B.A.LL.B.-10th Sem. Paper-I Administrative Law-II

Question No. 1- What is Loktvad? Discuss its definition, characteristics and expansion in social work.

Answer- Public interest litigation (PIL) is a litigation or judicial proceeding in which the interest of the general public or a large section of the public is involved. Or in other words, it can be said that such a litigation or judicial proceeding or matter in which the interest of the general public or society is involved is called public interest litigation.

Public interest litigation is a unique platform to provide justice to the poor and weaker sections of the society. When a person is unable to file a case or take legal action in court due to poverty, financial weakness or any other reason, then a case or judicial action is filed in court on his behalf by another person, voluntary organization or institution through public interest litigation. For example, if a person is unable to muster the courage to go to court due to lack of money (poverty), then any other person or organization can knock at the door of the court on his behalf, this is public interest litigation.

Former Supreme Court judge Krishna Iyer says that "The narrow concept of only the aggrieved person being able to approach the court has now ended. It has been replaced by class action, public interest litigation, representative litigation etc. Now any person who is connected with any public interest can approach the court for the protection of such interests."

According to Black's Law Dictionary- "Public interest litigation means a legal action instituted in a court for the enforcement of public interest or general interest in which the public or a class of the community has a pecuniary interest or any interest which affects their legal rights or liabilities."

Justice **P.N. Bhagwati in 1981** explained the concept of PIL thus, "Where any legal wrong or legal injury is caused to any person or a determinable class of persons by reason of the violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or a determinable class of persons is unable to approach the Court for relief by reason of poverty, helplessness or disability or socially or economically deprived condition, any person may apply for appropriate direction, order or writ to the High Court under Article 226 and in case of violation of fundamental rights of such person or determinable class of persons may seek judicial redressal for the legal wrong or legal injury caused to such person or determinable class of persons in this Court under Article 32.

Scope of public interest litigation-The scope of public interest litigation is very wide. Its scope can be studied from two perspectives: from the perspective of subject matter and from the perspective of jurisdiction (locus standi).

In terms of subject matter-

(i) Those which are of wider public interest;

(ii) In which no private interest is involved;

(iii) Which is not politically motivated?

There are many cases in which it has been held that matters related to private interest cannot be raised through public interest litigation. (**Freedom Fighter Ramchandra Bihari Sevashram vs. State of Bihar, AIR 2008 NOC 98, Patna**, **National Council for Civil Liberties vs. Union of India, AIR 2007 SC 2631**).

From the point of view of 'locus standee', causes related to public interest can be raised in the court by any person or organization. It is not necessary that only the aggrieved or distressed person should approach the court. The general rule is that under **Article 226** of the Constitution, a writ can be filed only by the person whose legal rights have been violated. But now any person, association or organization of the society can approach the court for the protection of the legal rights of any person or class who is unable to approach the court due to

poverty or any other reason. It is only necessary that there should be widespread public interest involved in such cases. A good example of the increasing area of public interest litigation is to consider letters and newspaper clippings as writs and take action on them. In the last few years, the trend of considering newspaper clippings, post cards and letters as writs and taking action on them has increased. **Bandhua Mukti Morcha v. Union of India (AIR 1982 SC 805)**, People's **Union for Democratic Rights v. Union of India (AIR 1982 SC 1473)**, **Sunil Bacha vs. Delhi Administration (AIR 1980 SC 1579)** etc. in which action has been taken by considering letters and news clippings as writs.

It is essential for a public interest suit that-

(i) The matter involves general public interest;

(ii) There is no personal interest involved therein;

(iii) It is done in good faith;

(iv) Should not be politically motivated.

Saving the water of Ganga and the beauty of Taj from pollution etc. are good examples of public interest litigation.

Environmental and ecological issues can be raised through public interest litigation **(Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, AIR 2006 SC 1489**).

In the case of **Girish Vyas vs. State of Maharashtra (AIR 2012 SC 2043)**, the Supreme Court has stated that public interest litigation is a challenge to the government and the government machinery and it also provides them an opportunity to make the basic rights of humans meaningful.

Question No. 2- What is a writ of habeas corpus? Discuss the reasons for issuing a writ of habeas corpus by the court and its nature.

Answer - A writ of habeas corpus, also known as a 'great writ', is a petition that can be filed in court by a person who has been taken into custody. This writ is used to bring a prisoner or other detainee before the court. Its purpose is to find out whether the imprisonment or detention of a person is legal or not. Through a writ of habeas corpus, it is also found out whether there is any discrepancy in the facts related to the arrest and detention. For example, the date of arrest is wrong, the charges are wrongly written on the booking sheet, or the date of birth of the offender is wrong. Through a writ of habeas corpus, any extradition process, the amount of bail, and the jurisdiction of the court can also be investigated.

Habeas Corpus is a Latin term meaning 'you shall have the body in custody.' It is an order issued by the court to produce the detainee before the court and examine whether the arrest was valid or not.

Writ of Mandamus- A writ of mandamus is a command or order issued by any law or any authority recognized by law to any person, corporation or other authority to perform any public duty.

Prohibition - Prohibition writ means a writ issued by a higher authority to his subordinate officer, so as to stop something prohibited by law. This writ can be issued only against judicial and quasi-judicial bodies.

Writ of Certiorari-The word certiorari is a Latin word meaning to be informed. This writ is issued by a higher court to review the actions of a lower court.

Quo warranto writ- Quo warranto writ means by what authority. This writ is issued requiring a person to show by what authority he has exercised his powers or rights.

The power to issue such writs is vested in the Supreme Court under **Article 32** and in the High Courts under **Article 226**. While the Supreme Court under **Article 32** issues writs for violation of the fundamental rights of an individual, the High Courts under **Article 226** have wider jurisdiction to issue writs for violation of legal and fundamental rights.

Meaning of Habeas Corpus Petition- Habeas corpus writ is a legal process that acts as a remedial measure for a person who is illegally detained. The term habeas corpus is a Latin word which means to bring or present a body before the court. This is the most important right available to a person who is illegally detained. The basic purpose of using this writ is to release a person from unlawful detention or imprisonment. This writ is very important as it determines the right of a person to his freedom and personal liberty the court shall order the immediate release of the person detained or imprisoned under the authority of the court. If the court finds no legal justification for the cause, it shall order the immediate release of the person detained or imprisoned.

Who can apply for habeas corpus petition?

To answer this question, the courts have made it clear in various cases that a person who is in prison may apply for a writ of corpus, his may-

(1) A person unlawfully held captive or detained.

(2) A person who is aware of the benefits of the case.

(3) Any person who is acquainted with the facts and circumstances of the case and has voluntarily made an application under **Article 32** of the Indian Constitution and files a habeas corpus petition under **section 226**.

(4) When the habeas corpus petition is rejected

The following are the situations in which a habeas corpus petition is rejected:

(1) When the Court does not have territorial jurisdiction over the prisoner.

(2) When the detention of a person is linked to a court order.

(3) When the person detained has already been released.

(4) When the imprisonment has been made legal by removing the defects.

(5) The writ of habeas corpus shall not be available during an emergency.

(6) When the competent court dismisses the petition on merits.

Whether the principle of res judicata applies to this writ

When it comes to illegal confinement of a person, the doctrine of res judicata does not apply. A successive petition for habeas corpus under **Article 32** can be filed in the court with new grounds, which were not included in the earlier petition. A petition for habeas corpus is admissible only if it is filed in a forum having independent existence and separate jurisdiction and competence.

In the case of **Lallubhai Jogibhai Patel vs Union of India and Others on December 15, 1980**, it was held that no second petition for habeas corpus is admissible in the court if it is filed on the same grounds as the first petition.

Preventive Detention-Preventive detention is the confinement of a person to prevent him from committing any kind of crime in the future. It does not act as a punishment or sentence imposed on a person; it is only a precautionary method. The concept of preventive detention and habeas corpus come together. **Article 22** of the Indian Constitution states the procedure for preventive detention and the law needs to be strictly followed. The Parliament has the power to make laws for preventive detention for various reasons related to it such as-

(1) Defense.

(2) Foreign relations or the foreign affairs of the country.

(3) Its main objective is to provide security to India and its states.

(4) To maintain public order.

However, such detention can be monitored through judicial review by examining the pre-conditions of detention.

Alternative Remedy- If the respondent gives a valid justification for the detention or imprisonment then the writ of habeas corpus cannot be issued by the court. However, in case of alternative remedy, the applicant still has the right to issue the writ of habeas corpus. It is not denied on the basis of availability of alternative remedy to the applicant.

Burden of proof - The burden of proof lies on the person or authority to satisfy the court that the detention or imprisonment of the person was done on a lawful basis. And if the detainee alleges that the imprisonment was malicious and beyond the jurisdiction of the authority detaining the person, then the burden of proof lies on the detainee.

Territorial Jurisdiction- Under **Article 32** of the Indian Constitution, the Supreme Court has jurisdiction over all authorities within and outside the territorial jurisdiction of India. Under **Article 226**, the High Court has jurisdiction to deal with a case when the High Court has control over that authority and a probable cause of action arises.

Habeas Corpus Petition during Emergency Proclamation- Habeas Corpus petition can be maintained during emergency proclamation, as after the 44th amendment in 1978, it was stated that the fundamental rights enshrined under **Articles 20** and **21** cannot be suspended. And for enforcement of these rights, writ petitions can be filed in the court.

Additional District Magistrate Jabalpur Vs Shiv Kant Shukla 1976 SC 1207 This case is also known as Habeas Corpus case and it is based on the grounds of issuance and the practicability aspect of this writ.

Illustration-A has been detained by police officer B without a warrant. All efforts made by A's family to find out A's whereabouts went in vain. Since he was wrongly detained by B (the police officer), a habeas corpus petition can be filed in the court by A's family on his behalf. Nature of

Habeas Corpus Petition-The concept of habeas corpus can be traced back to the thirteenth century. Habeas corpus cum cause writ is an order asking a person who has detained another person to appear before the court and justify his actions as to the grounds on which and for what reason The whole case revolved around the situation when the emergency was declared and the question raised was whether the writ of habeas corpus is maintainable in such a situation. It was held that as in the case of **Liversidge v. Anderson** all rights were suspended during the emergency, so was held in this case also where the state has the power to curtail the rights enshrined under **Article 21** of the Indian Constitution, particularly the right to life, in an emergency situation. This decision was considered as the darkest day in Indian history.

Sheela Barse v. State of Maharashtra 1983 SCC 96 In this case, a letter was written to the Supreme Court regarding the situation of women prisoners who were beaten up in the lockup and a writ petition was filed by the plaintiff, who is a human rights activist, regarding this situation. An enquiry officer was sent by the Court to investigate the situation and the allegations made by the plaintiff. It was found that the allegations were true. It was held that if the person detained or confined cannot apply for a writ, then someone else can file it on his behalf, which nullified the locus standi approach.

Sunil Batra v. Delhi Administration 1980 AIR 1579 In this case the court held that the writ petition of habeas corpus can be filed in the court not only for wrongful or illegal detention of the prisoner but also for his protection from any kind of ill-treatment and discrimination by the officer responsible for his custody. Thus the petition can be filed for illegal detention and the manner of detention can be investigated.

Nilabati Behera vs State of Orissa In this case, the petitioner's son was taken by the Orissa police for questioning. All efforts made to trace him proved futile. Therefore, a writ petition of habeas corpus was filed in the court. During the pendency of the petition, the body of the petitioner's son was found on the railway track. The petitioner was awarded compensation of Rs 1,50,000.

Kanu Sanyal v. District Magistrate Darjeeling & Others 1974 AIR 510 In this case, it was held that the legality of detention should be looked into from the facts and circumstances of the case instead of following the traditional practice of producing the dead body before the court. This case mainly focused on the nature and scope of the case and held that this writ is a procedural writ and not an original writ.

A.K. Gopalan v. State of Madras In this case, the Preventive Detention Act was examined on the basis of its constitutional validity. If a legislature deprives a person of his personal liberty, it must first be competent enough to make such a law. If the law supporting the detention is illegal, it is considered illegal. The person has the right to move the court. A person can file an appeal in the Supreme Court against the order of the High Court in case of accepting or rejecting the application for habeas corpus petition.

Question No. 3- Discuss briefly the responsibility of the state in relation to tort. Briefly differentiate between sovereign and non-sovereign actions.

Answer- Sovereign immunity is an argument made for wrongdoings committed by the government or its representatives. Obviously, these are based on public policy grounds. As a result, even if all the elements of an actionable claim are present, it is possible to prevent liability by making this argument. The doctrine of sovereign immunity is cantered on a principle of common law derived from British jurisprudence according to which the king does no wrong and cannot be accused of personal negligence or misconduct, and thus cannot be held liable for the negligence or misconduct of his servants. Another part of this doctrine is that a state cannot be sued in its own courts and this is considered an element of sovereignty.

This doctrine kept changing in Indian courts from the mid-nineteenth century till recently. When a legitimate claim for compensation is brought before the courts and is rejected by the old law, obviously having no validity, outrage and requests for explanation are natural. To ensure that legitimate claims are not defeated, Indian courts kept narrowing the scope of sovereign functions so that victims can receive compensation. The Law Commission of India also suggested abolishing this old doctrine in its first report. However, the draft bill to abolish this doctrine never passed for several reasons, and hence it was left to the judge to integrate this doctrine into the Indian Constitution.

Sovereign and non-sovereign functions of the state-Sovereign functions of the state can be defined as those functions for the execution of which the state is not answerable before the court. These functions are mainly related to the defense of the country, maintenance of the country's armed forces and maintaining peace in the region. These functions can be performed by the state only for external sovereignty and they are therefore not subject to the jurisdiction of ordinary civil courts and are primarily indivisible functions. But in addition, the state has many sovereign functions which are not primarily indivisible including taxation, maintenance of law and order including police functions, legislative functions, administration of laws and policies and granting of pardons.

While non-sovereign acts are those acts which fall under the jurisdiction of a normal civil court and if the state commits a wrongful act or breaches a contract, it will be liable for the wrongful act committed. But today, it has become very difficult to distinguish between sovereign and non-sovereign acts of the state. As per the case of Peninsular and Oriental Steam Navigation **Company vs Secretary of State for India**, the court considered the difference between sovereign and non-sovereign acts for the first time. It said that the secretary of state will not be liable for his sovereign acts and will be liable only for commercial acts. This decision helped the court to understand and interpret the acts of the state when the question of liability arose. But there was no established protocol or criterion to decide which act is sovereign and which is non-sovereign.

Important Judgments Distinguishing between Sovereign and Non-Sovereign Functions of the State- Following are the judgments given by the courts to understand the functions performed by the state and how these can be used to distinguish between sovereign and non-sovereign functions of the state-

Fulfilment of statutory duty- is a special criterion on the basis of which the court can decide whether an act falls under sovereign function or not. In the case of **Shivbhajan Durga Prasad vs Secretary of State,** a chief constable was arrested and tried. He was later acquitted. But the

petitioner sued the Secretary of State saying that he is liable for the wrong done by the constable. The court held that the secretary was not liable for the acts of the constable. Maintenance of public paths- The state maintains public paths for public welfare and no commercial purpose is involved in it. Construction of public paths and their maintenance is one of the sovereign functions.

In the case of **McInergie v. Secretary of State** the Calcutta High Court held that the right of a public road in maintenance, the state did not carry out any commercial operation and thus, the public road constructed by the government he is not liable for any damage caused to the plaintiff by coming in contact with the pole.

Maintenance of military road-This is also one of the important sovereign functions of the government. Maintenance of military road is done by the government for the purpose of defence. In the case of Secretary of State vs Cockcroft, the plaintiff was injured due to the negligence of the servant. The servant left a pile of gravel on the military road on which no one was walking. The court held that the government would not be liable for such actions because maintenance of military road is a sovereign function.

Seizure of Goods- During War In the famous case of **Kesoram Poddar & Co. v. Secretary,** commandeering of goods during war was said to be a sovereign act. According to the facts of the case, a company sued the Secretary of State to recover damages as the company suffered heavy losses due to the defendant's failure to take delivery of certain goods purchased and to pay for them. The Court held that since this command of goods and delivery falls under commandeering of goods which is a sovereign act, such a claim is dismissed.

Training for Defence - The government provides training for the safety of the general public and hence it is a sovereign function. In the case of **Secretary of State vs. Nagarao Limbaji**, where the plaintiff sued the Secretary of State for damages for the loss of his finger due to an explosion near the area where defence practice was being conducted, the court held that facilities provided for bombing practice and other training for defence are sovereign functions of the state as such functions are not performed by the government for its own personal gain but for the welfare and safety of the country and its citizens.

Arrest and Detention- Maintenance of law and order involves the duty to arrest and detain. When an act is done in good faith it is a sovereign function of the State. He filed a complaint for damages against the Secretary of State in the case of M.**A. Kador Jailani v. Secretary of State** where certain police officers wrongfully detained and confined the plaintiff. It was held that, unless the wrongdoing was done either by order or on its behalf and was subsequently acknowledged or adopted, the Government was not responsible for the wrongdoings done by its officers. Similarly, in the case of **Gurcharan Kaur v. Province of Madras** the DSP directed the Sub-Inspector of Police to go to the station and prevent the other Maharaja from leaving the station. On the arrival of the train, the Sub-Inspector, in good faith, though acting under a mistaken impression, decided that he had to detain the Maharani, and not only prevented the Maharani from boarding the train but also closed the gate in the iron fence and posted two constables near the Maharani and his daughter lodged a complaint about wrongful imprisonment. It was held that the government should not be held accountable for police conduct done in good faith in the discharge of its statutory duty. Thus, if the unjustified interference of a government employee is done in good conscience, the State will not be responsible.

Performance of military duty- In the case of **Union of India v. Harbans Singh** where as a result of the negligence and carelessness of a truck driver of the Indian Army Department engaged in military service, the plaintiff's father was hit and crushed while delivering food to serving military personnel. The State is not held liable as the driver's act was done while performing sovereign duty.

Maintenance of law and order- As per the facts given in the case of **State of Orissa vs. Padmalochan,** the Orissa Military Police lathicharged a crowd gathered in front of the District Court to demand their demands. It was claimed that the police personnel attacked the members of the crowd without the orders of the magistrate or other police officers, resulting in injuries to the plaintiff. He filed a complaint against the State for the injuries he sustained. The trial court ruled in favour of the plaintiff but, on appeal, the High Court held that the police officers committed misconduct in the execution of their duties without authority and this unlawful act does not exempt the plaintiff from the capacity of the sovereign function entrusted to him and further held that whatever injuries the plaintiff suffered.

Revenue Collection - In the case of **Kuppanna Chetty & Co. v. Collector of Anantapur**, the Tehsildar wrongfully confiscated movable goods under the Madras Revenue Recovery Act and thereby caused heavy loss to the plaintiff. The Court held that since the collection of revenue was a sovereign or purely State activity, in violation of its statutory duties, the State was not liable for any tort committed by a Government servant in the course of such activity. Similarly, this was upheld in the case of **State of Andhra Pradesh v. Ankanna**. As per the facts of the case, a bullock cart belonging to the plaintiff was unlawfully and maliciously detained by the Revenue Officers for recovery of land revenue under the Revenue Recovery Act. The Court held that collection of land revenue was a sovereign activity and the State was not responsible for the malicious act of its servants when the act was done under a law.

Through the above case laws, it can be interpreted that the State cannot be held accountable for any wrongdoing done by a public officer in the alleged exercise of his legislative duties in the field of sovereign functions like collection of revenue etc.

Administration of Justice-Administration of justice, which is one of the functions of the State in the exercise of sovereign functions, is to identify such persons and order their trial in accordance with the law. If people are found guilty while discharging the administration of justice, the framework of judicial duties cannot be properly executed. This applies to a person whose actions as a judicial officer can be considered to be in his judicial capacity. An agent of the government will have both judicial and executive powers. Only if he discharges judicial functions in the course of administering justice will he be spared from liability. Even if he committed the crime of false imprisonment while acting in his executive capacity, he cannot claim sovereign immunity.

Malicious Prosecution - In the case of **Maharaja Bose v. Governor General in Council**, the petitioner filed a suit of malicious prosecution for false arrest and damages against the Governor-General in Council. According to the facts of the case, the complainant was travelling from Howrah to Patna by the respondent's railway. He boarded the infraclass compartment of the train. At about 1 am, when the said train reached Asansol railway station, three Indian soldiers forcibly occupied the plaintiff's seat. The complainant objected to this and he informed two railway employees about it. However, they did not take any action.

The servant of the defendant, against whom the plaintiff had earlier complained, arrived and made extensive enquiries and asked the constables to vacate it. While such discussions were going on at the Duty Assistant Station, the Station Master arrived in the compartment and accused the plaintiff of pulling the chain and insulted him using foul language and severely assaulted him. The plaintiff was then dragged out of the compartment without any hearing.

Vicarious liability of the state and tortuous liability- Vicarious liability is a type of strict, secondary liability arising under common law principles of agency, i.e. respondeat superior which means the responsibility of a superior for the actions of his subordinate, or, in a broader sense, the responsibility of a third person who has the 'right, ability or duty' to control the activities of the violator. The responsibility is placed not on the offender but on the person who should control the offender. Moral responsibility of officials for their own wrongs has become more prevalent, with evidence indicating equality between the ruler and the person concerned.

Only when the king found it necessary to take over the responsibility of a public official, it was used to pay duties from the state treasury. Dharma had to be imposed on both the king and the subject was seen as a binding civil law. In both Hindu law and Muslim law, as far as possible, the rulers themselves administered justice and the rest was done by exceptionally learned, upright judges. The most remarkable development in recent times has been the Court's declaration that it had jurisdiction to award compensation.

State responsibility in India can be easily understood from **Article 300 (1)** of the Constitution, which originally came through **Section 176** of the Government of India Act, 1935. It can be traced back to **Section 32** of the Government of India Act, 1915, which has its origin in **Section 65** of the Government of India Act, 1858. It will therefore be seen that the Government of India and the Constitution of each State are in succession to the East India Company, according to the chain of legislation beginning with the Act of 1858. In other words, the responsibility of the Government is the same as that of the East India Company before 1858.

Question No. 4 - By separation of powers do you understand how the principle of separation of powers has been implemented in India?

Answer- Separation of powers has long been a controversial issue. In government, it is important. Another issue of controversy is whether or not it is included in our Constitution. The main goal of this research paper is to define separation of powers. Why is it important? What types of constitutions exist, and which one do we have? Does our Constitution have a checks and balances system? What is the importance of the independence of the judiciary?

How is Montesquieu's principle of separation of powers used in the US, and most importantly, is it enshrined in our constitution or not? Since the goal of this research is to educate and raise awareness among the common people who believe that law is complicated and not for common people, extremely simple English is used.

"When the legislative and executive powers are united in the same person or in the same body or magistrate, there can be no liberty. Again, if the judicial power is not separated from the legislative and executive powers, there is no liberty. Where it is joined with the legislative power, the life and liberty of the subject will become subject to arbitrary control, for then the judge will be the legislator. Where it is joined with the executive power, the judge may behave with violence and oppression. If the same person or the same body, whether of the nobility or of the people, were to exercise those three powers, of making laws, executing public resolutions, and hearing the cases of individuals, all would be lost."

Wade and Phillips give three definitions of separation of powers-

(1) One branch of government should not perform the duties of another, such as delegating legislative powers to ministers;

(2) One branch of government should not control or interfere with the discharge of the duties of another branch, such as when the judiciary is separated from the executive branch or when ministers are not accountable to Parliament;

(3) The same person must not serve in more than one of the three branches of government, such as sitting as a minister in Parliament.

The separation of powers theory consists of three prongs of the structural classification of governmental powers: (1) a person should not serve in more than one of the three branches of government. For example, ministers should not be allowed to sit in the House of Commons.

(2) No Government agency shall be permitted to interfere in the working of another Government agency needed.

(3) The functions of one organ of Government shall not be performed by another organ.

Similarly, James Madison said that "No other political truth is of more intrinsic importance, or more valid as a fervent supporter of liberty, than the fact that the concentration of all powers, legislative, executive, and judicial, in the same hands, is a tyranny of tyranny."

The principle of separation of powers has had a great influence on the governments of various nations. The constitution of England is a gift of traditions. The constitution here is an unwritten constitution. Hence, it is a constitution having a separate existence from the constitution of America. Hence, the principle of separation of powers is becoming ineffective here in the beginning.

Principle of Separation of Powers in India- India follows separation of functions rather than powers. Unlike the US, the concept of separation of powers is not strictly followed in India. However, a system of checks and balances has been put in place in such a way that the judiciary has the power to strike down any unconstitutional law passed by the legislature. Today, most constitutional systems do not have a strict separation of powers between different organs in the classical sense because it is impractical. The Constitution of India adopts the idea of separation of powers in an implicit manner. The principle of separation of powers is called the separation of powers despite there being no explicit provision recognising it as such, the Constitution provides for proper separation of functions and powers among the three organs of government.

Three organs of government-

Legislature - The main function of the legislature is to make laws. It is the basis for the functioning of the other two organs, the executive and the judiciary. It is sometimes given the first place among the three organs, because unless laws are made, implementation and application of laws cannot take place.

Executive - The executive is the organ that implements the laws made by the legislature and enforces the will of the state. It is the administrative head of the government. Ministers including the Prime Minister/Chief Minister and President/Governor are part of the executive.

Judiciary - The judiciary is the branch of government that interprets the law, resolves disputes and provides justice to all citizens. The judiciary is considered the watchdog of democracy and the guardian of the Constitution. It includes the Supreme Court, High Courts, District and other subordinate courts.

What is separation of powers?

In the strictest sense, the principle of separation of powers is very rigid.

Background of the Concept- The concept was first seen in the works of Aristotle in the 4th century BC, in which he described the three agencies of government as the assembly, public officials and the judiciary. A similar concept was adopted in the ancient Roman Republic. In modern times, it was the 18th century French philosopher Montesquieu who made this theory highly systematic and scientific in his book De l'Esprit des Lois or The Spirit of Laws. His work is based on the understanding of the English system which was showing a tendency towards more distinction between the three organs of government. This idea was further developed by John Locke.

Purpose of Separation- Its purpose is to prevent the abuse of power by any one person or group of persons. It will protect the society from arbitrary, irrational and tyrannical powers of the state, safeguard the liberty of all and allocate each function to the appropriate organs of the state for the effective discharge of their respective duties.

Meaning of Separation of Powers- Separation of powers divides the government into three branches viz. legislature, executive and judiciary. Though different authors give different definitions, but in general, we can state three features of this principle. Each organ should have persons of different capacities, i.e. a person working in one organ should not be a part of the other organ.

One organ should not interfere in the functioning of other organs. One organ should not take over the work of another organ or they should be confined to their own work only. Thus these broad areas are defined, but in a complex country like India there is often conflict and encroachment by one branch on another branch.

Importance of the principle- This principle ensures that autocracy does not enter the democratic system. It protects the citizens from arbitrary rule. Therefore, the importance of the separation of powers principle can be summarized as follows:

It can be presented in-

(1) It keeps autocracy away

(2) Protects individual liberty

(3) Helps in creating efficient administration

(4) The independence of the judiciary is maintained

(5) Prohibits the legislature from making arbitrary or unconstitutional legislation

Constitutional status of separation of powers in India-Under the Indian Constitution-

Legislature - Parliament (Lok Sabha) and Rajya Sabha (Rajya Sabha) State Legislative Bodies

Executive- At the central level. President, At the state level. Governor

Judiciary - Supreme Court, High Courts and all other subordinate courts

Some articles of the Constitution-

Article 50: This article mandates the state to separate the judiciary from the executive. But, since it falls under the Directive Principles of State Policy, it is not applicable.

Articles 53 and 154: It provides that the executive power of the Union and the States shall be vested in the President and Governor and they shall enjoy immunity from civil and criminal liability.

Articles 121 and 211: These provide that legislatures cannot discuss the conduct of a judge of the Supreme Court or a High Court. They can do so only in the case of impeachment.

Article 123: The President, being the executive head of the country, is empowered to exercise legislative powers (including promulgation of ordinances) under certain conditions.

Article 361: The President and Governors enjoy immunity from court proceedings.

It has a system of checks and balances, in which different organs control each other by certain provisions. The judiciary has the power to exercise judicial review over the actions of the executive and the legislature. The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per **Article 13** or if it violates fundamental rights. It can also declare unconstitutional executive actions void. The legislature also reviews the functioning of the executive. Although the judiciary is independent, judges are appointed by the executive. The legislature can also change the basis of decision, following constitutional limits. Checks and balances ensure that no organ becomes too powerful. The constitution guarantees that discretionary power given to any one organ is within the democratic principle.

Functional Overlap - The Legislature, apart from exercising law making powers, also exercises judicial powers in cases of breach of its privileges, impeachment of the President and removal of judges. The Executive can further influence the functioning of the Judiciary by appointing the Chief Justice and other Judges to the post. Powers by the Judiciary - Exercise of judicial powers by the Legislature in the matter of amending and revalidating the law declared invalid. By disqualifying its members and impeaching judges, the Legislature discharges the functions of the Judiciary. The Legislature can impose penalties for infringement of freedom of speech in Parliament. This comes under the powers and privileges of the Parliament. But while exercising such power it is always necessary that it is done in accordance with due procedure. The head of every government ministry is a member of the legislature, thus the Executive becomes an integral part of the Legislature. The Council of Ministers on whose advice the President and Governor act consists of elected members of the Legislature. Under certain circumstances the legislative power vested in the Legislature can be exercised by the Executive. If the President or

the Governor, when the Legislature is not in session and is satisfied that circumstances exist which require immediate action, they can promulgate Ordinances which will have the same power as an Act made by Parliament or a State Legislature. The Constitution through **Article 118** and **Article 208** empowers the Legislature at the Centre and in the States to make rules for regulating their respective procedures and conduct of business, subject to the provisions of this Constitution. The Executive also exercises the power to make laws under delegated legislation. Tribunals and other quasi-judicial bodies which are part of the Executive also perform judicial functions. Administrative tribunals which are part of the Executive also perform judicial functions. Higher Administrative Tribunals must always have a member of the Judiciary. Higher Judiciary is given the power to supervise the functioning of subordinate courts. It also acts as the Legislature while making rules regarding legislation regulating its conduct and disposal of cases.

Apart from functional overlapping, the Indian system also lacks separation of personnel between the three departments. Applying the principles of constitutional limitation and fiduciary power in the Indian scenario, a system has not been created where no organ can usurp the functions or powers that have been assigned to another organ by express or essential provision, nor can they divest themselves of their essential functions under the Constitution.

Moreover, the Constitution of India clearly provides for a system of checks and balances to prevent arbitrary or capricious use of power derived from the said supreme document. Though such a system appears to dilute the principle of separation of powers, it is essential to enable the just and equitable functioning of such a constitutional system.

By granting such powers, a mechanism is established for control over the exercise of constitutional powers by the respective organs. This clearly indicates that the Indian Constitution does not provide for strict separation of powers in its scheme. Instead, it creates a system consisting of three organs of government and grants them both exclusive and overlapping powers and functions. Thus, there is no complete separation of functions among the three organs of government.

Judicial declaration-

Kesavananda Bharati vs State of Kerala; 1973): In this case, the Supreme Court held that the amending power of the Parliament is subject to the basic features of the Constitution. Therefore, any amendment that violates the basic features will be declared unconstitutional**. Swarn Singh Case; 1998):** In this case, the Supreme Court held the pardon granted to a convict by the Governor of Uttar Pradesh as unconstitutional.

Ram Jawaya Kapoor v. State of Punjab 1955 In this case it was held that the Indian Constitution has not really recognised the doctrine of separation of powers in absolute strictness, but the functions of the different parts or branches of the Government have been sufficiently differentiated and as a result it can very well be said that our Constitution does not envisage the assumption by one organ or part of the State of functions which essentially belong to another. Indira Nehru Gandhi v. Raj Narain 1975 Where a dispute relating to the election of the Prime Minister was pending before the Supreme Court, it was held that the settlement of a particular dispute is a judicial function which the Parliament cannot exercise even under the constitutional amendment power. Therefore, the main ground on which the amendment was held to be ultra vires was that when the Constitutional Body declared that the election of the Prime Minister would not be void, it performed a judicial function which it should not have performed according to the doctrine of separation. After this decision the place of this principle in the Indian context became a little clearer.

Question No. 5- Discuss the judicial control over public corporation.

Answer- In all countries with developed or developing democracy, the main goal is to achieve an efficient and effective administrative system. Administrative law in India was recognized in the mid-20th century. Administrative law is neither legislative nor judicial, it is a quasi-judicial and

quasi-legislative system that deals with the relationship between individuals and the government.

In simple terms, it regulates the actions of administrative officers and determines the organisation, powers and duties of such officers. Administrative law is a species of constitutional law and it cannot exercise its powers beyond constitutional law. However, it becomes necessary for the judiciary to examine administrative actions and their constitutionality because the scope of administrative law is wider than other laws. The main purpose of judicial control is to protect the rights of individuals from abuse of powers by administrative officers by ensuring the legality as well as constitutionality of the actions taken by administrative officers.

Scope of Judicial Control over Administration- in India, the Constitution provides for independent judicial and legislative powers. There is separation of powers between the legislature, executive and judiciary. The Indian Constitution contains many provisions to ensure an effective and efficient system of separation of powers. For example the executive appoints the judges of the Supreme Court but within the limits of the guidelines given by it. And after such appointment, the executive ceases to have any control over the discharge of functions by the judiciary. Similarly, though the judiciary has the power to control the administrative actions of officers, such control cannot be exercised at their own will but can be exercised only when relief is sought. Judicial interference or control is restrictive in nature which limits the scope of its application. Generally, such control is confined to the following cases-

Lack of jurisdiction-When a public officer or administrative authority acts beyond its jurisdiction, the court has the power to declare such action as ultra vires. For example, in an organisation, a particular authority is given the power to take certain decisions or actions and any authority other than the competent authority exercises such power to take decisions, then a person can seek interference from the court under the provision of jurisdictional error.

Irrationality - The general principle is that powers conferred on administrative authorities should be exercised in a reasonable manner. But if an administrative officer makes a decision that bypasses the moral standards of society and is one that is absent under the law then such a decision can be considered unreasonable. It can also be called a wrongful act in law. The concept of irrationality as a ground for judicial control was established through the case of **Associated Provincial Picture Houses v. Eynesbury (1947)**. The case is also known as the Eynesbury test because the court laid down three tests to determine whether a court has the right to intervene on the ground of irrationality or not:

(1) If the defendant has not considered any fact which was to be considered.

(2) If the defendant has considered a fact which was not to be considered.

(3) If the decision is such that no reasonable authority, after a reasonable application of mind, would have considered giving effect to such decision.

(4) The Court further said that no court can interfere merely on the ground of disagreement.

Procedural impropriety-It means failure by an administrative authority to follow prescribed rules and procedures or the general law. In case of procedural impropriety, the judiciary has the power to intervene even though the principles of natural justice have not been violated**. Council of Civil Services Unions Vs. In the case of Minister for the Civil Service Lord Diplock** regarded procedural unfairness as one of the key factors in determining whether an administrative action is subject to judicial intervention.

Proportionality - It means that whatever action is taken by the administrative authority must be limited to the extent proportionate to the objective of the decision.

Irrationality: This may also be called 'Eynesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no reasonable person who applied his mind to the question to be decided could have arrived at it. Any action taken by an administrative authority requires the court to consider its advantages as well as disadvantages. Unless the court is satisfied that the action is necessary in the interest of the

general public, it will not be upheld. If any such authority takes an action which is for its private benefit and does not benefit the public interest, the court may be asked to interfere.
Forms of judicial control over administration-
(1) Judicial review
(2) Statutory appeal
(3) Case against the Government
(4) Criminal and civil suits against government officials
(5) Extraordinary treatment

Judicial Review- Judicial review is one of the most important powers of the High Courts and the Supreme Court. It is the basic need of a developing civilization to protect and safeguard the rights of the public by checking the administrative actions and their constitutionality as well as legality. This principle is prevalent in countries where the constitution is considered as their supreme law, for example- USA, India, and Australia etc. The power of the courts to exercise judicial review is restricted by the constitution. However, the legislature cannot exclude judicial review if the administrative action is against the constitution or harms the public interest. The principle of judicial review was first established on February 24, 1803 by the US Supreme Court in the case of **Marbury vs. Madison** when it declared an act of the legislature (Congress) as unconstitutional. The following are the mechanisms of judicial review-
(1) Judicial review of legislative action.
(2) Judicial review of judicial decision.
(3) Judicial review of administrative action.

In the cases of **Kesavananda Bharati**, **Chandra Kumar v UOI**, judicial review was held necessary and declared an essential and integral part of the Indian Constitution. In **Shri Shankari Prasad Singh Deo v Union of India**, the First Amendment Act of 1951 was challenged but the Supreme Court rejected this argument by granting plenary power to the Parliament to amend the Constitution. In the landmark case **of Golaknath v State of Punjab**, the Supreme Court reversed its decision as it observed that **Article 368** does not provide the power to amend the Constitution.

Statutory Appeals-Statutes and laws made by the legislature call for judicial intervention in case of any kind of suffering or loss. The aggrieved party has the right to appeal to a higher administrative tribunal than the tribunal that made the original decision. For example, any person aggrieved by a decision of the Sessions Court can appeal to the High Court for intervention. The Supreme Court or the Supreme Court is the highest court and, therefore, there is no right of appeal against its decisions.

Suits against the Government- There are certain limitations with regard to suits against the Government. The Government's responsibility under contract law is similar to the responsibility of citizens, subject to such limitations as may be regulated by Parliament under the Constitution. However, the Government is liable only for the acts of its officers for which they are liable. The Government can be held liable for the acts of its officers only in respect of non-sovereign functions.

Civil and criminal suits against government officials - The laws relating to civil and criminal proceedings against the acts of government officials vary from country to country. In India, the Code of Criminal Procedure makes government officials personally liable for acts done by them in such capacity and allows suits to be filed against such acts with two months' prior notice. However, some officials, except ministers, are immune from such civil suits such as the President and Governors. In Britain, the monarch and in the US, the President is immune from such legal proceedings.

Extraordinary Remedies - Apart from the above-mentioned types of judicial controls, the Indian Constitution provides certain additional remedies by way of writs under **Article 13** and

Article 226. The court has the power to provide these remedies The High Court has discretionary powers to issue orders, except the writ of habeas corpus, when no other remedy is available. These writs are issued by the Supreme Court only to protect the fundamental rights of the citizens, but the High Court has the power to issue these writs for the protection of other rights as well. The writ of prohibition is not specifically provided under the Indian Constitution, but it is still granted as a remedy by the Supreme Court. There are two types of writs of prohibition- preventive and mandatory. The mandatory writ is somehow similar to the writ of mandamus and the preventive is similar to the writ of prohibition. The writ of prohibition is issued against the executive authorities.

The remedies by way of writ are as follows-

Habeas Corpus - It is derived from the Latin word meaning "you may keep the body". It is used to secure a person who has been illegally or unlawfully detained. Through this writ, the Supreme Court or High Court can order another person who has illegally detained another person, to produce the body of that person before the court. The court requires the person in custody to provide valid grounds for detention and if he fails to do so then the person in custody will be released by the court. This writ can be issued against both public and private authorities. The Court shall have power, within all the areas in respect of which it exercises jurisdiction, to issue directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, to any person or authority, including any Government, within those areas for the enforcement of any right conferred by Part PF and for any other purpose. In the case **of Ichhu Devi v. Union of India**, the Supreme Court held that an application made by any disinterested public person through a postcard would also be considered for issuance of a writ of habeas corpus.

Mandamus-It is an order given by the Supreme Court and High Court to lower or subordinate courts, tribunals or public authorities. This writ can be issued to any government, court, corporation or public authority if they fail to perform their respective duties. In the case of **John Paley and others vs State of Kerala**, the Supreme Court held that the court cannot issue a writ of mandamus and direct a state legislature to establish a tribunal. The petition cannot be maintained and was dismissed.

Quo warranto- This writ is issued against a private person when he assumes the office of a public servant over which he has no authority. The power to issue this writ is discretionary and it depends on the discretion of the court whether to issue this writ or not. This writ can be issued only when a genuine public office is involved and it cannot be issued against a private or ministerial office. In the case of **Niranjan Kumar Goenka vs Bihar University**, Muzaffarpur, the court held that if the person is not holding a public office then the writ of quo warranto cannot be issued.

Writ of Certiorari-It is issued by the High Court to inferior courts. It is corrective in nature and its function is to correct errors. It is issued when the jurisdiction of the inferior court is exceeded or the High Court wants to decide a case on its own. In the case of **A.K. Kripak vs Union of India**, the Supreme Court laid down the difference between quasi-judicial authorities and administrative authorities. The Supreme Court annulled the decision by issuing writ of certiorari.

Prohibition- This writ is not issued frequently and is an extraordinary remedy that the High Court issues to a lower court or tribunal to prevent them from deciding a case because they have no jurisdiction. If the court or tribunal does not have jurisdiction and still decides on the case, the decision will be invalid because for an action to be valid it must have the sanction of law. This writ can only be issued against judicial and quasi-judicial authorities. In the case of Prudential Capital Markets vs State of AP and others, the question was raised as to whether a writ of prohibition can be issued against District Forums/State Commissions who have already

passed an award regarding consumer matters? The Court held that after the execution of the order, the writ of prohibition cannot be issued and neither can the award be stayed nor stayed.

Limits of judicial control over administration-With courts already overburdened with cases, it becomes difficult for the courts to handle this burden. Excessive delay in justice discourages justice seekers from approaching the court. The old saying "justice delayed is justice denied" holds true in such cases even today. Since the courts cannot interfere in administrative work at their own will and they can interfere only when justice is demanded, This delays the process of justice. As in most of the cases the judiciary is able to intervene only when a lot of damage has already been done and in such cases there is no way to mitigate the damage already suffered by the victim. Due to the high cost of judicial processes most of the time only rich people are able to get relief against administrative actions and the poor people are deprived of justice and become victims of such administrative actions and denial of justice. Courts in India are bound by certain statutory limitations and cannot take action against them. Some administrative actions are outside judicial control and cannot be reviewed. Lack of general awareness also becomes one of the limitations of judicial control. In a country like India where illiteracy is high, people are deprived of even the general knowledge of the remedies that are provided by the judiciary in case of grievances. For the courts which can act only when relief is sought, providing justice to the citizens becomes difficult in this case.

Recent cases related to judicial control

In the recent case of **Azizur Rahman v. State of West Bengal and others,** the Calcutta High Court held that the power of judicial review of the judiciary is to examine the legality and constitutionality of administrative action and not the wisdom or soundness of such action. The judiciary will exercise its powers only when the action is totally arbitrary or for personal gain or affects the public interest. In the case of **I.R. Coelho (Dead) by L.R.S. v. State of Tamil Nadu** and others, the Supreme Court held that the laws added to the 9th Schedule of the Constitution through amendments after 24th April, 1973 can be amended if they are against the Constitution.

Question No. 6- Define natural justice and briefly explain its use in administrative work.

Answer- The principle of natural justice is derived from the Roman law term 'jus natural' and is closely related to common law and moral principles, but has not been codified. It is a law of nature which is not derived from any statute or constitution. The principle of natural justice is followed with supreme importance by all citizens of a civilized state. In the ancient days of fair dealing, at a time when there were strict and stringent laws for hiring and firing in industrial areas, the Supreme Court gave its order with the passage of time and established social, justice and economy statutory protection for workers.

The first rule is the 'Hearing Rule' which states that the person or party affected by the decision taken by the panel of expert members should be given a fair opportunity to express his/her viewpoint in order to defend himself/herself.

Second, the 'rule of bias' generally states that the panel of experts must be impartial when making a decision. The decision must be given in an independent and impartial manner that satisfies the rule of natural justice and thirdly, the 'reasoned judgment' which refers to the order, decision or verdict of the court that is given by the presiding officer on a valid and proper basis.

The principle of natural justice is a very old concept and it started at a very young age. The Greeks and Romans were also familiar with this concept. In the times of Kautilya, Arthashastra and Adam recognized the concept of natural justice. According to the Bible, in the case of Eve and Adam, when they ate the fruit of knowledge, God forbade them. Before pronouncing the sentence, Eve was given a fair chance to defend herself and the same procedure was followed in the case of Adam.

Later, the concept of natural justice was accepted by English jurists. The term natural justice is derived from the Roman term jus-naturale and the Lex Naturale, which schemed the principles of natural justice, natural law and equity.

'Natural justice means knowing what is right and what is wrong.'

In India this concept was introduced long back. In the case of **Mohinder Singh Gill vs Chief Election Commissioner** the court held that the concept of impartiality should be there in every function whether it is judicial, quasi-judicial, administrative and/or quasi-administrative function.

Purpose of theory-

(1) To provide equal opportunity to be heard.
(2) The concept of fairness.
(3) To fill the loopholes and deficiencies in the law.
(4) Protect fundamental rights.
(5) Basic features of the Constitution.
(6) There was no miscarriage of justice.

The principles of natural justice must be free from bias and the parties must be given a fair opportunity of being heard and all reasons and decisions taken by the court must be communicated to the concerned parties.

The Supreme Court said that arriving at a fair and just decision is the objective of judicial and administrative bodies. The main objective of natural justice is to prevent failure of justice. A committee i.e. "Ministers Power" laid down 3 essential procedures related to the principles of natural justice.

(1) No one should be a judge in his own case.
(2) No one's condemnation can go unheard.
(3) The party has the right to know the reasons and the decision taken by the authority.

When can it be claimed?

Natural justice can also be claimed while acting judicially or quasi-judicially such as Panchayats and Tribunals etc. It includes the concept of fairness, basic ethical principles and different types of bias and why natural justice is needed and what are the special cases or circumstances involved where the principles of natural justice will not apply.

In the case of Province of **Bombay v. Khushaldas Advani** it was held that natural justice will apply over statutory justice as it is a fundamental principle of natural justice which leads to fairness and justice.

(1) Effect of work
(2) Administrative action.
(3) Civil consequences.
(4) The principle of legitimate exception.
(5) Fairness at work.
(6) Disciplinary Action.

In the case of **Board of High School vs Ghanshyam**, a student was caught cheating in the examination hall and was debarred from the examination due to this act. The Supreme Court held that the student cannot file a PIL against the examination board.

High water mark case- Eurasian Equipment & Co. Ltd. vs State of West Bengal: Under this case all the executive engineers were blacklisted. The Supreme Court said that you cannot blacklist anyone without giving valid and reasonable grounds and at the same time he should be given a fair opportunity to be heard.

nemo judex in causa sua

'No one should be a judge in his own case' as it leads to the rule of bias. Bias means an act that leads to improper activity in a conscious or unconscious state with respect to a party or a

particular case. Therefore, this rule is needed to make the judge impartial and give the decision based on the evidence recorded according to the case.

Personal bias - Personal bias arises out of the relationship between the party and the deciding authority. Which leads the deciding authority to indulge in improper activity in a questionable situation and give a decision in favour of his person. Such equations arise due to various forms of personal and professional relationships. To successfully challenge the administrative action on the ground of personal bias, it is necessary to give a proper reason for the bias. The Supreme Court held that the brother of a member of the selection committee was also a candidate in the competition, but due to this the entire process of selection cannot be cancelled. Here, to avoid biased action on behalf of his brother, the concerned panel member associated with the candidate can be requested to be removed from the panel of the selection committee. So that a fair and reasonable decision can be taken. Ramanand Prasad Singh vs UOI.

Pecuniary Bias- If a judicial body has any kind of financial advantage, no matter how small, it will create bias in the administrative authority.

Subject matter bias- When the deciding authority is directly or indirectly involved in the subject matter of a particular case. In **Muralidhar v. Kadam Singh** the court refused to set aside the decision of the election tribunal on the ground that the wife of the Speaker was a member of the Congress party which was defeated by the petitioner. Departmental bias- The problem or issue of departmental bias is very common in every administrative process and it is not prevented effectively and at every small interval it gives rise to a negative perception of fairness in the proceedings.

Policy Perception Bias- Issues arising out of pre-determined policy perception are very predicated issues. Spectators sitting there do not expect the judge to sit with a blank sheet of paper and give a fair hearing and judgment on the case.

Bias by obstinacy- The Supreme Court has invented new criteria for bias by way of unfairness. This new category has emerged from a case in which a judge of the Calcutta High Court upheld his own judgment in an appeal. The rules of bias are violated directly because a judge cannot sit in an appeal in his own case.

Audi alteram partem - consists of just 3 Latin words, which basically means that no person can be convicted or punished by a court without being given a fair opportunity to be heard. In many jurisdictions, most cases are left indecisive without being given a fair opportunity to be heard.

The literal meaning of this rule is that both the parties should be given a fair opportunity to put forth their case and a fair hearing should be conducted. This is an important rule of natural justice and its pure form is not to punish anyone without any valid and reasonable ground. A person should be given prior notice so that he is prepared to know what all charges have been leveled against him. This is also known as the rule of fair hearing. The components of a fair hearing are not fixed or rigid in nature. It varies from case to case and authority to authority.

Question No. 7- Describe the process of investigation by Lokpal.

Answer - Section 20 of the Lokpal Act defines the procedure with regard to preliminary inquiry and investigation. On receipt of a complaint, the Lokpal orders a preliminary inquiry into the matter to ascertain whether a prima facie case exists for proceeding in the matter.

20-Provisions relating to complaints and preliminary inquiry and investigation-

(1) On receipt of a complaint, the Lokpal may, if he decides to take further action, make an order-

(a) A preliminary inquiry by its investigation branch or any agency (including the Delhi Special Police Establishment) against a public servant to ascertain whether a prima facie case exists for proceeding in the matter; or

(b) investigation by any agency (including the Delhi Special Police Establishment), when a prima facie case exists: Provided that if the Lokpal has decided to proceed with a preliminary inquiry, he shall, by general or special order, refer the complaint or class of complaints or complaints

received in respect of public servants belonging to Group A or Group B or Group C or Group D, to the Central Vigilance Commission.

Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003 (45 of 2003): Further, it is provided that the Central Vigilance Commission, after holding a preliminary inquiry in respect of Group A and Group B public servants, shall, in respect of complaints referred to it under the first proviso, submit its report to the Lokpal in accordance with the provisions contained in **sub-sections (2)** and **(4)** and in the case of Group C and Group D public servants, the Commission shall take action in accordance with the provisions of the Central Vigilance Commission Act, 2003 (45 of 2003),-

It further provides that before ordering an inquiry under **clause (b)**, the Lokpal shall seek explanation from the public servant to determine whether a prima facie case for investigation exists. It further provides that seeking explanation from the public servant before an inquiry shall not impede the search and seizure, if any, required to be carried out by any agency (including the Delhi Special Police Establishment) under this Act.

(2) During the preliminary inquiry specified in **sub-section (1),** the investigating wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of the material, information and documents collected, seek comments from the public servant and the competent authority on the allegations made in the complaint and after receiving the comments of the concerned public servant and the competent authority, make a report to the Lokpal within sixty days from the date of receipt of the reference will present.

(3) A Bench consisting of at least three Members of the Lokpal shall consider every report received under **sub-section (2)** from the investigating wing or any agency (including the Delhi Special Police Establishment) and, after giving an opportunity of being heard to the public servant, decide whether a prima facie case is made out and take one or more of the following actions, namely:-

(a) Investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) Initiating departmental proceedings or any other appropriate action against the public servants concerned by the competent authority;

(c) To drop the proceedings against the public servant and take action against the complainant under section **46**.

(4) Every preliminary inquiry specified in **sub-section (1)** shall ordinarily be completed within a period of ninety days from the date of receipt of the complaint and within a further period of ninety days for reasons to be recorded in writing.

(5) If the Lokpal decides to inquire into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to conduct the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order-

Provided that the Lokpal may, for reasons to be recorded in writing, extend the said period for a further period not exceeding six months at a time.

(6) Notwithstanding anything contained in **section 173** of the Code of Criminal Procedure, 1973 (2 of 1974), any agency (including the Delhi Special Police Establishment) shall submit an investigation report under that section to the court having jurisdiction in respect of cases referred to it by the Lokpal and send a copy of the same to the Lokpal.

(7) A Bench consisting of at least three Members of the Lokpal shall consider every report received under **sub-section (6)** from any agency (including the Delhi Special Police Establishment) and after obtaining the comments of the competent authority and the public servant,-

(a) Give sanction to its prosecution wing or investigating agency to file a charge sheet or close the report before the Special Court against the public servant;

(b) Direct the competent authority to initiate departmental proceedings or any other appropriate action against the public servant concerned.
(8) After taking a decision regarding filing of a charge sheet under **sub-section (7),** the Lokpal may direct its prosecution branch or any investigating agency (including the Delhi Special Police) to file a charge sheet.
The Lokpal (Establishment) has been authorised to initiate prosecution in the Special Court in respect of cases investigated by the agency.
(9) The Lokpal may, during the preliminary inquiry or investigation, as the case may be, pass appropriate orders for the safe custody of documents relating to the preliminary inquiry or investigation, as the case may be, as it may deem fit.
(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public the status of the number of complaints pending or disposed of before it.
(11) The Lokpal may retain original records and evidence which may be required in the process of preliminary inquiry or investigation or in the conduct of a case by it or by the Special Court.
(12) Save as otherwise provided, the manner and procedure for conducting a preliminary inquiry or investigation (including the materials and documents to be made available to the public servant) under this Act shall be such as may be specified by regulations.
Persons likely to be adversely affected will be heard. If at any stage of the proceedings the Lokpal-
(a) Considers it necessary to inquire into the conduct of any person other than the accused; or
(b) Is of the opinion that the reputation of any person other than the accused is likely to be affected prejudicially by the preliminary investigation, the Lokpal shall give such person a reasonable opportunity of being heard in the preliminary investigation and of producing evidence in his defence in accordance with the principles of natural justice.
Lokpal may require public servant or any other person to furnish information, etc.- Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person, who, in its opinion, is capable of furnishing information or producing documents relevant to such preliminary inquiry or investigation, to furnish any information or produce any document.
Power of Lokpal to grant sanction to initiate prosecution-
(1) Notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 (2 of 1974) or **section 6A** of the Delhi Special Police Establishment Act, 1946 (25 of 1946) or **section 19** of the Prevention of Corruption Act, 1988 (49 of 1988), the Lokpal shall have the power to grant sanction for prosecution **under clause (a)** of **sub-section (7)** of **section 20**.
(2) No prosecution under **sub-section (1)** shall be initiated against a public servant for an offence committed by him while acting or purporting to act in the discharge of his official duties any offence is alleged and no court shall take cognizance of such offence without the previous approval of the Lokpal.
(3) Nothing contained in **sub-sections (1)** and **(2)** shall apply in relation to persons holding office under the provisions of the Constitution and in respect of whom the procedure for the removal of such person has been specified therein.
(4) The provisions contained in **sub-sections (1), (2)** and **(3)** shall not be contrary to the generality of the provisions contained in **clause (c)** of **sub-section (3)** of **article 311** and **article 320** of the Constitution.
24. Action on investigation against public servant such as Prime Minister, Minister or Member of Parliament. Where the findings of the Lokpal, after conclusion of the inquiry, reveal that an offence under the Prevention of Corruption Act, 1988 (49 of 1988) has been committed by a public servant specified in **clause (a)** or **clause (b)** or **clause (c)** of **sub-section (1)** of **section**

14, the Lokpal may register a case in a Special Court and send a copy of its report containing its findings to the competent authority.

Question No. 8- What do you understand by judicial activism? How is it necessary for uplifting the society? Discuss.

Answer- Judicial Activism Know what it means. The judiciary plays an important role in maintaining and promoting the rights of citizens in a country. The active role of the judiciary in maintaining the rights of citizens and maintaining the constitutional and legal system of the country is known as judicial activism.

Judicial activism can be essential to the upliftment of society because it can help maintain and promote the rights of citizens and preserve the constitutional and legal order of the country. For example, some of the decisions that have been considered judicial activism have enhanced the status of women in society, protected the environment, protected bonded laborers, and provided protection from inhuman treatment in prison.

The scope of judicial activism is so wide that no precise definition exists. There is no statutory definition of it as each jurist or scholar defines it differently. Proponents of judicial activism consider it a proper form of judicial review. In contrast, Thomas Jefferson refers to it as the 'autocratic power of federal judges'. According to **VD Kulshreshtha**, judicial activism occurs when the judiciary is actually tasked to participate in the lawmaking process and subsequently emerges as an important player in the legal system.

The concept of 'judicial activism' is in contrast to the idea of 'judicial restraint'. Both of these terms are often used to describe the assertiveness of judicial power, and are also used in terms of personal and professional attitudes that can make the courts lean towards one view or another as playing an appropriate role. The terms 'judicial activism', 'judicial supremacy', 'judicial autocracy', 'judicial anarchy' and others are often used interchangeably in the United States. The term 'judicial activism' is also considered accusatory. It implies that the performance of judges is based on their ideologies, opinions, values and interests.

Origin and development of judicial activism

The theory of judicial activism emerged during the judicial review process in the United Kingdom. The British Constitution is an example of an unwritten constitution that allows judicial activism. During the reign of the Stuarts (1603–1688), the unwritten constitution created the possibility of judicial review, and thus judicial activism was born. The judicial review theory was established by Justice Edward Coke in 1610. In the Thomas Bonham v. College of Physicians case (1610), he ruled that any law passed by the Parliament that is against common law or reason can be reviewed and declared invalid by the courts. This theory of judicial review and, accordingly, judicial activism was supported by Sir Henry Hobart, who became the Chief Justice of the Court of Common Pleas in 1615 after Sir Edward Coke. The first significant case involving the idea of judicial review was **Madbury v. Madison (1803)**, in which the US Supreme Court explicitly declared certain provisions of the Judiciary Act of 1801 to be unconstitutional. For the first time in American history, a court declared a law unconstitutional. Judicial review has gained popularity in the United States ever since the Supreme Court ruled that federal courts have the authority to invalidate unconstitutional laws. However, the exact phrase 'judicial activism' was used by Arthur Schlesinger Jr. in his article 'The Supreme Courters 1947', which appeared in the January 1947 issue of Fortune magazine. He used the phrase to categorize the judges of the US Supreme Court at the time as judicial activists, champions of self-restraint, and judges in between two classes.

In the case of **Sakal Newspapers Private Limited v Union of India (1962)**, the government sought to regulate the number of pages in relation to the price of a newspaper in accordance with the Newspapers Act 1956 and the Order of 1960. The Supreme Court ruled that newspapers cannot be subject to the same regulation as other businesses because they serve as

a forum for the exchange of ideas and information. This decision broadened the protection of free expression provided by **Article 19(1)(a)** of the Constitution.

Reservation Policy- In the case of **Balaji v State of Mysore (1963)**, the Supreme Court argued that economic backwardness is the root cause of social backwardness. The Court distinguished caste from class and ruled that caste should not be used to assess backwardness. Additionally, it was decided that the percentage of the reserved category in the total should not exceed 50. It was decided that **Article 14**, as well as subsections of **Articles 15** and **16**, must be complied with. Similar limits on reservation were imposed by the Court in the case of **Chitralekha v State of Mysore (1964)**.

Doctrine of Prospective Adjudication- The doctrine of prospective adjudication first emerged in the American legal system. It states that a decision taken in a specific case will only affect the future and will have no retroactive effect on past decisions. In **Golaknath v. State of Punjab (1971)**, the Supreme Court of India pioneered the idea of "prospective adjudication" while addressing the constitutional validity of the 17th Amendment to the Constitution and held that the Parliament has no power to amend Part II of the Constitution or abridge any of the fundamental rights.

Doctrine of Basic Structure - In the case of **Kesavananda Bharati v. State of Kerala (1973)** the Supreme Court issued a judgment that is considered a watershed moment in Indian constitutional jurisprudence. The Court developed the doctrine of "basic structure" while addressing the scope of the amendment power conferred by Article 368 of the Constitution. By a 7:6 majority, a bench of 13 judges ruled that Parliament has wide powers to amend the Constitution, but that power must not diminish or destroy the basic structure or fundamental framework of the Constitution.

Habeas Corpus Case- The case of **ADM Jabalpur vs. Shivakant Shukla (1976),** in which **Article 21** was raised, was the most controversial decision of the Supreme Court regarding judicial activism. The majority of the bench hearing the case of ADM Jabalpur held that in cases of grave emergencies, such as those that existed between 1975 and 1977, a legal process could be established; following which even human life could be ended. Although Justice Chandrachud, who wrote the judgment, faced criticism for writing the opinion in favor of the government, the legal theory he presented was a classic example of judicial activism. Justice Chandrachud has interpreted **Article 21** in such a way and upheld the validity of the law requiring assent to maintain the sovereignty of the country, if it is threatened by internal or external aggression.

Transition from activism to over-reach- Parliament has repeatedly accused the judiciary of judicial interference. According to Parliament, the judiciary is acting beyond its constitutional authority. Judicial activism that goes beyond all justifiable limits is called 'judicial overreach'. Judicial overreach occurs when the courts arbitrarily, excessively and repeatedly interfere in the domain of the legislature and the executive.

Though the difference between judicial activism and overreach is subtle, their effects on society are entirely different. Unlike the need for judicial activism, the intent of judicial overreach is not genuine. Overreach hampers the functioning of the institutions of a healthy democracy.

According to Chief **Justice JS Verma**, "Judicial activism is justified if it is within the ambit of legitimate judicial review. There should not be any judicial tyranny or adhocism in it."

Why is judicial activism necessary in India?

The power to make laws in India lies with the legislature and the judiciary is not allowed to interfere. However, there have been many instances when the legislature has failed to pass laws when it was needed. In such cases, the judiciary can use the concept of judicial activism to provide justice to the people, which require activism.

Question No. 9 - Right to information is essential for the effective enforcement of constitutional rights of a citizen yes. Please discuss.

Answer: The Right to Information opens up government records to public scrutiny, giving citizens a vital tool for informing them about what the government does and how effectively it is working It works by making the government more accountable. It improves decision making by public authority by removing unnecessary secrecy.

Section 2(a) of the Act defines 'appropriate Government'. Appropriate Government means the Government concerned with any public authority dealing with the Right to Information. The Central Government, Union Territory Administrations or State Governments establish, constitute, empower, manage or finance such authority.

Thus, in case of a public authority affiliated to the Central Government/Union Territory Administration in the manner above, the concerned Government is the "Central Government". While in case of a public authority affiliated to the State Government in the manner above, the appropriate Government is the "State Government".

Competent Authority **Section 2(e)** of the Act defines the term 'competent authority'. The competent authority is the authority which regulates autonomous bodies functioning in accordance with the requirements of the Constitution. This authority is ultimately responsible for enforcing the RTI Act in those bodies. For example, in the case of the Supreme Court of India, the Chief Justice of India is the competent authority.

Section 2(f) of the Act specifies the type of information that can be obtained under the RTI. The term "information" refers to any material in any form, including records (written information including any map, picture etc. of any act, policy or decision relating to a government body), documents (a part of a record or a separate document or a piece of information giving details on a specific subject or decision of a government authority), memoranda (these may be in the form of letters or notes on a particular subject), e-mails, opinions (opinions of a government agency or government personnel on official matters transmitted as part of the official record), advices (advice on official matters forming part of the official record), publications in the press (press briefings or press notes on official matters issued in official capacity), circulars (circulars circulated by a government/public authority in official capacity informing of a certain decision or policy), orders (any order issued by a government authority in official capacity), logbooks (documents containing information, observations and statistics of a particular project of a public authority), contracts (official contracts entered into by a public authority and their specifications), reports (test results, investigation reports and other such reports). reports about official issues including expert reports on a specific subject), letters (letters discussing proceedings), samples (samples of goods to be purchased/consumed for government purposes), models (models of programmes and projects), data held in any electronic format (data stored in computers, pen drives, CDs), information about any private organisation which a public authority may obtain under any other law, are now effective.

Public Authority **Section 2(h),** The term 'public authority' is defined under **Section 2(h).** A public authority is a self-governing authority, body or organisation that is directly or indirectly linked to the government. Such an authority may be linked to the government in the following ways-

(1) It is established or created under the Constitution.
(2) It is established by an Act of Parliament.
(3) It is established by an Act of the State Legislature.
(4) It is established or constituted by a notice or order issued by the appropriate Government.
(5) Any institution owned, managed, or substantially financed by the appropriate Government;
(6) any institution owned, managed, or substantially financed by the appropriate Government.

Records as defined in **section 2(p)** of the Act, may include any of the following-

Document-It can refer to any piece of information or a collection of documents providing information on a certain topic.

Manuscript - A handwritten text, map, or drawing in its original form.
File - A collection of papers or related documents on a certain subject. Digital documents in the form of microfilm, microfiche and facsimile copies. Electronic documents reproduced as images. Any additional material created or generated by a computer or other device right to Information **(Section 2(j),** the term 'right to information' is defined in **Section 2(r).** It **refers to the right to obtain information available under the RTI Act which is held or controlled** by any public authority. These rights include: Right to inspect-

This refers to the right to examine and scrutinize papers, works, and records. In this case, no document or copy of the document is obtained, and the information is simply viewed and examined.

Right to take notes, extracts etc.- Taking notes or extracts means noting down important information from the documents. Important information from the documents is written here, and authentic extracts from the documents can also be copied.

Right to obtain samples of certified materials- A citizen has the right to obtain certified samples of materials purchased by the Government or used by the Government.

Right to obtain information in electronic format-When the information sought is recorded on a computer or other electronic device, the RTI Act allows citizens to obtain it in electronic forms, such as tapes, video cassettes, floppy disks, diskettes, printouts, etc.

Question No. 10- Write short notes on any two of the following-

Answer- (1) Violation of public policy - Violation of public policy implies that even if a certain behavior is not explicitly recognized by law, the courts have upheld it in the past. When an employee is fired for exercising a constitutional or statutory right, a violation of public policy may occur.

Wrongful dismissal in violation of public policy

Primary tab-An action for wrongful dismissal (or dismissal) in violation of public policy gives a dismissed employee the right to bring an action against his or her former employer for wrongful dismissal. Although employment relationships are generally based on at will and can therefore be terminated by either party without cause, this action for wrongful dismissal operates as a narrow exception to the at will doctrine.

To state a claim for wrongful dismissal in violation of public policy the plaintiff must show that-

(1) A clear public policy existed and was supported by the state or federal constitution, law, or administrative regulation, or was expressed in the common law;

(2) Dismissing employees under circumstances similar to plaintiff's dismissal would endanger public policy;

(3) The plaintiff's dismissal was motivated by conduct involving public policy; and

(4) The employer had no legitimate business justification for the dismissal.

Employees can usually make this claim after being terminated from their job for the following reasons-

(1) In the exercise of a legal authority,

(2) Refusing to do any illegal act, or

(3) Reporting illegal conduct.

For example, California has held that terminating employees for reporting a company's practice of hiring undocumented workers, in violation of the Immigration Reform and Control Act (IRCA), was wrongful termination in violation of public policy. This is because IRCA was based on the following public policies-

(1) Protecting documented workers from employment discrimination, and

(2) Protect all certified workers from competition from undocumented workers who are willing to accept lower wages the desire to do so would reduce the effectiveness of labor unions.

As a result, firing employees who report violations of the Act would directly threaten the policy objectives of the Act.

Because wrongful termination is generally recognized under tort law as a violation of public policy, courts have allowed plaintiffs to recover compensatory and punitive damages. However, some jurisdictions, such as Arkansas, recognize this action as based exclusively on contract law, and as a result, do not allow the recovery of punitive damages.

(2) Violation of Principles of Natural Justice. -The principles of natural justice are violated when a tribunal decides a case on grounds that have not been raised or considered by the parties. Further, if the issue is decided without considering the arguments and submissions made by the parties, it would also amount to a violation of natural justice. However, if the adjudicator has given reasons for not considering any submissions and such reasons are bona fide, it would not be a violation of natural justice. This may happen if the submissions are omitted by mistake or are so unreliable that the adjudicator does not feel the need to clearly state his findings.

Some more examples of natural justice-

(1) To terminate the services of an employee without a disciplinary inquiry.

(2) Forming a pre-judgmental opinion about a person for any reason

(3) Making a decision based on prejudice

(4) Making rules or laws that are based on prejudice against any community or institution

(5) Where the principles of natural justice have been violated, the decision of the Supreme Court of the State can be relied upon as an alternative remedy.

(3) Contractual obligations of the State - Contractual obligations of the State refer to legally valid obligations that come into force as a result of an agreement. Contractual obligations are the responsibilities and duties set out in the terms and conditions of the contract that the parties to the contract agree to legally perform. These obligations dictate the specific actions to be taken by each party to accomplish the agreed goals. Contractual obligations form the backbone of any contract. If these obligations are clearly stated, it can prevent disputes and resolve issues quickly. **Article 299** of the Constitution deals with the formalities of obligation on the government along with contractual obligation. If a public authority fails to perform a duty assigned to it by law, a writ of mandamus is issued to it. Remedies under **Articles 32** and **226** of the Constitution are public law remedies to ensure that public authorities discharge their duties in their respective fields.

B.A.LL.B.-10th Sem. Paper-II Intellectual Property Law

Question No. 1- What is intellectual property? Explain the nature and significance of intellectual property.

Answer- Intellectual Property Rights (IPR) is rights attached to intangible property owned by a person/company and protected against use without consent. Thus, rights related to ownership of intellectual property are called intellectual property rights. These rights aim to protect intellectual property (creations of human intellect) by allowing creators of trademarked, patented or copyrighted works to benefit from their creations. The Universal Declaration of Human Rights (UDHR) also mentions intellectual property rights under Article 27 which states that "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."

Meaning and nature of intellectual property

Intellectual property (IP) is an intangible asset that comes into existence through human intelligence. It refers to creations of the mind or products of human intelligence such as inventions, designs, literary and artistic works, symbols, names and images used in commerce.

The convention establishing the World Intellectual Property Organisation states that 'intellectual property' includes the following will include rights relating to:

(1) Literary, artistic and scientific works,
(2) Performances, phonograms and broadcasts of performing artists,
(3) Inventions in all fields of human endeavour,
(4) Scientific discoveries,
(5) Industrial Design,
(6) Trademarks, service marks, commercial names and designations,
(7) Protection against unfair competition, and
(8) All other rights arising from intellectual activity in the industrial, scientific, literary or artistic fields.

Other categories of intellectual property include geographical indications, rights in respect of technical know-how or undisclosed information, and layout designs of integrated circuits.

According to **Salmond**, intellectual property is those material goods which are acquired by law from the immaterial products of human skill and labour receives recognition as.

Locke states that the body, physical labour, and manual skill are the individual's exclusive liberty against the whole world.

The things which Locke's principles want to highlight are-

(1) A man's body is his property, and
(2) The labour of his body and the work of his hands are properly his.

Because intelligence can be considered as an inalienable independence of the body and the person.

According to **Blackstone**, "Like other tangible properties, intellectual property, which is intangible in nature, has been recognized by the state through law under the general interpretation of property. When a person produces an original work by using his rational capacity, he wants to have the right to dispose of that original work according to his wish and any attempt other than the arrangement made by him seems to be an encroachment on his rights."

Nature- Intellectual property (IP) A category of property that includes intangible creations of human intelligence, such as inventions, literary and artistic works, designs, symbols, names and images used in commerce. IP is protected by law through patents, copyrights and trademarks, which allow people to earn recognition or financial benefit from their creations. The IP system aims to balance the interests of innovators with the public interest by promoting an environment where creativity and innovation can flourish.

Different countries recognise and protect different types of IP in different ways. For example, in India, any issue related to trademarks is dealt with under the Trademarks Act, 1999.

Classification of Intellectual Property- Intellectual property refers to legal rights that arise from intellectual activity in literary, artistic, scientific and industrial fields. Generally, intellectual property is divided into the following two categories in terms of scope

(1) Copyright and related rights-Literary, artistic and scientific works are covered under copyright. According to **section 13(1)** of the Copyright Act, 1957, copyright subsists in works of the following years-

(a) Literary, dramatic, musical and artistic works.

(b) Cinematograph films and

(c) Evaluation.

Allied rights are those rights which are similar to copyright and are related to copyright. Under **Sections 37** and **38** of the Copyright Act, 1957, provision was made regarding the rights of the broadcasting organisation and presenter respectively, which fall under the category of allied rights.

(2) Industrial property.-The following fall under the category of industrial property-

(i) Patent

(ii) Industrial design

(iii) Trademark

(iv) Geographical indications

Under **Article I** of the Paris Convention for the Protection of Industrial Property against Unfair Competition, suppression of unfair competition is included in the field of industrial property protection. Any anti-competitive

practice which is contrary to fair dealing in industrial and commercial matters is called unfair competition.

Thus, the term 'industrial property' primarily includes inventions and industrial designs. In addition, trademarks, service marks, commercial names and designations indicating source and origin and protection against unfair competition are also included is covered under the subject matter of industrial property.

Apart from this, as a result of progressive progress in the field of art, science and technology and communication revolution, new subjects under intellectual property - computer programs, geographical indications, protection of new plant varieties and farmers' rights, conservation of biodiversity, rights related to confidential information and information technology etc. have been included on the basis of recommendations of international conferences. Copyright and confidential information make the specific nature of intellectual property more clear. Trademark has no close connection with intellectual creativity, but it cannot be denied that patents, designs and copyrights are the result of intellectual effort and creative activity in the field of applied arts, technology and fine arts. On the one hand, new original ideas and inventions are coming into existence through authors, inventors, scientists etc., while on the other hand the types and scope of intellectual property are constantly increasing.

Question No. 2- Explain the contribution of World Intellectual Property Organisation in the protection of intellectual property rights.

Answer- In general terms, right means the standard of work permitted in a particular area. Legally, it means the standard of work permitted by law.

According to **Austin**, a person's right arises when another person or other people are bound or obligated by law to do or refrain from doing something in relation to him. According to Holland, legal right is the inherent capacity of a person to control the actions of others with the permission and cooperation of the state. According to Gray, when a person gets the capacity to force another person or others to do or not to do any work as a result of the imposition of legal rights and duties on one or more persons by the society, then such capacity is called legal right. Rights are related to interests.

According to **Salmond**, the set of property rights of a person constitutes his wealth. In which his assets and property in various senses are considered to be included, on the other hand, the sum of the personal interests of a person constitutes his status and personal conditions. For example, the land or movable property or payment rights or goodwill of business or share capital in a company and his annual liabilities held by a person are all related to his property or wealth. Whatever remains after removing the property right is all the rights. Some people are of the opinion that property rights are transferable; IP is generally defined as a non-physical asset that is the product of an original idea. IP rights surround the control of the physical manifestations or expressions of ideas

rather than the intangible non-physical entity. For example, a trademark is a marketable and commercial asset of the owner that is available to them forever, unlike copyright which has a limited time period Whereas personal rights are not transferable. At present, there is a growing tendency to emphasize on the element of property for the protection of personal rights, on which protection can be based.

In the legal sense, intellectual property refers to a set of rights that are recognized by law. The owner of intellectual property has the exclusive right to use these rights as property.

In the legal sense, intellectual property refers to a group of rights which are recognized by law. The owner of intellectual property has the exclusive right to use these rights as property. Just as the owner of tangible property has rights over property, the owner of intellectual property also has the same rights. Thus, the owner of intellectual property has the right to assign, surrender, transfer or bequeath the intellectual property. Intellectual property rights have a special nature; hence it can be recognized and protected by a separate legislation. According to **Article (VII)** of the Convention establishing the World Intellectual Property Organization, intellectual property includes the following:

(1) Literary, artistic and scientific works,
(2) Scientific discoveries, industrial designs
(3) Trademarks, service marks, commercial names and designations,
(4) Inventions in all fields of human endeavour,
(5) Protection against unfair competition, and
(6) All other rights arising from intellectual activity in the industrial, scientific, literary or artistic fields.

Intellectual property rights are legal rights that regulate the use of the products of human intelligence. These rights prohibit any other person from taking advantage of the content without the explicit approval of the owner. Intellectual property rights encourage, promote and protect the intellectual creativity and inventiveness of authors; inventors etc. and also protect the interests of consumers by facilitating the marketing of quality goods and services.

In this way, under intellectual property rights, protection is provided to those ideas, knowledge, confidential information etc. which are valued commercially.

Nature of Intellectual Property Rights- Intellectual property rights are primarily negative in nature. Intellectual property rights are such rights on the basis of which the copyright can be exercised by anyone other than the copyright owner. Since intellectual property rights are the copyright of ideas, they are co-terminus with ideas and the right also covers the object which is covered by the idea, i.e. if the idea, which is the subject matter of an intellectual property right, is applied to a tangible object, then such object will be covered by the intellectual property right in question. If an intellectual property right is considered to be inherent in a physical object, then the reason for its being so inherent is only that

the idea which this right has covered as its subject matter is the same idea which is applied to this physical object.

Thus, even though an intellectual property right is vested in a physical object, it cannot be identified with that physical object; rather it can be identified with the idea i.e. the idea which is the subject matter of this right. Some positive rights have also been made intellectual property rights by law, such as the right to assign or license copyright on compliance of the conditions required by the Act, the right to obtain patent, the right to register a trademark and the right to obtain remedies in case of infringement, etc.

World Intellectual Property Organization - The constituent document of the World Intellectual Property Organization (WIPO), the WIPO Convention, was signed in Stockholm on 14 July 1967, entered into force in 1970, and was revised in 1979. WIPO is an intergovernmental organization that became one of the specialized agencies of the United Nations organization system in 1974.

WIPO traces its origins to 1883 and 1886, when the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works were signed. Both conventions provided for the establishment of an 'international bureau'. The two bureaus were unified in 1893 and replaced by the World Intellectual Property Organisation in 1970, based on the WIPO Convention.

WIPO has two main objectives-

(i) To promote the protection of intellectual property throughout the world; and

(ii) Ensuring administrative cooperation among intellectual property unions established by treaties administered by WIPO. To achieve these objectives, WIPO, in addition to performing the administrative functions of the unions, also carries out a number of activities, including-

(i) Norms setting activities, which include setting norms and standards for the protection and enforcement of intellectual property rights through the conclusion of international treaties;

(ii) Programme activities, including legal and technical assistance to States in the field of intellectual property;

(iii) International classification and standardisation activities, including cooperation between industrial property offices with respect to patents, trademarks and industrial design documentation; and

(iv) Registration and filing activities, including services relating to international applications for patents for inventions and registration of marks and industrial designs.

Functions of the World Intellectual Property Organization-The main functions of WIPO include-

(1) Assist in developing initiatives to improve IP protection around the world and to harmonize national legislation in this area,

(2) Signing of international agreements on the protection of intellectual property,
(3) To implement the administrative functions of the Paris and Berne Unions,
(4) Providing technical and legal assistance in the field of intellectual property,
(5) Collect and disseminate information, conduct research and publish the results thereof,
(6) Ensuring the functioning of services that facilitate international IP protection,
(7) Take any other appropriate action.

Administering multilateral international conventions is the most important function performed by WIPO, which includes depositing treaties, means of conflict settlement of States, ensuring review of treaties, etc. WIPO Worldwide Academy has been preparing human resources in the field of IP protection since 1998. This academy provides a distance learning centre where you can gain knowledge with the help of the Internet. WIPO Mediation and Arbitration Centre was created in 1994, it helps to settle/resolve disputes.

Membership of World Intellectual Property Organization-The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations whose mission is to develop a balanced international intellectual property (IP) system. WIPO's mission is to support innovators and creators by ensuring that their ideas can safely reach the market and improve lives. WIPO has 193 member countries, including 190 UN member states, the Cook Islands, the Holy See and Niue. Palestine has permanent observer status, and other organizations have official observer status at WIPO meetings.

To become a member, a state must deposit an instrument of ratification or accession with the Director-General. Member States determine the direction, budget and activities of the organization through decision-making bodies. Unlike most UN organizations, WIPO does not rely heavily on voluntary contributions from Member States, and instead derives 95% of its budget from fees related to its global services.

Question No. 3- Explain the process of obtaining a patent. What defenses are available to a defendant in patent infringement proceedings?

Answer - The process of obtaining a patent under the Patent Act is arranged in the following steps-
(1) Submitting an Application
(2) Testing the application
(3) Objection to the acceptance of the complete specification
(4) Hearing of the parties
(5) Grant and printing of patents

Section 6 of the Act describes who can apply for a patent-
(1) Persons who claim to be the true and first inventors.
(2) or his delegate

(3) The legal representative of a deceased person who has not yet passed his sentence may make the application

1. Provisions relating to application (section 7) (1)- Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the Patent Office.

(a) Every international application for a patent under a Patent Cooperation Treaty which may be filed designating India shall be deemed to be an application under this Act if a corresponding application has also been filed before the Controller in India.

(b) The filing date of the application specified in sub-section (1A) and its full specification processed by the patent office as designated office or elected office, as provided under the International Patent Cooperation Treaty the filing date will be.,

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for invention, proof of the right to apply shall be submitted along with the application, or within the prescribed period after the filing of the application.

(3) Every application under this section shall state that the applicant possesses the invention and shall name the person who claims to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes that the person so named is the true and first inventor.

(4) Every such application (not being a Convention application or an application filed under a Patent Cooperation Treaty designating India) shall be accompanied by a provisional or complete specification.

Process- To obtain a patent, the application should be submitted in the prescribed form along with the prescribed fee in the appropriate office. If the complete specification is not submitted with this application, then the complete specification should be submitted within 12 months of applying, if this is not done then the application will be considered cancelled.

Examination of application- (1) Where an examination in respect of an application for a patent has been requested in the manner prescribed under **sub-section (1)** or **sub-section (3)** of **section 11B**, the application and the specification and other documents relating thereto shall be referred by the Controller, as soon as may be, to an Examiner for reporting on the following matters, namely:-

(a) Whether the application form and the specifications and other documents connected therewith comply with the requirements of this Act and any rule made there under;

(b) Whether there is any lawful ground for objection to the grant of a patent under this Act in pursuance of the application;

(c) The result of the inquiry conducted under **section 13**; and
(d) Any other matter as may be prescribed.
(2) The Examiner to whom the application and specifications and other documents connected therewith have been referred under **sub-section (1)** shall ordinarily submit a report to the Controller within such period as may be prescribed.

Once the patent application is filed and published, the next step would be to examine the patent application. The applicant must file a request for examination within "forty-eight" months from the date of filing the application or the priority date, whichever is earlier.

Objection (**Section 9 25(1)** (1) Where an application for a patent has been published but the patent has not been granted, any person may present an objection in writing to the Controller against the grant of the patent on the grounds following-
(a) That the applicant for a patent or the person under whom or through whom he claims has wrongly obtained the invention or any part thereof from him or the person under or through whom he claims;
(b) That the invention, in so far as it is claimed in any claim of the complete specification, was published before the priority date of the claim—
(i) In any specification filed in pursuance of an application for a patent made in India on or after the 1st January, 1912; or
(ii) In any other document, in India or elsewhere-

Provided that the ground specified in **sub-section (ii)** shall not be available where such publication does not constitute an anticipation of invention by virtue of **sub-section (2)** or **sub-section (3)** of **section 29**;
(c) that the invention, in so far as claimed in any claim of the complete specification, is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed pursuant to an application for a patent in India, being a claim the priority date of which is earlier than the priority date of the applicant's claim;
(d) that the invention, in so far as claimed in any claim of the complete specification, was publicly known or publicly used in India before the priority date of that claim.
Explanation.-For the purposes of this section, an invention relating to a process for which a patent is claimed shall be deemed to be publicly known or publicly used in India before the priority date of the claim, if the product made by that process has already been imported into India before that date, except where such import has been made only for the purpose of reasonable trial or experiment;
(e) that the invention, so far as claimed in any claim of the complete specification, is obvious and does not obviously involve any inventive step, having regard to the published matter referred to in **clause (b)** or having regard to what was in use in India before the priority date of the applicant's claim;

(f) That the subject matter of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
(g) That the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
(h) The applicant has failed to disclose information required by section 8 to the Controller or has given information which was false in any material particular to the best of his knowledge;
(2) At any time after the grant of a patent, but before the expiration of a period of one year from the date of publication of the grant of the patent, any person interested may give notice of opposition to the Controller in the prescribed manner on any of the following grounds, namely:-
(a) That the patentee or the person under whom or through whom he claims has wrongly acquired the invention or any part thereof from him or from the person under whom or through whom he claims
(b) that the invention, so far as claimed in any claim of the complete specification, was published before the priority date of the claim.
(3) (a) Where any such notice of opposition has been duly given under **sub-section (2)**, the Controller shall notify the patentee.
(4) On receipt of the recommendation of the Opposition Board and after giving an opportunity of being heard to the patentee and the opponent, the Controller shall make an order maintaining or modifying or cancelling the patent.
(5) The Controller shall not take into account any personal document or secret examination or secret use while passing an order under sub-section (4) in respect of the ground specified in **clause (d)** or **clause (e)** of **sub-section (2)**.
(6) If the Controller issues an order under **sub-section (4)** that the patent shall be maintained subject to an amendment in the specification or any other document, the patent shall be deemed to have been amended accordingly.
Hearing of parties - Exercise of discretionary powers by Controller. Without prejudice to any provision contained in this Act which requires the Controller to hear any party to a proceeding hereunder or to give an opportunity of being heard to any such party, the Controller shall give an opportunity of being heard to any applicant for a patent or for an amendment of a specification (if the applicant makes such demand within the prescribed time) before exercising any discretion vested in the Controller by or under this Act adversely against the applicant.

Provided that the party desiring a hearing shall make a request for such hearing to the Controller at least ten days before the expiry of the time limit specified in respect of the proceedings.

Question No. 4- Who is the owner of copyright? Explain what you understand by copyright license.

Answer - Section 17 of the Copyright Act, 1957 is an exception to the general rule of the author being the first owner of copyright. This section simply stipulates that the person who pays the consideration for the work done shall

become the first owner of the copyright. Let us learn about this section in detail **Section 17(a)** of the Copyright Act, 1957 Literary, dramatic and artistic works this section of **section 17** talks about literary, dramatic and artistic works. It states that whenever an author creates a work under a contract to publish it in the course of his employment or service with the proprietor of any newspaper, magazine, book, etc., then, subject to any agreement to the contrary, the proprietor of such newspaper or magazine shall become the first owner of the copyright.

Illustration- If 'A' is a journalist working in a newspaper agency named Mirror Now, and then he will have only authorship rights on that article. The first owner of the article will be the owner of Mirror Now.

As per **Section 17(b)** of the Act, where any photograph is taken or any painting or drawing is made, or any engraving or cinematograph film is made, at the instance of any person, for a valuable consideration, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. In **Chidambare v Renga**, where a person is obliged to do something, and in discharge of such obligation, he transfers certain interests; such transfer is for valuable consideration.

Section 17(c) provides that in the case of a work made in the course of the author's employment under a contract of service or apprenticeship to which **clause (a)** or **clause (b)** does not apply, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein. An author may create a work independently, or he may create a work under a contract of service or a contract for service.

Section 17(cc) provides that in the case of any address or speech made in public, the person who made such address or speech or if such person has made such address or speech on behalf of any other person, speech, such other person shall be the first owner of the copyright therein, notwithstanding that the person who delivers such address or speech, or, as the case may be, the person on whose behalf such address or speech is delivered, is employed by any other person who arranges such address or speech or on whose behalf or at whose premises such address or speech is delivered.

Section 17(d) of the Copyright Act, 1957: Work assigned by the Government: Provides that if any copyrightable work is created on an assignment by the Government, such Government shall be the first owner of the copyright arising out of such work, unless there is an agreement to the contrary between the parties.

Illustration- If a sculptor named 'A' is awarded a tender by the State Government to make a statue of national heroes to be installed on the road, the first ownership of copyright arising out of such statue will belong to the State Government. In **Dunk v. George Waller, (1970) 2 WLR 241**, it was held that an apprentice is a student bound to another for the purpose of learning his trade,

the contract being such that the master teaches and the other serves the master with the intention of learning. Hence, the work belongs to the teacher.

Section 2(d) defines author, stating that 'author' means,-

(1) In relation to a literary or dramatic work, the author of the work

(2) In relation to musical work, the composer

(3) In relation to artistic works other than photographs, the artist—

(4) In relation to a photograph, the person taking the photograph, the artist;

(5) In relation to a cinematograph film or sound recording, the producer and

(6) In relation to a literary, dramatic, musical or artistic work produced by means of a computer, the person who causes the work to be produced.

The following types of rights are created by copyright-

(1) Statutory rights—Gives the copyright owner the exclusive right to do certain acts with respect to the work, including the right to publicly display the work.

The owner can control when the work is displayed in a public place, such as when it is broadcast in multiple locations via television or radio. The right to publicly display the work applies to the following types of works:

Literary works, musical works, dramatic works, choreographic works, pantomimes, motion pictures and audio-visual works. The Copyright Act also grants the owner other rights, such as the right to distribute the work. However, the right to distribute varies from case to case. For example, if the owner sells a book, the right to distribute the book expires after the first sale, and the buyer can resell the book as second-hand material. On the other hand, if the owner sets up a library and charges rent for reading books, the law does not prohibit this, and the rule of expiration does not apply.

(2) Negative Right- Copyright is a negative right, which means the right of the author or owner to prevent others from copying his or her original work. It is interesting to note that the author of a work may not always be its owner.

(3) Multiple rights – The first is the right to reproduce the copyrighted work, second, the right to prepare derivative works based on the work, third, the right to distribute copies of the work to the public.

(4) Economic Rights- Economic rights are those rights which help the author to obtain economic benefits9. As per **section 14** of the Copyright Act, 1957 (14 of 1957), different rights are recognised for works depending upon their nature. The section provides that it is the sole right of the author to do or authorise to do the works conferred under it. Important rights generally recognised by all types of works under Indian law, which have attracted much judicial interpretation, include reproduction right, right of distribution and the right to communicate the work to the public.

(5) Moral rights - Moral rights are personal rights that reflect the relationship between the creator and his work. They give control over the creation of the work. Moral rights are called droit morale in French. Moral rights do not bring any direct financial benefit to the author of the work. They help in avoiding

modification or alteration of the content. Moral rights maintain the integrity of the author's work. Moral rights are neither unlike moral rights nor legal rights.

License - License is different from assignment. By license, the licensee obtains the right to exercise certain rights under the terms of the license. License gives the licensee a right to copyright does not convey ownership whereas in assignment the assignee acquires ownership of the assigned interests licenses and assignments are in writing and duly signed.

According to **Section 2(j)** of the Act a copyright licence may be exclusive or non-exclusive. Section 2(j) of the Copyright Act defines the term exclusive licence to mean and include a licence which grants to the licensee and persons authorised by him, to the exclusion of all other persons, any right comprised in the copyright of a work.

Grant of compulsory licence- If the author stops publishing his work, then in such a situation compulsory licence can be granted. Compulsory licence is granted in public interest.

Section 31 of the Copyright Act, 1957 Compulsory licence in works withheld from the public. - (1) If at any time during the term of copyright in any work which has been published or performed in public, a complaint is made to the Copyright Board that the owner of the copyright in the work-

(a) Has refused to reproduce or permit the work to be reproduced or to be reproduced or has refused to permit the work to be publicly displayed, and by reason of such refusal the work has been kept from the public; or

(b) in the case of such work or sound recording, the work recorded in such sound recording has been refused to be communicated to the public by broadcasting, on such terms as the complainant may consider reasonable, the Copyright Board may, after giving the owner of the copyright in the work a reasonable opportunity of being heard and after making such inquiry as it may consider necessary, if it is satisfied that the grounds for such refusal are not justified, direct the Registrar of Copyrights to grant to the complainant a licence to reproduce the work, to publicly perform the work or to communicate the work to the public by broadcasting, as the case may be, provided such compensation is paid to the owner of the copyright and subject to such other terms and conditions as the Copyright Board may determine and thereupon the Registrar of Copyrights shall grant the licence to such person or persons who, in the opinion of the Copyright Board, is or are qualified to do so in accordance with the directions of the Copyright Board, on payment of such fee as may be prescribed.

Question No. 5- What do you understand by trade mark? Discuss the function of trade mark. What kind of protection is given to trade mark in India?

Answer- Trade mark is required for the following purposes-

(1) For the purpose of providing information regarding the origin and properties of the product.
(2) For the purpose of advertising the product.
(3) For the purpose of creating attraction for the product in the minds of consumers.
(4) To increase sales of the product.
(5) For the purpose of guaranteeing the quality of the product.
(6) To distinguish one product from another.
(7) For the purpose of protecting the goodwill of the product.

Purpose of the Trade Marks Act, 1999 This Act has been enacted for the registration and better protection of trade marks. This Act came into force all over India from 30 December 1999. The Trade Marks Rules, 2002 have been enacted. Apart from this, the JTNKAM DANTO (Application and Appeals to the Intellectual Property Appellate Board) Rules 2003 and Intellectual Appelletate Board (Procedure) Rules 2003 have also been passed. The Trade Marks Act, 1999 has been expanded considerably.

The Act has the following objectives-
(1) Arrangement for registration of trade marks.
(2) To improve the right to use a trade mark.
(3) To provide protection to the trade mark of the proprietor of fraudulent trademarks.
(4) Registration of trade marks for goods and services.
(5) To amend and consolidate the law relating to trade marks.
(6) To grant a monopoly in the registered trade mark to the registered proprietor of a trade mark.
(7) To provide for penalties to prevent infringement of trade marks
(8) Package,
(9) Permitted Package,
(10) Services,
(11) Trade Description
(12) Trademarks.
(13) Well known trademarks Provision of services.

Meaning of existing registered trade mark under section 2(4) of the Act- In this regard, the following provisions are provided under section 2(4) does-

For the purposes of this Act, "existing registered trade mark" means a trade mark registered under the Trade and Merchandise Marks Act, 1958 (43 of 1958), immediately before the commencement of this Act.

Thus, for the purposes of the Trade Marks Act, 1999, an existing registered trade mark means a registered trade mark under the Trade and Merchandise Marks Act, 1958, immediately before the coming into force of the Trade Marks Act.

Question No. 6 – Explain the constitution, powers and functions of the Appellate Board under the Trade Marks Act, 1999.

Answer- Section 83 of the Trademarks Act of 1999 establishes the Intellectual Property Appellate Board (IPAB). The composition, powers and functions of the IPAB are as follows-

Organization-The IPAB consists of a Chairperson, Vice-Chairperson and other members as may be appointed by the Central Government.

Powers - IPAB is vested with jurisdiction, powers and authority under the Trademark Act and the Copyright Act.

Functions-The IPAB exercises its jurisdiction, powers and authority through benches. If the members of the bench disagree on any issue, they must state their differences and refer the matter to the Chairman. The Chairman may either hear the case himself or have it heard by another member or members. The opinion of the majority of the members hearing the case, including the original members, shall be the final decision.

Section 84 of the Trademarks Act of 1999 establishes the composition, jurisdiction, powers and authority of the Appellate Board. The Appellate Board consists of a Chairman, Vice-Chairman and such other members as the Central Government may deem fit. Benches of the Appellate Board may also exercise their own jurisdiction, powers and authority. A Bench consists of one judicial member and one technical member, and sits at such place as may be specified by the Central Government in the Official Gazette.

Qualifications for appointment as Chairperson, Vice-Chairperson or other Members as per **section 85** of the Act-

(1) A person shall not be eligible for appointment as Chairperson unless he-

(a) Is, or has been, a Judge of a High Court; or

(b) Has held the office of Vice-President for at least two years.

(2) A person shall not be eligible for appointment as Vice-Chairman unless he-

(a) Has held the post of Judicial Member or Technical Member for a period of not less than two years; or

(b) Has been a member of the Indian Legal Service and has held office for at least five years in Grade-I or a higher post of that Service has worked for a year.

(3) A person shall not be qualified for appointment as a Judicial Member unless he—

(a) Has been a member of the Indian Legal Service and has held a post in Grade-I of that Service for a period of not less than three years; or

(b) Has held a civil judicial office for at least ten years.

(4) A person shall not be eligible for appointment as a Technical Member unless he-

(a) has, for a period of not less than ten years, performed the functions of a Tribunal under this Act or under the Trade and Merchandise Marks Act, 1958 (43

of 1958), or under both, and has, for a period of not less than five years, held the post of a Joint Registrar; or

(b) Has been a practitioner of proven specialized experience in trademark law for at least ten years.

(5) Subject to the provisions of **sub-section (6),** the Chairperson, Vice-Chairperson and every other Member shall be appointed by the President of India.

(6) No person shall be appointed as Chairperson without consultation with the Chief Justice of India.

Appeals to the Appellate Board under section 91 of the Act.-

(1) Any person aggrieved by any order or decision of the Registrar under this Act or the rules made there under may prefer an appeal to the Appellate Board within three months from the date on which the order or decision against which the appeal is made has been communicated to the person appealing.

(2) No appeal shall be accepted if it is presented after the expiry of the period specified under **sub-section (1)**.

Provided that an appeal may be admitted after the expiry of the specified period, if the appellant satisfies the Appellate Board that he had sufficient cause for not preferring the appeal within the specified period.

(3) An appeal before the Appellate Board shall be made in the prescribed form and verified in the prescribed manner and shall be accompanied by a copy of the order or decision appealed against and such fee as may be prescribed.

Under section 92 of the Act. Procedure and powers of the Appellate Board.-

(1) The Appellate Board shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the provisions of this Act and the rules made there under, the Appellate Board shall have powers to regulate its own procedure including the fixing of the place and time of its hearings.

(2) The Appellate Board shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(a) Obtaining evidence;

(b) Issuing commissions for the examination of witnesses;

(c) Requisitioning any public record; and

(d) Any other matter as may be prescribed.

(3) Any proceeding before the Appellate Board shall be deemed to be a judicial proceeding within the meaning of **sections 193** and **228** and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Appellate Board shall be deemed to be a civil court for all the purposes of **section 195** and **Chapter XXVI** of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 92(2) of the Trade Markets Act, 1999 states that the Appellate Board has the same powers as a civil court while trying a suit under the Code of Civil Procedure, 1908. These powers include: receiving evidence, issuing commissions to examine witnesses, requesting public records, and any other matters as may be prescribed.

The Trade Marks Act, 1999 also contains provisions regarding the composition of the Appellate Board. For example, if members of a bench disagree on an issue, they must state the issue and refer it to the chairman. The chairman may either hear the issues or refer the case to another member or members for hearing. The majority opinion of the members hearing the case will determine the outcome.

(2) The Appellate Board shall have the same powers for the discharge of its functions under this Act as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:- (a) receiving evidence; (b) issuing commissions for evidence. **Section 92 (3)** of the Trade Marks Act, 1999 states that any proceedings before the Appellate Board shall be deemed to be judicial. The Appellate Board has the following powers and functions: receiving evidence, issuing commissions for the examination of witnesses and calling for public records.

If members of a bench have different opinions on an issue, they must state their differences and refer the matter to the chairman. The chairman may either hear the issues himself or have another member hear the case. The opinion of the majority of the members hearing the case, including the member who heard the case first, will determine the decision.

Under **Section 93** of the Act, no court or authority, other than the Appellate Board, is authorised to exercise any jurisdiction, powers or authority in respect of an appeal against any order or decision of the Registrar referred to in Section **91(1)** of the Act.

The Chairman, Deputy Chairman or other Member shall not appear before the Appellate Board or the Registrar if he ceases to hold office. (**Section 94**)

The Appellate Board has the power to pass interim orders but no final order by way of injunction or stay or order or any other means is passed by the Board in any appeal or any proceeding connected therewith unless copies of all documents in support of such appeal and the authority of such interim order have been served on the party against whom the appeal is made or is proposed to be made. Before passing any interim order, the party is given an opportunity of being heard by the Appellate Board.

Question No. 7- What is assignment? Describe the mode of assignment as provided in the Copyright Act, 1957.

Answer- Copyright does not give any person the right to copy, reproduce, publish or sell any original writing, painting, dramatic production, sculpture etc. without the permission of the creator Thus, the law provides the copyright owner (i.e. the

producer) with the right to transfer the ownership of the copyright to a third party. For example, in the case of creating an entire movie, all creative individuals come to the producer with their idea transformed into relevant works, assigning their rights in their work in exchange for royalties. These works are then summarized to form a complete movie. Yes, this process is not that easy and involves many questions that arise at the time of assignment and especially after that.

Under **Section 18** of the Copyright Act, 1957, the owner of copyright in an existing work or the prospective owner of copyright in a future work may assign the copyright to any person either wholly or in part and either generally or subject to limitations and for the whole or any part of the term of copyright.

Provided that in the case of a transfer of copyright in any future work, the transfer shall take effect only when the work comes into existence.

Since the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee must have the power to assign the rights, and the assignor must have the right to assign the rights.

In respect of rights which are not assignable, the applicant shall be deemed to be the owner of the copyright for the purposes of this Act and the provisions of this Act shall have effect accordingly.

In this section, the term 'assignee' in relation to the transfer of copyright in a future work also includes the legal representative of the assignee if the assignee dies before the work comes into existence.

In the case of **Khemrai vs Garg Co. AIR 1975 Delhi 130**, the court has clarified that **sections 17** and **18** of the Act determine where the copyright lies. If a work is created by the author for a publisher in exchange for consideration, then copyright in such work lies with the publisher subject to any contract to the contrary. According to **section 18**, if the copyright is assigned to the publisher, then the publisher is considered the owner of the copyright in respect of the assigned rights and the copyright lies with the publisher.

If the assignee of a copyright becomes entitled to any right contained in that copyright, then the assignee is deemed to be the owner of the copyright in respect of such assigned rights and the assignor in respect of the rights not assigned.

In this section 'assignee' means the legal representative of the assignee in respect of an assignment of copyright in a future work, if the assignee dies before the work comes into existence. Mode of assignment - According to **section 19(1)** of the Copyright Act, 1957, for an assignment of copyright in a work to be valid it must be in writing and signed by the assignor or his agent duly authorised by him.

K.A. Venugopal v. Suryakant Kamath, AIR (1992) Karnataka 1 Assignment under the Act.

The Act requires the deed to contain the following-
(1) **Section 19(2)** identifies the work in respect of which the assignment is to be made,
(2) The rights assigned and the period and territorial extent of such assignment, and
(3) The amount of ownership, if any, to be conveyed to the assignee or his legal heirs during the currency of the assignment and that the assignment is subject to revision, enforcement or termination of the assignment on such terms as may be mutually agreed upon by the parties.

Where the assignee does not exercise any of the rights assigned to him under any of the other sub-sections of this section within a period of one year from the date of the assignment, the assignment in respect of those rights shall be deemed to have been cancelled on the expiry of the said period unless otherwise specified in the assignment **(Section 19(4)**.

According to **Section 19 (5)**, if the period of assignment is not stated, it shall be deemed to be five years from the date of assignment. If the territorial extent of assignment of rights is not specified, it shall be deemed to extend to India. According to **Section 19 (6)**, **sub-section (7)** of Section 19, the above provisions were made even before the coming into force of the Copyright (Amendment) Act, 1994 may go.

Assignment can also be done without any conditions. There is no limit on its duration; it can be done for a fixed period or for the entire period.

Therefore, according to **Section 18** of the Copyright Act, the owner of copyright in any future work may assign the copyright either wholly or in part and either generally or under restrictions to any person either for the whole term or for any part of the copyright but the assignment shall be effective only when the work comes into existence.

Question No. 8- What is an invention? Which inventions are patentable under the Patent Act 1970 (as amended) and the Patent Amendment Act 2002? Explain.

Answer- A patent is necessary to use an invention in any form. The invention is the subject matter of the patent which is provided protection through a patent.
Section 2(1)(j) or **2(j)** of the Patents Act, 1970 defines invention as follows-
Invention means the making of a means any new and useful-
(1) The art, process, method of manufacture,
(2) A machine, equipment or other thing,
(3) Goods produced by manufacturing, and any new and useful improvement or purported invention of any of these.

A new definition of invention has been substituted by the Patents (Amendment) Act, 2002, wherein invention means a new product or process incorporating an inventive measure and which is capable of industrial use. As per **section 2(1)(j)(a)** of the Act, inventive measure means any advance in

knowledge beyond the pale of invention which involves a technological advance or is of economic significance or both and is not obvious to a person skilled in the art of invention.

In respect of the object of invention, provision has been made under Rule 2(c) of the Patent Regulations 2003 according to which the object includes any substance or goods or any plant, machinery or equipment, whether or not earth bound. Thus an invention is not only related to the product but also to the process, which can be used industrially. A new product or a new process of its manufacture or a solution to a technical problem can also be patented. Only the invention is patented, hence it is necessary for the invention to be patentable, it should include inventive method, should be vague or unobvious, should be capable of industrial use, and the invention should be related to such subject which has been prohibited by the Act.

In **Vishwanath Prasada Radheshyam v. H.M. Industries, AIR (1982) SC 1444** the Supreme Court held that "An idea or principle which is abstract in nature is not patentable. A patent protects the resultant product of an invention. An improvement in a known product or process is capable of being protected by a patent if it results in a new product or process or in a cheaper product or process."

It is a fundamental principle of patent law that a patent is granted only for an invention which is novel and useful.

In the case of **Thomson Bent vs. Controller of Patents and Designs, AIR 1989 Delhi 249** and many other cases the Court has always taken the view that a patentable invention must not only be a novel invention but must also be useful.

In the case of **Humphson v. Sayer, (1887) 4 RPC 407** the Court opined that if the public in any manner becomes aware of the invention then a patent cannot be granted to the original or first inventor or to any other person because the public cannot be prevented from using the invention.

Thus, to be patentable, an invention must mean a new product or process involving an inventive device and the invention must be capable of industrial use. The invention must not relate to a product, article or process that is prohibited by the Patent Act.

Inventions are patentable - As per the Indian Patent Act 1970, certain inventions are patentable under **sections 3** and **4** are not eligible. These include-

(1) Trivial or contrary to public order
(2) Contrary to morality, public health, or the environment
(3) Scientific discoveries
(4) New forms of known substances
(5) Agricultural or horticultural methods
(6) Diagnostic, therapeutic or surgical procedures for the treatment of humans or animals
(7) Plants and animals, excluding microorganisms

(8) Mathematical or business methods, computer programs, or algorithms
(9) Literary, dramatic, musical or artistic works, including cinematographic works and television productions
(10) Plans, rules, or methods for performing mental tasks or games
(11) Information presentation
(12) Topographies of Integrated Circuits
(13) Traditional knowledge
(14) Incremental progress in the pharmaceutical sector According to **Section 4**, nuclear power cannot be patented.

Conditions of Grant of Patent- Section 47 of IPA 1970 entitled 'Grant of patent to be subject to certain conditions' lays down certain conditions for grant of patent. According to this section, the government may import or make or cause to be made any patented product or any product made by any process 'only for the purpose of its own use'. According to this section, the government may make educational instruction and distribution of patent medicines in government dispensaries or hospitals for public service. Both process and product patents can be imported by the government only for the purpose of its own use.

Rights of a Patentee – In India, a patentee has the following rights during the term of patent:

Right to use the patent-The patentee has the exclusive right to make, use, sell, distribute or license the patented invention for commercial purposes. This includes the right to use the patented method or product. The patentee can exercise these rights through its agents or licensees.

Right to exclude others- The patentee has the right to prevent others from making, using, selling or importing the invention without their consent. This right is valid for a limited time frame, usually 20 years from the date of filing the patent application. Unless the required renewal fee is paid

Right to take legal action- The patentee can take legal action against any unauthorized use or infringement of his patent rights.

Obligations of the Patent holder- As the owner of a patent, the patentee has specific obligations to maintain and enforce his rights in the patent. These obligations of the patentee include-

Duty to pay statutory and maintenance fees- It is mandatory for the patentee to pay all statutory costs associated with the registration process for obtaining a patent. Non-payment of these fees as mentioned in **section 142** of the Patent Act makes the patent ineligible for consideration.

Duty to disclose patentee - According to **Section 8** of the Patent Act of 1970, the patentee must disclose the innovation to the society. This obligation of the patentee includes disclosing all the necessary information about similar innovations documented in remote applications at the time of applying for a patent or within six months of submitting the application.

Duty to request examination- As per **section 11B** of the Indian Patent Act, 1970, the patentee has an obligation to request examination within the prescribed time. No patent application shall be examined unless such a request is made by the applicant or any interested party.

Duty to work on the invention-The patentee is obligated to actively work on the invention in India, either by manufacturing the product or licensing it to others. This obligation of the patentee is intended to prevent the patentee from simply keeping the invention to himself, without contributing to its development. Patented products must be made available to the public at reasonable prices that meet the reasonable needs of the public.

Duty to respond to objections- If the patent examiner raises objections in the First Examination Report (FER), it is the patentee's duty to respond to these objections. Failure to seek clarifications within one year from the date of FER may result in automatic rejection of the patentee's application.

Duty not to abuse the patent - The patentee is prohibited from using the patent to violate laws or regulations, harm public interests, or unfairly dominate the market. Additionally, making false or misleading statements about the invention in advertising, marketing, or promotional materials is not permitted. The patentee has an obligation to ensure ethical use of his or her patent.

Limitations of Patent Rights- Although patent rights confer exclusive privileges, they are not absolute and are subject to certain limitations mentioned in the Indian Patent Act 1970. The major limitations are-

Use of patent by the government- As per **section 100** of the Indian Patent Act, 1970, the central government has the right to use the patented invention for government purposes. This includes using or acquiring the patent for its own use. The government can also acquire the patent by paying reasonable compensation and this right also extends to selling the patented invention.

Compulsory License - Section 84 of the Indian Patent Act deals with the grant of compulsory license. After three years from the date of grant of patent, any interested person can apply to the Controller for a compulsory license.

Certain conditions have to be met to obtain a license, which include non-fulfilment of a reasonable need of the public, the patented invention not being available at an affordable price, and the invention not being manufactured in the territory of India.

Use of invention for defence purposes- If an application for a patent is classified as relevant for defence purposes by the Central Government, the Controller may issue directions restricting or preventing the publication of information about the invention.

This makes the provision of confidentiality applicable to the invention and any order made by the Controller or the Central Government regarding confidentiality is considered final and cannot be challenged in the court. Restored Patent - To maintain the validity of the patent, the patentee is required to pay the

renewal fee to the Patent Office within a specified time period. Failure to fulfil this requirement results in the expiry of the patent. However, the provisions of the Indian Patent Act 1970 allow the restoration of an expired patent as mentioned in **sections 60** to **63**.

When a patent expires and is later reinstated, certain limitations are imposed on the rights of the patentee. Specifically, if a patent expires and is later reinstated, the patentee cannot file a suit for infringement after the date on which the patent ceased to be effective. This provision underscores the importance of timely payment of renewal fees to prevent expiration of the patent and to retain the ability to enforce one's rights against infringement.

Question No. 9 - What is patent infringement? What are the remedies available in case of patent infringement? Explain.

Answer- Patent rights are a privilege granted by the state to a person who first invents or manufactures a new product. The inventor of such a complete product gets a monopoly over that product. He (the patentee) uses them and can sell it. Infringement of patent arising out of patent rights occurs when a person makes, uses or sells an invention within a certain period without obtaining a license from its owner. Infringement is considered in the following cases-

(i) Copying the invention

(ii) Making improper alterations to the invention

(iii) Mechanical equivalent

(iv) Taking into account the essential features of the investigation

All of the above actions often overlap during product or process patent infringement. Where the infringer dilutes the patented product or process but actually adopts the essential features of the patentee's invention, the identical imitation or abstract variation of the invention amounts to infringement.

Whether or not there has been a breach must be decided on a case-by-case basis. In any case, whether or not there has been a breach will be determined on the facts of the case.

Remedies- When the patent rights of the patentee are infringed, the remedy is through judicial intervention. The plaintiff is entitled to receive compensation for the infringement of his rights and to take action for injunction. In addition, the plaintiff is also entitled to compensation for actual economic loss suffered as a result of the infringement. The court can also issue interim injunctions, but in doing so the judge must see whether whatever has been done affects the entire invention of the plaintiff or not. If a person has registered his patent with the Controller, he has a monopoly over that use. The patentee can seek injunctions and permanent injunctions, in addition to seeking compensation for his loss which has been suffered by the other party. Even the goods manufactured by the infringer may have to be destroyed.

Question No. 10- Write short notes on any two of the following-

Answer: (1) Copyright ownership- Copyright ownership can be complex and depends on many factors, including the type of work, how it was created, and legal agreements. In general, the creator of a work is the first owner of copyright. However, there are a number of exceptions, such as when the work is acquired as part of employment during which it was built or when it was commissioned.
Here are some examples of copyright ownership-
Works made for hire—when an employee creates a work within the scope of his or her employment, the employer owns the copyright. This principle also applies to some independent contractors and commissioned works.
Government works—in the absence of an agreement, the copyright for government works is held by the government.
Joint Work—when two or more creators create a work together that includes their contributions, they are co-owners of the copyright. Each contributor's contribution must be independently copyrightable, and they must have an equal interest in the copyright.

Copyright ownership can also be transferred through assignment, contract, will, or devise. For example, an employer may give an employee the copyright of a work with a written, signed document.
(2) Rights of a Patentee - In India, a patentee have the following rights during the patent term - Right to use the patent - The patentee has the exclusive right to make, use, sell or distribute the patented product or to use the patented method. This includes the right to license the invention to others for commercial purposes. The patentee can also assign the process to another person with his permission.
Right to exclude others- The patentee can prevent third parties from making, using, selling or importing the invention without the patentee's approval. This right is valid for a limited time frame, usually up to 20 years from the filing of the patent application.
Right to take legal action- The patentee can take legal action against any unauthorized use or infringement of his patent rights.
As long as the required renewal fees are paid, the patent remains in force.
(3) Difference between Intellectual Property and Real Estate: Intellectual property (IP) is intangible and can include assets such as brand names, logos, product designs, inventions and unique works related to creativity. Real estate is a physical asset that can generate income for the owner. Some other differences between IP and real estate are as follows:
Definition- IP is the expression of creative ideas while real estate is a physical asset like land, fence, building etc.
Reality- IP is intangible, while real estate is tangible.
Protection- IP rights protect the right to use the original work, but not the idea.

Real estate may be easier to identify and protect in comparison. Monetary value - The monetary value of IP can be variable, while the monetary value of real estate is limited.

Duration - some IP rights last for a certain amount of time, while others can last forever. Real estate can generate income for the owner, without the owner having to do any actual work on the property.

B.A.LL.B.-10th Sem. Paper-III International Organisation

Question No. 1- Briefly mention the reasons and events that led to the establishment of the United Nations.

Answer- Two destructive world wars took place in the twentieth century. The League of Nations was established after the First World War. The main objective of the League of Nations was to maintain peace and security in the world. The League of Nations failed to achieve its objective. The main proof of the failure of the League of Nations is that the destructive effects of the Second World War forced the nations once again to establish such an international institution through which their mutual disputes could be resolved peacefully and peace and security could be established in the world war. Therefore, during the war, most of the great nations started efforts in this direction. As a result of their efforts, 51 nations signed the United Nations Charter in San Francisco on 26 January 1945. Thereafter, the governments of the designated nations ratified it by 24 October 1945, and thus the legal United Nations was established on 24 October 1945. As has been explained above, nations had made efforts in this direction during the war itself. We will study these efforts and events under the following headings-

(1) The Declaration of St-James's Palace, June 12, 1941 - By June 1941, London had become home to nine exiled nations. Representatives of the exiled governments of Greece, Belgium, Czechoslovakia, Luxembourg, Netherlands, Norway, Poland, Yugoslavia and representatives of Britain, Canada, Australia, New Zealand, South Africa and General de Gaulle of France met at the famous St James's Palace in London and signed a declaration on June 12, 1941 expressing their desire to establish peace.

(2) The Atlantic Charter (August 14, 1941) - The second important event after the declaration of St. James' Palace was the Atlantic Charter of August 14, 1941. It was the meeting of two great world politicians, Britain's Prime Minister, Winston Churchill and America's President Franklin Roosevelt. These two politicians met in a ship on the Atlantic Ocean. Therefore, the charter they signed is called the 'Atlantic Charter'. In this charter, they pledged to end Nazism and expressed faith in the principles of equality of states, universal peace, collective cooperation, prohibition on the acquisition of territories by conquest, etc.

(3) The United Nations Declaration [Jan. 1, 1942] – The third important event was the formation of the United Nations.

This was the declaration of the United Nations which was signed by US President Roosevelt, Britain's Prime Minister Churchill, Russia's Maxim Litvinny and China's T.V. Sung on January 1, 1942. Later, representatives of 22 countries also signed it. Every government pledged to cooperate and decided that it would not enter into any separate truce or treaty with the enemy. This declaration is very important because the words 'United Nations' were used for the first time in it and those who signed the declaration of the 'United Nations' were also considered to be the original members of the United Nations.

(4) The Moscow Declaration (Oct. 30, 1943)- On October 30, 1943, representatives of Britain, America, Russia and China gathered at the Moscow Conference and signed a declaration, which is called the Moscow Declaration. In this declaration, they resolved to take joint action against the enemy and emphasized on the establishment of such a world institution which is based on the principle of equality of nations, is open to all countries and maintains international peace and security.

(5) The Techeran Conference, Dec. 1, 1943 - Churchill, Roosevelt and Stalin met in Tehran on December 1, 1943. They signed a declaration stressing the need to establish an international institution that would maintain world peace and security.

(6) Dumbarton-Oaks Conference, 1941- This conference is important in relation to the establishment of the United Nations. This conference was held in two phases- in the first phase representatives of Russia, Britain and America participated; in the second phase China, Britain and America participated. In this conference, the structure, functions, main organs etc. of the future world organization were discussed in detail. Britain, China, Russia and America agreed to name the future organization as United Nations.

(7) The Yalta Conference (Feb. 11, 1945) - The most important event after the Dumbarton Oaks Conference was the Yalta Conference. In this conference, Churchill from Britain, Roosevelt from America and Stalin from Russia gathered with their foreign ministers and military chiefs. In this conference, a final decision was taken for the establishment of the future world organization. In this conference, it was also decided that the next conference would be held in San Francisco on April 25, 1945 to prepare the charter for the future organization.

(8) San Francisco Conference (San Francisco Conference, June 25, 1945) - A conference of many nations was held in San Francisco on June 25, 1945 under the chairmanship of Lord Halifax. In this conference, the charter was voted upon and Ultimately the Charter was accepted unanimously. But the Charter did not come into force immediately. It was provided that the Charter would come into force only when the governments of China, France, and Britain, America and Russia and the majority of the governments of the other signatory states ratify it. This condition was fulfilled on 24 October 1945 and hence the United Nations Charter came into force from that day. 51 states signed it in San Francisco and today the United Nations has 175 members. Thus the United Nations has achieved almost universality. As is clear from the preamble of the Charter, the main objective of the establishment of the United Nations was to save the future generations from the scourge of war. Apart from maintaining international peace and security, its objectives are to develop friendly relations among nations, encourage international cooperation in economic, social, cultural or humanitarian fields and

make the United Nations a centre for coordinating the activities of nations for achieving these objectives.

Question No. 2- Discuss the structure and functions of the United Nations General Assembly.

Answer - Structure of the United Nations General Assembly- All the members of the United Nations are represented in the General Assembly. At present, the United Nations has 175 members. Each member has the right to cast one vote. But this General Assembly can have only 5 representatives (**Article 9**).

Voting Rights - According to Article 18 of the Charter, every member has the right to cast one vote. Important proposals are decided by a 2/3 majority of the members of the General Assembly. According to Article 18, important proposals include suggestions for maintaining international peace and security, election of non-permanent members of the Security Council, election of members of the Economic and Social Council, election of members of the Trusteeship Council, making new states members of the United Nations, suspending the rights and veto powers of members, expelling members and questions related to the trusteeship system. Its other proposals are decided by the majority of the members of the General Assembly.

Procedure-The annual sessions of the General Assembly can be called by the Secretary-General of the United Nations or by a majority of the members (**Article 20**). The General Assembly has the right to make its own rules of procedure (**Article 21**). The General Assembly also has the right to establish subsidiary organs to carry out its functions. The work of the General Assembly begins with a debate on the report of the Secretary-General.

All members are represented in the General Assembly and each state can send upto 5 representatives. Hence it is a big assembly. The General Assembly mainly does its work through committees. There are 4 types of committees of the General Assembly- (1) Main Committees, (2) Procedural Committees, (3) Standing Committees, and (4) Ad hoc Committees.

The Main Committee of the General Assembly considers the agenda etc. of the proposals to be considered by the General Assembly. It prepares suggestions etc. for the General Assembly. Every member has the right to representation in the Main Committees. The main committees of the General Assembly are the following: (3) Political and Security Committee (Apart from this, a special political committee has also been established which assists the First Committee. (2) Economic and Financial Committee, (3) Social, Humanitarian and Cultural Committee, (4) Trusteeship Committee (including non-self Governing Territories), (5) Administrative and Budget Committee (6) Legal Committee.

Functions and powers of the General Assembly- According to **Article 7** of the Charter of the United Nations, the General Assembly is one of the six major organs of the United Nations. Prof. Leonard has divided the functions and powers of the General Assembly into five headings- (1) Deliberative Functions, (2)

Supervisory Functions, (3) Financial Functions, (4) Elective Functions and (5) Constitutional Functions.

(1) Deliberative Functions - Deliberative functions refer to those functions of the General Assembly under which it discusses, studies and presents its suggestions. The deliberative functions and powers of the General Assembly are as follows:

(1) The General Assembly may deliberate on any question under the UN Charter and make recommendations to the UN and the Security Council (**Article 10**). There is one exception, however. The General Assembly may not consider a question which is being considered by the Security Council (**Article 12**).

(2) The General Assembly may discuss general principles of international cooperation for the maintenance of peace and security (including disarmament) (**Article 11**).

(3) The General Assembly has the power to draw the attention of the Security Council to situations likely to threaten international peace and security (**Article 11-3**).

(4) The General Assembly also has the power to commission studies with the aim of enhancing international co-operation. And can present their suggestions in this regard.

(5) The General Assembly of the United Nations has the right to give its suggestions and propose methods for the peaceful settlement of any problems or situations which are likely to deteriorate the relations between nations.

By observing the above powers and functions, it is known that the General Assembly is a very influential organ of the United Nations. There is no doubt that since the establishment of the United Nations, the functions and powers of the General Assembly have increased continuously and it has done important work. But still it has some limitations; those limitations are as follows-

(1) The proposals of the General Assembly do not have a binding effect on the states. These are only suggestions. It would be inappropriate to call the General Assembly of the United Nations a world parliament. Because this parliament cannot make laws for the states and its proposals and declarations do not have a binding effect on the states. But in some circumstances, the proposals and declarations of the General Assembly of the United Nations can create legal implications. For this, it is necessary that the proposals of the General Assembly are passed unanimously. Only those proposals of the General Assembly can create legal consequences in which traditional international law is declared or new rules of international law are created or the provisions of the Charter are interpreted.

(2) Another important limitation of the General Assembly is that the UN cannot interfere in the internal or domestic affairs of Member States. This principle of the UN is enunciated in **Article 2 (7)** of the UN Charter.

(2) Supervisory Functions - By supervisory functions we mean those functions through which the General Assembly controls other organs and specialized agencies. These organs are the Economic and Social Council and the Trusteeship Council. The Economic and Social Council actually works as a subordinate organ of the General Assembly. Similarly, the General Assembly controls all matters except those related to the social areas of the Trusteeship Council. Apart from this, the main organs of the Security Council and the United Nations send annual reports to the General Assembly. The General Assembly deliberates on those reports. When the session of the General Assembly begins, the General Assembly discusses the annual report of the Secretary General of the United Nations. Therefore, the General Assembly is such a main organ of the United Nations which controls other organs.

(3) Financial functions- According to Prof. Leonard, the General Assembly is a powerful organ because it exercises financial control over the United Nations. According to **Article 17** of the Charter, the General Assembly discusses and passes the budget of the United Nations. Apart from this, the most important power is that the General Assembly distributes the expenses of the institution among the members, that is, the members have to bear the expenses for the institution which the General Assembly determines. This is an important power and function. A major matter related to the economic powers of the General Assembly is Certain Expenses of the United Nations (1962). The facts and rules propounded in this matter are as follows-

Under the resolution of Uniting for Peace (United Nations Emergency Force on UNEF, 1950), the United Nations General Assembly also received some powers in relation to international peace and security. Under this resolution, the General Assembly can send its emergency forces for a ceasefire agreement or to maintain peace and order. Under this resolution, the General Assembly sent its emergency forces (United Nations Emergency Force on UNEF) to Egypt in 1956 during the Suez Canal Crisis. After this, in 1960, under the same resolution, troops were sent to Congo (U-N Operation in Congo). Russia was opposing the resolution of Uniting for Peace, 1950 from the very beginning. According to it, this was against the provisions of the Charter. Thus Russia refused to pay the expenses incurred on the troops sent to Congo and Egypt. As a result, the United Nations faced an economic crisis. Therefore, in 1961, the General Assembly of the United Nations asked the International Court of Justice to give an advisory opinion on this issue. The General Assembly asked the International Court of Justice to clarify paragraph 2 of **Article 17**. There is a provision in paragraph 2 of **Article 17** that the expenses of the member states will be determined by the General Assembly. Indirectly, the International Court of Justice accepted the validity of the 1950 resolution to organize for peace and clarified that the organization can do everything that is not prohibited by the Charter. Despite the above-mentioned decision of the International Court of Justice, the problem could not be solved

because Russia and France still refused to pay the expenses on the troops. Therefore, the General Assembly passed a resolution on September 1, 1965 in which it was said that **Article 19** will not be applied in the expenses incurred in connection with the United Nations troops sent to Egypt and Congo. According to **Article 19**, the voting rights of those member states which do not pay the expenses set by the organization can be suspended. This provision was made because America was adamant that it would get Russia's voting rights suspended. Apart from this, to overcome the financial crisis of the organization, the members were asked to meet the expenses incurred on sending the above-mentioned troops by giving voluntary grants.

(4) Election related functions - The United Nations General Assembly performs two types of election related functions: (1) Those relating to the membership of new States, and (2) Those relating to the election of members of the other organs.

(1) Election work related to membership of new states- The word 'Admission' was used in the UN Charter. But according to Prof. Leonard, in reality, new states are selected for their membership in the General Assembly. When the Security Council agrees to the application of a new state, the General Assembly selects it as a member of the UN by a majority of 2/3 of the members present.

Apart from this, the General Assembly has some rights regarding the loss of membership of members. In this regard, the General Assembly has the following rights-

(1) If collective action is taken against a Member, the General Assembly may, by a majority of two-thirds of its members, with the consent of the Security Council, suspend that Member.

(2) If a Member flagrantly violates the Charter of the United Nations, the General Assembly may, by a two-thirds majority of the members present and on the suggestion or consent of the Security Council, expel that Member from the Organization.

(3) Further, under **Article 19**, any Member State which fails to pay the dues prescribed by the Organization may be suspended from its voting rights by the General Assembly by a two-thirds majority, on the recommendation and consent of the Security Council.

(2) Functions relating to the election of members of other organs: In this regard the General Assembly performs the following functions:

(1) It elects the 10 non-permanent members of the Security Council.

(2) It selects the 54 members of the Economic and Social Council.

(3) It selects some members of the Trusteeship Council.

(4) It elects and appoints the judges of the International Court of Justice together with the Security Council.

(5) The General Assembly appoints the Secretary-General of the United Nations on the advice and consent of the Security Council.

(5) Constituent Functions- The General Assembly performs some constitutional functions. The General Assembly participates in the amendment of the Charter. Any amendment of the Charter is possible only when 2/3rd members of the United Nations accept it, which requires 5 permanent members and these 2/3 members ratify it. Therefore, if the General Assembly does not give its consent for the amendment of the Charter by 2/3 votes, the Charter cannot be amended. For the amendment of the Charter, it is necessary that after the consent of the five permanent members, the governments of those members ratify such amendment.

By observing the above powers and functions, it is known that the General Council is an important organ of the United Nations. The powers of the General Assembly of the United Nations reached its peak on November 3, 1950 with the passing of the resolution to organize for peace. Through this resolution, the General Assembly got a lot of powers regarding international peace and security.

Question No. 3- Discuss the law related to membership of the United Nations. Mention the process of suspension and expulsion of membership.

Answer-Membership-According to the United Nations Charter, there can be two types of members- (1) original members and (2) members made according to **Article 4**. The original members of the United Nations are those states which participated in the United Nations Conference in San Francisco and signed the Charter and later ratified it. Apart from this, those will also be considered as original members who signed the United Nations Declaration of January 1, 1942. and thereafter signed the existing Charter and ratified it under **Article 110** (**Article 3**)

Any state can be made a member by a two-thirds vote of the General Assembly on the recommendation of the Security Council. Apart from this, the following 5 conditions have been described in **Article 4** for making a state a member - (1) being a state (2) being a peace loving person, (3) accepting the responsibilities of the Charter, (4) having the will to follow the responsibilities of the Charter. (5) Capacity to fulfil those responsibilities.

The behaviour of the United Nations in admitting new states as members is inconsistent with the above provisions mentioned in Article 4. The member states of the United Nations often give prime importance to their personal interests etc. while voting for admitting states as members and impose conditions other than the above conditions. After the establishment of the United Nations, Russia prevented new states from becoming members through its veto powers and imposed conditions other than those mentioned in **Article 4**. For example, on the question of Italy and Finland's membership, Russia put a condition that it would vote only if Bulgaria, Hungary and Romania were also made members. Therefore, the General Assembly of the United Nations asked the International Court of Justice to give an advisory opinion on this matter in 1948. The General Assembly put the following two questions before the Court-

(1) Can a Member of the United Nations impose any conditions not stated in the Charter on its vote on a request for membership in the Security Council or the General Assembly?
(2) Can a Member make its positive opinion a condition that certain other States should also be admitted as Members?

The International Court of Justice, in its advisory opinion [Conditions of the Membership in the U-N-1-C-J-Rep-(1948)] held that while voting on the question of admitting States into the United Nations in both the above mentioned questions, Member States cannot impose any condition which is not mentioned in the UN Charter and conversely it cannot impose the condition that some more States should also be admitted into the United Nations.

Therefore, according to the Court, the conditions mentioned in the Charter should be kept in mind and political matters should be given priority. Despite this opinion of the International Court of Justice, due to the veto power of the superpowers, the Security Council was unable to give its positive consent to the application for membership of many states. Therefore, the next question was whether the General Assembly can make any state a member of the United Nations only by its decision? The General Assembly of November 22, 1949 again asked the International Court of Justice to give an advisory opinion on this question. The International Court of Justice, in its advisory opinion of March 3, 1950, (Compe] tence of the General Assembly Regarding the Admission to the U-N- L- C- J- Reports (1950), answered that for a state to become a member, the affirmative recommendation of both the Security Council and the General Assembly is necessary.

Thus, the admission of a nation as a member of the United Nations is a matter which is decided by both the organs, the Security Council and the General Assembly. From the provision of paragraph 2 of **Article 4** it appears that the admission of new members takes place only through the General Assembly. But this is not so. If the Security Council is not in favour of the admission of a new state then it need not make any recommendation, in such a situation the General Assembly cannot take any decision on the matter of admission of a new state.

Conditions of becoming a Member of the United Nations - Article 4 of the Charter mentions the conditions that states are expected to fulfill to become a member of the United Nations. These conditions are - first, the state should be peace loving, second, these states can be members, which accept the obligations mentioned in the Charter. And third, these states can be members, which are able and willing to follow the obligations mentioned in the Charter.

The total number of members of the United Nations has become 193. Thus, most of the states of the world are represented in this organization. In fact, this is an important step towards the goal of universality of the organization.

Suspension of a Member - Article 5 of the Charter provides that a member may be suspended from the United Nations. According to this article, a member may be suspended from exercising its rights and privileges of membership if the Security Council has taken any preventive or enforcement action against it. Suspension can be done by the General Assembly on the recommendation of the Security Council. Suspension of a member is a non-procedural matter, so it requires the affirmative vote of nine members including the concurring vote of the permanent members of the Security Council. This provision means that when a member is suspended, it loses all the rights it enjoys. For example, it cannot be represented in the General Assembly and the three councils (Security Council, Economic and Social Council and Trusteeship Council) and it cannot be elected as a member of these councils. It cannot be invited to draw the attention of the Security Council or the General Assembly to matters under **Articles 31, 32** and **34** of the Charter, or to participate in the deliberations of the Security Council under other circumstances under paragraph 1 of **Article 35**. However, a State remains a member even after being suspended and must fulfill all the obligations of a member.

Expulsion of a Member - Article 6 of the Charter provides for the expulsion of a member from the United Nations. According to this, if a member repeatedly violates the principles of the Charter, then it can be expelled by the General Assembly on the recommendation of the Security Council. Expulsion from the United Nations is an enforcement action because this action is taken against the will of the concerned state. Expulsion is done against the will of the member. Since expulsion is a procedural matter, it requires a positive vote of nine members including the concurring vote of the permanent members of the Security Council. For this, a two-thirds majority of the members present and voting in the General Assembly is also required in accordance with paragraph 2 of **Article 18**. A decision of both the General Assembly and the Security Council is necessary for the expulsion of a member. So far no member has been expelled from the United Nations. Once a member is expelled from the United Nations, its status becomes the same as that of a non-member state Thus, after expulsion it can exercise all the rights that non-member States are entitled to exercise.

Withdrawal of Membership from the United Nations - A membership of the United Nations can be terminated against the will of the member by expulsion in accordance with **Article 6** of the Charter. But there is no provision in the Charter regarding the possible cases in which the member wishes to separate from the United Nations voluntarily. Provision for withdrawal of membership was made in the Covenant of the League of Nations. The member could either withdraw its membership by giving two months' notice, or if any member opposed any amendment, or if the amendment was not acceptable to it in any other way, it could mean that the particular member ceased to be a member of the League of Nations. But no such provision has been made in the Charter.

Question No. 4- Mention the constitution and functions of the Security Council of the United Nations.

Answer: Powers and Functions of the Security Council: The powers and functions of the Security Council can be conveniently studied under the following four headings: (1) Maintenance of international peace and security, (2) Election related functions, (3) Supervisory functions and (4) Constitutional functions.

(1) Maintaining international peace and security- According to the United Nations Charter, the primary responsibility for maintaining international peace and security lies with the Security Council (**Article 24**). The Charter has given the Security Council many powers in this regard. Under **Article 24**, it is provided that all member states have accepted that the Security Council works on their behalf and the Security Council will carry out its functions in accordance with the objectives and principles mentioned in the Charter. The members of the United Nations have pledged that they will accept and follow the decisions of the Security Council (**Article 25**). The Security Council also has the right to make plans for the control of aggression and present them before the members. **Chapter 6** of the Charter has provisions for resolving international problems peacefully. According to the Charter, states should first resolve their problems through negotiation, investigation, mediation, compromise, arbitration, judicial decision or any other peaceful means. The Security Council can also advise the states in this regard. The Security Council can investigate any problem and give its suggestions about it and can also advise by which of the above mentioned methods the problem should be solved. If the state parties are unable to solve their problems and if their problems are likely to endanger international peace and security, then the Security Council can give its suggestions for solving the problem (**Article 37**).

Apart from this, the Security Council has been given important powers under **Chapter 7** in the matter of threat to international peace or breach of peace and aggression etc. First of all, the Security Council decides whether there has been a breach of peace or an act of aggression and if it reaches this conclusion, it can give its suggestions for resolving this problem (**Article 39**). Under **Article 41**, in order to maintain international peace and security, the Security Council can suggest to the states that they should sever economic and other types of relations with the guilty state. Under this article, the United Nations does not have the right to use armed forces. But if the action taken under **Article 41** does not solve the problem, then under **Article 42,** the Security Council has the right to use air, sea or land forces. In short, the Security Council can decide on collective action to be taken by the United Nations to maintain international peace and security.

According to the Charter, the members of the United Nations are bound to provide their armies if required, but according to **Article 43**, these armies were to be provided through special understanding. Unfortunately, due to the conflict

and cooperation among the superpowers, these special agreements have not been reached till now, so the Security Council does not have such armies. Apart from this, there is also a provision in the Charter that there will be a Military Stalk Committee to assist the Security Council, in which the military presidents of the permanent members will be there. Due to non-cooperation among the superpowers, this provision has also lost its importance. Apart from this, there is also a provision in the Charter that it is the responsibility of the members to assist each other and to follow the decisions taken by the Security Council.

From the above provisions it becomes clear that the Security Council has important powers in matters of peace and security but due to mutual conflict and non-cooperation among the superpowers, the Security Council has not been able to use these powers properly. The biggest obstacle in the use of these powers has been the use of the right of veto by the superpowers or members. Due to the use of veto, the Security Council has been unable to take decisions on important matters.

Veto and its effects on Efficiency of Security Council - According to **Article 27,** the Security Council has nine (9) votes to decide on all important proposals Affirmative votes are necessary in which the affirmative consent of the superpowers i.e. permanent members is necessary. In other words, we can say that through these articles, the permanent members (China, Russia, America, Britain and France) have been given veto power by the Charter. This veto power was actually given because the makers of the Charter thought that the superpowers will cooperate with each other and fulfil their responsibilities to maintain international peace and security. Soon after the establishment of the United Nations, this idea proved wrong because the conflict between the superpowers and the cold war began. The provision of affirmative vote of the permanent members for the Security Council to decide on important questions has created a serious problem. As a result of the conflict among the superpowers, it is often seen that any permanent member makes the Security Council incapable of taking a decision by exercising his veto power i.e. by giving a positive vote, hence the veto power of the superpowers has badly affected the ability of the Security Council. Due to this, the Security Council has become an incapable organ. For example, in 1950, the Security Council could not take its decision in the matter of Korea initially because when the question of Korea was being considered, the representative of Russia was not present in the Security Council. The Security Council was unable to take any effective action in the matter of Korea initially. Similarly, in other important matters also, due to the veto power of the superpowers, the Security Council could not fulfill its responsibility of maintaining peace and security properly. The Indo-Pak conflict of 1971 is also a good example of this. In the Indo-Pak conflict, the Security Council could not take any decision initially because Russia used its veto power in favor of India. Therefore, in conclusion it can be said that the veto power of the superpowers

has crippled the Security Council. Famous jurist Julius Stone has written in his book 'The Legal Control of International Conflict', "The Security Council started the work of establishing peace with the idea that it could bind the members of the United Nations with its decisions. But in practice it became handicapped in taking decisions on important questions due to the veto power of each permanent member."

Contribution of Security Council in maintaining international peace and security As has been explained above, the veto power of the permanent members has crippled the Security Council in taking decisions on important issues. Some legal experts are of the opinion that since the inception of the United Nations, the Security Council has succeeded only in Korea and that too only partially. The reason for its success in Korea was that the question of Korea was being considered in the Security Council. At that time the representative of Russia was not present. Prof. Goodspeed has rightly written that it would not be right to say that the United Nations could stop the attack of North Korea on South Korea. Because in reality this task was accomplished by America. The United Nations had only given its consent and permission to the action taken by America. In fact, the American forces fought in Korea in the name of the United Nations. Thereafter, as soon as the representative of Russia returned to the Security Council, this task also faced obstacles.

But it would not be right to say that the Security Council has not contributed in maintaining international peace and security. In fact, the Security Council has done quite effective work in many cases. The prominent cases in these cases are Indonesia, Palestine, Suez Crisis, Indo-Pak conflict, Congo, Cyprus, Arab-Israeli conflict, 1973 etc. It is clear from these examples that the Security Council has contributed in maintaining peace and security. The Security Council has played its role very effectively in the Gulf War (1991).

Question No. 5- What do you expect from an international organisation? Briefly discuss its nature and development before the Second World War.

Answer-In the post-modern era, human civilization is passing through a transitional stage. Nations are interdependent for their existence and development. Hence, they are compelled to form international organizations for the purpose of maintaining continuous contact with each other. Apart from this, the concept of sovereignty often becomes the cause of differences and wars among states, but in the modern era, due to the development of nuclear power, nations cannot afford the risk of war. Therefore, it has become necessary for nations to organize themselves honestly and solve their problems through peaceful means. International organizations are an important step in this direction.

Definition- This formal group of independent and sovereign states is called an international organization which is formed to achieve certain specified goals. Despite being friends in terms of form, size and purpose, almost all international

organizations are born as a result of the feeling that humans should be united. While forming the organization, the states keep sovereignty safe. International organization is thus different from the super national state.

According to **Organske**, "An international organization is established where some nations come together and where each of them feels that it will have some advantage by the functioning of a formal organization."

In the words of Cheever and **Heavyland,** "International organization is a cooperative arrangement established among states, usually by an agreement, to perform certain mutually beneficial functions through regular meetings and staff."

In the words of Charles **Lerche**, "A formal group of nations organized for some common purpose is called an international organization. Despite differences in form, it is born from the same motivating elements and there is a significant similarity in their philosophy and organization."

Nature of International Organisations - The objectives of international organisations are generally broad but vague. The objective of the League of Nations was to encourage international cooperation and to strive for achieving international peace and security. The objective of the United Nations (U.N.) was to protect international peace and security, develop friendly relations among nations and achieve the objectives of international cooperation. These objectives are expressed in vague and ambiguous language so that the organisation can get worldwide support and all nations show enthusiasm to become its membership. Justice, freedom and security are such words which are liked by the citizens of all countries of the world. Hence, these are used openly in the constitutions of international organisations. As far as the membership of international organisations is concerned, it is not necessary for an international organisation to be universal in the sense that all the nations of the world are its members, yet it should be universal in the sense that all those superpowers which threaten to disrupt world peace come under its jurisdiction, because in the absence of a permanent mutual understanding among the superpowers about each other's fundamental objectives, interests and responsibilities, all organisations for the protection of peace can be considered to be a creation only on paper and the need for a new aggressor to emerge is again paved. The result of these powers getting divided in their objectives and failing to identify and coordinate their basic interests can be destruction and no type of organisation can establish the necessary peace and unity.

Evolution of International Organisations - The history of international organisations is not a gift of the modern age; its idea has been there since ancient times. From the sixth and seventh century itself, scholars had started expressing their faith in international organisation. Italian poet and philosopher Dante (1265-1312) presented the idea of an international organisation which is based on justice. In 1305, Pierre Dubois of France put forward a plan to form a union of

European kings to face Islam. In 1903, King Henry IV of France accepted a plan proposed by his Chief Minister Sali. According to this, there was a discussion of dividing the whole of Europe into 15 parts and forming a union of them. In the modern age, philosophers like William Ten, Rousseau, Betham and Kant etc. supported the idea of international organisation.

The international state system attained its modern form only after the establishment of the national state. National states were formed in the 16th and 17th centuries. In 1648, the principle of abolition of all states, big or small, was accepted. The French Revolution took place against the autocracy of the kings, which gave the message of individualism and democracy. Its description is as follows-

(1) Vienna Conference - After the French Revolution, the Vienna Conference was held in 1815 to maintain the balance of power in Europe. This was the first occasion when such a big international conference was organized in Europe, in which representatives of almost all the major nations of Europe participated. Under the conference, decisions were taken in the form of many treaties and agreements through which many regional arrangements were made. Decisions were also taken on some social and economic issues and an international institution was formed which worked in the form of a Congress.

(2) Concerted arrangement of Europe- The Congress formed under the Vienna Conference worked successfully for a few years, but after some time, due to mutual interests, there were a lot of differences among the members of the Council of Friends. Even after the Vienna Congress, its meetings continued to be held from time to time to establish peace among the major nations of Europe and to discuss political issues. Since the representatives of the major nations of Europe had jointly taken upon themselves the responsibility of maintaining peace in Europe, this arrangement was called the Concerted arrangement of Europe. Under this, conferences of major powers were held in 1818, 20, 21 and 22. In 1818, these powers declared international law as the basis of relations between nations and declared to behave accordingly. Even after the concerted arrangement of Europe, the powers of Europe continued to hold conferences on special issues. This conference was held in Paris in 1955 in which, along with solving the Eastern questions, the European powers also discussed the issue of peace and international law Topics related to international law were also accepted. Similarly, the Berlin Conference, 1878, tried to solve the problems arising out of the Eastern Question and the conferences of 1905, 1908 and 1909 respectively, which dealt with the problems arising out of the Yugoslav, Austrian and Balkan Wars. The Hague Conferences on international law were held in 1899 and 1907, in which 20 and 44 countries respectively participated and arbitration was strongly supported for solving international disputes.

Out of the 13 treaties established by the second Hague Conference, 11 were on international laws of war. It was also decided in this Hague Conference that the third conference would be held in 1915 and the conference would continue to be held every 8 years, but due to the outbreak of the First World War, the third conference could not be held and the Hague System also ended. The Hague System was a solid step towards making the international system global in terms of its comprehensiveness. It proved that any system for international peace and security can be successful only when it is global. Although the conferences held under The Hague System did not completely solve the problems, yet these conferences have a special contribution in the development of the history of international organization, because the states participating in the conferences felt the need for permanent means and agencies of mediation.

(3) Non-political Organisations - At this time, such organisations started being formed which were worldwide in terms of membership. International Telegraph Union was formed in 1856 and 'Universal Postal Union' in 1874. Similarly, non-political organisations were formed on health, trade, trademark and copyright. After the Second World War, most of these were linked to the economic and social council of the United Nations (U.N.) through judicial agreements. Such organisations are today counted in the categories of special committees of the United Nations. Of these, the main ones are International Union, International Monetary Fund, Food and Agriculture Organisation, World Health Union, International Telegraph Union etc.

Some special purpose organisations were also formed on a non-governmental or semi-governmental basis. The International Red Cross, established in Geneva in 1863, was one such organisation. Despite being non-governmental, such organisations continued to help the international community in meeting its needs. The Institute of International Law and the International Law Association, both established in 1873, made significant contributions to the development of international law.

(4) International Organisation-League of Nations - League of Nations was the first political organisation formed after the First World War. It ultimately failed but it brought revolutionary changes in the family of nations and many reforms and amendments also took place in international law. Immediately after its formation, on 16 December 1920, the Permanent Court of International Justice was established and international law got a new support. America stayed away from the League of Nations due to the pressure of domestic politics, but the Paris Pact of 1928 was the result of its leadership. Through this pact, war was declared illegal. The League of Nations was destroyed in the flames of the Second World War, but a new world organisation was formed from its ashes which is before us today in the form of the United Nations Organization (U.N.O.).

Question No. 6 - Write briefly about the organisation and structure of the International Court of Justice.

Answer- To maintain public order, it is essential to have proper law and an institution to implement it. Only when international law is well defined, order can be established in the international area. International problems can be solved only by the International Court of Justice. Which was established by the League of Nations. After the end of the League of Nations, the Permanent Court of Justice was also abolished and in its place the International Court of Justice was established.

Formation of International Court of Justice- Provision for this court has been made in **Article 92** of the United Nations. It has been stated in this article that all the members of the United Nations will automatically be members of this court. There are 15 judges in the International Court of Justice. These judges are elected by the General Council and the Security Council. The tenure of the judges is 9 years. The decisions of the court are taken by the majority of the judges. The President of the International Court of Justice has the right to cast the deciding vote. The headquarters of the court is in Hague, but the meeting can be held anywhere if required. The court is an autonomous institution. It elects its President and Vice President and appoints the Registrar. The judges of this court are elected by the General Assembly and the Security Council.

Salary: Judges are paid salaries and are expected not to engage in any political or administrative activities that might adversely affect their efficiency.

Ad-hoc Judges - There is a provision for appointment of ad-hoc judges in the rules of the court. These judges are also salaried.

Jurisdiction of the International Court of Justice the International Court of Justice has three types of jurisdiction (1) Voluntary (2) Compulsory (3) Advisory

1. Voluntary jurisdiction- All the cases which the concerned parties bring before the court for justice come under this type of jurisdiction of the International Court of Justice.

Article 36 of the Statute of the Court provides that the Court shall have jurisdiction over all disputes which the parties by mutual agreement refer to the Court for decision.

Any disputed matter may be referred to the courts by both the parties by agreement or one party concerned with the dispute may refer the matter and the other parties may give their consent to it.

2. Compulsory jurisdiction - States which are parties to the present treaty may at any time they may declare that they make the jurisdiction of the Court essential and self-evident and without any 'special' admission as to any other State accepting the same duty, all legal matters relating to:

In quarrels admit-

(a) Interpretation of a treaty

(b) Any question of international law

(e) The existence of any fact which, if proved, would constitute a breach of any international obligation.
(e) The form and consequences of compensation for breach of an international duty.
The above declaration by the States provides for compulsory jurisdiction by admission as the Court can exercise jurisdiction only if both the parties to the dispute have made the declaration, as provided in **clause (2)** of Article 36. The Treaty provides that declarations made under the old Optional Sentence Clause of the Statute of the Permanent Court of International Justice shall be deemed to be an admission of compulsory jurisdiction of the present Court.
Importance of the Court - The International Court of Justice has made a significant contribution to the gradual development of international law its importance and contribution is briefly mentioned below-
1. In the absence of any treaty or convention, the court takes the help of general principles of law accepted by civilized nations to decide on a dispute. In this way international law develops.
2. The International Court of Justice clarifies ambiguous rules of international law.
3. Article 59 of the Statute of the Court prohibits the Doctrine of Precedent, yet this indicates its importance.
4. The advisory opinions of the Court also contribute significantly to the development of international law. Such as the conditions for becoming a member of the Union, the requirements for becoming a member of the General Assembly, rules regarding compensation for losses, determination of the law (rules) regarding succession of international institutions, etc.
Question No. 7- Describe the structure of the United Nations Secretariat and explain the functions of the Secretary General.
Answer- The Secretariat - According to Prof. Goodrich (L.M. Goodrich), the concept of international civil service is not new. It was started by the League of Nations. The experiment done by the United Nations was expanded even more. The Secretariat is an administrative organ of the United Nations. The Secretariat consists of the Secretary-General and as many other employees as the organization requires. The Secretary-General is the chief administrative officer of the organization. He is appointed by the General Assembly on the recommendation of the Security Council (**Article 97**). The Secretary-General is often a famous person from a small and neutral state. The first Secretary-General of the United Nations was Trygve Lie, the second was Dag Hammarskjoeld, the third was U-Thant of Burma, the fourth Secretary-General was Kurt Waldheim of Austria. The current Secretary-General is Mr. Avier Perez De Cuellar of Peru. He assumed the post of General Secretary on January 1, 1982 and was subsequently elected for a second term.

His second term ended on 31 December 1991. His next Secretary-General was elected Boutros Ghali of Egypt and he took charge in January 1992.

To maintain the international nature of the Secretariat and to keep it impartial, it has been provided in the Charter that the Secretary-General and his staff will not obey the orders of any government and every member state of the United Nations will respect the international nature of the Secretary-General and his subordinate staff (**Article 100**).

The Secretary General appoints the secretariat staff as per the rules laid down by the General Assembly. According to the Charter, the secretariat staff should have the following qualities at the time of appointment: efficiency, competence and integrity. Their terms of service and salary etc. are determined as per the rules framed by the General Assembly.

Following are the functions of the Secretary-General:

(1) The Secretary-General, in his capacity as the chief administrative officer of the Organization, attends all meetings of the General Assembly, the Security Council, the Economic and Social Council and the Trusteeship Council and performs all other functions assigned to him by these organs.

(2) It also submits to the General Assembly an annual report on the work of the Institution (**Article 98**).

(3) If in its opinion any matter threatens international peace and security, it may draw the attention of the Security Council to such matter (**Article 99**).

(4) The Secretary-General collects facts and figures regarding the economic situation throughout the world and transmits them to the Economic and Social Council.

The functions of the Secretary-General and the status of his office have been greatly influenced by the personalities of the three people who have held the post. Dag Hammarskjoeld in particular has greatly influenced his position. In the words of Charles Winchmore - "The Office of the Secretary & General has been shaped by the character of its three successive incumbents and more especially by the outstanding achievements of the Secretary General Dag Hammarskjoeld."

After the passing of the Uniting for Peace Resolution (November 3, 1950), the powers and functions of the Secretary-General in relation to international peace and security have increased considerably. Under this resolution, the Secretary-General can be given the right to send troops to conflict areas and to exercise control over them. During the Suez Crisis in Egypt in 1956 and in Congo in 1961, Dag Hammarskjoeld performed important tasks in sending and controlling United Nations troops and increased the prestige and dignity of his post. But the experience of Congo has made it clear that the cooperation and unity of the superpowers is necessary for the Secretary-General to perform the functions of peace and security and for their success. In the absence of this, the United Nations fell into an economic crisis and the United Nations was forced to withdraw its troops before the completion of the task.

Thus it becomes clear that there are some limitations on the powers and functions of the Secretary General. For the success of the Secretary General's work it is necessary that there should be mutual cooperation among the superpowers.

Question No. 8- Describe the structure and functions of the Trusteeship Council.

Answer- Trust Council-It works for the development of people living in trust areas. The judicial council

There are following members-

(1) Members administering jurisdictions;

(2) Permanent Members of the United Nations that are not administering jurisdictions;

(3) The General Assembly shall elect, for a term of three years, such number of members as to make the number of members administering and non-administering jurisdictions equal.

Voting-Each member of the Vyasa Parishad has the right to cast one vote. Its decisions are taken by the members present are taken by majority (**Article 89**).

Functions and powers-The Trust Council performs its functions under the General Council. It performs the following functions Edits-

(1) It may consider reports submitted by the territory administering the trust territory.

(2) It may accept petitions and cause them to be examined with advice of the administering States.

(3) It may, from time to time, with the approval of the non-administering officer, send persons for inspection into the jurisdiction.

(4) The above and other actions may be taken in accordance with the trust agreements.

(5) The Trusteeship Council shall prepare a questionnaire for the political, social, economic and educational development of the trust territories and shall submit a report on the basis of the questionnaire to the General Assembly for the administration of the trust territories (**Article 88**).

(6) The Trusteeship Council may receive assistance from the Economic and Social Council and specialized agencies (**Article 91**).

The number of people living in the trust territories has been decreasing every year since the inception of the United Nations. The work of the Trusteeship Council is decreasing very rapidly. In a few years, perhaps the Trusteeship Council will have no work left at all. It is the only organ among the major organs of the United Nations which has almost successfully completed its work. It has worked successfully in all areas except the region of South-West Africa. In the words of Leonard- "By the fall of 1966] virtually all colonial peoples had attained independence and membership in the U-N-Only three trust territories remain of

the original eleven which means that the Trusteeship Conucil had almost completed its original mission of asserting these areas in their quest for self-government and independence."

After the independence of Papua New Guinea in 1975, the Trust Territory of the Pacific Islands is the last trust territory left. It is also called Micronesia. The council is considering ending its trust status. It is important to note here that The United Nations itself took the responsibility of South-West Africa and Namibia (which has been illegally taken over by South Africa). A council (U.N. Council for Namibia) was established for this.

As a result of the efforts of the United Nations, Namibia is now independent and has become the 160th member of the United Nations.

International status of South-West Africa [L.C.J. Rep. (1950)] - is an important case relating to trust territories. Under the mandate of the League of Nations, the Republic of South-West Africa was assigned to Southern Africa for administration. On the dissolution of the League of Nations, South Africa claimed that the territory became an integral part of its territory: hence it was outside the control of the United Nations Trust System. The General Assembly sought an advisory opinion on the matter from the International Court of Justice. The Court decided that South-West Africa had an international status under the mandate which South Africa alone could not change. The Court stated in its decision that the General Assembly of the United Nations had the right to control the territory in the same manner as the Mandatory Commission and that it was the responsibility of South Africa to respect the control of the trust system and to accept the control and supervision of the General Assembly. Despite this decision, South Africa continued to hold the territory in accordance with the mandate. Opposed United Nations control over the territory of the South West African Republic.

When the resolutions of the International Court of Justice and the General Assembly had no effect on South Africa, in 1970 the Security Council passed a resolution against South Africa. South Africa did not pay any heed to this either. Therefore, the International Court of Justice was once again requested to give advisory importance regarding the legal consequences of this situation. In 1971, the International Court of Justice gave the following decision in its advisory opinion regarding the legal consequences of the continued presence of South-West Africa in South Africa despite the Security Council:

(1) South Africa's continued presence in South-West Africa is illegal and South Africa has a responsibility to withdraw and end its occupation of South-West Africa.

(2) It is the duty of the Members of the United Nations to recognise the illegitimacy of South African presence in South-West Africa or Namibia and to not establish relations with South Africa.

(3) Non-members (States which are not Members of the United Nations) also have a duty to assist in action taken by the United Nations. Hence South Africa was illegally occupying the territory of South-West Africa.

Namibia became independent at midnight on 21 March 1990. The United Nations Security Council for Namibia held its last session from 9 April to 11 April 1990 in Winchok, the capital of Namibia, and passed a resolution calling for its dissolution.

Difference between Mandate System and Trusteeship System - According to Prof. Goodspeed, the trust system is the successor of the experiment done by the League of Nations, but it would be wrong to consider it as just an extended part of it. In the history of international institutions, the mandate system of the League of Nations was the first experiment through which an attempt was made to improve the condition of the enslaved people. According to **Article 22** of the Covenant of the League of Nations, the best way to improve the condition of such people was to hand over these areas to developing countries for administration. Therefore, such areas were handed over to some developing countries under the mandate system for administration and development.

The scope of the trust system is wider than that of the mandate system. The control of the trust system over the territories is also more effective. The Security Council has taken responsibility for the strategic areas of trust territories. As compared to the mandate system of the League of Nations, the Security Council has effective control over the power administering the strategic trust territories. The residents living in the trust territories cannot be recruited in the armed forces and such a power has to work according to the provisions of collective security. As compared to the mandate system, the trust system has done more effective and commendable work. Most of its work is almost over. Only one trust territory is left which will become independent in the near future. This is the best proof of its success.

Question No. 9- Give a brief evaluation of the League of Nations. What were the reasons for the failure of the League of Nations?

Answer - According to **Philip Noel Baker,** "The League of Nations is the first attempt in the history of providing a permanent and organic system of international institutions to the international society among nations." This attempt was the result of the First World War. The disastrous results of the First World War forced Ratho to try to establish such an international institution which is based on respect for law and can establish peace and security in the world. During the First World War (1914-19), the Allied Nations established many committees related to shipping, raw materials, food stuff, fuel etc. The successful work of these committees was recognized by the Allies Encouraged towards international cooperation. Often the League of Nations is called the scapegoat of war. In the Hague Conference of 1899 and 1907, the founders of the League kept the above mentioned Hague Conferences before them as the model

of the League of Nations Assembly. They believed that legislative functions could be developed by the League of Nations Assembly.

By the end of the First World War, the world's politicians had clear ideas about the establishment of the League of Nations. They were at least unanimous on the fact that an international institution should be established that could save the people of the world from the horrors of war in future and its destructive effects. In January 1918, Britain's Prime Minister Lloyd George said in one of his important speeches - "An international institution should be established to limit the burden of weapons and reduce the possibilities of war."

On 8 January 1918, US President Wilson announced a 14-point program for world peace. The 14-point program included a conference of representatives of the superpowers, a permanent secretariat, disarmament, compulsory arbitration, and the use of military force against nations that started wars and violated the provisions of the League of Nations. President Wilson encouraged the establishment of the League of Nations and contributed significantly to its health. It would not be unfair to say that Wilson deserves the most credit for the establishment of the League of Nations.

By the end of 1918, Lord Robert Socil prepared a draft which is famous as Socil Draft. In December 1918, General Smuts presented his ideas for the establishment of the League of Nations. In his proposal, he made provision for a General Conference, a Council and Arbitration Court. After this, the President of America presented the second and third drafts. The British government also presented a draft. Finally, the proposals of America and Britain were put in a joint draft which is called the Hart-Miller Draft. This joint draft was placed before the League of Nations Commission of the Peace Conference. On 28 April 1919, the Peace Conference accepted this Covenant which was finalized by the Commission. It is worth remembering that this Covenant was kept as an integral part of the Treaty of Versailles. Thus the League of Nations was established on January 10, 1920.

Objective of the League of Nations - The following were the two main objectives of the League of Nations-

(1) The maintenance of international cooperation, peace and security, and

(2) To promote international cooperation.

The following were the main organs of the League of Nations:

(1) Assembly,

(2) Council and

(3) Secretariat.

(1) Assembly - All the members of the League of Nations were represented in the Assembly. Each member was entitled to send three representatives, but each member was entitled to cast only one vote. Sir A. E. Zemmem has rightly written - "The Assembly was neither an assembly nor any other part of the world government system. It was only the first external and visible demonstration of

the Assembly's establishment of the rule of law in the world." It is worth remembering that one flaw in the League of Nations contract was that there was no clear division of functions between the Assembly and the Council. But there were some functions which were performed only by the Assembly. For example, the Assembly accepted new states as members by a two-third majority, nominated temporary members of the Council and approved the appointment of the Secretary-General.

(2) Council- The members of the Council were the principal Allied and Associated Powers, i.e. America, Britain, France, Italy and Japan. Apart from this, four members were elected by the League of Nations Assembly. Unfortunately, America never became a member of the League of Nations. This decision definitely proved fatal for the future of the League of Nations. A small country was chosen to fill the place of America. As has been explained earlier, there was no clear division of functions between the Assembly and the Council. The Council performed many functions in collaboration with the Assembly. But there were some functions which were performed only by the Council. The main functions among these were nominating additional permanent members, planning to reduce armaments, advising members to protect against external attack and to maintain regional sovereignty.

(3) The Secretariat - Although there was neither the concept of an international secretariat nor an international civil service in the international system, yet the League of Nations deserves credit for establishing an international civil service in the true sense and it was an experiment started by the League of Nations which was developed and perfected by the United Nations. The Secretariat of the League of Nations had about 600 officers and subordinate employees. The head of the Secretariat was the Secretary-General who was appointed by the unanimous decision of the Council.

Functions of the League of Nations: The main functions of the League of Nations were to: (1) Reduce national armaments to the lowest level consistent with national security (**Article 8**).

(2) To safeguard the territorial integrity and political independence of the Members of the League of Nations against external aggression (**Article 10**).

(3) Peaceful settlement of international disputes (**Articles 12** and **16**).

(4) Peaceful changes in international relations (**Article 19**).

(5) The maintenance of international peace and security.

According to Professor Goodspeed (Stephen S. Goodspeed), the League of Nations had two objectives - international peace, security and international cooperation. According to him, the Covenant of the League of Nations was a multilateral treaty whose dual objective was to maintain international peace and security and to encourage international cooperation.

Reasons for the failure of the League of Nations- The League of Nations had the following weaknesses and defects due to which the League of Nations failed-

(1) The main drawback of the League of Nations was that the Council could take decisions only by consensus. Due to the division of nations into groups, consensus was not possible in many matters. Thus the principle of unanimity, which was put in place to increase the efficiency of the League of Nations, actually proved fatal. It created obstacles in the functioning of the Council.

(2) The second major flaw was that war was not completely prohibited in the League of Nations treaty. Under the provisions of the treaty, states had the right to wage war under certain circumstances. According to the treaty, it was the responsibility of the members to first solve their international problems through arbitration or council investigation. But if the problem was not solved by these means, then after a period of 3 months, the right to wage war was obtained. According to legal experts, this was a major constitutional flaw in the League of Nations treaty.

(3) The US Senate did not ratify the League of Nations; hence, the US could not become a member of the League even though it had contributed significantly to its establishment.

(4) If any amendment to the Covenants of the League of Nations was unacceptable to any member or was opposed by that member, such member state could withdraw its membership from the League of Nations.

(5) Besides the above provisions, any member could withdraw its membership from the League of Nations by giving two years' notice. As a result, the number of members in the League of Nations eventually reduced from 62 to 32.

(6) The League of Nations Council did not have the power to settle international disputes peacefully.

(7) The League of Nations did not have the power to prevent the super powers from attacking smaller states and taking unfair advantage.

(8) The League of Nations was not a universal international institution. Only 62 states were its members and Over time, this institution was reduced to only 32.

(9) The League of Nations was based on the distinction between super powers and smaller states.

(10) One of the major reasons for the failure of the League of Nations was that nations (particularly the superpowers) focused their private Self-interests were always given the highest priority.

(11) The final fault of the League of Nations was that it failed, like the Euro, in its main task of maintaining peace in the world remained.

Causes and events of dissolution of League of Nations- Apart from the above-mentioned defects and weaknesses, some such events happened which made the downfall and dissolution of League of Nations inevitable. These major events were as follows-

(1) In 1923, Italy attacked an island called Corfu. Greece raised this issue in the League of Nations. The League of Nations did not help Greece and gave its advice in favour of Italy.
(2) In 1931 Japan invaded and occupied Manchuria. The League of Nations was also unable to take any effective action.
(3) The League of Nations' main task was to try to keep national armament to a level consistent with national security. As a result of the League of Nations' efforts, a disarmament conference was held in 1932. This was an important event because it was the first conference of its kind, but it did not achieve any success. It proved to be a failure for the League of Nations.
(4) In 1935 Italy attacked Ethiopia. The League of Nations was unable to take action against Italy remained.
(5) In 1939 Russia attacked Finland. This time to the League of Nations remained a mere spectator and could not take any action.
The above events made it clear that the League of Nations was a weak international institution and was unable to maintain world peace and security. The famous jurist Prof. E. Corvoit has rightly written- "The failures of the League of Nations were so evident and widespread that they hid the achievements made under it. Despite all its flaws, the overall experience was a progress towards an effective legal system for the world. If it had only revealed the problems, diversity and disparities of collective action on a global scale, it would have been a positive achievement. In fact, it started such institutions and processes which are still used beneficially today." Prof. Goodspeed has also written- "The League of Nations started all aspects of international organization. Undoubtedly, one of the most novel innovations was the adoption of international civil service in the true sense." In fact, the modern administration has got its present form and process as a result of the development of international organization (which was started by the efforts of the League of Nations).

Question No. 10- Write short notes on three of the following-

Answer – (1) International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) – Before discussing the World Bank, it would be desirable to say a few words about the World Bank Group.

The World Bank Group - The following things are included in the World Bank Group-
(i) The International Bank for Reconstruction and Development or the World Bank (I.B.R.D.);
(ii) International Development Corporation (I.D.A.);
(iii) International Finance Corporation (I.F.C.);
(iv) Multinational Investment Guarantee Agency (M.I.G.A.)

The first three above are specialized agencies of the United Nations but the fourth one is not a specialized agency.

It was established as a result of the Bretton Woods Conference of July 1944 and the constitution of this institution was adopted in the Appendix-II of the final act of the said conference. Thereafter, it was linked with the United Nations through a special agreement which was approved by the General Assembly on 14 November 1947. Its objective is to help member states in reconstruction and development of their region by investing capital for production purposes. It encourages investment of foreign private capital by giving guarantee. Its objective is also to encourage balanced development of international trade. Its membership is open to those states which were members of the International Monetary Fund before 31 December 1945. Other states can be made members by majority of the Board of Governors. Russia formally became a member of the World Bank in June 1992. The World Bank had given approval to the application for membership of Russia and other former Russian republics in April 1992 itself. Like Russia, 12 other former Russian democracies also became members of the World Bank. Thus the Bank became a true World Bank.

It has three main organs- (a) Board of Governors; (3) Executive Directors; (c) President. The council has one governor and one alternate member. Its tenure is of 5 years. Its session is held every year. All the powers of the council of the bank are concentrated in the council. The council has delegated its powers to 18 executive directors and they carry out the general functions of the bank. The executive directors elect their own chairman who is responsible towards the institution and presides over the meeting of the executive directors.

The Bank's annual conference on Development Economics was held on 23 and 24 May 2005. International Monetary Fund (I.M.F.) - It was established as a result of the Bretton Woods Conference (July 1994) and it became associated with the United Nations through an agreement in November 1947. According to Article I of the pledge of the International Monetary Fund, its main objectives are to encourage international economic cooperation, encourage balanced development of international trade, increase stability in exchange among members and remove mutual competition in that regard, remove foreign exchange restrictions, create confidence in members by making funds available to them and reduce disparities in international balance of payments among members, etc.

Apart from the oral members, other states can be made members of the Council of Governors by a simple majority. Each member has the right to vote according to the amount of money he has contributed to the COP. Apart from 250 votes, each member has the right to cast one additional vote for every 1,00,000 sterling pounds of money. In June 1992, Russia formally became a member of the International COP. 12 other former Russian republics also became members. Thus, 184 states are members of the COP. It has four main organs (a) Council of Governors (b) Executive Director; (c) A Managing Director; and (d) Employees.

All the powers of the fund are concentrated in the council. The council elects its chairman and its session is held every year. The body of executive directors is 18 and they carry out the general functions of the fund. The executive directors elect the managing director who acts as the chairman of the executive directors. The main office of the fund is in Washington.

(2) Meaning and Definition of Blockade: According to Stark, a blockade occurs when a belligerent country prohibits the passage of ships along the warring country's coast or any part thereof.

According to **Oppenheim**, a blockade is the imposition of a barrier or obstruction by warships on the enemy's coastline or any part thereof with the aim of preventing the entry and exit of ships or aircraft of opposing states.

According to **Hall**, a blockade is a blockade by a belligerent state during wartime to prevent entry or access to an area or place held by the enemy. It is an act of war carried out by the warships of a belligerent state with the aim of preventing the entry or departure of an enemy from a neutral demarcated port.

Characteristics of blockade-First, the blockade should be done by warships, even if it is strengthened by other means. Second, only the enemy's coast or part of it or the enemy's ports should be the target of blockade. Third, both entry and exit can be stopped by blockade. Fourth, to be considered acceptable, the blockade should be imposed impartially against the ships or aircraft of all the states. Lastly, blockade is a war-like activity.

Blockade should not be mistaken for a siege whose aim is to capture the surrounded place. Blockade prevents every mutual contact by sea.

Declaration of Paris, 1856 - The fourth article of the Declaration of Paris of 1856 stipulated that a blockade, to be binding, must be effective i.e., established with a force practically sufficient to prevent the enemy from access to the coast.

In the Battle of Cambrai (1854) it was believed that a blockade of 120 miles was organised by a single British battleship patrolling the coast. The Formosa blockade, on the other hand, was considered incomplete and was notified by France in 1884. When Britain objected to it on the grounds that the French admiral was under insufficient military command, the blockade was abandoned until reinforcements arrived to reinforce it.

Wheaton states that the effect of the blockade should not be increased beyond what is necessary in the circumstances of the case, as it would infringe on the rights of the neutral.

Declaration of London, 1990- The ungratified Declaration of London confirmed the rule established by the Declaration of Paris (1856) that a blockade must be effective to be binding. It further stated that a blockade must be declared and notified. According to the Declaration of London, a blockade must be declared either by the government at war or by the commander of the naval force acting on behalf of that state, specifying specifically the date on which the blockade is to commence, the limits of the coastline subject to the blockade and the period

within which neutral ships may pass. This rule is based on the interest of neutrals to be duly informed of the extent of their liability.

Types of Blockade-There can be many forms of blockade like Effective Blockade, Blockade de facto, Blockade by Notification, Paper Blockade, Strategic Blockade, Commercial Blockade or Pacific Blockade Pacific Blockade), Simple and Public Blockades, etc.

(3) Good Offices - When two nations are unable to resolve their disputes among themselves, then a third friendly country or a person can help in resolving their disputes. This third nation can offer its good offices in this regard. These services can be offered by a state, a person or an international institution. But in this way the third person or nation only creates such an environment and presents general suggestions. But does not participate in the talks etc. in an active manner. In 1947, the United Nations Security Council offered its good offices in the dispute between Indonesia and Netherlands. Similarly, recently France offered its good offices to America and North Vietnam and South Vietnam. It is worth remembering that most of the talks held to establish peace in Vietnam were held in Paris.

For example, the Secretary General has played an important role in resolving the Cyprus dispute for more than two decades, the Rainbow Warrior Dispute (1986), and making efforts to negotiate with the parties in Afghanistan as well as making suggestions for resolving the problem.

Negotiations - Attempts are also made to resolve international disputes through negotiations.

It is a less formal method than arbitration or judicial decision. Sometimes disputes are resolved only through negotiations, but sometimes other methods are also used along with negotiations, such as mediation, arbitration etc. Negotiations are the simplest method for peaceful settlement of disputes, because only the parties to the dispute are involved in its process. Negotiations can be bilateral or multilateral according to the parties to the dispute. Negotiations have always been important in resolving disputes and will remain so in the future too. In Article 233 of the United Nations Charter, which mentions the methods of peaceful settlement of disputes, negotiations are mentioned first.

By passing a resolution (Resolution 53/101) on 8 December 1998, the United Nations General Assembly declared guiding principles regarding international negotiations. The General Assembly affirmed the importance of peaceful means of resolving disputes and negotiations consistent with international law and made it clear that negotiations should be in accordance with the following guiding principles-

(a) The conversation must be conducted in good faith.

(b) States should appropriately involve in international negotiations those States which have vital interests directly involved in the matter concerned.

(c) The purposes and objectives of the negotiations must be consistent with the rules and principles of international law, including the provisions of the Charter of the United Nations.
(d) States should abide by mutually agreed terms for holding negotiations.
(e) States should strive to maintain a constructive atmosphere during the negotiations and should refrain from or avoid conduct that could undermine the negotiations or their progress.
(f) States should focus their attention throughout the negotiations on the main objectives of such talks in order to reach a conclusion should do.
(g) In case of any interruption in the dialogue, efforts should be continued to find a mutually acceptable and fair solution.
(4) Peace proposal: Due to the non-cooperation of the permanent members of the United Nations, the Security Council proved incapable of establishing peace and security. The provisions of **Article 43** regarding the granting of armed power to the United Nations by the states could not be implemented, because special agreements were required in this regard. Due to the cooperation and conflict between the superpowers, it was not possible to do so; hence the Security Council could not get the necessary power to establish peace and security. At the beginning of the Korean conflict in 1950, the Security Council had decided to stop the attack of South Korea. Necessary action was taken in this regard. This action was possible because when this decision was being taken, the representative of Russia was not present in the Security Council. On August 1, 1950, when that representative of Russia returned to the Security Council, the Security Council became incapable of taking a decision in the matter of Korea. America, with the support of France, Britain etc., tried to provide proper powers to the United Nations to deal with such conflicts. With the efforts of America and the support of other western countries, on November 3, 1950, the United Nations General Assembly passed a resolution to organize for peace.
The following are the main points in this proposal-
(1) By an affirmative vote of the Security Council or by a majority of the members of the Security Council, a special resolution of the General Assembly An emergency session can be called within 24 hours.
(2) If the Security Council is unable to prevent a breach of the peace or aggression, the General Assembly may impose restrictions on it can consider.
(3) The General Assembly may recommend collective action, including, when necessary, the use of armed force, to maintain international peace and security.
(4) A Peace Inspection Commission of 14 members was formed whose job was to inspect the conflict zone and report on the situation there to the General Assembly. However, this commission could go to the conflict zone only if the concerned state agreed to it.

(5) Each Member State was required to maintain in its army a certain number of trained forces which could be supplied to the United Nations on demand.
(6) A 14-member Collective Action Committee was formed to study and report on measures to establish international peace and security.

Professor **Duraj Andasi** has rightly written that the objective of the proposal to unite for peace was to improve the peace and security machinery of the United Nations. According to another **jurist Kunz (Joseph L. Kunz**), it was a proposal to take some powers from the Security Council and give them to the General Assembly so that veto could be avoided And some amendments should be brought in the work of the United Nations to maintain international peace and security. In the words of Dr. Nagendra Singh, "The proposal to organize for peace has an important place in the history of the development of the General Assembly as a powerful organ of the United Nations."

Validity of the Uniting for Peace Resolution (1950)- The validity of the Uniting for Peace Resolution has been criticized by some jurists and communist countries-Russia had opposed this resolution from the very beginning. According to a Russian writer, "The permanent members of the Security Council have a special responsibility to secure and strengthen world peace. According to the Charter, the Security Council is such an organ which is capable of taking international action for international peace and security. In this matter, the United Nations institution is different from the League of Nations. In the United Nations institution, the Peace Council is the only organ which can take such action." According to another **Russian writer**, **Prof. Kiloy (Krylov),** "The decisions of the General Assembly should be considered inferior to the legal force only on the basis of majority against the wishes of the minorities, if the interests of the minorities are in accordance with the objectives and principles of the United Nations Charter. The minorities have the right to reject these decisions. According to Russia, this proposal is inconsistent with the provisions of the Charter. Because in the Charter, the responsibility of maintaining peace and security lies with the Security Council and only it can use military force in this matter. Russia's opinion does not seem to be correct, because under **Article 10**, the General Assembly has the right to consider any question related to the Charter. Apart from this, according to **Article 24**, the primary responsibility of maintaining peace and security lies with the Security Council. Primary responsibility does not mean that if the Security Council is unable to maintain peace and security, the entire responsibility of the United Nations institution can end." According **to Prof. Jagaj Andrassy**, "It is not concluded from any provision of the Charter, even **Article 24**, that if the Security Council is unable to take immediate and effective action or is incapable or incapable, then the responsibility of the entire institution ends." Another legal expert Miss Gutteridge has expressed the opinion that the United Nations has the legal capacity to make developments according to the needs and circumstances. She has given two tests

in this regard - (1) Such development should not be against the express provisions of the Charter, and
(2) Such development should be for achieving the objectives mentioned in **Article 1** of the Charter. Therefore, it can be concluded that the proposal to organize for peace is such a development which meets the above mentioned criteria. In short, we can say that the proposal to organize for peace is a valid proposal and it is inconsistent with the provisions of the Charter. Not there.

B.A.LL.B.-10th Sem. Paper-IV Taxation Law

Question No. 1- What is tax? How is it different from fees?

Answer - The three lists in Schedule VII of the Indian Constitution define the limits of the legislative power of the Union and the States. The power to levy taxes and fees do not match each other, and the terms "fee" and "tax" have been given various interpretations. To distinguish a fee from a tax, the Hon'ble Supreme Court in its early judgments has formulated the "quid pro quo test" between the fee received and the services rendered. While the levy of a fee relates to the cost paid by the government in providing the service, the tax was once considered a common burden for the benefit of the public. The fee should have been set aside and not deposited into the Consolidated Fund.

What is tax?

To pay for its expenses, the government legally taxes its citizens. By definition, a tax is a payment for which the taxpayer receives neither a direct nor a defined benefit. We can identify some of the most important characteristics of a tax from the definition.

Taxes are a requirement that the government imposes on its people and various commercial enterprises. Since paying taxes is mandatory, failure to do so will result in penalties.

The relationship between the taxpayer and the taxing body is not a direct transactional one. In other words, the taxpayer cannot ask for anything in return for paying the tax.

Taxes are imposed to finance public expenditure for the benefit of the entire nation.

It is impossible for the basis of taxation to remain constant over time. The tax authority checks it on a regular basis. What is the fee?

A fee is a voluntary payment made to a government in exchange for specific services rendered in the public interest, but which confers a specific benefit to the payer.

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Difference between tax and duty- The distinction between tax and charge was first addressed in the landmark case of Hindu Religious Endowments Commissioner v. Sri Lakshmindra Tirtha Swamy of Sri Shirur Math, AIR 1963 SC 966. The Supreme Court ruled that in this case a tax becomes a charge when, first, the money raised through the tax relates to the cost incurred by the government in providing the service. Therefore, a quid pro quo component is required. Second, the money raised must be clearly designated for the costs the government incurs in providing the services and should not be combined with the Consolidated Fund.

Base	Tax	charge
Definition	Taxes are money that the government levies on a person or company when they do a particular job or complete a particular transaction. Taxes are levied for the benefit of the entire country.	A fee is similar to a tax, as both are amounts that people or businesses have to pay to the government. The main purpose of a fee is to manage or control various types of activities.
measured	This tax is often calculated as a percentage of the total cost of the transaction.	The cost of providing the service is closely related to the rate. Generally, fee proceeds are used only to provide the service for which they are intended.
levy collection	Taxes are taxes that are paid for general government services. This is a way for the government to earn money.	A charge is a fee that is charged to help the person from whom the money is taken. It is billed for services provided by an individual, business, or professional.
Administrative and Applications	Administration and use: Your taxes might pay a teacher, police officer, or bureaucrat. They might help build a school or pave a road. They might fund the local sewage treatment facility.	A fee is charged for the exact service, and the money received is usually set aside for that service.

	Can provide.	
Example	Tax is levied on the amount earned by a person in a year. In addition, tax is often levied on the sale of goods as well. Taxes include income tax, gift	However, fees are levied spe of a service. For example, the gove entry fees for parks. Examples of

Case law

The first major case discussing the difference between tax and duty was Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Tirtha Swamy of Sri Shirur Math, AIR 1963 SC 966. In this case, the Supreme Court held that a levy is a duty when, firstly, the amount raised through the levy relates to the expenses incurred by the government in providing a service. Therefore, there must be an element of quid pro quo. Secondly, the money collected should not be merged into the Consolidated Fund and it must be specifically earmarked for the expenditure incurred by the government in providing services.

These two elements were further cemented by the Supreme Court in the case of Mahanta Sri Jagannath Ramanuj Das v. State of Orissa, AIR 1954 SC 400, where it was held that the fee should be a consideration for certain services received by individuals, and should not be included in the general revenue of the State, which should be spent for general public purposes. The above two principles of fee have undergone considerable changes through subsequent judicial decisions, and the strict requirement of both has been diluted.

In the case of Srinivasa General Traders v. State of Andhra Pradesh, 1983 4 SCC 353 it was held that the correlation between the fee and the services provided/required is of a general nature and not of mathematical exactness. It is only necessary that a 'reasonable nexus' exists between the fee charged and the services rendered.

In the case of Krishi Upaj Mandi Samiti & Others v. Orient Paper & Industries Ltd. (1995) 1 SCC 655, the validity of market fee levied by market committees on sale and purchase of bamboo was questioned. The Court summarised the jurisprudence on the distinction between tax and duty in para 21 of this judgment, inter alia, on the following points-

(1) The subjects on which fees may be levied have been separately set out in Schedule XII to the Constitution.

(2) It appears that the basis for the imposition of all charges is public interest, but the reason for the imposition of the charge is some special benefit which is conferred on the person on whom the charge is levied.

(3) In determining whether a levy is a fee, the real test should be whether its primary and essential purpose is to provide specific services to any specific area or classes.

(4) It is not a principle that the fee must be contingent to the service actually rendered. However, the rendering of the service must be established and the service so rendered cannot be remote.

(5) To satisfy the test of quid pro quo, a substantial and substantial portion of the fee must be shown to have been spent for the purpose for which the fee is charged.
(6) In addition, although the full range of benefits need not be provided to those paying the fee, they must be provided with certain specific benefits which have a direct and reasonable relationship to the fee.

The requirement of reasonable nexus between the levy of duty and the services provided was also observed in State of Gujarat v. Akhil Gujarat Pravasi Mahamandal, (2004) 5 SCC 155. Further, cursory observations in Jindal Stainless v. Haryana, (2006) 7 SCC 241 as well as Jindal Stainless Ltd. v. State of Haryana, (2017) 12 SCC 1 held that though there is no element of quid pro quo in a tax, duty cannot be validly imposed without quid pro quo.

This gap has undoubtedly reduced over the years, as is evident from the several judgments delivered by the Supreme Court on this issue. However, the recent judgment of the Hon'ble Supreme Court has reduced this gap further. Jalkal Vibhag Nagar Nigam & Others Vs. Pradeshiya Industrial and Investment Corporation & Others, Civil Appeal No.

The recent judgment of the Hon'ble Supreme Court in the case of No. 6107/2021 has further diluted this distinction. In the said case, the Court upheld the validity of water tax under the Uttar Pradesh Water Supply and Sewerage Act, 1975. Under the said Act, the tax was levied on the area covered by the water supply services of the Uttar Pradesh Jal Sansthan. It was argued that such tax was in fact in the nature of a fee and, therefore, cannot be imposed by the State Government under Entry 49 of List I. The Hon'ble Supreme Court clarified that the quid pro quo criterion has no practical or constitutional significance. Both tax and fee may have elements of compulsory extraction. In this It is also emphasised that exact correlation between expenditure incurred and service rendered need not be demanded anymore.

The division bench of Justice DY Chandrachud, Justice Vikram Nath and Justice BV Nagarathna further said that for every tax the element of quid pro quo may not necessarily be absent in the case. Therefore, the present decision makes quid pro quo obsolete. Instead, the Court considered the nature of the levy and held that since the water tax in the present case is levied on the premises through which water is provided and not on the actual consumption of water by the owner in possession, it is a valid tax on land and buildings.

Question No. 2 - Describe the conditions and limitations mentioned in the Income Tax Act for providing depreciation allowance deduction.

Answer: Scheme of deductions and allowances (sections 30 to 37).
(1) Expenditure relating to building (Section 30). The following deductions are allowed under section 30 in respect of rent, rates, taxes, are going.
Repairs and insurance of premises used for the purpose of business or profession
(a) The rent of the premises, if the taxpayer is in possession of the premises as a tenant and the amount of repairs (whether current or capital repairs), if he has undertaken to bear the cost of the repairs;
(b) The amount of current repairs, if the taxpayer occupies the premises other than as a tenant;
(c) Any sum due on account of land revenue, local rates or municipal taxes, and

(d) The amount of any premium in respect of insurance against the risk of damage or destruction of the premises

(2) Expenditure relating to machinery, plant and furniture (section 12)-Under section 31, the following expenditure in respect of machinery, plant or furniture used for the purpose of business or profession is allowed as deduction: (a) amount paid for running repairs, and (b) amount of insurance premium paid in respect of insurance against risk of damage or destruction.

(3) Depreciation (section 32)- Depreciation usually means the loss or diminution in value which occurs gradually over the useful life of a material thing, due to physical wear and tear and deterioration, and is usually limited to that loss or diminution in value which cannot be restored by current repair and maintenance.

Regarding depreciation

(i) Buildings, machinery, plant or furniture, being tangible assets;

(ii) technical know-how, patents, copyrights, trademarks, licences, franchises or any other similar business or commercial rights, being intangible assets acquired on or after April 1, 1998, is wholly or partly owned by the taxpayer and is used for the purposes of business or profession, then the following deduction will be allowed-

(i) in the case of assets of an undertaking engaged in the generation of electricity or generation and distribution of electricity, such percentage on their actual cost to the assesses, as may be prescribed;

(ii) In the case of a block of assets, such percentage thereof as may be prescribed, of the written down value thereof;. Section 32(1), to avail the benefit of depreciation, the following conditions must be fulfilled-

(a) The taxpayer should be the owner of the asset. Partial depreciation claim is allowed from assessment year 1997-98 onwards ownership is also recognized.

(b) The asset must be used for the purpose of business or profession.

(c) The asset must be used during the relevant previous year. However, if the asset acquired during the previous year is used for less than 180 days during that previous year, then in that case only 50% of the normal depreciation is allowable.

(d) The asset in respect of which depreciation is claimed falls under eligible classification of assets, namely, building, should be covered under machinery, plant and furniture.

Investment Allowance (Section 32A)- In respect of any ship or aircraft or machinery or plant owned by the taxpayer and used wholly for the purposes of the business carried on by him, there shall, in accordance with and subject to the provisions of this section, be deducted in respect of the previous year in which the ship or aircraft was acquired or the machinery or plant was installed or, if the ship, aircraft, machinery or plant was put to use in the immediately following previous year, in respect of that previous year, a sum equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the taxpayer, be deducted as investment allowance. Investment Deposit Account (Section 32AB). Where a taxpayer, whose total income includes income taxable under the head 'Profits and gains of business or profession', out of such income,

(a) he has deposited any sum of money in his account with the Development Bank before the expiry of a period of six months from the end of the previous year or before furnishing his return of income, whichever is earlier; or

(b) For the purpose of purchase of any new ship, new aircraft, new machinery or plant during the previous year,
(c) Utilised any amount without crediting any amount to the deposit account under,
In accordance with the scheme to be formulated by the Central Government and for the purposes specified therein, a taxpayer shall be allowed a deduction of-
(i) A sum equal to the aggregate of the amount or amounts so deposited and the amount so utilised, or
(ii) Development rebate (section 33) an amount equal to twenty per cent of the profits of the business or profession as computed from the audited accounts of the taxpayer.

Question No. 3 - Briefly explain the provisions of the Income Tax Act regarding taxation of income of charitable and religious trusts and institutions.

Answer- Income from property held for charitable or religious purposes- Income from property held for charitable or religious purposes is exempted from tax. Section 11 exempts income of trusts established for charitable or religious purposes and Section 12 provides for income from donations given voluntarily to trusts established for charitable or religious purposes. For this purpose, Wakf and Hindu endowments are included under trusts and other legal liabilities.

According to section 11(1) of the Income Tax Act, property income of a trust established wholly for charitable or religious purposes shall be exempt from income-tax in so far as it is used in India for such purposes in the previous year in which it is received. However, this exemption will be available even if the entire income is not used for charitable or religious purposes but 85 per cent of it is used for such purpose. In short, for such exemption it is necessary that at least 15 per cent of such income is spent for charitable or religious purposes in the previous year in which the income is accrued or arises and thus up to 15 per cent of such income can be accumulated for such charitable or religious purposes in future.

Similarly, section 11(2) provides that if a trust established for charitable or religious purposes has not spent at least 85 per cent of such income in the same year for charitable or religious purposes in India but has been accumulated for spending on such purposes in future, the amount so accumulated shall not be included in the income of the previous year of that trust, provided the following conditions are fulfilled –
(a) The trust has given information in the prescribed manner to the Income Tax Officer as to the purpose for which the money is collected and for what period. This period should not exceed 10 years.
(b) This saved money should be deposited in government securities, savings account in post office, bank or in a Government bank.

For the purposes of exemption under section 11(4) of the Act, property owned by a religious or charitable trust is also included in commercial establishments. Here, exemption in respect of income of such establishment will be available only if the ownership of the establishment property is in the possession of a religious or charitable institution.

Trust established partly for charitable or religious purposes. If the trust established for charitable or religious purposes is established before 2nd April, 1962, then this exemption will be available even if the property of the trust is partly for charitable or religious purposes. In the case of such a trust also it is necessary that at least 85 percent of such income should be spent for charitable or religious purposes in the previous year

in which it is earned or generated and the remaining amount can be accumulated in the same manner for charitable or religious purposes in future.

Income received from voluntary contributions to a trust established for charitable or religious purposes (Section 12)- According to Section 12 of the Act, the income of a trust or institution established wholly for charitable or religious purposes which is received from voluntary contributions i.e. donations given voluntarily is also considered as if it is the income of property held by such trust or institution wholly for charitable or religious purposes.

In the case of Commissioner of Income Tax vs. Chhadagilal Jain Trust, (1977) 106 I.T.R. 179, it was held that for the use of income received under section 12, all the same provisions will apply as given in respect of income from property held by the trust under section 11 and section 13.

Apart from this, there are certain other conditions given in section 12(1) which need to be followed otherwise these income tax exemptions will not be available-

(1) The trustee receiving the income of the trust must give an application to the Income Tax Commissioner to register the trust. This application must be given before 1 July 1973 for old trusts and within one year of the formation of new trusts.

(2) If the total income of the institution or trust exceeds Rs. 25,000 per annum, its accounts should be audited by a chartered accountant and the trust should submit the audit report and the prescribed statement in respect of the same. Section 13(a) of the Act provides exemption in respect of the total income of political parties. According to this provision, interest in securities or income from building property or income from other sources and income from voluntary contributions shall be excluded from the total income of a political party if-

(1) The political party maintains such books of account and forms as may enable the Income-tax Officer to properly compute its income,

(2) The political party shall maintain records of all persons who have made voluntary contribution of more than Rs. 20,000 and also their names and addresses.

(3) The accounts, etc., of the political party have been audited by an accountant as defined in section 288 (2).

Here political parties mean any organization or body of Indian citizens which is registered with the Election Commission of India.

Question No. 4 - Discuss the various penalties that can be imposed by the Income Tax authorities in respect of offences committed under various provisions of the Income Tax Act.

Answer- Penalties Various penalties can be imposed by the Income Tax authorities in respect of offences committed under various provisions of Income Tax Act, 1961 from Section 271 to Section 275, which are of the following types-

(1) Penalty for failure to furnish return and to comply with notices and for concealment of income (section 271)- The Assessing Officer, Commissioner of Income Tax (Appeals) or Commissioner of Income Tax may impose a penalty under this section. According to this section, if the Assessing Officer or Commissioner of Income Tax (Appeals) or Commissioner is satisfied in the course of any proceedings under the Act that any person

(a) (Repealed)

(b) Has failed to comply with a notice under sub-section (2) of section 115D or under sub-section (2) of section 115D or under subsection (1) of section 142 or subsection (2) of section 143 or has failed to comply with the investment made under subsection (2A) of section 142, or
(c) Has concealed the details of his income or has furnished inaccurate particulars of such income, or
(d) Has concealed the particulars of the fringe benefits or has given inaccurate particulars of such fringe benefits, he may direct
Provided that such person shall pay, by way of a penalty, the following-
(i) (Repealed)
(ii) In the cases mentioned in clause (b), a sum of ten thousand rupees for each such failure, in addition to the tax, if any, payable by him.
(iii) In the cases specified in clause (c) or clause (d), the tax payable by him;

The excess, if any, shall not be less than but not more than thrice the amount of tax sought to be evaded by concealing the particulars of his income or fringe benefits or furnishing inaccurate particulars of such income or fringe benefits.

(1) Penalty for failure to keep, maintain and preserve books of accounts, documents, etc. (section 271A)-The Assessing Officer or the Commissioner of Income-tax (Appeals) may impose such penalty under this section if any person fails to keep or preserve any books of accounts and other documents as are required by section 44AA or under the rules made under that section.

In this case a penalty of Rs. 25,000 can be imposed. Section 273 makes it clear that the burden of proving that there was a reasonable cause for not maintaining the book etc. as per section 44 is on the assesses and if he proves it, the penalty under this section will not be imposed.

(2-A) Penalty for failure to maintain information and documents in connection with international transaction (Section 271AA) - This is a new section which has been added by the Finance Act 2001 from 01.04.2000. Under this, provision has been made to impose penalty for failure to maintain information and documents in connection with international transaction. If a person fails to maintain information and documents required by section 32-1 (1) or section 92-D (2), then a penalty equivalent to 2 percent of the value of each international transaction carried out by this person will be imposed. The penalty can be imposed by the Assessing Officer or Commissioner (Appeal).

(2-A) Failure to get accounts audited (Section 271-B)- If any person fails to get the accounts audited as required by section 44-AB in respect of any previous year relevant to any assessment year and to obtain the report of such audit or to attach the report of such audit with the return filed under section 139 (1) or the return filed in compliance of notice served under section 142 (1) then the Tax-Redressed Officer may impose penalty under section 271-B. The amount of penalty shall be half per cent of the gross receipts from profession or gross receipts from business or percentage of total sales or turnover of business in the previous year or one lakh rupees, whichever is less.

Penalty for failure to deduct tax at source (section 271-C)- For failure to deduct tax at source as required under sections 192 to 206B or for not paying the full or any part of the tax required under section 115-(2) or the second proviso to section 194-B, the person defaulting in paying the tax at source is liable to a penalty equal to the amount of

tax which he has failed to deduct or pay at source. The penalty shall be imposed by the Joint Commissioner.

(3) Penalty for failure to answer questions, sign return, allow inspection (section 272-A) - If any person is bound under the law to state any true fact relating to his assessment year but refuses to answer any question put to him by an income-tax authority or refuses to sign any statement which he is by law compelled to sign by an income-tax authority in any proceeding under this Act or who is summoned under section 131 (1) to appear at a specified place on a specified date and give evidence or produce his accounts or documents but fails to do so, he is liable to a penalty of ten thousand rupees for each such default.

Power to reduce or remit penalty (section 273A)- The Commissioner may reduce or remit the amount of penalty imposed for concealment of income or furnishing false particulars of income if he is satisfied that-

(a) The assesses has voluntarily and in good faith disclosed true and full details of his income before the concealed income was detected by the assesses or before the incompleteness of the details furnished in respect of such income was detected by the Assessing Officer,

(b) The assesses has co-operated in such inquiry which relates to the assessment of his income, and

(c) Any tax or interest required to be paid under any order made under this Act has been paid or satisfactory arrangement has been made for paying it.

Later, the Supreme Court held that this power of the Commissioner carries with it a duty to do justice. If the assesses has complied with all the statutory provisions, then it is the statutory duty of the Commissioner to exercise this power in favour of the assesses.

Procedure for imposing penalty (Section 274) - Before imposing penalty under this chapter (Sections 271-273), it is necessary to hear the assesses or give him a reasonable opportunity of being heard. If the penalty exceeds Rs. 10,000, the order of penalty is passed by the Income Tax Officer and if the penalty exceeds Rs. 20,000, the order of penalty is passed by the Assistant Commissioner or it cannot be passed by the Deputy Commissioner without the prior approval of the Joint Commissioner. If the assesses is not given an opportunity of being heard, then the order passed for imposing penalty will be illegal.

Question No. 5- Who is the Wealth Tax Authority under the Wealth Tax Act? Explain the jurisdiction and powers of the Wealth Tax Authorities.

Answer- Wealth Tax Authority (Sections 8-13A and 35, 36 and 37)- Section 8 makes provision regarding Wealth Tax Authorities and their jurisdiction. According to this, the Income Tax Authorities mentioned in Section 116 of the Income Tax Act will be the Wealth Tax Authorities for the purpose of the Wealth Tax Act and these authorities will perform the functions and exercise the powers of the authorities mentioned in the Wealth Tax Act in relation to the persons falling under their jurisdiction and for this purpose their jurisdiction under the Wealth Tax Act will be the same as is hidden to them by an order or direction given under Section 120 of the Income Tax Act or under any other section of the Income Tax Act. It becomes clear from the explanation of Section 8 that in relation to a person who does not have income chargeable to income tax under the Income Tax Act, the authority which has jurisdiction in relation to the area in which that person resides will have jurisdiction.

There are the following categories of authorities for the purposes of this Act:
(a) The Central Board of Direct Taxes,
(b) The Principal Director of Income-tax or Chief Commissioner of Income-tax,
(c) Director of Income-tax or Commissioner of Income-tax or Commissioner of Income-tax (Appeals)
(d) Additional Director of Income-tax or Additional Commissioner of Income-tax or Additional Commissioner of Income-tax (Appeals)
(e) Joint Director of Income Tax or Joint Commissioner of Income Tax or Deputy Commissioner of Income Tax
(f) Deputy Director of Income-tax or Deputy Commissioner of Income-tax or Deputy Commissioner of Income-tax (Appeals)
(g) Assistant Director of Income Tax or Assistant Commissioner of Income Tax
(h) Income-tax Officer
(i) Tax Recovery Officer
(j) Income-tax Inspector.

(2) Jurisdiction of Wealth Tax Authorities (Section 8)- The Board has the power to confer powers and functions on Wealth Tax Authorities. Wealth Tax Authorities shall exercise such powers and perform such functions as are conferred on them by the Board. The Board may authorise any other authority to confer powers and give directions to its assistant authorities for the exercise of certain functions. The Board may authorise the Chief Director or Director to exercise the functions of any Wealth Tax Authority. The Board may confer power on the Chief Director or the Chief Commissioner or the Commissioner to issue written orders to the Deputy Commissioner to exercise the powers and perform the functions conferred on an Assessing Officer.

Functions and powers-

(1) Powers relating to discovery, production of evidence, etc. (Section 37) 1
(2) Power to call for information, etc. (Section 38)
(3) Powers relating to assessment of taxes
(4) Power to rectify mistakes (section 35)
(5) Powers relating to collection and recovery of tax, penalty, etc.
(6) Powers and functions of refund and adjustment
(7) Power to impose penalty (sections 18 and 18-A)
(8) Power to search and seize (section 37-A)

Question No. 6- What do you understand by sales tax? Briefly describe the main features of Central Sales Tax.

Answer- Sales Tax - Sales tax is a tax levied on sales. This tax was started in 1935 during the British rule and continued even after independence. But later, Article 269 of the Constitution was amended, restricting the states' right to tax in relation to purchase and sale outside the states, import and export within the Indian border, purchase and sale during inter-state trade and sale of goods declared of special importance by the Parliament. The central government was given the right to levy tax on such sales, which was prohibited for the state governments to determine these types of taxes, the Sales Tax Act, 1956 was passed.

The main features of the Central Sales Tax Act are as follows: The main features of the Central Sales Tax Act are as follows:

(1) Objective - The main objective of the Central Sales Tax Act is to formulate the principles related to sales tax determination whether the purchase and sale is done through inter-state trade or through import-export in India. Apart from this, restrictions and conditions are also to be imposed on the sales tax laws of the states.

(2) Imposition of tax liability- The Central Excise Tax Act imposes tax liability on every trader who sells goods inter-State, irrespective of the quantity of sale. The trader has to pay tax even on the sale of goods inter-State which is not taxable in that State.

Under the Central Tax Act, the responsibility of levying sales tax may lie with the Central Government, but the responsibility of collecting the tax will lie with the State Government from which the goods are going out.

(3) Goods of special importance. -Section 14 of the Central Sales Tax Act provides that the State Governments shall have the power to fix special rates of state tax for goods of special importance but this rate shall not exceed 4%. The Central Government alone shall have the power to make changes in the list of such special goods.

(4) The tax collected by the State Government under the Central Sales Tax Act shall be credited into the Consolidated Fund of India.

(5) According to the Central Sales Tax Act, 1956, the Central Government and State Governments have the right to make rules regarding tax liability and recovery. Even the administration of the Act is carried out by the State Sales Tax Administrator.

According to the definition given in Section 2 (B) of the Act, a trader means a person who does the business of buying and selling goods and if the government also does such business, then it is also included in it. There are two types of traders-

(1) Registered dealer

(2) Unregistered trader

The sales tax rates of the Central Government are different for both the above types of traders.

Question No. 7- What is the procedure for registration of a trader under the Central Sales Tax Act. Mention the benefits of registration and under what circumstances can the registration be cancelled?

Answer- The procedure for registration of a trader and the procedure for issuing a certificate have been mentioned in Rule 3 to 10 of the Central Sales Tax Registration and Turnover Act, 1957, according to which an application in Form 'A' will be given by the trader to the Notified Authority for starting the registration process. It will be signed by the business owner in case of a firm, by any one of the partners, in case of a joint Hindu family by the karta, in case of a company by the company director or the chief officer, and in case of a government by an officer authorized by the government.

Where a trader has business in more than one place, then a single application can be sent by the trader to all the places. He has to mention the main place of business in his application and the application has to be given to the advertising officer of that main place. If the trader has not complied with the State Sales Tax Act, then he can do so.

For this, the principal place of business is fixed at some other place. This is also the case for Central Sales Tax He will have to keep a main place and in his registration application he will have to submit applications for all the places where he is doing business within that place.

In view of the application the Central Government has directed that

(1) A dealer who carries on business at one place in a State shall apply to the designated officer authorised for registration for general sales tax in that State.
(2) In case of a dealer carrying on business at more than one place, such dealer shall apply to the designated officer of the principal place (to be chosen by him) who is authorised to register for general sales tax in a State.
(3) A dealer who does not have a fixed place of business shall present an application to the chief officer appointed under the general sales tax law of the State, whether known as the Commissioner, Lecturer or by any other name.

Under Section 7 (1) of the Act, a trader who is required to get registered shall apply for registration before 30 days from the date on which he became liable to pay Central Sales Tax. However, even after 30 days, on presenting proper reasons, he may apply for registration and obtain a certificate which will be issued from the date of application. A trader who fails to get registered within the stipulated time shall be considered guilty under Section 10AA and shall be punishable with imprisonment of up to six months or fine or both.

Benefits of Registration by getting registered the dealer will be entitled to all the concessions provided under section 8(1).

Cancellation of registration- A trader's registration can be cancelled. This cancellation can be done automatically or on request by the trader.

Cancellation can be done by the officer due to the following reasons-

(1) The trader has ceased to carry on the business.
(2) The trader himself is no longer in existence i.e. he is dead.
(3) The trader has not filed the security or has failed to file the security.
(4) Where the trader has failed to pay any tax or penalty.
(5) Where the dealer has registered himself under the Central Sales Tax Act but he continues to sell his goods in his State is relieved from the responsibility of paying tax.
(6) Any other action as appropriate.

Question No. 8 - When is a purchase and sale considered to be in the course of inter-State trade?

Answer: Under the Central Sales Tax Act, 1956, Central Sales Tax will be levied only on the sales which are made from one State to another i.e. this tax is levied only on inter-State sales and not on any other type of sales.

As per the provisions of section 3 of the Central Sales Tax Act, a sale shall be deemed to be inter-state in the following cases if the goods are to be sent from one state to another during the sale, then both the sale of the goods and the sending of the goods from one state to another will be completed simultaneously. Inter-state sale is considered only in the situation when the shipment and sale of goods under the contract starts from one state and its delivery is taken in another state.

For example, if a trader from Uttar Pradesh goes to Gujarat and purchases goods and then sends the goods to Uttar Pradesh, then it will not be called inter-state sale. Although here the goods have been loaded from one state to another, but such loading has happened after the contract of sale, hence it is not called inter-state sale.

Therefore, inter-state sale will be considered only when the goods are shipped from one state to another under a delivery note, that is, the goods are shipped from one state according to a sale contract and its delivery is made in another state. In the following cases, sending goods from one state to another will not be considered as inter-state sale

(1) Self shipment: If the shipment of goods is made after delivery of the sold item, the sale will not be an inter-State sale.

(2) Shipment after sale.-If any goods are shipped after the delivery of the goods, the sale shall not be treated as an inter-State sale even though the shipment is from one State to another.

(3) Passage of goods through different States. - If the shipment of goods passes through more than one State after the sale but is delivered in a city of the same State, the sale would not be treated as an inter-State sale.

According to Explanation (1) of section 3 of the Central Sales Tax Act, if the contract is made after the expiry of the sale deed from one State to another but before the buyer takes delivery of the same i.e. when the goods are in transit, then the sale shall be treated as inter-State sale. For example, Monu sends goods from Madhya Pradesh to Faizabad on 8 December, 2016 and the goods arrive in Faizabad on 20 December, 2016 but the goods are not sold on 20 December, 2016 The contract made between December 2015 and December 2015 will be considered as a non-profit sale. Such sale should be done by transfer of the document i.e. by sealing R8.

In the aforesaid cases the goods shall be deemed to have been shipped at the time the goods are handed over to the carrier or other depository and delivery thereof shall be deemed to have taken place at the time when delivery thereof has been taken by the buyer from such carrier or depository.

The purchase and sale of any goods shall be considered to be within the State only when the buyer and the seller of the goods are in the same State at the time of contract of sale of the definite goods and even in that condition the purchase and sale shall be considered to be within the State only when the buyer and the seller are in that State at the time of determining the sale of the definite goods and the goods in the future deal. Hence under these circumstances the purchase and sale of goods shall be considered to be in the same State and the State in which such sale has been made shall have the right to levy tax on such sale and to collect it.

Question No. 9- What do you understand by service tax? Briefly describe the value provisions of the service tax law.

Answer- Service Tax - Service sector has certainly grown substantially in the Indian economy and the share of service in GDP in India has become more than agriculture and industry and thus it has changed the basic structure of Indian economy. Service sector contributes about 70% to GDP in India. Service has a variety of dimensions in economic activities. Nowadays services include a large variety of activities and most of them are not person-centric but institution-centric. For example, banking, insurance and telecommunication sectors are handled by large institutions and it is the backbone of the economy. A large part of the country's GDP comes from the service sector. Its contribution to revenue is insignificant. With the increase in income, an increased proportion of this type of income is spent on the consumption of services such as entertainment, travel and tourism etc. While multiple duties like central excise duty, value addition tax, sales tax, entry fee and octroi etc. are imposed by the central, state and local government on the goods produced and consumed. Tax is not directly imposed on most of the services. Thus, the production and consumption of services, which is the driving force of the economy, does not contribute much by way of taxation. Taxing the

services sector was not essential to ensure neutrality and horizontal equity in taxation but it does expand the tax base and improve the revenue productivity of the tax system.

The most important reason for imposing taxation on services is the need to harmonize domestic trade taxes at both the Centre and State levels, as it is now felt that the use of services and goods should be treated the same for the purpose of taxation. Keeping this in mind, service tax has been imposed in India more than a decade ago.

Service Tax in India - The Tax Reforms Committee headed by Dr. Raja J. Chauleya identified the revenue potential of the services sector in India and recommended the imposition of "Service Tax on selected services."

Based on these recommendations, in his budget statement for the year 1994-95, the then Union Finance Minister Dr. Manmohan Singh gave birth to the new concept of service tax and made the following statement. "There is no good reason to exempt services from taxation while goods are taxed and many countries treat services and goods as the same for tax purposes. In this regard, India makes an attempt by taxing telephone, life insurance and stock broker services."

Services were presented under the remaining entries of the Constitution and hence, could not be brought under separate regulation. Thus, Service Tax was levied under Chapter V of the Finance Act, 1994. The following 3 services were introduced for the first time with a natural rate of 5% on value.

1. Telephone facility
2 years broker
3. Non-life insurance

Subsequent Finance Acts added more and more services for the purpose of service tax. Thus today service tax has come into existence as services are chargeable for Rs 115.

Constitutional Background - According to Article 265 of the Constitution of India, the power of law without the power of the Central or State Government, no tax of any kind can be levied or collected. The power to make laws and levy taxes and duties is given by the Constitution through Article 246. According to Article 246, laws can be made by the Parliament or the State Legislature if such power is given by the Constitution of India.

This right is given in the following three lists in the Seventh Schedule of the Constitution of India

List 1 - Union List
List II- State List
List III- Concurrent List

Each schedule lists a number of matters. Each matter in the list is known as an entry.

In respect of a matter enumerated in List I, i.e., the Union List, the Parliament has the exclusive power to make laws with respect to that entry. On the other hand, in respect of a matter enumerated in List II, the Legislative Assembly of a State has the exclusive power to make laws for the State or a part of it with respect to such an entry.

In addition to the above two lists, there is a third schedule known as the Concurrent Schedule. List II i.e. the Concurrent List empowers the Parliament or the Legislative Assembly of a State to make laws in respect of any matter.

Entry 97 of the Union List is the rest of the list and empowers the Central Government to levy tax on any matter not enumerated in List II (State List) or List I

(Concurrent List). Service tax was introduced in 1994 by the Central Government under the power conferred under Entry 97 of List I.

The government passed the Constitution (88th Amendment Act, 2003) which provided for the formal imposition of service tax by the Centre through Article 268A in the Constitution. The said article is reproduced below. "268A

(1) A tax on services shall be levied by the Government of India and such tax as may be specified in sub-section (2) shall be collected and appropriated by the Government of India and the State Government.

(2) The levy in any financial year of any tax levied under the provisions of sub-section (1) may be made by Parliament by law.

According to the principle of collection and allocation as per the formula by

(a) To be collected by the Government of India and the State :

(b) Be appropriated by the Government of India and the States, in accordance with the policy of collection and use for a specific purpose as may be prescribed by Parliament and by law."

Question No. 10- Write short notes on the following-

Answer- (1) Tax Assessment Officer and Tax Recovery Officer-Tax Assessment Officer (Section 2 (7-A)) A new sub-section (7-A) under section 2 has been added by the Direct Laws (Amendment) Act, 1987 from 01-04 1988. According to this, Tax Assessment Officer means such Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or Income Tax Officer, who has been given relevant jurisdiction by an order or direction passed under subsection (1) of section 120 or subsection (2) of section 120. Tax Assessment Officer includes such Additional Director, Joint Commissioner or Joint Director, who has been given directions under section 120 (4) (b) to exercise the powers and perform the functions given to the Tax Assessment Officer in this Act.

Tax Recovery Officer (Section 2(44)) - Tax Recovery Officer means any Income-tax Officer who is authorised by the Chief Commissioner or Commissioner by a general or specific order in writing to exercise the powers of a Tax Recovery Officer.

(2) Double Taxation Relief - The term double taxation means that an income is taxed in more than one country. A particular income of a taxpayer can be taxed in India and can also be taxed in any other country simultaneously. Such a situation arises mainly due to two fundamentally different bases of taxation -

(i) A country can impose taxes based on the origin of the income of the taxpayer and

Double Taxation relief- According to Section 44 (a) of Wealth Tax Act, it is an eternal rule of Indian Constitution that no person should be double burdened or punished for the same thing. The same is true for taxes imposed on a person. Shivansh is an Indian who went to live abroad for job or business and in that country he made a lot of wealth and bought a lot of shares from companies which he left there and returned to India. The income from the property there started coming to him in India. Certainly, he will have to pay wealth tax on the income coming in India, but he is empowered as per the law of the country in which the property is located. The Central Government can enter into an agreement with any other country for the following purposes -

(ii) While the other country may assess tax on the basis of domicile.

(1) To prevent double taxation of the same amount under this Act and the equivalent Act of the said country, or
(2) To prevent evasion of wealth-tax under this Act and the corresponding Act of the said country, notices shall be issued to the State for exchange or investigation. or
(3) For recovery of money under this Act and the equivalent Act of the said country.

After such an agreement is made, it should be notified in the official gazette. To implement the agreement, the central government will have to pay tax on the income from Shivash's property according to the laws of that country. Due to tax by these two countries, Shivash will be subjected to double taxation which will be difficult for Shivash to pay only Therefore, he will have to bear the burden because he has come from another country and started living in India. To solve this problem, provision of Section 44 (a) and 44 (b) has been made in the Wealth Tax Act, which does not eliminate the double burden on the taxpayer but definitely reduces it.
According to Section 44(a) of the Act, the Central Government may enter into agreement with other countries for such concessions the Act may make provision for the same.

Relief in case of no settlement According to Section 44A of the Wealth Tax Act, provision has been made for relief in a situation where no settlement has been reached with other countries. According to this section, if the net wealth of the assessee includes assets situated abroad and wealth tax has been paid in respect of them under any law in force in that country, then he shall be entitled to exemption in respect of such assets at the Indian tax rates and the tax rates of such country, whichever is lower. If the tax rates in India and that country are the same, then he shall be entitled to exemption on the basis of Indian rates. It is noteworthy that the provisions of Section 44A are applicable in a situation where no settlement has been reached between India and such country to give relief for double taxation.

(3) Incidence of tax - Section 5 of the Income Tax Act deals with the incidence of tax. The liability to tax on different types of taxpayers varies according to their residential status. Section 5 determines the liability to tax on the scope of the total income of a taxpayer having regard to his residential status. In computing the total income of a non-resident for the purpose of income tax, income which is received or arises outside India is not included.

VAT- VAT is a tax which is levied on the increase in the price of goods and services at every stage of production and circulation. It is levied on the value of all imported goods. It is levied by the registered VAT business or person or taxpayer. VAT has replaced other taxes and its implementation has neither increased the price to the final consumer nor has reduced the profitability of the business. VAT is levied on the difference between the selling price and the cost of the goods produced or the service provided, i.e. the difference between output and input.
VAT can be divided into the following points
(1) This point is sales tax.
(2) It is collected only at value addition at each stage.
(3) Tax paid by the dealer in advance and collected at each point of sale is deducted from tax.

(4) Power of Income-tax Officer to search and seizure- Power of Search and Seizure Section 37 (a) The Principal Director or Director or Chief Commissioner or such Joint Director or Joint Commissioner as may be authorised by the Board in this behalf may

authorise the authorities mentioned below to make search and seizure. Any of these authorities may authorise search and seizure if, in consequence of any information in its possession, that authority has reason to believe that-

(a) any person who has been served with a summons under section 37 or a notice under section 16 (4) to produce any books of account or other documents has omitted or failed to produce or cause to be produced any books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice has been issued in the manner aforesaid, or to whom such summons or notice was to be issued, fails to produce any account books or other documents which are useful for or relevant to the conduct of any proceedings under this Act, or

(c) any person is in his possession any money, bullion, jewellery or other valuable article which is disproportionate to his known assets and the particulars thereof are useful for or relevant to any proceedings under this Act.

In the above circumstances, the Principal Director or Director or Chief Commissioner or Commissioner may authorize any Joint Director or Joint Commissioner or Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income Tax Officer and the Joint Director or Commissioner authorized by the Board in this behalf may authorize any Assistant Director, Deputy Director or Assistant Director or Income Tax Officer to conduct search and seize the material found. The officer who is so authorized is called an authorized officer.

(5) Assessment of Insurance Business - The taxable income of the entities doing insurance business is not calculated like other business entities. Rules regarding tax assessment of insurance business entities have been given in the First Schedule of the Income Tax Act, 1961. These rules have been given separately for life insurance business and other insurance businesses. Life insurance business throughout India is done by Life Insurance Corporation, which was established in 1956 under a special Act. All income of an entity doing insurance business is called business income, whether it is from house property or capital gain or income from other sources.

The profit of life insurance business will be calculated in the following manner

The annual average profit of the life insurance business for that assessment year shall be the taxable profit of the life insurance business after making the following adjustments in the excess or deficiency shown by the inter-assessment period made under the Insurance Act, 1938, for the inter-assessment period ending immediately preceding the assessment year.

Any excess or deficiency of any earlier inter-assessment period, if included in the above excess or deficiency from this the previous excess or shortage will be deducted.

After making the above adjustments, the excess amount obtained is divided by the number of years included in the inter-assessment period. Such division gives the annual average of the adjusted excess. This annual average amount is taxed in the subsequent years. This annual average is taxed until the next assessment is done. Income tax will be levied on the profits of life insurance business at the rate of 12%.

B.A.LL.B.-10th Sem. Paper-V Land Law Including Ceiling and Other Local Law

Question No. 1- What do you understand by consolidation? Describe those lands whose consolidation cannot be done under the UP Consolidation of Holdings Act, 1953.

Answer- Land reform is the most important package of measures to improve the economic condition of agricultural tenants. It aims at redistributing the ownership of agricultural land in favour of the peasantry, regulation and rationalisation of rents, improving the size of farms and providing security to tenants to increase traditional agricultural produce. The areas of land reform are very wide and have undergone a lot of reforms in its implications since then. Some of them are land acquisition, requisitioning, ceiling, abolition of zamindari and intermediaries, tenancy and tenancy etc. Consolidation is also a major aspect of the scope of land reform. Land consolidation is a planned readjustment and rearrangement of fragmented land blocks and their ownership. It is usually used to create larger and more rational land holdings. It can be used to improve rural infrastructure and implement developmental and environmental policies.

In the **State of Uttar Pradesh and Uttarakhand**, the Uttar Pradesh Consolidation of Lands Act, 1953 is the statutory law on this field of land reform. Uttar Pradesh is the rainbow land where the multicoloured Indian culture has flourished since time immemorial. Right from the inception of planned economic development efforts, land reforms were given high priority with the objective of removing the obstacles posed to the transformation of agriculture by the exploitative and faulty land ownership system in the country. However, land reforms in the country have been satisfied with the objective of creating individual ownership rights and providing security of ownership to the actual tiller of the land and no fundamental change in agrarian relations on socialist lines was attempted. Uttar Pradesh, which had witnessed large scale political mobilisation of peasants during the freedom struggle, was one of the more progressive states in the country during the first phase of land reforms introduced after independence. In the second phase, the focus was on consolidation of fragmented holdings had gone.

The Uttar Pradesh Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954) received the assent of the President on 4th March, 1954 and was published in the U.P. Gazette Extraordinary on 8th March, 1954.

Preamble - Whereas it is expedient to make provision for the consolidation of agricultural holdings for the development of agriculture in Uttar Pradesh so it is enacted.

It has 5 chapters and 54 sections.

Meaning of consolidation

Land consolidation is the redistribution of land plots aimed at enabling landowners to obtain larger plots of land in one or more locations in exchange for their former small and fragmented land plots. The term land consolidation comes from the Latin commutation (grouping). Land consolidation has always been

more than just a simple rearrangement of plots in order to overcome the effects of fragmentation and seek higher agricultural productivity and lower costs.

Views of the Food and Agriculture Organization (FAO)

Land consolidation is sometimes wrongly assumed to be merely a simple redistribution of parcels to overcome the effects of fragmentation. In fact, land consolidation has been associated with broader social and economic reforms in Western Europe since its earliest applications. Denmark's first consolidation initiative in the 1750s was part of a deeper social reform to free people from obligations to noble landlords by establishing privately owned family farms. Consolidation of fragmented holdings improved agricultural productivity, but this was not the sole purpose of these reforms.

Scope of land consolidation schemes

An overall objective of the early projects was to increase the net income of production and reduce its cost. With this focus, these projects worked to consolidate parcels and also included other provisions such as irrigation, land levelling, etc. Moving away from focusing on the reconstruction and structure of the farm, the emphasis has been on achieving more efficient rural areas by balancing the interests of agriculture, landscape, nature conservation, recreation, etc. Environmental status is being given increasing priority. Land consolidation now includes village renewal activities. Projects involve providing adequate land for new homes and work places. In line with other changes in the concept of rural development, land consolidation now places greater importance on gender inclusion and the use of alternative dispute resolution methods It also modernises the land ownership system by eliminating archaic rights such as grazing, haymaking, logging, fishing, etc.

Section 3(2) defines consolidation as follows:

Consolidation means rearranging the land holdings among several landholders in one unit in such a way that their the related holdings become more dense;

Explanation.—for the purposes of this section, holdings shall not include—

(1) Land which was cultivable in the agricultural year immediately preceding the year in which the notification is issued under **section 4**;

(2) Land subject to river action and intense soil erosion;

(3) Lands specified in **section 132** of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950;

(4) Dense areas which are generally subject to water logging for prolonged periods;

(5) Usar, Kallar and Rihala plots forming a compact area, including cultivated land within such area;

(6) Land used for growing betel, rose, jasmine, keora, and

(7) Such other areas as the Director of Consolidation may declare unsuitable for the purpose of consolidation.

Section 3 (2A) states that "consolidation area" means the area in respect of which a notification has been issued under **section 4**, excluding such parts thereof to which the provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or any other law by which the zamindari system has been abolished, do not apply.

Section 3(4C) defines holding. Holding means a piece or pieces of land held under tenure by a tenant either singly or jointly with other tenants. **Section 3(5)** defines land as a holding for the purposes of agriculture, horticulture and animal husbandry (including fisheries and poultry) means land held or occupied for the purpose and includes-

(1) A site forming part of a holding, house or other similar structure; and

(2) Trees, wells and other improvements existing on the plot of land.

Under Section 3(11), a tenant means a landholder with transferable rights or a landholder with non-transferable rights and includes-

(1) A tenant,

(2) a Government lessee or a Government grantee, or

(3) A co-operative agricultural society which fulfils the prescribed conditions.

Question No. 2 - How is the Statement of Principles prepared? How are objections to the Statement of Principles dealt with?

Answer- Publication and objections (Section-20) - On preparation of the provisional consolidation plan, the Assistant Consolidation Officer shall send or cause to be sent information along with relevant extracts to the concerned account holders and interested persons. Thereafter it shall be published in the unit. Subject to the provisions contained in **Section 11-A**.

Registering objections-

(1) Any person to whom a notice has been sent under **sub-section (1)** and

(2) Any other person affected by the provisional consolidation plan,

Objection may be filed if there is a dispute as to the propriety or correctness of the entries in the Provisional Consolidation Plan or in the extracts submitted.

(1) Affected, or

(2) Any interest or right, other than a right of a public highway, in or over any public land keep, or

(3) Has any other interest or right which is substantially affected by the declaration made under **sub-section (2)** of **section 19A**

(4) A person may, within fifteen days of the publication of the provisional consolidation plan, file an objection before the Assistant Consolidation Officer or the Consolidation Officer, stating the nature of such interest or right.

In front of whom?

(1) An objection may be filed before the Assistant Consolidation Officer or the Consolidation Officer.

(2) Time limit for filing objections

The objection can be made within fifteen days of filing the objection-

(1) Receipt of notice
(2) The date of publication of the provisional consolidation plan, as the case may be,

Disposal of objection to statement (Section-21)

All objections received by the Assistant Consolidation Officer shall, as soon as may be, after the expiry of the prescribed period of limitation, be submitted to the Consolidation Officer who, after giving notice to the parties concerned and the Consolidation Committee, shall dispose of them and the objections received by him in the manner hereinafter given.

Any person aggrieved by the order of the Consolidation Officer under sub-section (1) may, within fifteen days from the date of the order, file an appeal before the Settlement Officer, Consolidation, whose decision, save as otherwise provided by or under this Act, shall be final.

Local inspection before disposal of objections on provisional consolidation plan-

(1) After giving notice to the parties concerned and the Consolidation Committee, a local inspection of the disputed plots is conducted by;
(2) Before deciding on the objections the Consolidation Officer, and
(3) The Settlement Officer, Consolidation, before deciding the appeal.

If during the disposal of any objection or hearing of the appeal the Consolidation Officer or the Settlement Officer, the Consolidation-

(1) He is of the view that material injustice is likely to be caused to the several khatedars by giving effect to the provisional consolidation scheme and that it is not possible to make a fair and just allotment of land to the khatedars of the units without modifying the provisional consolidation scheme or preparing a fresh scheme, it shall be lawful for reasons to be recorded in writing-

The Consolidation Officer, after giving an opportunity of being heard to the concerned account holders, has the power to revise the provisional consolidation plan or retransmit it to the Assistant Consolidation Officer with such directions as the Consolidation Officer may deem necessary; and the Settlement Officer, Consolidation, after giving an opportunity of being heard to the concerned account holders, has the power to revise the provisional consolidation plan or retransmit it to the Assistant Consolidation Officer or Consolidation Officer, as the Settlement Officer, Consolidation may deem fit, with such directions as he may deem necessary.

Confirmation of provisional consolidation plan and issue of allotment order (Section 23)- The provisional consolidation plan so confirmed shall be published in the Unit and shall be final, except as otherwise provided by or under this Act. Where allotments made under **section 19-A** are not revised under section 21 and are confirmed under **sub-section (1),** the extract contained in the notice issued under **section 20** shall, except as otherwise provided by or under this Act, be deemed to be the final allotment order for the concerned account holders.

Question No. 3- Briefly describe the rights and powers of the Gram Panchayat under the Uttar Pradesh Panchayati Raj Act, 1947.

Answer- Section 5 (a) Disqualification for membership- A person shall be disqualified for being elected as and for being the head or member of a Gram Panchayat, if he-

(1) By or under any law for the time being in force for the purposes of elections to the State Legislature,

Provided that no person shall be disqualified on the ground that he is less than twenty-five years of age, if he has attained the age of twenty-one years;

(2) Is a salaried servant of the Gram Panchayat". "Nyaya Panchayat" deleted by the Khupi Act No. 6 of 2017.

(3) Holds any office of profit under any State Government or the Central Government or any local authority (except a Gram Panchayat) or any board, body or corporation owned or controlled by any State Government or the Central Government.

(4) has been dismissed from service on account of misconduct by the State Government, the Central Government or any local authority; the words "Nyaya Panchayat" have been deleted by the Uttar Pradesh Act No. 6 of 2017;

(5) is in arrears of any tax, fee, rate or any other dues payable by him to the Gram Panchayat, Area Panchayat or the District Panchayat for such period as may be prescribed, or has, despite being required to do so by the Gram Panchayat, Nyay Panchayat, Area Panchayat or the District Panchayat, failed to hand over any record of his ownership or any property which came into his possession by reason of holding any office under him;

(6) Is an undischarged insolvent;

(7) Has been convicted of any offence involving moral turpitude;

(8) Has been sentenced to imprisonment for a term exceeding three months for contravening any order made under the Essential Commodities Act, 1955;

(9) Has been sentenced to imprisonment or transportation for a term exceeding six months for contravention of any order made under the Essential Supplies (Temporary Powers) Act, 1946 or the Uttar Pradesh Supplies Control (Temporary Powers) Act, 1947;

(10) Has been sentenced to imprisonment for a term exceeding three months under the Uttar Pradesh Excise Act, 1910;

(11) Has been convicted of an offence under the Narcotic Drugs and Psychotropic Substances Act, 1985;

(12) Has been convicted of any electoral offence;

(13) Has been convicted of an offence under the Uttar Pradesh Social Disability Prevention Act, 1947 or the Protection of Civil Rights Act, 1955; or

(14) No person shall be removed from office under **clause (iii)** or **(iv) of sub-section (1)** of **section 95** unless the period provided in that behalf in the said section or such shorter period as may be ordered by the State Government in any

particular case has elapsed: Provided that the period of disqualification under **clause (d), (g), (g), (h), (i), (j), (k), (l)** or **(m)** shall be five years from such date as may be prescribed: Provided that the disqualification under **clause (e)** shall cease on payment of the amount due or delivery of the records or property, as the case may be:

Provided also that the disqualification under any clause specified in the first proviso may be removed by the State Government in such manner as may be prescribed.

Section 6 Termination of membership- (1) A member of a Gram Panchayat shall cease to be a member if the entry relating to him is deleted from the electoral roll of the territorial constituency of the Gram Panchayat.

(2) Where a person ceases to be a member of a Gram Panchayat under sub-**section (1),** he shall also cease to hold the office to which he was elected, nominated or appointed by reason of being a member thereof.

6 (a) Decision on question of disqualification.-If any question arises as to whether a person has become subject to any of the disqualifications specified in **section 5-A** or **sub-section (1)** of **section 6**, the question shall be referred to the prescribed authority for its decision and its decision, subject to the result of any appeal, as may be prescribed, shall be final. Substituted by Uttar Pradesh Act No. 6, 1969.,

Question No. 4- Explain the process of fixing the limit of land holding. Where and how does one appeal against such fixation? Is there any exemption from the maximum land holding limit?

Answer - Determination of area for purposes of ceiling limit and exemption. For the purposes of determining the ceiling area under **section 5** or any exemption under **section 6** -

(i) Subject to the provisions of clause (up), one and a half hectares of non-irrigated land or two and a half hectares of grove land or two and a half hectares of wasteland shall be counted as one hectare of irrigated land;

(ii) one and a half hectares of single crop land or two and a half hectares of any other non-irrigated land in the following area, namely, -

(a) Bundelkhand;

(b) Trans-Yamuna parts of Allahabad, Etawah, Mathura and Agra districts;

(c) Trans-Yamuna areas of Allahabad, Fatehpur, Kanpur, Etawah, Mathura and Agra districts, deep stream of Yamuna Up to a distance of 16 kilometres;

(d) The part of Mirzapur district south of the Kaimur Range;

(e) Tappa Upraudh and Tappa Chaurasi (Balai Pahad) of Tehsil Sadar in Mirzapur District;

(f) That part of Tehsil Robertsganj in Mirzapur District which lies to the north of the Kaimur Hills;

(g) the villages specified in list 'A' and 'B' of Schedule VI of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, in pargana Sokteshgarh and

the hilly areas of parganas Ahraura and Bhagat in tehsil Chuar of Mirzapur district; and
(h) the areas comprised in the erstwhile Taluka Naugarh or Tehsil Chakia of Varanasi District;
(i) The mountainous and Bhabar regions of Kumaon and Garhwal divisions and the Jaunsar-Bawar pargana of Dehradun district should be made into a single unit hectare will be counted as irrigated land.
Explanation.- For the purposes of **clause (ii),** "single crop land" means any unirrigated land which is capable of producing only one crop in an agricultural year as a result of assured irrigation from any State irrigation work or private irrigation work.
4A. Assessment of irrigated land-The prescribed authority shall examine the relevant Khasras of the Fasli years 1378, 1676 and 1380, the latest village map and such other records as it may consider necessary, and may also conduct a local inspection where it considers necessary and thereafter if the prescribed authority is of the opinion that:-
Firstly, (a) that, in any one of the aforesaid years, irrigation facilities were available for any land in respect of any crop;
(i) Any canal included in Schedule No. 1 of the irrigation rates notified in Notification No. 1579-MCyw/XXIII 62-MCy-1946, dated the 31st March, 1953, as amended from time to time; or
(ii) Any lift irrigation canal; or
(iii) Any Government tube-well or private irrigation work; and
(b) In any one of the said years at least two crops have been grown on such land; or
secondly, any land has been irrigated by any State irrigation work opened after the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, and at least two crops have been grown on such land in any agricultural year between the date of commissioning of such work and the date of issue of notice under **section 10**; or
Thirdly, (a) any land is situated within the effective command area of a lift irrigation canal or State tube-well or private irrigation work; and
(b) The class and composition of its soil is such that it is capable of growing at least two crops in an agricultural year; the prescribed authority shall determine such land to be irrigated for the purposes of this Act.
Explanation 1. For the purposes of this section "effective command area" means the area which is affected by any irrigation scheme.

The farthest field in the direction was irrigated –
(a) In any of the Fasli years 1378, 1379 and 1380; or
(b) In any agricultural year specified in **clause (ii)** of **sub-section (1)** of **section 3** of the said Act.

Explanation 2.- The ownership and location of private irrigation works shall not be relevant for the purpose of this section.

Explanation 3.- Where sugar cane crop has been grown on any land in any of the 1378 fasli, 1379 fasli and 1380 fasli years, it shall be deemed that two crops were grown on the land in any of those years and the land is capable of growing two crops in one agricultural year.

Imposition of ceiling on land holdings, exemptions and acquisition of surplus land.

Imposition of ceiling limit.-(1) On and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no khatedar shall be entitled to hold any land in excess of the ceiling limit applicable to him throughout Uttar Pradesh.

Explanation 1.- In determining the maximum ceiling area applicable to a khatedar, all land held by him, whether in his own name or in the name of any other person, shall be taken into account.

Explanation 2.- If, on or before the 24th day of January, 1971, any land was held by a person who continues to be in actual agricultural possession thereof and after the said date the name of another person is entered in the annual register, whether in addition to or to the exclusion of the former and whether by virtue of a transfer deed or licence or a decree, it shall be presumed, unless the contrary is proved to the satisfaction of the prescribed authority, that the first-mentioned person continues to be in possession of the land and that it is held by him directly in the name of the second-mentioned person.

(2) Nothing in **sub-section (1**) shall apply to land held by the following class of persons, namely:-

(a) The Central Government, a State Government or any local authority or any Government company or corporation;

(b) A University;

(c) An intermediate or degree college or a post-graduate college imparting education in agriculture;,

(d) Any banking company or co-operative bank or co-operative land development bank;

(e) Bhoodan Yagna Committee constituted under the Uttar Pradesh Bhoodan Yagna Act, 1952.

(3) Subject to the provisions **of sub-sections (4), (5), (6)** and **(7),** the maximum limit for the purposes of **sub-section (1).**

The area will be as follows -

(a) in the case of a khatedar whose family does not have more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) and two additional hectares of irrigated land or such additional land which together with the land held by him amounts to two hectares, for each of his

adult sons who are either not khatedars themselves or who hold less than two hectares of irrigated land, subject to the maximum limit of six hectares;
(b) in the case of a khatedar whose family consists of more than five members, 7.30 hectares of irrigated land (including land held by other members of his family), in addition for each of the five members in excess of his and for each of his adult sons who is not himself a khatedar or who holds less than two hectares of irrigated land irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son amounts to two hectares, the maximum limit of such additional land being six hectares;
Explanation.- The expression "major son" in **clauses (a)** and **(b)** includes an adult son who is dead and has left behind minor sons or minor daughters (excluding married daughters) who are not themselves khatedaras or who have less than two hectares of irrigated land;
(c) In the case of any other account holder, 7.30 hectares of irrigated land:
Explanation. - Any transfer or partition of land which is eligible to be ignored under sub-sections (6) and (7) shall also be ignored.
(d) For the purposes of determining whether the adult son of a landowner himself is a citizen of India under **clause (a)** or **clause (b)** of this Act,
(d) Is a landowner within the meaning of;
(g) For the purposes of service of notice under section 9.
(4) Where a holding is held by a firm or a co-operative society or association of persons (whether incorporated or not, but not including a public company), the members thereof (whether called partners, shareholders or by any other name) shall be deemed to hold that holding for the purposes of this Act in proportion to their respective shares in the firm, co-operative society or other society or association of persons.

Provided that where a person immediately before his entry into the firm, co-operative society or other society or association of persons held any land or an area of land not less than the area proportionate to his aforesaid share, he shall be deemed to hold no share in that holding or, as the case may be, only the lesser area and the whole or the remaining area of the holding, as the case may be, shall be deemed to be held by the remaining members in proportion to their respective shares in the firm, co-operative society or other society or association of persons.
(5) In relation to any holding held by a private trust,—
(a) where the shares of the beneficiaries thereof in the income from such trust are known or determinable, then, for the purposes of this Act, the beneficiaries shall be deemed to have shares in the holding in the same proportion as their respective shares in the income from such trust,

(b) In any other case, it shall be governed by clause (e) of sub-section (3).
(6) In determining the maximum area applicable to a khatedar, any transfer of land made after the twenty-fourth day of January, 1971, which but for such

transfer would have been declared as surplus land under this Act, shall be ignored and not taken into consideration;

Provided that nothing in this sub-section shall apply to-

(A) transfer in favour of any person (including the Government) specified in sub-**section (2);**

(b) Such transfer which is proved to the satisfaction of the prescribed authority to be in good faith and for adequate consideration and under an irrevocable instrument, which is not a benami transaction, or is for the immediate or deferred benefit of the land holder or other members of his family.

Explanation 1.- For the purposes of this sub-section, transfer of land made after the twenty-fourth day of January, 1971,

The following are included under -,

(a) a declaration made after the twenty-fourth day of January, 1971, by any person as a co-shareholder in any suit or proceeding, whether such suit or proceeding was pending on the twenty-fourth day of January, 1971, or was instituted thereafter;

(b) Any admission, admission, renunciation or declaration of the same effect made in any other deed or instrument or in any other manner in favour of any person.

Explanation 2. - The burden of proving that a case falls within clause (b) of the proviso shall be on the party seeking the benefit thereof.

(7) In determining the maximum area applicable to a landholder, any division of land made after January 24, 1971, which, but for such division, would have been declared as surplus land under this Act, shall be taken into account would be ignored and will not be considered;

Provided that nothing in this sub-section shall apply to-

Division made in any suit or proceeding pending on the said date –

Provided further that notwithstanding anything contained in the preceding proviso, if the prescribed authority is of the opinion that due to collusion between the owner of the land and any other party to the partition, such other party has been given a share to which he was not entitled, or has been given a larger share than he was entitled to, he may ignore such partition.

Explanation 1. - If a suit is instituted after the said date for a declaration that the partition of the land has taken place on or before the said date, such declaration shall be ignored and not taken into consideration, and it shall be deemed that no partition had taken place on or before the said date.

Explanation 2. - The burden of proving that a case falls within the first proviso shall be on the party seeking its benefit.

(8) Notwithstanding anything contained in **sub-sections (6)** and **(7),** no khatedar shall transfer any land held by him while proceedings for the determination of surplus land in respect of such khatedar are pending and every transfer made in contravention of this sub-section shall be void.

Explanation.- For the purposes of this sub-section, the proceedings for determination of surplus land shall be deemed to have commenced on the date of publication of the notice under **sub-section (2)** of **section 9** and shall be deemed to have ended on the date when an order is passed in respect of such khatedar under **sub-section (1)** of **section 11** or **sub-section (1)** of **section 12**, or under **section 13**, as the case may be.

6. Exemption of certain lands from imposition of ceiling limit.- (1) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to a landowner and his surplus land, namely:-

(a) land used for industrial purpose (that is to say, for the purposes of manufacture, preservation, storage or processing of goods) and in respect of which a declaration under **section 143** of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 exists;

(b) Land occupied by a residential house;

(c) Land used as a cremation ground or burial ground, but excluding agricultural land;

(d) Lands used for tea, coffee or rubber plantations and, to the extent prescribed, lands required for purposes connected therewith and for the development of such plantations;

(e) Lands held before the 24th January, 1971, for the purposes of a stud farm, up to the prescribed extent;

(c) land held before the 1st day of May, 1959, by or under any public religious or charitable wakf trust, endowment or institution, the income of which is applied wholly for religious or charitable purposes, and not being a wakf, trust or endowment the beneficiaries of which are wholly or partly the settler or his family members or his descendants;

(g) Land held before the 8th June, 1973 by a Gaushala of public nature registered under the Uttar Pradesh Gaushala Act, 1964, up to the prescribed limit,

Explanation.-Nothing in **clause (i)** of **sub-section (1)** shall apply in relation to a cowshed specified in **clause (g)** of that sub-section,

(2) No person shall transfer any land specified in **clause (d)** or **clause (c), (g)** or **clause (h)** of **sub-section (1)** without the previous permission of the State Government and every transfer made without such permission shall, **notwithstanding anything contained in any other law for the time being in force, be void—**

Provided that nothing in this sub-section shall apply to any transfer made in favour of a person specified in **sub-section (2)** of **section 5**.

(3) Any land which is the subject of a transfer which is void by virtue of sub-**section (2)** shall be deemed to be surplus land and shall, on and from the 10th day of October, 1975, or the date of such presumed transfer, whichever is later, be transferred to, and vest in, the State Government free from all encumbrances and

all rights, title and interest of all persons in and to such land shall be extinguished.
Provided that if there is any encumbrance, it shall be added to the amount payable under **section 17** in place of the surplus land. (4) Where any land is deemed to be surplus land under **sub-section (3),**
(i) the provisions of **section 14** shall apply mutatis mutandis in relation to such land, with the references to the dates specified in **sub-section (1)** of that section being substituted by references to the dates specified in **sub-section (1)** of this section, and
(ii) The amount payable therefore under **section 17** shall be paid to the person in whose favour such transfer was purported to be made.

Question No. 5- Define building under the Uttar Pradesh Urban Building (Regulation of Rent, Rent and Eviction) Act, 1972. State the circumstances under which the occupation of the owner or tenant of a building will be deemed to be over.

Answer.- Short title, extent, application and commencement (1) This Act may be called the Uttar Pradesh Urban Buildings (Regulation of Rent, Rent and Eviction) Act, 1972.
(2) It extends to the whole of Uttar Pradesh.
(3) It shall apply to—
(a) Every city as defined in the Uttar Pradesh Nagar Mahapalika Act, 1959;
(b) Every municipality as defined in the United Provinces Municipalities Act, 1916;
(c) Every notified area constituted under the United Provinces Municipalities Act, 1916; and
(d) Every town area constituted under the United Provinces Town Areas Act, 1914—

Provided that if the State Government is satisfied that it is necessary or expedient so to do in the interests of the general public residing in any other local area, it may, by notification in the Official Gazette, declare that this Act or any part thereof shall apply to such area and thereupon this Act or any part thereof shall apply to such area-

Provided further that if the State Government is satisfied that it is necessary or expedient so to do in the interest of the general public, it may, by notification in the Official Gazette-
(i) Cancel or amend any notification issued under the preceding proviso; or
(ii) Declare that the Act or any part thereof, as the case may be, shall not apply to any such city, municipality, notified area, town area or other
(4) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. Exemption from operation of the Act.
(1) Nothing in this Act shall apply to—

(a) any building belonging to the Government of India or any State Government or any local authority or any building vested in it; or
(b) any tenancy created by a grant thereof in respect of any building leased or acquired by the State Government or the Government of India, or
(c) Any building used or intended to be used as a factory within the meaning of the Factories Act, 1948; or
(d) any building used or intended to be used for any other industrial purpose (that is to say, for the purpose of manufacturing, preserving or processing any goods) or as a cinema or theatre, where the plant and equipment installed in the building for such purpose is leased along with the building—

Provided that nothing in this clause shall apply in relation to any shop or other building situated within the premises of the cinema or theatre, the tenancy in respect of which has been created separately from the tenancy in respect of the cinema or theatre; or
(e) Any building which is used or intended to be used as a place for public entertainment or amusement (including a sports stadium, but not a cinema or theatre), or any building appurtenant thereto; or
(c) any building constructed and held by the University or any other statutory corporation or a society registered under the Societies Registration Act, 1860 or a co-operative society, company or firm, and intended solely for its own occupation or for the occupation of any of its officers or employees, whether on rent or free of cost, or for the occupation of persons connected with it in the ordinary course of its business as a guest house, by whatever name called.
(2) Save as provided in **sub-section (2)** of **section 24** or **sub-section (3)** of **section 29**, nothing in this Act shall apply to any building during a period of ten years from the date of completion of its construction.
Explanation. - For the purposes of this sub-section, -
(a) the construction of a building shall be deemed to be completed on the date on which a report of its completion is submitted to or otherwise recorded by the local authority having jurisdiction, and in the case of a building subject to assessment, the date on which the first assessment thereof takes effect, and where the said dates are different, the earlier of the said dates, and in the absence of any such report, record or assessment, the date on which it is first actually occupied (not including occupation merely for the purposes of supervising construction or guarding a building under construction)-

Provided that there may be different dates of completion of construction with respect to different parts of a building that are either designed as separate units or are in separate occupancy by the landlord and one or more tenants or by different tenants;
(b) 'Construction' includes any new construction made on the site of an existing building which has been wholly or substantially demolished;
(c) where an extension is made to an existing building so much that the existing building forms only a small portion thereof, the whole building including the

existing building shall be deemed to have been constructed on the date of completion of the said extension.

(3) If the State Government is satisfied that it is necessary or expedient so to do in the interest of the general public, it may, by notification in the Official Gazette, exempt any building owned by any educational or charitable institution and the entire income derived from which is applied for the purposes of that institution from all or any of the provisions of this Act and may likewise cancel or amend such notification.

Definition.- In this Act, unless the context otherwise requires-

(a) "Tenant", in relation to a building, means the person by whom the rent is payable, and the tenant's heirs on his death;

(b) 'House tax' means the tax specified in **section 128 (1) (i)** of the United States Municipalities Act, 1916 or **section 173 (1)** of the Uttar Pradesh Municipalities Act, 1959 or, as the case may be, **section 14 (p) (m)** of the United Provinces Town Areas Act, 1914;

(c) 'District Magistrate' includes any officer authorised by the District Magistrate to exercise, perform and discharge all or any of his powers, functions and duties under this Act and different officers may be so authorised in respect of different areas or cases or classes of cases and the District Magistrate may withdraw any case from any such officer and either dispose of it himself or transfer it for disposal to any other such officer-

Provided that nothing in this clause shall be construed as empowering the District Magistrate to delegate his power to authorise any officer to perform the functions of the prescribed authority under **clause (e)** or the power to make or authorise a complaint under **section 33**;

(d) Except in **clause (e),** "prescribed" means prescribed by rules made under this Act;

(e) 'prescribed authority' means a Magistrate of the first class, who has had experience of not less than three years as such, who is authorised by the District Magistrate to exercise, perform and discharge all or any of the powers, functions and duties of the prescribed authority under this Act and different Magistrates may be so authorised in respect of different areas or cases or classes of cases and the District Magistrate may withdraw any case from any such Magistrate and may either dispose of it himself or transfer it for disposal to another such Magistrate;

(c) 'Assessment', in relation to a building, means the valuation or proportionate assessment, as the case may be, of the rental value thereof by the local authority having jurisdiction, and 'assessed' shall be construed accordingly;

(g) 'Family', in relation to a landlord or tenant of a building, means—

(i) husband/wife,

(ii) Male descendants,

(iii) Such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of any bona fide descendant who is

ordinarily living with him, and includes the landlord in relation to a building, includes any woman having a legal right of residence in that building;
(h) 'Old Act' means the United Provinces (Temporary) Rent and Eviction Control Act, 1947;
(i) 'Building' means a roofed structure, residential or non-residential, and includes—
(i) Any land (including any garden), garages and outhouses appurtenant to such building;
(ii) Any furniture supplied by the landlord for use in such building;
(iii) Any fittings and fixtures installed in such building for its more beneficial use;
(j) "Landlord", in relation to a building, means the person to whom the rent thereof is payable or would be payable if the building were let and includes, except in **clause (g),** the agent or attorney of such person;
(t) subject to the provisions of sections 6, 8 and 10, 'standard rent' means-
(i) In the case of a building governed by the old Act and let out at the commencement of this Act-
(a) Where the agreed rent is payable therefore at such commencement and also the fair annual rent; Which has the same meaning in this Act as in **section 2(g)** of the old Act as reproduced in the Schedule is, the agreed rent or the fair annual rent and 25 per cent thereof, whichever is higher;
(b) Where there is no agreed rent but there is a fair annual rent, the fair rent at 25 per cent thereof;
(c) Where there is neither an agreed rent nor a fair annual rent, the rent determined under **section 9**;
(ii) In any other case, the determined rent value for the time being in force, and in the absence of a determination, the rent determined under section 9;
(d) 'State Government' means the Government of Uttar Pradesh;
(e) 'Local authority' means a municipal corporation, a municipal board, a notified area committee or a town area committee;
(f) 'improvement', in relation to a building, means any addition or alteration thereto or the provision of any new convenience for the tenant, and includes all repairs carried out in a year, the cost of which exceeds the amount of one month's rent thereof or, in a case referred to in the proviso to sub-section (2) of section 28, two months' rent thereof.

Rent regulation

Prohibition of premiums and rents ordinarily payable. (1) No landlord shall charge or receive any premium or any additional payment over and above the rent payable to him for admitting a tenant into any building, nor shall any tenant charge or receive any premium for admitting a sub-tenant or any other person.
(2) Save as provided in **sections 5, 6, 7, 8** and **10**, the rent payable in respect of any building shall be such as may be agreed upon between the landlord and the tenant and in the absence of any agreement shall be the standard rent. Rent **payable in case of old buildings.-**In respect of any building to which the old Act

was applicable, in the case of a tenancy continuing before the commencement of this Act, the landlord may, by giving a notice in writing within three months from the commencement of this Act, increase the rent payable therefor beyond the standard rent and the rent so increased shall be payable from the commencement of this Act.

Effect of improvements on rent- Notwithstanding anything contained in section 4 or section 5, but subject to the provisions of section 8, where a landlord has made any improvement in a building after the commencement of this Act either with the consent of the tenant or in pursuance of any requirement of law, he may, by giving notice in writing to the tenant within three months from the date of completion of the improvement, increase the monthly rent of the building by an amount not exceeding one per cent of the actual cost of such improvement from the said date and thereupon the standard rent of the building shall be increased accordingly.

Liability to pay taxes. Subject to any agreement in writing to the contrary, but notwithstanding anything contained in section 179 or section 149 of the Uttar Pradesh Municipalities Act, 1959 or any rule made or notification issued under section 338 of the United Provinces Municipalities Act, 1916 or section 14 (1) (e) of the United Provinces Town Areas Act, 1914, the tenant shall be liable to pay to the landlord, in addition to and as part of the rent, the following taxes or their proportionate part, if any, payable in respect of the building or portion thereof under the tenancy, that is to say-

(a) Water tax;

(b) twenty-five per cent of every increase in house tax made after the commencement of this Act, or such part thereof as is not attributable to the increase in the valuation of the building as a result of the increase in rent under the provisions of **section 5**;

Provided that nothing in this section shall apply in relation to a tenant whose rate of rent payable (excluding any increase or rent under the provisions of **section 5**) does not for the time being exceed twenty-five rupees per month?

Fixation of standard rent.- (1) In the case of any building to which the old Act applied and which was let at the commencement of this Act, in respect of which there is neither a reasonable annual rent nor an agreed rent or in any other case where neither an agreed rent nor any assessment is in force, the District Magistrate shall, on an application made in that behalf, fix the standard rent.

(2) While fixing the standard rent the District Magistrate may take into consideration the following matters-

(a) The date of commencement of this Act or the date of letting, whichever is later (which in this section is referred to as the respective market value of the building and its site immediately before the said date (hereinafter referred to as the said date);

(b) The cost of construction, maintenance and repairs of buildings;

(c) The rent prevailing for similar buildings situate in that area immediately before the said date;
(d) The facilities provided in the building;
(e) The latest valuation of the building, if any;
(f) Any other relevant fact which appears to be important in the circumstances of the case.
(3) Every order made under **sub-section (1)** shall, subject to the result of an appeal preferred under **section 10**—while living, will be final.
An Act to prohibit the taking or inflicting of punishments.
This Act was enacted by Parliament in the twelfth year of the Republic of India as follows-

Question No. 6 - What do you understand by standard rent? Describe the process of determining standard rent.

Answer: As per **section 3(k)** of the Act "standard rent" is subject to the provisions of **sections 6, 8** and **10**-
(1) In the case of a building governed by the old Act and let out at the time of the commencement of this Act give-
(a) where at such commencement the agreed rent is payable as well as the fair annual rent (b), which in this Act has the same meaning as in **section 2(g)** of the old Act, as reproduced in the Schedule, the agreed rent or the fair annual rent and 25 per cent thereof, whichever is higher;
(b) Where there is no agreed rent but there is a fair annual rent, the fair rent at 25 per cent thereof;
(c) Where there is neither an agreed rent nor a fair annual rent, the amount determined under **section 9** rent.

Effect of improvement in rent as per section 6.- Notwithstanding anything contained in **section 4** or **section 5,** but subject to the provisions of section 8, where a landlord has, after the commencement of this Act, either with the consent of the tenant or in pursuance of any requirement of law made any improvement in a building, he may, by giving notice in writing to the tenant, within three months from the date of the completion of the improvement, increase the monthly rent of the building by an amount not exceeding one per cent of the actual cost of the improvement effected by the said method, and the standard rent of that building shall stand increased accordingly.

Disputes regarding amount of standard rent, etc. As per **section 8 (1)** Where any dispute arises in respect of the amount of standard rent, or in respect of the amount of increase in rent permissible under section 5 or section 6, or in respect of the date from which such increase shall take effect, or in respect of the amount of taxes payable by the tenant under **section 7**, or in respect of the amount of proportionate rent payable by the tenant after the release of any part of the building or any land appurtenant thereto under **section 16** or **section 21**, or in respect of the amount of rent payable by the original tenant for the new building

allotted to him under **sub-section (2)** of **section 24**, the District Magistrate shall, on an application made in that behalf, by order determine such amount.
(2) Where the valuation of a building occupied by a tenant is less than the agreed rent payable therefore, the District Magistrate may, on the application of the tenant or of his own motion, after giving an opportunity of being heard to the landlord, direct the local authority concerned to enhance the valuation in accordance with the agreed rent, with effect from the date on which the agreed rent becomes payable or from the date of the commencement of this Act, whichever is later, and then, notwithstanding anything contained in the law relating to that local authority, the valuation shall be corrected accordingly.
(3) Every order under **sub-section (1)** or **sub-section (2)** shall, subject to the result of any appeal preferred under section 10, be final.
Appeal against orders under sections 8 and 9.-(1) Any person aggrieved by an order of the District Magistrate under **section 8** or **section 9** may, within thirty days from the date of the order, prefer an appeal against the same to the District Judge and the District Judge may either dispose of the same himself or assign it to any Additional District Judge under his administrative control for disposal and may withdraw it from any such officer or transfer it to any other such officer.
(2) The appellate authority may confirm, modify or rescind the order or may send the case back to the District Magistrate for re-hearing, and may also take any additional evidence, and may, pending his decision, stay the operation of the order under appeal on such terms, if any, as he may think fit.
(3) No further appeal or revision shall lie against any order passed by the appellate authority under this section and his order shall be final.
Question No. 7- What is a regional development plan? How can this plan be amended? Explain the difference between a regional development plan and a master plan.
Answer- Regional Development Plans- Civil survey and master plan of the development area-

(1) The Authority shall, as soon as may be, prepare a master plan for the development area.
(2) The Master Plan shall define the various zones into which the development area is divided for the purposes of development and the manner in which the land in each zone is proposed to be used (whether by carrying out development work thereon or by This will serve as the basic framework within which regional development plans for different areas can be prepared.
(3) The Master Plan may provide for any other matter which may be necessary for the proper development of the development area. 9. Regional Development Plans.-
(1) Simultaneously with or immediately after the preparation of the Master Plan, the Authority shall proceed to prepare a Zonal Development Plan for each of the areas into which the development area may be divided.

(2) The regional development plan may contain a site plan and use plan for the development of the area and may show the approximate location and extent of proposed land uses in the area for public buildings and other public works and utilities, roads, housing, recreation, industry, business, markets, schools, hospitals and public and private open spaces and other categories of public and private uses; may specify standards for population density and building density; may indicate every area in the area which, in the opinion of the Authority, may be declared or required for development or redevelopment; and

In particular, they said provision shall be included in respect of all or any of the following matters, namely:-

(i) Dividing any site into plots for the construction of buildings;

(ii) For streets, open spaces, parks, recreation grounds, schools, markets and other public purposes

Allotment or reservation of land-

(iii) The development of any area into a township or colony and the restrictions and conditions for such development,

(iv) The construction of buildings on any site and the creation of open spaces in or around buildings, and restrictions and conditions in respect of height and character of buildings:

(v) The alignment of buildings on any site;

(vi) The architectural features of the elevation or façade of any building to be erected on any site,

(vii) The number of residential buildings that can be constructed on the plot or site;

(viii) Before or after the creation of the forest and the person or authority by whom or at whose expense such Facilities to be provided-

(ix) prohibitions or restrictions in respect of the construction of shops, workshops, factories warehouses or buildings having specified architectural features or designed for special purposes in the locality; the maintenance of walls, fences, hedges or any other structural or architectural construction and the height at which they shall be maintained; restrictions in respect of the use of any site for purposes other than the construction of buildings; any other matter which is necessary for the proper development of the area or any area thereof in accordance with the plan and to prevent buildings being constructed in such area or locality from becoming untidy.

Submission of plans to the State Government for approval-

(1) In this section and in **sections 11, 12, 14** and **16** the word "plan" means the master plan and the plan for an area regional development plan.

(2) Every plan, after its preparation, shall be submitted by the Authority to the State Government for approval and that Government may either approve the plan with or without any modifications or with such modifications as it may consider necessary or reject the plan with directions to the Authority to prepare a fresh plan in accordance with such directions.

Procedure to be Follows in Preparation and Approval of a Plan-

(1) A plan shall be finalised before making any such decision and submitting it to the State Government for approval, the Authority shall prepare a plan and make a copy thereof available for inspection and publish a notice in such form and manner as may be prescribed by regulations made in that behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

(2) The Authority shall also give every local authority within whose local limits the land affected by the scheme is situate a reasonable opportunity of making any representation in respect of the scheme.

(3) The Authority shall, after considering all objections, suggestions and representations received by the Authority, finally prepare a plan and submit the same for approval of the State Government.

(4) Subject to the foregoing provisions of this section, the State Government may direct the Authority to furnish such information as that Government may require for the purpose of approving any plan submitted to it under this section.

Date of commencement of the scheme.--As soon as may be after the scheme has been approved by the State Government, the Authority shall publish a notice in such manner as may be specified by the State Government stating that the scheme has been approved and naming the place at which a copy of the scheme may be inspected at all reasonable times and the scheme shall come into operation on the date of the first publication of the aforesaid notice.

Maintenance and improvement of facades of certain buildings along main roads. -

(1) Where in a development area, any building which is occupied wholly for non-residential purposes or partly for residential and partly for non-residential purposes abuts a main road, the occupier of such building shall be liable to repair, paint or whitewash the facade of such building at his own expense in accordance with any bye-law made in that behalf.

(2) Where the Authority considers it necessary or expedient so to do with a view to ensuring uniformity with any colour scheme or other specification made in that behalf, or where an occupier fails to repair, repaint, whitewash or paint the facade of any building in accordance with **sub-section (1)**, it may, by order, require that the said work shall be done by the Authority itself or under its direction, and may also require the occupier to pay to the Authority the cost of such work.

(3) The cost of any work specified in **sub-section (2)** shall be calculated on no profit no loss basis and in case of any dispute as to the reasonableness of the amount to be deposited, the same shall be decided by the State Government and subject thereto, the order of the Authority shall be final and shall not be questioned in any court.

(4) In case of default by an occupier in paying the whole or any part of the cost of any work specified in **sub-section (2),** the same may, on a certificate of the Deputy Chairman, be recovered from the occupier as an arrear of land revenue.
Explanation.—In this section 'main street' shall have the meaning specified in the bye-law, 'occupier' in relation to a building means a person in actual possession or use of the building, and includes the owner (which expression shall include the agent appointed by the court or the trustee or the receiver, seizer or manager or the mortgagor in possession of the building) of the building who is in possession of-
(ii) The tenant who is for the time being paying or is liable to pay rent to the owner in respect thereof;
(iii) Its rent-free grantor or licensee-
(iv) The person who is liable to compensate the owner for its unauthorised use and occupation.

Question No. 8 - Discuss the provisions relating to imposition of taxes by the Municipal Council under the Uttar Pradesh Municipality Act, 1916.

Answer - Section 128 of the Act Imposition of taxes (1) Subject to the provisions of this Act and **article 285** of the Indian Constitution, a Municipality may levy the following taxes, namely:-
(i) Tax on the annual value of buildings or lands or both.
(ii) Water tax on the annual value of buildings or land or both;
(iii) drainage tax on the annual value of buildings, which may be levied on buildings which are situate within the distance determined by rules in this behalf for each municipality from the nearest sewer line;
(iv) Conservancy taxes for collection, removal and disposal of faeces and polluted matter from latrines, urinals, sewage pools. (2) In addition to the taxes specified in **sub-section (1),** a municipality may, for the purposes of this Act and subject to the provisions thereof, levy any of the following taxes, namely:-

(i) Taxes on trades and professions carried on within the municipal limits, and taxes conferring special benefits on, or imposing special burdens on, municipal services;
(ii) Taxes on trades, professions and occupations, including taxes on all incomes remunerated by salaries or fees employment includes;
(iii) Theatre tax, meaning tax on entertainment or amusement; (a) tax on dogs kept within the Municipality;
(iv) Cleaning tax;
(v) Taxes on deeds of transfer of immovable property situate within the municipal limits;
(vi) Tax on advertisements other than advertisements published in newspapers
(vii) within municipal limits taxes on moving vehicles and other conveyances or boats parked therein.
(viii) Improvement taxes.

(3) Municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws made there under.
(4) This section shall not give power to impose any tax which the State Legislature cannot, under the Constitution, impose the state does not have the right to impose-

Provided that any municipality which immediately before the commencement of the Constitution was validly imposing any such tax under this section may continue to levy that tax until provision to the contrary is made by Parliament.

Section 128A of the Act Tax on deeds of transfer of immovable property (1) Where a municipality has levied the tax specified in **clause (xiii-b)** of sub-section (1) of **section 128,** the duty liveable by the Indian Stamp Act, 1899, on any deed of transfer of immovable property, shall, in the case of immovable property situate within the limits of such municipality, be increased by two per cent on the amount or value of the consideration in respect of which the duty is calculated under the said Act: Provided that the municipality may, with the previous approval of the State Government, by special resolution increase the above-mentioned percentage of increase in stamp duty up to five per cent.
(2) All collections arising from the said increase, after deducting contingency expenses, if any, shall be deposited by the State Government payments will be made to the concerned municipality in the prescribed manner.
(3) For the purposes of this sub-section, **section 27** of the Indian Stamp Act, 1899, shall be read and construed as if the particulars specified therein were required to be stated separately in respect of—
(a) Property situate within the limits of a municipality; and
(b) Property situated outside the limits of any municipality.

(4) For the purposes of this section all references to the Government in section 64 of the Indian Stamp Act, 1899, shall mean the Municipal Corporation municipality will also be considered included.

Section 129 of the Act Restriction on imposition of water tax.-The imposition of tax under **clause (ii)** of **sub-section (1)** of **section 128** shall be subject to the restriction that the tax shall not be imposed,-
(i) On land which is used exclusively for agricultural purposes, unless water is supplied by the Municipality for such purpose; or
(ii) Any land or building, the annual value of which does not exceed three hundred and sixty rupees, and which the Municipality, water is not supplied by the
(iii) On any plot or building no part of which is within the radius of the nearest stand-pipe or other water works prescribed for the municipality, where water is provided to the public by the municipality.
Explanation.-For the purposes of this section,

(a) 'Building' shall include the premises, if any, thereof and where there are several buildings in common premises, all the Such buildings and common premises shall include;
(b) 'a plot of land' means any piece of land held by a single occupant, or held in common by several co-occupants, no part of which is wholly separated from the other part by the land of another occupant or by other co-occupants or by public property.
(3) Municipal taxes shall be assessed and levied in accordance with the provisions of this Act and the rules and bye-laws made thereunder.
(4) This section shall not give power to impose any tax which the State Legislature cannot, under the Constitution, impose the state does not have the right to impose-

Provided that any municipality which immediately before the commencement of the Constitution was validly imposing any such tax under this section may continue to levy that tax until provision to the contrary is made by Parliament.

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(ii) Any land or building, the annual value of which does not exceed three hundred and sixty rupees, and which the Municipality, water is not supplied by the

(iii) On any plot or building no part of which is within the radius of the nearest stand-pipe or other water works prescribed for the municipality, where water is provided to the public by the municipality.

Explanation.-For the purposes of this section,

(a) 'Building' shall include the premises, if any, thereof and where there are several buildings in common premises, all the such buildings and common premises shall include;

(b) 'a plot of land' means any piece of land held by a single occupant, or held in common by several co-occupants, no part of which is wholly separated from the other part by the land of another occupant or by other co-occupants or by public property.

Section 129(a) of the Act: Levy of tax on annual value of buildings or lands or both.- Tax on annual value of buildings or lands or both shall be levied in respect of all buildings and lands situate within the municipal limits, except-

(a) Buildings and lands used solely for purposes connected with the disposal of the dead;

(b) buildings and lands or part thereof used exclusively for public worship or charitable purposes, fields, farms and gardens of Government aided institutions of research and development, playgrounds of Government aided or unaided, recognised educational institutions or sports stadia;

(c) Buildings used solely as schools and intermediate colleges, whether owned or operated by the State Government receive assistance or not;

(d) Ancient monuments as defined in the Ancient Monuments Preservation Act, 1904, subject to any direction of the State Government in respect of any such memorial

(e) Buildings and lands vested in the Union of India, except where the provisions of **clause (2)** of **article 285** of the Indian Constitution apply;

(f) any owner occupied residential building constructed on a plot having a carpet area up to thirty square metres or fifteen square metres, provided the owner thereof does not own any other building within the municipal limits; and of the Act:

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(a) Buildings and lands used solely for purposes connected with the disposal of the dead;

(b) buildings and lands or part thereof used exclusively for public worship or charitable purposes, fields, farms and gardens of Government aided institutions of research and development, playgrounds of Government aided or unaided, recognised educational institutions or sports stadia;

(c) Buildings used solely as schools and intermediate colleges, whether owned or operated by the State Government receive assistance or not;
(d) Ancient monuments as defined in the Ancient Monuments Preservation Act, 1904, subject to any direction of the State Government in respect of any such memorial
(e) Buildings and lands vested in the Union of India, except where the provisions of **clause (2)** of **article 285** of the Indian Constitution apply;
(f) any owner occupied residential building constructed on a plot having a carpet area up to thirty square metres or fifteen square metres, provided the owner thereof does not own any other building within the municipal limits; and
(g) a residential building occupied by the owner of the building which is situated in an area included within the limits of the Municipal Council, within five years or after the area has been provided with the facilities of road, drinking water and street lights, whichever is earlier",

Section 130 of the Act Restriction on imposition of other taxes.-The levy of tax under clause (iv) of **sub-section (1)** or clause (up) of **sub-section (2)** of **section 128** shall be subject to the restriction that the tax shall not be assessed on any house or building or collected from the occupant of any house or building, unless the municipality undertakes the work of house cleaning or the collection, removal and disposal of excreta and polluting matters from latrines, urinals and sewage pools under **clause (a)** of **section 196**.

Section 130A of the Act Power of State Government to require municipality to levy tax (1) The State Government may, by general or special order published in the Gazette, require a municipality to impose any tax specified in section 128, not already levied, at such rate and within such period as may be specified in the notification and the municipality shall act accordingly.
(2) The State Government may require a municipality to increase amend or alter the rate of any tax already levied and the municipality shall increase, amend or alter the tax as necessary.
(3) If the Municipality fails to comply with the order passed under **sub-section (1)** or **(2)**, the State Government may pass appropriate order imposing, increasing, amending or altering the tax and thereupon the order of the [State Government] shall have effect as if it were a resolution passed only by the [Municipality] under [**sub-section (2)** of **section 134**].

Section 130B of the Act to collect proceeds of taxes for certain purposes.-All monies received from water, drainage, sanitation and conservancy taxes specified in **clauses (ii)**, **(iii)** and **(iv)** of **sub-section (1)** and **clause (vi)** of **sub-section (2)** of **section 128** and all other proceeds derived from water works and sewage farms and the disposal of excreta and effluents collected from latrines, urinals and cesspools, shall be pooled together and applied for the purposes connected with the construction, maintenance, extension or improvement of water works and sewage drainage works and arrangements for the collection, removal and

disposal of excreta and effluents from latrines, urinals and cesspools, including the maintenance of sewage farms.

Section 131 of the Act Making of preliminary proposals.- (1) Where a municipality desires to levy any tax, it shall, by special resolution, make a proposal specifying-

(a) The tax which it proposes to impose, being one of the taxes specified in **sub-section (2)** of **section 128;**

(b) the person or class of persons on whom it is to be imposed and the type of property or other taxable goods or the particulars of the circumstances in respect of which the liability is to be imposed, except in so far as any such class or description has already been defined under **clause (a)** or by this Act is adequately defined;

(c) The amount or rate chargeable from each such person or class of persons;

(d) Any other matter specified in section 153 as the State Government may, by rule, specify.

(2) The municipality shall also draft rules which it may desire the State Government to make in respect of the matters specified in **section 153**.

(3) The Municipality shall thereafter publish the proposals made under sub-section (1) and the draft rules made under **sub-section (2)** in the manner prescribed in **section 94** along with a notice in the form set out in Schedule III.

Section 132 of the Act Procedure after making proposal- (1) any resident of a municipal area may, within a fortnight from the publication of the said notice, make to the municipality all or any part of the said Act made under the preceding section may submit an objection in writing to any proposal and the Municipality may accept any objection so submitted shall also consider the objection and pass order thereon by a special resolution.

(2) If the Municipality decides to amend its proposals or any of them, it shall publish the notified proposals and (if necessary) the amended draft rules together with a notice indicating that the proposals and rules (if any) are amendments of the proposals and rules previously published for objection— Provided that no such publication shall be necessary where the amendment is confined to a reduction in the amount or rate of tax originally proposed.

Question No. 9: Write short notes on any two of the following.

Answer- (1) Acquisition and disposal under the Uttar Pradesh Planning and Development Act, 1973-

Section 17. Compulsory acquisition of land.-(1) If in the opinion of the State Government any land is required for development or for any other purpose, the State Government may, under this Act, acquire such land under the provisions of the Land Acquisition Act, 1894: Provided that no person from whom any land is so acquired shall be entitled to such After the expiry of a period of five years from the date of acquisition, a person may apply to the State Government for the restoration of the land to him on the ground that the land has not been used for the purpose for which it was acquired within that period and if the State

Government is satisfied to that effect, it shall order the restoration of the land to him on payment of the charges incurred in connection with the acquisition together with interest at the rate of twelve per cent per annum and such development charges as have been incurred subsequent to the acquisition.

(2) Where any land has been acquired by the State Government, that Government may, after taking possession of the land, transfer the land to the Authority or any local authority for the purpose for which the land has been acquired, on payment by the Authority or the local authority of the compensation awarded under that Act and the charges incurred by the Government in connection with the acquisition.

Section 18. Disposal of land by Authority or concerned local authority- (1) Subject to any direction given by the State Government in this behalf, the Authority or, as the case may be, the concerned local authority may dispose of any land acquired and transferred to it by the State Government, without carrying out or carrying out any development thereon; or any such land as it may deem fit, to such persons, in such manner and subject to such conditions and regulations as it may consider expedient to secure the development of the development area in accordance with the plan.

(2) Nothing in this Act shall be construed as enabling the Authority or the concerned local authority to dispose of land by way of a gift, but subject to this, references in this Act to the disposal of land shall be construed as references to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise.

(3) Notwithstanding anything contained in **sub-section (2),** the concerned authority or local authority may create a mortgage or charge on such land (including any building thereon) in favour of the Life Insurance Corporation of India, Housing and Urban Development Corporation, or a banking company as defined in the Uttar Pradesh Public Money (Recovery of Dues) Act, 1972, or any other financial institution approved by the State Government by general or special order in this behalf.

(4) Where vacant land has been disposed of under this section by way of a lease for the purpose of carrying out a building within a specified time, there is a right to forfeit and re-entry the lease if the building is not carried out within such time, and the lessee fails, without sufficient cause, to carry out the building or a substantial part thereof within the specified time or such extended time as may be granted by the lessor, the lessor may, subject to the provisions of **sub-section (4A)**, forfeit the lease and re-enter the land: Provided that no forfeiture and re-entry shall be made unless the lessee has been given a reasonable opportunity of showing cause against the proposed action.

(5) Where the lessee fails to carry out the construction within the prescribed time and the extended time, under **sub-section (4),** so that the total period exceeds five years from the date of lease, charges at the rate of two per cent of the prevailing market value of the land concerned shall be recovered from him every

year by the lessor and if a further period of five years elapses from the date of imposition of the said charges, the lease shall stand forfeited and the lessor may re-enter the land:) Provided that where the period of five years has expired before the commencement of the Uttar Pradesh Urban Planning and Development (Amendment) Act, 1997, or where the period of five years expires within one year after such commencement, the charges may be recovered after a period of one year from the date of such commencement.
(6) On such confiscation and re-entry, the premium paid by the lessee for such land shall be refunded without interest, after deducting the amount due to the lessor under such lease, if any, and a sum equal to 5 per cent of the premium for administrative expenses.
(7) Any person aggrieved by an order under **sub-section (4)** may, within thirty days from the date of knowledge thereof, prefer an appeal to the District Judge whose decision shall be final.
(8) The land reclaimed after forfeiture of the lease shall be disposed of in accordance with the provisions of **sub-sections (1)** and **(2)** will be able to go.
(2) Development Authority-Section 3. Declaration of development areas. If the State Government is of the opinion that any area within the State is necessary to be developed according to a plan, it may, by notification in the Official Gazette, declare that area to be a development area.
Section 4. Development Authority- (1) The State Government may, by notification in the Official Gazette, constitute an authority to be called the Development Authority for a development area for the purposes of this Act.

(2) The Authority shall be a body corporate by the name specified in the said notification, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, and shall have power to contract and shall by the aforesaid name sue and be sued.
(3) The Authority in relation to a development area comprising the whole or any part of a city as defined in the Uttar Pradesh Municipal Corporation Act, 1959 shall consist of the following members, namely:-
A-Chairman, to be appointed by the State Government:
B - Vice-Chairman, to be appointed by the State Government
C- The Secretary to the State Government, who shall be in-charge of the Department to which the work relating to the Development Authorities has been transferred for the time being, ex officio),
D- The Secretary to the State Government, who shall be in charge of the Finance Department, ex officio.
1 Chief Town and Country Planner, Uttar Pradesh Ex-officio:
2 The Managing Director of the Jal Nigam established under the Uttar Pradesh Water Supply and Sewerage Act, 1975. Ex officio,
3 Chief Municipal Officer, ex officio:

4 The District Magistrate of every district any part of which is included in the development area, ex officio:
5 Four members to be elected by the Municipal Corporation from among itself for the said city, but any such member shall cease to hold office as soon as he ceases to be a Councillor of the Municipal Corporation will be able to-
Such other members, not exceeding three, as may be nominated by the State Government.
(4) The appointment of the Vice-Chairman shall be full-time.
(5) The Vice-Chairman shall be entitled to receive such salary and allowances out of the funds of the Authority and shall be governed by such conditions of service as may be determined by the State Government by general or special order in this regard.
(6) A member specified in **clause (c), (d), (e)** or (f) of **sub-section (3)** may, instead of personally attending a meeting of the Authority, depute an officer not below the rank of Deputy Secretary in the Department in the case of a member specified in **clause (c)** or **(d),** not below the rank of Town Planner in the case of a member specified in **clause (e)** and not below the rank of Superintending Engineer in the case of a member specified in **clause (f),** to attend the meeting. The officer so deputed shall have the right to take part in the proceedings of the meeting and shall also have the right to vote.
(7) The Authority, in relation to a development area other than the development area specified in **sub-section (3),** shall consist of a Chairperson, a Vice-Chairman and not less than five and not more than eleven other members, including at least one member each of the Municipal Boards and Notified Area Committees having jurisdiction in the development area, who shall hold office for such term and on such terms and conditions as may be determined by general or special order of the State Government in this behalf.

Provided that any member of the Authority, other than the Vice-Chairman or an ex officio member, may at any time by writing under his hand addressed to the State Government resign his office and on such resignation being accepted he shall be deemed to have vacated his office.
(8) No act or proceeding of the Authority shall be invalid by reason of any vacancy in, or any defect in the constitution of, the Authority will not happen.
Section 7. Objects of the Authority.-The objects of the Authority shall be to promote and secure the development of the development area in accordance with the plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to undertake building, engineering, mining and other works, to carry out works in connection with the supply of water and power, disposal of sewage and to provide and maintain other services and amenities and in general to do anything that is necessary or expedient for the purposes of such development and for purposes incidental thereto:

Provided that save as otherwise provided in this Act, nothing contained in this Act shall be construed as authorising the Authority to disregard any law for the time being in force.

(3) Advisory Council (1) The State Government may, if it thinks fit, constitute an Advisory Council for the purpose of advising the Authority on the preparation of the Master Plan and the plan of development or on such other matters arising out of or in connection with the administration of this Act as may be referred to it by the Authority.

(2) The Advisory Council, in relation to the development area referred to in **sub-section (3)** of **section 4,** shall consist of the following members, namely:-

(a) The ex officio Chairperson of the Authority, who shall be the Chairperson.

(b) Chief Town and Country Planner, Uttar Pradesh and Chief Engineer, Local Self Government Engineering Department, Uttar Pradesh, ex officio:

(c) Director, Medical and Health Services, Uttar Pradesh, or his nominee not below the rank of Deputy Director shall not be below, ex officio:

(d) Four representatives of the local authorities having jurisdiction within the limits of the development area, to be elected by their members from among themselves:

(e) The Transport Commissioner, Uttar Pradesh, or his nominee not below the rank of Deputy Transport Commissioner, ex officio:

(f) Chairman, State Electricity Board, Uttar Pradesh or his nominee, ex officio:

(g) All members of the House of the People and of the State Legislative Assemblies whose constituencies include any part of the development area:

(j) all members of the Rajya Sabha and the State Legislative Council whose residence is in the development area:

(i) Three members nominated by the State Government, one of whom shall represent the interest of labour and the other the interest of industry and commerce in the development area.

(3) For the purposes of **clause (h)** of **sub-section (2),** the place of residence of a member of the Council of States or a State Legislative Council shall be deemed to be the place mentioned in the notification of his election or nomination as such member.

A member elected under **clause (d)** of **sub-section (2)** shall hold office for a term of three years from the date of his election to the Council and shall be eligible for re-election:

Provided that such term shall end when the member ceases to be a member of the local body from which he was elected.

The Advisory Council, if any, in respect of a development area other than the development area specified in **sub-section (2)** shall consist of such members as the State Government may, by general or special order, determine in that behalf.

The Advisory Council shall meet when called upon by the Chairman: Provided that such meeting shall be held at least twice a year.

(4) Nazul land (1) The State Government may, by notification in the Official Gazette and on such conditions as may be agreed upon between that Government and the Authority, place all or any developed and undeveloped land (hereinafter known and referred to as the Nazul land) situated in the development area vested in the State at the disposal of the Authority for the purpose of development in accordance with the provisions of the Act,
(2) After any Nazul land has been placed at the disposal of the Authority under sub-section (1), no such land shall be developed by or under the control and supervision of the Authority.
(3) After any such Nazul land has been developed by or under the control and supervision of the Authority, the Authority shall act thereon in accordance with such directions as may be given by the State Government in that behalf.
(4) If any Nazul land placed at the disposal of the Authority under **sub-section (1)** is at any time subsequently required by the State Government, the Authority shall, by notification in the Official Gazette, place the same at the disposal of that Government on such terms and conditions as may be agreed upon between that Government and the Authority.

Question No. 10- Write short notes on any two of the following-

Answer.- (1) Consequences of dissolution of municipality.- Where a municipality is dissolved under section 30, the following consequences will occur:

(a) All members of the Municipality, including the Chairman, shall vacate their offices on the date specified in the order, but this shall not affect their eligibility for re-election or re-nomination;
(b) Until the formation of the new municipality
(i) all powers, functions and duties of the Municipality, its Chairman and Committees shall be vested in, and shall be exercised, performed and discharged by, such person or persons as the State Government may appoint in that behalf and such person or persons, as the occasion may require, shall be deemed to be the Municipality, Chairman or Committee according to law;
(ii) such salary and allowances to such person or persons as the State Government may, by general or special order, fix in that behalf, shall be paid out of the Municipal Fund;
(iii) The State Government may, from time to time, by notification in the Official Gazette, make such incidental or consequential provisions including provisions for adapting, altering or modifying any of the provisions of this Act without affecting the substance thereof, as appear to it to be necessary or expedient for carrying out the purposes of this section.
(2) 30. Power of State Government to dissolve Municipality. If at any time the State Government is satisfied that any Municipality is persistently in default in the performance of the duties imposed on it by or under this Act or any other law for the time being in force or has more than once exceeded its powers or is

abusing the powers conferred on the municipality, it may, after giving the municipality a reasonable opportunity of showing cause why such an order should not be made, by an order published in the Official Gazette with reasons, dissolve the municipality.
(3) Duties of Municipality (1) It shall be the duty of every municipality to make reasonable provision within the municipal area for—
(a) Lighting public streets and places;
(b) Watering public streets and places;
(c) To survey and mark the boundaries of the municipality;
(d) Cleaning public streets, places and drains, removing noxious vegetation and abating all public nuisances;
(d) To regulate objectionable, dangerous or obnoxious trade, business or practices; restrain, remove or destroy stray dogs and dangerous animals;
(d) Undesirable obstructions in streets or public places on grounds of public safety, health or convenience and removal of bulges;
(e) Securing or removing dangerous buildings or places;
(f) to acquire, maintain, alter and regulate places for the disposal of the dead and to arrange for the disposal of unclaimed bodies, after ensuring in writing from the police that there is no objection to doing so;

(g) Public roads, culverts, market toilets, latrines, urinals, drains, drainage works and sewerage create, change, and maintain works;
(h) Reclamation of unhealthy settlements;
(i) Planting and maintaining trees on roadsides and other public places;
(j) Providing water supply for domestic, industrial and commercial purposes;
(k) To provide an adequate supply of pure and wholesome water where the health of the inhabitants is endangered by the inadequacy or unhealthiest of the existing supply, to safeguard water used for human consumption against pollution and to prevent polluted water from being so used.
(l) To maintain in working condition public wells, if any, in addition to any other source of water supply, to protect their water from pollution and to keep it fit for human consumption;
(ll) To register births and deaths;
(n) Establish and maintain a system of public vaccination;
(nn) To establish and maintain or support public hospitals and dispensaries, and to provide public medical assistance;
(o) To establish, maintain and support maternity centres and child welfare and birth control clinics and to promote population control, family welfare and small family norms;
(p) Maintaining or contributing towards the maintenance of veterinary hospitals;
(q) To establish and maintain or provide assistance to institutions of physical culture,
(qq) Establishing and maintaining primary schools;

(r) Rendering assistance in extinguishing fire and protecting life and property in case of fire;
(rr) To maintain and develop the value of the property vested in or entrusted to the management of the Municipality;
(s) To maintain the finances of the Board in a satisfactory condition and to fulfil its obligations;
(t) to give prompt attention to official communications and to prepare such statements, returns and reports as the State Government may require the Board to submit; and
(tt) To perform any obligation imposed on him by law.
(v) Regulating leather factories;
(vv) construction and maintenance of parking spaces, bus stops and public conveniences;
(w) Promote urban forestry and ecological aspects and protect the environment;
(ww) Protect the interests of weaker sections of society including the handicapped and the mentally retarded;
(y) Promote cultural, educational and aesthetic aspects;
(yy) Constructing and maintaining animal enclosures and preventing cruelty to animals;

(x) improvement and upgradation of slums;
(xx) urban poverty alleviation;
(z) To provide urban amenities and facilities such as gardens, public parks and playgrounds.
(4) Duties of Municipality- (1) Every Municipality, unless sooner dissolved under **section 39**, shall continue for five years from the date appointed for its first meeting and no longer.
(2) The election for the constitution of a municipality shall be held on the following dates:
(a) Before the expiry of the period specified in **sub-section (1);** or
(b) Before the expiration of a period of six months from the date of its dissolution-
(Provided that where the remaining period of the continuance of the dissolved municipality is less than six months, it shall not be necessary to hold any election under this sub-section to constitute a municipality for such period.
(3) A municipality constituted on the dissolution of a municipality before the expiration of its term shall continue only for the remainder of the period for which the dissolved municipality would have continued under **sub-section (1**) if it had not been so dissolved. [Substituted by Uttar Pradesh Act No. 12 of 1994.,
(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where it is not practicable in unavoidable circumstances or in the public interest to hold election for the constitution of a Municipality before the expiry of the term of the municipality, then, until the due constitution of such Municipality,

all the powers, functions and duties of the Municipality shall be exercised and performed by the District Magistrate or a Gazetted Officer not below the rank of Sub-Collector appointed by the District Magistrate in this behalf and such District Magistrate or officer shall be called the Administrator and such Administrator shall be deemed to be the Municipality, Chairman or Committee, as the occasion may require. [Inserted by Uttar Pradesh Act No. 23, 2005. Uttarakhand Amendment A new sub-section shall be added at the end of section 10-A, namely-
(4) Notwithstanding anything to the contrary contained in any other provision of this Act, where due to unavoidable circumstances or in the public interest, it is not practicable to hold election to constitute a Municipal Council/Nagar Panchayat before the expiry of its term, then, until the proper constitution of such Municipal Council/Nagar Panchayat, all the powers, functions and duties of the Municipal Council/Nagar Panchayat shall be exercised, performed and discharged by such Gazetted Officer not below the rank of District Magistrate or Sub-Divisional Magistrate as may be appointed in this behalf by the District Magistrate and such District Magistrate or such officer shall be deemed to be the Chairman/Chairman or Committee in law, as the occasion may require- Provided that the tenure of the Administrator appointed under this section shall not exceed six months or until the constitution of a new Board. Inserted by Uttarakhand Act No. 3, 2008.