LL.B.-6th 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 It has been replaced by class action, public interest litigation, representative litigation etc.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.

LL.B.-6th Sem. Paper-II Environmental Law Including Laws for the Protection of the Wild Life and Other Living Creature Including Animal Welfare

Question No. 1- Explain the meaning and scope of the terms environment and environmental pollution. Which causes are responsible for the environment? Explain.

Answer - Environment is a very broad term. There is no limit to its expansion. In simple words, it would be 100% true to say that if there is environment then we exist, without it neither the existence of any animal nor any plant is possible.

Environment is called (Environment) in English. The word (Environment) is derived from the French word (Environer).

Which means the whole ecology or environment. It includes all the conditions, circumstances, conditions and effects that affect the organism and biological group.

The literal meaning of environment is the surrounding or nearby external conditions that affect the growth and development of humans, animals or plants, etc.

The term 'environment' originates from the French word 'environner', which means 'to surround'. It includes all the surroundings where humans live. These surroundings cover both the entirety of the natural world and man-made terrain. The natural environment includes elements such as air, water, lakes, trees and mountains, while the man-made environment includes developments such as buildings, roads, parks, bridges, monuments, gardens and more.

What is environmental pollution?

According to **Section 2(A)** of the Environment (Protection) Act, 1986, "environment includes water, air and land and the inter-relationships existing between water, air and land and human beings, other living creatures, plants, micro-organisms and property."

1. According to the Science Advisory Committee of the United States of America - Pollution is an adverse change in our environment which has a direct or indirect effect on the energy pattern, radiation level, chemical physical components and abundance of biological organisms.

2. According to Lagham- Pollution means the introduction into any part of the environment of a person of waste materials or excess energy or any other hazardous matter which alters the environment and by this alteration directly affects the use or opportunity of the person to use it in the manner in which the person wishes.

Environmental factors - The following are the environmental factors:

(a) Ecological factor - Three factors come under this factor of environment-

(1) Biotic factors - Biotic factors are organisms living in an ecosystem that affect other organisms living in that ecosystem. They may include plants, animals, fungi, bacteria, and protests. Biotic factors can interact with other living things in many ways, such as through competition, consumption, predation, parasitism, disease,

and symbiosis. For example, deer are a biotic factor that eats grass, which affects the amount of grass in the ecosystem.
The following relationships are studied under biological factors-
(1) In the biological relations of living beings
(2) In biological relation to plants
(3) The effects of animals on plants, and
(4) Human contribution
(2) Atmosphere - The air in the sky is such a cover that surrounds the earth from all sides. The atmosphere has many layers. On the basis of these layers, the atmosphere can be divided into the following 5 parts-
(1) Ozone sphere
(2) Ionosphere
(3) Stratosphere
(4) Troposphere
(5) Troposphere
(3) Fire-causing - The temperature at which a substance starts burning is called fire. Fire can be produced in any way, natural or artificial. Natural fire is produced by lightning, short circuit, volcanic eruption and trees rubbing against each other in strong winds. Artificial fire is produced by humans.
Based on the intensity and spread of fire, it can be of the following three types-
(1) Shikhar Agni
(2) Bahistal Agni
(3) Ground fire
(b) A biotic factors- A biotic factors may be divided into the following two categories-
(1) Physical factors
(2) Chemical factors
Causes of environment- The following are the main causes of environmental pollution-
(1) Population growth- The main cause of environmental pollution is the increases in human population, as a result of which many people have been born which directly, pollute the environment. Due to population growth, the pressure on limited natural resources is increasing day by day due to which many problems are arising which affect our environment.
The following are the important root causes of environmental pollution related to population:
(1) The rapid increase in the world population,
(2) The expansion of cities and the ever-increasing density of population in cities,
(3) The rapidly growing gap between the population of the developed and developing parts of the world,
(4) Increase in the ratio of urban-rural population etc.

(2) Industrial activities: Along with the development of human civilization, industrialization also developed, which resulted in many kinds of problems. Industrial development pollutes our environment both directly and indirectly.

The two main components of industrialization, namely, rapid exploitation of natural resources and increase in industrial production, have an adverse effect on the environment. Due to excessive exploitation of natural resources for the use of raw materials in factories, the following consequences arise which affect the quality of the environment:

(1) Reduction in forest areas due to deforestation.
(2) Conversion of surface into wasteland by excavation due to mining of minerals,
(3) Degradation of agricultural land due to industrial expansion,
(4) Declining ground water level due to excessive extraction of ground water,
(5) Subsidence of surface due to release of ground water and mineral oil etc.

(3) Agricultural development-Modern scientific technology and excessive use of chemical fertilizers have polluted the environment in many ways.

Due to the rapid expansion of agriculture, pollution occurs in the environment in the following forms-

(1) Forest development and related land use changes,
(2) Use of chemical fertilisers, insecticides and herbicides in fields,
(3) With the increase in irrigation facilities and quantity of irrigation,
(4) Changes in biological communities, etc.

(4) Urbanisation - In reality, urbanisation means expansion and growth. It means large-scale increase in concentration of population in cities. Due to this explosion in urban population, there is a huge increase in buildings, roads, streets, sewage drains, storm drains, paved surfaces, automatic vehicles (motor cars, trucks, buses, lorries, motor cars, scooters, etc.), number of factories, urban waste materials, aerosols, smoke, ash, garbage, sewage, harmful gases, etc. which give rise to many environmental problems.

(5) Modern Technology: The basic objective of technology at present is to rapidly exploit natural resources and to produce various types of goods from these resources in order to increase the material standard of human society, which pollutes the environment.

Modern technology has entered into every aspect of human society (viz. economic, political, educational and social).

Question No. 2- Explain the contribution of Indian judiciary in the development of environmental law for the protection of environment.

Answer- Role of Judiciary in Environmental Protection - India, with its diverse ecosystem and population, is facing a number of environmental challenges. From air pollution and deforestation to water scarcity and loss of biodiversity, the country's natural resources are under tremendous pressure. In this context, the role of the judiciary in ensuring environmental protection becomes paramount.

The Indian judiciary has played a key role in interpreting and enforcing environmental laws, resolving disputes, protecting environmental rights and shaping environmental governance.

Supreme Court of India adopts Sustainable Development Principles- The Supreme Court of India has adopted the principles of sustainable development, recognising the importance of achieving a balance between the environment, society and the economy. The concept, though not new, has gained importance in the twenty-first century with the rise of global industrial and information societies. The aim of sustainable development is to meet the needs of the present without compromising the ability of future generations to meet their own needs, as stated in the Brundtland Report. The Supreme Court has held that the United Nations Conference on the Human Environment and the Stockholm Conference in 1972 played a significant role in raising environmental consciousness and establishing the idea of sustainable development as part of customary international law. It has outlined several principles of sustainable development, including pursuing sustained economic and social progress while preserving the environment and natural resources essential for sustainable development.

The principle of intergenerational equity emphasises that development should meet the needs of the present generation without exhausting non-renewable resources and depriving future generations of their benefits. The Supreme Court in the case of **Bombay Dyeing and Manufacturing Company Limited vs Bombay Environmental Action Group supported** this approach, ensuring that present generations do not exploit resources to the detriment of future generations.

The precautionary principle states that states should adopt a precautionary approach to environmental protection, even when there is no absolute scientific certainty, in order to prevent irreversible damage. The Indian Supreme Court has adopted this principle, incorporating it into the burden of proof in environmental cases. Those seeking to change the status quo have the burden of proof in demonstrating the absence of harmful effects of proposed actions.

In addition, the Court supports the principle that polluters should bear the costs of pollution, taking into account the public interest and without distorting international trade and investment. This principle promotes the internationalization of environmental costs and the use of economic instruments to hold polluters accountable not only for compensating victims but also for rehabilitating ecosystems.

The recognition and application of these principles by the Supreme Court of India reflects its commitment to sustainable development and environmental protection. By incorporating these principles into its decisions, the Court encourages responsible behaviour, accountability, and a balance between economic development and environmental protection.

Development of environmental law principles by the judiciary

Doctrine of absolute liability- In the landmark case of **Union Carbide Corporation v. Union of India**, the Supreme Court of India established the doctrine of absolute liability. The Court held that when an enterprise engages in inherently dangerous or risky activities, it is absolutely liable for any damages resulting from accidents in such operations. This liability applies without exemption, meaning that the enterprise must compensate all those affected by the accident. This decision set a new precedent by introducing the concept of absolute liability in environmental cases.

Polluter Pays Principle – The polluter pays principle has gained a lot of recognition in recent years. The underlying principle is that if a person or entity pollutes the environment, they are responsible for bearing the costs associated with the pollution and its cleanup. This principle is not based on fault assignment, but on the idea that those who cause damage to the environment should be held accountable for compensating for the damage. This aligns with the goal of remediating environmental harm. The Supreme Court of India, in the case of **Vellore Citizens Welfare Forum vs Union of India**, held the polluter pays principle to be integral to sustainable development.

Precautionary Principle – The Supreme Court of India in the Vellore Citizens Forum case outlined three main aspects of the precautionary principle. First, environmental measures should be aimed at anticipating, preventing and addressing the causes of environmental degradation. Second, lack of scientific certainty should not be used as a reason to postpone necessary measures. Finally, the burden of proof lies on the party taking the action to demonstrate its benign nature. These principles guide decision-making in situations where potential harm to the environment exists.

Public Trust Doctrine- The public trust doctrine is based on the principle that certain resources, such as air, water, sea and forests, are important for society as a whole and should not be subjected to private ownership. In the case of **M.C. Mehta vs. Kamal Nath and others**, the Supreme Court held that public trust the principle is an inherent part of the law of the country. This principle ensures that these resources are protected and managed in the best interest of the public.

Principle of Sustainable Development- The concept of sustainable development was highlighted by the World Commission on Environment and Development (WCED) in its report commonly known as the Brundtland Report. Sustainable development refers to development that meets present needs without compromising the ability of future generations to meet their own needs. Courts play a vital role in striking a balance between development and environmental protection. In the case of Rural Litigation and Entitlement Centre vs State of UP, the Court emphasised that natural resources are the permanent assets of mankind and should not be exhausted within a generation. In the case of

Vellore Citizen Welfare Forum, the Supreme Court recognised sustainable development as a viable concept for poverty alleviation and improving human life while living within the ecological carrying capacity.

Recognition of Environmental Rights by Judiciary- The active role of the judiciary in environmental protection is evident in several major judgments, which are summarised below-

(a) Right to healthy environment- In the Charan Lal Sahu case the Supreme Court held that the right to life guaranteed by **Article 21** of the Constitution includes the right to healthy environment.

In **Damodhar Rao vs Municipal Corporation of Hyderabad**, the Court relied on constitutional mandates under **Articles 48A** and **51A(g)** to hold that environmental pollution would violate the fundamental right to life and personal liberty enshrined in **Article 21**.

(b) Public Nuisance: Judicial Response- The Supreme Court's decision in **Ratlam Municipal Council v. Vardhichand** case emphasised the social justice component of the rule of law. It held statutory authorities accountable for fulfilling their obligations in abating public nuisance and making the environment pollution-free, even if there were budgetary constraints. The case also recognised public interest litigation (PIL) as a constitutional obligation of the courts.

(c) Remedial relief includes awarding compensation to victims- In the **Delhi Gas Leak case (MC Mehta vs Union of India)** the Supreme Court established two important principles of law. First, it reaffirmed the power of the court to award remedial relief, including compensation, for proven violation of fundamental rights such as **Article 21**. Secondly, it introduced the concept of 'no fault' liability (absolute liability) for industries engaged in hazardous activities, which significantly influenced liability and compensation laws in India.

(d) Fundamental Right to Water- The fundamental right to water in India has evolved through judicial interpretation. In the case of **Narmada Bachao Andolan v. Union of India and others**, the Supreme Court held that water is a basic need for human survival and is an inherent part of the right to life, human rights, right to healthy environment and sustainable development enshrined in **Article 21** of the Constitution.

Question No. 3- Development should not be at the cost of environment. Explain this statement.

Answer- An international conference was held in October 1974 at a place called Cocoyak in Mexico. The subject of the conference was Pattern of Resource Use, Environmental Development Strategies. The conference was chaired by Lady Jackson Barbara Ward. Since this conference was held at a place called Cocoyak, the resolution adopted by this conference is called the Cocoyak Declaration. The words Environment and Sustainable Development were used for the first time in

this conference. It was accepted in this conference that the aim of development is to develop humans and not things.

After the Kokoyak Declaration, international organizations have started working for sustainable development. Sustainable development means integration of development and positive environmentalism. For sustainable development, development should be in accordance with economic and ecological sustainability.

This indicates that development projects should be made in accordance with the environment so that environment and development are for the people, not the people for environment and development. Environment and development are interdependent because development cannot happen without environmental protection and environmental protection cannot happen without development.

The Environmental Law Expert Group of the World Commission on Environment and Development has laid down the following principles in relation to environmental resources, interferences, rights and responsibilities in relation to environmental protection and sustainable development:

(1) There is a human right to an environment adequate to support life and well-being.

(2) Nations should adopt the principle of intergenerational equity in the use of the environment and their natural resources needed.

(3) Conservation is a principle that the environment and the use of its resources should be managed in a manner that provides the greatest sustainable benefit to the present generation while leaving the resource base sufficient to meet the needs of future generations Maintain competence. This context includes the concepts of testing, maintenance, use, rotation and growth. This principle should be an integral part of the planning processes.

(4) The essential ecosystems and ecological processes of the biosphere are subject to the need to conserve and preserve biodiversity.

(5) Nations should adopt adequate standards of environmental protection and monitor changes in the quality and use of environmental resources, publishing the data obtained.

(6) Where an activity has a significant impact on the environment and the use of its resources, such activity should be subject to an environmental assessment of its impact before a decision is taken on whether it should be permitted to proceed.

(7) Nations should cooperate to support the concept of sustainable development, and those nations that are more developed should assist those that are still developing.

(8) Persons potentially affected by the foregoing type of activity must be informed of the matter in a timely manner and be given access to relevant administrative or judicial proceedings.

(9) Where natural resources transcend national boundaries, they should be used by Nations in a reasonable and equitable manner, while Nations should generally prevent environmental interference from causing significant transboundary damage.
(10) Where States permit or undertake beneficial activities that are also hazardous, they should take reasonable precautionary measures to limit the risk and provide countermeasures if substantial cross-border damage occurs, including compensation for such damage where it results from an activity that was not understood to be harmful when it occurred.
(11) Nations have a general obligation to cooperate in addressing environmental problems, interference and use of natural resources which transcend national boundaries, and to communicate such relevant information in an integrated manner to unrelated Nations.
(12) Nations should apply standards regarding transboundary environmental interference and the use of environmental resources no more stringent than those domestically.
(13) Where there is existing or potential environmental interference or use of environmental resources, States concerned should consult together in good faith at the initial stages and should work together to monitor and investigate such issues and to cooperate in setting appropriate standards.
(14) States should develop contingency plans to deal with situations where cross-boundary interference would occur, and where such a contingency exists, they should promptly alert other States concerned and provide them with relevant information.
(15) Where a Power is affected by cross-border interference or is affected by their use of an environmental resource, equal access to and treatment should be afforded to that person in any relevant administrative or judicial proceedings.
(16) States should cease activities that violate international environmental obligations and compensate for the damage caused and resolve the environmental obligation peacefully.

In India, it has been recognized by the Supreme Court as the principle of polluter pays. In the case of **Velo Citizens Welfare vs Union of India AIR 1996 SC 2715**, Justice Kuldeep Singh said that sustainable development is a balanced concept between ecology and development. He further clarified that some of the important features of sustainable development, as evident from the Brundland Report and other international documents, are inter-generational equity, use and conservation of natural resources, environmental protection, precautionary principle, polluter detection principle and cooperation, eradication of poverty and financial assistance to developing countries, etc.

Similarly, according to Justice Kuldeep Singh, "polluter pays principle" means that the ultimate liability for environmental damage extends not only to compensation to the victims of pollution but also to the cost of reversing

environmental degradation. The damage caused to the environment is a part of a continuous process and thus the polluter is liable to pay the cost of the individual harmed as well as the cost of replacing the damaged ecology.

Therefore, sustainable development is the biggest need of the present era - environment should not be destroyed during development. Under this ideology, we have to prevent misuse of natural resources like forest, water and soil which are essential for our economic development. If we use these three natural resources thoughtfully and by taking care of them, then our environment should be protected if we use it then both agricultural and industrial development is possible and we can also preserve those natural resources.

Question No. 4- Mention the appointment of officers and their powers and duties under the Environment Protection Act, 1986.

Answer- Power to appoint officers and give them necessary powers- Section 4 of the Act makes the following provisions regarding this power of the Central Government-

(1) Without prejudice to the provisions of **sub-section (3**) of **section 3**, the Central Government may, by notification, appoint officers by such designations as may be specified in the said notification.

The Central Government may appoint such officers as it may deem fit for the purposes of this Act. (2) The officers appointed under sub-section (3) shall be subject to the general control and direction of the Central Government.

Or, if the Government so directs, they shall be subject to such authority or authorities, if any, constituted under **sub-section (3)** of **section 3**.

The following points may be said to be noteworthy regarding the power to appoint officers whom Section 4 gives to the Central Government:

(1) For the purposes of the Environment (Protection) Act, 1986, the Central Government may,-

(a) Create the requisite number of posts for officers and

(b) The appointment of officers to such posts may create such posts

(c) The Central Government may confer such powers and assign such functions as may be necessary to the officers so appointed.

(2) Shall be subject to the general control and direction of the Central Government or

(a) Shall, if the Central Government so directs, be subject to the authority or authorities constituted under **sub-section (3)** of **section 3**.

(3) The Central Government shall exercise the powers conferred under section 4 without prejudice to the provisions of **sub-section (3)** of **section 3** of the Act.

MC Mehta vs Union of India (Ganga Pollution Case) (1988) Kanpur has long been the hub of the leather industry in India. Most of these industries are located on the southern banks of the river Ganga. These industries are known to pollute the river. In 1985, a matchstick thrown into the river caused a massive fire in the river, leaving a toxic layer of chemicals on its surface. Thus, renowned

environmental advocate and activist MC Mehta filed a petition in the Supreme Court against the tanneries and the Kanpur Municipal Corporation to prevent them from discharging untreated effluents into the river, thereby polluting the river.

The court observed that several laws including the Environment Protection Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974 are in force in India to prevent environmental pollution. However, the authorities have been negligent in discharging their duties prescribed under these laws. It also observed that the financial capabilities of the industries are irrelevant while considering the issue of setting up primary treatment plants. Therefore, every tannery was directed to set up at least a primary treatment plant, if not a secondary plant.

The Court also laid down the following guidelines-

It was the duty of the Central Government to direct all educational institutions across India to teach at least one hour of lessons every week on environmental protection and improvement.

Apart from this, the central government should publish environment related textbooks and distribute them among the students.

MC Mehta vs Union of India (Vehicular Pollution Case) (1991) Delhi is the national capital of India and yet it is considered one of the most polluted cities in the world. The population of Delhi has increased manifold in the last few years and one of the results is that the pollution levels have skyrocketed. The main source of pollution has been two-wheelers. Therefore, MC Mehta filed a petition in the Supreme Court to highlight the plight of the capital due to vehicular pollution and suggest practical solutions to the problem.

Having regard to the technical and other solutions suggested by the petitioner and the literature submitted, the Court the following interim orders were passed-

Under the Environment Protection Act, 1955, it is the duty of the State to protect the environment, life, flora and fauna as mentioned in **Section 51A** as a fundamental duty. Awareness is very important to reduce environmental pollution. People should be made aware about the harmful effects of vehicular pollution on environmental health.

A committee was formed to examine vehicular pollution in the capital and suggest practical solutions to curb it.

According to Rule 4 of the Environment (Protection) Rules, 1986, the Central Government while exercising the power to give directions under Section 5 of the Environment (Protection) Act, 1986 shall comply with the following conditions-

(1) A direction must be in writing.

(2) The direction may,—

(a) The nature of the proceedings should be clearly stated.

(b) The period for which the direction given by the Central Government is complied with.

(3) The person, officer or authority to whom such direction is issued shall be served a copy of the proposed direction and shall be given a period of not less than fifteen days from the date of service of the same to file objections.
(4) The owner of the industry, operation or process shall also be given a copy of the proposed direction and an opportunity shall be given to him to file objections within fifteen days where the proposed direction affects the supply of electricity or water or any other service-
(a) To prevent, or
(b) It is related to regulation.

Provided that the applicant shall not be given an opportunity of being heard where he has already been heard and as a result of such hearing the Central Government has issued a direction stopping or regulating the supply of electricity, water or any other service.
(5) The Central Government shall consider the objection within forty-five days from the date of receipt of the objection and the date on which the person, officer, authority was given an opportunity of submitting the objection (whichever is earlier) and stating the reasons therefor in writing-
(a) Confirm the direction, or
(b) Amend it, or
(c) Decide not to issue the proposed direction.
(6) The Central Government may issue a direction without an opportunity of being heard where it is of the opinion that-
(a) There is a possibility of serious damage to the environment.
(b) It is not appropriate to give an opportunity of filing objections against the proposed direction,
(c) The Central Government shall give reasons in writing for not providing an opportunity of being heard.

Question No. 5 – Explain the formation, powers and functions of the Animal Welfare Board of India.

Answer.—in this Act, unless the context otherwise requires,—
(a) 'Animal' means any living creature other than a human being;
(b) 'Board' means the Board established under section 4 and reconstituted from time to time under **section 5A**;
(c) “Captive animal” means any animal (other than a domestic animal) that is held in captivity or confinement, whether for permanent or temporary, or which is bound or which is or appears to be disabled, or which is subjected to any device or contrivance for the purpose of hindering or preventing escape from captivity or confinement;
(d) 'Domestic animal' means any animal which has been tamed or which is kept for human use;

Has been, or is being, domesticated sufficiently to fulfil any purpose, or which, though neither has been, nor is being, or is intended to be so domesticated, actually is or has become, wholly or in part, domesticated;
(e) 'Local authority' means any municipal committee, district board or other authority invested by law with the control and administration of any matters within a specified local area;
(f) 'Owner' used in reference to an animal includes not only the owner but also the person for the time being in possession or custody of the animal any other person possessing the same, whether with or without the consent of the owner;
(g) 'Phooka' or 'Doom Dev' includes any process of introducing air or any substance into the female part of a dairy animal with the aim of extracting the secretion of milk from the animal;
(h) "Prescribed" means prescribed by rules made under this Act;
(i) 'Street' includes any way, road, street, square, yard, alley, passage or open space, whether a principal street or not, to which the public has access.
Duties of persons having care of animals- It shall be the duty of every person having the care or charge of an animal to take all reasonable measures to ensure the well-being of such animal and to prevent such animal from being caused unnecessary pain or suffering.
The Animal Welfare Board of India is established- (1) to promote animal welfare generally and in particular for the purpose of preventing animals from unnecessary pain and suffering, there shall, as soon as may be after the commencement of this Act, be established by the Central Government, a Board to be called the Animal Welfare Board of India.
(2) The Board shall be a body corporate having perpetual succession and a common seal and shall, subject to the provisions of this Act, have power to acquire, hold and dispose of property and may sue and be sued in its own name.
Constitution of the board
(1) The Board shall consist of the following persons, namely:-
(a) The Inspector General of Forests, Government of India, ex officio;
(b) The Animal Husbandry Commissioner of the Government of India, ex officio;
(1) Two persons representing the Ministers of the Central Government dealing with Home Affairs and Education, to be constituted by the Central Government, Shall be appointed by the Central Government;
(2) One person to represent the Indian Board for Wild Life, to be appointed by the Central Government;
(3) three persons who, in the opinion of the Central Government, are or have been actively engaged in animal welfare work and are eminent humanitarians, to be nominated by the Central Government;
(c) one person to represent such association of veterinary practitioners as, in the opinion of the Central Government, ought to be represented on the Board, to be elected in such manner as may be prescribed by that association;

(d) Two persons to represent practitioners of modern and indigenous systems of medicine, to be nominated by the Central Government;
(c) one person to represent each of the two Municipal Corporations which, in the opinion of the Central Government, ought to be represented on the Board, to be elected by each of the said Corporations in the prescribed manner;
(f) one person to represent each of such three organisations actively interested in animal welfare as, in the opinion of the Central Government, ought to be represented on the Board, to be elected by each of the said organisations in the prescribed manner;
(g) one person to represent each of the three societies concerned with the prevention of cruelty to animals, which in the opinion of the Central Government should be represented on the Board, to be selected in the prescribed manner;
(h) Three persons nominated by the Central Government;
(i) Six members of Parliament, of whom four shall be elected by the House of the People and two by the Council of States.
(4) Any of the persons specified in **clause (a)** or **clause (b)** or **clause (bb)** or clause (bb) of **sub-section (1)** may depute any other person to attend any meeting of the Board.
(5) The Central Government shall nominate one member of the Board as its Chairman and another member of the Board as its Vice-Chairman.
Functions of the Board - The functions of the Board shall be as follows-
(a) To constantly study the law in force in India for the prevention of cruelty to animals and to advise the Government on amendments to be made from time to time in any such law;
(b) To prevent unnecessary pain or suffering to animals in general, and in particular when transporting them from one place to another being transported to a location or when used as performing animals, or to advise the Central Government on the making of rules under this Act when they are kept in prison or confinement;
(c) Giving advice to the Government or any local authority or other person regarding improvements in the design of vehicles so that the burden on the draught animals can be reduced;
(d) take all steps as the Board may consider appropriate for the improvement of animals, encouraging or providing for the construction of sheds, water-troughs, etc. and providing veterinary aid to animals;
(e) advise the Government or any local authority or other person with regard to the design of slaughter-houses or the maintenance of slaughter-houses or the slaughter of animals, so as to avoid, as far as possible, unnecessary pain or suffering in the pre-slaughter stages, whether physical or mental, can be eliminated, and where necessary, animals should be provided with as much be killed in a humane manner;

(f) to take all such steps as the Board may consider appropriate to ensure that unwanted animals are destroyed by the local authorities, whenever it becomes necessary to do so, either immediately or after they have become unconscious due to pain or suffering;
(g) to encourage by means of financial assistance or other grants, the construction or establishment of pinjrapoles, rescue homes, animal shelters, sanctuaries and other similar places where animals and birds can find shelter when they become old and useless or when they are in need of protection;
(h) to co-operate with and co-ordinate the activities of associations or bodies established for the purpose of preventing unnecessary pain or suffering to animals or for the protection of animals and birds;
(i) To provide financial and other assistance to animal welfare organisations working in any local area or to encourage the formation of animal welfare organisations in any local area, which shall function under the general supervision and guidance of the Board;
(j) to advise the Government on matters relating to the medical care and attention provided in animal hospitals and to grant financial and other assistance to animal hospitals whenever the Board considers it necessary to do so;
(k) to provide education regarding the humane treatment of animals and to encourage the formation of public opinion against the causing of unnecessary pain or suffering to animals and to promote animal welfare through lectures, books, posters, film exhibitions etc;
(l) To advise the Government on any matter relating to animal welfare or the prevention of unnecessary pain or suffering to animals.
Power of Board to make regulations.-The Board may, subject to the previous approval of the Central Government, make such regulations as it may deem fit for the administration of its affairs and the performance of its functions.
Question No. 6 - Explain the powers of the Central Government to protect and enhance the environment under the Environment (Protection) Act, 1986.
Answer- Powers of the Central Government to take measures for the protection and improvement of the environment-
Section 3 empowers the Central Government to take all measures it considers necessary or expedient to protect and improve the quality of the environment and to prevent, control and abate environmental pollution. Some of these measures are as follows-
(1) To coordinate actions between State Governments, authorities and other authorities.
(2) Planning and implementing nationwide programmes.
(3) To set standards for the quality of various aspects of the environment.

(4) To set standards for emission or discharge of pollutants.
(5) Restricting the operation of certain industries, processes or operations in specified areas.
(6) To lay down procedures and safety measures for prevention of accidents due to pollution and to take remedial measures.
(7) To establish procedures and safety measures for the handling of hazardous substances.
(8) Examine manufacturing processes, materials and substances that are capable of causing pollution.
(9) To conduct and sponsor investigations and research on pollution-related issues.
(10) Inspection of premises, plant, equipment, machinery, manufacturing or other processes, materials or substances.
(11) To establish or recognize environmental laboratories and institutions.
(12) Collect and disseminate information on pollution related matters.
(13) To prepare codes, manuals or guidelines relating to the prevention, control and abatement of environmental pollution.
(14) Such other matters as the Government may consider necessary or expedient.
The Central Government is also powered to constitute such authority(s) for the purpose of exercising and performing such powers and functions as the Government may assign to it.
Question No. 7 - Constitution, powers and functions of the Central Board under **Water Pollution Prevention and Control Act, 1974 Discuss the functions.**
Answer- The functions of the Central Board, State Boards and PCBs are all covered by the Water (Prevention and Control of Pollution) Act, 1974. The Central Board, also known as the Central Pollution Control Board, was established by the Central Government by **Section 3** of the Water (Prevention and Control of Pollution) Act.

The Central Board should be viewed as a perpetual succession body corporate having power to acquire, maintain and dispose of all water. Under **Section 3(3)** of the Water (Prevention and Control of Pollution) Act, 1974, contracts can be entered into with any person or party. In the name of the Central Board, they can sue or receive compensation.

Central Board- Central Pollution Control Board

Constitution and Structure (Section 3)- The Central Government is empowered to appoint or establish a Central Board called the Central Pollution Control Board by notification in the Official Gazette. As far as the composition of the Board is concerned, the Central Board should consist of the following members-
(1) A Chairperson who has knowledge or practical experience in dealing with matters relating to environmental protection the Chairman shall be appointed only by the Central Government.

(2) Not more than 5 officers representing the Central Government.
(3) Not more than five members shall be nominated by the Central Government from among the members of the State Board.
(4) Not more than three members shall be appointed by the Central Government to represent agriculture, fisheries, trade or any other interest as that Government may deem fit.
(5) 2 persons to represent companies or corporations owned, controlled or owned by the Central Government.
(6) A full-time Member Secretary who has full knowledge, experience and qualifications in the scientific management and prevention of environmental pollution.

Functions of the Central Board (Section 16) –

(1) To advise the Central Government on any matter relating to the prevention and control of water pollution.
(2) To coordinate the activities of the State Boards and resolve disputes between them.
(3) Provide technical assistance and guidance to State Boards and conduct and sponsor investigations and research relating to water pollution problems and the prevention, control, or abatement of water pollution.
(4) To plan and conduct training of persons engaged or to be engaged for the prevention, control or abatement of water pollution, on such terms and conditions as may be specified by the Central Board.
(5) Organise a comprehensive programme through the mass media on prevention and control of water pollution.

Powers of the Central Pollution Control Board- The Water (Prevention and Control of Pollution) Act of 1974 and the Air (Prevention and Control of Pollution) Act of 1981 both established the Central Pollution Control Board, which is a statutory body. The main objective of the Central Pollution Control Board is to promote and enforce environmental laws and regulations to prevent and manage pollution in the country. Its powers and duties are as follows-

(1) Section 18 of the Water (Prevention and Control of Pollution) Act empowers the Central Pollution Control Board to give directions to State Pollution Control Boards.
(2) The Central PCB has the power to perform any of the duties of a State PCB if any of its directions are not complied with.
(3) **Section 33A** of the Water (Prevention and Control of Pollution) Act empowers the Central Pollution Control Board to issue directions prohibiting, closing or regulating any activity, industry, and process or imposing restriction on the supply of energy, water or any other service.

There have been many cases in which environmental issues related to CF have been brought before the courts. Here are some examples of CF and an explanation of their importance.

In **M.C. Mehta vs Union of India**, the Supreme Court ruled that the financial capacity of the turnery is not a relevant factor compelling them to install a basic treatment plant. The State Pollution Control Board will not allow an industry to continue operating if it cannot build a basic treatment plant.

According to the judgment in **Narula Dyeing & Printing Works vs Union of India**, a consent order issued by the State PCB as per **Section 25(2)** of the Water (Prevention and Control of Pollution Act) does not permit an industrial unit to discharge trade effluents into any water body. The unit must comply with the conditions mentioned in the consent order and install a wastewater treatment plant within the time limit specified in the consent order.

Based on public complaint, the State PCB refused to grant permission to continue the factory in a populated area in the case of **Mahaveer Soap and Godakhu Factory vs Union of India**. It was decided that there was a valid justification for refusing permission. The decision of the Court did not allow the State PCB to refuse permission for any reason did not replace the decision of.

According to the judgment in TN **Godavarman Tirumalpad vs Union of India**, a state PCB gradually regulates multiple pollution sources. The court has no jurisdiction to tell the government which action should be taken first.

In **Andhra Pradesh Pollution Control Board vs M.V. Naidu**, the Supreme Court ruled that as per **Section 25** of the Water (Prevention and Control of Pollution) Act, even newly established companies are prevented from causing pollution while they are still being set up. Therefore, approval from the State Pollution Control Board must be obtained before starting the venture.

In **Mahabir Soap and Godakhu Factory v. Union of India**, the State PCB refused to grant permission to continue the industry on the ground that the factory was located in a populated area and there was no public information about it The complaint was filed. It was decided that the State PCB's justifications were consistent with the goal of the Water (Prevention and Control of Pollution) Act. Subject to further ruling by the Court, the State PCB may refuse.

Question No. 8- Explain the provisions regarding prohibition of hunting of wild animals under Wildlife (Protection) Act, 1972. Also mention the decided cases.

Answer - Ban on hunting- Hunting has spread all over the world and to control it, it is necessary to ban hunting. The government has also made laws to regulate hunting activities and to regulate or ban the trade of animals and their parts.

According to **Section 9** of the Wildlife (Protection) Act, 1972, the ban on hunting is explained as follows: “No person shall hunt any wild animal specified in **Schedule I, II, III** and **IV**, except as provided in **Sections 11** and **12** of the Wildlife Act.” After independence, the government prohibited hunting under the

Wildlife (Protection) Act, 1972, except for certain purposes defined in Sections 11 and 12 of the Wildlife (Protection) Act, 1972.

If we look at the impact of the ban on hunting, according to a study, it has been found that the ban on wildlife hunting by the Botswana government has reduced the income and livelihood of the rural people, due to which they have suffered a lot.

Hunting wild animals is definitely an illegal act and anyone found doing so will be booked under the provisions of the law as per the various Acts mentioned above. If we look at the provisions and sections of the Wildlife (Protection) Act, 1972, **Section 11** of the same Act deals with certain cases in which hunting of wild animals is permitted. **Section 11** of the Wildlife (Protection) Act states that, notwithstanding anything contained in any other law for the time being in force and subject to the provision of **Chapter IV**.

If the Chief Wildlife Warden is satisfied that any wild animal specified in **Schedule (I)** is dangerous to human life or is too sick to be saved, he may, by order in writing and for reasons to be recorded, permit any person to hunt such animal.

If the Chief Wildlife Warden or the authorised officer is satisfied that any wild animal specified in **Schedule (II)** is dangerous to human life or any property, he may, by order in writing and for the reasons to be recorded, permit any person to hunt any such animal.

Killing or harming any wild animal in self-defence or in defence of another shall not be deemed to be an offence under the Wildlife (Protection) Act, 1972.

These are exceptions given in **Section 11** of the Wildlife (Protection) Act, 1972, under which any person will be allowed to hunt wild animal.

The whole act of killing an animal must be done as per the provisions mentioned and if it is not as per the provisions mentioned then that person will be booked and punished under the said provisions.

Granting a hunting permit for special purposes simply means that a person can hunt without being held liable under the provisions of law that regulate the hunting of animals only under special circumstances or for special purposes.

According to **Section 12** of the Wildlife (Protection) Act, 1972, Notwithstanding anything contained elsewhere in the Wildlife (Protection) Act, 1972, it is lawful for the Warden to grant, by an order in writing stating the reasons thereof, to any person, on payment of such fee as may be prescribed, a permit which shall entitle the holder of such permit to hunt, subject to such conditions as may be specified, for the following purposes-

(1) Education.
(2) Scientific research.
(3) Scientific management.

Analyzing the **section 12** of Wildlife Protection Act, 1972, we come to know that hunting is permitted for some specific purposes and all these specific purposes are very necessary for the development of any country and above mentioned three purposes are mentioned.

Education is considered to be the most important element of society. Education is necessary for everyone and animal body parts are needed for research and practical studies, due to which hunting is allowed in this area.

Scientific research is something that needs to be developed in this field to compete globally and never depend on other countries for scientific research on any particular thing or things there should be no work. And, the last is scientific management. Before explaining why it is necessary, one must first understand what scientific management is. 'Scientific Management' is a management that analyzes and smoothens the workflow in any place or organization. Scientific management is considered as an element and an exception that is allowed to be hunted for so that it ensures a smooth workflow, brings efficiency, effectiveness and productivity.

In the case of **State of Bihar vs Murad Ali Khan, 1989**, it was held that hunting is an offence under **Section 51(1)** of the Wildlife Protection Act and ruled that hunting of wild animals should be permitted in certain cases and gave an example of self-defence that under no circumstances, killing or causing any harm to a wild animal to save oneself from that animal would fall under the provision of Wildlife Protection Act.

In the case of **Navin Chandra Gogoi v. State, 1958**, the Magistrate convicted the person under **Section 429** of the Indian Penal Code and as per the provisions of the Wild Birds and Animals Protection Act, 1912. But, the petitioner filed an appeal against this judgment and the Sessions Judge upheld the decision of the Magistrate and argued that the conviction under **Section 429** of IPC was not valid as **Section 429** of IPC states that killing of domestic animal would make the petitioner liable under the provision and killing of rhinoceros is not in any way the killing of domestic animal and hence the conviction under the provision of **Section 429** of IPC is void.

Question No. 9-What do you understand by conservation forest? What efforts have been made by the Indian Forest Act, 1927 to conserve forests? Explain.

Answer- Section 29 states that the State Government may, by notification in the Official Gazette, declare that the provisions of this Chapter shall apply to any forest land which is not included in a reserved forest but is the property of the Government or over which the Government has a proprietary right, or to the whole or any part of the forest produce to which the Government is entitled.

Forest land included in any such notification shall be called a protected forest. No such notification shall be issued until the nature and extent of the rights of the Government or of private persons in or over the land or wasteland

included in the notification have been ascertained and recorded in the survey or settlement record or in such other manner as the State Government considers sufficient. The above recording shall be presumed to be correct unless the contrary is proved.

Provided that if the State Government considers that such investigation and recording is necessary in respect of any forest land or wasteland, but it will take so much time that in the meantime the rights of the State Government will be endangered, then the State Government may declare such land as protected forest pending such investigation and recording, but the existing rights of any persons or communities will not be reduced or affected thereby.

Indian Forest Act, 1927- The Indian Forest Act was a revised law based on the previous Indian Forest Acts enacted during the British rule. Just like the preamble of the Constitution which sets out the objectives, every law has its own preamble which lists the objectives and guidelines of that particular act. The preamble of the Indian Forest Act demands the following-

(1) Strengthening the law relating to forests,

(2) Regulation of forest produce and transit, and

(3) Imposing duties on timber and other forest produce.

It also includes the procedure to be followed in cases of declaring an area as reserved, protected or village forest. The Act is divided into **13 chapters** having a total of 86 sections ranging from definition of various forests to penalties to be imposed for violation of the provisions of the Act. In the case of definition of the term 'forest', its scope is wide as it includes private land, grazing land, cultivable land etc. and hence the Supreme Court has not yet given any specific interpretation and hence the Act is silent on the definition of forest or forest land.

Section 2 of the Act which is the interpretation section defines various terms required in the field of forests ranging from all animals including cattle, forest officers who are put in charge by the state government, forest produce which includes timber, charcoal, wood oil etc. It also has a separate definition of river which includes any stream, canal or other channel. Further, the Act has classified forests into 3 types: reserved forests, protected forests and village forests.

Reserved Forests- Reserved forests are described in **Chapter II** of the Act from **Sections 3** to **27**. In simple terms, any forest land or wasteland that is owned by the government is a reserved forest. These forests are restricted because the government has proprietary rights over the land. Use of reserved forests is prohibited for local people when Unless they have the permission of the government. An area of land is declared a reserved forest when the government issues a preliminary notification under section 4 of the Act that such land is to be treated as reserved forest and the Forest Settlement Officer disposes of it by accepting or rejecting all rights.

Section 26 of the IFA, 1927 prohibits several activities in the forest including grazing, felling of trees, burning, quarrying, hunting, etc. The penalty for violation of the provisions of **Section 26** is imprisonment up to two years or fine up to Rs 20,000 but not less than Rs 5,000.

Village Forests - As per the sequence of sections under the Act, village forests are dealt with under **Section 28** in **Chapter II** of the Act. When the government allots a reserved forest or any other land to a village community for their use, that piece of land is classified as village forest land. As per the Act, the State Government makes rules to regulate the management of these forests.

In some cases the terms Gram Van and Van Gram are used interchangeably, but ultimately their meanings are different. While Gram Van is a legal category under the Indian Forest Act, Van Gram is merely an administrative category. Although the latter is recognised by the Forest Department, such villages cannot get revenue benefits as they are not technically under revenue departments. Generally, the land given to Gram Vans is included in the Village Grazing Reserve (VGR).

Procedure for Settlement of Rights- This Act was primarily incorporated to distinguish between types of forests, protect their use and regulate forest produce. Classification of forests involves the rights of the government and determines how a forest or wasteland becomes a reserved or protected forest.

Under this process, the forest settlement officer has to consider the claims made by the local residents regarding the use of the land, and later either accept or transfer or discontinue the practice based on his discretion. The government has to first notify that the particular piece of land will be marked as a reserved or protected forest as per Section 4 of the Act.

According to **Section 6** of the Act, the FSO may call for examination of any person who he thinks has knowledge of the facts, including the evidence of any person who may be acquainted with them. No new right can arise over notified land after the issue of such a notification, and those claiming any pre-existing right have at least three months to assert such right and make a case for compensation.

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

Answer- (1) Central Zoo Authority- Zoos play a vital role in the conservation of wild animals. **Sections 38A** to **38B** establish the Central Zoo Authority in India with the objective of conserving biodiversity, particularly animals, in accordance with the National Zoo Policy, 1998 and the National Zoo Rules, 1992 (as amended in 2009).

Under Section 38A - Section 38A allows the Central Government to establish a Central Zoo Authority-

(1) It shall have a Chairman, a Member Secretary and ten other persons as its members.

(2) These members shall be appointed by the Central Government.

Under Section 38B (1) The Chairperson and ten other members shall hold office for a term of three years and may send their resignation to the Central Government under section 38B.

(2) The Central Government may remove the Chairperson and other Members from office if they become insolvent, are convicted, are declared of unsound mind or refuse to act.

Functions and procedure of Zoo Authority- (1) The Authority is entrusted with the functions of recognising and derecognising zoos under section 38C and to evaluate the functioning of zoos.

(2) Recognition of a zoo is granted subject to the conditions specified under **section 38H**.

(3) It will also have to ensure coordination of training of zoo personnel in India and outside.

(4) The Authority is required to lay down minimum standards for the housing, maintenance and veterinary care of animals in zoos.

(5) The Authority has power to regulate its own procedure under section 38D.

(2) Legal control of noise pollution - Statutory provisions relating to noise pollution in India there are various statutory provisions related to noise pollution in India. Such provisions are spread across various laws and amendments and the various statutory provisions are as follows-

1. Constitution of India- Article 21 of the Indian Constitution gives the right to life to the citizens of India. It has been clarified through various decisions of the Supreme Court that the right to life does not only mean the existence or survival of a person. The scope of **Article 21** is very wide and it is said that it ensures the right of a person to live with dignity or to live a better life. So, if a person faces problems due to noise pollution and it disturbs his peace and comfort then it means that noise pollution is violating the right to life of that person.

2. Code of Criminal Procedure- Section 133 of the Code of Criminal Procedure empowers the Executive Magistrate, District Magistrate or Sub-Divisional Magistrate to order conditional removal of an object causing a nuisance. This provision can therefore be used in case of nuisance caused by noise. So if the Executive Magistrate, District Magistrate or Sub-Divisional Magistrate receives a report from a police officer or any other source that loud noises are causing unlawful obstruction or nuisance and the source of such loud noises should be removed from public places which are lawfully used by the public, then the Executive Magistrate, District Magistrate or Sub-Divisional Magistrate may order the removal of such nuisance within a specified time. If the Executive Magistrate, District Magistrate or Sub-Divisional Magistrate does not take the necessary action, in that case, this section can be called into question in the civil court.

3. Indian Penal Code- Chapter 14 of the Indian Penal Code deals with certain crimes. Such crimes are those acts which affect public health or safety. **Section 268, Section 287, Section 288, Section 290, Section 291** and **Section 294** deals with noise pollution. **Section 268** talks about public nuisance and any person who is guilty of any public nuisance is if that person does any act which may cause injury to any person, which may cause annoyance to the general public or which may cause any general nuisance. So causing noise pollution also comes under the provisions of **section 268. Section 287** talks about irresponsible use of any machinery. Any person who handles any machinery in an irresponsible manner which later causes injury or damage to anyone. So if someone is causing noise pollution from a machine then in that case that person can be imprisoned for up to 6 months or fined Rs 1000. **Section 288** states that when a building is in the process of construction or repair, in that case if a person negligently causes injury to someone then that person can be punished with 6 months imprisonment and a fine of Rs 1000. Now during the construction or repair of buildings, there is a lot of noise pollution. So such noise pollution can easily cause harm to a person or the general public and if something like this happens then the offender is punished under **Section 288** of the Indian Penal Code. **Section 290** talks about any other form of public nuisance which is not mentioned under the Indian Penal Code. So basically if there is any noise-related incident which is not mentioned under the code and such noise-related incident is creating some kind of public nuisance, then in that case, the offender is fined Rs 200. **Section 291** states that if a person continues to cause a public nuisance even though he has been given an injunction by the court and such injunction has already ordered that person not to repeat such acts, then in such case that person can be punished with imprisonment of 6 months or he can be fined. **Section 294** talks about obscene songs and it further states that if a person plays, recites or sings such obscene songs then he is causing a nuisance. Such an offender is punished with 3 months imprisonment or fine or both.

4. Law of Tort- Noise pollution can be included in the crime of nuisance under the tort law. Any person who is facing any problem due to such noise pollution can file a civil suit to claim damages. As long as the noise pollution interferes with the use of land by the person and the person can prove such damages, then that person can file a suit related to such noise pollution.

5. Motor Vehicles Act- The Motor Vehicles Act provides guidelines regarding the use of horns in vehicles. Under this Act, the use of horns that are too loud and cause nuisance is not permitted.

6. Noise Pollution Control Rules, 2000 under Environment Protection Act, 1996 – To combat and control noise pollution, the Government of India amended the Noise Pollution Control Rules in the year 2000 and made it a part of the Environment Protection Act, 1996.

Under this rule, the government classified industrial, commercial and residential areas and specified noise standards for such classified areas. This rule also states that a radius of 100 metres around any hospital, school, university and court premises should be declared as a silent zone The noise standard for day time is 75 dB in industrial areas, 65 dB in commercial areas, 55 dB in residential areas and 50 dB for quiet zone. The noise standard for night time is 70 dB in industrial areas, 55 dB in commercial areas, 45 dB in residential areas and 40 dB for quiet zone. Also, this rule states that any loudspeaker can be used only after permission by the authority and such loudspeaker cannot be used between 10 pm to 6 am and any person violating these rules becomes an offender and such offender is liable to punishment and fine this rule is applicable all over India.

(3) Stockholm - The Stockholm Declaration of Principles - lays out in great detail the 26 principles or Magna Carta on the human environment. For better understanding, the principles have been grouped based on their applicability and enforceability. They are as follows:

Human-Cantered (Principles 1 and 15) - Principle 1- Rights and Responsibilities to Protect the Environment Human beings have the right to use and enjoy nature. The right to enjoy nature is not absolute; it is co-extensive with the duty to protect it. Article 21 of the Constitution also protects the fundamental right to a healthy environment. This principle also explicitly prohibits discriminatory laws.

Principle 15- Human Settlement and Urbanisation Planned settlements and urbanisation are essential. They minimise adverse effects on the environment. The aim is to ensure maximum benefit for all through planning. All discriminatory schemes are also prohibited.

Sustainable Development (Principles 2, 3, 4, 5, 13 and 14)- Principle 2 Duty to conserve natural resources Natural resources are limited. We must use natural resources carefully. Conservation of resources depends on effective planning and management.

Principle 3 - Duty to Conserve Renewable Resources Although renewable resources are never exhaustible, their conservation is essential for their quality.

Principle 4- Wildlife Conservation Many factors are responsible for endangering wildlife. Humans have a special responsibility to protect wildlife. Incorporating wildlife conservation into economic planning leads to sustainable development.

Principle 5- Duty to conserve non-renewable resources Non-renewable resources are exhaustible. They are valuable resources. It is necessary to exercise caution and vigilance to prevent them from getting exhausted

Principle 13 - Rational Management of Resources States should adopt rational methods to manage resources and improve the environment. An integrated and coordinated approach is preferable.

Principle 14 - Rational Planning Conflicts between development and conservation can be resolved with rational planning. Development and conservation should go hand in hand.

Reflection on the status of customary international law (Principle 21) - States have the absolute right to use natural resources in accordance with their policies. However, their policies must be governed by the principles of international law.

Preventive action (Principles 6,7,8 and 18)- Principle 6 Management of pollution is harmful to the environment. Discharge of large amounts of toxic substances and other substances is harmful to the ecosystem. Citizens

Both the US and the US should play an active role in reducing the dumping of harmful substances. Principle 7- Managing marine pollution States should take measures to safeguard human health, marine life and the legitimate use of the seas.

Marine pollution should be reduced by taking necessary steps to prevent the release of substances hazardous to the environment. Principle 8- Social and economic development Social and economic development for a better living and working environment.

Improvement of the conditions is necessary. Improvements should not affect the environment in any way. Principle 18- Application of Science and technology are indispensable in today's life. They are used in almost every industry. Science and technology are also useful for the protection of the environment. It is useful for identifying and controlling environmental risks. They are useful for finding solutions to environmental issues.

Compensation to victims (Principle 22)- States should come together to extend the scope of international law to determine liability for those who harm the environment. States should also come together to compensate victims of environmental pollution or damage.

Cooperation (Principles 24 and 25)- Principle 24 - Cooperation with States Although each State has exclusive jurisdiction to legislate on internal matters, international cooperation is necessary for the overall improvement of the environment. States should recognize that environmental problems affect all States equally States can control, prevent and reduce environmental risks through multilateral and bilateral agreements.

Principle 25- Coordination with Nations coordination between states is very important as they can work together to improve the existing situation. States can coordinate existing environmental plans.

(4) Land pollution and its effects - Land pollution can have many negative effects on the environment, animals and humans. Here are some of the effects:

Contaminated drinking water - Toxins present in the soil can leach into groundwater, which is the primary source of drinking water for many communities.

Loss of fertile land - Polluted soil can make it difficult to produce food, which can decrease the availability of food and adversely affect the lives of animals and humans.

Climate change – Land pollution can contribute to climate change, which can cause erratic rainfall, flash floods and other problems.

Habitat destruction - Land pollution can lead to species extinction and habitat destruction, forcing animals to flee their homes to survive.

Increase in wildfires – Polluted areas can become very dry, increasing the risk of wildfires.

Increase in air pollution – Burning of waste increases air pollution.

Health problems – Soil pollution can cause a variety of health problems in humans, including cholera, diarrhoea, cancer, heart disease, respiratory disorders, birth defects, skin defects and chronic kidney disease.

Land pollution is caused by human activities such as waste disposal, industrial activity, mining and agriculture.

(5) Rio Declaration – A conference was held in Rio de Janeiro in the year 1992. This conference lasted from 3 June to 14 June and some principles were laid down in the conference on which Agenda 21, Rio 5, Rio 10, Culture 21, Rio 20, Sustainable Development Summit and Agenda 2030 are based and those principles are as follows-

(1) Human beings should be concerned about sustainable development and every human being deserves a better life.

States have the right to exploit their resources and it is the responsibility of the States to ensure that their exploitation does not harm the environment of any other State.

(2) Environmental protection will be included in the new policy of any country.

(3) Least developed countries and poor countries will be given necessary assistance and support in times of need.

(4) There shall be international cooperation among States for the protection of the environment and the sustainable development of resources.0

(5) To achieve such sustainable development, the State must eliminate all unnecessary practices that harm our environment.

LL.B.-6th Sem. Paper-III 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.

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.

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:

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
(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.

LL.B.-6th Sem. Paper-IV 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.

LL.B.-6th Sem. Paper-V 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.

LL.B.-6th Sem. Paper-VI Women and the Law

Question No. 1- Describe the main provisions of the Convention on the Prevention of All Forms of Discrimination against Women, 1979 do it.

Answer- As mentioned in the **articles 55** and **56** of the Charter of United Nations, one of the objectives of United Nations is to promote universal human rights and fundamental freedoms without any discrimination on the basis of sex. Universal Declaration of Human Rights also declares that all rights and fundamental freedoms mentioned in every declaration shall be realized without any discrimination on the basis of sex. Discrimination against women is against human dignity and welfare of the society and hinders the full realization of women's capabilities or potential power. On 7 November 1967, the General Assembly passed the Declaration on the Elimination of Discrimination against Women.

On 18 December 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women, the main provisions of which are as follows-

Article 1 of the Convention defines the term discrimination against women.

Part one

Article 1. - For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction on the basis of sex which has the effect or purpose to impair or nullify the recognition, enjoyment or exercise by women, regardless of their marital status, on the basis of equality with men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2. States Parties condemn all forms of discrimination against women, agree to pursue a policy of eliminating discrimination against women by all appropriate means and without delay and, for this purpose, undertake the following obligations-

(1) To incorporate the principle of equality of men and women into their national constitutions or other appropriate laws, if not already incorporated therein, and to ensure the practical implementation of this principle through legislation and other appropriate means;

(2) Adopt appropriate legislative and other measures, including bans where appropriate, to prohibit all forms of discrimination against women;

(3) establish legal protection of women’s rights on an equal basis with men and ensure effective protection of women against any acts of discrimination through the competent national tribunals and other public institutions;

(4) Refrain from engaging in any act or practice that discriminates against women and ensure that public authorities and institutions act in accordance with this obligation;

(5) take all appropriate measures, including legislation, to eliminate discrimination against women by any person, organization or enterprise;

(6) Take all appropriate measures, including legislation, to amend or abolish existing laws, regulations, and customs and practices that discriminates against women;
(7) Repeal all national penal provisions that discriminate against women.
Article 3- States Parties shall take all appropriate measures, including legislation, to ensure the full development and advancement of women in all fields, in particular in the political, social, economic and cultural fields, in order to guarantee them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.
Article 4- 1. The adoption by States Parties of temporary special measures aimed at promoting substantive equality between men and women shall not constitute discrimination as defined in the present Convention, but shall not result in the maintenance of unequal or different standards in any way; these measures shall cease when the objectives of equality of opportunity and treatment have been achieved.
2. The adoption by States Parties of special measures aimed at the protection of maternity, including those contained in the present Convention, shall not be deemed to be discriminatory.
Article 5 - States Parties shall take all appropriate measures:
(a) To modify social and cultural patterns of behaviour of men and women, so as to eliminate prejudices and customary and all other practices which are based on ideas of inferiority or superiority of any sex or on stereotyped roles for men and women;
(b) To ensure that family education includes an appropriate understanding of motherhood as a social function and recognition of the common responsibility of men and women in the upbringing and development of their children, recognizing that the interest of the child is the primary consideration in all cases.
Article 6- State Parties shall take all appropriate measures, including legislation, to prevent all forms of trafficking in women and the exploitation of women in prostitution.
Part II
Article 7. States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, ensure the right of women on equal terms with men-
(a) To vote in all elections and public referendums and to be eligible for election to all publicly elected bodies;
(b) To participate in the formulation and implementation of public policy and to hold public office and perform all public functions at all levels of government;
(c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.
Article 8. States Parties shall take all appropriate measures to ensure that women have the opportunity, on an equal footing with men and without

discrimination, to represent their governments at the international level and to participate in the work of international organisations.

Article 9- 1. States Parties shall grant women the same rights as men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to a foreigner nor a change of nationality by the husband during the marriage shall automatically change the wife's nationality, render her stateless or impose the husband's nationality on her.

2. States Parties shall grant women the same rights as men with regard to the nationality of their children.

Part III

Articles 10, 11, 12, 13- State parties resolve to eliminate all discrimination against women we shall take all measures to ensure that women have equal opportunities in education, employment,

Article 14 - States Parties shall take into account the special problems faced by rural women and the important roles they play in the economic survival of their families, including through their work in the non-monetised sectors of the economy, and shall take all appropriate measures to implement the provisions of the present Convention on women in rural areas.

Part IV-

Article 15 - States Parties shall provide women with equality with men before the law.

Article 16-a. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, ensure on the basis of equality of men and women

(1) Equal right to enter into marriage;

(2) Equal right to freely choose a life partner and to marry only with their free and full consent;

(3) Equal rights and responsibilities during marriage and upon its dissolution;

(4) Equal rights and responsibilities of parents in matters relating to children, regardless of their marital status. In all cases the interests of the children shall be paramount;

(5) Equal right to decide freely and responsibly about the number and spacing of their children and to have access to information, education and means to exercise these rights;

(6) Equal rights and responsibilities in connection with guardianship, ward ship, trusteeship and adoption of children, or similar institutions, where these concepts exist in national law. In all cases the interests of the children shall be paramount;

(7) Equal personal rights of spouses, including the right to choose a family name, profession and vocation;

(8) Equal rights of both spouses with regard to the ownership, acquisition, management, administration, enjoyment and disposal of property, whether free or for a valuable purpose.

b. The engagement and marriage of a child shall have no legal effect, and all necessary actions shall be taken, including enacting legislation specifying a minimum age for marriage and making registration of marriages in the official registry compulsory.

Article 17- 1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter called the Committee), consisting of eighteen members at the time of entry into force of the Convention and, after ratification or accession to the Convention by the thirty-fifth State Party, twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, with due consideration of equitable geographical distribution and representation of the different forms of civilization as well as the major legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by Member States. Each Member State may nominate one person from among its nationals.

3. Preliminary elections shall be held six months after the date of entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address to States Parties a letter inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons so nominated, indicating the names of the States which have nominated them, and shall publish it in the form of a copy of the list of the States.

4. The members of the Committee shall be elected at a meeting of Member States convened by the Secretary-General at United Nations Headquarters. At that meeting, for which the presence of two thirds of the Member States shall constitute a quorum, the persons elected to the Committee shall be those nominees who receive the largest number of votes and an absolute majority of the votes of the representatives of Member States present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the term of office of nine members elected at the first election shall expire at the end of two years; the names of these nine members shall be chosen by lottery by the Chairman of the Committee immediately following the first election.

6. The election of five additional members of the Committee shall take place after the thirty-fifth ratification or accession, in accordance with the provisions of paragraphs 2, 3 and 4 of this Article. The term of office of two of the additional

members elected on this occasion shall expire at the end of two years, the names of these two members being chosen by lottery by the Chairman of the Committee.
7. To fill casual vacancies, the State Party whose expert has ceased to serve as a member of the Committee shall, subject to the approval of the Committee, appoint another expert from among its nationals.
8. The members of the Committee shall, with the approval of the General Assembly, receive remuneration from the resources of the United Nations on such terms and conditions as the General Assembly may determine, taking into account the importance of the responsibilities of the Committee.
9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

a. States Parties may submit to the Secretary-General of the United Nations, legislative, judicial, administrative or other measures for consideration by the Committee.

Undertake to submit a report on the measures they have adopted to give effect to the provisions of the present Convention and on progress made in this regard
(1) Within one year of its entry into force for the State concerned;
(2) At least every four years thereafter and further whenever the Committee so requests.
b. The report may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19- 1. The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20- 1. The Committee shall meet annually for a period not exceeding two weeks to consider reports submitted in accordance with article 18 of the present Convention.
2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place determined by the Committee. (Amendment subject to ratification)

Article 21- 1. The Committee shall report annually on its activities to the United Nations General Assembly through the Economic and Social Council and may make suggestions and general recommendations based on its examination of reports and information received from States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with the comments, if any, of States Parties.
2. The United Nations Secretary-General shall transmit the report of the Committee to the Commission on the Status of Women for its information.

Article 22. The specialized agencies shall be entitled to be represented at discussions on the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee invites the specialized

agencies to submit reports on the implementation of the Convention in the areas falling within the scope of their activities can do.

Part six

Article 23-Nothing in the present Convention shall affect any provision which may be more favourable to the realisation of equality between men and women which may be contained in:

(a) the law of a State Party;

(b) any other international convention, treaty or agreement in force in that State.

Article 24-States Parties undertake to take all necessary measures at the national level aimed at the full realisation of the rights recognised in the present Convention.

Question No. 2- Discuss the social and legal status of women in ancient India.

Answer- in Hindu society, the respect and honour of women has been ideal and dignified since ancient times. Society has a natural loyalty and reverence towards them. Their contribution to the family and community has always been valued and respected and women have been considered all-powerful, rich and a symbol of knowledge, fame and wealth. Gradually, their importance increased so much that without them, a man alone was considered incomplete. But the status of women keeps changing according to the times. In the Vedic era, their status was very advanced and refined.

She was given equal rights in every sphere of life. She has made a great contribution in education, religion, personal and social development.

She was not any less than men. She used to help her husband in his work. Thus, she was a permanent and proud part of the society like a man. She was well-mannered. She faithfully performed her family and social duties and along with her husband, she used to complete all the household tasks. In fact, both men and women are like two pairs of chariots of sacrifice. In this era, the wife was considered to be the symbol. The relationship between the house and the wife was considered to be interdependent and the idea of a house without a wife was considered futile.

In the post Vedic era, women were respected. In the field of education, their status was equal to that of men. Special rituals were organized to get an educated girl. Only those men and women of this era who were educated were considered eligible for marriage. There were women who remained engaged in studies throughout their lives and were called Brahmavadani. But gradually, the complexity of Vedic rituals increased in this era and the pomposity in the name of purity and sanctity increased in the Yagya works, as a result of which efforts were made to keep women away from Yagya works and they were not considered suitable for reciting Vedic mantras. The reason for this seems to be that by this era, inter-caste marriage had become prevalent. In which there were women of other classes who had no acquaintance with Vedic literature and they used to

pronounce Vedic mantras incorrectly. Therefore, to keep the Vedic literature pure and correct, a rule was made to keep women away, this is where the slavery of women begins.

In the period of Sutras and Smritis, the condition of women became even more pitiable. Various types of restrictions and charges were imposed on them. Restrictions were imposed on their political, social, religious, economic and personality statuses. They were directed to remain under the control of men from birth to death.

The daughter started being considered as a heritage which became a problem for the father or guardian. The son started being welcomed on the birth of the daughter and the son. The ceremonies of both were different. By the early medieval age, the daughter was considered as a form of power. Due to the influence of Shakti religion, she was given the form of Gauri and Bhavani, but even after understanding her form of power, the father continued to be burdened with the feeling of responsibility towards her.

By the time of the early medieval period, there were strict controls on her. In the name of protecting religion and society, such systems were made that made the condition of women more pitiable day by day. Thus, her personality remained confined within the circle of many restrictions.

Freedom of women- In Vedic times, women were as independent and free as they were not in any previous era. In all respects, they were equal to men. They freely participated in all the fields of knowledge, sacrifices, etc. There were many learned women in that era. They had written the verses of Rigveda. They were leading not only in the field of knowledge and scholarship but also in sacrifices. The sages who are counted in Brahmayagya include the names of learned women like Sulam, Gargi, etc. In the religious debate that was organized on the occasion of Janak Yagya, Gargi, by finding the question of Dukhha with her extraordinary logical and subtle thinking, made sage Yagyavalkya bite the dust. These examples show that in that era, women freely participated in all the works with men. There was no lack of respect and honour in them. In the post Vedic period itself, the condition of women started to deteriorate. Derogatory words started to be used for them. They were called untruthful and their freedom was restricted by depriving them of equal participation in sacrifices with men. In this way, many social and religious controls were imposed on them which later on became even more extensive.

Women's education- In the Vedic era, women's education was at its highest level. They were leading in the field of intelligence and knowledge. They had full right to perform yajnas and study Vedas. They were also proficient in philosophy and logic. They used to cooperate equally with their husbands in performing yajnas. Kaushalya performed yajna at the time of Ram's coronation as crown prince.

It is known from Mahabharata that Kunti, the mother of Pandavas, was well versed in Atharvaveda. This shows that women of that era were learned. Girls of that era followed celibacy and also got Upanayan Sanskar done. Manu has also mentioned the rules for girls. There were two classes of students of Vedic era, one was Sadhovdhu and Brahmavadini. Sadhovdhu were those students who used to study a little before marriage and Brahmavadini were those who used to debate after completing education and there were some women who used to remain engrossed in studies throughout their life and did not get married.

Right to property- In Hindu society, the right of women to property has been accepted and the special circumstances due to which she used to get her share in the property have also been analyzed. However, there are some details in the Vedic period which does not accept this right of hers, like- only that girl who did not have a brother was considered the heir to the father's property. But this is an exception. Usually she has had a share in the wealth. She is not considered any less than a son. Therefore, the right of women in the Vedic era was considered to be of very high importance The right to property was accepted. This system was prevalent in the society till the fourth century BC but in the second century BC many restrictions were imposed on women's education due to which their right to property was also damaged.

Since the Vedic era, a daughter has had a right to property in the presence of a son. The religious texts have also accepted this. Kautilya, while equating the daughter with a daughter, declared the daughter as the heir, even if she gets a smaller share. Vishnu and Narada have supported the daughter's share. A widow is also considered to have a right to property. After the death of the husband, the widow is usually the heir.

Behavior of society towards women- The behavior of Hindu society towards women became harsher day by day. From the post Vedic period, the distrust of men towards women and the feeling of irresponsibility increased. She was looked down upon. Some scholars have accused her of the vices of the world. It is said that if a person keeps counting the faults of a woman for a hundred years of his life, he will still die without caring about her faults. Thus, the attitude of society towards women was not good.

But it is clear from the Vedic literature that women were respected a lot during this period. They respected their elders in the family and their views were accepted by all the members of the family. They participated in all social and religious festivals along with their husbands.

Question No. 3 – Discuss the various provisions of the United Nations Convention against Discrimination against Women, 1979.

Answer- On 8 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981

after the twentieth country had ratified it. By the Convention's tenth anniversary in 1989, nearly one hundred nations had agreed to be bound by its provisions.

Among international human rights treaties, this Convention occupies an important place in bringing the female half of humanity to the centre of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The present document explains the meaning of equality and how it can be achieved. In doing so, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "widespread discrimination against women still exists" and emphasizes that such discrimination "violates the principles of equal rights and respect for human dignity". As defined in **Article 1**, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex… in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality, requiring States Parties to take all appropriate measures, including legislation, to ensure the full development and advancement of women, to guarantee them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men (**Article 3**).

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the status of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as the influence of cultural factors on gender relations.

The legal status of women receives the most attention. Concern over the basic rights to political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions are, therefore, restated in **Article 7** of the present document, under which women are guaranteed the rights to vote, hold public office and exercise public functions. This includes women's equal rights to represent their countries internationally (**Article 8).** The Convention on the Nationality of Married Women that was adopted in 1957 is integrated under **Article 9**, which grants women statehood irrespective of their marital status. Thus, the Convention draws attention to the fact that often women's legal status is linked to marriage, making them dependent on their husband's nationality, rather than in their own right. **Articles 10, 11** and **13**, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands have a special emphasis on the status of rural women,

Whose special struggles and important economic contributions, as noted in **Article 14**, require greater attention in policy planning? **Article 15** emphasizes women's full equality in civil and professional matters, demanding that all laws restricting women's legal capacity be abolished The instrument "shall be deemed null and void." Finally, in Article 16, the Convention returns to the issue of marriage and family relations, emphasising the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and control over property.

Convention on the Elimination of All Forms of Discrimination against Women-States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, the dignity and worth of the human person and the equal rights of men and women, Noting that the Universal Declaration of Human Rights reaffirms the principle of the inadmissibility of discrimination and declares that all human beings are born free and equal in dignity and rights and that each person is entitled to all the rights and freedoms set forth therein, without discrimination of any kind, including discrimination on the basis of sex, Noting that States parties to international treaties on human rights have the obligation to ensure the equal right of men and women to the enjoyment of all economic, social, cultural, civil and political rights, Taking note also of the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting the equality of the rights of men and women, Noting, however, that despite these various measures, widespread discrimination against women continues to persist; Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, hinders women from participating on equal terms with men in the political, social, economic and cultural life of their countries, impedes the development of prosperity of society and family, and makes more difficult the full development of women’s capacities in the service of their countries and humanity, he expressed concern that women in situations of poverty have the least access to food, health, education, training and employment opportunities, and other necessities. Convinced that the establishment of a new international economic order based on equity and justice will contribute significantly to the promotion of equality between men and women, Emphasizing that the elimination of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination, and interference in the internal affairs of States is essential for the full enjoyment of the rights of men and women, Affirming that the strengthening of international peace and security, the reduction of international tensions, mutual cooperation among all States, whatever their social and economic system, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in

relations between countries and the realization of the right to self-determination and independence of peoples under foreign and colonial domination and foreign occupation, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and consequently contribute to the realization of full equality between men and women, Being convinced that the full development of a country, the welfare of the world and the peace of the world require the equal rights of women with men in all fields, Considering the great contribution of women to the welfare of the family and the development of society, which has not yet been fully recognised, the social importance of motherhood and the role of both parents in the family and in the upbringing of children, and knowing that women's role in reproduction should not be a basis for discrimination but rather requires a sharing of responsibility between men and women and between the whole society for the upbringing of children, being aware that achieving full equality between men and women requires a change in the traditional role of men in society and the family, as well as in the role of women, being determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and to adopt for this purpose all measures necessary to eliminate such discrimination in all its forms and manifestations,

Question No. 4 - Discuss the Directive Principles of State Policy which assure advancement of the welfare of women.

Answer - The Directive Principles of State Policy are described in **Part 4** of the Indian Constitution. The Directive Principles contain those objectives and goals which the State has the most sacred duty to follow. That is, the ideal of establishing a 'welfare state' and socialist society, envisaged in the Preamble of the Constitution, can be achieved only when the government tries to implement the Directive Principles. Today we are citizens of a welfare state, whose duty is to increase the happiness and prosperity of the common people. For this purpose, some economic and social goals have been contained in the Directive Principles, which the States are required to follow.

The Directive Principles contain those ideals which every government will always keep in mind while formulating its policies and enacting laws. It contains those economic, social and administrative principles which are suited to the specific conditions of a country like India.

Dr. B.R. Ambedkarnagar has said that "These are the unique features of the Indian Constitution. The goal of a welfare state is inherent in it."

The Directive Principles of State Policy of the Indian Constitution, i.e. **Articles 36** to **51**, **Chapter 4** establish a welfare state. Welfare schemes for women along with all sectors have been talked about.

Under the Indian Constitution, under the Directive Principles of State Policy, women welfare schemes have been discussed in **Articles 39, 40, 42, 46, 47** etc., according to which **Article 39** gives the principle regarding achieving economic

justice, that is, **Article 39** specifically directs the state to conduct its policy in such a way so that-
(a) All citizens, both men and women, have the right to an adequate means of livelihood.
(b) The ownership and control of the material wealth of the community should be distributed in such a way as to best serve the collective interests. To fulfil the objectives under this clause, the state can nationalise the means of production.
(c) The economic system should function in such a way that wealth and means of production are not concentrated to the detriment of the general public.
(d) There should be equal pay for equal work for both men and women.
(e) The health and strength of workers and the tender age of children should not be misused and citizens should not be forced by economic necessity to take up employment which is not suited to their age or strength.
(c) Children should be provided opportunities and facilities for their healthy development in an environment of freedom and dignity. Children and minors should be protected from exploitation and moral and economic abandonment.
In pursuance of **Article 39 (d)**, Parliament has passed the Equal Remuneration Act, 1976. In the case of **Randhir Singh vs Union of India**, the Supreme Court has held that though equal pay for equal work is not a fundamental right under the Constitution, it is certainly a constitutional objective and if the State discriminates in this matter, the court can exercise its jurisdiction under **Article 32** to enforce it, i.e. the principle of pay for equal work applies to persons employed on daily wages as well. If they do the same work as permanent employees, they are also entitled to get equal pay.

Article 40 of the Constitution enshrines one of the following- Directive Principles of State Policy It provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The 73rd and 74th Constitutional Amendments provide for 33 per cent reservation for women in Panchayati Raj institutions.

Article 42 provides for ensuring humane working conditions and providing maternity relief. It states that "The State shall make provision for ensuring just and humane conditions of work and for maternity relief."

Article 46 states that the State shall use its power to promote the educational and economic interests of the weaker sections of the society, including the Scheduled Tribes as well as the Scheduled Castes.

Article 47 The State shall regard it as among its primary duties to raise the level of nutrition and the standard of living of its people and to improve public health, and in particular, the State shall endeavour to prohibit the consumption of intoxicating drinks and alcoholic beverages for any purpose other than medicinal purposes.

Question No. 5- Review the criminal law of dowry death and describe its essential elements do it.

Answer- Dowry-death-Provision regarding dowry-death has been made in **section 304B** of the Indian Penal Code, 1860. This section has been inserted by an amendment of 1986. The original text is as follows-

Section 304B Dowry death. - (1) Where a woman dies within seven years of her marriage from burns or from bodily injury or under circumstances other than normal and it is shown that immediately before her death she was harassed or treated cruelly by her husband or his relatives for demand of dowry, it shall be termed as dowry death and her death shall be attributable to her or his relatives.

Explanation.- For the purposes of this sub-section, dowry has the same meaning as defined in **section 10** of the Dowry Prohibition Act, 1961.

(2) Whoever causes dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

In view of the increasing number of dowry deaths, this section was added to the Indian Penal Code in 1986. This section creates a new crime.

Kans Raj v. State of Punjab, AIR 2000 SC 2324 for the fault of the husband, the in-laws or other relatives cannot, in all cases, be presumed to be involved in the demand of dowry. In cases where such an allegation is made, the direct acts imputed to persons other than the husband are required to be proved beyond reasonable doubt. Such relatives cannot be held guilty for the offence relating to dowry death on the basis of mere presumption and implications. However, a tendency has developed to involve all the relatives of the in-laws of the deceased wives in dowry death cases which, if not discouraged, may affect the prosecution case even against the real culprits. In their over zeal and desperation to convict as many persons as possible, the parents of the deceased have been found to try to involve other relatives which ultimately weakens the prosecution case even against the real accused as appears to have happened in the instant case.

In the case of **Shrimati Shanti and others vs State of Haryana AIR 1991 SC 1226**, it has been held that the accused demanding dowry from the father and brother of the deceased and treating the wife cruelly, the death of the deceased within 7 years of marriage, cremating the deceased in a hurry without informing the parents of the deceased, all these are signs of unnatural death and constitute the offence under **section 304B**.

In the case of **State of Himachal Pradesh vs Nikkuram AIR 1995 SC 67**, the Supreme Court has thrown light on the essential elements of **Section 304B**. In it, the husband of a deceased Roshni, Ram, his mother and sister Kamla Devi were accused of causing dowry death of Roshni. It was said that Roshni was treated cruelly for the demand of dowry. She was injured with a sickle. Anant Roshni consumed poison and died. The Supreme Court did not consider the crime to be within the purview of **Section 304B** because neither injury was found on

Roshni's body which could have caused death nor there was any evidence of cruel treatment due to dowry.

Sarojini vs State of Madhya Pradesh is an important case. In it, the body of the deceased was found completely burnt in the store room of her in-laws' house. Her tongue and eyes had come out and blood was oozing from her mouth. On the basis of the postmortem report and medical report and other evidence presented, the Supreme Court considered it a case of murder and not suicide.

Abetment of suicide- This is another crime related to dowry death which is directly related to women. Many married women get so upset due to dowry, harassment, cruel behaviour etc. that they are left with no other option but to commit suicide.

Section 206 Abetment of suicide.- Whoever abets the commission of suicide by any person, shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

State of Punjab v. Iqbal Singh After the unfortunate incident which took place on the afternoon of 7th June, 1983, the mother of the deceased lodged a First Information Report against the husband Iqbal Singh. After investigation, the husband, his mother and sister were produced for trial. After examining the evidence of the prosecution, the trial court convicted all the three accused under Section 306, IPC and sentenced the husband Iqbal Singh to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, failing which to undergo one year rigorous imprisonment. So far as the other two accused are concerned, keeping in view their role and the fact that the mother was an aged and feeble woman, it sentenced them to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- each, failing which to undergo three months rigorous imprisonment.

Case of **Pawan Kumar vs State of Haryana.** In this case, it has been held by the Supreme Court that in case of dowry death, it is not necessary to have an agreement for dowry. Continuously demanding TV and scooter from the deceased and his father comes under the purview of dowry.

In the case of **Deepak Shohale vs State of Madhya Pradesh**, the modesty of an unmarried girl was violated by the accused. The girl committed suicide. The court did not consider it a case of abetment of suicide. At the most, it was a case of outraging the modesty.

Question No. 6: Discuss the main provisions of Dowry Prohibition Act, 1961.

Answer: An Act to prohibit the taking or giving of punishment.

This Act was enacted by Parliament in the twelfth year of the Republic of India as follows-

1. Short title, extent and commencement.-

(1) This Act may be called the Prohibition of Punishments Act, 1961.

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

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

2. Definition of dowry.—In this Act, —dowry means any property or valuable security given or agreed to be given directly or indirectly to a person—

(a) By one party to the marriage to the other party to the marriage; or

(b) To the parent or any other person of either party to the marriage, to either party to the marriage or to any other person, in respect of the marriage of the said parties thereto at any time either before or after the marriage, but it does not include dower or mahr in the case of persons to whom the Muslim personality law (Shariah) applies.

Explanation 2.- "valuable security" has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

3. Punishment for giving or taking dowry- (1) If any person, at the commencement of this Act, gives or abets the giving or taking of dowry, he shall be punishable with imprisonment of not less than five years and with fine not less than fifteen thousand rupees or the amount of the value of such dowry, whichever is higher - the Court may, on adequate and special circumstances to be recorded in the judgment, sentence him to imprisonment for a term of less than five years.

(2) Nothing in **sub-section (1)** shall apply to or in relation to,—

(1) Gifts given to the bride at the time of marriage (without any demand being made in that behalf)- Provided that such gifts shall be entered in a list maintained in accordance with rules made under this Act;

(2) Gifts given to the bridegroom at the time of marriage (without any demand being made in that behalf): Provided that such gifts shall be entered in a list maintained by rules made under this Act-

Provided further that where such gifts are given by or on behalf of the bride or by any person related to the bride, such gifts are of a customary nature and their value is not excessive having regard to the financial position of the person by or on whose behalf such gifts are given.

4. Punishment for demanding dowry- If any person, directly or indirectly, demands dowry from the parents or other person of the bride or groom, Whoever demands dowry from any relative or guardian, as the case may be, shall be punishable with imprisonment of at least six months which may extend to two years and with fine which may extend to ten thousand rupees: Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

Restrictions on advertising.- If any person,

(1) by advertisement in any newspaper, magazine, journal or any other media offers any share in his property or money or both for the marriage of his son or daughter or any other relative;

(2) Prints or publishes or broadcasts any advertisement specified in **clause (a)**, He shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years, or with fine which may extend to fifteen thousand rupees, but the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

5. Any agreement to give or take dowry shall be void-Any agreement to give or take dowry shall be void.

6. The dowry is for the benefit of the wife or her heirs-

(1) Where any dowry is received by a person other than the woman in connection with whose marriage the dowry is received has been given, then that person shall transfer it to the woman-

(a) Within three months from the date of the marriage, if the dowry was received before the marriage; or

(b) If the dowry is received at the time of or after the marriage, within three months from the date of its receipt; or

(c) If the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and until such transfer, hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property within the time limit specified by **sub-section (1)** or as required by **sub-section (3)**, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which may extend to two years, or with both shall be punishable with a fine which shall not be less than five thousand rupees but which may extend to ten thousand rupees, or with both.

(3) Where a woman entitled to any property under **sub-section (1)** dies before she acquires the same, the heirs of the woman shall be entitled to claim it from the person in possession of the same at the time—

Provided that where such woman dies within seven years of her marriage, not of natural causes, such property shall,- (a) if she has no children, devolve on her parents; or

(b) If he or she has children, it shall be transferred to such children and until such transfer, it shall be held in trust for such children.

(3) Where a person has been convicted under **sub section (2)** for failure to transfer any property required by **sub section (1)** or **sub section (3)** who, before his conviction under that subsection, has not transferred such property to the woman entitled to such property or, as the case may be, to her heirs, parents or children, the Court shall, in addition to imposing the punishment under that subsection, by order in writing, direct that such person shall transfer the property to such woman or, as the case may be, her heirs, parents or children within a period specified in the order, and if such person fails to comply with the direction within the specified period, a sum equal to the value of the property

may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, her heirs, parents or children.
(4) Nothing contained in this section shall affect the provisions of **section 3** or **section 4**.

7. Cognizance of offences.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), –
(a) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;
(b) No Court shall take cognizance of any offence under this Act unless on its own knowledge or a police report of the facts constituting such offence, or
(ii) The victim of the offense or the parents or other relatives of such person or any recognized welfare institution or a complaint made by the organisation;
(c) Any Metropolitan Magistrate or a Judicial Magistrate of the first class for any offence under this Act

It shall be lawful to pass any sentence authorised by this Act on any person convicted of any offence.

Explanation.-For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or a State Government.
(2) Nothing in **Chapter 36** of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.
(3) Notwithstanding anything contained in any law for the time being in force, a statement given by the person aggrieved by the offence shall be deemed to be No person shall be prosecuted under this Act.
8. Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.
(1) The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to the offences under this Act as if they were cognizable offences –
(a) For the purposes of investigation of such offences; and
(b) For the purposes of other matters-
(c) The matters specified in **section 42** of that Code, and
(d) Arresting any person without a warrant or order of a Magistrate.
(2) Every offence under this Act shall be non-bailable and non-compoundable.
(a) Burden of proof in certain cases. Where a person is prosecuted for taking or abetting the taking of dowry under **section 3**, or for demanding dowry under **section 4**, the burden of proving that he has not committed any offence under those sections shall be on him.

Dowry Prohibition Officer-

(1) The State Government may appoint as many Dowry Prohibition Officers as it may think fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely:-
(a) To see that the provisions of this Act are complied with;
(b) To prevent, as far as possible, the taking or instigation to take dowry or the making of a demand for dowry;
(c) Collect evidence necessary for the prosecution of persons committing offences under the Act; and
(d) Perform such additional functions as may be assigned to it by the State Government or as may be specified in rules made under this Act.
(3) The State Government may, by notification in the Official Gazette, confer such powers of a police officer on the Dowry Prohibition Officer as may be specified in the notification. The Officer shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.
(4) The State Government may, for the purpose of advising and assisting the Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an Advisory Board consisting of not less than five social welfare workers (of whom at least two shall be women) of the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under **sub-section (1).**

9. Power to make rules.-

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—
(a) The form and manner in which, and the persons by whom, the gifts specified in **sub-section (2)** of **section 3** shall be made; shall be kept and all other matters relating thereto; and
(b) There is better coordination of policy and action with respect to the administration of this Act.
(3) Every rule made under this section shall, as soon as may be after it is made, be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more useful pages. If, before the expiry of the session or of the session immediately following the useful pages aforesaid, both Houses agree in making any modification in the rule, it shall take effect only in such modified form as may be prescribed by law, so however, that any such modification or annulment shall not affect anything previously done under that rule, if it shall not otherwise take effect.

10. Power of State Government to make rules.-

(1) The State Government may, by publication in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, that is to say—
(a) Additional functions to be performed by Prohibition Officers under **sub-section (2)** of **section 8B**
(b) The conditions and responsibilities under which the Prohibition Officer may exercise his personality under **sub-section (3)** of **section 8B**.
(3) Every rule made by the State Government under this section shall, as soon as may be after it is made, have the force of the State Legislature.

Question No. 7- Write an essay on Gender Justice and Supreme Court.

Answer- Our Constitution has imbibed the public welfare sentiments of the social concept. Its main objective is to eradicate poverty, ignorance, disease and equality. Violation of the fundamental right to equality contained in Article 14 of the Constitution is an encroachment on the basic structure of the Constitution.

Article 14 of the Constitution provides for equality before law and **Article 15** prohibits discrimination on the basis of religion, race, caste, sex or place of birth.
Article 14 states that- "The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India."
Article 15 provides that- (1) The State shall not impose any disability, liability, restriction or condition on any citizen only on grounds of religion, race, caste, sex, place of birth or any of them in respect of- (a) admission to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, ponds, bathing ghats, roads and places of public recreation maintained wholly or partly out of State funds or dedicated to the use of the general public.

Thus, it is clear from **Article 14** and **Article 15 (1)** and **(2)** that the above type of discrimination will not be made on the basis of sex only, i.e. being a man or a woman. Men and women will be equal before the law and they will get equal protection of the laws. Also, no one will be denied entry into a shop, public restaurant, hotel or place of public entertainment only on the basis of being a woman. Similarly, no one will be denied the use of wells, ponds, bathing ghats, roads and public gathering places dedicated for the use of the general public, which are fully or partially maintained from the state funds, only on the basis of being a woman.

Kath Running vs. State of Saurashtra AIR 1952 AC 123 explained the meaning of discrimination and the Supreme Court held that "the word discrimination means to treat a person unfavorably as compared to others." If a law treats inequality on the basis of religion, race, caste, sex or place of birth, it will be void.
In the case of **Mrs. A. Cracknell vs State AIR 1952 Allahabad 746**, the Allahabad High Court held that a woman cannot be deprived of the right to own or enjoy property merely because she is a woman. If any law provides for the deprivation of property on this basis alone, it will be considered unconstitutional.

Special provisions for women - It is noteworthy that **Article 15 (3)** of the Constitution makes special provisions for women and children. It states that "Nothing in Article 15 shall prevent the State from doing anything special for women and children." Thus, **Article 15 (3)** presents an exception to **Article 15 (1)** and **15 (2).** According to this, the State can make special provisions for women and children. This will not be considered discrimination within the meaning of **Article 15**.

In the case of **Muller v. Oregon 2 LA SS** the US Court held that "the physical appearance of women and their feminine functions place them in a miserable position in the struggle for existence. Therefore the preservation of their physical fitness becomes an object of public interest so that caste, strength and skill can be safeguarded."

That is why many special laws have been made for women. **Article 42** of the Constitution provides for special maternity relief for women. This is not an infringement of **Article 15(1)** of the Constitution. In the case of **Dattatreya vs State AIR 1953 Bombay 311**, the Bombay High Court has held that the State can establish educational institutions exclusively for women and can also reserve seats for them in other such institutions.

T. Sudhakar Reddy v. State of Andhra Pradesh Committees Act, 1964 upheld by the Court by the Registry. In the case of AIR 1994 AC 544, the nomination of two women of a particular class to the Andhra Pradesh Co-operative

In some decisions, special provisions made for women have been considered constitutional; such as-

(1) Under Order 5 Rule 15 of the Code of Civil Procedure, 1908, service of summons can be served on any adult male member of the family of the defendant if he is not found but not on women. Women are exempted from service.

(2) The provisions of this section of the Indian Criminal Procedure, 1860 are valid as they protect the chastity of women.

(3) Under the Code of Criminal Procedure, the right of a woman to receive maintenance from a man is legal.

Similarly, some special provisions have been made for children in the Constitution, such as: (a) Under **Article 45** of the Constitution, provision is made for free and compulsory education for children below 14 years of age provisions;

(b) Provision for protection of children from exploitation under **Article 39 (g)** etc opportunities in lake planning.

Question No. 8- Explain the principle of Stridhan and refer to those provisions of law where this right has been given to women.

Answer- Dowry system is one of the most common social evils prevailing in our modern society. This evil has already taken the lives of many girls, however many girls are suffering due to it like a slow poison in their lives. Although we have been successful in creating awareness to a large extent, there are huge ethnic,

linguistic, cultural diversities in our country. In such a situation, when it comes to eliminating social evils, people in our society cannot follow the demands of any one group or organization.

Therefore it is necessary that the elimination of these evils is done at the individual level. However, there is another factor that we need to consider and that is the right to use Stridhan. We must take care that even if dowry is refused, the bride's right to Stridhan does not end and her husband does not keep it with him, because he has earned Stridhan. The term Stridhan comes from the word Stri which means woman and Dhan which means property. So, both of these have to be used to make a difference Combining the expressions, we get the woman's property called Stridhan. This is a term that comes from Hindu Smritis from centuries ago, but today it has come to include all types of caste marriages.

In a broad sense, stridhan is the property of a woman, over which she has absolute ownership. **Section 14** of the Hindu Succession Act, 1956 brought about significant reforms in Hindu law on woman's property. Before 1956, woman's property was divided into two heads: stridhan and woman's property. But in Hindu law, it has been given a technical meaning by all. Hindu law recognizes the right of a woman to hold and dispose of property. At no stage has a woman been denied the use of property as a full owner. Stridhan is any valuable property, which is owned only by a woman. It is a property over which she has the absolute right of ownership and alienation. 'Stridhan' is different from other property, which is owned by a woman and is called 'woman's property'. According to the Smritikars, stridhan included the properties that she received as gifts from relatives, which mostly included movable properties, such as jewelry, ornaments and clothes. Gifts given to her by strangers at the time of her marriage ceremony or during the bridal procession were also regarded as stridhan.

The Smritikaras have defined 'stridhan' as the property that a woman has received as gifts from her relatives, mostly consisting of movable property. During both the bridal procession and the wedding ceremony, the stridhan is seen carrying the gifts given by her wedding guests. In the case of **Bhagwandin Dubi vs Maya Bai (1869)**, the Privy Council held that property acquired by a Hindu woman from men does not fall under stridhan. Instead, the properties will be classified as "women's property". In the case of Kaserbai vs Hansraj (1906), the Bombay High Court created the Bombay School doctrine, according to which property inherited from other women is called stridhan. The Allahabad High Court observed in the famous case of **Debi Mangal Prasad Singh vs Mahadev Prasad Singh (1912)** that any share acquired by a woman through partition is not stridhan but women's land in both the Mitakshara and Dayabhaga schools. The Hindu Succession Act 1956 declared the joint property obtained by partition as absolute property or stridhan. As the owner of absolute property, a woman has complete control over its alienation, which means she can give it away, sell, lease, trade, and mortgage or do whatever she wants with it.

Stri-Sampada- This is known as the head of Stridhan. During the virginity state, pativrata state or widowhood state, such gifts may be given to the woman by her parents and their relatives or by the husband or his relatives. Such gifts may be given by will or inter-vivos. The school of Dayabhaga does not consider the gift of immovable property by the husband as stridhan. Property given to a woman as gift or will by strangers during her virginity or widowhood is called stridhan. Before 1956, gifts received from strangers during coverture were stridhan, but were under the control of her husband during her husband's lifetime. After the death of the husband they became stridhan. By her own exertion woman can acquire property at any stage of her life, whether through labour, employment, singing, dancing etc. or through any other mechanical art. The property thus acquired by her during her virginity or widowhood is called Stridhan according to Hindu law. Any such property which is acquired by her during her concubinage will not be considered as Stridhan according to the Mithila and Bengal schools, but according to the rest of the schools it is Stridhan. According to the Hindu law schools it is said that any property which is purchased out of Stridhan, or out of savings of Stridhan as well as out of accumulation and savings of Stridhan revenue constitutes as Stridhan. There is no presumption under Hindu law that a woman acquiring property under an agreement takes it as a limited state. Property acquired by a woman under an agreement under which she gives up her rights of Stridhan will also be Stridhan. When a woman acquires property under a family settlement, whether that property is stridhan or not depends on the terms of the arrangement. It is the settled norm in all Hindu law schools that any property which a woman acquires by adverse possession at any stage of her life is her stridhan. Payments made to the woman in lump sum or periodically for her maintenance, including arrears of such maintenance, constitute stridhan. In addition, all movable and immovable properties transferred to her as outright gifts in lieu of maintenance are still stridhan. The father-in-law had given his widowed daughter-in-law certain properties for her maintenance. He died in 1960 and his share by way of inheritance deed passed to the daughter-in-law. The daughter-in-law filed a partition suit to get her share of the inheritance. The other members of the family said that she would be allowed to take her share only on the condition that she would include the property given to her under the maintenance deed in the suit properties. A Hindu woman can inherit property from a man or a woman. Such property can be inherited from her parents or her husband. By Mitakshara, inherited property was considered as Stridhan. But in many decisions such property was considered as the property of the woman The share acquired by partition after the coming into force of the Hindu Succession Act, 1956 is known as stridhan. As per Section 14 of the Act, any property acquired by a Hindu woman on partition after the coming into force of the Act shall be deemed to be her absolute property and any property acquired by her before the coming into force of this Act shall also be her absolute property, if she

continues to be in possession of that property during the coming into force of this Act.

In **Krishnamma v. Kumar Krishnan**, the Court held that any such share out of the property acquired by a woman on partition shall also be her absolute property. It is the settled view that the share acquired on partition is not stridhan but the property of the woman.

Rights of enjoyment and management - A woman's right of enjoyment over the property is more than that of the karta and the same is true for her power to manage it. The woman is the sole owner, while the karta is only the head of the coparcener, there are other members of the coparcener and these members also have rights.

Power of transfer- Being the holder of limited property the female proprietor has limited rights. Like the karta, her powers are limited and she can transfer property only in 5 exceptional cases. The principle on which the restrictions on the power of disposal of the woman are placed has been explained by the Privy **Council thus-** It is admitted by all parties that if there are collateral heirs of the husband, the widow cannot, at her own will, transfer property except for special purposes. For religious and charitable purposes or those which should be conducive to the spiritual welfare of her husband she has greater powers of disposal than for purely worldly purposes. On the other hand, it may be considered established that a transfer made by her, which would not otherwise be valid, may be rendered valid with the consent of her husband's relatives. But it is certainly not a necessary or logical consequence of this latter proposition that in the absence of collateral heirs of the husband or on their failure, the restrictions on the power of transfer of the widow are entirely extinguished. The restriction on her power of alienation is an incident of the property and not for the benefit of the revertors4. She can alienate property with the consent of the presumed revertors. She can alienate property only in exceptional cases.

In **Pratibha Rani v Suraj Kumar**, the Supreme Court observed that Pratibha Rani was harassed by her in-laws and was denied stridhan. Pratibha Rani's parents had fulfilled the demands of her in-laws by giving gold jewellery, Rs 60,000 in cash and other articles to her husband's family. A few days after the marriage, her in-laws started harassing her for dowry and7threw her out of the house along with her two minor children, without giving them any money for their maintenance. She had filed two complaints against her husband and in-laws under **Section 125** of the Code of Criminal Procedure, 1973.

In the case of **Bhai Sher Jung Singh vs. Mrs. Virinder Kaur** the Punjab and Haryana High Court held that if a woman claims property, jewelry, money etc. given to her at the time of marriage, the husband and his family members are bound to return such property. If they refuse to return the property, they will have to face severe punishment. The Court held that Bhai Sher Jung Singh and his family have committed an offence under **Section 406** for criminal breach of trust

as they had dishonestly misappropriated the jewelry which was stridhan given by Virinder to her husband for safekeeping.

Surrender- Surrender means the renunciation of the property of the woman. A woman can surrender her property in favour of her immediate successors. By surrendering, she can end her property before her death and can create the rights of ownership of that property in the successors before time. Successors- After the death of the woman, the property of the woman does not pass to her heirs but passes to the heirs of the person from whom the property was received.

Hindu Succession Act, 1956 (Section 14)- According to **Section 14(1)** of the Hindu Succession Act, 1956, the property of a Hindu woman is her absolute property. This means that the property acquired by her, whether before or after the commencement of the Act, is the absolute property of the woman and not a limited property. However, the provisions of **Section 14(1)** do not apply to property acquired by way of a gift, a will or any other instrument, an order or decree of a civil court or an award, if the terms of the gift, will or other instrument or the order, decree or award provide for a restricted estate in such property.

Property received in lieu of maintenance- Under all sections of Hindu law, payments made to a woman in lump sum or periodically for her maintenance, including arrears of such maintenance, constitute stridhan. Additionally, all movable and immovable properties transferred to her as outright gifts in lieu of maintenance are still stridhan.

In **Chinnappa Govinda v. Valliammal-1**, the father-in-law had given certain property to his widowed daughter-in-law for her maintenance. He died in 1960 and his share in inheritance passed to the daughter-in-law. The daughter-in-law filed a partition suit to get her share of the inheritance. Other members of the family said that she had to pay the dues to the widow She would be allowed to take her share only on the condition that she would include the property given to her under the maintenance deed in the suit properties.

Property held by woman after commencement of the Act- Section 14(2) of the Hindu Succession Act, 1956 provides that nothing in **section 14(1)** shall apply to property acquired by virtue of a gift, will or any other instrument, or by virtue of an order or decree of a civil court or an award, if the gift, will or other instrument or the terms of the order, decree or award prescribe a restricted property in respect of such property.

Question No. 9- Sexual exploitation of working women is a violation of both human dignity and economic equality. Discuss the guidelines given by the Supreme Court of India in this context.

Answer - Vishaka Judgement Sexual harassment at workplace in India was first recognised by the Supreme Court of India in its landmark judgement in **Vishaka and others vs State of Rajasthan and others AIR 1997 SC 3011**. Vishaka and other women's groups had filed public interest litigation against the State of

Rajasthan and the Union of India for enforcement of fundamental rights of working women under **Articles 14, 19** and **21** of the Constitution of India. The litigation was filed after Bhanwari Devi, a social activist in Rajasthan, was brutally gang-raped for preventing child marriage. The Supreme Court of India made the legal guidelines legally binding based on the right to equality and dignity under the Indian Constitution as well as under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It shall be the duty of employers or other responsible persons in workplaces or other institutions to prevent or prevent acts of sexual harassment and to take all necessary steps to provide procedures for the resolution, settlement or prosecution of acts of sexual harassment.

Sexual harassment includes unwelcome sexual behaviour (whether directly or by implication) of-

(a) Physical contact and proposals

(b) Demand or request for sexual favours;

(c) Sexually coloured remarks

(d) Showing pornography

(e) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

All employers or persons in charge of a workplace, whether in the public or private sector, must take reasonable steps to prevent sexual harassment. Without prejudice to the generality of this obligation, they must take the following steps-

(a) Clear prohibition of sexual harassment at workplace as defined above should be notified, published and disseminated through appropriate means.

(b) The rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and such rules should provide for appropriate penalties against the offender.

(c) Steps should be taken to incorporate the above prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 in respect of private employers.

(d) Appropriate working conditions in respect of work, leave, health and hygiene should be provided so as to ensure that there is no hostile atmosphere towards women at the work place and no woman employee has reasonable grounds to believe that she is disadvantaged in connection with her employment.

Where such conduct amounts to a specific offence under the Indian Penal Code or any other law, the employer should initiate appropriate action in accordance with the law by filing a complaint with the appropriate authority. In particular, he should ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. Victims of sexual harassment should have the option of seeking the transfer of the perpetrator or their own transfer.

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Whether such conduct is an offence under the law or a violation of service rules, an appropriate complaint mechanism should be created in the employer's organisation for redressed of the grievance raised by the aggrieved. Such a complaint mechanism should ensure timely disposal of complaints.

The complaint mechanism mentioned in (6) above should be adequate to provide, where necessary, a complaints committee, special counsel or other support service, including maintaining confidentiality. The complaints committee should be chaired by a woman and at least half of its members should be women. Also, To prevent the possibility of any undue pressure or influence from senior levels, such a complaint committee should include a third party, either an NGO or other body familiar with the issue of sexual harassment. The complaint committee should make an annual report to the concerned government department about the complaints and the action taken by them. The employer and the person in charge will also report on compliance with the above guidelines, including the report of the complaint committee, to the government department.

Employees should be allowed to raise issues of sexual harassment in labour meetings and other appropriate forums and it should be discussed positively in employer-employee meetings.

Awareness about the rights of women employees in this regard needs to be created, particularly by notifying guidelines prominently (and enacting suitable legislation on the subject, if enacted) and in an appropriate manner.

Where sexual harassment occurs as a result of the act or omission of a third party or an outsider, the employer and the person in charge shall take all necessary and appropriate steps to assist the affected person in terms of relief and preventive action.

Sexual harassment at workplace is an affront to the fundamental rights of a woman, observed the Supreme Court in Civil Appeal No. 1809/2020 titled **Punjab and Sind Bank and others vs Durgesh Kuvar**, while upholding the high court verdict quashing the transfer of a woman bank employee. Directing her to be redeployed to the Indore branch, a division bench of Justices Dhananjaya Y Chandrachud and Ajay Rastogi also said she would be entitled to a penalty of Rs 50,000.

The Supreme Court of India in **Khedat Mazdoor Chetna Sangathan v. State of M.P.** and others 1994/4026 asked itself a question that if honour or dignity is lost then what is left in life?

This is the importance of the right to life and personal liberty guaranteed under the Constitution of India. **Article 21** of the Indian Constitution, which is a set of fundamental rights guaranteed under **Part-I** of the Indian Constitution, provides that- No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 of the Indian Constitution has its origins in the **39th chapter** of Magna Carta, the English charter of liberties, written in the early 13th century. It plays the same role as the Due Process Clause does under the US Constitution and the Japanese Constitution.

The Supreme Court, while interpreting the right to life under **Article 21** of the Indian Constitution, has on several occasions emphasised that the right to life cannot be equated with the right to live a mere animalistic life. (**Francis Coroli v. Administrator, Union Territory of Delhi (1981) 1 SCC 608; Olga Tellis v. Bombay Municipal Corporation (1985) 3 SCC 545)** The right to life would essentially include the right to live with human dignity and would include those aspects of life which make life meaningful, complete and worth living.

Gender discrimination has been recognised as an impediment to the full realisation of the right to life under **Article 21** of the Constitution of India. In **C. Masilamani Mudaliar v. Sri Swaminathaswamy Thirukoif Murthy 1996 AIR 1697**, the Supreme Court held that equality, dignity of person and right to development are inherent rights in every human being. For meaningful enjoyment of the right to life under **Article 21**, every woman is entitled to the elimination of barriers and discrimination on the basis of sex. The Supreme Court reiterated that the State has an obligation to eliminate gender-based discrimination and to provide favourable conditions and facilities for women to realise the right to economic development including social and cultural rights.

In v. **Taiyar Kare, (1996) 1 SCC 490,** the Supreme Court held that women have the right to life and liberty under Article 21 of the Constitution of India. Similarly, they also have the right to be respected and treated as equal citizens. The Supreme Court held that the crimes of rape were aggressive acts aimed at humiliating and degrading women. Such crimes were offences against basic human rights and also violate the fundamental right to life under Article 21. The judges emphasised that ... the dignity of women cannot be touched or violated. Thus, the right to life includes the right of women to live with dignity and lead a peaceful life.

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

Answer- (1) Maternity Benefit- Under the Maternity Benefit Act, 1961, women get leave and pay during and after childbirth. This Act protects the job of women and gives them time to take care of their child. Under this Act, women working in recognized organizations and factories can take maternity leave for up to six months before and after giving birth to a child. During this leave, the employer has to pay the female employee her full salary.

Some other provisions of the Act are-
(1) If a woman suffers a miscarriage or undergoes an abortion during pregnancy, she will be entitled to a maximum of six weeks of paid leave.
(2) If a woman gives birth to a child before this time, the salary shall be paid within 48 hours of production of the birth certificate.
(3) Establishments employing 50 or more employees shall provide crèche facilities within a stipulated distance.
(4) If a woman has two or more children, she will be given 12 weeks of maternity leave.
(5) If a woman adopts a child, she will also be given 12 weeks of leave.
(2) Family Courts - Family courts are established to resolve disputes related to marriage and family matters quickly. They were established under the Family Courts Act, 1984. According to this Act, a family court is mandatory in cities or towns with a population of more than one million. Family courts can also be established in other areas if the state government wishes. Family courts have jurisdiction over a wide range of cases, such as divorce, restitution of conjugal rights, guardianship, maintenance, property and marital status disputes. Proceedings in family courts may take place in camera. These courts have to try to help the parties reach a settlement. For this, they may also take the help of medical experts, welfare agencies, and other professionals. If the matter is not resolved, the judge usually schedules a final hearing.
(3) Demand for dowry- The Dowry Prohibition Act, 1961 was introduced to stop the demand for dowry. This Act is applicable to the whole of India except Jammu and Kashmir. Under this Act, taking, giving or assisting in dowry can result in 5 years of imprisonment and a fine of up to Rs 15,000. At the same time, demanding dowry can be punished with imprisonment of 6 months to 2 years. Beating or demanding valuables for dowry can also be punished under **Section 498** of the IPC. Under this section, all such behaviour of the husband or his relatives has been included which causes mental or physical harm to a woman or forces her to commit suicide. Under this section, the husband can be sentenced to a maximum of three years if found guilty. According to **Section 2** of this Act, dowry means giving or demanding any property or valuable security directly or indirectly. It does not include Mehr or Mahr in the case of those persons on whom Muslim Personal Law (Shariat) applies. However, the Act excludes gifts in the form of clothes, jewellery etc. which are customary in marriages, subject to the value exceeding Rs. 2,000.