

B.A.LL.B.-6th Sem. Paper-I Political Science-II

Question No. 1- The Indian constitution is federal. Under what circumstances does it become unitary? Explain?

Answer: There is often a debate on the nature of the Indian Constitution whether it is completely federal or unitary. On analyzing the Constitution, it is clear that its basic nature is federal, but under certain circumstances it assumes a unitary form. This is a unique feature of the Indian Constitution which is called Federal or "Federal with Unitary Bias"."Quasi-federal"

Features of the federal nature of the Indian Constitution:

There are some important features of a federal constitution, which are clearly present in the Indian Constitution:

1. Division of Powers: The Indian Constitution clearly divides legislative powers between the Centre and the States under the Seventh Schedule. It has three lists: Union List, State List and Concurrent List. This is a fundamental feature of federalism.

2. Written Constitution: The Indian Constitution is a detailed and written document, which clearly defines the powers and limitations of the Centre and the States.

3. Supremacy of the Constitution: The Constitution is the supreme law of the country and both the central and state governments are subject to its limitations. Any law or action that is not in accordance with the Constitution can be declared unconstitutional.

4. Independent Judiciary: India has an independent judiciary, with the Supreme Court at the apex, which is the guardian of the Constitution. It adjudicates disputes between the Centre and the states or among states and interprets the Constitution.

5. Rigid Constitution: The process of amendment in the Indian Constitution is rigid, especially for those provisions which relate to the federal structure. Some amendments require a special majority in the Parliament as well as the consent of the legislatures of more than half of the states.

6. Bicameral Legislature: The Parliament has two houses, the Lok Sabha (which represents the people directly) and the Rajya Sabha (which represents the states). The Rajya Sabha gives the states an opportunity to influence the decisions of the central government.

Under what circumstances does the Indian Constitution become unitary there are several provisions in the Indian Constitution that give the central government more power and control over the states, making it unitary under certain circumstances.

These situations mainly relate to emergencies, administrative control and legislative supremacy:

1. Emergency Provisions: This is the most important situation when the Indian Constitution becomes unitary. Part XVIII of the Constitution provides for three types of emergencies:

National Emergency (Article 352): When the country is threatened by war, external aggression or armed rebellion.

Unitary effect: During this period, the central government gets the power to give instructions to any state. Parliament gets the right to make laws on any subject mentioned in the state list. The executive powers of the states come under the centre. Financial distribution may also change in favour of the centre. The autonomy of the states almost ends.

State Emergency/President's Rule (Article 356): When the constitutional machinery in a state fails.

Unitary effect: The state government is dismissed and the governance of the state comes directly under the control of the President (i.e. the central government). The powers of the state legislature are transferred to the Parliament.

Financial emergency (Article 360): When the financial stability or credit of the country is threatened.

Unitary effect: The central government can give instructions to the states on financial matters. Salaries and allowances of state government employees can be reduced. Financial bills of states can be reserved for the consideration of the President.

2. Power of Rajya Sabha (Articles 249, 312):

Article 249: Parliament gets the power to legislate on any subject mentioned in the State List if the Rajya Sabha passes a resolution by a two-thirds majority of its members present and voting that it is necessary or expedient in the national interest. It temporarily establishes the supremacy of the Centre over the legislative power of the states.

Article 312: Rajya Sabha can create All India Services by a special majority. Members of these services (IAS, IPS, IFS) are appointed by the Centre but serve in the states, giving the Centre indirect control over the administration of the states.

3. Role of the Governor):

The Governor is the representative of the President (Central Government) and is the constitutional head in the state.

The Governor can reserve the State Bills for the consideration of the President (Art. 200) by refusing to assent to the Bills, thereby curtailing the legislative power of the State. The President can do so by

It is the Governor who recommends President's rule, which can often be at the behest of the Central Government for political reasons.

4. Single Citizenship: India has the provision of single citizenship, which gives equal rights to citizens across the country. It strengthens the unity and integrity of the nation, which is inclined towards unity shows.

5. Integrated Judiciary: India has an integrated system of judiciary, with the Supreme Court at the top and the High Courts and subordinate courts below it. This system enforces the laws of both the Centre and the states, which often differ in a federal system in which

6. Constitution Amendment Procedure:

Many important parts of the Constitution can be amended by Parliament by a special majority (Article 368), without the need for the consent of the states. This gives the Centre the power to make unilateral changes to the Constitution, which can affect the federal balance.

Although the consent of the states is required for provisions relating to the federal structure, this happens in relatively few cases.

7. Financial Dependence of States:

The states are largely dependent on the Centre for financial resources. The Central Government provides various grants-in-aid and loans to the states, which maintains the Centre's control over the states.

The Finance Commission recommends the sharing of revenue between the Centre and the states, but the final decision rests with the Central Government.

8. Comptroller and Auditor General (CAG) and Election Commission:

CAG also audits the accounts of the states, thereby maintaining the financial control of the Centre.

The Election Commission of India (the central body) also conducts elections to state assemblies and local bodies due to which the center has control over the electoral process.

9. Planning Commission/NITI Aayog:

The Planning Commission (now Niti Aayog) though a non-constitutional body was/is the centre which retained significant control over the development decisions of the states through the Five Year Plans. The states were compelled to implement the central schemes.

Conclusion:

The nature of the Indian Constitution is unique. It is basically federal as it incorporates federal features like separation of powers, written constitution, supremacy of the constitution and independent judiciary. However, due to factors like emergency provisions, role of governor, special powers of Rajya Sabha, All India Services and financial interdependence, it assumes a unitary character in special circumstances and sometimes even in normal circumstances. For this reason, the Indian Constitution is called 'semi-federal' or 'centrist federal', which indicates its flexible and adaptable nature. This system is considered suitable to maintain the vast diversity and unity of India.

Question No. 2- Explain the three major organs of government?

Answer- Government is an important institution that runs the governance and administration of any nation. Modern democratic governments are usually

divided into three major organs to ensure efficiency and to prevent abuse of power. These organs are: Legislature, Executive and Judiciary. Separation of Powers and Checks and Balances between these three organs is the hallmark of a healthy democracy.

1. Legislature:

The legislature is the organ of government whose primary function is to make laws. It is often known as the parliament or legislature. It represents the people and in democratic countries expresses the will of the people in the form of laws.

Main functions:

Law-making: This is the most important function of the legislature. It makes new laws, amends existing laws, and repeals obsolete laws.

Policy-making and discussion of public issues: The legislature provides a forum for debate and discussion on various issues of national and international importance. It reviews government policies and can present alternative policies.

Control over the Executive: The legislature exercises control over the executive through various means. These include question hour, zero hour, no-confidence motion, censure motion, adjournment motion and debate on the budget. This ensures that the executive does not abuse its powers and remains accountable to the people.

Financial control: The legislature has complete control over the finances of the government. The government cannot levy any tax or spend any money unless it is authorised by the legislature (Article 265). The budget must be approved by the legislature.

Constitutional Amendment: The legislature has the power to amend the Constitution, although the process is usually rigorous so as to maintain the supremacy of the Constitution.

Electoral functions: In some countries, members of the legislature participate in the election of positions such as the President or Vice President. In India, members of Parliament participate in the election of the President and Vice President.

Judicial functions (limited): In some countries, the legislature also has some judicial powers, such as impeachment proceedings (like against the President or judges in India).

Structure (in Indian context):

In India, the legislature at the central level is called the Parliament, which has two houses:

Lok Sabha (House of the People): This is the lower house, whose members are directly elected by the people. It represents the will of the people.

Rajya Sabha (Council of States): This is the upper house, which represents the states and union territories. Its members are elected by the members of the state legislative assemblies through the proportional representation system.

In the states, it is called the State Legislature, which consists of the Legislative Assembly (in all states) and, in some states, also the Legislative Council.

2. Executive:

The executive is the organ of government whose main function is to implement laws and conduct administration. It implements the policies of the government and manages day-to-day governance.

Main functions:

Implementation of Laws: The primary function of the executive is to implement the laws and policies made by the legislature.

Policy-making: Although the legislature makes laws, the executive often drafts policies and presents them to the legislature.

Running the administration: This includes managing government departments, providing public services, hiring staff, and handling daily administrative tasks.

Foreign Relations: The executive conducts the country's foreign relations, concludes treaties, and participates in international agreements.

Military and Security: It is responsible for the country's defence and internal security, including the operations of the military, police, and intelligence agencies.

Emergency powers: The executive (such as the President in India) has special powers during an emergency, such as imposing a national emergency or President's rule.

Structure (in Indian context): There are two types of executive in India:

Permanent Executive: It consists of civil servants (bureaucracy) who are recruited on the basis of merit and remain in office for the entire tenure of their tenure, even if the government changes.

Political Executive: It consists of the President, Vice President, Prime Minister and Council of Ministers these people are elected directly by the people or through the legislature and hold office for a fixed tenure.

Nominal Executive: President (in India) He is the head of the state and all decisions are taken in his name but he does not have any actual powers.

Real Executive: Prime Minister and Council of Ministers (in India) This is the head of the government and the real executive makes decisions. It is answerable to the legislature.

In the states, the Governor is the nominal head, while the Chief Minister and his Council of Ministers is the real executive.

3. Judiciary:

The judiciary is the organ of government whose main function is to interpret laws, provide justice and protect the Constitution. It ensures that laws are applied fairly and the rights of citizens are protected.

Main functions:

Interpretation of laws: The judiciary explains the meaning of laws when there is an ambiguity or controversy in their application.

Dispensation of Justice: It gives judgements in criminal and civil cases, resolves disputes and punishes the guilty.

Protection of Fundamental Rights: The judiciary is the protector of the fundamental rights of the citizens. If the rights of any citizen are violated, he can knock the door of the judiciary.

Protection of the Constitution (Judicial Review): The judiciary has the power of judicial review, under which it can examine the constitutionality of the laws made by the legislature or the actions of the executive. If any law or action is found against the Constitution, it can be declared unconstitutional. It maintains the supremacy of the Constitution.

Settlement of disputes between the Centre and the States: In a federal system, the judiciary is responsible for settlement of disputes between the Centre and the States or within the States settles disputes arising between them.

Advisory Function: In some countries (such as the Supreme Court in India), the judiciary may advise the President on important legal matters But can give advice.

Structure (in Indian context):

India has a unified and independent judiciary:

Supreme Court: It is the highest court of the country and is the final interpreter of the Constitution.

High Courts: These are the highest courts of the states.

Subordinate Courts: These are district and lower level courts.

The appointment process of judges is designed to ensure the independence of the judiciary, with security of tenure and salaries and allowances Special provisions have been made in regard to.

Separation of Powers and Checks and Balances separation of Powers and Checks and Balances):

In modern democratic states, these three organs of government are kept independent of each other so that there is no centralization of power and dictatorship does not arise. This is called the principle of 'separation of powers'. However, these organs are not completely independent Not only are they not mutually exclusive, but they also exercise some degree of control over each other, which is called the principle of 'Checks and Balances'.

Example:

The legislature controls the executive by asking questions, introducing no-confidence motions and rejecting the budget.

The executive enforces laws passed by the legislature and the president has the power to veto bills.

The judiciary exercises control over the laws made by the legislature and the actions of the executive by examining their constitutionality.

The legislature can impeach judges.

This system ensures that no organ of government becomes too powerful and does not misuse power. This is extremely important for the stability of a democratic system of governance and protection of the rights of citizens.

Question No. 3- Explain the principle of separation of powers?

Answer- The Doctrine of Separation of Powers is a fundamental principle of political science and constitutional law that advocates the division of power of the government into different organs so as to prevent centralization of power and protect civil liberties. This principle is based on the idea that if

If all the powers of the government are concentrated in the hands of one person or institution, it leads to autocracy and tyranny the probability increases background and Development:

The idea of separation of powers was also found in ancient Greek thinkers such as Aristotle and the Roman Republic. However, the credit for developing this theory as a modern constitutional theory goes mainly to John Locke and particularly to the Baron de Montesquieu.

John Locke (17th century): In his book "Two Treatises of Government," Locke divided the powers of government into three parts:

Proposed to divide:

Legislative Power: Power to make laws.

Executive Power: The power to enforce laws.

Federative Power: The power to make war and peace, treaties and international relations. Locke suggested keeping executive and federal powers in the same hands, but he insisted on the separation of legislative and executive powers.

Montesquieu (18th century): French philosopher Montesquieu systematically presented the theory of separation of powers in his famous work "The Spirit of Laws" (De l'esprit des lois, 1748). He studied the British constitutional system and concluded that political liberty can be ensured only when the three major powers of government are separated into three separate organs:

Legislative Power: The right to make laws.

Executive Power: The right to enforce laws and run the administration.

Judicial Power: The right to interpret laws, provide justice, and resolve disputes. Montesquieu argued that if these three powers were concentrated in a single person or institution, liberty would be lost. In his words, "When the legislative and executive powers are combined in the same person or the same body, there is no liberty... There is no liberty if the judiciary power is not separated from the legislative and executive power."

Objectives of the theory:

The principle of separation of powers mainly tries to achieve the following objectives:

1. Preventing abuse of power: To ensure that no one person or group becomes too powerful and moves towards autocracy.

2. Protection of civil liberties and rights: When power is divided, it provides a safeguard to the liberty of citizens as no single organ can easily infringe upon their rights.

3. Efficiency and Specialisation: Each organ can specialise in its specific function, making governance more efficient.

4. Accountability of Government: Each organ functions within its own designated area and is accountable to others to some extent.

Types of Theory:

The principle of separation of powers can be observed in practice in two main ways:

1. Strict Separation: This is the idealistic form of the theory, where the three organs are kept completely separate and independent, so that no organ interferes with the functions of the other. This is usually seen in the US Presidential system.

Example (United States):

The President (executive) cannot be a member of the Congress (legislature).

The President can veto laws passed by Congress.

The judiciary (Supreme Court) can examine the constitutionality of Congressional laws and presidential actions (judicial review).

Judges are appointed by the President but require confirmation by the Senate.

2. Checks and Balances: This is a more practical form of separation of powers, where the organs are separate but also exercise some degree of control over each other. This ensures that no organ oversteps its powers. Most modern democracies follow this system.

Example (India):

Legislature Control over Executive: The Parliament (legislature) can remove the Council of Ministers (executive) through a no-confidence motion. It passes laws and approves the budget.

Executive control over legislature: The President (nominal executive) summons and prorogues the Parliament and can dissolve the Lok Sabha. He has the power to veto bills.

Judiciary Control over Legislature and Executive: The judiciary can examine the constitutionality of laws made by the Parliament and the actions of the executive through judicial review.

Legislature control over the judiciary: Parliament can remove judges from office through impeachment.

Importance of separation of powers:

Prevention of Dictatorship: This principle prevents any one branch from gaining excessive power and turning into a dictatorship.

Protection of civil liberties: It provides a safeguard for the rights and liberties of individuals.

Administrative Efficiency: Each organ specializes in its specific function, making governance more efficient.

Accountability: Each organ functions within its own designated area and is accountable to some extent to the other organs.

Stability: It brings stability to the political system because no single organ can act arbitrarily.

Criticisms and limitations:

Some criticisms are also made of the principle of separation of powers:

1. Complete separation impossible: In practice, it is not possible to completely separate the three organs of government. Each of them has to coordinate and cooperate with each other to function effectively.

2. Hinders Efficiency: Complete separation may hamper the functioning of the government and slow down the decision making process.

3. Complexity: It can make the structure of government complex and difficult for the public to understand.

4. Lack of accountability: Some critics argue that it diffuses responsibility, making it difficult to determine who is responsible for a particular failure.

5. Relevance in the modern welfare state: In the modern welfare state the functions of the government have increased a lot, and the role of the executive has become prominent. In such a situation the concept of complete separation becomes less relevant.

Conclusion:

The principle of separation of powers is an idealistic concept aimed at preventing the abuse of power and protecting liberty. However, in modern systems of governance, its blend with the principle of 'checks and balances' has been found to be more feasible and effective. In most democratic countries, instead of complete separation between the organs of government, a system of checks and balances on each other along with functional separation is adopted. This system ensures that no organ is overly powerful and the government functions in an accountable and just manner. The Indian Constitution is also an excellent example of this practical form of separation of powers.

Question No. 4- What is a pressure group? What impact do pressure groups have on political parties and government?

Answer- In a general sense, a group is a collection of individuals who interact with each other on the basis of a common purpose, interest, identity or relationship and whose behaviour influences each other. There is some degree of awareness, solidarity and a sense of membership among the individuals in a group.

Various definitions of group have been given in sociology and psychology, but the main essence is that:

There should be two or more persons.

There must be some sort of relationship or interaction between them.

They have some shared goals, interests or values.

They influence each other's behaviour.

For example, a family, a sports team, a student union, or a business organization is all groups.

Pressure Group:

Pressure group is a special type of group which tries to influence the government without contesting elections or directly gaining political power work to promote and protect the interests of 'Interest Group' or 'Lobby Group'

It tries to influence public policies and decisions without any effort. These groups are also called Lobby Groups specific to their members.

Salient features of pressure groups:

Special interests: These represent the interests of a particular class, profession, religion, industry or issue (e.g. farmers' unions, labour unions, etc.) associations, environmental organizations, trade boards).

Non-electoral: They do not directly field candidates in elections and do not try to form government.

Indirect Influence: They indirectly exert pressure on the government, legislature and political parties to get their demands accepted.

Organised: These are usually organised and have membership, structure and leadership.

Activists or advocates: They use various methods (protests, strikes, lobbying, etc.) to raise their demands media campaigns, petitions).

Influence of pressure groups on political parties and government pressure groups are an integral part of the functioning of democracy. They exert significant influence on both political parties and the government.

Let's put:

1. Impact on political parties:

Pressure groups are important to political parties because they give them the leverage to gain from voters on resources and specific issues provide information.

Electoral support and funding:

Pressure groups provide financial aid, volunteers and campaign support to political parties or candidates of their choice during elections.

They can encourage their members to vote in favour of a particular party. This is important for parties, especially when they are contesting elections.

Influencing the policy agenda:

Pressure groups try to influence the policy agenda of political parties. They try to get issues related to their interests included in party manifestos and policy proposals.

For example, a farmers' union will try to ensure that issues such as farm loan waivers or minimum support prices are on the political party's agenda.

Providing information and expertise:

Pressure groups often have expertise in their specific areas. They provide political parties with valuable information, research and technical knowledge on relevant issues.

This information helps parties formulate more effective policies and understand voters' problems.

Role in Candidate Selection:

Some pressure groups prepare their own supporting candidates within political parties or try to sensitize existing leaders to their interests.

They can form their own factions within the parties to influence ticket distribution or internal party decisions can be influenced.

Criticism and praise of the party's policies:

Pressure groups openly criticise or praise the policies of political parties when required. This promotes public debate and makes parties more accountable to the public.

Transfer of support from one party to another:

If a political party ignores the interests of a pressure group, the pressure group may transfer its support to another party in future elections. This puts pressure on the parties to take their demands seriously.

2. Impact on the Government:

Pressure groups play a vital role in influencing the policy-making process of the government, as they are directly concerned with the implementation of laws and rules.

Lobbying:

Pressure groups establish direct contact with government ministers, bureaucrats, MPs and other decision makers. They put forward their demands and arguments in front of them so that policies can be bent in their favour. This is called lobbying. This is an effective way to motivate legislators to enact laws that are favorable to the interests of their members.

Influencing policy-making:

The government considers the information and demands presented by pressure groups when making laws or formulating policies. Pressure groups may propose amendments to draft policies or demand new laws.

At times, the government consults with pressure groups on policies relating to specific areas.

Demonstration and protest:

If the government does not pay heed to the demands of the pressure groups, they resort to strikes, demonstrations, rallies, dharnas and other agitational methods. These protests put public pressure on the government and may force it to reconsider its policies.

Influencing public opinion:

Pressure groups try to influence public opinion through media campaigns, advertisements and public meetings. When public opinion is in their favour, the pressure on the government to accept their demands increases.

Expert Advice and Information:

The government needs information and expert advice on a variety of issues. Pressure groups are often experts in their field and they can provide valuable information to the government, helping the government to make informed decisions.

Litigation:

Some pressure groups resort to the courts to challenge government policies or laws. They may file public interest litigations (PILs) to hold the government accountable for its actions.

Media of representation and communication:

Pressure groups act as a bridge between the public and the government. They convey the demands, complaints and concerns of various groups to the government, which helps the government to understand the pulse of the public.

Positive and negative aspects of the influence of pressure groups:

Positive aspects:

Promote democratic participation: They provide a platform for people to participate in politics even if they are do not be active in elections.

Making the government accountable: These make the government more accountable to different sections of the public.

Providing expertise and information: They provide valuable information and expert advice to policy makers.

Voice of disadvantaged groups: These provide an opportunity to the weaker and deprived sections of the society to raise their voice.

Negative aspects:

Undemocratic: Pressure groups are not selected through elections, yet they influence policies, raising questions on the democratic process.

Narrow interests: Sometimes they concentrate only on fulfilling their narrow interests thereby ignoring the wider public interest interests may be overlooked.

Corruption and underhand dealings: Some pressure groups use unethical means (such as bribery) to exert influence which can lead to increase in corruption.

Inequality: Powerful and wealthy pressure groups have more influence than smaller and less organised groups, leading to inequality in policy making.

In conclusion, pressure groups are an indispensable force in modern democracies. They use a variety of direct and indirect methods to influence policies, mobilise resources and shape public opinion, both on political parties and on the government.

While they contribute to democratic participation and accountability, monitoring and regulation of their activities is important so that they do not promote narrow interests at the expense of the public interest.

Question No. 5- The constitution of Britain is an unwritten constitution. Explain the law on the basis of traditions?

Answer-The Constitution of Britain is one of the few constitutions in the world that is called 'unwritten'. However, it would not be completely correct to say that it is completely unwritten, because many parts of it exist in written form. Calling it 'unwritten' means that it is not compiled in a single document, but it has evolved from various sources such as Acts, judicial decisions, and especially conventions. In fact, a significant part of the British Constitution is based on these conventions, and on the basis of these, the interpretation of law and governance is conducted.

The 'unwritten' nature of the British Constitution:

The constitution of Britain is not written in a single document called 'Constitution'. It is composed of several sources:

1. Acts of Parliament: Such as Magna Carta (1215), Bill of Rights (1689), Act of Settlement (1701), Parliament Act (1911, 1949), European Communities Act (1972), Human Rights Act (1998) etc. These are written laws and form part of the constitution.

2. Judicial Precedents: Important decisions given by the courts that interpret the law and establish constitutional principles.

3. Constitutional Conventions: These are unwritten rules and customs that have evolved over time and govern political behaviour.

4. Works of Authority: Books by scholars such as Dicey and Bagehot, which explain constitutional practices and principles.

5. EU law (formerly): From 1973 to 2020, EU law also had an influence on British law. Of these, 'traditions' make the British constitution unique and are the main reason for its unwritten nature.

What are the conventions?

Constitutional conventions are unwritten rules and customs that govern political behaviour and constitutional practice. These are not legally enforceable in a court of law, but are followed on the basis of political morality and practice. Ignoring these may lead to a political crisis or constitutional deadlock, not a legal one.

Interpretation of law based on traditions:

The interpretation and governance of law in Britain is largely governed by these traditions. This shows how unwritten rules create a well-functioning and effective constitutional system.

1. Operation of Constitutional Monarchy:

Real power lies with the Prime Minister: Traditionally, although the monarch (king/queen) is the head of state and all executive powers are vested (legally) in him or her, real executive power lies with the Prime Minister and the Council of

Ministers. The monarch acts only on the advice of the Prime Minister ("The Queen reigns but does not rule.")

Role of the monarch: The monarch has the power to "advise, encourage and warn". It is a convention that the monarch will give his assent to bills passed by Parliament and will never exercise a 'veto'.

Appointment of Prime Minister: The monarch will appoint the person who is the leader of the majority party in the House of Commons as Prime Minister. This is an unwritten convention, not a written law.

2. Operation of Parliamentary Sovereignty:

Supremacy of the Legislature: In theory, the British Parliament is sovereign and can make or repeal any law. No court can declare a parliamentary act unconstitutional (as happens in other countries under judicial review).

Accountability of the Executive: The executive (ministers) is accountable to Parliament. By convention, the Council of Ministers is collectively responsible to the House of Commons. If a motion of no confidence is passed, the government has to resign. This convention is the cornerstone of parliamentary democracy.

3. Functioning of the Cabinet Government:

Collective Responsibility: It is a major convention that all members of the cabinet are collectively responsible to the Parliament. If a minister disagrees with a decision of the cabinet, he must either publicly support that decision or resign.

Individual Ministerial Responsibility: Every minister is individually responsible to the Parliament for the actions of his ministry. If a serious mistake occurs, he may have to resign.

Position of the Prime Minister: The Prime Minister, being the head of the cabinet, presides over cabinet meetings and gives direction to the policies of the government. Although he has very little power legally, tradition gives him the power to exercise his powers makes you extremely powerful.

4. Role of the House of Lords:

Financial bills: By convention, the House of Lords (Upper House) cannot reject financial bills. They can only delay them.

Non-financial bills: They can only delay non-financial bills for a certain period (as per the Parliament Acts 1911 and 1949), but cannot completely obstruct them. This tradition maintains the supremacy of the House of Commons.

5. Control over the army in peace time:

Traditionally, the military cannot be permanently maintained in peacetime without the permission of parliament. This ensures that the civilian government has control over the armed forces.

6.

Role of Opposition:

Her Majesty's Loyal Opposition: There is a strong tradition in British politics of the opposition being called 'Her Majesty's Loyal Opposition'. This recognises that the opposition criticises the government but is loyal to the country.

Shadow Cabinet: The opposition has a 'shadow cabinet', which consists of a deputy minister for each government minister.

There is an opposition 'shadow minister' for the government. This is also a convention that ensures close monitoring of government policies and the offering of alternative policies.

7. Solution to constitutional crises:

When a constitutional or political crisis arises, traditions often show the way. In the absence of written law, past customs and established practices provide the way forward.

Importance and Limitations of Traditions:

Importance:

Flexibility: Traditions make the Constitution highly flexible, allowing it to be adapted to changing circumstances and the needs of society without any formal amendment process.

Evolutionary nature: they make the British Constitution a 'living' document that is constantly evolving.

Practicality: they reflect actual political practice and power relations, which may often differ from written law.

Check on absolutism: Though not legally binding, they are followed due to political morality and pressure of public opinion, thereby providing an effective moral check on abuse of power.

Limitations/Criticisms:

Ambiguity: Traditions can be ambiguous because they are unwritten, and sometimes their exact meaning or application is uncertain there can be a dispute over scope.

Potential for instability: Theoretically, conventions could be ignored by any government, causing a constitutional crisis (although this is rare as the political consequences can be severe).

Judicial unenforceability: since they are not legally enforceable, courts cannot enforce them it entirely depends on the willingness of political leaders to follow them.

Possibility of takeover: Traditions may be deliberately violated by a powerful government or leader, threatening democratic values.

Conclusion:

The UK Constitution is unique because of its 'unwritten' nature and heavy reliance on traditions. Traditions form the cornerstone of the actual functioning of the British constitutional system. They play a vital role in interpreting laws, establishing relationships between organs of government and regulating political behaviour. Although they are not legally binding, ignoring them can lead to serious political consequences and constitutional crises. This shows that a strong political culture and established customs can ensure a successful constitutional

constitution even without a written constitutional text can run a democratic system.

Question No. 6- What is called rule of law? What is the importance of rule of law in India?

Answer - Rule of Law is a fundamental constitutional principle that states that all individuals, institutions and the government itself in a country are subject to the law, and not to the arbitrary wishes or personal power of individuals. It simply means that "there shall be the rule of law, not the rule of individuals." It is the cornerstone of a well-organized, just and democratic society.

This concept was formulated by British jurist A.V. Dicey in his book "Law of the Constitution" (1885) in the form of three main principles:

1. Supremacy of Law:

This means that no person in the country, no matter how high a position he holds, is above the law.

There shall be no arbitrary or discretionary power of the Government or public authorities.

A person can be punished only for violating the law and not for any other reason. That is, no one can be punished unless he has clearly violated the established law and this can be proved in ordinary courts in a normal legal manner.

2. Equality before law:

This means that the law is equal for all and all people, whatever their status, rank, religion, caste or sex, are subject to the common law of the country.

No person is above the law and no one enjoys any special privileges or exemptions.

The same law would be applied to all classes by common law courts. Dicey emphasised that there should be no special tribunals or special laws for government officials.

3. The common law is the result of the Predominance of Legal Spirit / Judge-made Constitution):

Dicey believed that individual liberties and rights do not flow from any provision of a written constitution, but rather are the result of judicial decisions made by the courts and the common law.

He argued that the courts are the real guardians of these rights and freedoms, and that rights are more secure if they are enforceable in the courts than if they are merely declared in a document.

In short, the rule of law rejects arbitrary power, emphasizes equality of all before the law, and stresses the need for an independent judiciary that interprets and enforces laws.

Importance of Rule of Law in India:

India has adopted the parliamentary system and the principle of rule of law from Britain. Provisions such as the Preamble, Fundamental Rights, Independence of Judiciary and Supremacy of the Constitution of the Indian Constitution clearly

show the importance of the rule of law in India. The Indian Supreme Court has held the rule of law to be part of the Constitution, which means that even the Parliament cannot change it.

Basic Structure the importance of the rule of law in India is evident from the following points:

1. Basis of Constitutional Government:

The rule of law ensures that the government works according to the constitution and law and not as per any other rules.

According to the will of the individual or group. This prevents arbitrary government and establishes a constitutional government.

In India, the Constitution is supreme and the legislature, executive and judiciary all derive their powers form and function under the Constitution.

2. Protection of civil rights and freedoms:

The rule of law is the greatest protector of the fundamental rights and freedoms of citizens. It ensures that no person can be deprived of his liberty without violating the law.

The Fundamental Rights (Articles 12-35) enshrined in the Indian Constitution reflect the spirit of the rule of law, such as Article 14 which talks about equality before law and equal protection of the laws.

3. Equality before law:

In India, all citizens, irrespective of their religion, caste, sex, position or economic status, are equal before the law. From the Prime Minister to a common citizen, everyone is subject to the same laws and everyone gets justice under the same courts article 14 clearly establishes this principle.

4. Independent and Impartial Judiciary:

An independent and impartial judiciary is essential to maintain the rule of law. In India the judiciary is kept free from interference by the executive and the legislature so that it can interpret laws and deliver justice without fear or favour.

The Supreme Court and the High Courts have the power of judicial review under which they can declare any law made by the legislature or any order of the executive as unconstitutional if they violate the Constitution or established laws. It prevents the government from misusing its powers.

5. Basis of justice and fairness:

This ensures that justice is delivered in a fair and transparent manner. No decision will be taken on the basis of personal bias or power, but only on the basis of law.

It promotes the principles of fair trial and due process in the criminal justice system.

6. Transparency and accountability:

The rule of law makes the government and its officials accountable for their actions. Every government action must be legal and based on law.

Laws such as the Right to Information (RTI) also promote transparency in accordance with the rule of law.

7. Anarchy and prevention of anarchy:

If there is no rule of law, anarchy and chaos can prevail in society, where powerful individuals or groups can impose their will. The rule of law is essential for a stable and orderly society.

8. Development of Administrative Law:

The development of administrative law in India is based on the principles of the rule of law. It regulates the discretionary powers of government officials and ensures that administrative action is in accordance with the law.

Conclusion:

The rule of law is an inherent and important principle of the Indian constitutional system. It is not merely a legal concept but a moral and political ideal that lays the foundation of democracy, equality and justice. In India, efforts are constantly made to maintain and strengthen the rule of law through the Constitution, the judiciary and various statutory provisions, thereby protecting citizens from arbitrary power and creating a well-ordered society. It is the soul of Indian democracy and a symbol of good governance in the country.

Question No. 7- Explain direct democracy according to the Constitution of Switzerland?

Answer- Switzerland is called the "Home of Direct Democracy" because its Constitution gives the people unique powers to directly make laws, amend laws and control government policies. While most modern democracies are representative democracies, where citizens elect their representatives who make decisions on their behalf, in Switzerland public participation is at every stage of policy-making it is direct and active at this level.

What is Direct Democracy?

Direct democracy is a form of government in which citizens participate directly in policy making without any representatives. In this, the public directly votes on laws, decides on policies and sometimes recalls officials.

Explaining Direct Democracy in Switzerland:

The Swiss Constitution realizes direct democracy through several instruments. These instruments apply at the federal, cantonal, and communal/local levels, although their prevalence is most pronounced at the federal level.

The main instruments of direct democracy in Switzerland are the following:

1. Compulsory Referendum:

What is it: This is a provision that no amendments to the constitution or certain international treaties can come into force unless they are ratified by a majority of voters and a majority of cantons (states).

Procedure: If the federal parliament passes an amendment to the constitution, it is necessarily put to the vote of the people. The people vote 'yes' or 'no' on it. 'Double majority' Majority is required: that is, a majority of the citizens voting as

well as a majority in the cantons (more than half of the cantons must also support the proposal).

Importance: It ensures that no major change can be made in the Constitution without the direct consent of the people, thereby maintaining the sanctity of the Constitution and the sovereignty of the people.

2. Optional Referendum:

What it is: A provision that gives the public the right to vote on any ordinary law (except constitutional amendments) passed by the federal parliament, provided a specified number of voters or cantons demand it.

Functioning: If the federal parliament makes a new law, it is put on hold for a period of 100 days before it can be implemented. If within this period 50,000 voters or 8 cantons demand that a referendum be held on the law, the law is put to a public vote. If the majority votes 'no', the law is struck down.

Importance: It gives the people the power to have the final say on the laws made by the Parliament. It makes the legislature more accountable and ensures that no law is made against public sentiment.

3. Popular Initiative / Initiative Right):

What it is: It gives the people themselves the right to propose new provisions in the Constitution or to propose amendments to existing provisions.

Methodology: If 100,000 voters (within 18 months) sign a petition proposing a constitutional amendment, the proposal is presented to the federal parliament. Parliament can either accept or reject the proposal, but in either case, the proposal must be put to a vote of the people (and this also requires a double majority).

Importance: It gives the public the power to actively initiate the policy-making process rather than merely react to laws. It gives the citizens the power to put their agenda directly before the government and make it constitutionally binding provides the possibility to implement it formally.

Direct democracy at the cantonal and local levels:

While the above devices are most prominent at the federal level, strong forms of direct democracy also exist in cantons and communes:

Landsgemeinde: Some small cantons in Switzerland (e.g. Appenzell Innerrhoden, Glarus) still have the practice of 'Landsgemeinde' or 'Cantonal Assembly'. In this, all eligible citizens gather together under the open sky and directly make laws, approve the budget and elect officials by raising their hands. This is the purest form of direct democracy.

Referendums and initiatives at the cantonal and commune level: As at the federal level, cantons and communes use mandatory or optional referendums and public initiatives on a variety of local laws and policies.

Reasons for the success of direct democracy in Switzerland:

There are several reasons for the success of direct democracy in Switzerland:

1. Small size and population: Switzerland is a small country with a relatively low population, making it easier for citizens to participate directly.

2. High literacy and political consciousness: Switzerland has a high literacy rate and politically aware citizens who are able to understand and vote on complex issues.

3. Federal Structure and Autonomy of Cantons: The highly decentralised and federal structure of the country, where cantons have extensive autonomy, provides a favourable environment for the exercise of direct democracy.

4. Pluralistic society: There are different linguistic (German, French, Italian, Romansh) and religious groups in the country, and direct democracy gives them the opportunity to participate in the decision-making process, thereby also protecting the interests of the minorities.

5. Stable political culture: The Swiss have a strong constitutional culture and a spirit of compromise and consensus, which is essential for direct democracy.

Advantages and Challenges of Direct Democracy (in the context of Switzerland):

Benefits:

Supremacy of the People: It ensures the true sovereignty of the people and makes them masters of their own destiny.

Government Accountability: The government and parliament are more accountable to the public as their decisions can be changed by the public.

Political Education: It motivates citizens to actively participate in the political process, thereby increasing their political literacy and awareness.

Stability: Because of the direct participation of the public, policies gain wider legitimacy and are less likely to be subjected to rebellion or instability.

Protection of minorities: Referendums and initiatives provide minority groups with an opportunity to raise their voice and challenge decisions that affect their interests.

Challenges:

Complexity and Delay: Frequent referendums and initiatives can be lengthy and complex processes, leading to delays in decision-making.

Voter apathy: Sometimes voters may not show interest in or be unable to understand all the issues, which may lead to low voter turnout.

Emotional decisions: On certain issues, the public may take decisions based on emotional or short-term considerations, which may be detrimental to long-term national interest.

Influence of powerful interest groups: Wealthy and organised interest groups (lobbies) can influence public opinion by investing heavily in referendum campaigns.

Danger of Majoritarianism: Though there is a provision for double majority, yet in certain cases the decisions of the majority may be against the interests of the minorities.

In conclusion, Switzerland's constitution presents a perfect example of direct democracy, where tools like referendum and initiative put the people at the centre of the policy-making process. This system may be slow and complex, but it has helped keep Switzerland a stable, accountable and highly democratic nation, where the people are sovereign in the true sense of the word.

Question No. 8- Explain the process of election of President according to the Constitution of the United States of America.

Answer-The President of the United States is one of the most powerful positions in the world. According to the Constitution of the United States, the election of the President is a complex and multi-step process, which is not based directly on the popular vote, but through a specific system called the 'Electoral College'. This process lasts for about a year and involves several stages.

Process of election of President of United States of America:

1. Qualifications:

To become the President of the United States a person must fulfil the following qualifications:

Must be at least 35 years of age.

Must be a natural-born citizen of the United States.

Have resided in the United States for at least 14 years.

2. Nominations and Primaries/Caucuses (January to June, prior to election year):

Each major political party (Democratic and Republican) selects its own presidential candidate.

The process takes place via 'primaries' and 'caucuses'.

Primaries: These are state-level elections where registered voters vote for their preferred presidential candidate. There are two types of primaries:

Open Primaries: Voters can vote in any party's primaries, even if they are not registered members of that party.

Closed Primaries: Voters can only vote in the primaries of the party they are a registered member of.

Caucuses: These are state-level meetings where registered party members gather to discuss and vote on their preferred candidate. Caucuses are more community-oriented and personal.

The results of these primaries and caucuses determine how many delegates each candidate will receive at that party's National Convention. Delegates are committed to supporting a particular candidate.

3. National Conventions (July-August):

In the summer, each major political party holds its national convention.

At this convention, delegates elected from the primaries and caucuses vote to formally nominate the party's presidential candidate (and vice presidential candidate).

Candidates usually select their vice presidential running mate, who is approved by the convention.

The convention is also used to adopt the party's platform and formally launch the campaign.

4. General Election Campaign - September-October:

Following the national conventions, the nominated candidates undertake extensive campaigning across the country.

In this phase, the presidential and vice presidential candidates travel across the country, holding rallies, releasing advertisements, and participating in televised debates with their rivals.

The focus of the campaign is on winning over voters and paying particular attention to 'swing states', where the outcome is unpredictable.

5. Election Day (First Tuesday of November):

The general election is held on the first Tuesday after the first Monday in November.

On this day, citizens do not vote directly for the President and Vice President, but they vote for the President through the Electoral College vote for electors.

Each state is allocated a specific number of delegates to the Electoral College based on its population. This number is equal to the total number of members of Congress the state has (members of the House of Representatives + number of Senators, which is always 2). For example, California has the most delegates (54), while some smaller states have only 3 delegates.

The District of Columbia also gets 3 delegates. There are a total of 538 delegates in the Electoral College (435 House + 100 Senate + 3 DC).

6. Electoral College (December):

The votes cast by voters on Election Day are used to elect representatives to the Electoral College.

Winner-Take-All System: In most states, the candidate who receives the most votes in a state's popular vote receives all of that state's Electoral College delegates. (The only exceptions are Maine and Nebraska, where delegates may be allocated proportionally or based on congressional districts).

In December, each state's delegates meet in their capital and formally cast their votes for president and vice president. These votes count as Electoral College votes.

To win, a candidate must receive at least 270 votes (a majority) of the Electoral College's total 538 votes.

7. Counting and Certification of Votes (January):

In early January, the United States Congress meets in a joint session to count the Electoral College votes.

Congress formally certifies the votes and declares the winner of the presidency and vice president.

8. Inauguration - January 20:

The President-elect and Vice President-elect take the oath of office on January 20. The ceremony takes place at Capitol Hill and the new President formally takes office.

Features of the system and debates:

Indirect Election: This is an indirect election system where citizens do not directly elect the President but instead elect representatives to the Electoral College.

The difference between the popular vote and the Electoral College can be the difference between the total number of individual votes cast across the country (for example, George W. Bush in 2000 and Donald Trump in 2016). A candidate can win the popular vote but not the Electoral College and become president (for example, George W. Bush in 2000). This occurs when a candidate wins by narrow margins in a few key states, giving him all of those states' electoral votes, while losing by large margins in other parts of the country.

Representation of less populous states: The Electoral College system was designed to give less populous states more representation in presidential elections, as each state gets at least 3 representatives, no matter how small its population.

Reflection of Federalism: This system reflects the federal principle of the US Constitution, where the states are also considered as a single unit is given importance as.

Ongoing debate: The system is often described as antiquated and contrary to democratic spirit, and there are ongoing debates and proposals to change it, but change has been difficult due to the high hurdles required for constitutional amendment.

In short, the election of the President of the United States begins with primaries/caucuses, nomination of candidates through national conventions, a general election campaign, and finally the Electoral College votes to determine the winner. It is a unique system that reflects a blend of American history, federal structure, and democratic principles.

Question No. 9- Comment on the independence of judiciary in India?

Answer - Independence of Judiciary in India is a fundamental feature of the Indian Constitution and a pillar of the Indian democratic system. It ensures that the judiciary can impart justice impartially, interpret laws, and protect the Constitution without fear or favour. The Constitution makers ensured that the judiciary remains free from the influence of the executive and the legislature, so that it can effectively play its role as the guardian of civil rights and the final interpreter of the Constitution.

Meaning of Independence of Judiciary:

Independence of the judiciary means that:

Separation from Executive and Legislature: The judiciary functions without any pressure or interference from the other two organs of government (executive and legislature).

Impartiality: Judges should be able to make decisions without any personal interest, political pressure or outside influence.

Supremacy of the Constitution: The judiciary is capable of upholding the supremacy of the Constitution and ensuring that all organs of the government function within the ambit of the Constitution.

Protection of Civil Rights: It is the guardian of the fundamental rights of the citizens and protects them from the liabilities of the State or any other power prevents their violation by.

Provisions ensuring independence of judiciary in the Indian Constitution:

The Indian Constitution has made several specific provisions to maintain the independence of the judiciary:

1. Process of appointment of judges (Appointment of Judges):

Judges are appointed by the President (who is part of the executive), But this process is independent the judiciary is designed to maintain.

The appointment of judges in the Supreme Court and High Courts has evolved through the 'Collegium System', where a group of senior judges recommend names for appointment. Though the President has the final approval, in practice the Collegium's recommendations are respected. This ensures that the executive does not have complete control over the appointment of judges.

2. Security of Tenure:

Judges are provided security of tenure. Supreme Court judges hold office till the age of 65 and High Court judges till the age of 62.

They can only be removed from office through a complex impeachment process (the impeachment motion has to be passed by a special majority in both houses of Parliament) prescribed by the Parliament on the grounds of 'proven misbehaviour or incapacity'. This process is so difficult that till date no Indian judge has been removed in this manner, giving them the freedom to work without fear.

3. Salaries and Allowances:

The salaries, allowances and other service conditions of judges are determined by Parliament, but they cannot be altered to their disadvantage after appointment (except in a financial emergency).

Their salaries and allowances are charged on the Consolidated Fund of India, which means they cannot be voted on in Parliament, only discussed. This ensures their financial independence.

4. Restriction on Discussion in Parliament on the conduct of judges:

The conduct of judges can be discussed in Parliament only when an impeachment motion is pending against them (Article 121). This provision protects judges from unfair criticism or political attacks.

5. Power to Punish for Contempt of Court):

The Supreme Court and the High Courts have the power to punish for their contempt. This power helps in maintaining the dignity and authority of the court and prevents outside interference.

6. Ban on Practice after Retirement):

The Chief Justice and Judges of the Supreme Court cannot practice law before any court or any authority in India after retirement. This ensures that their decisions are not applicable for future use. Don't let yourself be influenced by business profits.

7. Separation of Judiciary from Executive (\$eparation from Executive):

Article 50 of the Indian Constitution directs the state to take steps to separate the judiciary from the executive in the public services.

This ensures that administrative officials or police officers do not have judicial powers, thus ensuring impartial justice.

8. Judicial Review:

The judiciary has the power of judicial review under which it can examine the constitutionality of laws made by the Parliament and orders of the executive. If a law or order is found to be against the Constitution, it can be declared unconstitutional. This power makes the judiciary the ultimate guardian of the Constitution and ensures that other organs of government act within their constitutional limits.

Importance of Independence of Judiciary:

1. Guardian of the Constitution: The judiciary is the guardian of the constitution and ensures that all laws and government actions are in accordance with constitutional provisions. It maintains the supremacy of the constitution.

2. Protector of Fundamental Rights: It is the protector of the fundamental rights of citizens. If the government or any individual violates the fundamental rights of a citizen, the judiciary can intervene to protect them.

3. Maintainer of Federal Balance: India is a federal country where there is division of powers between the Centre and the States.

The judiciary adjudicates disputes between the Centre and the states or among states, thereby maintaining the federal balance.

4. Check on the Government: It prevents the executive and legislature from misusing their powers, thus preventing arbitrariness and autocracy.

5. Basis of justice and fairness: Only an independent judiciary can ensure fair and equal justice. It gives all citizens an equal opportunity to get justice before the law.

6. Protecting democratic values: The judiciary plays an important role in upholding the principles of democracy, such as the rule of law, equality and liberty.

7. Final Interpreter: The decision of the judiciary is final in matters of interpretation of any provision of the Constitution.

Challenges and Concerns:

Though the Indian Constitution makes several provisions to ensure the independence of the judiciary, there are certain challenges and concerns:

Judges' appointment process: On executive influence or lack of transparency in the collegium system there are often arguments.

Pending cases in courts: High number of pending cases affects the speed and efficiency of justice.

Accountability of Judges: The difficult process for removal of judges sometimes makes it difficult to ensure accountability, especially when allegations of misconduct arise.

Judicial Activism vs. Judicial Overreach: Judiciary activism is sometimes seen as 'judicial overreach' where the judiciary appears to encroach into the domain of the executive or the legislature.

Political pressure: Although independent, there remains a risk of political pressure in some cases, especially at the lower levels of the judiciary.

Corruption allegations: The judiciary is also sometimes accused of corruption, which poses a threat to its independence and credibility.

Conclusion:

The independence of the judiciary in India is a fundamental principle of the Indian democratic system. The Constitution has provided extensive safeguards to protect it from interference by the executive and the legislature. It is the guardian of the Constitution, the protector of civil liberties and the maintainer of federal balance. Although there are some challenges, an independent judiciary will continue to play a vital role in upholding the principles of rule of law, justice and democracy in India. It is an essential and glorious aspect of India's vibrant democracy.

B.A.LL.B.-6th Sem. Paper-II Social Psychology

Question No. 1- Explain the meaning, nature and history of social psychology?

Answer- Social psychology is a broad and fascinating field that studies the influence of social factors on the thoughts, feelings, and behaviours of individuals. It seeks to understand how people make sense of the social world, how they interact with others, and how groups, culture, and social context shape their actions and beliefs.

Let us understand its meaning, nature and history in detail.

Meaning of Social Psychology:

Social psychology is the branch of psychology that deals with the scientific study of how the thoughts, feelings, and behaviour of individuals are influenced by the real, imagined, or implied presence of others. To put it simply, it is the study of how the social environment affects an individual.

Scientific study: This means that social psychologists use systematic methods, such as experiments, surveys, and correlation studies, to test hypotheses and draw conclusions.

Individual thoughts, feelings, and behaviour: The focus of social psychology is on the individual, regardless of the social context in which he or she lives. It studies how individuals think (social cognition), feel (attitudes, emotions), and behave (social influence, interpersonal relationships).

Actual, imaginary or implied presence:

Real presence: When people are actually around us (e.g., behaviour in a crowd).

Imaginary presence: When we imagine what others will think or what effect it will have on us (such as not cheating on a test because we think someone is watching).

Implicit presence: When social norms and cultural expectations influence our behaviour even when no person is specifically present (such as walking on the left side of the street).

Nature of Social Psychology:

The nature of social psychology can be understood from several key characteristics:

1. Scientific nature: As mentioned above, it is based on empirical research methods. It builds and tests theories using observation, experimentation and statistical analysis. It does not rely on intuition or common sense.

2. Person-centred: Although it studies social influences, its ultimate focus is on the individual how social factors work within the individual.

3. Comprehensiveness and multi-level analysis: It studies factors ranging from the micro level (such as an individual's thoughts and feelings) to the macro level (such as the influence of culture and society).

4. Dynamic and interactive: It assumes that there is a constant and dynamic interaction between the individual and the social environment. People influence society and society influences people.

5. Applied nature: The findings of social psychology are used to understand and solve a variety of real-world problems, such as reducing prejudice, improving leadership skills, promoting health behaviours, and resolving conflicts.

6. Emphasis on cognitive processes: Modern social psychology places great emphasis on social cognition—understanding how people think about themselves and others, process social information, and make sense of the social world.

7. Varied Research Methods: It uses a variety of research methods, including laboratory experiments, field experiments, surveys, correlation studies, case studies, and observation.

8. Cultural sensitivity: In recent years, social psychology has recognized the importance of cultural context. It acknowledges that social behaviour and processes may differ across different cultures.

History of Social Psychology):

The history of social psychology is relatively new, but it has deep roots in philosophy and sociology.

Early Roots:

Philosophy: Ancient Greek philosophers such as Plato and Aristotle expressed ideas about the relationship between society and the individual. Later, thinkers such as Hobbes, Locke, and Rousseau discussed the social contract and human nature, providing the conceptual basis for social psychology.

Sociology: In the late 19th century, sociologists began to study social norms, crowd behaviour, and group processes. Emile Durkheim's work emphasized social facts and collective consciousness, while Max Weber focused on social action and the role of power.

Emergence of Social Psychology:

During this period in the late 19th century, social psychology began to be recognized as a separate discipline.

Triplett (Triplett, 1898): Norman Triplett conducted one of the first empirical social psychology experiments in which he found that cyclists raced faster when competing with others (an early demonstration of social facilitation).

Le Bon (Le Bon, 1895): Gustave Le Bon's book "The Crowd: A Study of the Popular Mind" threw light on crowd psychology and suggested that individuals lose their identity in a crowd and become irrational.

Early 20th century:

McDougall (1908): William McDougall wrote "An Introduction to Social Psychology," in which he viewed instincts as the primary motivators of social behaviour.

Ross (1908): Edward Ross published another book called "Social Psychology", in which he emphasized social influence and imitation. These two books are often seen as the first textbooks of social psychology.

Influence of psychoanalysis: Sigmund Freud's work influenced unconscious motivations and group dynamics.

Golden Age: Post-World War II):

The Second World War catalysed the development of social psychology. Events during and after the war prompted social psychologists to consider important questions:

Dictatorship and tyranny: How can people become involved in horrific events such as the Nazi regime and the Holocaust? (e.g. Adorno et al.'s work on the authoritarian personality).

Group conflict and prejudice: Why does group conflict occur and how can prejudice be reduced?

Conformity and Obedience: Why do people succumb to pressure from others or follow authority? (Ashe's conformity experiment, Milgram's obedience experiment).

Kurt Lewin: He is often considered the "father of social psychology." He emphasized group dynamics, action research, and the idea that behavior is a function of the interaction between the individual and his environment is a function of ($B = f(P,E)$).

Modern Social Psychology:

1960s and 1970s: This period was influenced by the cognitive revolution. The field of social cognition emerged, focusing on how people process, interpret, and remember social information. Leon Festinger's cognitive dissonance theory was an important contribution of this period.

1980s and 1990s: This decade saw continued growth in social cognition, with research expanding into areas such as attitudes, self-concept, social influence, and interpersonal attraction. The influences of evolutionary psychology and neuroscience were also felt.

21st Century: Social psychology today is a diverse and dynamic field.

Multicultural Perspective: The importance of cultural context has been greatly recognized.

Biological and neuroscientific approaches: Fields such as social neuroscience and social genetics are trying to understand how the brain and biology influence social behaviour.

Applied Social Psychology: Principles of social psychology are being applied in fields such as health psychology, environmental psychology, legal psychology, and organizational psychology.

Open Science and the Replication Crisis: In recent years, social psychology has attempted to address the replication crisis and adopt open science practices to improve the reliability and transparency of research.

In short, social psychology is a young but rapidly evolving field that combines scientific rigor, personal focus, and a broad perspective to understand the social aspects of human behaviour. Its history stretches from philosophical inquiries to today's cutting-edge neuroscience and cross-cultural studies, helping us understand who we are and how we function in the social world.

Question No. 2- Explain the scope, challenges and solutions of new problems of social psychology?

Answer- Social psychology is a dynamic field that seeks to understand the complex interactions between individuals and the social world. It not only develops theories to explain human behaviour but also it also plays an important role in finding practical solutions to social problems.

Let us discuss its scope, challenges and solutions to new problems in detail:

Areas of Social Psychology:

The scope of social psychology is very broad and includes many aspects of human behaviour that are related to social psychology are influenced by the context. Its main study areas are as follows:

- 1. Social Cognition:** This studies how people think about themselves and others, process social information, remember it, and understand the social world. This includes schemas, attitudes, stereotypes, biases, and decision-making processes.
- 2. Attitudes and Attitude Change:** This studies how attitudes (our pre-dispositions of feelings, thoughts and behaviour) are formed, how they influence behaviour, and how they can be changed (eg through persuasion). It also includes the study of cognitive dissonance.
- 3. Social Influence:** It studies how people influence each other. It includes topics such as conformity, obedience, persuasion, crowd behaviour and social facilitation/inhibition.
- 4. Interpersonal Relationships:** These studies how people like, love, and form and maintain relationships with each other. This includes topics such as attraction, friendship, love, conflict resolution, and breakups.
- 5. Group Processes:** This studies how groups form, function, and affect individuals. It includes topics such as group polarization, groupthink, leadership, teamwork, intergroup relations, and social loafing.
- 6. Prejudice and Discrimination:** It studies how prejudices (preconceived negative feelings), stereotypes (oversimplified beliefs about groups), and discrimination (negative attitudes) develops, what effects they have, and how they can be reduced.
- 7. Aggression and Altruism:** Aggression involves behaviour intended to harm others, while altruism is the selfless behaviour of helping others. Social psychologists study the causes and consequences of these behaviours.

8. Self and Identity: It studies how individuals understand themselves; develop self-esteem, and how social contexts shape their identity.

9. Culture and Social Behaviour: Modern social psychology emphasizes the role of culture, understanding how cultural norms, values, and beliefs influence social behaviour promoting justice, improving organizational effectiveness, understanding legal decisions, and solving environmental problems.

Challenges of Social Psychology:

Social psychology, being a dynamic field, also faces many challenges:

1. Complexity of human behaviour: Human behaviour is extremely complex and multidimensional, influenced by many internal and external factors. Controlling and studying all of these factors can be challenging.

2. The role of culture and context: Social behaviour depends heavily on the cultural context. What is valid or true in one culture may not be so in another. This can make it difficult to develop general principles that apply across all cultures.

3. External Validity in Lab Experiments: Most social psychology experiments are conducted in the laboratory where it is easy to control variables. However, it can be challenging to generalize findings from these controlled settings to complex social situations in the real world.

4. Ethical Concerns: Social psychology often studies sensitive topics such as prejudice, conformity, and obedience. Participants can potentially experience psychological distress, making it important for researchers to follow ethical guidelines and ensure the well-being of participants. (For example, Milgram's obedience experiment would not be permitted under today's ethical standards).

5. Replication Crisis: In recent years, psychology, including social psychology, has faced a replication crisis. This means that the findings of some published studies have not been able to be replicated by independent researchers. This has raised questions about the rigor and reliability of research in the field, although significant efforts are being made to address it.

6. Social Desirability and Self-Awareness: Participants may behave in socially desirable ways or respond according to researchers' expectations, which may bias the results. People are not always aware of the underlying reasons for their behaviour.

7. Changing Social Landscape: Society is constantly changing as new technologies, social norms, and global events arise. Social psychologists have to adapt to keep their research relevant and to study the effects of these changes.

8. Need for an interdisciplinary approach: Social psychology often needs to collaborate with other disciplines such as sociology, economics, political science, neuroscience, and computer science to develop a complete understanding of social problems, which can be a challenge in itself.

Solutions to New Problems:

Social psychology is constantly evolving and is actively involved in finding solutions to new social problems.

Contributing:

1. Digital World and Online Behaviour: Digital World and Online Behaviour

Problems: Cyber bullying, online radicalisation, spread of misinformation, social media addiction, online identity construction.

Solutions: Social psychologists study the dynamics of online social interaction, develop interventions to prevent cyber bullying, analyze cognitive biases to understand and combat the spread of misinformation, and create guidelines to promote healthy online behaviour. They also study identity formation and group polarization in online communities.

2. Climate Change and Environmental Behaviour:

Problems: Environmental degradation, apathy or denial about climate change, barriers to adopting sustainable behaviour.

Solutions: Social psychologists study how people perceive environmental risks, form attitudes toward environmental issues, and promote sustainable behaviours (e.g., energy conservation, recycling)

10. Applied Social Psychology: The principles and findings of social psychology are applied to solve various real-world problems, such as health behaviour. What social influence techniques are most effective for giving. They also study environmental activism and social movements.

3. Polarization and Political Divide):

Problems: Increased political polarization, intergroup conflict, misinformation, and "echo chambers".

Solutions: Social psychologists study the psychological factors of polarization using theories of group identity, in-group bias, and social interaction. They research interventions to reduce conflict, promote common identity, and improve communication and understanding between different groups.

4. Pandemics and Public Health Behaviour:

Problems: Vaccine hesitancy, refusal to wear masks, not following social distancing, resistance to public health guidelines.

Solution: During the pandemic, social psychologists studied the role of risk perception, trust, social norms, and persuasion to increase the effectiveness of public health messages and to promote healthy behaviour.

5. Artificial Intelligence (AI) and Human-AI Interaction:

Problems: Trust or distrust of AI, amplification of prejudices by AI, emotional attachment to AI.

Solution: A new emerging field exploring the social and psychological aspects of human-AI interaction this includes understanding how people perceive AI, how to reduce AI-generated biases, and designing AI in a way that is ethically and socially acceptable.

6. Diversity and Inclusion in the Workplace:

Problems: Prejudice in the workplace, discrimination, lack of inclusion, barriers to embracing diversity.

Solution: Social psychology helps develop evidence-based approaches to diversity training, bias reduction strategies, and promoting inclusive work cultures.

7. Social Justice and Inequality:

Problems: Systemic inequality, oppression, issues of marginalized groups.

Solutions: Social psychologists help understand and address social justice issues by using theories of social identity, power dynamics, and social movements. They also help to understand and address social justice issues.

Research interventions to promote change and reduce inequality. In short, the field of social psychology is broad and touches all aspects of human behavior that are influenced by social contexts. While it faces its inherent complexity and research challenges, it is constantly applying its theories and research methods to find solutions to emerging social problems, making it an extremely relevant and valuable discipline for modern society.

Question No. 3- Explain the fundamental forces of behavioural psychology on the basis of social power?

Answer - Behavioural psychology on the basis of social power studies how social power affects a person's behaviour, feelings, and thoughts. Social power is the ability of an individual or group to influence others, and it is an important concept in behavioural psychology.

There are various bases of social power such as:

Formal power: This is power due to a position or rank, such as a boss has over his or her employees there is power.

Informal power: This power is due to popularity, seniority or expertise among others.

Reward power: This power is due to the ability to reward others, such as a teacher's power to reward students giving good grades.

Coercive power: This power results from the ability to punish others, such as a police officer arresting criminals.

Legitimate power: This is power due to a person's position or rank, such as a judge enforcing the law.

Referent power: This is the power that people have because of the qualities or characteristics of a person, such as a celebrity

Expert power: This power is due to a person's knowledge or skill, such as a doctor diagnosing an illness.

Social power affects a person's behaviour in several ways. For example, people with high power may be more confident and decisive, while people with low power may be more obedient and disciplined.

Social power is an important concept in social psychology because it helps understand the functioning of social interactions, groups and organizations.

In the study of social power, social psychologists also examine how people use and abuse social power, and what effects it has on the behaviour of others.

For example, a boss may abuse power over his or her employees, making them less motivated to work.

Conversely, a leader can use his or her power to motivate and encourage others, thereby improving group performance.

Through social psychology we can better understand the effects of social power and more can create a positive and productive social environment.

Overall, social power is a complex concept that affects a person's behaviour in many ways. Social psychology plays an important role in understanding the effects of social power and creating a more positive social environment.

Question No. 4- Explain the importance and principles of publicity in social psychology?

Answer- The study of propaganda and persuasion is an important and deep field in social psychology. It focuses on how messages are designed and disseminated to influence the thoughts, feelings, and behaviours of individuals. While the term "propaganda" is often used in a negative sense (especially when it is used to control public opinion on a large scale), social psychology views it as a broader concept that includes the principles and processes of persuasion.

Importance of Propaganda/Persuasion in Social Psychology: The study of propaganda (or in a broader sense, persuasion) is important in social psychology for several reasons:

1. Understanding Social Influence: Propaganda is a powerful form of social influence. By studying it, social psychologists can understand how people are influenced by messages, make decisions, and change their beliefs and behaviours.

2. Predicting and Controlling Human Behaviour: By understanding the principles of persuasion, it becomes possible to predict how people will react to specific messages and, to some extent, how their behaviour can be influenced. This is important in fields such as politics, advertising, public health, and education.

3. Relevance to Democratic Processes: In a democratic society, citizens vote in elections, form opinions on public policy and participate in social movements. The dissemination of information and persuasion play a central role in these processes. The study of propaganda helps us understand how public opinion is formed and can potentially be manipulated, helping citizens to become informed and critical consumers.

4. Cultural and Ideological Impact: Propaganda often helps shape and reinforce social norms, values, and ideologies. By studying it we can understand how certain beliefs or ideas become dominant in society.

5. Combating Misinformation and Disinformation: In today's digital age, the spread of misinformation and disinformation is a serious challenge. Social Psychology's theories of persuasion help us understand why these messages are effective and how they can be countered or their effects reduced.

6. Practical Applications: The principles of persuasion can be used for a variety of positive purposes.

Is done for:

Public health campaigns: To prevent smoking, promote vaccinations, or adopt healthy eating habits.

Environmental Awareness: To promote environmental conservation.

Education: To motivate students to learn and adopt certain attitudes.

Advertising and marketing: To sell products or services.

Social change: Movements for social justice or human rights.

7. A Tool of Knowledge: The study of propaganda helps us understand how communication works and how people react to information. It also helps us recognize our own cognitive biases and vulnerabilities that make us vulnerable to manipulation.

Theories of Propaganda/Persuasion:

Several major theories have been developed in social psychology to explain persuasion. These theories explain how the message, source, and audience work together to influence attitude and behaviour change:

1. Elaboration Likelihood Model (ELM) - Petty & Cacioppo: This is the most influential and widely accepted model of persuasion. It states that persuasion can occur through two different routes:

Central Route: This occurs when people carefully consider the content of the message (quality of arguments, evidence) and think deeply about it. This occurs when the message is relevant to the recipient; he or she has the motivation and capacity to process it. Attitude change that occurs through this route is more lasting and more resistant to behaviour.

Example: A car buyer who thoroughly researches engine performance, fuel efficiency, and safety features.

Peripheral Route: This occurs when people focus on external cues of the message (e.g. source credibility, attractiveness, message length, music, branding) rather than evaluating the actual quality of the argument. This occurs when motivation or ability is low. Attitude change through this route usually less persistent and less resistant to behaviour.

Example: Buying a car because a famous celebrity is endorsing it, even though one does not know anything about the car's features.

2. Heuristic-Systematic Model (HSM) - Chaiken: This model is similar to the ELM, but uses slightly different terminology. It also assumes that people can process information in two ways:

Systematic Processing: Similar to the central route, this involves a thorough evaluation of the content of the message.

Heuristic Processing: Similar to the peripheral route, this involves the use of simple rules or "heuristics" (such as "experts are right," "more arguments are better"). The HSM emphasizes that people can often use both processes simultaneously, or engage in systematic processing despite heuristic processing if they are sufficiently motivated.

3. Social Judgment Theory (Sherif & Hovland):

This theory states that the effectiveness of a persuasive message depends on whether the recipient has a pre-existing how the attitude interacts with the message. It consists of three main areas:

Latitude of Acceptance: The extent to which a message appears to be acceptable or agreeable.

Latitude of Rejection: The extent to which a message appears unacceptable or disagreeable.

Latitude of Non-Commitment): The extent to which the message seems neutral or ambiguous.

This theory states that people are most influenced by messages that fall within their latitude of acceptance. If the message is too deeply in their latitude of rejection, it can cause a "boomerang effect" and push the recipient in the opposite direction.

4. Principles of Social Influence (Cialdini):

Robert Cialdini has identified six key principles of persuasion that are often used in promotion and marketing:

Reciprocity: People often like to repay those who have done something for them (such as giving free samples).

Commitment and Consistency: People tend to remain consistent with their decisions and behaviours once they have committed (such as agreeing to a larger request after agreeing to a smaller one, the "foot-in-the-door" technique).

Social Proof: People rely on the behaviour of others to determine whether is correct (e.g. "best selling" product).

Authority: People are more inclined to follow expert or authority figures (such as a product promoted by a doctor or professor).

Liking: People are more likely to be influenced by people they like (such as attractive or similar-looking people).

Scarcity: Things that are rare or have limited availability seem more desirable (e.g. "limited time offer").

5. Cognitive Dissonance Theory (Festinger):

Although not directly a theory of persuasion, it is important in explaining attitude change. It states that when people have two or more inconsistent cognitions (thoughts beliefs, attitudes, behaviours), they experience an unpleasant mental state (dissonance). To reduce this dissonance, they may change one of their

cognitions, often changing the attitude to one that is consistent with the persuasive message.

Example: A smoker knows that smoking is harmful (knowledge) but he continues to smoke (behaviour). To reduce this dissonance he can either quit smoking or believe that smoking is not that harmful.

Conclusion:

The study of propaganda and persuasion in social psychology helps us understand how the human mind can be influenced. It enables us to understand not only how to design messages effectively, but also how to critically evaluate the messages we are surrounded with every day. This knowledge empowers individuals to make more informed decisions and protect themselves from potential manipulation, which is more important than ever in today's information-surplus society.

Question No. 5- Explain the types of disorders or anxiety?

Answer - Social psychology studies the influence of social factors on the behaviour, thoughts and feelings of individuals. Although social factors may trigger or exacerbate anxiety or nervousness (such as social anxiety), the detailed classification and interpretation of the "disorder or type of anxiety" is the purview of abnormal psychology.

Nevertheless, since the question has been asked, I can provide you with a detailed explanation of the different types of "anxiety disorders", which represent a major group of psychological disorders and are often associated with the term "anxiety". "Disorder" or

Anxiety Disorders:

Anxiety disorders are a group of mental health conditions characterized by excessive worry, fear, or nervousness that interferes with a person's daily life. It is very different from merely feeling occasional anxiety or stress because it is more intense, persistent, and often occurs for no apparent reason.

Anxiety disorders are classified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published by the American Psychiatric Association (APA). Here is a detailed description of the major types:

1. Generalized Anxiety Disorder (GAD):

Definition: It is a condition in which a person has excessive, uncontrollable, and persistent worry about a variety of events or activities (e.g., work, school, health) that lasts for at least six months. The worry is often disproportionate to the actual problems.

Symptoms:

Constant worry and anxiety.

Feeling restless or on edge.

Get tired easily.

Difficulty concentrating or mind going blank.

Irritability.

Muscle tension.

Sleep disturbances (difficulty falling asleep, staying asleep, or restless, unsatisfactory sleep).

Connection to social psychology (indirect): Social factors such as chronic socio-economic insecurity, workplace stress, or family issues can trigger or exacerbate this type of anxiety.

2. Panic Disorder:

Definition: This disorder is characterized by unpredictable and recurrent panic attacks followed by persistent worry about having another attack or about the consequences of the attack (such as losing control, going crazy) for at least one month.

Heart attack Symptoms of a panic attack (come on suddenly and peak usually within 10 minutes):

Fast heartbeat, pounding heartbeat, or pounding heart.

Sweating.

Trembling or shaking.

Difficulty breathing or suffocation.

Chest pain or discomfort.

Nausea or stomach upset.

Dizziness, feeling unsteady, light-headed, or fainting.

Feeling cold or hot.

Numbness or tingling of sensations.

Feelings of derealisation or separation from oneself.

Fear of losing control or going crazy.

Fear of dying.

Connections to social psychology (indirect): Experiencing panic attacks in public places or social situations may lead a person to avoid such situations, leading to social isolation.

3. Agoraphobia:

Definition: An anxiety disorder in which a person avoids situations or places from which escape might be difficult or where help is not available in the event of a panic attack or other unpleasant symptoms. It often occurs alongside panic disorder, but can also occur independently.

Major fearful situations:

Using public transportation.

Open spaces (eg parking lots, markets).

Enclosed spaces (eg shops, theatres).

Standing in a crowd or waiting in a line.

Being alone outside the house.

Relation to social psychology: This disorder focuses on avoiding direct social contexts, thereby limiting social participation and severe reduction in contact. Fear of being watched or judged by others in public places may also be involved.

4. Specific Phobia:

Definition: It is an extreme irrational and persistent fear of a particular object or situation that is disproportionate to the actual danger posed by the object or situation. Exposure to the feared object or situation almost always results in an immediate anxiety reaction.

Common types:

Type of animal: (e.g. spiders, snakes, dogs)

Type of natural environment: (e.g. elevation, storms, water)

Blood-injection-Type of injury: (e.g. needle, blood, injury)

Situational type: (e.g. airplanes, elevators, enclosed spaces)

Other types: (eg vomiting, choking, loud noises)

Connections to social psychology: While the origin of phobias usually comes from personal experience (such as trauma), social learning (seeing others being afraid) or cultural factors (common fear of certain animals) may play a role in the development and maintenance of phobias.

5. Social Anxiety Disorder (SAD) / Social Phobia:

Definition: This is a condition in which a person has intense anxiety and fear about being judged negatively by others or being embarrassed in social situations. This fear can be so intense that the person avoids those situations starts avoiding it completely.

Common fearful social situations:

Speaking or performing in public.

Meeting unfamiliar people.

Eating or drinking in front of others.

Attending parties or social events.

Doing something in the presence of others (such as writing).

Symptoms:

Intense anxiety before or during social situations.

Physical symptoms such as sweating, shaking, fast heartbeat, blushing.

Avoiding social situations or enduring them with extreme distress.

Believing that others are viewing them negatively.

Direct connection to social psychology: This disorder is directly related to social contexts and the presence of others. Self-presentation, social comparison, and fear of evaluation by others play a central role, all of which are part of the social psychology of the disorder are the main subjects of psychology.

6. Separation Anxiety Disorder:

Definition: It is excessive anxiety about separation from a significant attachment figure (such as a child from a parent). This disorder can also occur in adults, where they have excessive anxiety about separation from their spouse or children.

Symptoms:

Fear of separation or extreme distress over the experience.

Physical symptoms (headaches, nausea) due to dissociation.

An unwillingness to be alone or without an attachment person.

Recurring nightmares that center on themes of isolation.

Refusing to sleep alone.

Connection to social psychology (indirect): Attachment theory, which is related to both social psychology and developmental psychology, helps in understanding this disorder. It highlights the quality of early social relationships and how they affect responses to separation.

7. Selective Mutism:

Definition: This is a rare anxiety disorder in which a child (or adult) persistently fails to speak in some social situations where speech is expected (such as school), while being able to speak in other situations (such as at home with family members). The disorder interferes with academic or occupational achievement or social communication.

Relationship to social psychology (indirect): Social phobia and fear of being evaluated by others is an important component of this disorder, manifesting as an extreme form of social anxiety.

Question No. 6- Explain the nature of sensitivity and practical challenges?

Answer- It is important to understand the relationship between sensation and social psychology because our senses influence our social behaviour and experiences. Sensation is the process by which we experience the world through our senses, such as seeing, hearing, smelling, tasting, and touching. Social psychology is the study of the effects of social situations on the thoughts, feelings, and behaviours of individuals.

Nature of sensation:

Sensation is information received by the sensory organs (such as eyes, ears, nose, tongue, skin) before it is processed by the brain. This information is converted into electrical impulses and then transmitted to the brain, where it is interpreted and we experience the world.

Practical Challenges:

There are a number of practical challenges between empathy and social psychology:

Social influences: Our perceptions are influenced by the social context. For example, what we find attractive may depend on who we see him or her with and how we feel about the situation. We may find a person attractive, or we may find a person attractive to be attractive to others.

Discrimination: Our sensibilities can be influenced by prejudices and stereotypes, which may lead to discrimination against others.

Social norms: Social norms, which are social expectations, can also influence our sensitivities. For example, we may judge a particular thing as tasty or unpleasant only after observing the reactions of others.

Social cognition: The information we acquire about others influences our social behaviour.

Example:

Social comparison: We compare ourselves with others, and this can affect our sense of self. If we see that someone is more successful than us, we may feel worse about our abilities.

Social support: Social support, such as encouragement from friends and family, can help to calm our emotions and can help improve mental health.

Social performance: We may be anxious to perform well in front of others, and this can affect our emotions. For example, we may feel nervous during a public speech.

Question No. 7 - How does the effect of human behaviour in social psychology affect social life?

Answer- Social psychology is the scientific study that focuses on how the thoughts, feelings, and behaviour of individuals are influenced by the real, imagined, or implied presence of others. In short, it investigates how the social world shapes human behaviour and what important role it plays in human social life.

To understand the impact of social psychology on human behaviour and social life, we need to examine the processes and phenomena that it studies: we need to understand the various social:-

1. Social Influence:

This is the central pillar of social psychology, and it directly explains how the presence of others influences our behaviour affects.

Conformity: People often behave in a way that conforms to the norms or expectations of others, even when

They may disagree personally. For example, employees in a new office may observe others to see when to have lunch or what clothes are appropriate to wear. This establishes social norms and helps maintain social order.

Obedience: People follow the instructions of authority figures, even if they feel uncomfortable with those instructions. Milgram's famous experiments showed how willing people can be to harm others at the behest of an authority figure. This shapes behaviour in hierarchical structures (such as the military or the workplace).

Compliance: This occurs when people behave in direct response to a request. Various techniques of persuasion, such as "foot-in-the-door" (starting with a small request, then moving to a larger one) or "door-in-the-face" (starting with a large, unacceptable request, then moving to a smaller one), highlight how persuasion can influence others in social contexts.

Groupthink and Group Polarization: The pressure to conform in a group decision-making process can lead to incorrect or extreme decisions. Groupthink occurs when group members struggle to reach a consensus, while group polarization occurs when the group's initial tendencies become stronger after group discussion. This affects group decision-making in everything from boardrooms to political movements.

2. Social Cognition:

It studies how people think about the social world, process information, and understand others.

Attitudes: Our attitudes (positive or negative evaluations of people, objects, or ideas) strongly influence our behaviour. Social psychology explains how attitudes are formed (e.g. social learning, direct experience), how they change (e.g. persuasion), and how they guide our behaviour (e.g. people with positive attitudes toward the environment are more likely to recycle).

Attribution: How people explain the causes of others' behavior (is it due to the person's nature or due to the situation?) helps us understand how we react to and interact with others. Attributing a negative action to an internal characteristic (bad person) can lead to anger and defensive behavior, while attributing it to a situational factor (was under stress) can lead to empathy.

Stereotypes, Prejudice, and Discrimination: Social cognition helps us understand how these harmful social phenomena arise and persist. Stereotypes (oversimplified beliefs about groups), prejudice (negative feelings toward a group), and discrimination (negative attitudes) create deep divisions in our social lives and affect interactions between different groups.

Self-Concept and Self-Esteem: Social psychology explains how our self-perception is shaped by social comparison, the reactions of others, and social roles. Our self-esteem affects how much risk we take in social situations, how we interact with others, and how we cope with challenges.

3. Interpersonal Relationships:

Social psychology deeply studies the relationships between people, including attraction, friendship, love, and conflict.

Attraction: What factors attract people to each other (proximity, similarity, physical attractiveness)? Understanding this can help inform how friendships and romantic relationships form.

Love: The study of different types of love (e.g. passionate love, compassionate love) and their development highlights the complexity of social relationships.

Conflict and Cooperation: Social psychology studies the causes of group conflict (e.g. resource competition, miscommunication) and ways to resolve them (e.g. contact hypothesis, common goals). It affects important aspects of social life, from war between nations to strife within the family.

Altruism and Aggression: Why do people help others (altruism) and harm others (aggression)? These behaviours play an important role in social life. Social psychologists explore the underlying causes of these behaviors (e.g. empathy, social norms, and frustration) and how they can be promoted or reduced.

4. Group Dynamics:

It studies how groups function and affect individuals.

Social Loafing: This phenomenon explains why people put in less effort when working in a group than when working alone. This affects productivity in the workplace.

Leadership: Different leadership styles and how they affect group performance and satisfaction. Effective leadership is important in many areas of social life (e.g. politics, business, community).

Intergroup Relations: How members of different social groups interact with each other. This includes the study of prejudice, conflict, and cooperation within groups.

Overall impact on social life:

Social psychology affects our social life in several ways:

Self-Understanding: It helps us understand how our own thoughts, feelings, and behaviours are influenced by social contexts. It helps us recognize our own biases and reactions.

Understanding Others: It gives us the tools to understand the behaviour of others, anticipate their intentions, and interact with them effectively.

Solving Social Problems: Its principles are used to solve real-world problems in areas such as reducing prejudice and discrimination, resolving conflicts, promoting public health behaviours, raising environmental awareness, and improving productivity in the workplace.

Better Decision-Making: Understanding the mechanisms of persuasion and social influence enables individuals to make more informed and critical decisions about media messages, political campaigns, and advertising.

Building Healthier Relationships: Understanding the principles of interpersonal attraction, communication, and conflict resolution can help individuals build stronger and more satisfying personal and group relationships.

Public Policy and Social Justice: Social psychological research helps policymakers develop programs and laws that promote social justice, equality and improve social harmony.

Question No. 8- Examine mental health and mental trauma?

Answer - Social psychology does not directly diagnose mental health disorders or treat trauma - this work falls under the domain of clinical psychology and psychiatry. However, social psychology provides an important lens for understanding mental health and trauma does, particularly highlighting the role of social factors.

Let us examine the concepts of mental health and trauma from the perspective of social psychology:

1. Social Psychology Perspective on Mental Health:

Mental health is not just the absence of mental illness, but it includes a state of emotional, psychological and social well-being. Social psychology is a group of social conditions that affect mental health in many ways highlights the factors:

Social Support:

Importance: A major finding of social psychology is that strong social relationships and support networks are important for mental health.

Impact: Loneliness and social isolation have been linked to an increased risk of depression, anxiety and other mental health problems. In contrast, strong social support helps cope with stress, build resilience and improve overall well-being.

Theory: Social psychological theories such as Attachment Theory and Social Exchange Theory explain how people form and maintain meaningful relationships that meet their emotional needs.

Social Comparison:

Importance: Social psychologists have shown that people often compare themselves with others to evaluate their abilities. Thoughts and feelings

Impact: This comparison can affect mental health positively or negatively.

Upward comparison: When people compare themselves to those they perceive as better off, this can lead to jealousy, inadequacy and low self-esteem, especially in the age of social media where 'perfect' lives are often presented.

Downward Comparison: Comparing yourself to others who are perceived to be less fortunate can increase self-esteem and promote a sense of well-being.

Social Norms and Conformity:

Importance: Social norms are unspoken rules for behaviour, thoughts and feelings. Conformity pressure acts on individuals to follow these norms.

Effects: Some social norms can be harmful to mental health. For example, the stigma associated with mental illness is a social norm that prevents individuals from seeking help and makes them feel isolated. Social psychologists study interventions to reduce stigma and promote more openness about mental health.

Identity and Group Membership:

Importance: Our social identity (race, gender, religion, nationality, etc.) and our membership in various groups deeply influence our self-perception and mental well-being.

Impact: Discrimination, exclusion or being in a minority group can cause stress, anxiety and depression. A sense of strong group identity and belonging, especially in groups that provide support, can be a protective factor for mental health.

Socioeconomic Status (SES):

Importance: Social inequalities and poverty have a profound impact on mental health.

Implications: Low SES is often associated with stress, insecurity, limited resources, and reduced access to health services, all of which can contribute to poor mental health outcomes.

2. Social Psychology Perspective on Psychological Trauma: Mental trauma is an emotional response to a traumatic event such as an accident, disaster, war, or assault. Social psychology contributes to the understanding of mental trauma, especially its social causes, consequences, and the role of social factors in treatment:

Collective Trauma and Shared Experience:

Importance: Social psychology studies the collective trauma experienced by entire communities or societies following events such as natural disasters, terrorism, or mass violence.

Implications: These shared experiences can influence group solidarity, collective identity and recovery processes. Shared grief and collective resilience can develop through social support and collective action.

Examples: the sense of solidarity in New York City after 9/11 or the community coming together after a natural disaster.

Social Support and Trauma Recovery:

Importance: Social psychology underscores the important role of social support in recovery from trauma.

Implications: Strong social support from family, friends, or support groups for traumatized individuals can help reduce the negative effects of trauma and promote resilience. Conversely, social isolation can increase the risk of post-traumatic stress disorder (PTSD) and other mental health problems.

Stigma and Trauma:

Importance: Social stigma can complicate the experience of trauma, especially if the trauma is caused by violence or oppression.

Effects: Social stigma against war veterans, survivors of sexual assault, or individuals suffering from certain illnesses may face difficulties, which may make them hesitant to seek help and increase isolation. Social psychologists help develop strategies to reduce stigma and increase social acceptance and support for survivors.

Social Reconstruction and Community Healing (Social Reconstruction and Community Healing):

Importance: After a large-scale trauma, communities often go through a process of rebuilding and healing.

Implications: Social psychology plays a role in social justice movements to rebuild collective memories, social identities, and prevent future trauma. Community-based interventions and peer support programs are influenced by social psychological theories.

Coping Behaviours and Trauma:

Importance: Social context can influence how individuals cope with trauma.

Implications: Some social groups may adopt harmful ways of coping with trauma (e.g. substance abuse), whereas other groups may promote positive coping strategies (e.g. activism, participation in support groups). Social psychology highlights the role of social learning and group norms.

Re-traumatisation:

Importance: Revisiting trauma may occur in social contexts (such as legal proceedings, media coverage, or insensitive societal reactions).

Implications: Social psychology helps understand how these social interactions can reactivate trauma and how supportive and informed responses can support the healing process.

Question No. 9- Explain the importance of morality in the control of moral development and social development?

Answer- In present times, it is extremely relevant to understand the interrelationship between moral development and social development and the importance of moral principles in social control. Social psychology investigates how individuals develop morality and how these moral principles help maintain social order, cooperation and justice.

Play an important role.

1. Moral Development:

Moral development is the process through which individuals develop their understanding of right and wrong, good and bad, and acquire the ability to act in accordance with moral principles. It is much more than just memorizing rules.

There is more; it involves moral reasoning, decision making, and behaviour.

Major principles of moral development:

Piaget's Theory of Moral Development):

Piaget identified two main stages of children's moral reasoning:

Moral Realism/Heteronomous Morality: (5-9 years) Children see rules as absolute and unchangeable. They focus on consequences, not intent. Punishment comes from external authority.

Moral Relativism/Autonomous Morality: (10+ years) Children understand that rules are changeable and based on agreement. They consider intent and believe that moral decisions should be made individually and that punishment should be proportionate to the crime.

Kohlberg's Theory of Moral Development (Kohlberg's Theory of Moral Development):

Kohlberg proposed three levels and six stages of moral reasoning:

Pre-Conventional Level: (in children, but also some adults) morality is based on consequences (avoiding punishment, receiving rewards).

Stage 1: Punishment and Obedience Orientation

Step 2: Individual Interest Orientation

Conventional Level: (most teens and adults) morality, social norms and is based on compliance with expectations.

Stage 3: Good Interpersonal Relationships Orientation - "Good Boy/Good Girl"

Stage 4: Maintaining Social Order Orientation

Post-Conventional Level: (some adults) Morality is based on personal principles and universal moral values that may transcend social rules.

Stage 5: Social Contract and Individual Rights Orientation

Step 6: Universal Ethical Principles Orientation

Development of Moral Identity: Social psychologists have emphasized that moral development is not just about reasoning, but also about forming a "moral self" or moral identity, where moral principles become a central part of a person's self-concept.

Social Learning Theory: Theorists such as Bandura explained that children learn moral behaviour through observational modeling and reinforcement. They observe how other people react to moral dilemmas and experience the consequences of these reactions.

2. Social Development:

Social development is the process through which children and adults develop the ability to interact with others, learn social skills, internalize social norms and values, and understand social roles. It is a lifelong process and involves emotional, cognitive, and behavioural components. Major aspects of social development:

Social Skills: The ability to interact effectively with others, such as communication, empathy, cooperation, and conflict resolution.

Social Cognition: The ability to understand the thoughts, feelings, and intentions of others (Theory of Mind), and interpret social situations.

Social Identity: A sense of belonging to different social groups and adopting their norms and values.

Emotional Regulation: The ability to effectively manage your emotions in social contexts.

3. The importance of morality in the control of social development:

Importance of Morality in Controlling Social

Morality regulates and guides social development in many important ways, leading to a well-organized, just, and cooperative society.

(Maintaining Social Order and Stability):

Rules and norms: Moral principles provide the basis for establishing codes of conduct, rules and laws in society. These rules govern individual behaviour, make social interactions predictable and prevent chaos.

Collective action: When individuals have some shared moral principles (e.g. fairness, honesty), they are more likely to work together, achieve shared goals, and solve social problems.

Fostering Cooperation and Harmony:

Trust: Ethics are the basis of trust. When people trust each other's honesty and ethical principles, cooperation and positive social relationships flourish.

Altruism and Empathy: Moral development develops in individuals the need for concern and empathy for others promotes a sense of empathy. It encourages altruistic behaviour (helping others), which is essential for social cohesion.

Reciprocity: Ethical theories often promote the idea of reciprocity as "what you give, you get what you get." It's a social contract that ensures that people treat others fairly knowing that they can expect fairness in return.

Conflict Resolution and Justice:

Fairness: Through ethical principles, society develops notions of justice and fairness. These principles provide a framework for resolving disputes, allocating resources, and correcting wrongs.

Legal and judicial systems: Ethics is used to inform and shape legal systems that enforce social norms and hold violators accountable.

Social justice movements: Moral reasoning often motivates social justice movements that challenge systemic inequalities and fight for a more just society.

Social Identity and Group Cohesion:

Shared values: The shared moral values of a group or community strengthen group identity and bring a sense of belonging among members fosters a sense of unity among.

In-group/out-group dynamics: Shared morality can help define the in-group (people who share our values), although it can sometimes also define the out-group (those who do not share our values).

This may also give rise to prejudice towards the people (who are considered to be the same people).

Self-Regulation and Accountability:

Internalization: Through moral development, individuals internalize moral principles without fear of external punishment. This leads to self-regulation, where individuals behave in accordance with their moral code.

Responsibility: Moral development gives individuals the ability to take responsibility for their actions and to be accountable to others.

Promoting Human Well-being):

Respect and Dignity: Ethical principles promote the idea of the inherent worth and dignity of all human beings, leading to a society where individuals are respected and their rights are protected.

Empathy and compassion: Moral development makes individuals more sensitive to the pain and needs of others, leading to acts of compassion and kindness that improve overall well-being.

Interaction between moral development and social development:

It is important that moral and social development do not occur in isolation from each other, but are deeply intertwined:

The social context shapes moral development: family, school, peer groups, and culture shape moral values and play an important role in moral development by transmitting expectations.

Moral development influences social behaviour: a person's moral reasoning and identity guide their social behaviour, such as how they react to conflicts, help others, or oppose injustice.

Importance of interaction: A well-organized society requires moral development that helps individuals internalize social norms and develop concern for the welfare of others. In turn, a just and supportive social environment provides favourable conditions for moral development.

Question No. 10- How does morality affect social psychology?

Answer- The relationship between ethics and social psychology is deep and complex because ethics directly determines how people think, feel and behave in social contexts. Social psychology deals with the development of morality, the processes of ethical decision-making and the impact of ethical principles on social behaviour studies the effects scientifically.

Let us understand in detail how ethics affects social psychology:

1. Moral Decision-Making and Social Cognition:

Social psychology studies how people think and make decisions when faced with ethical dilemmas.

Moral Reasoning: Theories such as Kohlberg's have highlighted stages of moral development that , show how people move from simple, consequence-based considerations to more complex, principle-based moral reasoning. Social psychology explores how the social context (e.g. group pressure, the influence of authority) can influence this reasoning.

Moral Biases: Just as cognitive biases affect decision making, there are also moral biases. For example, people often show greater moral tolerance toward members of the in-group or try to rationalize their own unethical behavior (self-serving bias).

Emotional Intuitions: Researchers such as Jonathan Haidt have argued that moral judgments often begin with intense emotional intuition rather than reasoning, and that reasoning only serves to rationalize the intuition later. Social psychology focuses on this emotional component and its role in social contexts explores its implications.

Moral Dilemmas: Social psychologists often use ethical dilemmas (such as the trolley problem) to understand how people make moral choices and which factors (such as consequences versus duty) most influence their decisions.

2. Impact of Ethics on Social Influence and Conformity: Ethical principles affect how people respond to social influences.

Moral Resistance: Individuals with strong moral convictions may be less susceptible to social pressures. They may refuse to conform to the views of the majority or the orders of authority if they consider these views to be immoral (for example, refusing to obey immoral orders during war).

Moral Exemplars: Individuals with morally high character can become powerful social examples to others, inspiring ethical behaviour and resistance within a group.

Internalization of Moral Norms: When individuals internalize moral norms, they behave in accordance with them even without external monitoring. This can lead to freedom from pressures to conform that are based solely on avoiding punishment or receiving rewards.

3. Group Processes and Intergroup Relations: Morality deeply influences interactions within groups and between different groups.

Moral Solidarity: Shared moral values strengthen group solidarity. When group members follow the same moral code, they trust each other more and cooperate more effectively to achieve shared goals.

Moral Exclusion: This is a social-psychological phenomenon where one group excludes another group from the realm of moral consideration. When this happens, members of the out-group are not seen as human, and immoral behaviour toward them is justified (as seen in genocide or serious human rights violations).

Justification of Prejudice and Discrimination: Moral principles (often in a distorted form) are sometimes used to justify prejudice and discrimination. For example, arguing that a certain group is "unworthy" or "less moral" may justify unethical behaviour towards them.

Social Justice Movements: Moral indignation and a deep sense of justice often fuel social justice movements. When people see that moral principles (e.g. equality, fairness) are being violated, they organize and act for social change.

4. Altruism and Aggression:

Morality directly influences altruistic (helping others) and aggressive behaviour.

Altruism: Feelings of empathy and moral obligation often motivate altruistic actions. When individuals see others suffering and feel morally obligated to help them, they are more likely to help. Moral principles such as "do no harm" and "help the weak" promote altruistic behaviour.

Aggression: Perceptions of immorality can increase aggression. If people believe they have been wronged or that someone has behaved unethically, they may be more inclined to use aggressive behaviour in return. "Moral disengagement" is the process by which people deactivate moral constraints, allowing them to harm others.

5. Self-Concept and Identity:

Morality plays an important role in the formation of an individual's self-perception and social identity.

Moral Identity: Individuals for whom moral principles are a central part of their self-concept (i.e., they have a strong moral identity) are more likely to behave in a way that is consistent with their values.

Self-Esteem: Acting ethically can boost self-esteem and a sense of psychological well-being. Unethical behaviour, in contrast, can lead to guilt, shame, and decreased self-worth, especially if the behaviour is contrary to a person's moral standards.

6. Social Ethics and Research Ethics:

Ethics is not only a subject of study in social psychology, but it also guides research conduct within the field Controls.

Research Ethics: Social psychologists must follow strict ethical guidelines in their research (such as informed consent, confidentiality, minimal use of deception, protecting participants from harm). This ensures that research is conducted in a humane and respectful manner and is itself influenced by ethical principles.

Application of Findings: The ethical use of social psychology findings is an important consideration. For example, principles of persuasion can be used for public health campaigns but can also be used for manipulative or harmful purposes.

B.A.LL.B.-6th Sem. Paper-III Law of Crime-II

Question No. 1- Explain and clarify the term culpable homicide. Differentiate between murder and culpable homicide which is not murder.

Answer: Criminal homicide is defined as follows under **section 299** of the Indian Penal Code has been done-

Section 299 – Culpable homicide not amounting to murder: “Whoever, with the intent of causing death, or with the intent of causing such bodily injury as is likely to cause death, or with the knowledge that such act is likely to cause death, causes death by doing any act, commits the offence of culpable homicide.

Essential Elements of Culpable Homicide-

Based on the above definition, the following are the essential elements-

- (1) Any act which causes the death of a human being,
- (2) The act is done with the intent to cause death
- (3) Such bodily injury is caused as is likely to cause death
- (4) The act is done with the knowledge that it is likely to cause death.

(1) Death of a human being- This section cannot be applied unless the death of a person has been caused. Here the word death means the death of a human being but the word human being does not include a child in the womb of the mother. For example, **Explanation (3)** to **section 299** provides that "It is not homicide to cause the death of a child in the womb of the mother but it is not culpable homicide to cause the death of a living child if any part of the child has protruded even though the child has not breathed or is not fully born."

(2) Act done with intent to cause death- Whoever causes death by doing any act with the intent to cause death, or with the intent to cause such bodily injury as is likely to cause death, or with the knowledge that such act is likely to cause death, commits the offence of culpable homicide. In the case of **Joginder Singh v. State (1979) Cr.L.J. 1406 S.C.** the accused were chasing a person in an open field. They caused the death of his relative who was accompanying him. In order to save his life from the accused the deceased jumped into a well, resulting in his death. The Supreme Court held that "if the prosecution proves beyond reasonable doubt that the deceased had no other option but to jump into the well to save his life, the accused will certainly be held guilty of culpable homicide.

(3) The act is done with the intention of causing such bodily injury which is likely to cause death-If the act done by the accused is done with the intention of causing such bodily injury that it is impossible that it will cause death, then the death caused in this way will be termed as culpable homicide. The connection between the 'act' and 'death caused by the act' should be direct and clear and the connection between these two, though not immediate, should not be too remote. But this is also possible only when such bodily injury is different from the bodily

injury sufficient to cause death in the normal course of the nature described in **section (3) of 300.**

(4) The act is done with the knowledge that it is likely to cause death- Under this section, a person is also guilty of culpable homicide who causes death by doing an act with the knowledge that he may cause death by that act. In the matter of culpable homicide, 'intention' or 'knowledge' has wide importance, because in the absence of these mental conditions it is not possible to make the accused responsible for the result of his act. For example, **illustration (c) of section 299** makes it clear- "A, with the intention of killing and stealing a cock, shoots at it and kills B, who is behind a bush, but A did not know that B was there. Here, although A was acting unlawfully, he is not guilty of culpable homicide, because the intention was not to kill B, or to cause death by doing an act which he knew to be likely to cause death."

When is culpable homicide not murder?

Homicide falling within the following exceptions is not-

Exceptions Grave and Sudden Provocation - Lack of power of self-control and grave and sudden provocation results in the death of the person who gave the provocation or causes the death of any person by mistake or accident. This exception has three provisions. The first provision states that the provocation should not be voluntarily given as a pretext for killing or causing harm to the offender. The second provision states that provocation shall not be committed by any act done in obedience to law or by a public servant in the lawful exercise of his powers. The third provision states that provocation should not be committed through the lawful exercise of the right of private defence.

Example- A abuses and slaps B's sister in front of him several times and commits grave and sudden provocation. The same would fall under this exception.

Exception 2 Exceeding right of private defense: Exceeding in good faith the right of private defense of the body or property and exceeding his power given by law and causing the death of the person against whom he is exercising such right of defense without premeditation and with intent to do more harm than is necessary to take such defense.

Exception 3 Public Servant exceeding his Power- If the offender is a public servant or is assisting a public servant and exceeds his powers in good faith, believing it to be lawful and necessary for the proper discharge of his duties, and without any malice aforethought. In the case of **Dukhi Singh vs State of UP (1955)**, a Railway Protection Force constable fired at a thief to catch him when he was evading his arrest, however, this resulted in his death. But, the constable was given protection under this exception and a case of culpable homicide was registered against him.

Exception 4 Sudden Fight- Culpable homicide is not murder if it is done without thinking, in a sudden fight, in a fit of passion, on a sudden quarrel and without the offender taking undue advantage or acting in a cruel or unusual manner.

Difference between culpable homicide and murder

| Basis of differentiation | Culpable homicide | Murder |
|----------------------------|---|---|
| Meaning/Concept | Death occurs by doing any act which is likely to cause death. | Death is caused by an act which is done with sufficient intention to cause death. |
| Essential elements | Caused with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that it is likely to cause death. | Act done with the intention to cause death or to cause such bodily injury as is sufficient to cause death or with the intention to cause death and with the knowledge of the possibility of causing death or to cause such bodily injury as is sufficient to cause death or with the knowledge that it is imminently dangerous to cause death or to cause bodily injury with such knowledge that it is likely that it will cause death. |
| Provisions | Sections 299 and 304 | Section 300 and 302 |
| Degree of intention | Comparatively less | sufficient to cause death |
| Knowledge Purpose (mainly) | Knowledge of possibility of causing death likely to cause death. | attendance is mandatory causing death |
| Punishment | Imprisonment for life or imprisonment of up to ten years and fine, if done with the intention of causing death or of causing such bodily injury as is likely to cause death, as mentioned in the first paragraph of section 304. Imprisonment for life or imprisonment of up to ten years or fine, or both, as mentioned in the second paragraph of section 304, if an act is done with the knowledge that it is likely to cause death, but is done without any intention or reason there is a possibility of death due to bodily injury. | Death or life imprisonment and fine |

Question No. 2- What is criminal misappropriation? Explain with the help of suitable examples. How is criminal misappropriation different from theft? Or What is criminal misappropriation? How is it different from criminal breach of justice?

Answer: Criminal misappropriation has been presented in a very detailed form in **Section 403** of the Indian Penal Code, that is, "When a person dishonestly uses or misappropriates any movable property, it is said to be misappropriation of property."

Section 403 of the Code defines criminal misappropriation as well as provides punishment for it: "Whoever dishonestly misappropriates any movable property, or converts the same to his own use, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Illustration-

(a) A takes property belonging to Z out of Z's possession, in good faith, at the time when A takes it, believing that the property belongs to Z. A is not guilty of theft, but if A, after his mistake, dishonestly appropriates the property to himself, he is guilty of an offence under this section.

(b) A, who is a friend of Z, goes into Z's library in Z's absence and takes a book without Z's express consent. Here, if A had the idea that he had Z's implied consent in taking the book for the purpose of reading, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

Explanation 1.-Dishonest misappropriation for a short time only is misappropriation within the meaning of this section.

Illustration-A receives a government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the promissory note belongs to Z, pledges it with a banker as security for a loan, with the intention that he will at a future date restore it to Z. A has committed an offence under this section.

Explanation 2.-A person who finds property lying unclaimed which is not in the possession of another person, and takes such property for the purpose of preserving it for the owner thereof, or of restoring it to the owner, neither dishonestly takes nor dishonestly misappropriates the same, and is not guilty of any offence, but is guilty of the offence defined above, if he appropriates the property to himself before knowing or having the means of discovering the owner thereof, or having used reasonable means of discovering and giving information to the owner thereof and before having kept the property for a reasonable time to enable the owner to demand it.

What is a reasonable means in such a case, or what is a reasonable time, is a question of fact. It is not necessary that the recipient knows who the owner of the property is, or that any particular person is its owner. It is enough that at the time of appropriating it he does not believe that it is his own property, or believes in good faith that the real owner cannot be found.

Illustration-(a) A finds a rupee lying on the highway. Not knowing whose rupee it is, A picks it up. Here A has not committed the offence defined in this section.

(b) A finds a letter lying on the street, containing a bank note. From the directions and contents of the letter he finds out to which the note belongs. He invests the note. He is guilty of an offence under this section.

Criminal misappropriation - Meaning **Sections 403 and 404** of the IPC deal with criminal misappropriation of property. **Section 403** defines criminal misappropriation and prescribes punishment for the offence and **Section 404** deals with misappropriation of property of a deceased person. The term misappropriation means dishonest appropriation and use of property of another for the sole purpose of capitalising it for one's own use.

Criminal misappropriation occurs when possession is obtained honestly but which is subsequently continued because of a change in intention or after the discovery of a new fact which the party did not know before. When that fact becomes known the property becomes wrongful and fraudulent.

This offence is punishable with imprisonment for a term which may extend to two years (simple or serious) or with fine or with both.

Essential Elements- Conditions for Application of **Section 403-**

(1) When a person has dishonestly misappropriated or converted any property to his own use.

(2) Such property is movable—

(3) There is another owner of the property in question.

The Supreme Court held in the case of **Ramaswami Nadar vs State of Madras 1958 S.C. 56** that **Section**

Section 403 will apply only if the prosecution has proved that-

(a) The accused has misappropriated the property,

(b) Is done with such dishonest intent,

(c) Such property belongs to the complainant.

Difference between criminal misappropriation and criminal breach of trust

(1) Section- Dishonest misappropriation of property has been defined in **section 403** while criminal breach of trust has been defined in **section 403** has been provided for in **section 405**.

(2) Possession of property- In criminal breach of trust the offender comes into possession of the property lawfully, whereas in dishonest misappropriation of property the offender obtains possession of the property by reason of some mistake or some accident.

(3) Trust.- In criminal breach of trust it is necessary for the property to be entrusted to the offender whereas in criminal misappropriation it is not necessary for the property to be so entrusted.

(4) Consent - In criminal breach of trust, the possession of the property by the offender is with the consent of the owner of the property whereas in dishonest misappropriation of property, the possession of the property by the offender may be with or without the consent of the owner of the property.

(5) Contract.-In criminal breach of trust the property is entrusted to the offender under a contract whereas in criminal misappropriation no such contract is necessary.

(6) Scope.-The offence of criminal breach of trust is wider in scope than that of dishonest misappropriation of property and as such includes dishonest misappropriation of property also. Whereas the offence of criminal misappropriation is not wider in scope. It does not include the offence of breach of trust.

(7) Nature of offence.-The offence of criminal breach of trust is more serious than the offence of dishonest misappropriation of property while the offence of dishonest misappropriation of property is not so serious.

(8) Punishment.-A person guilty of the offence of criminal breach of trust is punishable with imprisonment for a term which may extend to three years or with fine or with both, while a person guilty of the offence of dishonest misappropriation of property is punishable with imprisonment for a term which may extend to two years or with fine or with both.

| Sr. No. | Theft (Section 378) | Criminal misappropriation 403 |
|---------|--|---|
| 1 | Theft involves taking property from the possession of another person with dishonest intent. | The property comes into the possession of the accused in some natural manner. |
| 2 | In theft, the offender obtains possession of the property without the consent of the person in possession. | The accused comes into possession of the property by reason of some accident or otherwise and he subsequently misappropriates it. |
| 3 | The punishment for theft is given under Section 379, imprisonment for a term which may extend to thirty years, or with fine, or with both. | Imprisonment for a term which may extend to 'two' years, or Shall be punishable with fine or with both under section 403. |

Question No. 3 - Discussion of the law contained in the Indian Penal Code relating to grave and sudden provocation Do it.

Answer- The law relating to grave and sudden provocation has been described in the first exception to **Section 300** of the Indian Penal Code, which clarifies when culpable homicide is not murder-

Exception 1- When culpable homicide is not murder- Culpable homicide is not murder if the offender, while deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos-

Firstly- That the outrage is not sought or voluntarily inflicted by the offender as an excuse for killing or causing harm to any person.

Secondly- That the provocation is not given by anything which is done in obedience to law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly- Which the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.- Whether the provocation was so grave and sudden as to prevent the offence from falling within the category of murder, is a question of fact.

Grave and Sudden provocation as mitigation- The writers of the Code have briefly described the aim and purpose of the Code and the rationale for the punishment prescribed in case of murder committed under grave and sudden provocation in the following words-

We agree with all mankind and with the majority of jurists, ancient or modern, in thinking that homicide committed in a fit of rage, under extreme provocation, should be punished, but not so severely as in the case of murder. It should be punished to teach men a special respect for human life, to accustom men to control their passions, and in some cases to act with extreme severity. Yet we will not punish homicide committed in a fit of rage, under sudden provocation, with the highest penalties of the law. We think that to treat a man guilty of such homicide as we should treat a murderer, would be a most unreasonable course which would shock the universal sense of humanity and attract public sympathy in favour of a criminal against the law.

(1) Essentials. - The Code has listed the circumstances under **Exception 1 to Section 300 IPC** under which the offence of murder would become manslaughter not amounting to murder punishable under Section 304 IPC. To avail the benefit of this section, the following conditions must be fulfilled:

- (1) The accused has been provoked by the deceased.
- (2) The provocation must be grave.
- (3) The provocation must be sudden.
- (4) The provocation must have caused the offender to lose self-control.
- (5) The accused was deprived of the power of self-control while the deceased was under the influence of the substance.
- (6) The offender has caused the death of the person who gave him the provocation and then by mistake or accident causes the death of any other person.

It may be said that the defence of provocation is further limited by the following three proviso means that the exception is not available-

- (1) If the accused gives provocation or uses it as a pretext for assaulting someone else,
- (2) If the act is lawfully done by a public servant in the exercise of his legal authority as such servant goes,

(3) If the act is done in the exercise of the right of private defence.

(2) Meaning of grave and sudden provocation.- Among the above listed conditions, the most important condition which has puzzled the courts from time to time falls in the category of grave and sudden provocation which would entitle the accused to the benefit of the exception if the accused is deprived of his power of self-control. **L.C. Simon in the case of Mancini v. Director of Public Prosecutions 1942 A.C. 1(9)** has well described the scope of the doctrine of provocation as given below- It is not mere provocation which will convert the offence of murder into manslaughter (culpable homicide). For that kind of result the provocation must be such as to temporarily deprive the person provoking of the power of self-control and as a result he commits the unlawful act causing death.

The test to be applied here is what effect the provocation would have on a reasonable man as held by the Court of Criminal Appeal in **Rex v. Lesbini (1914) 3 K.B. 1116**, whereby an unusually excited or quarrelsome person is not entitled to rely on provocation which would not have led an ordinary man to do the act which he did.

This is particularly important when using the test-

(a) Considering whether sufficient time has elapsed since the provocation to allow a reasonable person time to calm down, and

(b) Consider the instrument with which the homicide was committed. To retaliate in anger with even a simple blow when prompted by provocation is quite different from using a deadly weapon such as a concealed dagger. In short, if the offence is to amount to homicide (culpable homicide), the manner of outrage must have a reasonable connection with the provocation.

(3) Words or acts amounting to provocation- It is important to note that Indian courts have not made a distinction between words and acts in applying the doctrine of provocation, as is done in the case of English law.

A case in which the defence of provocation is raised may be considered from two aspects-

(1) Whether words or gestures which did not occur simultaneously with the act could amount to provocation, and

(2) What is the effect of the delay between the act of provocation and the commission of the offence?

In the case of **Murugin ILR 1957 Madras 805** the Madras High Court held that where the deceased had not only committed adultery but later openly swore before the husband that she would continue such adultery and also abused her husband for opposing such conduct, the case fell under the first exception to **Section 300 IPC**. The decisions show that the mental condition created by the previous act may be considered to determine whether the subsequent act was sufficient to make the offender lose his self-control.

(4) Test of prudent person - K.M. Nanavati - The Supreme Court in the case of **K.M. Nanavati v. State of Maharashtra AIR 1962 SC 605** has extensively discussed the law relating to provocation in India and observed that

(1) The test of grave and sudden provocation is whether a reasonable person belonging to the same class of society as the accused, if put in the same situation as the accused, would be so provoked as to lose self-control.

(2) In India, under certain circumstances, grave and sudden provocation may be caused to the accused by words and gestures which would bring his act within the first exception to **Section 300** of the IPC.

(3) The mental background created by the prior act of the victim may be taken into consideration in determining whether the subsequent act constituted a grave and sudden provocation to commit the offence, and

(4) The fatal blow must have been clearly a result of the passion arising out of the provocation and not by the passion having cooled down by lapse of time or otherwise having given the accused an opportunity of premeditation and consideration.

The court further said- What a reasonable person would do in certain circumstances depends on customs, conduct, lifestyle, traditional values etc., in short, the cultural, social and emotional background of the society to which the accused belongs. In our country there are social groups which range from the lowest to the highest stage of civilization. It is neither possible nor desirable to lay down any standard of accuracy; this task is to be decided by the court keeping in view the relevant circumstances of each case.

The facts of this case aroused great public interest because of the fame it received presenting the clichéd problem of the alleged murder of the lover of his wife by an irate husband. The accused, a naval officer, was accused of murdering Prem Ahuja, a businessman from Bombay, for having an illicit relationship with the accused's wife, Sylvia. On learning about his wife's illicit relationship with the deceased, he went on board the ship, took a semi-automatic revolver and 6 cartridges from the store on false pretences, loaded them in the revolver, then went to Ahuja's flat, entered his bedroom and after a heated argument shot him dead.

Rejecting the plea of grave and sudden provocation put forward by the accused, the Court held that for the application of **Exception 1 to Section 300** IPC, it is necessary that the act which caused the death should have been done while the mental state of temporary loss of self-control was still in existence before the passion had time to cool down and there was reason to regain control of the mind. There is no doubt that the deceased lost his self-control for a moment when his wife confessed to him about her illicit relationship with the deceased, his subsequent conduct clearly shows that he had not only regained his self-control but was actually capable of planning the future course of action. He

drove his wife and children to the cinema, went to his ship, took the revolver and loaded the cartridge on false pretext, did some official work, went to the victim's office, not finding him there, went to his flat and shot him dead. There was a gap of three hours between the time he left his house and the time of the murder, which was sufficient time for the passion to cool down and for him to regain self-control, even if he had not regained self-control before. The time interval between when his wife confessed her crime to him and when she carried out her design against the deceased.

Question No. 4- Discuss the essential elements of criminal breach of trust and differentiate it from criminal misappropriation. Or Define criminal breach of trust and differentiate it from criminal misappropriation.

Answer - Criminal Breach of Trust Section 405 When a person misappropriates or uses any property entrusted to him against the express or implied agreement relating to the trust or against the conditions prescribed for the trust or converts or spends it for his own use or knowingly allows any other person to do so, then the trust is said to be breached. **Section 405** gives the following definition of breach of trust-"Whoever, having been entrusted with any property or any authority over property, dishonestly misappropriates the property, or converts the same to his own use, or dishonestly uses or spends the property in violation of any direction of the law prescribing the manner in which the trust is to be discharged, or of any legal contract, express or implied, made by him as to the discharge of such trust, is guilty of the offence of dishonestly misappropriating .

"Explanation 1.-Whoever, being the employer of an establishment, whether the establishment is exempted under **section 17** of the Employees' Provident Funds and **Miscellaneous Provisions Act, 1952 (19 of 1952)** or not, deducts the employee's contribution from the wages payable to the employee for credit into a Provident Fund or a Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in paying such contribution into the said Fund in violation of the said law, he shall be deemed to have dishonestly applied the amount of the said contribution in violation of any direction of law as aforesaid.

Explanation 2.-A person, being an employer, deducts the employee's contribution from the wages payable to the employee for credit into the Employees' State Insurance Corporation Fund held and administered by the Employees' State Insurance Corporation established under **the Employees' State Insurance Act, 1948 (34 of 1948)**, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in paying such contribution into the said Fund in violation of the said Act, he shall be deemed to have dishonestly applied the amount of the said contribution in violation of any direction of law as aforesaid.

Illustration-(a) A, being the executor of a will of a deceased person, dishonestly disobeys the law directing him to divide the effects according to the will, and appropriates the effects to his own use. A has committed criminal breach of trust.

(b) A is a warehouseman. Z, going on a journey, entrusts his furniture to A under a contract to return it on payment of a fixed amount for the warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(1) Criminal breach of trust - Meaning Section 405 IPC defines criminal breach of trust. It says that to constitute the offence of criminal breach of trust it is necessary to prove that the accused was entrusted with the ownership or dominion over the property or assets belonging to another and that he dishonestly misappropriated and converted it for his own use. That is to say, it must be proved that the beneficial interest in the property in respect of which the offence is alleged to have been committed was vested in some person other than the accused and that the accused was holding the property on behalf of that person. A trust is created between the transferor and the transferee under which the transferor remains the lawful owner of the property and the transferee has only the custody of the property for the benefit of the transferor himself or for any other person. At the most, the transferee gets only a special interest in the property handed over to him which is limited to his claim for expenses in connection with its safekeeping and under no circumstances does he get the right to dispose of that property in violation of the conditions of delivery. The offence of criminal breach of trust is constituted only when the following conditions are fulfilled-

(1) Any property or any part of any property has been entrusted to any person, and (2) the person so entrusted has—

(a) Has dishonestly misappropriated or converted the property to his own use, or

(b) Has contravened any direction of the law prescribing the manner in which the trust is to be executed, or

(c) There has been a breach of any express or implied term of the contract relating to the performance of the trust, which

(d) Has so used or addicted the property or has knowingly suffered any other person to do so.

In the case of **State of Maharashtra vs Narayan Champalal Bajaj, 1990 Cr.LJ 2635**, when the income tax raiding party could not complete the raid on that day, the raiding party locked the seized jewellery in a cupboard, sealed it by locking it and handed it over to the accused. The accused cut open the cupboard and took out some items. It was held that the accused was guilty of breach of trust.

The Supreme Court has held in the case of **Madhusudan Malhotra vs. Kishore Chandra Bhandari, 1988 SCC (Cri) 854** that if the husband does not return the Stridhan to his wife, he will be guilty of criminal breach of trust. Similarly, where the husband and father-in-law of a Hindu woman refused to return the Stridhan despite being asked for it, it was held that they were guilty of

criminal breach of trust (**Manas Kumar Dutta vs. Alok Dutta, 1991 Cr.LJ 288 Orissa**). The chairman of a trust purchased some property in the name of his son from the trust money. The son had no connection with the trust. But the complainant did not reveal any allegation against the son. The accused died before the trial. It was held that due to the death of the main accused, the basis of action against the second accused was lost (**Jarnadan Bandhu Ji Dighe vs. Vishwakarma Mandir Trust 1991 Cr.LJ 1095 Bombay**). In the case of **Balram Singh vs. Sukhwant Kaur, 1992 Cr.LJ 792**, the Court held that the offence of breach of trust is a continuing offence, hence the related complaint cannot be bound by limitation.

Essential elements of criminal breach of trust-

1. Entrustment of property- The first essential element of criminal breach of trust is entrustment of some property to the accused. The word trust means giving possession of property for some purpose, but it does not include the granting of ownership rights.

In the case of **Shamlal vs State of Punjab, 2001 Cr.LJ 2957 (Punjab & Haryana)**, the offence of criminal breach of trust was committed by the accused. The Punjab & Haryana High Court held that the provision of arbitration in the agreement between the parties cannot prevent criminal proceedings under **Section 406**. The court also clarified that civil and criminal proceedings can go on simultaneously.

2. Property - Under this section, the property can be of any type, movable or immovable. The property, in respect of which the offence of criminal breach of trust is alleged to have been committed, should either have been entrusted to the accused or he should have custody over the property.

3. Dishonest misappropriation of property- The basic element of the crime of criminal breach of trust is dishonest misappropriation of property for personal benefit. Keeping property in possession by a person without misappropriation is not equivalent to criminal breach of trust.

4. Dishonest use or disposal of property- Under this section, an offence is constituted by any one of the four positive acts. The four positive acts are- misappropriation, conversion, use and disposal. Use is an offence under this section only when any substantial or important harm is caused to the owner of the property or the accused is benefited.

5. Trust - A trust is a basic liability attached to the ownership of property and arising out of a trust declared and accepted by the owner of the property for the benefit of others or for the benefit of others as well as the owner. A trust is not revocable if the property is not entrusted. The trust need not be for the furtherance of any legitimate purpose.

6. Express or implied contract- Violation of a contract can only amount to criminal breach of trust if it is related to a legal or valid contract and not to a contract made for criminal purposes. For example, purchase of stolen property.

7. Deliberately tolerating another person's doing something - The expression 'deliberately' used here means deliberately and intentionally, and not accidentally or indifferently.

Punishment for breach of trust (Section 406)- Punishment for breach of trust is described in Section 406 and other forms of breach of trust along with their punishment is described in Sections **407 to 409**. These sections are as follows

Whoever commits criminal breach of trust shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, wharfinger etc. (Section 407)- Whoever, being entrusted with any property as a carrier, wharfinger or warehouseman, commits criminal breach of trust in respect of such property, shall be liable to imprisonment for a term which may extend to two years Shall be punished with imprisonment of any description for a term which may extend to seven years, and shall also be liable to fine.

Difference between criminal misappropriation and criminal breach of trust

(1) Section.- Dishonest misappropriation of property has been defined in **section 403** while criminal breach of trust has been provided in **section 405**.

(2) Possession of property- Criminal breach of trust requires that the property be entrusted to the offender, whereas dishonest misappropriation of property requires that the offender obtains possession of the property by reason of some mistake or some event.

(3) Trust. - Criminal breach of trust requires that the offender be entrusted with the property whereas criminal misappropriation does not require that the property be entrusted with the property.

(4) Consent. - In criminal breach of trust, the possession of property may be with the consent of the owner of the property whereas in dishonest misappropriation of property, the offender must be in possession of the property with the consent of the owner of the property. It can happen and it can also happen without consent.

(5) Contract. - In criminal breach of trust the property is entrusted to the offender under a contract whereas in criminal misappropriation no such contract is necessary.

(6) Scope.-The offence of criminal breach of trust is wider in scope than that of dishonest misappropriation of property and thus includes dishonest misappropriation of property. Whereas the offence of criminal misappropriation is not wider in scope and does not include the offence of breach of trust.

(7) Nature of offence.-The offence of criminal breach of trust is more serious than the offence of dishonest misappropriation of property while the offence of dishonest misappropriation of property is not so serious.

(8) Punishment- A person guilty of the offence of criminal breach of trust is punishable with imprisonment for a term up to three years or with fine or with both, while a person guilty of the offence of dishonest misappropriation of property is punishable with imprisonment for a term up to two years or with fine or with both.

Question No. 5 - "There is a lot of difference in the scope and application of sections 34 and 149. Though there is some similarity between the two and to some extent they overlap." Explain.

Answer - The principle of criminal liability is that the person who commits a crime takes responsibility for it and can be held guilty. Generally, no offender can be held responsible for the wrongdoing done by someone else. However, there are many exceptions to this rule and one such exception is vicarious/constructive and joint liability. Constructive liability is a legal principle of liability that empowers the court to hold a person liable for the acts or consequences of the acts of others. There are many provisions under the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') under which vicarious liability can be imposed on a person for criminal acts committed by another person. These include acts done with a common purpose, common intention, provocation, etc. However, this article will confine itself to Sections 34 and 149 of the IPC and discuss in depth the interaction of both the sections.

Section 34 of IPC and its scope-Section 34 of the IPC is enacted on the principle of joint liability in committing a criminal act. This section is merely a rule of evidence and does not establish any specific concrete offence. After the **amendment in 1870**, Section 34 of the IPC read as follows, "When a criminal act is done by several persons in furtherance of the common intention of all, each such person is liable for that act in the same manner as if it were done by him alone."

Section 34 of IPC deals with 'common intention'. Though the term 'intention' is not defined in the IPC, it plays a vital role in criminal liability. Section 34 of IPC examines a situation where a particular criminal intention or knowledge is required for the offence to be committed and it is committed by several persons. Every person who forms part of such understanding is held liable in the same manner and the criminal act is imposed by the fiction of law on all persons having the common intention. This provision has been incorporated to prevent abuse of justice and to deal with specific situations where it may be impossible to make a precise distinction between the acts of individual members done in furtherance of the common intention. To fulfil the preliminary requirement for the operation of this section, the establishment of an overt act is

not required by law as this section is attracted when a criminal act is committed by several persons in furtherance of the common intention of all. Therefore, the prosecution has to establish that all the persons concerned had the same intention. This also implies that the criminal act is committed by several persons in furtherance of the common intention of all. It is held that any person who does nothing except standing still and waiting can also be held liable. The phrase 'common intention' means acting in concert in accordance with a pre-arranged plan and scheme. It also includes several persons acting in concert with another to accomplish a common purpose. Even separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, make each such person liable for the consequence of all of them as if he had done them himself. The entire criminal action, whether it is not overt or is merely a covert act or is merely an omission which amounts to an illegal omission. Common intention under **Section 34** of the IPC is to be understood in a different sense from 'common intention' or 'similar intent' or 'common purpose'. Persons having the same intention which is not the result of a premeditated plan cannot be held guilty of a criminal act with the help of **Section 34** of the IPC. Direct evidence of common intention is seldom available and, therefore, such intention can only be inferred from the proven facts and circumstances of the case.

According to section 141 of the IPC,

An assembly of five or more persons is designated as an unlawful assembly if the common object of the persons forming that assembly is to carry out the purpose envisaged in **section 6**, and **section 142** of the IPC. Whoever, being aware of the facts which make an assembly an unlawful assembly, intentionally joins, or continues to attend, such assembly is said to be a member of an unlawful assembly.

The essential ingredients of **Section 149** of the IPC are that (1) there is an unlawful assembly; (2) a member of the assembly commits the offence; (3) the offence committed is (4) committed in prosecution of the common object of the assembly, or (5) is one which the members of the assembly know to be likely to commit an offence in prosecution of that object. Thus, the statutory requirement to constitute an unlawful assembly is that there should be five or more persons present. In such a case, every person who is a member of the same assembly at the time of the offence is punishable. The fact that a large number of the accused have been acquitted and the remaining who have been convicted are less than five cannot set aside a conviction under **Section 149** read with the substantive offence if the court finds that there are other persons who have not been identified or convicted but were participants in the offence and together constitute the statutory number. If, for example, only five known persons are accused of participating in an attack, but the courts find that two of them were wrongly implicated, it would be quite natural and logical to infer or assume that the number of participants was less than five. On the other hand, if the court

holds that the attackers were actually five in number but there may be doubts about the identity of two of them and acquits two of them, the others will not get the benefit of doubt about the identity. Unless a firm conclusion is reached on the basis of good evidence and cogent arguments that the number of participants was five or more, action will be taken against both the accused. The words 'in prosecution of common object' should be strictly interpreted as equivalent to 'in order to achieve common object'. The common object of the unlawful assembly can be gathered from the nature of the assembly, the arms used by them and the behaviour of the assembly at or before the scene of the incident. It is an inference to be drawn from the facts and circumstances of each case. The words "knew" denotes the state of mind at the time of the commission of an offence. The word "likely" means some strong evidence that such knowledge was available to the unlawful assembly. Under **Section 149**, the liability of other members for an offence committed during the continuance of the incident depends on the fact whether the other members knew in advance that the offence actually committed was likely to be committed in prosecution of the common object and such knowledge can be reasonably gathered from the nature, arms or behaviour of the assembly at or before the scene of action. If such knowledge cannot be reasonably attributed to the other members of the assembly then their liability for the offence committed during the incident does not arise.

Similarity between common intention and common object

There is a great difference in the scope of applicability of **sections 34 and 149** though they have some similarity and some degree of overlapping. There has been some confusion between 'common intention' and 'common purpose' both in the Sessions Court and the High Court and it is true that the two sometimes overlap but in law they are used in different senses and they should be kept distinct. The Allahabad High Court in the case of *Shabbir Khan v. Mohd. Ismail Khan*. held.

"Just as the existence of an assembly of persons sharing a common purpose is one of the characteristics of an unlawful assembly, the existence of an assembly of persons sharing a common intention is one of the characteristics of **Section 34**. In some ways the two sections are similar and in some respects they may overlap. But nevertheless, the common purpose, which is the basis of **Section 34**, is different from the common purpose which forms the basis of the composition of an unlawful assembly *Vs. State of Punjab*. The Hon'ble Supreme Court in *Dalip Singh and others v. State of Punjab* has held that **Section 34** of IPC cannot be resorted to because the appellants were not charged with the alternative and common intention required for Section 34 and also the essential common purpose required for **Section 149**. These are far from being the same thing. S.C. in **Karnail Singh and others v. State of Punjab** overruled *Dalip Singh* and opined that the facts leading to common purpose and common intention sometimes overlap and when such is the case the court may convict the accused

under both the sections while ensuring that the other requirements of the offence are fulfilled. The facts proved in brief in the said case were that the appellants, who had a long standing enmity with Gurbaksh Singh, climbed on the roof of his house and set fire to the house in which the deceased and Mr. Bholan were involved. The Supreme Court held that if it was their purpose under **Section 149** to burn the house and cause the death of Gurbaksh Singh, it was also their purpose under **Section 34** and on the facts of this case, the Court held that the common intention is not necessarily the same as the common purpose. There cannot be any distinction between the purpose and the intent with which the offences were committed. The Constitution Bench of the Supreme Court has endorsed the view in **Lachhman Singh v State**, wherein it was held that when a conviction under **Section 302** of the Penal Code is made under **Section 149** read with **Section 34** and there is acquittal under **Section 149**, the charge under **Section 149** vanishes. For some accused, a conviction under **Section 302** read with **Section 34** of the Penal Code is good even though there is no separate charge under **Section 302** read with **Section 34**, provided the accused could have been charged on the facts of the case.

It is due to the fact that **Sections 34 and 149** of IPC overlap to some extent, it has been held that where some are acquitted, thereby reducing the number of accused persons to less than five, it is possible to convict, on the basis of the special circumstances of the case and the evidence adduced therein, the remaining accused persons for the original offence read with **Section 34** IPC. Sometimes, common intention and common purpose may overlap, and in such cases common purpose is included in the common intention and there is no bar in law on convicting the accused with the aid of **Section 34** IPC in place of **Section 149** of IPC if there is evidence on record to show that such accused had shared the same intention to commit the offence and no apparent injustice has been caused. In the case of **Dhaneshwar Mahakud and others v. State of Orissa**, the court after relying on a catena of judgments concluded that if the evidence on record shows the presence of common intention then there is no bar on the conviction of the accused with the aid of **Section 34** of IPC. The court examined the evidence of witnesses as well as the injuries mentioned in the post-mortem report and concluded that common intention was present and hence no prejudice would be caused.

Question No. 6 What is rape? Can a husband be charged with rape? Discuss. Define rape. Describe its essential elements. Differentiate between rape and adultery.

Answer - One of the most important needs among the various natural needs of the human body is sex. Sex means a man having sex with a woman, but it does not mean that a man is free to have sex with a woman, if this happens then there will be no difference between man and animal. To control this natural tendency of sex and to maintain purity, the monopoly of the husband over the wife is considered

necessary. If a man has sex with a woman other than his wife without free consent, then he will be considered guilty of the crime of rape. The definition of rape is given in **Section 375** of the Penal Code-

Definition of Rape - According to **section 375** of the Indian Penal Code, if a man-

- (a) Penetrates his penis, to any extent, into the mouth, vagina, urethra or anus of a woman or makes her do so with himself or with any other person, or
- (b) Penetrates any object or any part of the body, not being the penis, into the vagina, urethra or anus of a woman to any extent or makes her do so with himself or any other person, or
- (c) Mutilates any part of the body of a woman in such a manner that the woman is forced to have sexual intercourse with him or asks him or her to do so with him or with any other person, or
- (d) Applies his mouth to the vagina, urethra or urethra of a woman or makes her do so with him or any other person,

He will be said to have committed rape where it occurs under the following seven types of circumstances- In is made subservient to any-

- (1) Against the will of the woman,
- (2) Without the consent of the woman,
- (3) With the consent of the woman, when her consent is obtained by putting her or any person in whom she is interested in fear of death or of hurt,
- (4) With the consent of the woman, when the man knows that he is not her husband and the woman gives her consent because she believes him to be the man, to whom she is lawfully married,
- (5) with the consent of the woman, when at the time of giving such consent she is incapable of knowing the nature and consequence of the act to which she has consented by reason of being of unsound mind or intoxicated or having been under the influence of any intoxicating or unwholesome substance,
- (6) With or without the consent of the woman when she is under eighteen years of age.
- (7) The consent of the woman, when she is incapable of communicating her consent.

Explanation.-(1) for the purposes of this section, vagina shall include the large labia.

(2) Consent means any unambiguous voluntary agreement when a woman by words, signs or any form of verbal or non-verbal communication expresses her willingness to engage in a specific sexual act—

A woman shall not be deemed to have given her consent to the specified sexual activity merely because she does not physically resist the act of penetration.

- (a) Sexual intercourse by a man with his own wife is not rape unless the wife is under 15 years of age.
- (b) The insertion of any medical procedure does not constitute rape.

Essential Elements - As per the definition given in the Code, the following 2 elements are required to constitute the offence of rape-

(a) A man has sexual intercourse with a woman,

(b) Such sexual intercourse has taken place in any one of the following 7 circumstances-

(1) against the will of the woman, (2) without her consent, (3) consent obtained by putting her under fear, (4) representing himself as the husband of the woman, (5) with a person of unsound mind, (6) with a woman under 16 years of age, (7) when the woman is incapable of communicating her consent.

(1) Sexual intercourse with a woman is essential for rape, even if the vaginal opening is not torn because the law considers only sexual penetration sufficient for the offence of rape. In the case of **Prithvi Chandra vs State of Himachal Pradesh AIR 1989 SC 702** it has been held that the offence of rape can be complete even if the vaginal opening is torn.

(2) Against her will (Section 375, Clause 1)- The offence of rape is committed only where the rape is committed against the will of a woman. Here, will means the will of a woman who is of sound mind and who has expressed her desire for sexual intercourse with a man and such desire is expressed before the sexual intercourse, not after the sexual intercourse.

(3) Without consent (Section 375 clause 2)- Sexual intercourse with the consent of the woman does not constitute the offence of rape. The offence of rape is constituted only if it is done without consent. Consent means free consent and consent obtained by fraud, deceit, mistake, misrepresentation is not considered to be free consent. For example, in **R. v. Williams (1923) 1 K.B. 340** the defendant was the singing teacher of the juvenile complainant. He had sexual intercourse with her and told her that his actions were a way to cure her breathing and improve her singing. The girl agreed believing that she was undergoing medical or surgical intervention. The defendant was convicted of rape. He appealed against his conviction on the ground that he had given the consent of the complainant.

But the court rejected the argument of the accused and convicted him. In a rape case, the burden of proving that the intercourse was done with the consent of the woman lies on the accused. (**Fitta v. State of Himachal Pradesh, 1987 Cr. LJ 1379 HP**)

Where the bangles of the prosecutrix are broken and she is injured in resisting, it cannot be said that the prosecutrix was willing for sexual intercourse (**G. Gagunlu v. State of A.P. 1993 Cr. LJ 3773**)

The Supreme Court has held in the case of **Rajasthan State vs. Noorekhan, 2001 SC/ST 696** that in the crime of rape, the absence of injury on the body of the prosecutrix is not material if her statement is corroborated by medical evidence and evidence of other witnesses. The facts of this case were as follows-

The prosecutrix was 15 years old. When she was alone in her hut and was washing clothes at the tubewell, the accused came there. First he asked for water and then for a knife to peel her cucumber. When the prosecutrix turned around after giving the knife, the accused caught hold of her and took her to a nearby walled area where he forced her to lie down on the floor, placed her leg on her chest, covered her mouth with his palm, lifted her lehenga and then raped her forcefully. The medical examination revealed rape. Broken bangles were found at the scene and semen was found on the lehenga of the prosecutrix. The High Court acquitted the accused on the ground that there were no injuries on the body of the prosecutrix. But on appeal, the Supreme Court found the accused guilty.

(4) Consent obtained by putting her in fear (Section 375 Clause 3)- If a woman is given permission to have sex by putting her in fear of death or hurt, then such consent will not be considered as free consent and the person having sex will be guilty of rape. But where the woman has given permission to have sex with her in greed of money, then the fact that the offer of money was imaginary does not vitiate the consent (**Motiram, 1954 Nag 922**)

The latest case related to consent is **Raju vs State 1994 SCC 538**. A nurse was going to attend her brother's wedding. She met both the accused in the bus. Both of them won the trust of the nurse. Both of them assured her that they will take her to her home on time. They reached Hassan late at night and stayed in a lodge there. The room had one bed. The nurse lay on the bed and both the accused lay on the floor. At night, they tied her mouth with a handkerchief and raped her at knife point. The Supreme Court convicted the accused of rape and punished them. The court said in its decision that it is true that if the nurse had been careful, such an incident would not have happened. She should not have stayed in a hotel with unknown people. But just because a woman or a young girl trusted unknown people, it cannot be concluded that she had given permission for sexual intercourse with her.

(5) Consent obtained by fraud (Section 375 clause 4)- When sexual intercourse is done with the consent of a woman about whom the man knows that he is not her husband but she has consented to sexual intercourse by considering him as her husband, it is said to be rape. Thus, if a man has sexual intercourse with a woman by introducing himself as her husband with her consent, he is guilty of rape. Similarly, in the case of **Uday Vs State of Karnataka, 2003 AIR SCW 760**, the trial court as well as the High Court have simultaneously held that though the victim had consented to sexual intercourse with the appellant, the consent was obtained by fraud and deceit, because the appellant induced her to give consent by promising that he would marry her. His appeal by special leave is directed against the judgment and order dated 20th April, 1995 of the High Court of **Karnataka at Bengaluru in Criminal Appeal No. 428 of 1992** by which the High Court dismissed the appeal and upheld the conviction of the appellant under **Section 376** of the Indian Penal Code and reduced the sentence

to two years rigorous imprisonment and fine of Rs.5000/- and to undergo additional rigorous imprisonment for 6 months in default. Earlier, the Sessions Judge, Karwar, before whom the appellant was tried in Sessions Case No. 16890, by his judgment and order dated 27th November, 1992 sentenced the appellant to undergo rigorous imprisonment for seven years under Section 376 of the Indian Penal Code and to undergo fine of Rs.20,000/- and to undergo additional rigorous imprisonment for six months in default. He also directed that on recovery of fine, a sum of Rs.10,000 out of that amount be paid to the prosecutor/complainant. The trial Court as well as the High Court have together held that though the victim had consented to have sexual intercourse with the appellant, the consent was obtained by fraud and deceit, as the appellant induced her to give consent on the promise that he would marry her. It was under such a false impression that for several months thereafter the prosecutrix, who claimed to be deeply in love with the accused, continued to have sexual intercourse with him until it was discovered that she was pregnant. When the appellant did not agree to the marriage, at that stage, the complainant lodged a report in the police station, which was investigated accordingly and the appellant was sent to the session's court. The matter was put up for hearing before the Judge, Karwar.

(6) With the consent of a woman of unsound mind (Section 375, Clause 5)- Sexual intercourse with the consent of a woman falling in any of the following categories amounts to rape-

(a) Is of unsound mind; (b) is in a state of intoxication; (c) a woman who has been given something by a man which has made her incapable of understanding the nature and consequences of the act

With the consent of a woman under 16 years of age (Section 375 Clause 6)- Since the consent of a woman under 16 years of age is irrelevant, if sexual intercourse is done with the consent of a woman who is under 16 years of age, then it will be rape. In the case of **Nalla Ram Babu vs State of Andhra Pradesh 1992 CR LJ 324**, it has been held that where a 10-year-old girl has been raped, the responsibility of the accused cannot be reduced on the ground that the report was filed late.

(7) Woman incapable of communicating.-If a woman is incapable of communicating her consent and a man has sexual intercourse with her, it shall amount to rape.

Penetration of penis necessary - Explanation to **section 375** provides that in the offence of rape it is necessary to prove that the penis of the man has penetrated into the vagina of the woman, but it is not necessary to ascertain the extent to which it has taken place.

Supreme Court judgment in **Tukaram and others vs State of Maharashtra. In 1979**, the Supreme Court overturned the High Court's conviction and acquitted the accused. The Supreme Court agreed with the session's judge that it was a case of consensual sex.

Husband's responsibility for rape - On the basis of the combined provisions of **sections 375 and 376**, sexual intercourse by the husband with his wife who is more than 15 years of age is not rape, even if it is without her wish and consent. But if the age of the wife is less than 15 years, then if the husband has such sexual intercourse which comes under the category of rape, then he shall be punished with two years imprisonment or fine and if the age of the wife is less than 12 years, then such sexual intercourse shall be considered as normal rape and he shall be punished in the same manner as if he has raped any other woman.

Section 376, clause (A) of the husband's liability for rape provides that if Whoever has sexual intercourse with his wife who is living separately from him under a decree of separation or under any custom or usage, without her consent, shall be guilty of rape on his wife and shall be punishable with imprisonment for a term of one year and with fine.

Difference between rape and adultery- Rape and adultery are covered under **Section 375 and 497** of the Indian Penal Code respectively.

Defined, although both crimes relate to sexual intercourse but the major differences between them are as follows-

| basis of difference | Rape | Adultery |
|---|--|--|
| Consensual | Rape is not committed with the consent of the woman. | It is done with the consent of the woman. |
| Pat's consent | The husband's consent has no importance. | Husband's consent provides immunity from criminal liability. |
| Marriage related | Rape can be committed against any woman, married, and unmarried or widowed. | Adultery can only be committed with a married person. |
| With his wife | Rape can also happen to one's own wife when the wife is below 15 years of age. | Adultery cannot be committed by a husband on his wife. |
| Crimes against body and marriage | Rape is a crime against the body. | Adultery is a crime against marriage. |
| Downtrodden side | The victim in rape is a woman. | There is a victim party in adultery. |

Question No. 7 - Discuss the objectives of legislative change through section 304(B) in respect of dowry deaths.

Answer- There is a provision regarding dowry death under **Section 304 (B)** of the Indian Penal Code. This provision has been inserted in the Indian Code by **Section 10** of the **Dowry Prohibition (Amendment) Act 1986**. This section provides that-

304(B) Dowry death- (1) "Where the death of a woman is due to any burning or bodily injury "(1) Where a marriage is caused to a person or which occurs otherwise than under the normal circumstances within seven years of her marriage and it is shown that, soon before her death, her husband or any relative of her husband had subjected her to cruelty or harassment for, or in connection with, any demand for dowry, such death shall be a dowry death and the husband or such relative shall be deemed to have caused her death."

Explanation.-For the purposes of this sub-section, 'dowry' has the same meaning as in **section 2** of the **Dowry Prohibition Act, 1961 (28 of 1961)**.

(2) There are many economic factors that contribute to the dowry system. The bride's economic status and the inheritance system are two examples. Some argue that economics and poor legal systems in the area of inheritance put women at a disadvantage, with inheritance going entirely to sons. As a result, women become completely dependent on their husbands and in-laws. And even when she does marry, husbands are only responsible for the welfare of their children Dowry is given. In India, daughters and sons were given equal legal status in Hindu families through the **Hindu Succession Act of 1956**. The Hindu Succession Act also applies to Sikh and Jain families. Dowry provided economic and financial stability to women in the form of marquis at their marriages, at least in theory. It prevented the disintegration of the family fortune and at times provided protection of pride. The practice can also be employed as a form of pre-death inheritance, as once a woman has received moral gifts, she can be removed from the family estate. Dowry has become a significant financial hardship for many families, and the groom's demands can leave them penniless. Dowry demands have increased over time. In 1984, Parliament made a drastic amendment to the **Dowry Prohibition (Amendment) Act, 1961** by enacting the **Dowry Prohibition (Amendment) Act, 1984** to make it effective to control and eliminate the evil of dowry. Now under this Act, the crimes have been made cognizable and the police officer can arrest the accused demanding dowry without a warrant and initiate criminal proceedings against the offender. This Act has made the punishment for demanding dowry even more stringent and many other important changes like establishment of family court etc. have been made.

It is clear from the observation of the above section that to declare a person guilty under this, it is necessary to fulfil the following conditions-

1. The death of the woman concerned is due to burning, or physical injury, or is due to unnatural cause (abnormal circumstances) (occurred in a situation different from normal circumstances),
2. Such death has occurred within 7 years from the date of marriage of such woman,

3. Before her death, the woman had been subjected to cruelty or harassment by her husband or relatives of her husband for dowry, relatives of her husband here meaning relatives by blood, marriage or adoption. **State of Punjab v. Gurmeet Singh AIR 2014 SC 2561.**

4. Such cruelty or harassment has been for or in connection with dowry,

5. The harassment or cruelty to the woman must have occurred just before her death.

According to **Section 304B IPC, clause 1**, the death of a woman shall be deemed to be a dowry death if it is caused-

1. Burns, bodily injury is caused or occurs under abnormal circumstances.

2. As a result of cruelty or harassment of the woman by the husband or any of his relatives in connection with any demand or demands for dowry.

Where the death of a woman is caused under the above circumstances, it shall be deemed to be a dowry death caused by the husband and his relatives and they shall be deemed to be guilty of this offence unless they prove otherwise. That is to say, unlike other crimes in which the accused is presumed innocent, here the burden of proving his innocence lies on the accused.

Section (2) imposes a minimum punishment of seven years' imprisonment which may extend to life imprisonment in case of dowry death.

An important feature of the crimes which have led to dowry deaths is that they are committed within the safest confines of the home and most of the time the perpetrators are the closest relatives such as brother-in-law, mother-in-law and sister-in-law living under the same roof. This fact is a result of the fact that a newly married woman is exploited by her husband and his close relatives. The family ties are so strong that the truth never comes out and there are no witnesses to testify against the guilty in court. The circumstances are unfavourable to the truth being discovered quickly or easily. The penal code may be adequate in terms of formal content but its successful enforcement is a matter of great difficulty. This is why the guilty persons walk free and are rarely punished.

Dowry related crimes under penal code- In brief; there are four situations where a married woman is subjected to cruelty and harassment which leads to the commission of this crime, viz.

(1) Husband or his relatives subject woman to cruelty, Section 498(A) IPC- Now her husband or any member of his family subjects her to cruelty or harassment.

(2) Dowry, death - Section 304 (B), IPC. Where a woman dies within seven years of her marriage due to any burns or bodily injury or under abnormal circumstances immediately following cruelty or harassment by the husband or his relatives for or in connection with any demand for dowry, such husband or relative shall be deemed to have caused her death and shall be punished for causing dowry death under **Section 304 (B) IPC.**

(3) Intentionally causing death of woman **Section 302**, IPC If any person intentionally causes the death of a woman, it shall amount to murder and shall be punished under **Section 302**, IPC.

(4) Abetment of woman to commit suicide **Section 306**, IPC If the husband or any of his relatives creates a situation which he knows will tend to incite the woman to commit suicide and she actually does so within a period of seven years from the date of marriage, the case will fall within the purview of **Section 306**, IPC (abetment of suicide).

Dowry-death: In 1986, the provisions under **section 304 (B)** IPC were made more stringent than those provided under **section 498 (A)** of the Penal Code by **the Indian Penal Code Prohibition (Amendment) Act, 1986 (43 of 1986)** which came into force on 19 November, 1986. This offence is cognizable, non-bailable and triable by the Sessions Court.

(1) **Surinder Singh v. State of Haryana AIR 2014 SC 817** In the Supreme Court case of Surinder Singh v. State of Haryana, reported in AIR 2014 SC 817, the Court partly allowed the appeal and reduced the sentence of imprisonment of the appellant from seven to five years. The Court also directed the appellant to surrender into custody within six weeks to serve the remaining sentence.

(2) **Pawan Kumar v. State of Haryana AIR 1998 SC 958 Pawan Kumar v. State of Haryana** was a case heard by the Supreme Court of India on 9th February, 1998 and reported in SC 958. The case involved the following facts-

Due to the mental torture and suffering of Urmil, she committed suicide. The court found that the quarrel, along with other evidence, constituted cruelty and harassment. **Appellants No. 2 and 3** were not responsible for cruelty or harassment to Urmil. The evidence was confined to the husband only and not against **appellant No. 2 and 3**. The main issue in this case is whether Vaishno Devi was married to Pawan Kumar or not. The second issue is whether Pawan Kumar and his parents subjected the deceased to cruelty and harassment due to demand of dowry.

(3) **Ravindra Trimbak v. State of Maharashtra 1996 (4) SCC 148** which was heard by the Supreme Court of India on February 23, 1996. The case involved the murder of Vijaya and the question whether death sentence should be awarded. The accused husband was charged and convicted by the trial court under **Section 302** read with **Section 120B** of the IPC for the murder of his wife Vijaya. The Supreme Court commuted the death sentence to life imprisonment and further ordered that the sentence awarded under Section 201 will run consecutively and not concurrently. The case referred to the following sections of the Indian Penal Code- **Section 34, Section 201, Section 498A, and Section 316**.

(4) In **Ram Badan v. State of Bihar AIR 2006 SC 2855**, the apex court held that when the evidence showed that there was persistent demand of dowry and for non-payment of the said amount there was harassment, humiliation, continuous

beating, poisoning of the deceased, the charge under **Section 113-B** of the Evidence Act would lie.

(5) **Tirath Kumari v. State of Haryana AIR 2005 SC 4429** the case involved six accused, including Tirath Kumar alias Raj Rani, mother of 11 and daughter Asha Rani, 12. The case involved the following ingredients: Death of a woman within seven years of her marriage Death was caused by burns, bodily injury, or any cause other than normal circumstances The woman was subjected to cruelty or harassment by her husband or any relative Shortly before her death The cruelty or harassment was in relation to a demand for dowry.

Question No. 8- What is dacoity? What are its essential elements? Explain the difference between dacoity and robbery. Or Explain the essential elements of the crime of dacoity. Explain the difference between dacoity and robbery.

Answer- Dacoity is a serious form of robbery. The only element in dacoity which differentiates it from robbery is the number of criminals committing the crime. So when five or more persons jointly commit or attempt to commit robbery, they commit dacoity as defined in **section 391** of the IPC.

Section 391 Dacoity - When five or more persons join together and attempt to commit robbery or where the persons who join together and attempt to commit robbery and the persons who are present and assist in the commission of such robbery or attempt to commit it, are five or more in all, then the person who commits such robbery or attempts to commit or assists in the same is said to commit dacoity. This section defines dacoity. There is no difference between robbery and burglary except the number of offenders. Robbery is dacoity only if the number of persons committing the robbery is five or more. The offence of dacoity involves the co-operation of five or more persons in committing or attempting to commit robbery. It is necessary that all the persons should share the common intention of committing the robbery.

Section 391 makes it clear that for an act of dacoity to be committed it is necessary that five persons jointly commit or attempt to commit the robbery. If a robbery was committed then the dacoits must have the looted goods, but if the case was an attempt to commit robbery then there is no question of the dacoits having the looted goods.

In **Emperor v. Ramchandra 1933 ILR 55 All 117** it was held that in case of robbery the circumstances that on seeing a large number of robbers the occupants of the house did not offer any resistance and no force or violence was required or used by the robbers, robbery does not become theft.

In the case of **Lakshman Ram v. State of Orissa AIR 1985 SC 486** the Supreme Court held that the accused persons who had committed dacoities in the houses of the complainant one after the other were held guilty under Section 395 for committing dacoity.

Essential Ingredients of Dacoity-

- (1) The accused commits or attempts to commit robbery,
- (2) The persons committing or attempting to commit the robbery and those who were present and assisted the number of persons should not be less than five,
- (3) All such persons shall act jointly.

Jointly means the organized and joint work of five or more persons participating in the act of committing a crime. In other words, five or more persons should be involved in committing the crime and should commit robbery or try to commit it.

In the case of recovery of stolen property on the information given by the accused immediately after the incident, the accused is liable to be convicted not only under **section 412** IPC for dishonestly receiving property stolen in committing dacoity but also under **section 491** IPC read with **section 114** Evidence Act. All the accused persons committed dacoity one after another in the houses of the complainants and looted and took away various kinds of property like watches, jewellery etc. It was held that the accused were guilty of dacoity under **section 395** of the Indian Penal Code and the dacoits are liable to be imprisoned for life or rigorous imprisonment for ten years or fine. Under **section 396** of the Indian Penal Code, if any person commits murder in committing such dacoity, then each of those persons shall be punished with death or imprisonment for life or rigorous imprisonment. **Section 399** makes preparation for dacoity punishable.

In the case of **Birbal Choudhary vs State of Bihar, AIR 2017 SC 4866**, more than 5 accused persons kidnapped the victim, kept him confined for 52 days and looted his money etc. It was considered as robbery.

Conviction of less than five persons- If there are only five persons committing robbery and out of these five only three are punished and the remaining two are acquitted, then three cannot be convicted because the crime of robbery cannot be committed by less than five persons.

| Sr. | Robbery (Section 390) | Dacoity (Section 391) |
|-----|--|--|
| 1 | Robbery, theft or robbery takes a serious form. | Robbery is a form of robbery. |
| 2 | In robbery the number of persons is not fixed, one person can commit robbery. | For the crime of robbery the presence of five or more persons is necessary. |
| 3 | In the crime of robbery, a person's property is taken without his knowledge. | In the offence of robbery the consent is faultily obtained. |
| 4 | To constitute robbery it is necessary to have committed the crime of theft or extortion. | The key element for robbery is committing or attempting to commit robbery. |
| 5 | The offence of robbery and its attempt have been made punishable separately. | His attempt in the crime of robbery is also punished similarly. |
| 6 | The crime of robbery is not punishable in all four circumstances. | All four stages of robbery are punishable: gathering for the purpose of robbery, preparing for robbery, attempting robbery and completion of the crime of robbery. |

Question No. 9- Is attempting suicide a crime in India? Are you in favour of retaining this crime? Give reasons.

Answer: In India, attempting suicide is a punishable offence under Section 309 of the Indian Penal Code.

Section 309 Attempt to commit suicide "Whoever attempts to commit suicide and does any act towards the commission of that offence shall be punished with simple imprisonment for a term which may extend to one year.

"(1) Any person who commits a crime or which is a breach of contract Comment
(1) Attempt to commit suicide (**309 IPC**) Suicide itself is not an offence under the Code. It

Only an attempt to commit suicide is punishable under this section. In other words, the Code applies only when a person fails to commit suicide. If the person succeeds, there is no offence which can be brought within the purview of the law. This section is based on the principle that the life of a person is valuable not only to him but also to his relatives, the State and the society which protects him. The State is under an obligation to prevent individuals from ending their own life in the same way as it prevents them from ending the life of others.

Under **Section 309**, IPC, an attempt involves at least an act towards committing suicide such as drowning, or taking poison or shooting oneself. If A throws himself into a well with the intention of committing suicide, and if he is rescued or his attempt fails, he is guilty of an attempt punishable under this section.

(2) Attempt must be intentional.- The essence of suicide is the intended destruction of one's own life. Hence, if a person accidentally or in a state of intoxication or in order to escape from apprehension takes an overdose of poison, he is not guilty under this section. Similarly, if a person due to family dispute, anxiety, loss of a dear relative or any such similar reason overcomes the desire to continue living and decides to end his life, he should not be held liable for attempting suicide. In such a case, the unfortunate person deserves mercy, sympathy and compassion instead of punishment.

(3) Is a hunger strike an attempt to commit suicide? - Hunger strikes, which are undertaken from time to time to secure the fulfilment of the demands of the strikers, raise some difficulties in this regard. These cases raise difficulties in determining whether the hunger strikers intention is to kill himself or to compel the authorities to meet his demands.

If the answer is in the affirmative i.e. to kill himself, then the accused is liable for attempt to commit suicide and if the answer is in the negative then he does not fall under **Section 309**, IPC.

Ram Sunder Dubey v. State A.I.R. 1962 III. 262 The question is whether any offence is made out under **Section 309**, I.P.C. The peculiar difficulty about suicide by starvation is that it is a long drawn out process, which can be stopped or abandoned at any stage (except perhaps the last). Unless there is a clear declaration by the accused of his intention to fast till death, it is difficult to be

sure that he really intended to continue the fast till the bitter end. And even if there is such an intention at the beginning, one has always to take care of the possibility that the accused may change his mind and break his fast before it becomes dangerous. I am prepared to hold that if a person openly declares that he will fast till death and will refuse all nourishment till a situation arrives when there is imminent danger of death, he can be held guilty of the offence of attempting suicide. But in the present case the evidence falls short of that and can hardly be said to be sufficient to prove the charge. Prima facie, it is not clear whether the accused intended to fast unto death or he had decided to fast for a limited period. The pamphlet Ex. Kha-1 which he issued on 17-2-1960 only stated that if the authorities did not redress his grievances by 26-2-1960 he would commence a hunger strike on 27-2-1960; but there was no indication as to how long the fast would continue. Possibly the accused believed that public opinion would weigh in his favour and the authorities would be compelled to redress his grievances before he succumbed to starvation. Alternatively it can be conceivable that he had decided to fast only for a limited period, even though he made no public announcement as to what that period would be. The intention of the accused to persist in the fast and cause his own death has not been proved in any way.

(4) Alarming rise in suicide cases- According to the National Crime Records Bureau, India's suicide rate increased by 7.2% from 2020 to 2021, with a total of 164,033 deaths. In 2022, India had a suicide rate of 12.4 per 100,000 people, the highest rate since 1967, and the country recorded the highest number of suicides in the world. In 2022, India recorded more than 170,000 deaths by suicide, with most cases in Tamil Nadu and Rajasthan. **Section 309** of the Indian Penal Code (IPC) classifies attempted suicide as a criminal offense, punishable by up to one year in prison, a fine, or both. There can be punishment. However, the Mental Health Care Act 2017 (MHCA) decriminalises attempted suicide for all practical purposes. Section 306 of the IPC deals with abetment to suicide, which attracts a jail term of up to 10 years and a fine. Section 309 of the Indian Penal Code (IPC) clearly states: "Whoever attempts to commit suicide and does any act in furtherance of such offence, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

(5) Section 309, IPC, Right to Die versus Right Not to Die – A Constitutional Dilemma (Difficult Presentation) - The power of the State to punish a person for failing to commit suicide under Section 309, IPC is questioned not only on the ground of morality but also on the ground of constitutionality of the said provision.

Maruti Shripati Dubal In the 1987 case of Maruti Shripati Dubal v. State of Maharashtra (1987) Cr. LJ. 743, the Bombay High Court ruled that Section 309 of the Indian Penal Code (IPC) is unconstitutional and should be struck down. The court held that **Section 309** violates **Articles 14, 19** and **21** of the

Constitution of India. The petitioner, a police constable who developed schizophrenia after a road accident, was booked under **Section 309** for attempting suicide after pouring kerosene on himself and trying to light a matchstick. The court reasoned that-

- (1) Attempting suicide should not be a crime.
- (2) This section treats all cases of attempted suicide equally and prescribes punishment for them arbitrarily.
- (3) Both the concept of suicide as a crime and the punishment prescribed were barbaric and irrational.

P. Rathinam- In 1994, a Division Bench consisting of Justices R.S. Sahai and B.L. Hansaria of the Supreme Court held that in **P. Rathinam/Nagabhushan v. Union of India AIR 1994 SC 1844**, notwithstanding the above, Hamlet's dilemma of "to be or not to be" is faced by many souls in times of distress, anguish and pain, when the question asked is "to die or not to die". If the decision is to die and the same applies to its fruition resulting in death, then that is the end of the matter. The deceased is relieved of the agony, pain and suffering and no evil consequences follow as per our law. But if the person concerned unfortunately does not survive, he may end up behind bars for attempting suicide, as it is punishable under **Section 309** of our Penal Code. The validity of **Section 309** has been questioned in the two existing petitions by contending that it is violative of **Articles 14 and 21** of the Constitution and a prayer has been made to declare the section void. The additional prayer in **Writ Petition (Crl) No. 419 of 1987** is to quash the proceedings initiated against the petitioner (Nagabhushan) under **Section 309**. The judiciary of this country has had the opportunity to deal with the above aspect and we have before us three reported judgments of three High Courts of the country, namely, Delhi, Bombay and Andhra Pradesh, on the above question. There is also an unreported judgment of the Delhi High Court. Before we apply our minds to this issue, it would be pertinent and beneficial to note what the above three High Courts have opined in this regard. P. Rathinam and Nagabhushan Patnaik had filed the petition challenging the constitutional validity of **Section 309** of the Indian Penal Code. **Section 309** punishes any person who attempts to commit suicide with simple imprisonment for a term which may extend to one year. The Supreme Court drew a parallel between the other fundamental rights and that just as the right to freedom of expression under **Article 19** gives the right to speak but also includes the right not to speak, the right to life under **Article 21** also includes the right not to live. Thus, **Section 309** was held unconstitutional and went.

Gian Kaur - However, in 1996 a five-member Constitutional Bench of the Supreme Court consisting of Justices J.S. Verma, G.N.R.N.P. Singh, Fayazuddin and G.T. Nanabati in the case of **Gian Kaur AIR 1996 SC 1257** reversed the 1994 judgment in **P. Rathinam vs. Nagabhushan AIR 1994 SC 1844**.

Facts in brief- Appellant Gian Kaur and her husband were convicted by the trial court for abetting the suicide of Kulwant Kaur. The appellant challenged the conviction, contending that **Section 306** of the Indian Penal Code, 1860 (IPC) was unconstitutional. The said challenge was based on the decision of a division bench of the Supreme Court in **P. Rathinam v. Union of India (1994) 3 SCC 394**, wherein **Section 309** of the IPC was declared unconstitutional as violative of **Article 21**. The issue was raised before a division bench of the Court, which, in view of the importance of the issue, referred it to a five-judge Constitution bench.

Arguments - The following arguments were raised before the Supreme Court-

1. The appellants argued that after the P. Rathinam judgment, the right to die had become a fundamental right under **Article 21** and hence **Section 306** of the IPC, which did not permit any other person to assist in the enforcement of this fundamental right to die, was unconstitutional.

2. He further submitted that since it has been settled that **Article 21** has a wide meaning in which the word 'life' does not mean 'mere animal existence but the right to live with human dignity including the quality of life', logically it must follow that the right to life would also include the right not to live i.e. the right to die or to end one's life.

3. As amicus curiae, Fali J. Nariman submitted that **Article 21** cannot include the so-called 'right to die' as **Article 21** guarantees protection of life and liberty, not its extinction.

4. Another amicus curiae, Soli J. Sorabjee submitted that **Section 306** can survive independently of **Section 309** of the IPC, as it does not violate **Article 14** or **Article 21** as was the case with **Section 306**.

Judgement - The Supreme Court rejected the argument that the right to life includes the right to end one's life. It observed, the 'right to die', if any, is inherently incompatible with the 'right to life' as incompatible is 'death with life' and thus struck down the P. Rathinam judgment and hence, **Sections 306 and 309** of the Indian Penal Code were declared constitutional. The Court specifically rejected the argument of mercy killing or euthanasia as it is not permitted in India due to the protection given under **Article 21**.

Question No. 10- What are the objectives of the Anti-Corruption Act, 1988? Discuss the crimes committed under this Act along with their punishments.

Answer- Objectives of Prevention of Corruption Act- Prevention of Corruption Act is a central law passed by the Indian Parliament, which has been made with the objective of eliminating corruption prevalent in the government system and public sector undertakings and establishing a corruption-free society.

Offences and penalties (powers) mentioned under the Act- The following offences have been made punishable under the Prevention of Corruption Act, 1988-

(1) Public servant taking gratification other than legal remuneration for official act (section 7)- Whoever, being or expecting to be a public servant, accepts or receives or attempts to accept, from any person, for himself or for any other person, any gratification other than legal remuneration as a purpose or reward for doing or forbidding to do any official act or for showing favour or disfavour to any person in the exercise of his official functions or for rendering or attempting to render any service or disservice to any person, in connection with any activity or business of the Central Government or any State Government or Parliament or the Legislature of any State or any local authority, corporation or Government company specified in **clause (c) of section 2**, or with any public servant, whether designated or otherwise, shall be punishable with imprisonment for a term of not less than six months but which may extend to five years and shall also be liable to fine.

Explanation.- (a) 'Expectation to be a public servant. If a person, not having an expectation of holding an office, obtains gratification by deceiving others into believing that he is about to hold the office and that he will then serve them, he may be guilty of fraud but he is not guilty of the offence defined in this section.

(b) 'Satisfaction.' The words 'satisfaction' are not confined to pecuniary satisfaction or satisfaction inferred in terms of money. (c) 'Legal remuneration.' The words 'legal remuneration' are not confined to the remuneration which a public servant may legally demand but include all remuneration which he is permitted to accept by the Government or organisation which he serves.

(d) 'A motive or reward for doing.' A person who derives satisfaction as a motive or reward for doing something he does not intend or is not in a position to do, or has not done, falls under this expression.

(e) Where a public servant mistakenly induces any person to believe that his influence with the Government has obtained a title for that person and thus induces that person to give to the public servant, money or any other gratification as a reward for such service, the public servant has committed an offence under this section.

(2) Taking gratification to exercise influence over public servant by corrupt or illegal means (section 8)-Whoever accepts or receives, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification as a reward or purpose for inducing, by corrupt or illegal means, any public servant, whether designated, to do or forsake any official act, or to show favouritism or disfavour to any person in the exercise of the official functions of such public servant, or to render or attempt to render any service or disservice to any person, or to any person under the Central Government or any State Government or Parliament or the Legislature of any State or any local authority, corporation or Government company specified in **clause (c) of section 2**, or with any public servant, whether designated or otherwise, shall be punishable with

imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(3) Taking gratification to exercise personal influence over public servant (section 9)-Whoever accepts or receives or agrees to accept or obtain, from any person, for himself or for any other person, any gratification whatsoever as a reward or inducement by the exercise of personal influence with any public servant, whether designated or otherwise, to do or forbear to do any official act, or to show favouritism or disfavour to any person in the exercise of the official functions of such public servant, or to render or attempt to render any service to any person with the Central Government or any State Government or with Parliament or the Legislature of any State or with any local authority, corporation or Government company specified in **clause (c) of section 2**, or with any public servant, whether designated or otherwise, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(4) Punishment for abetment of offences defined in section 8 or section 9 by public servant (section 10)-Whoever, being a public servant, abets an offence in respect of which any offence defined in **section 8** or **section 9** is committed, whether or not that offence is committed as a result of the abetment, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(5) Public servant obtaining valuable thing without consideration from person connected with proceedings or business transacted by such public servant (section 11)-Whoever, being a public servant, accepts or receives or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, or which is to be or is likely to be involved in any proceedings or business transacted or to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is a subordinate, or from any person who he knows to be interested in or connected with the person concerned, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine.

(6) Punishment for abetment of offences defined in section 7 or section 12 (section 12)-Whoever abets any offence punishable under **section 7** or **section 11**, whether or not that offence is committed as a result of the abetment, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years. Shall be liable to fine.

(7) Criminal misconduct by public servant (section 13) - (1) A public servant is said to be-commits the offence of criminal misconduct,-

(1) If he habitually accepts or receives or attempts to accept from any person any gratification as a motive or reward other than legal remuneration for himself or for any other person, as aforesaid. (2) If he habitually accepts or receives or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without consideration or for a consideration which he knows to be inadequate from any person who is, or is likely to be, involved in any proceedings or business carried on or about to be carried on by him, or has any connection with the official functions of himself or of any public servant to whom he is subordinate, or of any person whom he knows to be interested in or connected with the concerned person. (3) If he dishonestly or fraudulently misappropriates or otherwise converts to his own use or allows any other person to do so any property entrusted to him or under his control as a public servant. (4) If he (5) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage. (6) By abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage (7) while holding office as a public servant, receives any valuable thing or pecuniary advantage for any person without any public interest. (8) If he or any person on his behalf, at any time during the term of his office, is in possession of pecuniary resources or property disproportionate to his known sources of income for which the public servant cannot satisfactorily account. Explanation of Income. For the purposes of this section, "known sources of income" means income derived from any lawful source and such receipt has been disclosed in accordance with the provisions of any law, rules or orders applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

(8) Punishment for attempt (section 15)-Whoever attempts to commit the offence specified in **clause (c) or clause (d) of sub-section (1) of section 13** shall be punishable with imprisonment of up to three years and with fine.

In the case of **State of Punjab v. Madan Lal Verma, 2013 Cr.L.J.S.C.** it has been held that "mere recovery of bribe money from a person is not sufficient to convict the accused, if the substantial evidence is not credible, unless there is sufficient evidence to prove the amount of bribe or to show that the money was taken voluntary as bribe.

(9) Habitual commission of offences under sections 8, 9 and 12 (section 14)- Whoever habitually-

(a) An offence punishable under **section 8 or section 9.**

(b) An offence punishable under **section 12** shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall also be liable to fine.

Question 11- What is meant by outraging the modesty of a person? What provisions have been made in the Indian Penal Code regarding outraging the modesty of a person?

Answer- Section 354 of the Indian Penal Code has a provision regarding outraging the modesty of a woman, under which-

Section 354- Section 354 of the Indian Penal Code (IPC) protects the modesty and dignity of women by punishing assault or use of criminal force on a woman with intent to outrage her modesty. This section covers verbal and non-verbal conduct that insults the modesty of a woman. The punishment for this offence is imprisonment of one to five years and fine.

Comment-

(1) Assault on woman - Section 354, Indian Penal Code was enacted with a view to protect women from indecent assault and to safeguard public morality and decent behaviour. This section punishes assault or use of criminal force with the intention or knowledge that the modesty of a woman will be outraged.

(2) Essential elements-

- (a) The woman was assaulted or criminal force was used against her;
- (b) The accused intended to outrage her modesty or knew that her modesty was likely to be outraged.

This crime is cognizable, bailable, compoundable with the permission of the court, and triable by any magistrate. Its punishment includes imprisonment of two years in either case, or fine, or both.

Thus, attacking or using criminal force on a woman with the intent to outrage her modesty is a punishable offence under **Section 354**. Hitting a woman on the hip is an offence of outraging her modesty. (**KPS Gill vs State, AIR 2005 SC 3014**).

Removing a woman's skirt with the intention of raping her is outraging the modesty of a woman. (**Premiya alias Prakash vs State of Rajasthan, AIR 2009 SC 351**) Pulling a woman and stripping her is outraging her modesty. (**Aman Kumar vs State of Haryana, AIR 2004 SC 1497**).

The following new sections have been inserted in it by the Criminal Law (Amendment) Act, 2013-

354-A Sexual harassment and punishment for sexual harassment (1) Any of the following acts, namely:- (a) making physical contact and advances which include unwelcome and explicit proposals for sexual intercourse, be contained, or

- (b) Making any demand or request for sexual favors; or
- (c) Forcibly showing pornography to a woman against her will; or
- (d) Making sexually explicit remarks,

(e) Such man shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in **clause (1)** or **clause (ii)** or **clause (iii)** of **sub-section (1)** shall be punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in **clause (iv) of sub-section (1)** shall be punished with imprisonment of either description for a term which may extend to one year, or with both.

354-B Assault or use of criminal force on woman with intent to disrobe deals with assault or use of criminal force on a woman with intent to disrobe her- The section recognises the grave violation of the privacy and dignity of a woman in such acts and prescribes stringent punishment of imprisonment ranging from three to seven years with fine. It is a non-bailable and cognisable offence, which reflects the seriousness with which the law views such violations.

354-C Voyeurism- Any man who watches or photographs a woman committing a private act under circumstances observed by the offender or by any other person on the order of the offender or transmits such image, shall, on first conviction, be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine.

Intrusion into the privacy and private space of a person falls under **Section 354C** of the IPC.

For example placing cameras in trial rooms at different places or if the videos or images are circulated against the will or desire of the person. This includes uploading nude pictures or semi-nude pictures on the internet. This is one of the most rampant crimes that are being committed in India today. **Section 354C** of the IPC deals with voyeurism, punishing the act of watching or capturing an image of a woman in a private act without her consent. This section addresses the violation of privacy in the digital age, where such acts may include placing cameras in private places or circulating intimate images without consent. The punishment for voyeurism can be imprisonment up to three years and fine.

Explanation-1

For the purpose of this section, 'private act' includes voyeurism performed in a place which, under the circumstances, would be reasonably expected to provide privacy and where the victim's genitals, rear or breasts are exposed or covered only by underwear or the victim is using the toilet or the victim is performing a sexual act which is not of a kind which is ordinarily performed in public.

Explanation-2 Where the victims consent to the capturing of images or any act but not to their dissemination to a third person and where such image or act is disseminated, such dissemination shall be deemed to be an offence under this section.

354-D Stalking (1) Any person who—

(a) Repeatedly pursues and contacts, or attempts to contact, a woman with the intent to promote personal contact despite clear indication of disinterest by such woman; or

Monitors a woman's use of the internet, email or any other form of electronic communication, commits the offence of stalking- Provided that such conduct will not amount to stalking if the man doing it proves that-

(1) It was carried out for the purpose of preventing or detecting crime and a person accused of theft was arrested by the State was entrusted with the responsibility for the prevention and detection of crime; or

(2) It is not a condition or requirement imposed by any law or by any person under any law was adopted to comply with the

(3) Such conduct was reasonable and appropriate under the particular circumstances. It is also deliberate, malicious and repeated stalking or harassment of a particular individual which endangers his or her life or safety.

Question 12- Define kidnapping and abduction and differentiate between kidnapping and abduction. Or Define kidnapping and abduction. Explain its essential elements. Or Define kidnapping. How is it different from abduction? Or explain kidnapping under lawful guardianship and differentiate between kidnapping and abduction.

Answer - Kidnapping - The word 'kidnapping' is made up of two words, 'kid' which means child and 'napping', which means to steal. Thus, it literally means stealing a child.

Section 359 of the Indian Penal Code classifies kidnapping into two categories-

(1) Kidnapping in India

(2) Abduction from lawful guardianship

(a) Section 360 - Kidnapping from India.-Section 360 provides for kidnapping from India. It says, "Whoever takes any person beyond the limits of India without the consent of that person or of any person legally authorised to consent on that person's behalf, is said to have kidnapped that person from India."

The elements necessary to constitute this offence are-

(1) Transporting a person outside the territory of India,

(2) Without the consent of such person or a person legally authorised to give consent on that person's behalf.

The offence under this section is not complete until the person actually reaches not only the foreign territory but also his destination. Unlike **Section 361**, this offence is not limited to minors or persons of unsound mind. It can be committed against any person, male or female, major or minor, regardless of nationality and age.

(b) Kidnapping from legal guardianship.- Whoever a minor, if he is a male,

Transport without consent- The word "transport" literally means to accompany on a journey but the popular meaning is to take a person to his destination. Hence, the offence is not complete until the person actually reaches not only the foreign territory but also his destination.

(b) Section 361.-Kidnapping from lawful guardianship **Section 361** provides for kidnapping from lawful guardianship. It says, "Whoever takes or entices away any minor under the age of sixteen years, if he is a male, or under the age of eighteen years, if he is a female, or any person of unsound mind, out of the custody of the legal guardian of such minor or person without the consent of such guardian, is guilty of kidnapping."

Explanation.- In this section the words "lawful guardian" include a person on whom the care or custody of such minor or other person is lawfully entrusted.

Exception.-This section does not extend to the act of any person who in good faith believes that he is the father of an illegitimate child, or who in good faith believes that he is entitled to the lawful custody of such child, unless such act is done for an immoral or perverse purpose.

Objective and scope **Section 361**, Indian Penal Code makes it an offence to kidnap a minor under sixteen years of age, if a male, or a woman under eighteen years of age, if a female, from the lawful guardianship of a minor. The section also provides protection to a person of unsound mind from being kidnapped from the lawful guardianship of a minor. The provisions contained in **section 361** (Anglo Law) are in consonance with **section 55**, Offences against the Persons Act, 1861 which makes kidnapping of an unmarried girl a legal offence.

The offence of kidnapping is a more serious form of wrongful confinement, and is therefore an offence which necessarily contains all the elements of that offence. But kidnapping does not include the offence of wrongful confinement or keeping a kidnapped person in confinement.

This section is to protect minors and persons of unsound mind from exploitation and to ensure the safety of parents and guardians.

It is specified to protect the rights and privileges of the parents having lawful charge or guardianship over their children. Hence, the consent of the parents or guardians alone is not sufficient to exclude a case from the purview of this section it is adequate.

Essential elements - To establish an offence under this section, the following conditions must exist, namely-

- (1) Transporting or enticing a minor or an indisposed person,
- (2) Such minor must be below 16 years of age in the case of a male or below 18 years of age in the case of a female.
- (3) Depriving or enticing the legal guardian of his/her custody,
- (4) Without the consent of a legal guardian.

Abduction - In simple terms abduction means taking a person away by deceit or force. According to **section 362**, kidnapping takes place when a person induces another person to leave a place by force or by any deceptive means. Kidnapping in its pure and simple form is not a crime. It is an ancillary act not punishable by

itself, but when it is joined with some intention to commit some other crime, it becomes punishable as a crime.

For example- (a) If the intention is that the person abducted may be killed or that he may be so removed that he is in danger of being killed, then **section 364**, IPC applies;

(b) If it is intended to secretly and wrongfully confine any person, then **section 365**, IPC applies;

(c) if the abducted person is a woman and the intention is that she is compelled or is likely to be compelled to marry any person against her will or that she is compelled or is likely to be compelled to have illicit sexual intercourse, then **section 366**, IPC shall apply,

(d) if the intention is to cause grievous hurt to any person or there is a danger of the injured person being subjected to grievous hurt or to slavery or to lust against the nature of any person, then **section 367**, IPC applies;

(d) If the person abducted is under ten years of age and the intention is to dishonestly take any movable property from the person of the child, **section 369**, IPC applies.

Essential elements of kidnapping-

(1) Compels any person by force, or by persuasive means; or

(2) The purpose of the compulsion or inducement is to take such person from a place.

There cannot be any offence of kidnapping where no force or deception is used on the abducted person.

If a minor girl voluntarily leaves the custody of her guardian and meets a person who behaves well without any pressure or deceit, such person shall not be guilty of kidnapping. In view of the definition given in section 362, IPC, the word 'force' used therein means actual force and not show or fear of force.

Fraudulent - As used here, the expression fraudulent is wide enough to include the inducement of a woman to leave her husband's house under a pretence. It also includes the use of false statements by act or conduct.

The kidnapping continues - The crime of kidnapping is a continuing crime, a girl is not abducted only when she is abducted for the first time but she continues to be kidnapped every time she is taken to another place.

Abetment- If a woman consents to her own kidnapping and she has free consent, then the offence will not be constituted and the woman will not be punishable for abetting her own kidnapping.

Difference between kidnapping and abduction- There are two provisions of kidnapping and abduction mentioned in the code. Kidnapping is mentioned in **section 359** to **section 361** of Indian Penal Code and kidnapping is mentioned in **section 362** of Indian Penal Code.

In India, unlike trafficking (**Section 360**), kidnapping is a crime against guardianship (**Section 361**). The moment an adult is taken or lured away from the custody of his or her lawful guardian, the crime of kidnapping is complete. Unlike kidnapping, the very act of causing kidnapping is punishable, while in kidnapping the criminal is punishable with imprisonment for a term which may extend to two years. A specific purpose is necessary to punish.

| Sr No- | Kidnapping (from lawful protection) (Section 361) | Offences (Section 362) |
|--------|---|--|
| 1 | The lawful protection as defined in section 361 is exercised (a) in relation to a minor, being a male under 16 years of age and a female under 18 years of age, and (b) in relation to a deranged person (of any age). | Kidnapping can be of any person (man or woman) of any age. Similarly, kidnapping as described in Section 360 , Indian Penal Code, can be of any person of any age irrespective of his age. |
| 2 | Kidnapping is the removal of a person from lawful protection. | Kidnapping refers only to the person being kidnapped. |
| 3 | Kidnapping in general terms is the taking away of a minor or a person of unsound mind. The means used is not relevant. | In kidnapping, methods of force, compulsion or deception are used. |
| 4 | The consent of the injured person is unimportant. | The free and voluntary consent of the abducted person makes the kidnapping excusable. |
| 5 | The intent of the kidnapper is immaterial to the crime. | The intent of the kidnapper is an important factor in determining the guilt of the accused. |
| 6 | Kidnapping is a substantive offence in itself. | Kidnapping is not the actual or substantive offence and is not punishable in it. It is an offence only when it is done with any other intent as provided under sections 363A, 364A to 369 of the Indian Penal Code. |

Question 13- "Every murder is necessarily culpable homicide, but every culpable homicide is not necessarily murder." Do you agree with this statement? Answer with reasons. OR Explain the circumstances when culpable homicide is called murder. Are there any exceptions to this? OR What is murder? When culpable homicide is called murder? Explain with decided cases and tell the difference between culpable homicide and murder.

Answer - Murder has been defined in **Section 300** of the Indian Penal Code in the following manner-

(i) "Save the circumstances hereinafter excepted, culpable homicide is murder if the act by which death is caused is done with the intention of causing death." Or

(ii) If it is done with the intention of causing such bodily injury which the offender knows to be likely to cause the death of the person to whom the harm is caused; or

(iii) If the act is done with the intention of causing bodily injury to any person and the bodily injury which the intention to cause exists is sufficient in the ordinary course of nature to cause death ; Or

(iv) If the person doing the act knows that the act is so imminently dangerous that there is a high probability that it will cause death or such bodily injury as is likely to cause death and he does such act without any excuse for taking the risk of causing death or of causing injury as aforesaid.

Essential elements of murder- Culpable homicide is murder under the following circumstances

1. The act by which death is caused (except in the cases hereinafter excepted) is done with the intent to cause death. [**Section 300 clause (i),**;

When a person causes death by doing any act with the intention of causing death, it is presumed that he has committed murder. For example, Illustration (a) of **Section 300** provides that if 'A' fires at 'Y' with the intention of killing him, as a result of which 'Y' dies, 'A' commits murder.

2. causes such bodily injury which he knows to be likely to cause death [**Section 300 clause (ii),**

When a person causes such bodily injury to another person about which he knows that such bodily injury is likely to cause the death of the injured person, then such injurer shall be considered guilty of the crime of murder. For example, illustration (b) of **section 300** provides-

'A' knowing that 'Y' is suffering from such a disease that a single blow is likely to cause his death, strikes him with the intention of causing bodily injury. 'Y' dies as a result of that blow. 'A' is guilty of murder, although that blow would not have been sufficient in the ordinary course of nature to cause the death of a healthy person. But if 'A' knowing that 'Y' is suffering from a disease strikes him in such a manner that a healthy person would not die in the ordinary course of nature, then here 'A', though he may have intended to cause bodily injury, is not guilty of murder. If his intention was not to cause death or to cause such bodily injury which would cause death in the ordinary course of nature.

In this regard, the case of **Dr. A.G. Bhagwat v. Union Territory Chandigarh, 1989 Cr. LJ 214 P&H** is an apt example-

The accused was charged with causing grievous bodily injury by means of sulphuric acid. The doctor proved that the injury was such that it could have caused the death of the injured person.

The court explained that the word likelihood means 'probably' which can be easily differentiated from possibly. When the chance of something happening is very high, it can be said that it was very likely to happen.

But where the offender does not know that the bodily injury caused by him is likely to cause death, culpable homicide will not be murder as in the case of **Gurdeep Singh v. Jaswant Singh 1992 Cr. LJ 1283 SC**. In this case, 7 persons attacked a person (without any intent) and killed him. Only one injury was likely to cause death. The main accused was convicted under **part II of section 304** and the rest under **section 326/64**.

Later in **U.P. State v. Ramchandra 1992 Cr. LJ 418**, the court held that the murder was within the meaning of **clause (ii) of section 300** where the death was caused by administering potassium cyanide to the deceased and the behaviour of the deceased's husband and in-laws was cruel towards her.

3. Causing such bodily injury which is sufficient in the ordinary course of nature to cause death. **Section 300 clause (iii)**

Such bodily injury is considered sufficient to cause death in the normal course of nature, which is caused by any means which, if caused, would likely result in death. For example, an injury caused by a bullet is considered sufficient to cause death in the normal course of nature, which is measured by (a) which weapon has been used; (b) its intensity; (c) on which part of the body (at the vital spot of the body)

This position is fully clarified by **Section 300, Illustration (c)**, which is as follows:

A intentionally inflicts a wound on Y with a sword or stick which is sufficient in the ordinary course of nature to cause the death of a human being and as a result, Y dies. Here, A is guilty of murder, although he may not have intended to cause the death of Y.

Similarly, bodily injury was held to be sufficient to cause death in the ordinary course of nature where a 7 year old child was thrown on the ground three times in quick succession. (**Re Arumudham, 1990 Cr. LJ 1430 Mad.**)

4. The person doing the work knows that the work is so imminently dangerous that it is highly probable that it will result in death. **Section 300 clause (iv)**,

When an offender does an act which he knows to be so imminently dangerous that it is likely to cause death, then the offender will be guilty of the crime of murder. Under this, it is not necessary for the offender to have a motive for the crime. For example, Illustration (d) of Section 300 provides that 'A' without any motive fires a loaded cannon at a group of persons and kills one of them. 'A' is guilty of murder, although he may not have had a premeditated plan to cause the death of any particular person.

In the case of **Devraj vs State of Punjab AIR 1992 SC 950**, the Supreme Court also held that such a murder was within the amputated section 300 clause (iv) where the deceased was shot and injured but died after one and a half months. In the meantime, the deceased had to undergo surgery and his limb had to be amputated.



When is criminal homicide not murder? Homicide that falls under the following exceptions is not murder-

Exceptions Grave and Sudden Provocation- If a person commits the offence of murder under provocation, the murder committed by him shall be deemed to be culpable homicide for the purpose of punishment. Under the exception (i) of **section 300** of the Indian Penal Code, "Culpable homicide is not murder if the offender, at a time when he is deprived of the power of self-control by grave and sudden provocation, causes the death of the person by whom he gave the provocation or of any other person by mistake or accidentally."

Such an injunction shall be enforceable by law if the following conditions are fulfilled:

- (i) Be temporary and unfortunate:
- (ii) By words or actions of the deceased
- (iii) The accused has lost his self-control due to the provocation, and
- (iv) The accused committed the murder immediately after the provocation.

The case **K.M. Nanavati vs. State of Maharashtra, AIR 1962 SC 645** decided by the Supreme Court regarding grave and sudden provocation is important-

The accused was a naval officer who mostly stayed away from home. Meanwhile, his wife Sivaliya had a sexual relationship with a man named Ahuja, which his wife had also accepted. On hearing this, he wanted to talk to Ahuja immediately, but when his wife stopped him, he stopped. Later, after leaving his family in the cinema hall to watch a film, he went to the ship from where he took a revolver and went to talk to Ahuja. On reaching there, he asked Ahuja whether he was ready to marry Sivaliya and support her 3 children? On Ahuja's answer that "should he marry the woman with whom he had sex", Nanavati killed him. The appellant presented the argument of provocation.

But the court did not accept the argument of provocation of the appellant because the appellant had sufficient time of 3 hours to calm his mind.

But there the murder committed by the accused was considered to be under grave and sudden provocation where the accused saw his wife and neighbour in an objectionable situation and shot the neighbour dead instantly. (**Ajit Singh vs. State of Punjab, AIR 1991 SC 1738**)

A similar case is that of **Channa Khan, (1942) 25 Lah. 72**- The father, son and daughter-in-law lived together. The daughter-in-law had an illicit relationship with a barber. One day when the father saw the barber entering his house in his absence, he called his son who was nearby. When the father and son went inside, they saw the barber and wife embracing each other and killed both of them.

It was held that the murder had been committed under sudden and grave provocation.

But there the Court did not consider the murder committed by the accused to be under grave and sudden provocation and held the accused guilty of murder where the accused had seen the deceased and his sister in an objectionable position but the murder was not committed on the day of the incident but on some other day when the deceased was found lying next to the bed of his sister.

This was done in a fight after seeing him lying down (**Balbir Singh v. Delhi Administration, 1990 Cr. LJ 2527**)

Exception 2 Exceeding right of private defence - Culpable homicide is not murder if the offender, in good faith exercising the right of private defence of the body or property, exceeds the power conferred on him by law and, without intent to harm, causes the death of the person against whom he is exercising such right of defence.

Required conditions - For exception (2) to apply the following conditions must be fulfilled-

- (i) The right of private defence has been exercised;
- (ii) Such use is made in good faith;
- (iii) The experiment was carried out without premeditation;
- (iv) The use is done without intent to cause injury;
- (a) The right of private defence has been violated.

In the case of **Bhagwan Swarup v. State of M.P., AIR 1992 SC 675**, the murder by shooting by the accused was held by the Supreme Court to fall under exception (2) on the ground that the accused had fired the shot to save his father from a lathi attack.

Another similar case is **Laxman Kishan Nagare v. State of Maharashtra, 1989 Cr. LJ 1714**.

The deceased was a strong and healthy man but he did not have any weapon. He was sitting on the chest of the accused and was hitting him. The accused

inflicted three blows with a knife. The third blow proved fatal for the deceased and he died.

It was held that the murder was committed in violation of personal defence though the accused had no power to kill the deceased. Similarly, the Supreme Court held this in the case of **Latel vs State 2001 SC No. 723**.

It is held that where the accused commits murder by attacking a person fleeing in defence of his property, he violates the right of defence and is liable to be convicted under exception (2) of **section 300** for homicide not amounting to murder.

Exception 3 Public Servant exceeding his power - Culpable homicide is not murder if the offender, as a public servant, or in aid of a public servant acting in the advancement of public justice, proceeds through the power conferred on him by law, and causes death by doing an act which he in good faith believes to be lawful and necessary for the due discharge of his duties as such public servant, and without ill-will towards the person whose death is caused.

For exception (3) to operate, the following conditions must be fulfilled:

- (i) The person encroaching the power is either an assistant to the public servant;
- (ii) The exercise of the power is an act of the public or a public servant;
- (iii) Such encroachment is made in good faith;
- (iv) Has been done under lawful authority, and
- (v) The death is caused without any hostility.

In this regard, the case of **Dakkhi Singh v. State, AIR 1955 All 319** is an apt example-

A police officer arrested a man on the suspicion of being a thief. While the officer was returning in the car after arresting him, the thief jumped out of the car. The police officer had no way of catching him. He fired a shot at the thief which hit someone else and he died.

The judgment held that the police officer was guilty of the offence of culpable homicide, which is not murder.

Exception 4. Sudden Fight- Culpable homicide is not murder,

If the homicide is committed without premeditation, in a sudden fight that takes place in the heat of a quarrel and without the offender taking undue advantage or acting in a cruel or unnatural manner.

Required conditions - For the exception (4) to become applicable the following conditions must be fulfilled-

- (i) The fight is sudden;
- (ii) Is without any premeditation;
- (iii) happened to the deceased;
- (iv) The offender has neither taken undue advantage nor behaved with cruelty;
- (v) The offender has acted in a reasonable manner.

The Supreme Court has held in the case of **Gappu Yadav v. State of M.P., 2003 AIR SCW 1009 2003 (2) Scale 250** that exception (4) of section 30 will apply only where all the above elements are present. In this case, out of the seven injuries sustained by the deceased, only one was of fatal nature and was sufficient in the ordinary course to cause the death of the deceased. The injury inflicted proved the intention of the accused but the injury inflicted could neither be categorised as unusual nor cruel. When the deceased was attacked, the deceased fell down. But there was no evidence to prove that the accused inflicted injury on the deceased after he fell down when the deceased was lying helpless. It was proved by the evidence. It was proved by the evidence that the heated argument between the deceased and the accused suddenly took the form of a fight but the accused did not act in an unusual and cruel manner. The court applied exception 4 of **section 300**.

The Supreme Court has held that murder falls under exception (4) in the cases of **State of U.P. v. Jodha Singh, AIR 1989 SC 1822** and **Surender Kumar v. Union Territory of Chandigarh, AIR 1989 SC 1094** where a quarrel started over a trivial matter and later escalated to such an extent that the two parties came face to face with arms and one person died in the fight.

The latest case in this regard is **V. Strekadharan v. State of Kerala, AIR 1992 SC 754**. In this case the fight started suddenly on impulse which did not end as the accused chased the deceased for some distance before inflicting the fatal injury. It was held that the murder committed by the accused was under Exception 4.

Exception 5. Death caused by consent. - Culpable homicide is not murder if the person whose death is caused, being over 18 years of age, voluntarily suffers or takes the risk of death out of his own property.

For example euthanasia, mercy killing.

Required conditions - Exception (5) must be invoked to fulfill the following conditions:-

- (i) The deceased has consented to the causing of his death;
- (ii) The deceased is above 18 years of age; and
- (iii) Such consent is free, that is to say, the consent has been obtained through misrepresentation, undue influence or fraud.

In this regard, the case of **Dashrath Paswan v. State of Bihar, AIR 1958 Pat. 190** is important-

The accused had failed 3 times in his class 10 exams. Frustrated with life, he expressed his wish to die to his wife. The wife, who was 19 years old, expressed her wish to die first. Thus, on the basis of consent, the accused killed his wife, but was caught before he could end his life.

Held that the accused was guilty of culpable homicide because the accused's offence was subject to exception (5).

In **Punai Fattema v. Emperor (1869) 12 WR. Cr. 7** the accused was a snake charmer who claimed to be capable of curing a person bitten by a snake. By this statement he induced one of his listeners to give him his consent to be bitten by a snake. The deceased was bitten by a snake and died. It was held that the case did not fall under this exception because the consent given by him was not free consent because he gave the consent by false representation.

Difference between culpable homicide and murder

The provision for criminal homicide is made in **Section 299** and the provision for murder is made in **Section 300**. Generally, both the crimes seem similar because in both the crimes the criminal causes someone's death and the element of intent and knowledge is essential for both. The only difference between the two is that in criminal homicide the amount of intent or knowledge is less and in murder the amount of criminal intent or knowledge is more. Therefore, the amount of intent or knowledge determines the nature of the crime.

Culpable homicide is a genus and murder is its species. That is, every homicide involves murder but every murder does not involve culpable homicide.

Hon'ble Justice Goswami of the Supreme Court has expressed the view in the case of **Kishore Singh vs. State of Madhya Pradesh, 1977, 4 SCC 524** that there is a very subtle difference between culpable homicide and murder and hence the court has to exercise great caution while deciding whether a particular offence is homicide or murder.

When the court has to decide whether an offence is that of murder or culpable homicide not amounting to murder, the court must first see whether the prosecution has proved the offence under any one of the four sections of **section 300**. If the prosecution fails to prove it, the accused will be guilty of the offence of culpable homicide not amounting to murder.

In this connection the distinctions pointed out by Justice Melville in the case of **Rex v. Govinda, ILR (1876) 1 Bom 342** are important-

The accused pushed his wife. Then he sat on her chest and punched her very hard two or three times. Due to which bleeding started on her brain. As a result she died. Justice Melville held that (i) since the accused did not intend to cause the death of his wife, and (ii) neither the injury inflicted by the accused was such that it could be considered sufficient to cause death in the ordinary course of nature, the accused was guilty of culpable homicide and not murder.

The difference between criminal homicide and murder can be made more easily clear through the following table.

Culpable homicide section-299

A person commits culpable homicide when the act by which death is caused is done-

- (a) The act is done with the intention of causing death.
- (b) It is done with the intent to cause such bodily injury as is likely to cause death.

(c) Doing an act with the knowledge that it is likely to cause death.

Murder section 300

Culpable homicide is murder, except in certain exceptional circumstances, when the act by which death is caused is done

(i) Is done with the intention of causing death.

(ii) Is done with the intention of causing bodily injury of which the offender is well aware that such bodily injury is likely to cause the death of the person to whom such injury is caused.

(iii) Causing bodily injury to any person which in the ordinary course of nature would be sufficient to cause death, or

(iv) Is done with the knowledge that the act is of such imminent danger that there is a reasonable probability that death will result.

He will definitely cause it, which is likely to result in death.

Question 14-Define 'faulty obstruction' and 'faulty confinement' and differentiate between them.

Answer-The Constitution of India provides every person the right to freedom of movement within the territory of India and the right to personal liberty under **Articles 19 (1) (d)** and **21** respectively. However, this freedom is not absolute. It can be made brief, short and unrestricted in public interest in accordance with the procedure established by law. This constitutional guarantee is available against the action and process of the state and not against the action of any particular person.

The remedy against the act of any person summarising the right to try others is obtained by filing a complaint before a Magistrate against the accused for wrongful restraint or wrongful confinement depending on the nature of the offence under the criminal law and not by way of a habeas corpus petition under **Article 32** or **226** of the Constitution.

In order to protect the deprivation of the right to liberty of an individual by any person or group other than the State, the Penal Code has made wrongful restraint and wrongful confinement punishable under **Sections 339** to **348** IPC.

In fact wrongful restraint and wrongful confinement are examples of what is called false imprisonment in English law.

Section 339 IPC defines wrongful restraint, **Section 340** IPC explains when an act would amount to wrongful confinement, and **Sections 341** and **342** lay down punishments for them respectively. **Sections 343** to **348** IPC provide for higher punishment in case of aggravated form of wrongful confinement.

339 Wrongful obstruction.-Whoever voluntarily obstructs any person so as to prevent that person from proceeding in a direction in which that person has a right to go, is said to wrongfully obstruct that person.

Exception.-It is not an offence within the meaning of this section to obstruct any private passage of land or water which a person in good faith believes he has a lawful right to obstruct.

Example-A obstructs a road through which Y has a right to pass, not believing in good faith that he has a right to obstruct the road. Y is thereby prevented from passing. A wrongfully obstructs Y.

Essential Element of Wrongful Restraint-

1. The person must be voluntarily obstructed, and
2. The obstruction must be such that it prevents the person from going in a direction in which the person has a right to go.

Wrongful restraint means obstructing a person from going from one place to another where he has a right and desires to go. Malice is not an essential element of the offence under this section. Restraint means the abridgement of a person's liberty against his will. However, when a person is deprived of his will to move by sleep or otherwise, he cannot be said to be subjected to a restraint.

What the section contemplates is that there must be some obligation to be directly connected with the person accused. The person obstructing must have the intention or knowledge or reason to believe that the method adopted by him is likely to cause obstruction to the complainant.'

Wrongful obstruction does not require any obstruction of movement. It may be directed in a direction other than the one in which the victim intends to move. Neither the physical presence of the obstructing person nor the assault is necessary under this section.

Under this section it was observed that obstruction could be caused by abusive words or threats. This offence is determined by the effect caused and not by the nature of the act by which it is done. For example, when the accused brought out a ladder and thereby confined a person on the roof of a house, he was held liable for obstruction within the meaning of this section.

The accused demanded Rs. 15 from the complainant to take his carts from a ghat and when he refused to pay the amount, the carts were stopped from going. It was held that since the complainant's carts were illegally detained, it was an offence of wrongful restraint.

One class of the community cannot obstruct the use of a public road by another class. For example, when a Brahmin obstructed the complainant, an Izhava who had converted to the Arya Samaj, from using the road and did not even allow him to go to work, the accused was held liable for wrongful obstruction.

(3) Exception.-Defence to wrongful obstruction in good faith.--No offence is committed if the obstruction is done in good faith and the accused believes himself to have a lawful right to do so, as stated in the Exceptions clause of this section. It is justifiable for a person to obstruct another person from passing along a private way, over land or in water over which he has a lawful right to do so.

In **Shobharani Roy v. King AIR 1950 Cal. 157**, if the accused in good faith believes that he has a right to prevent the complainant from passing over his land, he is not guilty of a culpable homicide. No one can be convicted if it is found that there has been interference with the right.

In **Emperor v. Haji Ghulam Mohammed Azam (1918) AIR 43**, the tenant of a house has a status recognised by law and has a right of possession against the house owner unless he is lawfully removed from possession, and a house owner who prevents such tenant from entering the premises is guilty of wrongful restraint. But a person cannot be said to be in wrongful restraint if he has no right to move in any direction. For example, the Supreme Court in **Vijay Kumari v. S.M.Rao AIR 1996 SC 1058** held that the complainant, a female teacher who was the licensee of a room in a hostel has no right to stay there after the expiry of the period of licence and hence she cannot claim to stay in the room and any obstruction will not be called wrongful restraint.

Wrongful Confinement - Section 340, IPC Wrongful confinement is a form of wrongful restraint in which a person is wrongfully prevented from going beyond a certain limit. For example, arresting a person or locking him in a room, or tying him to a tree would be wrongful confinement.

Proof of actual physical obstruction is not necessary to support the charge of wrongful confinement. It is sufficient if the aggrieved person has formed an impression or reasonable apprehension that he is not free to go and that if he attempts to do so he will be (detained). Section 340- Wrongful Confinement- "Whoever wrongfully restrains any person so as to prevent that person from going beyond the prescribed limit is said to 'wrongfully confine' that person."

Example - (a) A locks Z in a place surrounded by a wall. Thus Z cannot go in any direction beyond the boundary of the wall. A has wrongfully confined Z.

(b) A posts men with guns at the exit doors of a building and tells Z that they will shoot Z if he tries to go out of the building. A has wrongfully confined Z.

Essential Elements of 'Wrongful Confinement'-

1. Wrongful obstruction of any person, has been given
2. As a result of the restraint, the person is prevented from going beyond a certain limit.

1 341. Punishment for wrongful restraint.-Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment-The punishment for wrongful restraint can be imprisonment of up to one month or fine of five hundred rupees or both. The offence under this section is cognizable, bailable, triable by any Magistrate. Compoundable **342**.
Punishment for wrongful confinement-Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may

extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for Wrongful Confinement- The offence of wrongful confinement is punishable with imprisonment of either description for a term which may extend to one year or with fine of one thousand rupees or with both. The duration of the confinement is a relevant factor which is taken into consideration while awarding the sentence.

This crime is cognizable, bailable, compoundable and triable by any magistrate. In the case of **Bhagwat vs State, 1971 Cr.LJ 1222 (Allahabad)**, it was held that it is not necessary to constitute this fact for the crime of wrongful confinement. To constitute this crime, it is sufficient to prove that the belief arises in the mind of the imprisoned person that a person is not free to leave the place of confinement and if he tries to leave that place, he will be immediately stopped.

Similarly in **Ravi Narain Das v. State of Orissa, 1992 Cr. LJ 269** the High Court has held that an essential element of the offence is that the accused had wrongfully confined the complainant and such confinement was done to prevent the complainant from going beyond any boundary.

In the case of **Vijay Kumari Magi vs. Smt. S.M. Rao, 1996 Cr.IJ 1371 (SC)** the Supreme Court clarified that for the offence of wrongful confinement it is necessary that the person who is prevented from going in a particular direction should have the right to go in that direction. In this case, after the license of the complainant teacher to reside in the hostel was terminated, she no longer had any right to stay in the hostel room as a licensee. Therefore, preventing her from entering the hostel room by the school authorities is not a wrongful restraint.

Difference between wrongful obstruction and wrongful confinement- The following are the main differences between wrongful obstruction and wrongful confinement-

1. Wrongful restraint is a partial obstruction of the right to personal liberty of a person whereas in wrongful confinement, liberty is totally restricted.
2. Every wrongful confinement contains a wrongful obstruction, but a wrongful obstruction never contains a wrongful confinement.
3. In wrongful restraint a definite limit is always necessary whereas under wrongful restraint no such limit is necessary.
4. In wrongful confinement, movement in all or any direction is blocked and the confined person is not allowed to go beyond the prescribed limits. However, in wrongful restraint a person is restricted from moving in only one or some directions; apart from these, he is free to move in other directions.
5. Wrongful restraint is not a serious offence, hence the punishment is less severe whereas wrongful confinement is a relatively serious offence and hence the punishment is also severe.

6. **Section 341** of Indian Penal Code describes the punishment for wrongful restraint which shall be simple imprisonment for a term which may extend to one month or with fine which may extend to Rs. 500 or with both while the punishment for wrongful confinement is described in **Section 342** of Indian Penal Code which shall be simple imprisonment for a term which may extend to one year or with fine which may extend to Rs. 1,000 or with both.

Question 15. What is hurt? When is hurt called grievous hurt? Does acid rain come under grievous hurt? Describe.

Answer- In simple words, 'hurt' means "causing bodily pain, injury or infirmity to another person by a person." Under **Section 319** of the Indian Penal Code, "Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

Therefore, it is clear that for the term 'hurt' to apply, it is not at all necessary that the injury be of permanent nature, i.e., no matter how short it is, if it is painful for the body or as a result of it, a part of the body becomes permanently or temporarily disabled, then it will be called an injury. There are many such crimes which not only come under the category of 'hurt', but also come under the category of 'assault'. For example, "Maiming a person by punching him, pouring boiling water on a person, is both 'assault' and physical 'hurt'." The term 'hurt' defined under **Section 319** includes all types of ordinary hurt, whether it is permanent or temporary, dangerous or ordinary. But it does not extend to that trivial hurt, which is trivial within the meaning of Section 95 of the Indian Penal Code.

Essential Elements of Hurt-

- (i) Causing bodily pain to anyone, or
- (ii) To make someone sick, or
- (iii) Infirmity of the other person

(i) Physical pain- There is no need for any direct physical contact to cause hurt. Hurt occurs where the direct result of an act is to cause physical pain. Whatever may be the means used to cause it. For example, if a person intentionally hurts a weak-hearted person and succeeds in doing so, he will be considered to have caused hurt.

Hurt is caused by causing physical pain and not by mental pain. For example, giving shocking news can cause pain but not hurt. Physical pain is necessary for hurt. Direct use of force on the body is not necessary in this.

When the injury is not serious and there was neither intention to cause death nor did the accused have the knowledge that it was likely to cause grievous hurt or death, the accused will be guilty of causing hurt only, though it may have caused death. Thus, in the absence of intention to cause death or grievous hurt, where a person died as a result of being punched twice on the stomach, the accused was held guilty of causing hurt only. Similarly, where a husband caused

hurt to his wife by striking her with a stick, he was held liable for the hurt. Dragging a person by the hair or punching him comes under this section.

(ii) Disease - A person who transmits a particular disease to another person is guilty of causing hurt. However, there is a difference of opinion in judicial decisions in respect of cases of transmission of venereal diseases from one person to another. In an interesting English case **R. v. Clarence (1888) 22 QBD 23 decided before 1888**, a husband was held guilty of transmitting venereal disease to his wife under **section 209** of the Offences Against the **Persons Act, 1861**. He was convicted by the trial Court for communicating Venereal disease and for assault causing actual bodily hurt under **Section 47** of the Act.

His wife was unaware of his condition and even if she had known about it, she would not have consented to intercourse.

The Court for Crown Cases quashed the conviction by a majority of nine to four, and held that it was neither an act of causing grievous bodily harm nor an act of infecting another with gonorrhoea by sexual intercourse, although he was aware of his condition and his wife was unaware of it, although she would not have sexual intercourse if she had known of his condition.

In the case of **Raka v. Emperor (1887) ILR Bombay 59** the Bombay Court held that a prostitute who had sexual intercourse with the complainant and transmitted syphilis was liable for infection under **section 269** IPC and not for causing hurt as the distance between the act and the disease was too remote to fall under **sections 319** and **321** IPC. On the other hand an accused suffering from venereal disease incited a girl of thirteen years of age who was unaware of his condition and had sexual intercourse with her and infected her with the disease and was held guilty of indecent assault.

(iii) Infirmary- Infirmary means temporary mental deviation, fit or fright. In the case of **Jasannal Jhamattammal v. Brahmanand Swarupanand, AIR 1944 Sind 19**, the accused landlord on 12th May, 1942, at about 10.30 p.m., uttered a terrifying sound 'whoosh' and extended his hand towards the wife of the complainant (tenant) and showed her a pistol so that the couple would vacate the premises. Due to the shock the wife of the complainant was badly frightened and became seriously ill for some considerable time. It was held that this act was sufficient to cause a state of temporary mental deviation or fit resulting in mental infirmity in the wife of the complainant and it would fall under **section 319** IPC.

Grievous hurt: Section 320 of the Indian Penal Code defines hurt under which the injury caused is called grievous hurt.

Section 320 Grievous Hurt only the following kinds of hurt are called 'grievous' hurt

1. Emasculation;
2. Permanent privation of the sight of either eye;
3. Permanent privation of the hearing of either ear-;
4. Separation of any member or joint.;

5. Destruction or permanent impairing of the powers of any limb or joint the powers of any member or joint);
6. Permanent disfiguration of the head or face
7. Fracture or dislocation of bone or tooth
8. Any hurt which endangers life or which causes severe bodily pain for a period of 'twenty days' or is unable to perform his/her basic tasks.

(i) Castration- This section is limited to males only, it means to make a man impotent or to deprive him of his masculine power. This section was inserted to prevent the practice of women in this country torturing men by pressing their testicles under ordinary provocation. Castration can be done in many ways. To bring a case under this section the impotence caused must be permanent.

(ii) Damage to the sight of an eye- The second type of grievous hurt is damage to the sight of an eye. Its severity is tested by causing permanent damage to one eye or both eyes.

(iii) Loss of hearing- Causing deafness is the third type of grievous hurt. It may occur in one ear or both ears. For this section to apply the deafness must be permanent.

(iv) Amputation of limb or joint- Amputation of limb or joint is the fourth type of grievous hurt. The expression used in this section is to maim a person for life by amputation of any limb, part or joint. The use of the word 'limb' means any limb or arm.

(v) Loss of limb- Limbs or joints are essential parts of the body which help in performing the ordinary activities necessary for normal life. Destruction or permanent loss of powers of any limb or joint is the fifth type of grievous hurt.

The term disfigurement (disfigurement) as mentioned in the sixth section is different from degradation (disablement). Disfigurement means causing any external damage which spoils the external beauty of a person. It does not make him weak whereas disabling on the other hand means creating some permanent disability and not merely temporary damage.

(vi) Permanent disfigurement of head or face- This is the sixth type of grievous hurt in which the head or face is permanently disfigured and disfigured. In the case of **Gangaram vs State of Rajasthan**, where the bridge of the nose was cut off by causing injury with a sharp weapon, it was held that this act amounts to disfigurement under this section and hence it causes grievous hurt.

(vii) Fracture or dislocation of bone or tooth - This may or may not cause permanent disability. This injury is considered as grievous hurt because it causes extreme pain and it causes serious disability to the victim. Fracture is not defined in the Code. It depends on the facts and circumstances of each case.

For this section to be applicable the fracture must be up to the inner surface. If the act results in only abrasion and does not break the bone, it will not be a fracture. In the case of **Hori Lal vs State AIR 1970 SC 1969** the Supreme Court held that fracture in the ordinary sense means breakage of a bone. Mere abrasion

or cutting which does not penetrate inside the bone cannot be termed as fracture. But if the injury is deep then partial cutting off of the skull vault would be a fracture within the meaning of **clause (7) of section 320, IPC**.

(viii) Dangerous or endangered hurt- The provisions contained in **clause (8) of section 320, IPC** are of general nature, this clause has been taken from the French criminal law, it includes three classes of injuries which are not covered under **clauses 1 to 7** of the section. It recognises the following hurts as grievous hurt, namely:- (i) Those which endanger life.

(ii) Those which cause the victim to be in severe bodily pain for a period of twenty days.

(iii) Those which render the affected person unable to carry on his daily activities for a period of twenty days.

The above three sub-sections are independent of each other.

Acid rain comes under grievous hurt- Under the Indian Penal Code, acid rain has been inserted in the category of grievous hurt by the **Criminal Law (Amendment) Act, 2013**. It has come into force from 3 February 2013. By this amendment, **Section 326 (a), 326 (b)** have been inserted in relation to grievous hurt by acid rain.

326A. Voluntarily causing grievous hurt by using acid, etc.-Whoever causes permanent or partial damage or disfigurement or burns or maims or disfigures or disables any part or parts of the body of any person by throwing acid thereon or by giving acid to that person or by using any other means with the intent to cause or with the knowledge that it is likely to cause such damage or hurt, shall be punishable with imprisonment of either description for a term which shall be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily throwing or attempting to throw acid- Whoever throws or attempts to throw acid at any person or gives or attempts to give acid to any person with the intent to cause permanent or partial injury or disfigurement or burn or maim or disfigure or disable or to cause grievous hurt to that person, shall be punishable with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

Explanation 1.-For the purposes of **section 326A** and this section, "acid" includes any substance which is acidic or corrosive in nature, or flammable, which is capable of causing bodily injury causing scarring or disfigurement or temporary or permanent disablement.

Explanation 2.-For the purposes of **section 326A** and this section, it shall not be necessary for the permanent or partial loss or deformity to be irreversible.

Question 16- What is the punishment provided for the offence of rape under the Indian Penal Code?

Answer-Punishment for rape or coercion-The following provisions have been made regarding punishment for the crime of rape **under section 376** of the Indian Penal Code-

(1) Whoever commits rape, except in the cases provided by sub-section (2), shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever

(a) Being a police officer-

(i) Commits rape within the limits of the police station to which he is appointed; or

(ii) Commits rape in the premises of any police station, whether situated or not in the police station to which he is appointed; or

(iii) Commits rape on any woman in his custody or in the custody of any police officer subordinate to him; Or

(b) being a public servant, taking advantage of his official position, commits rape on a woman who is in his custody as such public servant or in the custody of any public servant subordinate to him; or

(c) being a member of the armed forces deployed in any area by the Central or a State Government, commits rape in the area; or

(d) being in the management or staff of a jail, remand home or other place of custody established by or under any law for the time being in force, or of any institution for women or children, taking advantage of his official position, commits rape on any inmate of such jail, remand home, place or institution; or

(e) Being on the management or staff of any hospital, taking advantage of his official position to take charge of such hospital, I commit rape on a woman; or

(c) Any relative, guardian or teacher of the woman or any person in a position of justice or authority towards her, being such person commits rape on that woman; or

(g) Commits rape during communal or sectarian violence; or

(h) Commits rape on a woman knowing that she is pregnant; or

(i) Commits rape on a woman who is under sixteen years of age; or

(a) Commits rape on a woman who is incapable of giving consent; or

(t) Being in a position of control or influence over a woman, commits rape on that woman; or

(l) Commits rape on a woman suffering from mental or physical disability; or

(d) While committing rape causes serious bodily harm or maims or disfigures a woman, or endangers his life; or

(d) Repeatedly rapes that woman; or He shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.-For the purposes of this sub-section,-

(a) "Armed forces" means the naval, military and air forces and includes any member of the armed forces constituted under any law for the time being in force and includes the paramilitary forces and auxiliary forces under the control of the Central Government.

(b) "Hospital" means the premises of a hospital and includes the premises of any institution which receives persons during convalescence or persons in need of medical attention or rehabilitation; is meant to receive and treat them.

(c) 'Police officer' shall have the same meaning as the expression 'police' under the Police Act, 1861.

(d) "any women's or children's institution" means any institution established or maintained for the reception and care of women and children, whether called an orphanage or a home for neglected women or children or a home for widows or by any other name.

In the case of **Siddique Singh v. State, 1993 Cr.LJ 2919 (Mumbai)** where an Army jawan had visited a brothel and while returning from there abducted a four-month-old girl and raped her resulting in her death, it was held that the accused was guilty under **sections 366, 367 and 302** for throwing the dead body into the well from where it was taken out after twenty-four hours and for rape he was sentenced to the maximum punishment of life imprisonment.

In the case of **Bala Saheb vs State, 1994 Cr.L.J. 3044 (Mumbai)**, the medical jurist was of the view that there could be an increase or decrease of up to three years in determining the age on the basis of bone development test. The age of the accused was estimated to be fourteen to sixteen years from the said test. It was determined that the benefit of minimum error of this test should be given to the accused, and it should also be proved that the age of the accused should be given the benefit of minimum error of this test Since it is known that the prosecutrix had consented to the sexual intercourse, the accused cannot be held guilty of rape under **Section 376**.

In the case of **Santokh Singh v. State of Rajasthan, 1996 Cr. L.J. 4402 (Rajasthan)**, a 32 year old accused was sentenced to life imprisonment for raping a nine year old girl who was unable to defend herself.

In the case of **Kamal Kishore vs. State of Himachal Pradesh, 2000 Cr.LJ 2292 SC**, the Supreme Court clarified that in cases of rape, the court has the discretion to impose a punishment less than the minimum mandatory punishment adequate and specific reasons must be provided.

Question 17. What do you understand by abortion? Discuss the crimes related to abortion.

Answer: Abortion includes causing abortion, harming babies, abandoning babies and concealing birth.

Miscarriage- If a child of a pregnant woman is born prematurely, it is called miscarriage. Generally, if a child is born before six months, it is called premature birth. In other words, it can be said that if delivery takes place before the normal delivery period, it is abortion. With the objective of allowing married women to terminate unwanted pregnancies, to ensure privacy of women, to maintain interval between pregnancies and to limit population growth, the Government of India passed the **Medical Termination of Pregnancy Act, 1971**, according to which termination of pregnancy can be done only by a registered medical practitioner if it poses a threat to the life of the pregnant woman or there is a risk of serious harm to her physical or mental health or the pregnancy is due to rape or there is a substantial risk that the child will be seriously disabled on birth due to physical or mental abnormalities or where the contraceptive method of the married woman has failed or where there is a threat to her health due to actual or reasonably probable environment. Apart from the above reasons, if someone aborts a woman or that woman herself aborts, then it will be a punishable offence under the Indian Penal Code. The following are the offences related to abortion under the Indian Penal Code-

(1) Causing Miscarriage - According to **section 312** of the Indian Penal Code, "Whoever voluntarily causes abortion of a pregnant woman, if such abortion is not caused in good faith for the purpose of saving the life of the woman, shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both, and if the woman is quick with child, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Explanation.-A woman who procures an abortion herself is also within the meaning of this section.

Under this section, a crime is committed when abortion is not done in good faith to save the life of the woman. If abortion of a pregnant woman is done voluntarily by someone or voluntarily by the woman herself, it will be a punishable offence. In this section, abortion of a pulsating pregnant woman is considered more serious, hence more punishment has been provided for it.

The offence under this section is non-cognizable, bailable and non-compoundable and where the abortion falls under the first part of this section, it is triable by a Magistrate of the first class and if it falls under the second part of this section, it is triable by the Sessions Court.

(2) Causing miscarriage without woman's consent.-According to **section 313** of the Indian Penal Code, whoever commits the offence defined in the last preceding section, without the consent of a pregnant woman, whether she is

vivacious or not, shall be punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Thus, under the above section, the same crime as under **section 312** is committed but in this section, the crime is committed without the consent of the woman. In this section, it is not important whether the woman is pregnant or not. The crime under this section is more serious than the crime under **section 312** and severe punishment has been provided for it.

The offence under this section is non-cognizable, bailable and non-compoundable and is triable by the Sessions Court.

(3) Death caused by act done by intent to cause miscarriage. - According to **section 314** of the Indian Penal Code, "Whoever, with the intent to cause the miscarriage of a pregnant woman does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

If the act is done without the consent of the woman and if the act is done without the consent of the woman, he shall be punished with life imprisonment, or with the punishment mentioned above.

Explanation.-It is not necessary for this offence that the offender knows that the act is likely to cause death.

Causing death by doing acts with the intention of causing abortion is a punishable offence under this section. Under this section, it is necessary for the prosecution to prove that the accused had the intention of causing abortion of a pregnant woman and with this intention he did any such act which caused the death of that pregnant woman. If the same act is done without the consent of that woman, then the punishment for this can be up to life imprisonment. It is of no importance whether the accused knew or not that his act is likely to cause death. Since there is no mention in this section about the criminal state of mind of the accused in relation to the death of the woman, therefore all types of deaths come under this section, whether they are voluntary or involuntary, whether they are caused by rashness or negligence.

In **Jacob George v. State, 1994, Cr.LJ 3851 (SC)**, the accused homoeopathy doctor admitted the deceased to his hospital for abortion and operated upon her but the woman died within a few hours. The post-mortem examination proved that the death was caused by penetration of the uterus by the untrained accused using scientific instruments. The plea of the accused that the deceased was admitted to the hospital in a critical condition due to wrong method adopted by the cousin of the deceased for abortion was rejected as the accused did not make any such report to the police. The abortion performed by the accused was also not under permissible reasons. The accused was held guilty under **Section 314** by the Supreme Court.

In the case of **Surendra Chauhan v State, 2000, Cr.LJ 1789 (SC)**, a person having illicit relations with the deceased took the deceased to a doctor's hospital for abortion. The woman died during the abortion. The doctor was neither qualified to perform abortion nor was the hospital recognized by the Government under **Section 4** of the **Medical Termination of Pregnancy Act, 1971** nor were the basic facilities available in the hospital to perform abortion. The Madhya Pradesh High Court held that there was a common intention between the accused and the doctor to commit the offence under **Section 314** of the Code, hence the conviction of both of them under **Sections 314** and **34** of the Code was justified.

The offence under this section is non-cognizable, bailable and non-compoundable and is triable by the Sessions Court. (4) Act done with intent to prevent child being born alive or to cause it to die after birth-According to **Section 315** of the Indian Penal Code, "Whoever does any act before the birth of a child with the intent thereby to prevent the child being born alive or to cause it to die after birth, and by such act prevents the child being born alive, or causes the death of the child after its birth, if such act is not done in good faith for the purpose of saving the life of the mother, shall be punishable with imprisonment of either description for a term which may extend to ten years, or with fine, or with both."

Under the above section, any act done with the intention of preventing the birth of a child or causing its death after birth is a punishable offence. This section applies to any act done by the accused either before the birth of a child and while doing it, the intention of the accused should be to either prevent the child from being born alive or cause its death after birth. The act of the accused should actually prevent the child from being born alive or cause its death after birth. But if the accused proves that whatever he has done was done in good faith to save the life of the mother of the child, then he will not be convicted and the accused cannot be punished even on the basis of mere doubt.

The offence under this section is non-cognizable, bailable and non-compoundable and is triable by the Sessions Court.

(5) Causing death of quick unborn child by such act amounting to culpable homicide. - According to section 316 of Indian Penal Code, "Whoever does any act under such circumstances that, if he thereby causes death, is guilty of culpable homicide and who by such act causes the death of a living unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Illustration - 'A' knowing it to be likely that he may cause the death of a pregnant woman, does such an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is harmed but thereby the living unborn child in her womb dies, 'A' is guilty of the offence defined in this section.

Question 18- What provisions have been made under the Indian Penal Code regarding selling and buying of a minor for prostitution?

Answer- Prostitution has been adopted as a profession since ancient times, although its name and form has been changing, which earlier was known as Devdasi and now as prostitute and in modern times as call-girl etc. It is a social evil which has spread like leprosy in the society. It creates many types of diseases and crimes. There are many reasons for prostitution. In India, women are pushed towards prostitution by taking illegal advantage of illiteracy; poverty etc. and some voluntarily adopt prostitution as a profession. Provisions have been made in **Section 372** and **373** of the Indian Penal Code, 1860 for the prevention of any type of prostitution, which are as follows-

Selling minor for purpose of prostitution etc.- Under **Section 372** of Indian Penal Code, 1860, provision was made regarding selling minor for purpose of prostitution etc. that "Whoever sells, lets to hire or otherwise disposes of any person under the age of eighteen years with the intent that such person shall at any age be used or utilized for the purpose of prostitution or for illicit intercourse with any person or for any unlawful or immoral purpose, or knowing it to be likely that such person will at any age be used or utilized for any such purpose, shall be punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

Explanation 1.- Where a female under the age of eighteen years is sold, let on hire or otherwise disposed of to a prostitute or to any person who carries on or manages prostitution, it shall be presumed that he has disposed of her with the intention that she will be used for the purpose of prostitution. **Explanation 2.-** For the purposes of this section, "illicit intercourse" means sexual intercourse with persons not united by marriage or by any union or tie which, though not amounting to marriage, is recognised by the personal law or custom of the community to which they belong, or, if they belong to different communities, of both such communities, as a marriage-like relationship between them.

Buying of minor for purpose of prostitution etc.- In this regard, it has been provided under **section 373** that "Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with the intent that such person will at any age be used or used for the purpose of prostitution or for illicit intercourse with any person or for any unlawful immoral purpose, or knowing it to be likely that such person will at any age be used or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to one year and shall also be liable to fine."

Explanation1.- Any prostitute who purchases, hires or otherwise obtains possession of a female under the age of eighteen years or any person keeping or managing a brothel shall, unless the contrary is proved, be presumed to have obtained possession of such female with the intention that she shall be used for the purposes of prostitution.

Explanation 2.- 'Improper intercourse' has the same meaning as in **section 372**.

Thus, it is clear that the sections (**Section 372 and 373**) make the buying and selling of persons below the age of eighteen years punishable for the purpose of prostitution. The following are necessary to constitute the offence under these sections: Things need to happen-

1. Any person being sold, let on hire or otherwise disposed of
2. Such person is below eighteen years of age
3. Such sale, letting or otherwise disposal

Intent-

- (a) Prostitution; or
- (b) Improper sexual intercourse; or
- (c) Other unlawful or immoral purpose.

From the observation of **Section 372** and **Section 373**, it is also clear that while **Section 372** makes sale a punishable offence, **Section 373** declares buying a minor for prostitution a punishable offence. To make a presumption under **Explanation 1 of Section 373**, it is necessary that at the time of taking possession of such a girl, the accused-

1. Has been a prostitute; or
2. Maintains or operates a brothel; or
3. You manage such a brothel.

The provisions of this section apply to a woman below the age of eighteen years, whether married or unmarried, and to a woman leading an immoral life, and to girls belonging to the dancing caste. Similarly, the dedication of minor girls to temple service as 'Devdasi' knowing that they will be used for prostitution will be treated as a disposal within the meaning of this section.

Question 19- What provisions have been made under the Indian Penal Code regarding the crime of cruelty towards women or wives?

Answer-Cruelty towards women or wives- In modern times and especially in the last few years, there has been a continuous increase in the cases of cruelty on married women by their husbands or husband's relatives. Today, cruelty towards women and dowry deaths have become common. Due to cruelty and dowry, the number of suicides and abetment by women is increasing. The implementation of the Dowry Prohibition Act has also not had any significant impact on these incidents, so the legislature has been forced to make strict laws. A new **section 498-A** related to cruelty was added to the Indian Penal Code, 1860 by the **Amendment Act of 1983**, in which cruelty has been made a punishable offence.

Section 498-A provides that "Whoever, being the husband or the relative of the husband of a woman, treats such woman cruelly, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine."

For the purposes of this section, "liability" means-

- (a) Any intentional conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to the life, limb or health (whether mental or physical) of the woman, or
- (b) Harassing a woman with a view to coercing her or any relative of her to meet any demand for any property or valuable security or harassing a woman because of failure of any relative of her to meet such demand.

For an offence under this section, the accused must be either the husband of the victim or a relative of the husband and at the same time cruelty must be inflicted upon such woman. A new **section 113-A** has been added in the Indian Evidence Act relating to the presumption regarding abetment of suicide by a married woman. According to this, when the question is whether a woman has been abetted to commit suicide by her husband or any relative of her husband and it is shown that she committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has inflicted cruelty upon her, the court may, having regard to all other circumstances of the case, presume that such suicide was abetted by her husband or such relative of her husband. According to the explanation given in this section, cruelty for the purpose of this section has the same meaning as in **section 498-A** of the Indian Penal Code.

In the case of **P. Krishnamurthy v. State, 1994 Cr.LJ 506 (AP)**, the husband and mother-in-law of the deceased harassed, ill-treated and tortured her for not fulfilling their dowry demands. The court held the accused guilty under **Section 498-A** of the Indian Penal Code, 1860.

In the case of **State of West Bengal vs. Odilal Jaiswal, AIR 1994 SC 1418**, the Supreme Court has made it clear that in case of cruelty, it is not necessary that the newly married woman should make public the cruel behavior done to her; that is, discuss it with the general public. The newly married woman discusses such behavior with her mother. Therefore, merely not discussing the incident with other people does not make it unbelievable.

In the case of **Shyam Lal vs State of Haryana, AIR 1997, SC 1873**, there was a constant dispute between the husband and wife. The husband often tortured his wife for dowry. Once she was left at her parents' (pehar) house. There, the Panchayat counselled the wife and sent her back to her in-laws' house. She died 10-15 days after coming there. The Supreme Court did not consider it a case under **Section 304 (b)** of the Indian Penal Code, 1860, but considered it a case under **Section 498-A** because there was no evidence of dowry being demanded from the wife during those 10-15 days.

In the case of **Balram Prasad vs State of Bihar, AIR 1997, SC 1880**, the wife committed suicide by falling into a well. The wife's father stated in his evidence that his daughter was harassed by her husband and in-laws for dowry treated her cruelly and taunted her for being childless. For this reason, she had earlier also attempted to commit suicide by falling into a well but the neighbours saved her

She was saved. Later on, she had two children, but her husband and in-laws continued to treat her cruelly until her death. The Supreme Court considered this as cruelty under **Section 498-A**.

The word cruelty used in **section 498-A** does not only mean physical cruelty but it also includes mental cruelty. In this regard, the case of **Pawan Kumar vs State of Haryana, AIR 1998, SC 958** is noteworthy in which the Supreme Court has considered the following acts as cruelty-

- (i) Taunting the bride;
- (ii) Ill-treatment of the bride;
- (iii) Causing mental agony to the bride, etc.

Therefore, it is clear that **section 498-A** gives a new meaning and form to 'cruelty' and includes taunting, ill-treatment and causing mental agony under cruelty and gives a wider form to 'cruelty'.

The question of constitutionality of **Section 498-A** of the Indian Penal Code, 1860 came up before the Delhi High Court in the case of **Inder Raj Malik v. Sunita Malik, (1996) Cr.LJ 1510 (Delhi)**. It was argued that this section is against Article 14 of the Constitution in so far as it gives arbitrary power to the police and the court to arrest. It was also said that the word "harassment" used in **part (e)** of the Explanation to this section is not clear and hence any person can be arrested in a arbitrary manner for harassment under this section. In the context of **Article 21**, this section violates the principle of double punishment, because demanding dowry or any property is punishable under this section and is also punishable under **Section 4** of the **Dowry Prohibition Act, 1961**. Rejecting all these arguments, the High Court declared **Section 498-A** as constitutional and held that the word 'punishment' has been clearly defined under the section and no autocratic power has been given to the police and the court and the power of the court to decide the punishment cannot be called autocratic because this power is exercised by the court in a judicial manner and hence **Article 14** is not violated.

In the case of **State vs. Balappa, 1999 Cr.LJ 3064 (Karnataka)** the Karnataka High Court held that where the accused has been charged under **Sections 304B** and **498A** of the Code and the charge under **Section 304B** is found to be false, it cannot be said on that ground alone that the accused is not guilty under **Section 498A** also.

In the case of **Satvir Singh v. State of Punjab, 2001 Cr.LJ 4625 (SC)**, the Supreme Court held that where the accused tells the aggrieved wife to go and commit suicide and as a result the wife goes towards the railway tracks to commit suicide, the accused is guilty of cruelty under **Section 498-A** will be.

Computation of period of limitation.- The question as to when the period of limitation for filing a suit under **section 498-A** of the Indian Penal Code would commence to be computed before the Supreme Court in the case of **Arun Vyas v. Anita Vyas, 1999 Cr.LJ 3479 (SC)**, wherein the Supreme Court held that a person

who commits a case under section 498-A commits a case as defined in the Explanation appended to this section, is a continuing offence and each occasion on which cruelty is inflicted on the wife would be a fresh cause for computation of the period of limitation for the wife.

So depicting a woman in this way-

- (a) Which is likely to outrage her modesty?
- (b) has an adverse effect on the moral character of the general public;
- (c) Describing or depicting the figure, appearance or body of a woman or any part thereof in a manner which maligns her character and is likely to cause immorality, corruption or public pollution or moral degradation. This will come under the purview of indecent depiction.

Question 20- What do you understand by indecent representation of women? Indecent Representation of Women Act 1986 Describe the main provisions.

Answer: Under **Section 2 (c)** of the Indecent Representation of Women (Prohibition) Act 1986, "indecent representation of a woman" is defined.

It has been done according to which- "Indecent depiction of woman means the depiction of the figure, appearance or body of a woman or any part thereof in any manner which has the effect of being indecent or which is derogatory or derogatory to women or which is likely to deprave, corrupt or injure public morals or moral conduct."

Section 3. Prohibition of advertisements containing indecent representation of women.- No person shall publish or cause to be published or arrange for the publication or display of or participate in any advertisement which contains indecent representation of women in any form.

Section 4. Prohibition of publication or posting of books, pamphlets, etc., containing indecent representation of women.-No person shall produce or cause to be produced, sell, let on hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, article, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form.

But nothing in this section-

- (a) Shall not apply to any book, pamphlet, paper, slide, film, article, drawing, painting, photograph, illustration or figure—
 - (i) the publication of which is justified as being for the public welfare on the ground that such book, pamphlet, paper, slide, film, article, painting, drawing or illustration is in the interest of science, literature, art or learning or other purposes of general interest; or
 - (ii) Which is bona fide kept or used for religious purposes?
- (b) Shall not apply to any formulation which

- (i) On or in any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); or
- (ii) Is engraved, painted or otherwise depicted on or in any temple, or used for the conveyance of idols or any religious object;
- (c) Shall not apply to any film in respect of which the provisions of **Part II** of the **Cinematograph Act, 1952 (37 of 1952)**, would apply.

Section-5. Powers to enter and search.- (1) Subject to such rules as may be prescribed, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorised, enter and search,

- (a) may, at all reasonable times, enter and search any place in which he has reason to believe that an offence under this Act has been or is being committed, accompanied by such assistants, if any, as he considers necessary;
- (b) any advertisement or any book, pamphlet, paper, slide, film, article, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;
- (c) Examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of any offence punishable under this Act.

Provided that no entry under this sub-section shall be made into any private dwelling-house without a warrant.

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, along with the contents of that document, article or thing, if such advertisement cannot, by reason of its being quoted or otherwise, be separated from that document, article or thing without affecting its integrity, usefulness or saleable value.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code.

(3) Where any person seizes any article under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform the nearest Magistrate thereof and obtain orders from him regarding the custody of the article.

Section-6. Penalty.- Any person who contravenes the provisions of section 3 or 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with imprisonment for a term which shall not be less than six months but which may extend to five years and also with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

Question 21. What are the essential elements of the crime of adultery? Explain. Discuss the constitutionality of section 497 of the Indian Penal Code.

Answer- 'Adultery' has been defined under **Section 497** of the Indian Penal Code-

Section-497. Adultery- "Whoever has sexual intercourse, not amounting to the offence of rape, with a person who is the wife of another man, and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, is guilty of the offence of adultery" shall be guilty of, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such a case the wife shall not be punishable as an abettor."

Adultery Meaning- This section provides punishment for the crime of adultery. Adultery is an invasion of the rights of a husband over his wife. In other words, it is a crime against the sanctity of the marital home and is an act that is done by a man. It is an anti-social and illegal act. It involves the sexual intercourse of a married woman with the fact that it is without the consent or conspiracy of her husband. Sexual intercourse is an essential element in adultery.

Under this section, the scope of the crime is limited to adultery with a married woman and only the male offender is made liable for punishment which is imprisonment up to 5 years or fine or both. In the crime of adultery, the consent or wish of the woman is not a reason for forgiveness.

Thus adultery is an offence committed by a man against his wife in respect of her husband. A man who has sexual intercourse with an unmarried or prostitute woman or with a widow or with a woman (married) with the consent or connivance of her husband does not commit this offence. Adultery is a figurative expression meaning to pretend to be unaware and to deny an act or conduct.

Watching, something which is happening in front but neither there is any desire to oppose or interrupt it nor any interference. Elements-To constitute the offence of adultery the following elements must be established, namely- (1) There must be sexual intercourse with the wife of another person.

(2) The person must have definite knowledge or reason to believe that the woman is the man's wife.

(3) Such intercourse must take place without the consent or connivance of the husband.

(4) Such sexual intercourse does not amount to a charge of rape.

(i) Wife not guilty of adultery The scope of adultery under **section 497** of the Indian Penal Code is limited if compared with the offence of adultery as understood in divorce proceedings. As stated before the offence is committed only by a man who has sexual intercourse with the wife of another man and without the consent or connivance of the other. The wife is not punishable for

adultery or even an abettor of the offence though she is a consenting party to the offence. She will go along with it as an abettor.

Yusuf Abdul Aziz- In the case of Yusuf Abdul Aziz, the Supreme Court held that **Section 497** of the Indian Penal Code is not within the jurisdiction of **Articles 14, 15 and 21** of the Indian Constitution only on the ground that only the man is held responsible for adultery and not the wife with whom the adultery is committed. The wife has been saved from the purview of the section and she is not to be punished as an abettor. It was held that sex has been recognized as a reasonable and healthy basis of classification by the Constitution which provides for the State to make special provisions for women and children through **Article 15 clause (3)**. The reason for not punishing the wife has been summarized by the makers of the article in the following words-

Though we are well aware that the dearest interest of mankind is closely connected with the purity of woman and the sanctity of the marriage knot, we cannot imagine that there is any peculiarity in the conditions of society which prevents the punishment of wives for unfaithfulness in this country when in the presence of a compassionate person. The condition of women in this country is, sadly, very different from that of England and France; they are married in childhood, often at an early age despised on account of other wives, and have many rivals for the attentions of their husbands. To legislate for the punishment of the inconstancy of a wife, while the law admits to the husband the privilege of filling his own zenana-khana, is a custom which we accept very grudgingly. We are not so fanciful as to think of attacking by law a practice so deeply rooted in the ways of the people of this country as polygamy. But while it exists, and produces its unending influence upon the happiness and dignity of women, being already so suppressed, we are not prepared to throw the additional weight of the penal law into the scale.

2. The wife must be found guilty of adultery. It is high time that either the woman should be brought within the ambit of **section 497** and punished as an abettor under **section 108** of the Indian Penal Code. **Section 497** of the Indian Penal Code should be struck off from the statutory text as it is in England, many countries in Europe and Malaysia and Singapore. The present law highlights gender discrimination and is considered distasteful by women. When the law was written 145 years ago, women were considered a suppressed class in need of protection. But what kind of protection is this in which they are assumed to be human beings?

If women can be Prime Ministers and Chief Ministers, then why cannot they be held equally accountable for their actions as men?

Let both parties to the crime be equally guilty.

The Indian Penal Code (Amendment) Bill, 1972 proposed that the privilege given to women by **Section 497** be abolished. However, the section could not be amended and the law remains the same as it was enacted in 1860.

3. Punishing only the husband is not ultra vires Yusuf Abdul Aziz Legality of **Section 497** The Supreme Court held in the case of Yusuf Abdul Aziz that **Section 497** of the Indian Penal Code is ultra vires the Constitution. It does not attack **Articles 14** and **15** of the Constitution on the ground that the wife on whom adultery is committed escapes the purview of the section and is not punished as an abettor of the offence. **Article 15(3)** of the Constitution recognises gender as a valid classification.

Soumitri Vishnu-In Soumitri Vishnu v. Union of India AIR 1985 SC 1618, the Supreme Court confirmed its earlier view while dismissing a petition challenging the provisions of **Section 497** of the Indian Penal Code, which makes the offence of adultery illegal. It was held that **Section 497** of the Indian Penal Code cannot be said to violate **Article 14** of the Constitution because it makes an unreasonable classification between men and women.

(1) **Section 497** of the Indian Penal Code gives the right to the husband to prosecute for the commission of adultery but it does not give the wife the right to prosecute for the commission of adultery of a woman with whom her husband has committed adultery.

(2) **Section 497** of the Indian Penal Code does not give any right to a wife to prosecute a husband who has committed adultery with another woman, and

(3) **Section 497** of the Indian Penal Code is not applicable in cases where the husband has had sexual intercourse with an unmarried woman as a result of which the husband has free licence under the law to have extramarital relations with such unmarried woman.

In defining the offence of adultery as a crime restricted only to the male sex, it was held that no constitutional provision had been violated. It is a general admission that it is the man who is the seducer and not the woman. Some situations may have changed over the years but it is for the legislature to decide whether **Section 497** of the Indian Penal Code should be amended to suit the changed conditions of society.

The court further communicated that the fact that **Section 497** of the Indian Penal Code does not provide for hearing the wife does not make the section unconstitutional and does not violate **Article 21** of the Constitution. It is true that **Section 497** of the Indian Penal Code does not contain any specific provision for hearing a married woman but this does not justify the substitution that she does not have the right to be heard in the proceedings if she makes an application in this regard to the court.

Section 497 declared unconstitutional-

The Supreme Court in the case of **Joseph Shine vs Union of India AIR 2018 SC 4898** upheld the Indian Penal Code

Holding **Section 497** (Adultery) of the Indian Penal Code unconstitutional, the Court held that (i) **Section 497** discriminates between men and women on the basis of sex and therefore violates **Article 15** of the Constitution of India

It is contrary. Only a man is held guilty for adultery, not a woman. (ii) **Section 497** indicates that a married woman is the property of her husband. Her husband has monopoly over her. She cannot do anything without the consent of her husband. This is a violation of **Article 14** of the Constitution.

(iii) **Section 497** considers the wife to be subordinate to the husband. The husband can use his arbitrary influence on her. The wife cannot establish sexual relations with any other person without the consent of the husband. This makes it clear that the consent of the husband is paramount in adultery. This is a violation of **Article 14** of the Constitution. (iv) **Section 497** violates the right to life given under **Article 21** of the Constitution, because a woman cannot establish sexual relations with a person of her choice. But this has been considered a ground for divorce.

Q.22. Define theft and discuss the question whether theft by stealing electricity is theft under the Indian Penal Code, 1860? Also mention the deciding law. OR What do you understand by 'theft'? Is theft by stealing electricity under the Indian Penal Code, 1860? Explain and differentiate between theft and extortion. OR What is meant by theft? Explain its essential elements. Can a person steal his own property?

Answer- 'Theft' has been defined in Section 378 of the Indian Penal Code which is as follows-

378. Theft.-Whoever, with the intent of dishonestly taking any movable property from the possession of any person, without that person's consent, removes that property in order to take it, is said to commit theft.

Explanation 1-So long as a thing remains attached to the earth, it is not the subject of theft, being not movable property; but as soon as it is separated from the ground it becomes capable of being the subject of theft.

Explanation 2.-Removal which is done by the same act by which the separation is made may be theft.

Explanation 3- A person is said to cause the removal of a thing when he removes an obstruction which prevents the removal of the thing or when he separates the thing from something else and when he actually moves it.

Explanation 4- A person who causes the movement of any living creature by any means moves that living creature, and is said to move everything which is moved by that living creature in consequence of the motion so produced.

Explanation 5.-The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by some person who has authority, express or implied, for the purpose.

Example- A cuts down the tree without the consent of Y. He commits theft. A tree is planted on the land of Y with the intention of dishonestly taking it from the possession of Y. Here, as soon as A cuts off the tree in order to take it in this manner,

Basically the following are the elements of theft-

- (a) Movable property
- (b) Without consent;
- (c) Removal of property from someone's possession;
- (d) Dishonest intent;
- (e) The property has been removed or taken away.

Theft-Meaning- This section defines the offence of theft and **section 379** prescribes the punishment for theft. As defined in **section 378**, theft is the dishonest removal by any person of movable property without the consent of that person. Thus, it is an offence against possession and not against ownership. The offence of theft consists in dishonestly taking any movable property out of the possession of another without his consent. Such an act will not be treated as theft unless one has a legal right therein but it is not in any form or there is an appearance of legal right.

The expression 'appearance of legal right' does not mean a false statement but a true statement, does not mean a presumption of claim but a bona fide claim, however feeble. Five explanations are attached to **section 372** to clarify when an act is treated as theft.

Essential elements of theft- Theft requires the following five elements-

- (1) The accused must have a dishonest intent to take the property;
- (2) The property must be movable;
- (3) The property must be taken from the possession of another person so that one receives a wrongful gain and another suffers a wrongful loss;
- (4) The property must be taken and removed in this manner, that is, by obtaining the property by fraud;
- (5) Must be taken without the consent (express or implied) of that person.

(1) Dishonest intention - Intent is the basis of an offence. Something is not stolen unless there is a dishonest intention in taking it. If it is not taken dishonestly, it is not theft. It must be caused with the intention of causing wrongful gain to one person and wrongful loss to another. If a creditor takes immovable property from the possession of the debtor without his consent with the intention of pressurising him into paying the debt, it is theft.

Theft cannot occur if it is not done dishonestly. For example, A takes property from the possession of B, believing it to be his own property. In this case, A does not take it dishonestly, so he does not commit theft.

In the case of **Emperor v. Alim Khan (1911) ILR 34 All 89** it was held that it is clear from the definition that the gain or loss contemplated would not require acquisition or evasion. A person snatches some books from a boy and tells him

that he will return them when he comes to his house; it was held that the accused was guilty of theft.

In Queen Empress v. Shri Churan Chungi 1 (1985) ILR 22 Others 1017 it was held that the question is whether the accused had dishonest intention. Whether the claim is made in good faith is mainly a question of fact as it is for the accused to prove that the claim is made in good faith.

(2) Movable Property – The subject of theft should be movable property, i.e. land.

Or every kind of tangible property, except land and things attached to the land, permanently fixed to anything. A thing is said to be movable if it is capable of being moved. It is said to be immovable property if it is permanently attached to the land. Explanation to **section 378**. It clarifies that property becomes movable when it is separated from the land. A standing tree is immovable property but it becomes movable when it is cut down. Similarly when the accused dishonestly stole a hundred carloads of land from the land of the complainant, it was held that he was guilty of theft.

(3) To take out the property from the possession of any person- For the offence of theft, it is necessary to take the property from the possession of another person. But the word possession has not been defined anywhere in the Code. Neither physical control neither is necessary for possession nor is it necessary for actual theft to remove the movable property from the possession of a person but the ownership of that person is not considered necessary nor is the person's legal possession of it necessary. For the offence of theft it is sufficient that the thing is in the physical control of that person. Wild animals, birds flying in the open sky, river water, sub and sub-surface fish etc. cannot be stolen. In the case of **State of Rajasthan vs. Purna Bin Le Le (1977 Cr. L. J. 1055)** it has been said that the offence of theft is committed when a person removes the property from the possession of another person. "A" finds a watch lying on the road and takes it with him with dishonest intent. Here the offence of theft will not be constituted, because the watch has not been taken from anyone's possession, but has been found on the public road. Hence, we will call it criminal misappropriation of property.

(4) Moving of Property - The fifth element of theft is the removal of property. Under English law, permanent removal of property is considered necessary, whereas under Indian law, even a slight removal of property is sufficient for the offence of theft. It is necessary to remove the property from the place where the occupant has kept it. In the case of **Pyare Lal vs State of Rajasthan (AIR 1963 SC 1094)**, the accused took away a file of the department for some time. Although he had intended to return it after some time, but since he removed the file from the possession of the department, he was held guilty of the offence of theft. In the case of **Visakhi vs R (1917 PR No. 29)**, the accused merely moved a gold chain from the neck of the complainant so that it could be removed from the neck of the

woman. Due to the tug of war between the accused and the complainant, the chain fell from the neck and was later found on the bed. The accused was punished with the punishment of theft because the article had been removed sufficiently to constitute the offence of theft.

(5) Without the consent of that person- The second element of theft is that the property in question should be taken without the consent of the person in possession. That is, if a person takes the property of the person in possession with his consent, then he cannot be considered a criminal under this section. Consent is free, obtained without oppression, misrepresentation, undue pressure, fraud etc.

In the case of **Janak Yadav vs. State [(1960) 2 Cr.L.J. 1646]** it has been held that if the consent has been obtained by fraud, the accused should be held guilty of any offence but he cannot be punished for theft.

Can a person commit theft of his own property? The crime of theft is a crime against possession and not against ownership. Hence, the person who has immediate possession of the property is the one who is entitled to it. Therefore, if the owner does not have possession of the property but still tries to take it, he will commit the crime of theft.

For example, if 'A' obtains a loan by pledging his watch with 'Y' and later takes the watch out of 'Y's' possession without 'Y's' consent without repaying the loan in exchange for the watch, he has committed theft, although the watch is his own property, because he takes it dishonestly.

Extortion- According to section 383 of Indian Penal Code- When someone intentionally puts any person or other person in fear of injury of any kind and thereafter dishonestly induces the person put in fear to deliver any property or valued security or anything signed or stamped which can be converted into valuable security to any person.

Example: 'A' wants to acquire 'B's' house. 'B' prepares a sale deed and threatens 'B' to sign the sale deed peacefully or else he will kill him. Here, 'A' gets financial benefit just by B's signature It may happen. This will be called abduction. According to the definition given in section 383, abduction has the following essential elements-

(i) threatens to harm any person;

(ii) The person is in fear of injury to himself or to other persons;

(iii) Such fear or threat is given with malicious intent;

(iv) Taking property or a document of value by putting someone into fear.

Also, a donation cannot be termed as extortion merely because it was given at the behest of the Chief Minister. As far as the question of fear or threat is concerned, it should be clearly stated. **[R.S. Nayak vs. A.R. Antulay, AIR 1986 SC 2045,**

Whether theft of electricity is theft under Indian Penal Code-Theft of electricity is not theft of movable property under **Section 379** of Indian Penal Code, however it is punishable under **Section 39** of Indian Electricity Act, 1910 as theft of power is punishable with imprisonment of 3 years or fine of Rs. 5,000 and minimum of Rs. 500 or both. On the other hand, connection of cooking gas or water pipeline may be termed as theft. When the accused fixes pipe in the main line just before the meter to avoid payment, he is liable to commit theft. Idols in temples, paintings in museums and other public or private places are subject to theft. Human body whether alive or dead (except mummies or dead bodies preserved in scientific institutions or medical colleges are not covered under theft.)

In the case of **Ram Avtar Singh AIR 1965 SC 666** the Supreme Court decided that "Electricity flowing in an electric wire is not movable property, hence its dishonest withdrawal is not theft under the Indian Penal Code."

Difference between theft and extortion- The crimes of theft and extortion have many similar characteristics. Both crimes are against property. The purpose of both crimes is wrongful gain of property. For now, there are certain differences between the two, which are as follows-

| Sr No | Theft | Extortion |
|-------|--|--|
| 1 | In theft, property can be taken away without the consent of the owner. | In Uddapana the consent of the owner is obtained through faulty means. |
| 2 | Theft occurs only in relation to movable property. | In this the property can be movable or immovable. |
| 3 | There is no use of force in this. | In this, the property is obtained by putting a person in fear of harm and then inducing him to separate from his property. |
| 4 | In this no property is delivered by the owner. | In this the property is delivered. |

Question 23. Explain the circumstances under which 'theft' becomes 'robbery'. Also state the relevant provisions of the Indian Penal Code. OR All types of robbery involve either theft or extortion, explain. When does robbery become dacoity? OR What do you mean by robbery? When does theft and extortion become robbery?

Answer-In crimes against property, every type of robbery is either theft or extortion. Under the Indian Penal Code, the word robbery is not defined, but under **section 390**, the circumstances have been described in which theft and extortion become robbery. According to this section-

"All forms of robbery involve either theft or extortion."

When is theft robbery? - Theft is robbery if, in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender for that purpose voluntarily causes or attempts to cause fear of death, or of hurt, or of wrongful restraint, to any person.

Theft is robbery-

- (i) If in the course of committing theft;
- (ii) In committing that theft;
- (iii) In carrying away or attempting to carry away the property obtained by theft.
- (a) causes death, hurt or wrongful restraint of any person;
- (b) Causes or attempts to cause fear of immediate death or of immediate hurt or of immediate wrongful restraint.

If in committing theft or in carrying away or attempting to carry away stolen property the offender voluntarily causes death or hurt or wrongful obstruction to any person or causes instant death or If the accused causes or attempts to cause fear of immediate hurt or immediate wrongful restraint, then the offence of the accused shall be deemed to be robbery and not theft.

When is extortion robbery? Extortion is robbery if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of immediate death, or of immediate wrongful restraint, either to himself or to some other person, and by so putting him in fear, induces the person so put in fear to deliver up the thing to be extorted then and there.

Explanation.-The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustration-

(a) A overpowers Z, and fraudulently takes Z's money and jewellery from Z's clothes without Z's consent. Here, A has committed theft and he voluntarily causes Z to be wrongfully restrained in order to commit the theft. Therefore, A has committed robbery.

Hence, extortion is robbery if-

- (a) The offender is, at the time of committing the extortion, in the presence of the person put in fear;
- (b) That person himself or any other person-
 - (i) Emergency death:
 - (ii) Acute injury or
 - (iii) He commits extortion by putting the offender in fear of immediate obstruction; and
- (c) By putting him in fear, induces the person so put in fear to deliver up the thing to be extorted then and there.

Robbery-Meaning - This section defines robbery. In simple terms, robbery means depriving a person of his property. The main distinguishing feature between robbery, theft and extortion is the presence of imminent fear of violence. All types of robbery involve either theft or extortion. The essence of the offence of robbery is that the offender voluntarily causes or attempts to cause death or hurt or wrongful restraint in order to commit theft or to take away or attempt to take away the property looted.

A snatched the watch from B. C prevented the victim so that A could snatch the watch from him. As the hurt caused by B was connected with the theft of the watch, the offence was covered under this section. Where one accused prevented the complainant so that the other accused could snatch the watch of the complainant, it was held that the offence was covered under this section.

In the case of **Madhu v. State of Kerala AIR 2012 SC 664** the Supreme Court held that "where the conviction of the accused for robbery of jewellery and murder was based on circumstantial evidence, drawing inevitable conclusions in the absence of an unbroken chain of events is unsustainable."

On the basis of the above discussion, the following are the essential elements of robbery to constitute the offence of robbery:

The essential elements are-

(1) Carrying away of property.-In order for a theft to be the offence of robbery it is necessary that in committing the theft or in carrying away or attempting to carry away the stolen property the offender voluntarily causes death or hurt or wrongful restraint of any person or causes immediate death or immediate hurt or immediate wrongful restraint of any person has caused or attempted to cause fear of obstruction.

In **Kushi Mahto v. State of Bihar, (1980) Suppl SCC 344**, the accused while carrying the stolen property burst firecrackers to frighten the householders so that none of them would chase him. The Supreme Court held the accused guilty of robbery under **Section 390**.

(2) The expression "for that purpose" in this section means taking or attempting to take away property in the course of committing theft or in the course of committing theft.

In the case of **Kaliye Cario (1872) Unreported Criminal Cases 65**, the court held that if a person is seen while committing theft and in order to avoid getting caught, the accused will be held responsible for theft and not for robbery, because the hurt caused by him was not motivated by the purpose of theft but was motivated or inspired by the purpose of saving himself.

(3) Voluntarily causes- The expression 'voluntarily causes' used in this section is very important. According to this expression the hurt caused must be voluntary because accidental hurt cannot convert the offence into robbery.

In the case of **Edwards, (1843) 1 Cox 32**, the accused was cutting the rope tied to the basket with the intention of stealing it and in the process he accidentally

cut the wrist of the owner of the basket who was then trying to snatch the basket and run away in order to save it. The court held that he did not voluntarily cut his wrist, hence his crime was theft and not robbery.

(4) The word 'person'- includes both natural and juridical persons. Ordinarily the dead body of a human being does not come under the term 'person', but for the purpose of this section the body of a human being who dies in the course of the commission of theft is also a person.

(5) In the presence of the person put in fear.-The offence of provocation amounts to robbery when the accused is sufficiently near to the person put in fear to cause him immediate hurt or immediate wrongful restraint or to put him in fear of either of them.

For example, if 'A' a police officer obtains some jewellery from him by threatening him that he will be immediately put into prison and not released for several months, the police officer would be guilty of the offence of robbery under this section.

In the case of **Mohammed Abdul Hafeez v. State of Andhra Pradesh, (1983) CrLJ 689 SC** the Supreme Court held that in a case of robbery where the accused are convicted on the basis of identification made by the injured person in an identification parade which took place about four months after the incident and about whom no description was given by the injured person in the First Information Report, such conviction cannot be recognized.

In the case of **Ramesh Kumar Soni vs. State of Madhya Pradesh 1997 CrLJ 3418** the Supreme Court held that snatching a suitcase by putting pepper powder in the eyes is an offence under Section 390.

When does robbery become dacoity? **Section 391** of the Indian Penal Code defines dacoity. There is no difference between robbery and burglary except the number of criminals. Robbery is dacoity only if the number of people committing robbery is five or more. The crime of dacoity involves the cooperation of five or more people in committing or attempting to commit robbery. It is necessary that all the people share the common intention of committing the robbery.

Question 24. What is cheating? Also discuss the offences of cheating and dishonestly inducing a person to deliver property.

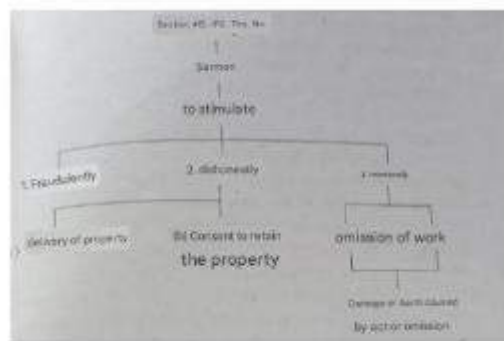
Answer- The main fact in the crimes committed against property is that "depriving the owner of the property or its occupant of such property, under which if a person by deceiving another person (by lying) fraudulently or dishonestly induces the deceived person to deliver any property to that person or by deceit induces another person to keep or deliver any property to that person or if a person by deceit induces another person to do any such act or omits to do any act which causes mental, physical, reputational or property related harm to the induced person and the circumstances are such that the person doing the act or omission has cheated the person inducing a person by deceit."

According to **section 415** of IPC, whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to deliver any property that any person should keep any property or intentionally induces the person so deceived to do or omit to do any act which he would not have done or omitted to do if he had not been so deceived and which act or omission causes, or is likely to cause, physical, mental, reputational or property damage or harm to that person, is said to cheat.

Explanation.- "Dishonest concealment of facts is fraud within the meaning of this section."

Fraud: Meaning-In common law, fraud was a crime and was punishable by imprisonment and fine. Hawkins defines fraud as "deceptive practices by any artful device to deceive or attempt to deceive any person out of his own authority, contrary to the general rule of honesty."

Section 415 deals with three types of fraud. For convenience, the different types of fraud are being presented through a diagram.



Therefore, as shown in the diagram, fraud can be committed in three ways, viz.

1. Fraudulently deceiving any person and obtaining from the person deceived (a) the delivery of any property, or
(b) Giving consent for the retention of any property by any person;
2. Dishonestly inducing any person to deliver any property or consenting to the retention of any property; and
3. Intentionally enticing a person to do or to induce him to do any act which he would not have done or would not have been tempted to do if he had not been so enticed and that act causes or is likely to cause physical, mental, reputational or property loss or harm to that person.

Essential elements-The word 'fraudulently' does not cover the whole definition of cheating but only the first part. The person deceived must do the act under the influence of deception and the harm must not be too remote.

In brief, the offence of cheating has the following elements viz.

- (1) Fraud of any person;
- (2) Fraudulently or dishonestly induces that person; and
- (3) Delivery of any property to any person.

This section covers only ordinary cases of cheating. When there is delivery of property or destruction of any valuable security, **section 420**, IPC applies.

For example, if A intentionally deceives B into believing that he has performed his part of a contract with A but he has not done so and thereby dishonestly induces B to perform it, then A is guilty of the offence of cheating under this section.

In the case of **Harish Sao vs. State of Bihar, AIR 1970, SC 843**, it has been held that a person is said to cheat if he fraudulently or dishonestly induces another person by deceiving him to deliver any property to him or to consent to do or omit to do an act which he would not have done if he had not been so deceived, and which act or omission causes or is likely to cause physical, mental, reputational or property damage or harm to that person.

Deceiving- This word means causing a false statement to appear believable, i.e., to fraudulently induce a person to do something wrong or to mislead a person about a fact. When a person fraudulently presents the existence of a fact which does not actually exist, then he is said to commit fraud.

In the case of **Abhay Anand Mishra v. State of Bihar, AIR 1961, SC 1698**, the appellant (accused) had applied to appear for the M.A. (English) examination in Patna University. Along with his application he had also enclosed a certificate that he was a graduate of three years ago and a teacher of a school. According to his statement these certificates were issued to him by the school principal and the concerned District School Inspector. On the basis of these certificates he was allowed to appear in the examination. Later when the university came to know that he was neither a graduate nor a teacher and that the certificates attached to these were fake, the university withdrew the permission to appear in the examination. In this case the Supreme Court convicted the accused for attempting to cheat and held that

That if the accused had participated in the examination, he could have been held guilty for the crime of cheating. **Property** - The property can be of any kind, movable or immovable. It is not necessary that the value of the property can be assessed in rupees or in terms of market value. For the applicability of this section, it is sufficient that the property has some value or the accused can convert it into a valuable security later. Thus, passport is also a property under this section.

Narasingha Murari Chakravarti v. State of West Bengal, AIR 1977, SC 1174

Kuju Nair's case, (1882) 12, Madras 114 In this the complainant requested the accused to enter the amount of his debt due in the cheque book. Instead of entering the amount due, the accused wrote in such language that the complainant could not understand that all the money had been paid. It was held that the accused was guilty of attempting to defraud.

Fraudulently - When a person does something fraudulently, he is said to do it with the intent to defraud. This expression means that fraud cannot be

committed unless there is intent to do so, but the word fraud used here means criminal deception.

It also means the use of false representations by a person to obtain an unfair advantage or to harm the rights or interests of another person.

Conviction-Under **section 415**, a person can be punished for cheating only if it is proved that as a result of his induction, any act of omission on the part of the victim has caused or is likely to cause any physical, mental, and reputational or property damage or harm to him (deceived person). Similarly, under this section, unless it is proved that the original intention of the accused was to cheat, a conviction order cannot be passed against him. In the case of **Maran Chand Pal v. State of Tripura, 1997 Cr.LJ 715 (Guwahati)**, the accused induced the prosecutrix to have sexual intercourse with him by promising that he would marry her. The evidence indicated that at the time of voluntary sexual intercourse, the prosecutrix was about sixteen years old. It was held that the offence of rape was not committed, but since the accused had given the promise of marriage, he was liable to be convicted of fraud.

In the case of **Naimichandra Swarup Chand Shah v. M/s T.H. Rayabhagi Farm, 2001 Cr.LJ 4301 (Karnataka)** the Court held that where a cheque issued in a business transaction towards the value of goods returned was dishonoured and the dishonest or fraudulent intention against the accused could not be proved, he cannot be punished for the offence of cheating and he would be guilty under section 138 of the Negotiable Instruments Act.

According to **section 417** of the Penal Code for cheating, whoever commits cheating shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Fraud by impersonation-Impersonation means a person falsely representing him to be someone other than himself. Such a person may be fictitious or real. In this regard, provision has been made in **section 416** of the Indian Penal Code. According to this- "A person is said to commit fraud by impersonation when he deceives another person by pretending that he is another person or by substituting a person knowing him to be another person or by representing that he or that another person is a person who in fact is different from that other person."

Explanation.- This offence applies whether the person impersonated is a real person or a fictitious person.

Example- 'A' is a certain rich banker of the same name. He cheats by this false pretence.

Essential Elements-Following are the essential elements of fraud by impersonation-

1. The accused had pretended that he was some other person. Or
2. That he substituted one person knowing him to be another person; or

3. That he had represented that he or some other person is a person who is in fact different from him or the other person.

Impersonating a candidate in an examination, a voter in an election or representing oneself as belonging to a caste other than one's actual caste for the purpose of marriage are instances in which it is generally considered that the offence described in this section has been committed.

Question 25. Define the offence of 'forgery'. What are the essential elements of forgery? Explain with the help of decided cases. OR What is forgery and how is it constituted? Explain with the help of decided cases.

Answer-Forgery includes the creation of a false document or electronic record or any part of a document or electronic record if it is with any such intention as is mentioned in this section. According to **section 463** of the Indian Penal Code- "Forgery Whoever makes any false document or electronic record or any part of a document or electronic record with the intent to cause loss or damage to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any contract, express or implied, or with the intent to commit fraud, or to enable fraud to be committed, commits forgery."

Section 463 contains the words "Whoever creates any false document or part of a document with intent to cause loss or damage to the public or to any person." In other words, "Whoever creates any false document or electronic record or part of a document or electronic record with intent to cause loss or damage to the public or to any person?" The words have been substituted by the First Schedule to the **Information Technology Act, 2000**. The offence of forgery which relates to documents and electronic records is contained in **sections 463** and **464** of the Code and the punishment is contained under **section 465**, IPC The definition of forgery as given in section 463 is similar to sub-section (10) of section 1 of the repealed British Forgery Act of 1913 which states that-

Forgery is the making of a false document or false electronic record with the intent to use it as genuine.....and forgery with the intent to cheat or deceive, as the case may be, is punishable.

So, in short, whoever dishonestly or fraudulently creates a false document or a false electronic record so as to use it as genuine, commits forgery. To constitute forgery, the false document or false electronic record must be accompanied by criminal intent, i.e., it must be done either dishonestly or fraudulently. A medical certificate of illness, disability is a document because it states the condition of the person and can be used as evidence if required. If a doctor without principles issues a false certificate in a case, he would be guilty of fabricating false evidence but not of forging a false certificate.

But if a doctor forges a certificate by affixing a certain seal or designation such as Chief Medical Officer, Civil Hospital, Lucknow to indicate that he is issuing the certificate as Chief Medical Officer or in the capacity of holder of a title, for example, F.R.C.S. (London) which he does not actually hold, he is guilty of forgery.

Where a National Savings Certificate endorsed by 'A' as security to the Ration Department was transferred in the name of the deceased on his death and encased by 'B' signing it in the name of the deceased, it was held that 'B' was liable for forgery under this section.

Essential elements- To constitute a conspiracy the following essential elements must be established-

- (1) Falsification of document or electronic record or part of document or electronic record needed;
- (2) It must have been made dishonestly or fraudulently; and
- (3) It must be done with the intent to cause harm or damage to the public or to any person.

The offence of forgery can be committed by a person who fabricates a false document or a false electronic record purporting to be a copy of another document or electronic record for the purpose of being used as evidence.

In the case of **Dharampal Bharadwaj v. State [(1985) Cr. Law J. 4757]** the Court opined that using a forged document as a genuine document with fraudulent and dishonest intent is an offence.

Thus, to constitute the offence of forgery, the simple creation of a false document is sufficient. The act falling under the category of creation of a false document is described in Section 464. Mere preparation to commit the offence of forgery cannot be a crime. In the case of **Basappa S. Sagothi vs State [1973 Cr. L. J. 1374]**, it has been said that the definition of forgery given in Section 363 makes it clear that for the offence of forgery, along with the creation of a false document, there should also be an intention to cause harm to the public or any other person.

In **R.R. Diwakar v. B.G. Guterl (1975) Cr. L.J. 90** CAS the Supreme Court held that from the definition of section 463 it is clear that apart from making a false document or electronic record there should be an intention by the person to cause loss or damage to the public or to any other person and only then it would amount to forgery.

Question 26. Explain the essential elements of Rishti with the help of examples. Or What is Rishti? Its What are the essential elements?

Answer- Generally, mischief is said to be committed when "a person wrongfully causes damage to any property or causes such damage that the property is either destroyed or its value or utility is reduced." As **Section 425** describes. Following are the sections including **Section 425-**

425. Mistri.- "Whoever, with the intent, or knowing it to be likely, that he may cause wrongful loss or damage to the public or to any person, causes the destruction of any property, or any alteration in the condition of any property,

Whoever causes any property to be damaged or destroyed by any act which destroys or diminishes its value or utility, or has an injurious effect upon it, commits mischief?

Explanation 1-It is not necessary for the offence of mischief that the offender is responsible for the injury or damage to the owner of the property.

It is sufficient that he intends or knows it to be likely that he will, by damaging any property, cause wrongful loss or damage to any person, whether the property belongs to that person or not.

Explanation 2.-Mischief may be committed by an act affecting property which belongs to the person doing the act, or jointly to that person and other persons.

Illustration-

(a) A voluntarily burns a valuable security belonging to Y with the intent to cause wrongful loss to Y. A has committed mischief.

(b) With the intent to cause wrongful loss to Y, A lets water into Y's ice-house, and thus melts the ice. A has committed mischief.

(c) 'A' voluntarily throws 'Y's ring into a river with the intention of thereby causing wrongful loss to 'Y'. 'A' commits mischief.

(d) A, knowing that his thing is about to be taken in execution in satisfaction of a debt due by him to Z, destroys the thing with the intent thereby to prevent Z from obtaining the satisfaction of the debt, and thereby to cause damage to Z. A has committed mischief.

(e) A, having insured a ship, voluntarily causes the same to be abandoned with the intent to cause loss to the insurers. A has committed mischief.

(f) A, having lent money to Z on loan, causes the ship to be abandoned with the intent of causing damage to him. A has committed mischief.

(g) A, being in joint possession of a horse with Y, shoots the horse with the intent of causing wrongful injury to Y. A has committed mischief.

(j) 'A' causes cattle to enter the field of 'Y' with the intention and knowing it to be likely that he will cause damage to the crop of 'Y'. 'A' has committed mischief.

Essential elements- The essential elements of the offence are as follows-

(i) Intention or knowledge of the possibility of causing wrongful injury or damage to the general public or to any person happen;

(ii) Destroying or altering the condition of any property; and

(iii) Such alteration has resulted in diminution in its value or utility.

(i) Intention or knowledge of causing wrongful loss or damage to public or any person.-It is an essential element of mischief that there should be intention or knowledge of causing wrongful loss or damage to public or any person but as

Explanation (1) provides that- "For the offence of mischief it is not necessary that the offender should have the intention to cause loss or damage to the owner of the property damaged or destroyed. It is sufficient that he intends or knows it to be likely that by damaging any property he may cause wrongful loss or damage to any person whether the property belongs to that person or not." It is also not necessary that there should be any gain or loss to the miscreant. It is sufficient that the public or any person is harmed by that act. But as Explanation (2) states that in case of joint owners such loss may be caused to the person causing the

mischievous himself. In the case of **Balai Chandra Nandi v. Durgacharan Banerjee, 1988 Cr.LJ 710 (Cal)**, the accused was convicted under Section 425 as he had broken into a warehouse and destroyed the goods kept therein.

(ii) Destruction of property or alteration of its condition-This is the second essential element of mischief because for mischief it is necessary that either the property has been destroyed or its condition has been altered. The Supreme Court held the accused guilty of the crime of mischief in the case of **Nagendra Nath vs State of West Bengal, AIR 1982 SC 665** because the accused signed the acknowledgement after receiving a registered parcel from the postmaster but instead of returning it to the postmaster, tore it and threw it away.

(iii) Diminishing or destroying the value or utility - It is necessary that when the offence of mischief is committed, the value or utility of the property should have diminished or the property should have been destroyed. For example, in illustration (d) of **section 425, 'A'** after insuring a ship voluntarily causes the same to be surrendered with the intent to cause loss to the insurers. 'A' commits the offence of mischief.

Punishment for mischief Section 426- "Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

B.A. LL.B.-6th Sem. Paper-IV Jurisprudence-II Legal Concept

Question No. 1- Define legal rights. What are its essential elements? Describe the main principles of legal rights.

Answer - Meaning of legal rights - In legal and jurisprudential literature, rights may be the most ambiguous word. When rights are used as an adjective, it means just or fair or right. Words similar to rights or denoting rights are also similarly ambiguous and multi-meaningful. Roman jurists considered rights, law and justice to be inseparable from each other and used this word to convey the meaning of all these. The real contribution to the development of human civilization is of law and its restrictive process which has made the individual aware of his duties and rights as a member of society. When the individuals of a society come in contact with each other, they have certain legal rights and duties towards each other, which are controlled by the prevailing law. It is well known that the basic purpose of law is to regulate the dealings of individuals while protecting human interests. To fulfil this purpose, it is necessary that the state uses its physical power to enforce the rights of individuals and punish those who violate them. This work is done by the state which protects the rights of the people by enforcing the law and binding them to perform their legal duties.

Definition of legal rights - Legal experts have interpreted legal rights in different ways. Savigny has considered it as power. Inhering has considered it as an interest protected by law. **According to Dr. Allen**, rights are the power guaranteed by law to achieve any interest.

According to Gray, a right is not an interest in itself, but it is only a means of protecting interests. Giving an example in support of this statement, Gray says that if a person lends money to another, then it is the interest of the lender to get his loan amount back from the debtor, it is not his actual legal right, but the power or ability given to him by law that he can recover the loan given, it will be his legal right. In other words, getting the loan amount from the debtor is the interest of the lender which is protected by law. But it is not a right in itself. Therefore, **according to Gray**, legal right is such a power by which a person forces other persons or persons by legal duty to do some work or to remain after doing the work.

The law protects the legal rights of every citizen. People are given legal rights by being a citizen of the country. It is the duty of every individual to protect the rights of every person. In simple terms it means that the action permitted by the law is called a legal right or the action recognized or protected by the state is called a legal right.

Definitions-

According to Holland this is fatal to the power or capacity. There is great difference of opinion among jurists about the definition and analysis of legal rights. According to Austin, a right is a capacity which is vested in a particular party or parties by virtue of a specified law and which is against some party or

parties other than the one in whom it is vested, or is corresponding to a duty imposed on some party or parties. According to him a person is said to have a right only when another or others are bound by law to do or refrain from doing something in relation to him. This means that a right always has a corresponding duty.

This definition is incomplete, as it appears from looking at it. Because in this definition there is no place for the rights of incomplete rights.

Salmond- Defines the right 1 day ago. It says that the right is an interest recognized and protected by the rule of merit. It is an interest which it is a duty to respect and which it is a duty to disregard. There are two main elements in this definition. First rule of rights or rule of merit means rule of law or in other words that which should be judicially enforceable. Thus according to the general a right should be judicially enforceable, secondly the right is an interest. Elements essential to create a right.

Main principles of legal rights - Mainly two principles of legal rights are as follows

(1) Interest Theory: Inhering believes that legal rights are based on "interest". According to him, legal rights are interests protected by law. The basic purpose of law is to protect human interests and to resolve conflicting human interests. Conflict of interests has to be avoided. But Salmond considers the definition of 'right' given by Ihering to be incomplete and says that for a legal right, only legal protection is not enough but it should also get legal recognition. According to Salmond, cruelty towards animals is prohibited by law and there is a provision to punish the guilty person for this. So, would it be right to say that animals have a legal right to self-defense? The meaning is that this right related to animals has legal protection, but due to not getting legal recognition, it cannot be placed in the category of 'legal right'. This is the reason why Salmond has accepted this right of animals only as a moral right. The well-known legal expert Gray also thought it appropriate to accept it only partially. According to Gray, 'right' is not interest itself but only a means to protect 'interest'. According to Gray, "It is the power in which a person can force another person or persons to do or not to do any work or works to the extent to which he gets this power from the society by applying it on another person or persons." Some jurists say that the basic basis of the right is 'rights'. For example- a child who is born and becomes one year old has some rights according to the law because it is known that a person is given rights from the day he is in the womb of his mother. But it cannot be said that They have a "will". What a right secures is not a wish or a choice, but some interest for the benefit of the person who holds that right. An interest may be called "a claim or desire of a person or group of persons which that person or group seeks to satisfy. **According to C.K. Allen,** "the essence of a legal right is not a legally guaranteed power, nor a legally protected interest, but a legally guaranteed power to realize the interest". It is the law that creates, protects and recognizes

the rights created. Thus, a characteristic of a legal right is its recognition. It is recognized by a legal system and enforced by a legal process. This principle, however, is subject to certain qualifications-

(1) The law will not always enforce the right, but will provide a remedy and compensation to the aggrieved party.

(2) Sometimes the law itself creates inefficiencies as far as the enforcement of a legal right is concerned.

(3) Sometimes a legal system lacks the mechanism to enforce its decisions.

Therefore, in view of the above difficulties it would be better to define legal rights in terms of recognition and protection by the legal order.

(2) Will Theory - Legal experts like Hegel, Kant and Hume have supported the interest theory of legal rights and said that the right of a person reflects his will. Pushta expressed the view that through right a person expresses his will power on a thing. In Germany

The supporters of historical jurisprudence have accepted the will theory of rights.

While criticising the will theory, Duguit has considered social solidarity as the basic source of rights. He considers will to be only an important element of rights. Patton has also accepted will as an element of rights. According to Holland, "Legal rights are the inherent capacity of a person by which he can control the actions of other persons with the consent and help of the state."

According to Austin, the right of a person means that other persons are bound by law to do or not to do something in relation to him. This definition of right given by Austin is based on the sovereign power of the state. Explaining duty, Austin has said that it is an obligation which if neglected is punishable due to the penalty associated with it. But John Stuart Mill has criticized the above idea of Austin on the ground that it is often necessary for interest to be associated with right. "Right is an inherent quality of human will." The right to self-expression and self-assertion is a part of the freedom of the individual which is inseparable from man and his personality. In the absence of such natural freedom and independence, man will feel helpless. All natural rights are necessary for the development in the life of man, provided that man does not use these rights for illegal things. The will theory was expanded by the theory of natural rights, which declared that there are some areas of personal life in which the state cannot legally interfere. The supporters of this theory are Hegel, Kant, Locke and Hume. On the other hand, Duguit criticizes that will is not an essential element in law. He says that more emphasis is placed on the rights of the individual than on his obligations. He considers this theory of subjective right to be merely a physical one called abstraction.

Elements of legal rights-

According to Sir John Salmond, there are five essential elements of every legal right-

(1) Underlying person - also known as the subject of the right. A legal right that is vested in a person and who can be identified as the owner of the right, its subject or the 'underlying person'. Therefore, there cannot be a legal right without a subject or its owner. Here, subject means the person in whom the right is vested. Therefore, a right cannot be conceived without a subject or its owner. The owner of a right need not be definite or determinable. A right may be owned by society, at large, indeterminate.

(2) Person of the incident. - The person who is bound by the duty or is the subject of the duty is called the person of the incident it is said.

(3) Subject-matter of the right. The act or omission which is binding on the person obliged in favour of the person entitled is known as the content or essence of the right.

(4) Subject-matter of the right- The thing to which the act or omission relates, over which the right is exercised. This is called the subject-matter of the right.

(5) Title of Right- Salmond also gives a fifth element that is 'title'. He says that "every legal right has a title, i.e. some fact or event by virtue of which the right becomes vested in its owner". A popular illustration cited by Salmond satisfies all the above elements of legal rights. It is as follows- "If A purchases a piece of land from B, then A is the subject or owner of the right so acquired. The persons bound by the correlative right are persons in general, because this kind of right is against the whole world. The context of the right consists in non-interference with the exclusive use of the land by the buyer. The object or subject-matter of the right is the land. And finally, the title of the right is the transfer by which it was acquired from its former owner".

Question No. 2- Discuss the different types of legal rights. Explain the relationship between rights and duties. Differentiate between fundamental rights and constitutional rights.

Answer - Types of legal rights - Following are the types of legal rights-

(1) Public and Personal Rights- 'Rem' means the world and 'persona' means a person. Right in rem is a right which is available against the whole world while right in persona is against a particular person. Right in persona usually arises out of contractual obligations e.g. breach of contract while right in rem usually is a result of law e.g. tort, crime. Right in persona is usually transitory in nature which can be transferred into right in rem. Right in rem is a permanent thing while right in persona is transitory in nature.

In the pure sense, legal rights are related to legal duties. **Holland** has defined rights by saying that a person will be considered to have a legal right only if one or more persons are legally bound to do or not do something towards that person, i.e. existence of rights is not possible without concomitant duties. In other words, rights can be called such an interest which is recognised by law and which is protected by law by imposing duties on other persons. **According to Samand**, apart from the above-mentioned narrow meaning, legal rights can also

be used in a broader sense. In this sense, rights can be used in the form of freedom, power or immunity.

(2) Personal and Proprietary Rights- Proprietary rights of a person include his property, his assets and his wealth in various forms. Proprietary rights have some economic and monetary value. Proprietary rights are valuable and personal rights are not. Proprietary rights are elements of a person's property. Personal rights are only elements of his well-being. Proprietary rights have not only judicial but also economic significance. Personal rights have only judicial significance.

(3) Positive and Negative Rights- When a duty, which corresponds to a right, is a positive duty; the right is called a positive right. The person on whom the duty lies will do some positive act on behalf of the person entitled. A negative right corresponds to a negative duty, i.e. a person will refrain from doing some act which is prejudicial to the person entitled. A positive right is a right to be positively benefited; a negative right is only a right not to be harmed. In the case of a negative right, others are prevented from doing something. The satisfaction of positive rights results in an improvement in the position of the owner. In the case of negative rights, the position of the owner is only maintained as it is. The law is more concerned with the prevention of harm than with the enforcement of positive benefits. Liability for harmful acts of commission is the general rule, but liability for acts of omission is exempt.

(4) Fundamental and subsidiary rights- Fundamental rights are basic or main rights vested in an individual under the law. They are vital and non-essential rights while subsidiary rights are more incidental or consequential rights that are not essential but are ancillary to the more basic general rights.

(5) Absolute and imperfect rights- according to Salmond,

(1) An absolute right is one which corresponds to an absolute duty. An absolute duty is one which is not only recognized by law but also enforced by law.

(2) In all fully developed legal systems, there are rights and duties which, though recognized by law, are not of an absolute nature. Those rights are called imperfect rights.

Examples of imperfect rights are claims barred by the passage of time, claims against foreign states or sovereigns, claims that cannot be enforced because they do not fall within the local limits of the court's jurisdiction, debts owed to the executor from the estate which he administers. In these cases, rights and duties are incomplete because there is no action for their maintenance. An imperfect right may be good as a ground of defence, though not good as a ground of action. An incomplete right can be perfected. The right of action may be dormant and may not be non-existent.

(6) Rights in re-proprioria and rights in re-aliena – A right in re-aliena, also called burden, is one which limits or deprives some more general rights of another person in respect of the same subject-matter. All other rights are rights

in re-ownership. The owner of a property has a right of repossession or possession of his property. The mortgaged property has a right in repossession or a right over someone else's property. Again, ownership rights are rights in one's own property. Rights in alienation are rights over another person's property. There are four main classes of encumbrances – servitude, lease, security and trust. Servitude is the right to limited use of a piece of land which is without ownership or possession. A lease is an encumbrance of property vested in one person by a right of possession and use vested in another person. Security is an encumbrance vested in a creditor over the property of his debtor for the purpose of securing the recovery of the debt. A trust is an encumbrance in which ownership of property is limited by an equitable obligation to dispose of it for the benefit of another person. The owner of the encumbered property is called the trustee and the owner of the encumbrance is called the beneficiary.

(7) Vested and dependent rights – Vested right is that right in respect of which all the events necessary for it to vest completely in the owner have occurred. No other conditions need to be fulfilled. In the case of contingent possession, only certain events necessary for the vesting of the right in the contingent owner have occurred. According to Patton "The right vests when all the material facts necessary to create the rights have occurred. When some part of the material facts has occurred, the rights remain contingent until all the facts on which the title depends have occurred."

(8) Legal and equitable rights – Legal rights are those which are recognized by the common law courts and equitable rights are those which are recognized only in the Chancery Court. Principles of equity were developed in English law to reduce the harshness of the common law. Despite the merger of law and equity by the Justice Act 1873, the historical distinction is still alive and relevant in some situations. When two legal rights are found to be inconsistent, the first right usually prevails. When a legal right and an equitable right are in conflict, the legal right will prevail over the equitable right, even if it is originally the latter, provided that the owner of the legal right acquired it for value and without notice of the former equitable.

(9) Tangible and Intangible Rights – Tangible rights are physical assets that can be seen, touched and measured, while intangible rights are non-tangible assets that represent valuable rights and privileges. Also known as real assets, these assets have a physical presence and are commonly used in day-to-day operations. Examples include fixed assets such as inventory and stock machinery and equipment real estate vehicles cash land buildings furniture intangible rights Also known as non-monetary assets, these assets lack a physical form and exist only on records and balance sheets. They derive their value from legal or intellectual property rights. Examples include intellectual property rights, patent licenses, brand name awareness, key research and development personnel,

copyrights, trademarks, goodwill, customer lists, software, proprietary technology.

(10) Primary and acceptance rights- Primary rights are also called prior, accepted or enjoyment rights. Secondary rights are called sanctionable, restorative or remedial rights. Examples of primary rights are right to dignity, rights in relation to one's own person, rights of master or guardian etc. Secondary rights are a part of the machinery provided by the State to redress the damage caused to primary rights.

(11) Public and private rights- Those rights which are given to an individual by the state or government or the constitution are called public rights. For example, right to vote, right to use public parks etc.

Private rights are attached to private persons or individuals. Example- A contract between two people gives rise to their private rights.

There is a close relationship between rights and duties. Every right has a concomitant duty attached to it. While defining duty, Salmond has said that it is a binding act. The opposite word of which is 'misdeed'. In other words, it arises when duty is violated. Expressing his views regarding duty, Gray said that the main objective of law is to protect human interests by forcing people to do or not do certain specific tasks.

According to Hibbard, 'Duty is an obligation vested in a person whose actions are controlled by some other person with the permission and assistance of the state.

Mutual relation between duty and right- Most jurists agree that every right has a concomitant duty. Hence, there is no difference of opinion about the relation between legal rights and duties. According to Austin, duties can be both relative and absolute. By relative duties, he means such duties which have a concomitant right. Austin has given the following types of absolute duties-

(1) Duties relating to oneself, such as a person's duty not to commit suicide, duty not to take intoxicants, etc.

(2) Duties to uncertain persons or the general public, such as the duty not to cause a nuisance.

(3) Duties which are not towards human beings but towards others, such as duties towards God or towards animals per duty etc.

(4) Duty to the sovereign or the State.

Austin's view is wrong - A closer examination of Austin's view makes it clear that it is wrong. The absolute duties mentioned by him are not duties in the legal sense, or even if they are duties, they are not absolute. Duty to God is not a legal duty. If it is not contained in any statute.

When a person is given a right it is assumed that certain duties are also imposed on him. Rights have their own correlative duties. When a person has a duty to perform his duty, there are two types of duties, when he has a legal duty, but in case of moral duty he has no obligation. It depends on the discretion of the

person. Duties are classified into absolute and relative duty, positive and negative duty and primary and secondary duty.

| Base | Fundamental rights | Constitutional rights |
|----------------------------|---|---|
| Meaning | Fundamental rights are a set of rights that are innate necessities to live a dignified human life. | Constitutional rights are the rights given to the people of India in the Indian Constitution. It also includes fundamental rights. |
| Waiver of rights | Waiver is the process of deliberately giving up or renouncing a given right. Waiver of fundamental rights is not permissible as was first stated in <i>Behram Khurshid Pesika v State of Bombay</i> , September 24, 1954/ | Constitutional rights cannot be abridged in India. However, the United States Supreme Court has permitted abridgement of rights. <i>Gette v. INS</i> , 121 F.3d 1285, 1293 (9th Circuit 1997) |
| Modifiability | Fundamental Rights can be amended by a Constitutional Amendment provided the basic structure of the Constitution remains intact. | Constitutional rights can be amended by a constitutional amendment, while statutory rights can be amended by an ordinary amendment. |
| Situation during emergency | During an emergency, all Fundamental Rights are suspended except Article 20 and Article 21. According to Article 32(4), Fundamental Rights cannot be suspended on any ground other than the conditions laid down in the Constitution, i.e., emergency provisions. | Not all constitutional rights are suspended during an emergency period. |
| Bond | Certain reasonable restrictions have been imposed on the fundamental rights contained in that particular article. For example Article 21 guarantees the right to life and personal liberty but it is subject to "procedure established by law". | Apart from the rights specified in the Articles, constitutional rights are also subject to statutory restrictions imposed at the will of the Lok Sabha. For example, the right to property under Article 300A can be taken away 'by authority of law'. This would not be possible if it were a fundamental right. |

| | | |
|---|--|--|
| Remedies in case of deprivation of rights | If a person is deprived of the rights under Part III of the Constitution he can file a petition in the Supreme Court under Article 32 or the High Court under Article 226. | The High Court can also be approached under Article 226 for violation of any constitutional right. |
| Example | Examples of fundamental rights include: the right to privacy the right to basic education the right to constitutional remedies. | Examples of constitutional rights include: Right to property Legislative privileges Reservation of seats for certain classes in the Lok Sabha. |

Question No. 3- Develop an explanation of the concept of ownership. Define the concept of ownership in detail.

Answer - The word ownership conjures up the image of property in the imagination, property without which there can be no ownership or possession. In the early times when humans were nomads and did not have the skills of agriculture and civilization, the concept of ownership never came to mind. However, the concept of ownership was formulated before the concept of ownership and that too only when humans started farming.

The Supreme Court of India has defined property as a legal concept in the case of **Guru Dutt Sharma v. State of Bihar** as, 'a set of rights and in the case of tangible property it would include the right to possess, the right to enjoy, the right to destroy, the right to retain, the right to alienate, etc.' And along with the clear concept of property comes the ideas of possession and ownership.

Concept of ownership-With the development of civilization, as humans settled down to farm and produce their own food and live in one place, they started developing the idea of ownership and the terms 'mine and yours' came to be recognised. First came the concept of possession and then the concept of ownership evolved. In Roman law there were two different terms 'possessio' which denoted physical control over something and 'dominium' which denoted absolute right over something. **According to Holdsworth**, ownership as absolute right in English law evolved through developments in the law of possession and the term 'dominium' was first used in English law in 1583.

Definition

Ownership has been defined by a number of jurists, some holding that it is the relation between a person and the right vested in him and some holding that it is the relation between a person and the thing which is the object of ownership.

Austin-According to him, ownership means a right enforceable against every person who is subject to the law which gives the right to put a thing to use of an indefinite nature. And indefinite in terms of use, unrestricted in terms of disposal and unlimited in terms of duration' when it comes to absolute ownership.

Austin's definition of ownership has three characteristics:

Indefinite in terms of use- This means that the owner can use the property as he wishes. For example, if a person has a piece of land, he can build a house on it, use it as a garden or leave it as is. But at the same time, he should not use it to harm his neighbours.

In the case of an exchange, the unrestricted owner has the right to transfer or dispose of the property without restriction. However, legal regimes impose certain restrictions on certain transfers or disposals.

In terms of duration the unlimited owner has the right of ownership as long as the thing is in existence and the right ceases as soon as the thing is destroyed.

Salmond-According to him, "Ownership, in its widest significance, denotes the relation between a person and the right vested in him. Whatever a person possesses is in all cases a right." Also he It is said that 'every right has ownership, and nothing can be owned except a right. Every person is the owner of his rights.'

He also distinguished between material and intangible ownership, 'Although the subject-matter of ownership in its broadest sense is a right in all matters, there is a narrower sense of the term in which we speak of ownership of material things. We speak of ownership, acquisition or transfer, not of rights in land or movable property, but of the most general sense of 'ownership'. We call this material ownership in order to distinguish it from the ownership of rights which may be called 'intangible ownership'.

Holland-He followed Austin's view of ownership and according to him an owner has three kinds of powers; possession, enjoyment and ownership all or some of which can be lost by lease or mortgage.

Hilbert-According to him, ownership consists of four rights which are the right to use the thing, the right to prevent others from using it, the right to dispose of the thing and the right to destroy the thing. In this regard, absolute ownership of land is not possible because land is indestructible, which is why there can be a legal interest in land in English law.

Pollock-According to him, 'Ownership may be described as the totality of powers of use and disposal permitted by law.'

According to Markby, ownership of an object indicates that all the rights related to that object are vested in that person. Hence, it is clear that ownership is a symbol of such a relationship between a person and an object which vests all the rights related to that object in that person. But Markby considers ownership as a collective right and considers it as an independent comprehensive right.

Characteristics of ownership- Ownership has the following characteristics-

(1) Ownership is either absolute or limited. When there are several co-owners of the same thing or property, the right of each owner is limited by the rights of the other co-owners.

(2) Ownership is also restricted in times of national crisis. For example, buildings can be acquired for the military during wartime.

(3) The owner also has to pay tax to the state for the use of his property. Hence, tax also limits ownership.

(4) No owner shall exercise his right of ownership in a manner that infringes the rights of other owners. He must exercise his right in a manner that does not cause harm to other people.

(5) The owner is also free to transfer his property at any time in any manner he wishes. He cannot transfer his property to defraud his creditors.

(6) Under the law, minors or insane persons cannot exercise the right of ownership over immovable property as the legal presumption is that such persons do not have the capacity to understand the true nature and consequences of their actions.

Nature and incidence of ownership-On analysing the concept of ownership one can find certain features which reveal the nature or characteristics of ownership such as use, enjoyment, disposal etc. The nature of ownership is as follows:

It is indeterminate at the point of use, that is, the user can use the owned object in any way he wants and is not bound not to use it. The user is free to use it. It is unrestricted at the point of disposal. The owner can transfer or dispose of the property during his lifetime or even after his death through a will.

The owner has the right to possess the thing owned, however, only if he actually possesses it.

Question No. 4- Explain the different methods of acquiring ownership and discuss the essential elements according to Austin. Explain the types of ownership.

Answer- Methods of acquiring ownership - Ancient Hindu jurists have written something about the policies of acquiring ownership. Narada has described 12 methods of acquiring ownership of property, but all these methods were not for all the castes. Some of them were only for specific classes.

Roman law also prescribed similar methods of acquiring ownership, many of which are still valid and some of them exist with variations. In terms of ownership, things can be of two types. Things which are not owned by any person. Such things are called ownerless property and ownership can be acquired on them by taking possession of them, but on such a condition that they are already owned by someone. Ownership can be acquired by derivative method. Samand has described two ways of acquiring ownership- first is acquiring ownership by means of acquisition method, second is acquiring ownership as a result of some act or incident.

If a person acquires ownership of someone else's property due to the operation of the law of intestacy or bankruptcy, such ownership is said to be acquired by the action of law. But if a person creates or receives something from another person, such ownership is said to be acquired by the act of that person.

In ancient and medieval English law, importance was given only to the possession of land and movable property. Like possession, ownership is a complex judicial concept. Among the various legal rights, the right of ownership is of special importance. In the ancient legal system, the views of the jurists were not clear about the meaning and difference of ownership and possession, yet under Roman law, both were considered different from each other. In Roman law, the words dominium were used for ownership and possession for possession. Under Roman law, ownership signifies complete right over an object, while possession shows only physical control over that object. **According to Materland**, the word ownership was first used in English law in the year 1583 AD.

From the above discussion it is clear that Roman law does not consider the full right of ownership to be based on possession, whereas in English law possession it is considered to be a solid and strong proof of ownership. Therefore, when a person does not prove more rights than the occupant of a thing, then it will be clearly considered to be the ownership of the occupant.

Austin's views on ownership- While explaining ownership, Austin has written that ownership is such a right on a definite object which is indefinite from the point of view of use, unlimited from the point of view of disposal and unlimited from the point of view of duration. This shows. According to Austin, ownership must have the following elements:

(1) Uncertain from the point of view of use - The owner of an object has the complete right to use that object as per his wishes. No other person can create unnecessary hindrance in its use-consumption. For this it is necessary that the owner uses the object in such a manner that it does not cause harm or nuisance to other persons.

(2) Unconstrained in terms of addition- The owner of a thing not restricted in possession has the right to dispose of or transfer it at will, such as by selling, mortgaging, donating, etc. No person can refuse such disposal or transfer unless a charge or restriction has been lawfully imposed on him.

(3) Unlimited duration- ownership in terms of duration is a perpetual right. It never ends. Even after the death of the owner, it remains vested in his legitimate heirs.

Status of ownership under Indian law- The right of ownership over property has been recognized in the Indian legal system of other countries as well. But in India no person can own any object elsewhere because the right of ownership in this country has been restricted by statutes and regulations. The law regarding maximum limit of land, rent control act, bank nationalization and company legislation etc. are direct examples of this. In ancient Hindu law also, the unrestricted right of disposal has been considered an important component of ownership. **According to Katyayana**, the owner's right to dispose was unlimited

and no restriction could be imposed on him. Types of ownership- Ownership is of the following types-

(1) Tangible and intangible ownership- Samand has used the word ownership in two senses- limited and broad. In the limited sense ownership refers to physical objects. When a person has ownership over physical objects it is called corporeal ownership. By corporeal or tangible objects we mean those objects which can be seen, examined or touched by the eyes, like land, house, coins etc.

According to Pollock, 'tangible ownership' means the complete right to the legitimate use of a physical object. In a broad sense, ownership is indicative of a person and the rights vested in him. This right can be of any form: personal, proprietary, in rem or in personam. Rights are such intangible concepts that cannot be perceived by the eyes. Examples: patent, copyright, right of way, right to recover the loan amount, etc. The subject matter of intangible ownership is not a tangible object but an intangible concept like rights. Thus, it is clear that ownership of a physical object is called tangible ownership, while ownership of a right is called intangible ownership.

Example - If a person has ten rupees in his pocket, then he will have 'tangible ownership' over those rupees because these rupees are a tangible object which can be felt by the eyes. But if that person has to take ten rupees from his debtor, then his right to get that loan amount will be called intangible ownership because this right cannot be felt by the eyes.

(2) Trust ownership and beneficial ownership - Trust of property is a unique example of duplicate ownership. Trust property is owned by two persons at the same time. For example, on one hand, the trustee owns the property and on the other hand, the beneficiary also gets ownership over the property. The trustee's ownership of the trust property is called 'trust ownership' and the beneficiary's ownership of the property is called beneficial ownership. In fact, the trustee's ownership is only for the welfare of the beneficiary, due to which he is the owner in name only and cannot use the trust property for his own benefit. The actual ownership of the trust property lies with the beneficiaries, i.e. the property belongs to the beneficiary and not the trustee. The trustee only represents or manages the rights of the beneficiary related to the trust property, otherwise also the trust's ownership has legal priority over any third person except the beneficiary. Regarding the trust, Samand said that its main objective is to protect the rights and interests of those individuals who, due to some reason, are unable to protect their interests effectively.

(3) Legal ownership and equitable ownership- The distinction between legal ownership and equitable ownership is based on the common law and equity law of England. Sometimes one person may own the same thing and another may have equitable ownership over it. For example, the ownership of a trustee is legal ownership, while the ownership of a beneficiary is considered equitable ownership as it is recognized by equity. In short, the ownership which has arisen

from the rules of common law is called 'legal ownership' and the ownership which has arisen from the rules of equity is called 'equitable ownership'. Common law did not recognize equitable ownership and it was recognized only by the Chancery Court.

(4) Sole ownership and co-ownership- If the right of ownership is vested in only one person, then such ownership is called 'sole ownership'. But if the right of ownership is vested jointly in two or more persons, then in that case the ownership of each will be called 'co-ownership'. This never means that all the persons are separate owners of any part of that property. The right of ownership is an indivisible right which can be jointly vested in many persons simultaneously. But the division of ownership by partition is called 'co-ownership' the rights can be divided into separate parts.

There are two main distinctions of co & ownership-

(a) Common or same ownership - In common or same ownership, two or more persons own a piece of land or object together. Their possession remains undivided and each of them is the owner of that piece of land or object along with other co-owners. In common ownership, after the death of any co-owner, his right passes to his successor. Common ownership is also called tenancy in common.

(b) Joint ownership- In joint ownership, on the death of any co-owner, his ownership also ends and the remaining living co-owners become the full owners of that property on the basis of the right of survivorship. After the death of its co-owner, the heir does not get the ownership, but it is transferred to the remaining living co-owners. Joint ownership is also called joint enjoyment. In a partnership firm, the ownership of the partners is joint ownership.

(5) Vested ownership and contingent ownership- Such ownership in which all the things related to acquiring ownership are completed and the right of the owner is already absolute, then such ownership is called vested ownership (amajmak vudmatipach). For example, if a person transfers his property to another person, then that other person will get vested ownership over that property. In vested ownership, the owner gets absolute right. Similarly, if some things related to acquiring ownership happen or are completed but some others remain to be completed or not, then such ownership is called contingent ownership. In contingent ownership, the owner is only a conditional owner.

Example - If a person mentions in his will that after his death his property should be handed over to his wife (during the life of the wife) and after the death of the wife the property should be handed over to 'A' and if 'A' is dead by that time, then it should be handed over to 'B', then in that case both 'A' and 'B' will be the contingent owners of that property because 'A' will get the property only when the wife of the testator dies and 'A' is alive at that time. Similarly 'B' will get the property only when both the wife of the testator and 'A' die and 'B' is alive.

The gist of this is that in contingent ownership, the ownership of the property vests in the owner only on the occurrence or non-occurrence of a specified uncertain event. The contingent ownership of the owner turns into vested ownership on the occurrence or non-occurrence of the specified event.

There are two conditions of contingent ownership-

(1) Condition Precedent - A condition precedent is a condition which, if fulfilled, would render an action incomplete.

The right becomes complete. In case of condition precedent, the right which has already been conditionally acquired becomes absolutely acquired.

(e) Condition Subsequent: A condition subsequent to the fulfilment of which would extinguish the right, that is, it would be destroyed.

Example- If a testator leaves his property to his wife with the condition that if she remarries, she will be deprived of that property and that property will go to the sons of the testator, then in this case the wife will get vested ownership over that property and the sons of the testator will have contingent ownership over that property. It would be appropriate to clarify here that the condition of remarriage of the wife is a condition subsequent with respect to her own vested ownership, whereas it is a condition precedent with respect to the contingent ownership of the sons of the testator. If the wife remarries, her vested ownership will disappear and the contingent ownership of the sons will turn into vested ownership and they will get full rights over that property.

Question No. 5- Explain the concept of legal personality. Explain the various theories of legal personality Explain.

Answer- Legal Personality- Law is made for the human community, in other words, the existence of law is for humans. The main function of law is to control human conduct. In such a situation, the importance of the word 'person' increases. From the point of view of study, both the words person and legal person are very important.

Definition of legal person-

According to Paton, legal personality is an artificial creation of law. According to this, a 'legal person' need not be a natural being or a human being. In the words of Paton- "All those entities which are units capable of holding rights and duties are 'legal persons'."

According to Salmond, "Legal person means any entity other than a human being who has personality under the law." In simple words, it can be said that "a legal person is an artificial or imaginary person who is a person in the eyes of law, but in fact is not a real human being." A legal person is also called an artificial, imaginary or judicial person.

In the words of **Kelsen**, "The legal man is a myth because it consists of nothing more than rights and duties."

According to the analytical school of thought, "a legal person is a holder of rights and duties."

According to Hegel- "Personality is the subjective possibility of just will."

Also know the concept of legal duty and its types according to jurisprudence –
Types of Legal Duty

Types of legal person-

According to **Hibbert**, there can be three types of legal persons-

(1) Corporation- Under law, a corporation is created under the Act. A corporation is a legal person and is a good example of legal creation. A corporation is a class or series of persons which is itself recognised by a legal code. A registered trade union is a legal person though it cannot be called a corporation in the literal sense. The Kerala High Court in the case of *M. Paramasivam v. Union of India* (AIR 2007 NOC 600 Kerala) held the State Electricity Board to be a legal person. A complaint can be filed against the Board.

(2) Institutions- Institutions are also legal persons. They are considered like corporate bodies. They also have perpetual succession and a common seal. Property can be acquired by them. A suit can be filed against them and by them. In this, personality is not given to any class of persons associated with the institution but to the institution itself. Its examples are - university, library, hospital, church etc.

(3) Funds or estates- Funds or estates used for some specific purpose are also considered as legal persons. Good examples of this are estates of the deceased or insolvent person, trust estate, etc.

Corporate personality - Corporate body or personality is the best example of a legal person. Even though a corporate personality is not a living being, it has the status of a living being in the eyes of law. The structure of corporate personality is subject to enacted law.

According to **Salmond**, "Corporation is a group of persons which has been recognized as a legal person by legal imagination." Thus, the structure of the corporation is formed by the humanization of classes and categories of humans. The corpus of this legal person is its members.

Since the legal personality of a corporation is based on imagination, it is also called fictitious or artificial person. Universities, hospitals, libraries, temples, banks, railways etc. are legal persons and have the status of corporate personality. The Union of India also has the status of a legal person.

Some important features of a corporate body-

(1) It has perpetual succession. A corporate body never dies. The death or removal of any member of a corporate body does not bring an end to the body but the place of such a person is taken by the government is taken over by his heir or other authorised person.

(2) It has its common seal.

(3) It may hold property.

(4) It may be sued and sued on its behalf.

Under the law there are two types of corporations-

(1) Corporation sole: A corporation sole is a corporate chain of successive persons.

A corporation is a corporate chain of persons coming one after the other in which there is only one person at a time. According to the law, the objective of a sole corporation is the same as that of a combined corporation. After the death of one person in a sole corporation, that post and the property, liabilities etc. do not end but they get vested in the next person who holds that post. Example – The King of England, Postmaster General, Minister of some department etc. are such sole corporations which have legal personality. These persons are the holders of such public post which is recognised by law as a corporation.

(2) Corporation aggregate: A corporation aggregate is a group of co-existing persons organized to fulfil some purpose. It is also called a deemed corporation. Limited companies are the best example of a corporate corporation. In this, the liability of each shareholder of the company is limited to the unpaid capital amount of the shares held by him. **Solomon vs. Solomon and Company (1887 A.C. 22)** is a good example of this, in which it is said that the main characteristic of a corporate corporation is "to have a separate existence from its members for certain purposes." For example, an incorporated company has its own rights over its assets and property. The rights of shareholders are limited only to dividends. This is the reason that even if the company goes bankrupt, there is no adverse effect on the financial condition of the shareholder. Similarly, even if a shareholder goes bankrupt, the financial condition of the company remains strong. Apart from this, the existence of the company does not end even if all the shareholders of the company die.

Principles of Corporate Body- There have been different views of jurists regarding the nature of corporate personality.

(1) Theory of Hypothesis- It is also called mythical or fiction theory. The names of Savini, Salmond, Gray, Holland, Kelson etc. are prominent among the strong supporters of this theory. According to the theory of hypothesis, corporate personality is only a legal fiction whose main objective is to bring unity in an unstable organization of people gathered collectively. Therefore, this fictional personality is different from the real person of those people who create it. In this, the change in the members of the corporation has no effect on the existence of the corporation. According to Salmond's concept, the corporate body is different from its members and the existence of the corporation continues even if all the members leave. Any corporation incorporated under the Act of Parliament can be closed only by the enacted law.

(2) Realist Theory- The main proponent of this theory was German jurist Gierke and Pollock, Dicey and Maitland are considered its supporters. It is also called Realist theory. According to this theory, the existence of a corporation is different from the collective form of its members. Corporate personality is not based on imagination but it has a real existence which is recognized by law and the state. When many people collectively establish a corporation, such establishment gives rise to a new will which is called the will of that corporation and such will is determined by the directors, employees, etc. of the corporation. It is expressed through directors, officers and employees. The supporters of realistic theory are of the opinion that collective personality is not just an imagination but a reality. Here, reality does not mean real person or physical reality but psychological reality. Modern realistic theory is based on the analysis of human personality.

(3) Bracket Theory- German jurist Ihering is considered to be its strong supporter. He was of the opinion that only the members of a corporation are real persons and the status of legal personality created in the form of a corporation is like a bracket which shows the collective nature of the members. The common interests of its members are implemented through the corporation. The supporters of the bracket theory are of the opinion that just as the synonyms of a word are expressed by placing them in brackets, in the same way the collective nature of different persons is expressed in the form of a 'corporation' and they are given uniformity. Bracket theory is also called symbolic theory.

(4) Concession theory - Leading legal experts Savigny, Salmond, Dicey etc. are considered to be the supporters of this theory. According to this theory, the corporation is important as a legal person because it is recognized by the state or law. In other words, it can be said that the legal personality of the corporation is a concession granted to it by the state which is accepted by the law. Concession theory is the product of the rise of the power of the nation state. In this, the supremacy of the state was emphasized and its aim has been to strengthen it. Giving the form of a person to any rule or body is a matter of discretion of the state. If the state wants, it can give the form of a person and if it wants, it can refuse to do so. This theory is similar to the theory of hypothesis.

(5) Purpose Theory - The basic or initial basis of purpose theory is the same as that of symbolic theory. This theory is based on the fundamental concept that the subject matter of rights and duties are only real living human beings. It does not believe in attributing personality to any inanimate object. Corporations do not have the capacity to assume duties and rights because their personality is not real. They only have subjectless existence which is accepted as legal persons for certain special purposes. German jurist Brinz is considered to be the main promoter of purpose theory. Damelius, Bexer and Planiol are its strong supporters. Barker is credited with developing this theory in England.

Question No. 6- Explain the concept of possession. Explain the different types of possession.

Answer - Possession has an important place in jurisprudence. Possession is the second most important property right after ownership. Possession is the continuous and real relationship between an object and a person. According to Fredrick Pollock, possession means physical control over an object. We all know that human life is impossible without the use and consumption of physical objects. To survive, a human needs food, clothing and shelter.

According to **Samand**, possession of material things is very important for human life. According to him, possession reveals the basic relationship between humans and things.

Definition of possession- Legal experts have given different definitions regarding possession, which are as follows-

According to Samand – The continuous and real relation between an object and a person is called possession. Possession of a physical object means that no other person in the world should have any right over that object against the possessor. It is clear from this definition that Samand has considered possession to be related to the 'object' and not to the right. **According to Zachariae**, 'possession' is such a relation between an object and a person which shows that the person has the intention to hold that object and the ability to dispose of it. **According to Savigny** – the essence of concrete possession is that the possessor, on the basis of his physical force, prevents other persons from using or consuming the object in his possession. **According to Markby** – the strong desire and ability of a person to keep an object under his physical control by using his physical force for freedom is called 'possession'. **According to Inhering** – "Possession is protective ownership." This means that possession is a shield of ownership which accrues to the person who actually possesses the ownership.

According to Anglo law there are three main concepts of possession-

- (1) A person may have both possession and physical control over a thing.
- (2) Possession may exist without any personal or physical control.
- (3) A person may have physical control over a thing without having possession of it.

Explaining possession, Holland has written that it is necessary for two elements to be present in it. Firstly, the possessor should have actual power over the thing in possession and secondly, he should have the desire to take advantage of that power. In English law, these are called 'corpus' and 'animus' respectively.

Savigny, in his theory of possession, has given two elements for possession, 'corpus possessionis' and 'animus domini'. In which "corpus possessions" means effective control and the ability to exclude external interference and the term 'animus domini' means the desire to keep holding an object as the owner.

According to **Justice Holmes** of America, to acquire possession of an object, it is necessary that a person has a physical relationship with that object and at the same time he has a definite intention towards that object. This makes it clear that both physical and mental elements are associated with possession. Thus, for concrete possession, it is necessary to have two elements. First, physical or objective element and second, mental or subjective element.

Essential elements of possession-Roman jurists have called the physical element of possession as 'corpus' and the mental element as 'animus'. These two elements can be called the body and concept of possession in legal language.

'Physical Element of Possession' - The first essential element of possession is the act of possession. It is also called the physical element of possession. This element indicates actual possession of a thing. The word 'corpus' means sole control over the thing and the ability to exclude others from possession of that thing. The occupant can get this type of protection in the following ways-

(1) Physical power of the occupier- The physical power of the occupier guarantees him the right to use the thing in his possession. On the basis of this he is assured of non-interference from other persons.

(2) Personal presence of the occupant - In many cases the personal presence of the occupant is necessary to retain possession of a thing, no matter how physically infirm that person might be.

(3) Secrecy - The person in possession may conceal an object so that no outsider may obtain possession of the object.

(4) Expression of intention-Expression of intention means that there should be an intention to retain possession of an object as well as to acquire that object. For example- If a person wants to acquire possession of a shop, then apart from the intention to retain possession, he should also be in a position to enter that shop and use it.

(5) Protection obtained by possession of other things- Sometimes, possession of one thing also gives possession of other things connected or attached to it. Example- A person's possession of a piece of land also gives him possession of other things, trees, plants etc. situated on that land. But the legal position in this matter is not completely clear. This principle that a person will get possession of all the things situated on the land due to possession does not always apply and it depends on the circumstances of the case. A good example of this is "South Staffordshire Water Works Company vs. Sherman. In which the company employed the defendant to clean the pond built on the company's land. While cleaning, the defendant found some gold rings lying at the bottom of the pond. The company filed a suit against the defendant claiming its possession of these rings. The court decided that the company itself has the first possession of those rings and not the defendant.

(6) Another element related to the corpus of possession is that the possessor must have possession of the thing. But this does not mean that the possessor has complete control over the thing. This control can be more or less depending on the thing. For example, if a person throws a net to catch fish, then that person does not have possession of the fish until they get caught in his net.

Mental element of possession- The second main element of possession is animus. It is also called the mental element of possession. It means the desire of the possessor to retain his possession over the object in possession. **According to Samand**, the intention to exclude other persons is the mental or subjective element of possession. In other words, it can be said that the person having physical possession of an object may or may not wish to use or consume that object, but it is very important to have the desire to retain possession over it.

The following points are noteworthy regarding the mental desire related to possession:

(1) It is not necessary that the intention to hold possession be justifiable; it may also be wrongful.

(2) The claim of the possessor on a thing should be exclusive, i.e. other persons should not have any right to it. There must be an intention to exclude. But it is not necessary that the exclusion be absolute.

(3) A person in possession may also hold an object in custody. For example, a pledgee has possession of an object pledged although his mental intention is to keep the object in custody until the debt is repaid.

(4) It is not necessary that the possessor himself holds the possession of the thing; it can be for some other person also. For example, a servant, attorney, trustee and bailee etc. do not hold the thing for themselves but for some other person.

(5) The occupant's intention regarding possession may be general and need not be specific.

Example- If a person has caught fish in his net, he will have possession of all of them, even if he does not know the exact number of those fish. Similarly, a person gets possession of all the books kept in his library, even if he is not aware of the existence of some of them. In the context of animus of possession, the case of **N.N. Majumdar vs State** decided by the Calcutta High Court is noteworthy. In this case, the police searched the house of the accused with the hope that perhaps a pistol would be recovered from there but the pistol was not found. The accused spoke to his wife and the wife went out of the house. She returned home after three-four minutes with a pistol and some cartridges.

The police relied on **Section 27** of the Criminal Code to argue that it should be presumed that the accused was in possession of the pistol. The court held that the Arms Act, 1959 being a special statute, the fact of "presumption" of possession must be proved. In the absence of presumption, mere act is

insufficient to prove possession. Important cases decided as to the element of possession-

In the case of **R. v. Hudson; 1943 K.B. 458** the accused received an envelope addressed to another person of the same name. The accused kept the envelope with him for a few days and opened it. He found a square inside the envelope which he used for his own purposes. He was convicted of theft. The court held in this case that the accused was not in possession of the envelope until it was opened because there was lack of intent. In the case of **Mary v. Green 1841 M & W 623** a carpenter bought a table with drawers at an auction. He discovered that the table had a secret drawer. He broke open the drawer and took the money kept inside it. This money belonged to the seller who had only sold the table. In the eyes of the law the seller was still in possession of the money kept in the secret drawer although he was not in actual possession of it.

Question No. 7- What do you mean by liability? What are the essential elements for determining civil liability? Explain.

Answer- Liability arises when a person breaks the law. Law prescribes rights and responsibilities for individuals. It provides legal rights to one individual and imposes liability on another. People should not violate the legal rights of others. If someone violates these rights, he is considered to have done something wrong and this gives rise to liability. In civilized societies, most of the relations between the individual and the state are governed by rules made or recognized by the state, i.e. law. Law prescribes rights and duties of individuals. In other words, it prescribes what the individual is to do and what he is not to do and what he has the right to have done. Violation of these rules is called wrong. When a person does a wrong, he is said to be liable. Thus, liability is the condition of the person who has done the wrong. Salmond defines liability as an essential bond between the wrongdoer and the remedy of the wrong. The function of law is not limited to merely prescribing rights and duties; it also ensures their protection, enforcement and redressal. Therefore, liability is a very important part of the study of law. Types of liability, when a person becomes liable or in other words, when liability comes into existence and the measure of liability are things that need to be known in this regard.

Definition of liability-

Sir John Salmond-Sir John Salmond defines liability as the necessary relationship between the wrongdoer and the remedy for the wrongdoing. In simple terms, it is the relationship between the person who does a wrong and the remedy for correcting it.

According to Markby, the term 'obligation' describes a situation when a person has to fulfil a duty, whether that duty is his primary responsibility or a secondary or enforced one. It is about doing a job.

Austin prefers to use the term 'obligation' rather than 'responsibility'. He says that certain actions, omissions or deeds, along with their consequences, are attributed to those who did or did not do them. In other words, it is about holding people responsible for their actions or inactions.

Civil Liability - Civil liability refers to the legal responsibility of one person or entity to another for matters involving non-criminal issues. It arises from violations of civil laws or regulations, typically involving disputes between individuals or entities over issues such as contracts, property rights, personal injury, or family matters.

When someone is found civilly liable, they may be required to compensate the injured party through remedies such as monetary damages or specific performance (fulfilment of a contractual obligation). Civil liability cases are typically initiated by private individuals or organizations seeking compensation or resolution of a dispute.

Criminal Liability-Criminal liability deals with the legal responsibility borne by an individual or entity for actions that violate criminal laws and regulations established by the government. Crimes are generally offenses against the entire society and the government represented by prosecutors' initiates' criminal proceedings. If a person is found criminally liable, he or she may face penalties such as fines, imprisonment, probation, or other punitive measures. The purpose of criminal liability is to punish the wrongdoer for violating laws designed to protect public safety and order.

Difference between Civil and Criminal Liability

Different jurists have provided different perspectives on the distinction between civil and criminal liability.

Some of these approaches are as follows-

Austin's Approach - Austin says that an offence committed at the discretion of the injured party or his representatives is considered a civil injury. On the other hand, offences committed by the sovereign or his subordinates are crimes. All absolute obligations are enforced through criminal means.

Salmond's View - Salmond's view is that the difference between criminal and civil wrong is not based on the nature of the right violated, but on the nature of the remedy applied. He identifies four major differences between the two-

Nature of the wrong; Crime is considered a wrong against society, while civil wrong is considered a wrong against a person or persons.

Remedy: Criminal offenses are redressed through punishment, while civil wrongs are redressed through damages procedure; criminal proceedings are used for crimes, while civil proceedings are used for civil wrongs and they take place in different courts.

Liability Measurement - In a crime, liability is measured by the wrongdoer's intent, while in a civil wrongdoing, liability is based on the wrongdoing, not the intent. Remedial and Penal Liability in Jurisprudence Liability can be further

classified into two categories: Penal Liability: When the wrongdoer is given a punishment such as a fine or imprisonment after successful proceedings, it is called penal liability in jurisprudence. Criminal liability falls under this category. Remedial Liability: This type of liability in jurisprudence involves measures that are not punitive in nature. After successful proceedings, the defendant may be ordered to pay damages, repay a debt, or take a specific action. Civil liability generally falls under this category. Remedial Liability Explained Remedial Liability is based on the principle "ubi jus ibi remedium", which means that where there is a right, there must also be a remedy. When the law establishes a duty, it also ensures that there is a means to enforce it. In most cases, the law prescribes a remedy for a breach of a duty and this remedy is enforced by the legal system.

Exceptions to this rule include-

Duties of imperfect obligation: Some duties exist in law but are not enforceable. For example, a time-barred debt, though legally recognized, cannot be compelled to be paid. Duties that cannot be specifically enforced: There are duties which, once broken, cannot be specifically enforced. For example, in cases of perfected assault, the defendant must be required to undo the act. In some cases, although specific performance of a duty is possible, the law may, for various reasons, choose to award damages to the plaintiff rather than enforce specific performance. For example, when a contract involves personal services, the law may not compel performance, but may award damages instead (as per the Specific Relief Act).

Penal liability-The legal principle 'actus non facit reum, nisi mens sit rea' (the act alone is not a crime, it must be accompanied by a guilty mind) is fundamental to understanding penal liability, which is liability for criminal offences.

Two essential conditions of penal liability

There are two main conditions for a person to be held criminally liable: actus reus and mens rea. Act (actus reus) Act is considered to be a voluntary bodily movement, which is caused by the will or desire of the person. It includes bodily movement caused by the intention of the person, provided that the body part involved is in a normal position.

Question No. 8 - What do you understand by property? Explain the various theories regarding the origin of the concept of property.

Answer- Origin- The word property is derived from the Latin word *proprietary* and the French equivalent *propriété*, which means thing owned. The concept of property and ownership are very similar to each other. However, there is a fine line that separates the two terms. It would not be wrong to say that human beings have long been aware of their rights to whatever they possess. The term property has been interpreted widely by various jurists such as Salmond, Bentham and Austin. A close observation of the definitions given by them will help us understand the concept in a better way. The word property is not a term

of art. It has been used in various senses. In the broadest possible sense, property includes all the legal rights of a person, whatever may be the description. The property of a person is all that belongs to him according to the law. Though it has become a fashion now, such usage of the term is common in old books. According to Blackstone- "An inferior person has no more property in the company, care, or assistance of a superior person, than the superior has property in the inferior person."

According to Locke- "Every person has a property in his person. Every person has a right to preserve his property, that is, his wife, liberty and estate."

In a narrow sense, property includes a person's ownership rights, not his possessions. Ownership rights constitute his property or estate, while personal rights include his status or personal position. If viewed through the lens of the narrow sense, only land, property, shares and debts are personal property, not his life, liberty or reputation. This is the most commonly used interpretation of property in modern times. However, another interpretation and meaning of property includes only those rights that are both proprietary and real. The law of property is the law of proprietary rights. According to this interpretation, a freehold or leasehold estate or copyright also includes the meaning of property. In the narrowest possible sense, property includes nothing more than the right to own physical property or material things.

Austin believed that property can have different meanings at different times. It can be used to denote rights to the greatest enjoyment known to law except slavery or it can be life interest or sometimes even slavery. It can be the whole group of assets owned by a person including both in-rem and personal rights. Today, intellectual or intangible property has become very important. For example copyright, trademarks, property in designs and patents.

Theories of Property - Several theories have been put forward to explain the origin and justification of property.

Natural theory - According to this theory, property is based on the principle of natural reason derived from the nature of things. Property was acquired by taking possession of an ownerless object and as a result of personal labour. According to Grotius, all things were originally ownerless and whoever acquired or took possession of it became its owner. According to Pufendorf, things originally belonged to people. There was no concept of personal ownership. The need for ownership and possession arose only with time and the development of mankind. Thus the principle of possession became the basis and foundation of all property.

Metaphysical theory-This theory was propounded by Kant and Hegel. A particular thing truly belongs to the owner when it is so attached to him that any person who uses it without his consent causes him harm. But to get a better justification on the law of property we have to go beyond cases of possession where there is an actual physical connection to the object and interference is

based on personality In simple terms, property is something over which a person has the freedom to direct his will.

Historical Theory-According to this theory, private property has undergone a slow and steady growth. It evolved from collective group or joint property. There were several stages in the development of private property. The first stage of natural possession existed independently of law. The second stage of juridical possession was a concept of both fact and law. The last stage in the development cycle was that of ownership. Ownership became a purely legal concept. According to Dean Roscoe Pound, the earliest form of property was a group property. It was a matter of time that families became divided and individual property came into existence.

Positive Theory-The founder of this theory was Spencer. He based his theory on the fundamental law of equal liberty. According to him, property was the result of individual labour. No person has any moral right to the property which he has not acquired by his individual labour and effort.

Psychological Theory - According to this theory, property came into existence from man's acquisitive tendency. Every person wants to own things and this is how property comes into existence. Bentham has rightly said, "Property is nothing more than the basis of a certain expectation of obtaining some benefit in the future from a rational thing." Sociological Theory - According to this theory, property should be considered not in terms of private rights but in terms of social functions. It is an institution which secures maximum interest.

Question No. 9: Write notes on six of the following.

Answer- (1) various ways of acquiring wealth - According to Samand wealth can be acquired in many ways. There are following four main ways of acquiring wealth.

Possession - It is the objective acquisition of ownership. The possession of a physical object is the right to own it. The actual relationship between a person and an object brings with it a legal relationship as well. The person who claims a piece of land as his own and also holds it, also makes it legal through ownership. If a person holds possession of something, he cannot do so forcefully. He also has to take the help of law to prove his right. But if a property does not belong to anyone, then the person who occupies it and has possession of it has a good right over the whole world. It is just like the birds flying in the air and the fish in the water belong to the person who catches them.

Prescription-According to Salmond, "Prescription may be defined as the effect of the passage of time creating and destroying rights. It is the operation of time as a versatile effect."

There are two types of prescription- positive acquisitive prescription and negative or extinctive prescription. Prescription is not confined to rights in rem. It is found in the realm of obligations and property. Positive prescription is possible only in cases of rights which admit of possession. Most rights of this nature are

rights in rem. Personal rights usually extinguish by their exercise and cannot be acquired or acquired by prescription. Negative prescription is common to the law of property and obligations. Most obligations are destroyed by the passage of time. Possession of them cannot be associated with ownership.

Agreement - According to Patton, an agreement is an expression of a common intention by two or more persons to each other to effect the legal relations between them. It is the result of a bilateral act. It may be in the nature of assignment or grant. Assignment transfers existing rights from one owner to another. Grant denotes an assurance or transfer of ownership of property as distinct from delivery of property. There are certain agreements which require attestation and registration of the deed. There is a general rule that the title of the transferee by agreement cannot be better than the title of the transferor. This is mainly due to the fact that no person can claim a better title than the title he has cannot transfer.

Inheritance - Another way of acquiring property is through inheritance. When a person dies, certain rights pass to his heirs and successors. The rights that remain with a person are called inheritable rights. Proprietary rights are inheritable rights. While, personal rights are generally not inherited, there are exceptions to this general rule. Inheritance of a person's property can be intestate or intestate. It can be through a will or without a will. If there is a will, succession takes place according to the law. If there is no heir, the property goes to the state.

(2) Legal status of unborn person- As already stated, a person is considered a natural person from his birth till his death. Such a natural person is entitled to bear rights and duties. A natural person is capable of having a legal personality, thus having a legal personality. Generally, a natural person has no legal personality before birth and after death. Therefore, for a natural person to have rights and duties, he must be alive. However, the law faces a problem when it comes to the case of an unborn child. Disciplines such as medicine and theology establish that an unborn child is a living entity. According to the legal fiction, a child growing in his mother's womb is considered already born. When he is born alive, he gets legal status. In general terms, the law pays attention only to living natural persons, but in the case of an *infante vendre sa mere* (baby growing in his mother's womb), the law makes an exception. A child growing in his mother's womb is capable of having certain rights and inheriting property, but it all depends on whether the child is born alive or not. An unborn child is considered a person during partition. Compensation can also be sought for the injury caused by such unborn child to its mother in the womb.

(3) Legal status of a mosque- Mosque is not a juristic person. The Lahore decision (**Maula Bakhsh v. Hafiz-ud-Din**, AIR 1926 Lahore. 372) held that a mosque is a juristic person and can sue and be sued, but in the **Masjid Shahid Ganj case (1940, 67 I.A. 251)** the Privy Council held that suits cannot be brought by or against mosques, as they are not artificial persons in the eyes of the

law. However, it left open the question whether a mosque can be regarded as a 'juristic' person for any purpose.¹ In **Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee (AIR 1938 Lah. 369)** the Full Bench of the High Court held that a mosque is a juristic person.

(4) Legal status of the President of India- The post of President of India can be placed under a single corporation because after the death of the person holding this post, another person takes over the post. The real holder of any post is the person who does not die. Living officials come and go, but this person created by law always exists in the same form. The President of India is a judicial person.

(5) De facto possession - When a person possesses an object or exercises physical control over it, it is called de facto possession. In simple terms, the relationship between a person and an object is called de facto possession. De facto possession of an object is a sign of physical control over it. For example, if a person has kept a parrot in a cage, he will have possession of the parrot but as soon as the parrot flies away, the person loses his possession of the parrot.

In fact the following points are important regarding possession-

(a) Things over which a human being cannot have physical control cannot be the subject of possession. For example, the moon stars, etc.

(b) To have actual possession of an object, it is necessary for a person to have physical control over it. But this does not mean that a person always keeps the object in his actual control.

(c) Mere physical control of the thing is not sufficient for factual possession; that person must have there must also be the power to exclude the other person from that possession.

(d) To determine the acquisition, renunciation or termination of possession, it is important that the possessor has the intention to continue to hold the thing. But in exceptional cases, possession can remain even without any intention or desire.

(6) De jure possession - Possession at law is also called "de jure" possession. It has already been stated that the law secures possession for two obvious reasons, in particular, which are as follows.

(1) By granting the owner certain legal rights.

(2) By punishing the persons in possession as individuals or by imposing compensation on the holder.

Whenever a person files a suit for possession, the first thing the court finds out is whether the plaintiff had actual possession of the thing in dispute. The facts show that in most cases of actual possession there is lawful possession, but there are many cases where a person does not have legal possession even though he has actual possession of the thing.

In the legal sense, possession is used as a relative term. The law is not usually concerned with who has the best ownership; rather, it is concerned with which of the preceding groups has the better ownership.

(1) Merry v Green (1847) 7 M&W 623- In this case the plaintiff bought a table at auction and found a purse in one of its drawers. Subsequently, he discovered that the seller had some money in a secret drawer, but he had not kept it grabbed it. It was held that it was not the plaintiff's but the seller's because the element of intention for that purse was missing during the process of transfer. The seller did not intend to sell that purse and the buyer did not intend to buy that purse.

(2) Hannah v. Peel (1945) 1 K.B. 509- In this case, the plaintiff was a soldier and was asked to stay in a house and he found a brooch there. The defendant filed a suit against the soldier but the brooch was not given to the owner as he had not taken physical possession of the house and the brooch was found on the floor. The corpus element was never in favour of the owner of the house and the principle of res nulls was applicable in the manner in which the brooch was found.

(7) Difference between ownership and possession-

| Base | Ownership | Possession |
|----------------------|---------------------------------------|--|
| Meaning | Legal rights recognized by law. | Physical control without ownership. |
| Legal recognition | Real concept. | Real concept. |
| Limitation of rights | More extensive. | Limited. |
| Transfer | Complex processes. | Simple, often no formal documentation. |
| Legal remedies | Proprietary treatments are available. | Official security measures |

(8) Difference between law and morality-

| Base | Law | Policy |
|------------------|--|--|
| Meaning | These are a set of rules and regulations to administer justice in society and regulate human behaviour. | Morality refers to all the acceptable customs and practices that have been prevalent since time immemorial. |
| Original | Laws in a country are made by the legislators or lawmakers and the parliament plays an active role in this entire process. | Morality is a product of society. It is prepared by the religious leaders of the society or the family members. |
| Role of religion | Religion has no role in law making. | Morality can be determined based on the religion of the people in a particular region. |
| Uniform | The laws are the same throughout the country and it is mandatory for all people to follow them. | Morality varies from region to region depending on the beliefs of different people living in different areas. |
| Flexibility | Laws are more flexible than morality as they can be changed depending upon the demand of the people. | It is very difficult to change the morals because of the rigid mentality of the people in the community. |
| Purpose | The aim of laws is to create a civilized society with proper social order and peace. | The purpose of ethics is to teach people to distinguish between right and wrong and to protect the moral rights of others. |

| | | |
|-----------------------|--|---|
| Punishment | A person can be punished for doing something wrong, such as paying a fine or being imprisoned. | A person cannot be punished for not following ethical standards because they are not legally binding. |
| Enforceability | Laws are enforced by the state on the citizens of the country. | Morality cannot be enforced by the state, and individuals are not legally bound to follow them. |
| Example | An example of law is the provisions of the Indian Penal Code, 1860. | An example of morality is respecting your parents and obeying them. |

Question No. 10- Morality is the basis of law. Explain the importance of morality in the light of the above statement.

Answer- Law and Morality- Ever since law has been recognized as an effective instrument of social order, there has been a debate on its relationship with morality. **According to Patton**, morality or ethics is the study of the highest good. In general, morality is defined as: All kinds of rules, standards, principles or norms by which human beings regulate, guide and control their relations with themselves and with others. Both law and morality have the same origin. In fact, morality gave birth to laws. The state gave its sanction to the moral rules and enforced them. These rules were named law. In the words of Hart, the law of every modern state reflects the influence of both accepted social morality and the broader moral ideal at thousands of points. Both law and morality have the same purpose or end, as both guide the actions of human beings in such a way that maximum social and individual well-being is produced. Both law and morality have the support of social or external sanction. Bentham said that law has the same center with morality, but its circumference is not the same. Morality is generally the basis of law, i.e. what is illegal (murder, theft, etc.) is also immoral. But there are many immoral acts such as sex between two unmarried adults, lewdness, ingratitude, etc. which are immoral but not illegal. Similarly, there may be laws which are not based on morality and some of them may even be contrary to morality, such as laws on technical matters, traffic laws, etc. Morality as a criterion of law: Many jurists have observed that law must conform to morality, and a law which is not consistent with morality should be violated and the government making such a law should be overthrown.

Patton said if a law lags behind popular standards, it falls into disrepute, even if legal if the standards are too high, enforcement becomes very difficult.

Morality as the end of law: According to some jurists, the purpose of law is to do justice.

Patton said that justice is the end of law. In its popular sense, the term 'justice' is based on morality. Thus, such morality, being a part of justice, becomes the goal of justice. The goal which the Preamble of our Constitution seeks to achieve is morality.

Introduction-No distinction in ancient times: In the early stages of society there was no distinction between law and morality. In Hindu law, the main sources of which are Vedas and Smritis, we do not find any such distinction initially. However, later Mimamsa laid down certain principles to distinguish

between imperative and recommendatory orders. The situation was similar in the West also. The Greeks formulated the theoretical moral basis of law in the name of the theory of natural rights. Roman jurists recognized certain moral principles as the basis of law in the name of 'natural law'. In the Middle Ages, the Church became dominant in Europe. Natural law was given a religious basis and Christian morality was considered the basis of law.

Morality as the basis of law

Throughout history, no clear distinction has been made between law and morality. Because of the lack of distinction, all laws originated from principles considered morally correct by people in society. Eventually, the state chose the morally correct things and gave them the form of laws or rules and regulations. Therefore, law originates and is based on the values prevailing among people, creating a similarity between the two concepts, i.e. law and morality. For example, it is morally wrong to kill someone or rape someone. This value has taken the form of law. Morality has been separated from laws over time, but it remains an integral part of legal development. Law essentially consists of certain basic principles such as the principle of fairness and equality, and these principles are derived from morality and ethics.

Morality Criterion of Law- The whole purpose of the existence of laws is to ensure justice in society and to work towards the best welfare of all people. Since the principle of justice falls under the purview of morality, many jurists believe that there should be no contradiction between law and morality. Any law that does not follow moral standards should be removed and whether a law is right or wrong can be evaluated on the basis of whether it is in conformity with moral values or not.

Morality as the Objective of Law- As stated earlier, the ultimate goal of lawmaking is to maintain a society that is based on the principles of justice, fairness and equality. The whole purpose of certain moral standards is also to maintain some kind of order in society which will reduce conflicts. This shows that more or less the purpose of both these phenomena is the same. Jurists believe that if law has to remain involved in the lives of people, it cannot ignore morality. If a law is against moral standards, people may hesitate to follow it which will create more conflicts in society.

Philosophical Choices - There are broadly two theories in the development of law, which are legal positivism and natural law theory.

According to natural law theory, any grossly unjust law that violates standards of morality is not law. This means that law and morality are deeply intertwined. The term 'natural law' itself comes from the idea that human morality comes from nature and takes the form of rules and regulations in society. Legal theorists who supported the natural law theory were Augustine, Aquinas, Lon Fuller and others.

Legal positivism, on the other hand, states that the body of law is devoid of any norms of morality. That being said, this theory does not completely negate the influence of morality on laws. The theory follows the view that all laws, rules, and regulations are man-made and thus advocates the separation of laws and morality. Legal theorists who advocate legal positivism include John Austin and H.L.A. Hart.

Hart-Fuller Debate on Law and Morality - The Hart-Fuller debate is one of the most interesting exchanges of ideas and opinions between Lon Fuller and H.L.A. Hart on the interesting interdependence between law and morality. It was published in the Harvard Law Review in 1958 and highlighted the differences in views in positivist and natural law philosophies. To understand the points presented by these two thinkers, it is important to analyze their beliefs and the reasoning behind them separately.

H.L.A. Hart - Hart is a positivist and is therefore of the opinion that while there may be a close relationship between law and morality, the two are certainly not dependent on each other. Having said that, Hart believes that law has been greatly influenced by the morality prevailing in society. According to him, a clear distinction must be made between what the law should be and what it ought to be. This is where Hart brings up the problem of penumbra, which means determining the meaning of the law when it is ambiguous. Fuller, in opposition to this, said that in situations where the law is uncertain, judges make decisions based on morality, basically what should be. To this, Hart responded by saying that determining what ought to be should be understood from the legal meaning, not the moral meaning. Essentially, the interpretation of law cannot come from outside the legal world.

Challenges due to the interrelationship between law and morality- The two concepts of law and morality may differ for many reasons, but one thing they have in common is that both of them affect the way we live our lives. Both morality and law are vague concepts that do not have any fixed meaning. Both these concepts have evolved with the new ideas that have emerged over time. Nowadays, it appears that the idea of morality has started to differ from person to person. This means that morality itself has become subjective; what may be morally wrong for one may be morally right for another. When there is no fixed standard of what can be morally right, how can lawmakers make laws based on morality? The modern world is witnessing a clash between law and morality and there are many issues where both these concepts should not overlap, and new laws should completely depend on the existing legal framework. Making laws that ensure justice requires a progressive approach, which may not be completely in line with morality. To understand the conflict between law and morality from a practical point of view, the following issues can be analyzed.

The Dudley and Stephens **case R v Dudley and Stephens (1884)** is one of the most famous cases dealing with the age-old debate between law and morality. The case discussed whether cannibalism, which was considered a highly immoral act, could be committed on the question of necessity and helplessness. The facts of the case involved four men who were stranded in a boat in the middle of the ocean, far from land. The men had no way of contacting anyone and were stranded in the boat without any food and water. After torturing themselves for seven days without food and water, the captain of the ship, Thomas Dudley, came up with an unethical solution. He suggested that one of the four men had to be sacrificed so that the other three could survive by eating his flesh. Edward Stephens agreed while Ned Brooks refused to pursue the plan and cabin boy Richard Parker was not consulted. Eventually, the boy was killed by Dudley and Stephens after whom the three men ate the boy's flesh.

Question No. 11-What do you understand by vicarious liability? Determine the liability of the Government of India for the torts committed by its servants.

Answer- The law imposes certain duties on its citizens. Violation of these duties is a wrongful act. When a person violates a duty imposed by civil law as opposed to a criminal wrong or a civil wrong such as breach of contract or breach of trust, he violates tort law. Tort primarily a civil wrong is the violation of the general legal rights vested in another. In the normal course of law, the person who commits a crime incurs the punishment. However, there are certain exceptions to this general rule, one of which is the common law concept of vicarious liability. The term vicarious liability is derived from the Latin word 'vice' meaning in place of. Etymologically, vicarious liability means 'liability instead' i.e. liability incurred by one but suffered or paid by another. The word 'vicar' is synonymous with vice and means 'in person' or substitute. In the eyes of law, a person cannot be held liable for the acts of another; he will be held liable only for the tort or wrong done by him. However, under certain circumstances, a person can be held liable for discharging the liability of another person. When a person discharges the liability of another person under such circumstances, it is called vicarious liability. Vicarious liability imposes liability on a person other than the wrongdoer, which is also called imputed liability.

(1) A wrongful/criminal act or omission is done by a person

(2) There is a relationship of control between the wrongdoer and the tortfeasor.

(3) When such act or omission is directly related to the said relationship.

There are 3 types of relationships in which the concept of vicarious liability can be applied, namely, relationship between the agent and **(1) Principal** - There is a fiduciary relationship between the agent and the principal, i.e. a relationship based on trust. In this relationship, the principal appoints the agent and authorizes him to act on his behalf and discharge the duties imposed on him by the principal. The person who is so authorized to act is the agent. The authority

of the principal may be express or implied. If the agent commits a tort in the course of his employment or in the discharge of his duties, liability may also be imposed on the principal who authorized such act in the first place. Here, the principal is in a position of power and control over his agent. Therefore, both the agent and the principal are joint tortfeasors and their liability is joint and several. The plaintiff has the right to sue both or either one. In the case of *State Bank of India v. Shyama Devi*, the plaintiff's husband had given cheques to be deposited in his account to a friend of his who was an employee of the defendant bank. No receipt for the deposit was taken and the friend misappropriated the amount. The court held that the employee was not acting within the scope of his employment with the bank but was acting as a friend of the depositor at the time of committing the fraud. Therefore, the respondent bank cannot be held liable under vicarious liability.

(2) Relationship between master and his servant- It is a general rule of law that if a master authorises or commands certain acts to be done by his servant, the master should be held liable for any tort committed by the servant. Again, here the master is in a position of control or authority over the servant working under his supervision. The master's liability arises because he derives the benefit of the acts done by his servant.

However, the following requirements must be fulfilled to make the master liable for the acts of his servant:

Should be done-

(1) The tort was committed by a servant. A servant is a person who is required to perform all the duties assigned to him by his master is appointed to complete it.

(2) The servant committed the tort in the course of employment. An act is said to be in the course of employment if the wrongful act is expressly authorised by the principal or if it is a wrong or unauthorised way of doing something authorised by the principal.

It is pertinent to note that this liability arises even when the servant has acted against the express instructions and not for any benefit of his master. Like the agent and principal relationship, the liability of the master and servant is joint and several and both are joint tortfeasors. However, in cases where the servant acts in the course of his employment, the master cannot be held liable for his actions simply because he would not have had the opportunity to act but for having been in the service of the master. Similarly, the master cannot be held liable for the wrongful acts of the independent contractor employed by him. Like a servant, an independent contractor undertakes to carry out the work of his employer; however, unlike a servant; he is not under the supervision or control of his employer and can exercise independent discretion in discharging his duties.

Traditionally, the test to determine the difference between a servant and an independent contractor was the "control test". However, modern authorities

apply the "hire and fire" test, i.e. to test whether a person is the wage employer of another and has the right to fire his employee.

(3) Liability of Partners- The relationship between partners is that of principal and agent and the rules of agency apply to them. In a partnership all the actors act on behalf of each other while representing themselves collectively. The partnership may be in the form of a firm, company, trustee or a partner representing a Hindu joint family. Therefore, a partner can be held liable for the wrongful or negligent act of another partner under the rules mentioned in the **Indian Partnership Act, 1935**.

In **Hamlin v. Houston & Co.**, one of the partners of a firm, acting within the scope of his authority, attempted to bribe the plaintiff's clerk to induce him to violate his employment contract. The court held that the other partner could be held liable for a tort committed by one of the partners.

State Responsibility - Over the last several decades, the powers and functions of the State have expanded considerably. There has been a great change from traditional laissez-faire policies to the recognition of the State as a welfare State. It is also a popular saying that "power corrupts and absolute power corrupts absolutely." Therefore, checks on the powers of the State are an essential requirement to ensure its accountability in circumstances of violation of the common legal rights of citizens by persons employed by the State. This requirement is met by **Article 300** of the Indian Constitution, which provides that the Union of India and the States are juristic persons for the purpose of any suit or proceeding and can thus sue or be sued in their name. Before the present-day Indian Constitution came into being, there was a brief mention of State liability under **Section 65** of the Government of India Act, 1858. The concept of imposition of vicarious liability on the State is essential for the performance of its fundamental duty of protecting its citizens. If such provisions were not there, no doctor in a government hospital or any police officer could be held liable for any malicious or wrongful act. Basis and justification of the concept of vicarious liability.

The concept of vicarious liability has its roots in the following Latin proverb "Quit facit per aliam facit per se" literally meaning, "Whoever does something through another is considered in law to be doing it himself." This proverb applies in master-servant and principal-agent relationships because in this relationship one actor is specifically appointed by another to act on their behalf or to perform certain specified functions. Since they take advantage of the actions of another, they are also liable to accept any liability incurred in the performance of such actions.

Respondate Superior - Literally means, "let the superior be responsible." Here too, the master and the principal have a position of power and control by which they can direct or authorize the performance of an act. In these cases, since they

hold a position of superiority, they can be held vicariously liable for the actions of their employees.

This principle is also justified due to the following reasons-

(1) The notion that anyone who hires another to act on his behalf has "too much money" and can, therefore, be held liable to satisfy the claims of the person who has been wronged as a substitute for the actual offender. For example, in a master-servant relationship, the master may be able to satisfy the claim because of his deep pockets or his insurance.

(2) Since the owner has potential financial concerns, he will ensure complete safety and care for his employees and others.

(3) Since a person enjoys the fruits of another's labour, he must be held liable for any losses incurred. He cannot be allowed to accept the benefit and reject the burden of his labour.

Question No. 12-Law is a means of achieving justice. Explain the objectives of law in the light of the above statement do it.

Answer- The term 'law' has three primary meanings. First, it refers to the concept of 'legal order'. It refers to a structured system that regulates relations and guides proper conduct through the organized and authoritative influence of political society. It establishes a framework for resolving conflicts and maintaining order using the regulated force of the governing body.

Second, 'law' encompasses the entirety of the legal precepts that exist within a politically organized community. It comprises a comprehensive collection of rules, regulations and principles that guide the behaviour of individuals and institutions, ensuring a functioning and orderly society. This set of legal principles forms the foundation on which the operations and interactions of society are built.

Third, the term 'law' encompasses all forms of authoritative control that operate within a politically structured society. It includes not only the theoretical construction of law, but also the practical application of justice. It involves the implementation of established legal principles to resolve disputes and maintain fairness in society. This aspect of law distinguishes between the theoretical guidance provided by legal frameworks and the active execution of justice by authorities. In a narrower sense, 'law' may refer specifically to civil law or the legal rules governing a particular geographical area. This definition emphasizes the tangible and operational aspects of the legal system that govern daily interactions, disputes, and matters of social significance.

Purpose of law - Law serves several purposes, of which the four main ones are-

(1) To maintain order- Law serves as a derivative of established social norms. Just as a civilized society requires shared values, law provides a coherent framework. Enforced law ensures alignment with society's guidelines. For example, wildlife management laws protect and preserve game for future generations.

(2) Setting standards - The law sets a benchmark for acceptable conduct within society. It specifies the actions that are considered criminal, reflecting society's stance on behaviour that harms individuals or their goods. For example, causing unreasonable harm to another person is a crime, as is assault.

(3) Dispute resolution-In societies involving diverse wants, needs and values, disputes are inevitable. The law provides a formal way to resolve these disputes, often through the court system.

(4) Protection of Freedoms and Rights - Constitutions and laws provide individuals with various rights and freedoms in their respective jurisdictions. One of the important functions of the law is to protect these rights from unjust violation by entities such as governments or individuals. If someone feels that their right to freedom of expression has been violated by the government, legal recourse is available through court proceedings. These key purposes of law collectively underscore the role of law in maintaining social order, defining acceptable conduct, settling disagreements, and protecting individual freedoms and rights.

Functions of Law in Jurisprudence- The functions of law in jurisprudence have been the subject of diverse views among jurists. Law is recognized as a dynamic concept that evolves over time and place, adapting to social changes. Its contemporary interpretation places law not only as a goal but as a means to achieve a goal, such as the attainment of social justice. The consensus among theorists is that law serves as a major means to ensure justice. A view expressed by Holland on the functions of law asserts that law serves the greater welfare of society, going beyond the role of mere protection for individual rights.

Roscoe Pound identified four major functions of law: preservation of law and order, maintenance of social equilibrium, facilitation of individual liberty, and satisfaction of fundamental human needs. He regarded law as a form of social engineering, designed to optimize the welfare of both individuals and the state. Realists propose that the functions of law in jurisprudence advance the best interests of individuals and the state, acting as a regulatory force. Salmond's view on the essence of law is logical. The term "law" covers a wide range of rules and principles. It serves as a mechanism regulating human behavior, reflecting justice, morality, logic, structure, and authority within the framework of society. It also deals with legislative components such as statutes, acts, rules, regulations, orders, and ordinances. From a judicial perspective, it includes court judgments, decrees, judgments, court orders, and injunctions. This broad definition includes acts, laws, rules, regulations, orders, morality, justice, logic, fairness, court procedure, orders, judgments, injunctions, legal wrongs, legal philosophy and principles.

B.A.LL.B.-6th Sem. Paper-V Law of Torts and Protection Act

Question No. 1- Define nuisance. Describe the different types of nuisance.

Answer- Nuisance as a tort means interference with the use or enjoyment of land by any person or the unlawful interference with any right attached to or relating to the comfort, health or safety of the person. Examples of this are acts of interference or nuisance done adversely. Interference or nuisance can be done in any manner, for example noise, vibration, heat, smoke, odor, fumes, water, gas, electric current, excavation or disease causing bacteria can become sources of nuisance.

(1) According to Prof. Dinfield, nuisance is unlawful interference with the use or enjoyment of any person's land or with any right therein or appurtenant thereto.

(2) According to Pollak, nuisance is the fault of unlawfully obstructing a person in the enjoyment or exercise of a common right.

(3) According to Salmond- "The offence of riot without legal justification. Allowing or causing to escape any noxious object from the land or from anywhere else in the possession of the plaintiff, including eg. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals."

Essential elements of nuisance- In order to make an act of nuisance actionable under the law of torts the following essential elements must be present

(1) To be satisfied- The first requisite for an action against a person for wrongful act is the conduct of the defendant

(2) By the defendant- this may include any action which is prima facie not legal and Unfair in the eyes of a sensible person.

Caution - If the plaintiff is extra sensitive and finds the act of the defendant unreasonable. Unreasonable because of his sensitivity, which would otherwise be reasonable according to a prudent person, an action for nuisance cannot arise. Damage/loss/inconvenience caused to the plaintiff. The next essential requirement is substantial damage or inconvenience caused to the plaintiff.

Plaintiff- The maxim 'de minimis non curat lex' comes into play and it provides that I should not consider the minor or minimal damages claimed by the plaintiff due to its sensitivity. Nevertheless, if the act of the defendant interferes with his legal rights the plaintiff, the upheaval comes into play.

Case Law- In *Ushaben v. Bhagyalakshmi Chitra Mandir*, where the plaintiff filed the suit. The defendant opposed the screening of the film 'Jai Santoshi Maa' claiming that it hurt the religious feelings of a particular Hindu community, the court dismissed the plea saying that hurting religious feelings was not an actionable wrong and the plaintiff is free not to watch the film again. It was therefore held that to claim damages for nuisance, the intervention would have to be a continuing state of wrong.

In *Halsey v. Esso Petroleum Co. Ltd.*, where the defendant's factory emitted smoke, oil, The smoke and odour caused harm to the health of the plaintiff as well as polluted the environment. Due to its own sensitive health issue, the former was held liable only towards the latter. The emission of smoke, oil and fumes is not a threat to health.

Types of Nuisance: Nuisance as a tort is further classified into two types- personal nuisance and public nuisance, both having their respective fields of operation and types of damages.

Personal Nuisance - Personal nuisance protects the interests of the occupant of land or premises in the use and enjoyment of his land. This type of nuisance usually arises from the defendant's personal use of the land or his actions in his private capacity. Accordingly, a plaintiff must show that he has some interest in the land in question. Thus, the land must not be public land. of the law. Personal property seeks to strike a

balance between two conflicting interests; the occupier of one uses his own land as he sees fit and enjoys his neighbour's land in quiet enjoyment of the land. Thus, a person should not use his property in a way that causes inconvenience to his neighbours.

In an action for personal harassment, the court considers the following-

(1) Whether the injury complained of is reasonable in terms of physical damage; whether the damage is substantial in terms of interference with the enjoyment of property and land.

(2) Whether the respondent's conduct is unlawful, improper, or unreasonable.

Elements that constitute a personal nuisance-

(1) The interference must be unreasonable or unlawful. This means that the act must be unreasonable in the eye of the law and must be something that would not be done by a reasonable person.

(2) Such interference must be with the use or enjoyment of land, or with certain rights in the property, or it must be in relation to property or cause physical nuisance.

(3) There must be visible damage to the property or enjoyment of the property to constitute a private nuisance.

Rose v Miles (1815) 4M & S.101

The defendant had wrongfully blocked a public navigable bay thereby causing an obstruction. The defendant was prevented from transporting his goods through the bay due to which he had to transport his goods. Good through land due to which he suffered additional cost in transportation. This had happened. As the plaintiff has successfully proved that the act of the defendant caused a public nuisance. That he has suffered loss as compared to other members of the society and on this he has a right of action against the defendant.

The disturbance may be in relation to property or physical discomfort-

1- Property - in case of nuisance in respect of property, any sensible damage to the property shall not amount to damage be substantial enough to support the action.

In the case of damage to property any sensible injury would be sufficient to support an action.

In St Helens Smelting Company v. Tipping (1865), smoke from the defendant's manufacturing operations damaged the plaintiff's trees and shrubs. The court held that such damage constituted a cause of action as damage to property.

2- Physical discomfort- In a suit for nuisance arising out of physical discomfort, two essential conditions are necessary.

(a) In excess of the natural and ordinary way of enjoyment of the property. The use by the third party must be outside the natural course of enjoyment of one of the parties.

(b) Interfere with the normal course of human existence. The inconvenience must be of such a level that it affects anyone in the area and people will not be able to enjoy or endure it.

3- Damage - The third essential element of the tort of nuisance is damage. It is monetary compensation for any loss or injury suffered by the plaintiff due to nuisance.

That is, damages are of many types-

(1) Increased damage

(2) Nominal loss

(3) Special damage

Public nuisance- Public nuisance refers to something that affects the general public or a section of the public. It is that which affects the public sphere or a section of the public because it is indiscriminate in its effect or prevalence. A nuisance can become a public nuisance either from its source or its ultimate effect or destination. Again, a nuisance

that affects a section or a segment of society is a question of facts depending on the facts and circumstances of each case. Everything must be looked at from a reasonable perspective. Examples of public nuisance include obstruction of highways or public waterways, noise pollution, oil spills from the activities of multinational oil companies and conducting an obnoxious business such as operating a brothel in the GRA. Public nuisance is usually a crime (see section 234 and section 192 of the Criminal Code and section 194 of the Penal Code) which can only be prosecuted by the Attorney General in his capacity as the guardian of the public right. In other words, a private individual has no right to do so. The Attorney General prosecutes the offence of public nuisance. However, for a private individual to be sued for public nuisance, he must show that he has suffered a particular or special loss/damage more than that suffered by other members of the public. In the case of *Daodu v NNPC*, the Supreme Court, according to *Kwakuegbu JSC*, held that the position of the law is thus, "Obstructing a public highway or obstructing the free passage." The public along the highway is a public nuisance. There is public nuisance and a private person has a right to bring an action if he can prove that special damage has been suffered in addition to the general inconvenience and injury to the public and that the special damage which he suffered was direct and substantial. The requirement to prove special damage will be satisfied if the plaintiff can show that he has suffered much more than any suffering suffered by the general public. It is worth noting that, many times a class or sections of the public will sue for public nuisance and usually the action will fail because the court will always say that it is a class action inappropriate in such cases. This is because they are all private persons together and they cannot enforce public nuisance. It is better to sue individually by trying to prove yourself have suffered more than all others. A similar decision was made in *Adediran vs. Interland Transport Ltd.* (supra), where the plaintiff-appellants filed a suit in a representative capacity for themselves and on behalf of the residents of the housing estate, the Supreme Court held that though all the injuries complained of arose out of the same tort complained of, each separate injury is a separate tort.

Question No. 2 - A case of justifiable negligence will not arise unless the duty to take care is breached. Explain the above statement through decided cases.

Answer- Negligence - A duty is imposed by law on a person to act with care towards others, if such duty exists and there is a failure to act with care and the other suffers loss, then the tort of negligence has been committed. It is already known that the tort law of India is based on the English common law. Thus the law relating to negligence is adopted and modified by the courts of India on the principles of justice, equity and good conscience. The word negligence is derived from the Latin word *neglectus*, which means 'to fail to take'. Negligence in the general sense refers to the act of being careless and in the legal sense, it refers to the failure to observe a standard of care which the doer should have taken as a reasonable person in a particular situation. Negligence in English law emerged as an independent cause of action only in the 18th century. Similarly the Indian law, IPC, 1860 had no provision for causing the death of a person negligently, which was later amended in the year 1870 by inserting section 304A.

Definition of neglect-

(1) Negligence in torts law may be defined as a breach of duty caused by the omission to do something which a reasonable person, guided by considerations which generally regulate the conduct of human affairs, would do or do something which a prudent reasonable person would not do. Actionable negligence consists in the neglect to use ordinary care or observe ordinary care and skill towards a person to whom the defendant has a duty to observe ordinary care and skill.

(2) Negligence has been viewed in three ways, firstly it involves a reckless state of mind, secondly, negligent conduct, and thirdly the injury and damage caused by negligence may be found to be due to a breach of conduct or tort.

According to Winfield and Jolowitz, negligence represents the breach of a legal duty of care owed to a plaintiff which results in unintended harm to the plaintiff.

In *Blyth v Birmingham Water Works Co*, negligence was defined as omitting to do something that a reasonable man would do or doing something that a prudent or prudent man would not do.

According to J.M. Feinman, the basic idea of negligence is that people should exercise reasonable care when they act, keeping in mind the potential harm that might be caused to other people. In a negligence action, the plaintiff has to prove the following ingredients-

1. The Duty must be towards the plaintiff-The duty arises when the law recognizes a relationship between the defendant and the plaintiff and requires the defendant to act in a certain way towards the plaintiff. It is not enough that the defendant has a duty of care towards the plaintiff but it must also be established which is usually determined by the judge. In the case of *Bourhill v Young* (1943) the plaintiff, who was a fisherman, alighted from a tram car and while she was being helped to put her basket on her back, a motorcyclist was hit by a motor car after the tram had passed at a distance of 15 yards which was on the other side of the tram. The motorcyclist died instantly and the plaintiff could not see the accident or the body as the tram was standing between him and the place where the accident occurred. He only heard the sound of the collision and once the body had been removed from the place of accident, he visited the place and saw some blood which was left on the road. As a reaction to this incident, she suffered a panic attack and gave birth to an 8-month-old stillborn baby, who died of his injuries. Because of this she sued the representatives of the deceased motorcyclist. It was held that the deceased had no duty of care towards the plaintiff and therefore she could not claim any damages from the representatives of the deceased. The case of *Donoghue v Stevenson* (1932) developed the principle that each of us has a duty of care to our neighbour or to any person we can reasonably expect to be affected by our acts or omissions. It was held that an action in negligence can succeed even though there is no contract between the manufacturer and the person suffering damage because the plaintiff succeeded in her claim that she was entitled to a duty of care despite the defective goods i.e. the bottle of ginger beer containing snails was not bought by her but by her friend.

2. Breach of Duty to take care-It is not enough for a plaintiff to prove that the defendant owes him a duty of care, but he must also establish that the defendant breached his duty to the plaintiff. The defendant breaches this duty by failing to take reasonable care in carrying out the duty. In other words, breach. Duty of care means that the person on whom the existing duty of care is owed must act prudently and not omit or do any act which he ought to do or ought not to do as aided by the case of *Blyth v. Birmingham Waterworkers Company*, (1856). In simple terms it means not observing a standard of care. In the case of *Ramesh Kumar Nayak v. Union of India* (1994), the post officials failed to maintain the boundary wall of a post office in good condition when it collapsed causing injuries to the defendant. It was held that the post officials were liable because they had a duty to maintain the post office premises and the breach of their duty to do so caused the collapse to occur. They were therefore liable to pay compensation. In the case of *Municipal Corporation of Delhi vs. Subhagwanti* (AIR 1966) a very old clock tower situated right in the middle of the crowded area of Chandni Chowk suddenly collapsed killing many people. The clock tower was 80 years old.

However the normal life span of the clock tower should have been 40-45 years. The clock tower was under the control of the Municipal Corporation of Delhi and they have a duty to care for the citizens. By ignoring the repair of the clock tower they have violated their duty to care for the public and were thus liable.

Consequential damage to the plaintiff- It is not enough to prove that the defendant failed to take reasonable care. It must also be proved that the failure of the defendant to take reasonable care resulted in damage to the plaintiff to whom the defendant has a duty of care. The damage may fall into the following categories-

- (a) Physical harm
- (b) Loss of reputation
- (c) Damage to property
- (d) Financial loss
- (e) Mental injury

When such damage is proven, the defendant is bound to compensate the plaintiff for the loss suffered. In the case of Joseph vs Dr. George Moonjelly (1994). The Kerala High Court awarded damages of Rs. 1,60,000 against a surgeon for operating on a 24 year old girl without following proper medical procedures and not even administering local anesthesia.

Res ipsa loquitur – Res ipsa loquitur is a Latin phrase that means “the thing speaks for itself.” It is considered a type of circumstantial evidence that allows the court to determine that the negligence of the defendant caused an unusual event to occur that later caused the injury to the plaintiff. Although normally the duty to prove that the defendant acted negligently is on the plaintiff but through res ipsa loquitur, if the plaintiff presents certain circumstantial facts, it becomes the onus of the defendant to prove that he was not negligent. Thus for this maxim to flow into effect there are three essential requirements

- (1) The thing caused by the damage must be under the control of the defendant or his servant.
- (2) The accident must be one which would not have happened in the ordinary course of things without negligence.
- (3) There should be no evidence as to the actual cause of the accident.

Defenses available in a negligence suit are-

Contributory Negligence by the Plaintiff- Contributory negligence means that when the immediate cause of the damage is due to the negligence of the plaintiff himself, the plaintiff cannot sue the defendant for damages as the defendant can use it as a defense. This is because in such a case the plaintiff is considered to be the author of his own fault. This is based on the maxim *volenti non fit iniuria* which states that If someone voluntarily places themselves in a position which may result in harm, they are not entitled to claim for damages arising from such harm. The burden of proving contributory negligence is *prima facie* on the defendant. In the absence of such evidence, the plaintiff is not bound to prove its non-existence. In the case of *Shelton v L & W Railway* (1946), when the plaintiff was crossing the railway line, a servant of the railway company who was in charge of the crossing shouted a warning to him. The plaintiff being deaf, he was unable to hear the warning and was consequently injured. The court held that this amounted to contributory negligence on his part.

An Act of God an Act of God is a direct, violent and sudden act of nature which is beyond the reach of any amount of human effort. Foresight could have been foreseen and if the foreseen could not have been made by any human care. And the defense is opposed to skill. Thus such acts which are caused by the original forces of nature fall into this

category. For example storm, hurricane, extraordinary high tide, extraordinary rainfall etc. If the cause of injury or death of a person is due to the occurrence of a natural calamity then the defendant will not be liable for it, provided he proves it in the court of law. This special defense was talked about in the case of *Nickels vs Marsland* (1876) in which the defendant has a chain of artificial lakes on his land. No negligence was committed by the defendant in the construction and maintenance of the artificial lakes. Due to this, some reservoirs burst due to unexpected heavy rains and four bridges in the country were washed away. The court held that the defendant cannot be held liable because the water was drained out due to the act of God.

Inevitable accident- An inevitable accident can also be called the defense of negligence and it refers to a defense of negligence and refers to an accident that there was no possibility of preventing by the exercise of ordinary care, caution, and ingenuity. It means a physically unavoidable accident. In the case of *Brown v Kendall* (1850) the dogs of the plaintiff and the defendant were fighting and their owners attempted to separate them. In an attempt to do so, the defendant beat the dogs with a stick and accidentally injured the plaintiff, severely injuring his eye. The plaintiff brought a suit for assault and battery against the defendant. It was held that the plaintiff's injury was the result of an inevitable accident. To prove that an act was negligent, all the essentials that are required to be proved are duty, breach of duty, damage and actual and proximate cause. An important maxim in relation to negligence, i.e. *res ipsa loquitur* is used by the courts when a negligent act cannot be explained. Also, the defense in a negligence lawsuit can be used by the defendant to defend itself from a lawsuit issued by the plaintiff.

Question No. 3- What is the tort of defamation? What are its essential elements and what are its defenses? Explain.

Answer- Meaning- Defamation is an injury to the reputation of a person. If a person injures the reputation of another in a case of interference he does so at the risk of his property. A man's reputation is his property, and if possible more valuable than any other property. Any intentional false communication, written or oral, which injures a person's reputation, diminishes the esteem, respect, or confidence of any person, or creates insulting, hostile, or unpleasant opinions or feelings against any person is called defamation.

Definition of Defamation-

(1) According to Salmond: The offence of defamation is the publication of a false and defamatory statement about another person without legal justification.

(2) According to Andarhill - Defamation is a false or defamatory statement made about another person without just cause or excuse which tends to injure the reputation of that person.

Kinds of Defamation - There are following two types of defamation.

(1) Libel. Libel refers to permanent defamatory statements, so anything that is written (books, newspapers, letters), anything that is broadcast (television or radio according to section 1 of the Defamation Act 1952, cable according to section 28 of the Cable Television and Broadcasting Act 1984), and even theatre presentations (according to section 4(1) of the Theatres Act 1968.) The 'permanence' requirement does not mean 'forever' (because on a fairly long timeline, nothing is), but rather communication that exists longer than the time the original message was transmitted. Thus, courts are even suggesting that skywriting can be defamatory because the writing takes time to spread, as in the *Gulf Oil case* (GB) *Ltd v Page* 1987, Ch 327, which concerned an aircraft carrying a defamatory statement on its back. Words are not necessary, it must only be a

form of lasting communication. Thus in *Monsoon v Tussauds Ltd* 1934, 50 TLR 581 the defendant placed a wax figure of the claimant near his 'Schmöber of Horrors' exhibition. He was tried for murder but not convicted. As it was a lasting communication it was held to be defamatory (described by the court as defamation by means of innuendo).

(2) Slander - Slander is a derogatory statement that is temporary. In short, it involves defamatory statements that are not covered under defamation. The main example is the spoken word. An untrue statement whispered into the right person's ear can be devastating to a person, and so the law recognises this. Gestures can also constitute defamation, as they are a form of temporary communication. Thus, even people who communicate through sign language are covered by the law! Because non-permanent statements have less effect than permanent statements, a claimant must show that they have suffered 'special harm', in fact a harm that can be estimated in monetary terms. However, the courts have extended this definition to include loss of the prospect of marriage (*Speight v Gosney* 1891, 60 LJQB 231) and loss of consortium (effectively, losing the financial support of a family member, as in *Lynch v Knight* 1861, 9 HLC 777). There are exemptions to this rule. Firstly, if it is alleged that the claimant has committed a criminal offence punishable by imprisonment (for the first time, as opposed to a repeated offence) as per *Gray v Jones* 1939, 1 All ER 798. This disposition can very easily lead to ostracism from society and other negative effects. Secondly, if the statements are calculated to disgrace the claimant in his profession, occupation or office. Thus, in *Foulger v Newcombe* 1867, LR 2 X. 327 the claimant was a gamekeeper tasked with preserving foxes.

Essential Elements of Defamation – The tort of defamation has the following essential elements.

(1) The statement must be defamatory - The definition of a defamatory statement is found in the common law. Since the communication of concepts and feelings is inherently an infallible event, so is the definition of a defamatory statement. Although the edges of a defamatory statement are a little fuzzy, the general concept can be found in the context of a number of cases. The first example of note is the definition advanced in *Parmiter v Coupland*. Case in Focus: *Parmiter v Coupland* 1840, 6 M & W 105. The claimant was the mayor of Winchester. A newspaper, the *Hampshire Advertiser*, printed a series of statements alleging that the mayor was corrupt, and neglecting his duties as mayor. Defamation is described by Parker B in 108 as, "a publication, without justification or lawful excuse, which is designed to injure the reputation of another, to bring them into hatred, contempt or ridicule".

2-The statement must refer to the plaintiff - If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable. In *Newsted vs London Express Newspapers Ltd*, the defendants published an article stating that 'Harold Newsted, a Camberwell man' had been convicted of bigamy. The story was true of Harold Newsted, a Camberwell barman. The action for defamation was brought by another Harold Newsted, a barber. Since the words were understood to refer to the plaintiff, the defendants were liable. The Delhi HC held in *Harsh Mendiratta vs Maharaj Singh* [vii] that an action for defamation can be brought only by the person who is defamed, and not by his friend or relative.

3- Defamation must be published - Publication means telling the defamatory matter to any person other than yourself. The person has been defamed and unless this is done, no civil action for defamation can be taken. In the case of *Mahendra Ram vs Harnandan Prasad*, it was said that when a defamatory letter is written to the plaintiff in Urdu and he does not know Urdu, he asks a third person to read it, it is not defamation unless it is

proved that at that time the defendant who wrote the letter knew that the plaintiff did not know Urdu.

Question No. 4- The plaintiff can get compensation only if the reason is not very remote. Explain this statement with the help of relevant decided cases.

Answer- Foresight of harm the principle of foresees ability of harm is relevant to such cases. Any event which is wrong may consist of a single consequence or may consist of multiple consequences, i.e. acts, wrongs the damage may be proximate or it may be remote, or it may be very distant. A little elaboration of the cases will perhaps make it clearer.

Scott v Shepherd A threw a light bulb into the crowd, it fell on X. To prevent injury to himself, A was held liable to B. His act was the proximate cause of the injury, even though his act was the most remote from the injury, in so far as the acts of X and Y intervened.

Haynes v Harwood the servants of the defendant negligently left a horse van unattended on a crowded street. A child throwing a stone at the horses caused them to spring and a policeman was injured in attempting to stop them in order to save the woman and children in the street. One of the defenses put forward by the defendant was remoteness of consequence i.e. the child's mischief was the proximate cause and the servants' negligence was a remote cause. Of course, the question of where to draw the line on the recoverability of consequential losses cannot be answered by a mathematically precise formula. Judges have from time to time exercised their discretion and in that process two formulas have been highlighted:-

(1) Test of Reasonable Foresight - According to this test, if the consequences of a wrongful act could have been foreseen by a reasonable person, then they are not too remote. Pollock was a proponent of this test of foresight. He held in the cases of *Rigby v Hewitt* and *Greenland v Chaplin* that "the defendant is liable only for those consequences which could have been predicted by a reasonable person placed in the circumstances of the wrongdoer."

But we should note here that it is not in itself a sufficient defense to say that the defendant did not foresee the consequences. Instead, it will be up to the court to decide, based on standards of reasonableness, whether the defendant should have foreseen the consequences.

This test of reasonable foreseeability lost its popularity to the test of obviousness. But, as we shall see later, it managed to regain popularity among jurists.

(2) The Test of Directness - According to the test of directness, a person is liable for all the direct consequences of his act, whether he could have foreseen them or not because the direct consequences of the wrongful act are not too remote. Further, according to this test, if the defendant could have foreseen any damage, he would be liable for all the direct consequences of his wrongful act. To better understand this particular test of foresight, it would suffice to look at the case of *Re Polemis*.

Re Polemis and Furness, Withy & Co. This case, commonly known as *Re Polemis* case, was the landmark case on the test of obviousness. The courts of appeal held the test of reasonable foreseeability to be the relevant test while the Privy Council later upheld the test of obviousness.

The relevant facts of the case are that the defendants had hired a ship to carry cargo. The cargo consisted of a quantity of petrol and/or benzene in tins. The cans had leaked and some oil had collected in one of the holds of the ship. Now, due to the negligence of the servants of the defendant, a plank fell and sparks were produced as a result. As a result of those sparks, the ship was totally destroyed by fire.

In this case, the Privy Council held that the shipowners were entitled to recover damages even though such damages were not foreseen by the defendants. It was held that since the fire (and subsequent destruction of the ship) was a direct result of the defendant's negligence, it was immaterial whether the defendant could have reasonably foreseen it. **According to Scrutton, L.J.**- "Once an act becomes negligent, the fact that its precise operation was not foreseen is immaterial."

The test of obviousness upheld in *Re Polemis* was held to be erroneous and was overruled by the Privy Council 40 years later in *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd*, also known as the *Wagon Mound* case.

The facts of this case are as follows- *Wagon Mound* was a vessel chartered by the appellants (*Overseas Tankship Ltd*). It was taking on fuel at Sydney Harbour at a distance of about 180 metres from the respondent's wharf. Some welding work was going on at the wharf. Due to the negligence of the appellant's servants, a large quantity of oil spilled into the sea which also reached the respondent's wharf. Due to the welding works going on there, molten metal (from the respondent's wharf) fell, igniting the fuel oil and causing a fire. The fire caused great damage to the respondent's wharf and equipment. In this case, the trial court and the Supreme Court held the appellants liable for the damage caused to the respondents on the basis of the decision in *Re Polemis*. But when the case reached the Privy Council it was held that *Re Polemis* was no longer considered good law the Supreme Court's decision was overturned. It was held that the appellants could not reasonably foresee the damage caused to the defendant and hence they were not liable for the damage.

In the case Lord Viscount Simonds said- "It does not seem consistent with current ideas of justice or morality that, for an act of negligence, the actor should be liable for all consequences, no matter how unforeseeable they may be." He also said that "according to the principles of civil liability, a person is only to be held responsible for the probable consequences of his act". And so in this case, the test of reasonable foreseeability regained its authority to determine the foreseeability of damage and thereafter the liability of a person for the harm caused by him in cases of tort. The *Wagon Mound* ruling was followed in subsequent cases

Hughes v Lord Advocate In this case, workers employed by the Post Office left a manhole on the street unattended. Before leaving the site, they covered the entrance to the manhole with a tarpaulin and placed several paraffin lamps around it. The 8-year-old plaintiff, attracted by the lamps, was playing around the manhole with another child. One of the lamps broke, causing the manhole to explode. The plaintiff suffered damage as a result of the explosion. In this case, the Court held that even though the explosion was not foreseeable by the Post Office workers, the type of damage (burns) was. Therefore, the defendants were held liable. *Doughty v Turner Manufacturing Co Ltd* In this case, the plaintiff was employed by the defendant. Due to the negligence of other workers employed by the defendant, an asbestos lid slipped into a cauldron of molten hot liquid. The resulting explosion injured the plaintiff, who was standing nearby. It was held that the damage caused as a result of the explosion was not such as could have been reasonably foreseen by the defendant, and hence the negligence of the defendant was not foreseeable.

Question No. 5- Describe the objectives of the Consumer Protection Act, 1986.

Answer- The Consumer Protection Act, 1986 was enacted to provide simple and quick access to redress of consumer grievances. The Act introduced the concept of 'consumer' for the first time and provided him with additional rights. It is interesting to note that

the Act does not attempt to protect every consumer within the literal meaning of the word. The protection is for a person who fits the definition of 'consumer' given by the Act.

Kumar, Vineet (12 September 2016). "An Analysis of Consumer Protection Laws in India" A iPleaders. 10 December Retrieved 2016.

Objectives and importance of the Act- The Consumer Protection Act was enacted to provide better protection to the rights of consumers. Before the enactment of this Act, there was no specific act for the protection of consumers and the only remedy available to consumers was under the Torts law i.e. filing a civil suit for damages against the shopkeeper or service provider. This Act is based on the principle of caveat emptor which means that it is the responsibility of the buyer to identify the defects in the goods.

There are several objectives which are sought to be protected under the Consumer Protection Act such as-

(1) To promote and protect all the six rights of consumers, which will be discussed later.

(2) To provide simple and speedy settlement of cases by providing quasi-judicial machinery for redressal of consumer disputes.

(3) The Act also aims to provide affordable resolution of consumer issues.

(4) There shall be a Consumer Disputes Commission, called State Commission, in every State in the country to adjudicate consumer disputes.

A dispute redressed forum has been set up.

Who is the consumer?

According to section 2(1)(d) of the Act, a consumer is a person who buys any goods or services or hires or avails the services of any person for his personal use and not for the manufacture or resale of such goods. For example, a person buying wheat flour for his personal use is a consumer, but a person buying wheat flour for baking roti, which he is going to sell in his bakery, is not a consumer.

Various consumer organizations- To increase consumer awareness, many consumer organizations and NGOs have been established. Consumer Guidance Society of India (CGSI) was the first consumer organization established in India in 1966. It was followed by many others like Centre for Consumer Education and Research (Gujarat), Bureau of Indian Standards In Tamil Nadu, Consumer Organisation Federation Mumbai, Grahak Panchayat Consumer Voice (New Delhi), Legal Aid Society (Kolkata), All India Grahak Panchayat Consumers' Eye on India. United India Consumer Association. Consumer dispute redressed agencies Main article Consumer court District Consumer Disputes Redressal Commission (DCDRC): Also known as 'Jala Commission', it is set up by the state government in each district of the state. State governments may set up more than one district forum in a district. It is a district-level court that hears cases worth up to ₹10 million (US\$130,000) State Consumer Disputes Redressed Commission (SCDRC): Also known as 'State Commission', it is set up by the state government in the state. It is a state-level court that hears cases worth less than ₹100 million (US\$130,000). National Consumer Disputes Redressed Commission (NCDRC): Set up by the central government. It deals with cases worth more than ₹100 million.

"Consumer Protection and National Consumer Disputes Redressed Commission". NCDRC. Archived from the original on 21 July 2011. Retrieved 18 December 2012.

Objectives of the Central Council- The objective of the Central Council is to promote and protect the rights of consumers such as: Right to be protected against the marketing of goods and services which are hazardous to life and property. Right of the consumer to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, to be protected against unfair trade practices.

Right to be assured access to a variety of goods and services at competitive prices, wherever possible; Right to be heard and to be assured that the interests of the consumer will receive due consideration at appropriate forums; Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers Right to consumer education Councils Jurisdiction of Courts/Three-Tier System Jurisdiction of District Forum Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of goods or services and the compensation claimed, if any, does not exceed Rs one crore. District Consumer Forum is now District Commission; will hear cases up to ₹1 crore value. Hindustan Times. 16 September 2020 | Retrieved 1 July 2022.

A complaint shall be instituted in the District Forum within the local limits of whose jurisdiction:

(1) the opposite party or each of the opposite parties, where there are more than one, at the time of filing of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain in the State, or

(2) Any of the opposite parties, where there are more than one at the time of the filing of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the District Forum is allowed, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, join such association; or

(3) The cause of the action arises, wholly or in part.

Consumer courts do not have jurisdiction over cases where services or goods were purchased for a business purpose.

Jurisdiction of State Commission.-Subject to the other provisions of this Act, the State Commission shall have jurisdiction:-

(1) for entertainment

(2) Complaints where the value of goods or services and compensation, if any, claimed exceeds one crore rupees but does not exceed ten crore rupees; and

(3) An appeal lies against the orders of any District Forum within the State and

(4) To call for the records and pass appropriate orders in any consumer dispute

Jurisdiction of the National Commission-

(1) For entertainment-

(2) Complaints where the value of goods or services and compensation, if any, claimed exceeds ten crore rupees is more; and

(3) An appeal against an order of the Mayor of a State; and

(4) To call for the record and pass appropriate orders in any consumer dispute which is pending before or has been decided by a State Commission. However, the Supreme Court of India has held that the jurisdiction of the National Commission under revisional jurisdiction is very limited and can be exercised only when When the State Commission exceeds its jurisdiction, fails to exercise its jurisdiction or there is material illegality in the order passed by the State Commission.

Question No. 6-What do you understand by conversion? Describe its essential elements and methods.

Answer- Conversion means improperly converting someone's goods, such as money into land or land into money, so that a person is deprived of ownership thereof.

According to Salmond, "Conversion is done intentionally so that the person is deprived of the possession and use of that thing".

According to Pollock, "The unauthorized acquisition of the powers and rights of the real owner is called conversion and the person who does this is guilty of the tort of conversion."

According to Prof. Winfield, conversion is defined as an act regarding the value of a person any person who unfairly denies the right or title of the person to the goods.

Essential elements of Conversion - In cases of conversion, it is necessary for the plaintiff to prove the following elements-

(1) Possession of goods - The first essential element for conversion is that the plaintiff should have the right to get immediate possession of the goods. It is not necessary to have ownership of the goods to initiate conversion proceedings. Possession of goods or immediate right to get possession of goods is sufficient. For example, the bailee has only possession of the goods but not ownership, yet he can initiate conversion proceedings against a third party. Similarly, a buyer, who has paid the price of the goods, can file a suit against the seller or any unknown person in relation to conversion. In the case of *Armari vs. Delmiri* (1721), the boy of a chimney sweeper found a precious jewel while cleaning it. He took that jewel to a goldsmith to get it examined. The goldsmith considered the child to be naive and said that the jewel was worthless and tried to pay a very small amount to the child in lieu of the jewel. The child refused to take that amount and asked for his jewel. The goldsmith refused to return the jewel. Thereafter, when the child instituted a suit for conversion against the goldsmith, the court held that he was guilty of conversion. The court further opined that the person who receives a property has the best right over that property against the whole world except the real owner.

(2) Depriving the plaintiff of possession of goods- Depriving someone of the use of his goods for any period of time is considered conversion. Conversion is a form of economic tort that involves intentionally interfering with another person's property. *Founds v Willoughby* (1841). The owner of two horses came aboard a ferry from Birkenhead to Liverpool. The boatman refused to take the horses. The owner refused to take them back to shore, and so the boatswain took the bridle from the owner and turned the horses loose as he disembarked. The owner remained on the boat and did not try to get the horses back. He sued the ferryman for conversion. At the trial the judge told the jury that the defendant boatman, by taking the horses from the plaintiff and letting them out overboard, was guilty of conversion. The boatman appealed.

Modes of Conversion - The tort of conversion may be committed in any of the following modes.

(1) Conversion by Taking- If a person without proper authority takes possession of the goods of another person with the sole intention of exercising dominion over them, he is guilty of conversion. This is because the act would be inconsistent with respect to the general right of dominion which the owner of property has, who is entitled to use it at all times and in all places. An act which is done by taking the goods but without the intention of exercising permanent or temporary dominion may be called trespass, but not conversion. If there is a wrongful taking, even if such act is done under the mistaken but honest belief of being legally entitled, or with the intention of benefiting the true owner, it does not matter. *Milson v Brooker* (1919) The defendant plucked some apples from the branches of a tree overhanging his neighbour's garden and sold them. It was held that the neighbour had the right to cut down the overhanging branches, but he had no ownership of the cut branches or the apples growing on them. The county court judge gave judgment to the owner of the tree. The defendant was entitled to remove the branches but could not use the removed branches (or the fruit) for his own use. The defendant appealed but it was dismissed. During the appeal it was also held that the

fruits remained the property of the owner of the tree, whether they were brought down by the hanging branches or blown away by the wind.

(2) Conversion by detention- This is deemed to have been done when the owner or to the contrary to other persons who are entitled to possession. This shows that the person interfering must have shown an intention to keep the thing in defiance of the plaintiff. This means that mere possession of property without ownership is no conversion and hence there is no tort. It is essential to note here that if a bailee retains the property even after the expiry of the period for which he was bailed, as distinct from acting in a manner totally contrary to the terms of the bailment, he may be liable for breach of contract but it should be noted that he is not necessarily guilty of conversion. We can therefore infer from the above statement that if a person finds the lost property, he cannot be sued for conversion even though he keeps it with him for a long time, unless by refusing to give it up or in some other way he shows an intention to give a description of it adversely to the owner. It should also be borne in mind that a refusal to occupy does not always cease to be a contract because some form of excuse (such as trade union difficulties etc.) is attached to it.

(3) Conversion by Destruction- Destroying another's property is an act of conversion, because it has the effect of completely depriving the owner of the thing. If the thing is destroyed, for example by burning it, it is in a way depriving the plaintiff of his property, even though the defendant did not take or contemplate taking the thing for his own use. If an act is done without the owner's authority, i.e., replacing wine with water is the conversion of the whole wine and so is converting cotton into yarn or grinding corn into flour. *Richardson v Atkinson* (1723) The defendant took some wine from the plaintiff's cask and mixed water with the reagent to make up the deficiency. He was held liable for the conversion of the whole cask because he had converted some of the contents by removing them and destroying the identity of the remaining portion.

(4) Conversion by Sale.- A person who, even though innocently obtains possession of certain goods and disposes of them, whether for his own benefit or that of another, shall be guilty of conversion if these goods belonged to another person who has fraudulently deprived him of them.

The auctioneer is liable to the real owner when he gets possession of the goods consigned by him for sale for the purpose of sale and consequently he sells them. Lord Denning explained this concept thus, when the sale of goods is made through the involvement of the auctioneer, he is liable to the owner for conversion if the goods are sold as a result of provisional bidding or under the hammer, where the seller had no title to those particular goods. Although an attempted disposition, for example, a mere bargain and sale without transfer of possession, i.e., delivery will not be treated as conversion. Thus, when the auctioneer in good faith without notice of the plaintiff's ownership returns the goods back to the person from whom he obtained them without selling them, he is not liable for conversion.

(5) Conversion by Delivery- In this case the question of legal justification is at issue and according to this principle every person is guilty of conversion who without legal justification deprives another person of his goods and hands them over to another in order to change possession. The case of *Hollins v Fowler* is important in this regard.

Defence of conversion- The defendant in conversion cases can present the following defences in his defence-

(1) Lien- This relates to both general and special (particular) cases. In this case it becomes important to note that demand and refusal is not evidence of conversion where the party has a lien over the property. This means that merely demanding the

property from the bailor and refusal on the part of the bailor will not be considered an act of conversion.

(2) Right to stop the Goods in Transit- The defendant raises this defence when the issue of sale of goods is involved i.e. when a good is sold by a person in such a manner that the original owner of the good suffers loss thereby rendering him unable to exercise his right to enjoy the property in it. Here the defendant may argue that the goods are committed for the ultimate purpose in transit i.e. the person being held is not the ultimate holder of the property but is merely a medium or a single unit in a larger chain or that he is not the ultimate beneficiary of the commitment.

(3) Denial of Plaintiff's Rights – In this particular defence, the defendant argues that the property in question belongs to him and the plaintiff has no right over it. This means that in this case, possession of the property has been denied by the defendants. The institution of *jus tertii* becomes important in this regard. It applies when the plaintiff did not have possession of the property but only had the right to possession and this is used by the defendant to protect himself. In a case where the plaintiff was in possession of the goods at the time of conversion, the defendant cannot file a claim for *jus tertii*.

(4) Distress – This is another defence where the goods are taken under distress or under execution. This means that if the goods were taken away or the enjoyment of the property of another was interfered with, it was not done intentionally but was done because of something really more important in the ordinary sense. It can also be said that the law may give more importance to the other act than the negative act of conversion on the part of the defendant. Therefore, it is a strong defense in the eyes of the law.

Question No. 7 - Description of the constitution, jurisdiction and procedure of the Claims Tribunal under the Motor Vehicles Act, 1988 Do it.

Answer - Constitution of Claims Tribunal under Motor Vehicles Act - Motor Accidents Claims Tribunal, Pala was established in 1994 under the MV Act, 1988 to consider applications for compensation claimed under various provisions of the Motor Vehicles Act. The Tribunal is headed by a judicial officer of the level of District Judge. The Court is also designated as Additional. Award of Compensatory Costs in certain cases. (1) No Claims Tribunal shall adjudicate on any claim for compensation under this Act, in any case where it is satisfied for reasons to be recorded in writing that the Motor Vehicles Act 1988 (MV Act) establishes the Claims Tribunal to adjudicate disputes relating to motor vehicle accidents. These tribunals are defined in Chapter XII, Section 165, which empowers the State Government to constitute Claims Tribunals to adjudicate claims for compensation arising out of: Motor vehicle accidents, causing death, bodily injury to persons, and damage to property of third parties.

Setting up of the Tribunal- The government of each state in India is empowered to create special courts, called Motor Accident Claims Tribunals. These tribunals are responsible for adjudicating on compensation for persons injured or killed in motor vehicle accidents and compensation for damage to property caused by these vehicles. The specific areas in which these tribunals operate will be announced in a public government document. Explanation To be clear, when we talk of compensation for accidents caused by motor vehicles resulting in injury or death, it also includes compensation which is mentioned in section 164 of this Act. Section 140(5) of the Companies Act Section 140(5) of the Act empowers the Tribunal (NCLT) to take action either suo motu or on an application by the Central Government or any person concerned. Engineer who has acted fraudulently or has been abetting or conniving with the management of a company in committing a fraud. If the Tribunal finds in the course

of an inquiry that an engineer of a company has, directly or indirectly, acted fraudulently or committed any fraud in relation to the company or its directors or officers, it may make an order directing the company to appoint its own auditors.

Constitution of Claim Tribunal Qualification of Members- According to Section 165 (2), the Claim Tribunal shall consist of such number of members as the State Government may deem fit. Where it consists of two or more members, its Chairman shall be appointed from amongst them. Only such person shall be eligible for appointment as a member of the Claim Tribunal who-

(a) Is or has been a Judge of the High Court or

(b) Is or has been a District Judge or.

(c) Is qualified for appointment as a Judge of the High Court.

Section 165(4) provides that where two or more Claims Tribunals have been constituted for any area, the State Government may, by general or special order, exchange the functions of the Courts therein. It is true that as soon as a Claims Tribunal is constituted, the jurisdiction of the civil court ceases. Claims for compensation under the heads specified in section 110 of the Motor Vehicles Act, 1939 could be maintained in cases where section 165 of the Motor Vehicles Act, 1988 corresponds to section 110 of the 1939 Act. *Aniruddha Prasad Ambasta v. State of Bihar* 'Aniruddha Prasad Ambasta and others. v. State of Bihar and others' is a case decided on 5th October, 1989 by the High Court of Patna (Ranchi Bench). The case number is Civil Writ Jur. Case No. 1152 of 1989 (R). The case involves the allegation that the appellants misappropriated or dishonestly used the amount contrary to the terms of the contract. The court held that the dispute is civil in nature and is not a criminal offence. The case is also known as '*Aniruddha Prasad Ambasta and others vs. State of Bihar and others*'.

Procedure and powers of Claim Tribunals- The procedure and powers of Claim Tribunals are mentioned in Section 169 of the Motor Vehicles Act, 1988. It is as follows-

(1) Summary procedure for holding inquiry- Section 169 of the Motor Vehicles Act, 1988 states that the Claims Tribunal may follow any summary procedure for holding inquiries under section 168 as it thinks best, subject to any rules made in that behalf. This section also states that the Claims Tribunal may choose one or more persons who have special knowledge of the relevant matter to assist it in holding an inquiry for the purpose of deciding any claim for compensation.

(2) Power of court to require evidence to be given, to take oath or to enforce attendance of witnesses, etc.-Section 169(2) of the Motor Vehicles Act, 1988 gives power to the Claims Tribunal to take evidence on oath, enforce the attendance of witnesses and to compel the discovery and production of documents and material objects. The Claims Tribunal also has the power to select one or more persons to assist in the investigation who have special knowledge of the matter relating to the investigation.

(3) Assistance to persons having special knowledge.-Subject to any rules that may be made in this behalf, the Claims Tribunal may choose one or more persons having special knowledge in any matter relevant to the inquiry to assist it in holding an inquiry for the purpose of adjudicating a claim.

Question No. 8- What do you understand by trespass from the beginning? Describe the defense and remedy of land trespass.

Answer - Trespass ab initio - Trespass ab initio is a type of trespass that occurs when someone enters land with legal authority, but then abuses that authority. The term 'trespass ab initio' is Latin for 'trespass from the beginning'. For example, someone may enter land to arrest a criminal or search for stolen goods, but then act in a way that

abuses their authority. The authority is then revoked retroactively, and the entry is considered a trespass from the beginning.

Here are some of the conditions that constitute trespass in the first instance-

(1) The right abused must be a right conferred by law and not by a person.

(2) There must be a positive act of misconduct, not a mere omission or neglect of duty. The law treats the person as an ab initio violator and presumes that he was doing so with a wrong purpose in mind had gone there keeping it.

The Six Carpenters' Case was a trespass case heard in the Court of King's Bench in England and Wales on 1 January 1616. The case involved six carpenters, who entered an inn, were served wine and bread, and paid for it. They then requested more wine and bread, but refused to pay for it. John Vaux brought an action for trespass against the six carpenters. The case was settled when it was decided that no trespass had occurred.

The following points were resolved in the case:-

(1) When someone is given entry, authority, or licence by law and they abuse it, they are trespassers from the start.

(2) The case was simply one of non-payment; this was a case of non-payment and not a case of misconduct. *Elias v Passmore* 1934, 2 K.B 164, where police officers wanted to arrest a man and in order to do so they had lawfully entered the claimant's land. While on the land they seized a number of things, some lawfully and some unlawfully. It was held that they had only trespassed in respect of documents they had unlawfully removed; their wrongful act did not disturb the main purpose of the entry, which was to make a lawful arrest. *Chic Fashions (West Wales) Ltd v Jones* 1968, 2 QB 299, where the Court of Appeal criticised the existence of the doctrine, saying that it contradicted the principle that if an act was lawful, subsequent events could not make it unlawful. In this case the police were searching the claimant's premises for stolen goods, and seized goods they mistakenly thought were stolen. The seizure was held to be lawful, as police entering premises with a warrant have the power to remove anything they believe to be stolen.

Defences of Trespass - In cases of trespass to land, the defendant can obtain immunity from liability on the basis of the following defences in his favour-

(1) Prescription - Prescription is the acquisition of an easement over someone else's property, through adverse use of that property. For example, a neighbor who has used your land to get to his backyard for the past 10 years may have an easement over your property.

(2) Leave and Licence- Leave and licence is a legal provision for trespassing proceedings. There is a good defence. A licence only makes one do a lawful act which, without it, would be unlawful. A licence may be either express, as in the case of a guest in the house, or implied, as in the case of a customer entering the shop.

(3) Re-entry - if a person has been illegally removed from possession of his land he can re-enter that land peacefully to take possession of it. No trespass proceedings can be initiated against him for such entry. Even if he has re-entered forcefully, he will not be liable for trespass, though he may be guilty of breach of peace under criminal law.

(4) Reception of goods- If a person sells land belonging to another person to another person, takes away the goods. The owner of them must enter for the purpose of a prescribed licence. Restatement. Similarly if the goods are on the land of another. Following a felony (involving, being or having the nature of a felony). crime) act of a third person, entry would be proper.

(5) Abatement of Nuisance.- An occupier of land may, with prior notice to another, take over the possession of the adjoining land for the purpose of removing the nuisance thereon.

(6) Necessity - The necessity defense is an intentional defense to tort liability. It involves the argument that the trespass was necessary to avoid greater harm. When considering the necessity defense, courts consider the value to society of the defendant's actions, not their mental state. Save a life - A neighbor trespassed onto property to save a child. The trespassing has greater social significance than the damage to the property. Stay safe - A hiker entered a barn to stay safe during a snowstorm. The hiker argues that entering the barn was necessary to save their life, and the damage to the barn was less than the harm they suffered. Fleeing a crime - A person trespasses while fleeing a potential robbery or other criminal offense.

(7) Execution of Legal Process - For execution of legal process, the plaintiff entering land does not fall under the category of unauthorized entry. For example, entering a house under a warrant to arrest a person, to confiscate his property or to search his house is legal. But this defence can be availed only if the warrant is valid and the procedure prescribed by law has been followed in executing the warrant.

Remedies for Trespass - Plaintiff for trespass committed on his land is entitled to receive the following treatment-

(1) Re-entry - a person entitled to possession may enter or re-enter the premises. He must do so in a peaceable manner under the common law. Right to eject a trespasser.

Hemmings v Pogues Club (1920) 1 K.B. 720 Hemmings, an employee of a golf club, was given a cottage on the golf club land as part of his job. He was then asked to leave the job along with the cottage. When he refused to leave, the golf club officials forcefully entered the premises and evicted him and his family along with their property. The court termed it a trespassing case.

(2) Action of element- It is an immediate remedy for a person who is evicted from 'immovable property' without following due process of law. Section 6 of the Specific Relief Act 1963 specifies this remedy. Even a person who has a high title has no right to dispose of another person without following due process of law. The person disposed of will get his property restored if he takes the law into his own hands. The plaintiff has to prove that he was in 'lawful possession' of the property and has been evicted without following due process of law. The suit for repossession must be brought within 6 months of the settlement. No trespasser can access this remedy.

Example - A stays in B's property while A is away for two days. On his return B evicts A from the property. In this case B cannot be held liable and A cannot seek remedies as he was a mere trespasser who had no possession of the land.

(3) Mesne Profits - The term 'mesne profits' refers to the compensation or damages that can be recovered from a person who is in 'unlawful possession' of the land. When a person is wrongfully dispossessed of any immovable property, along with the recovery of the property, the property is also entitled to the compensation or damages that may be recovered from him One can also claim compensation for the loss suffered during the settlement of the property. One can sue for ejectment and mesne profits in the same suit. Section 2(12) of the Code of Civil Procedure provides for mesne profits.

(4) Distress Damage Feasant - This measure of distress damage is applied to the land it gives the person in possession the right to seize the "encroaching cattle or other property". He can keep them with him until compensation for the damage is paid by the owner of the cattle. It forces the owner of the "property" to pay compensation in exchange for his cattle. The seized item can be anything like cattle, bull, bat, animal, etc.

However, this right can be enforced only if the item is "illegally present on the land, encroached or damaged". Moreover, the owner of a property is strictly advised not to pursue the item once it leaves his land or the real owner takes the item away.

Question No. 9 - Describe the tort committed against movable property and explain the essential elements of trespass to goods.

Answer- Generally the following types of torts can be committed against movable property-

(1) Trespass to Goods- An act of trespass to goods occurs when actual direct or indirect damage is caused to the goods belonging to a person or a thing is wrongfully taken away from the rightful owner without his consent. In other words, the act of trespass to goods means unlawful and intentional disturbance to the possession of goods, wrongfully taking it away from the rightful owner. Example, if A has a friend of B, B owns a motorcycle showroom. One day A is waiting for B to come out of his house. A removes one of the tyres of B's motorcycle without B's consent. A thus commits an act of trespass to B's goods. *Kirk v Gregory (1876)* In this case, on the death of a person, his sister-in-law removed some jewellery from his dead body and placed it in another room with the reasonable belief that the jewellery would be safer in the other room as people would come to pay their respects to the deceased.

Essential Elements of Trespass to Goods - The following elements are necessary for the formation of the tort of trespass to goods.

(1) Possession of the goods by the plaintiff-It is further necessary that at the time of the trespass the plaintiff had actual or there must be constructive possession of the goods or a legal right to immediate possession. Encroachment of goods is also actionable per se, that is, without any proof of actual damage.

(a) The trustee may, without being in possession of the goods, claim the right of immediate possession of the goods to a third party by virtue of his possession of the goods;

(b) The owner of a privilege can sue for trespass against the thing before obtaining actual possession of the thing.

(c) The executor or administrator may take action for trespass to the goods of the deceased before the grant of probate or letters of administration.

(d) In cases of bailment at will, the bailor can maintain a suit for trespass committed by other persons to the things bailed but he cannot maintain a trespass action against the bailee.

Two ships, the Winkfield and the Mexican, collided off the coast of South Africa. The collision caused both ships to be damaged and the Mexican sank. The crew, passengers and some mail and luggage were saved, but the remaining cargo on the Mexican's cargo was lost. Subsequently, the owners of the Winfield admitted that they were responsible for the collision. The Postmaster-General filed a claim demanding the value of the lost mail for which no other claim had been made. The court dismissed the claim on the ground that the Postmaster-General had no responsibility to any person interested in the lost mail. Therefore, the Postmaster-General could not claim its value. The Postmaster-General appealed.

(2) Direct interference with possession - Trespass to land is unlawful, direct and intentional interference with land. It includes the surface of the land, anything permanently attached to the land, the sub-soil underneath and the airspace to a reasonable height and depth above. *Wilson v Lombank Ltd (1963)* 1 WRR On considering previous dealings between the garage and Wilson, an implied term was found between Wilson and the garage but no lien. Wilson had possession of the car, he

had not lost possession of the car at any stage and he had a right to immediate possession. As Wilson could demand access to the car at any time, he had possession of the vehicle whenever he wished. It was also relevant that when the representative collected the vehicle the garage had waived any responsibility, which went to demonstrate that the line of credit did not affect ownership. The garage was found to have been in possession of the vehicle accidentally. As a result, Wilson was entitled to compensation for the total amount of the repairs and the value of the vehicle. Lombank's wrongful possession of the vehicle was an encroachment on Wilson's property.

(3) Interference without legal justification - this occurs when someone interferes with the possession of land without legal justification. This can be done by entering the land or by using an object to do so. *National Coal Board v Evans* (1951) 2 KB 861. Electric cables were laid under county council land by the National Coal Board (NCB) or its predecessors, so far as can be established, without the knowledge of the council. The council contracted JE Evans & Co (Evans) to dig a trench across the land. Evans had no knowledge or indication that there was a cable. While excavating the ground the cable broke and was damaged. The NCB brought a cause of action for trespass.

(2) Detinue - An act whereby a person wrongfully takes possession of the movable property of another. The remedy provided by English law is the action for detinue, i.e., specific recovery of the movable property detained from the person in possession. The person who wrongfully detains the movable property is known as the wrongful detainer. For the purpose of recovery of the detained movable property the plaintiff has to prove-

(1) That he has a lawful right to possess the movable property.

(2) The defendant has wrongfully taken possession of the movable property. Did it.

Example- If A gives his pressure cooker to B for repairs. Later A pays B for the service, but even after receiving the payment B refuses to give the cooker to A. This act of B is an act of detaining.

Dhyan Singh Shobhasingh v. Union of India AIR 1958 SC 274 Every person is guilty of conversion who, without legal justification, deprives another person of his goods by handing them over to another so as to change possession. The Torts (Interference with Goods) Act 1977 (TIGA 1977) is a law which amends the law in England, Wales and Northern Ireland in relation to torts affecting goods, such as conversion. The Act defines wrongful interference with goods as: conversion of goods, trespass to goods, negligence resulting in damage to goods, and any other tort resulting in damage to goods. The Act also provides the following relief in wrongful interference proceedings- An order for delivery of the goods and payment of any resulting damages. TIGA 1977 also abolished detainers, which allowed a landlord to keep goods if money was owed. Landlords were required to pay a penalty when disposing of any goods left by tenants. Any landlord who disposes of or sells goods left by a tenant without following the correct procedure set out by TIGA 1977 could find himself liable for damages. TIGA 1977 came into force on 1 June 1978.

(3) Conversion - Originally the concept of conversion was used by the court as a remedy whose purpose was to convert the possession of movable property to the rightful person, i.e. if a person who found the property of another refused to give it back to the rightful owner, then by conversion the court provides the remedy to the plaintiff. But as times change, conversion is used to mean wrongful taking or use of the property of another and the remedy available to the plaintiff is known as an action of conversion. To maintain an action of conversion, the plaintiff has to prove

- (1) That he has a lawful right to possess the movable property.
- (2) That the defendant wrongfully converts the possession of the movable property.

Question No. 10- Write a short note-

(1) Injunction - The definition of an injunction in law is a legal remedy imposed by a court in a civil proceeding. In simple terms, the definition of an injunction is when one of the parties to a certain action must either do something or refrain from doing something. The meaning of an injunction also includes monetary penalties or legal ramifications for failing to comply with the terms of the injunction, such as jail time. Failure to comply with the injunction law puts someone in contempt of court. An injunction is binding, meaning that the agreement or decision reached in court must be followed or obeyed.

Injunctions have been filed for hundreds of years. For example, in the 14th century, the Chancery Court in England was granting injunctions as a legal remedy for decisions made by common law courts. The Court of Chancery was an equity court that sought to provide remedies and solutions that were not granted by common law courts. Equity courts can grant non-monetary remedies such as injunctions and writs. However, in 1873 In 1789, the common law courts and the Chancery Court merged and began to grant injunctions and award damages to wronged parties.

Being the defendant in an injunction case means filing an injunction against yourself. The plaintiff filing the injunction has asked the court for relief to stop the defendant from starting or taking action. For example, if a new company wants to build on top of an old cemetery, the owner of the land might file an injunction against the company. The landowner would be the plaintiff and the company trying to build would be the defendant. The injunction would be appropriate in this case because it prevents irreparable harm. If the landowner were to wait for the case to be heard, it would be too late and the company would have already built on the graves. In this case, filing an injunction means trying to get the courts to order someone to stop doing something before irreparable harm or damage occurs. Filing an injunction against yourself means being told by the courts to avoid doing something or be prepared to suffer legal consequences or penalties.

Kinds of Injunction - Injunctions are of the following two kinds.

(1) Temporary and Perpetual - A permanent or perpetual injunction is issued at the time of final judgment, i.e., granting final relief to the applicant. In the judgment, the court may state that the temporary injunction granted during the pendency of the case will continue and remain in force even after the case is settled. Such an injunction is a permanent injunction that prevents or restricts the other party from doing any act or claiming any right contrary to the rights of the applicant even after the case is settled.

(2) Probable and Mandatory - A preventive injunction is granted to restrain a person or entity from doing some act or action. It prevents the continuation of a threatened injury or ongoing wrongdoing that will harm the applicant or infringe the applicant's rights. A mandatory injunction is granted to rectify a wrong that has already happened before the injunction is issued. The purpose of a mandatory injunction is to restore a wrongful state of things to the right order. For example: It prevents the seizure of property.

A warrant is issued against the other party to deliver the possession of the property to its rightful owner.

(2) Judicial Remedies- Judicial remedies are those remedies which are provided by the court to the person suffering from tort as a result of legal proceedings. Thus, to get

judicial remedies, it is necessary to file a suit. For convenience, judicial remedies can be divided into the following categories-

Damages - Damages, or legal damages, are amounts of money awarded to restore the injured party to the position they were in before the tort occurred. They are paid to help the plaintiff recover the losses they have suffered. Damages are the primary remedy in a cause of action for tort. The term 'damages' should not be confused with the plural of the word 'damages', which generally means "harm" or "injury."

Kinds of damages- The types of damages which are mainly demanded and accepted by the court in a tort proceeding are described below-

(a) General and special damages – when the defendant's wrongful act and there must be a direct causal relationship between the harm suffered by the plaintiff. For example, a person I, due to his negligence, crashes his car into a person B who has a rare bone disease. In this case, the plaintiff will be compensated for the actual damages suffered, without taking into account the plaintiff's rare bone condition. General damages are ascertained by calculating the amount of actual loss suffered by the plaintiff. For example, bodily pain and loss caused by it, or if the plaintiff's quality of life is reduced. Special damages are awarded by proving special loss. There is no straitjacket formula for getting the actual amount. The plaintiff just has to prove how much he has suffered. For example, medical expenses, loss of wages (potential), repair or replacement of lost or damaged goods or property. *Wagon Mound Case (Overseas Tankship Ltd. v Morts Dock & Engineering Co.)* In this case, the defendants owned a ship (The Wagon Mound No. 1). The plaintiffs were the owners of a dock called Morts Dock. The negligence of the defendant caused a spark which set fire to some cotton waste floating nearby, causing damage to the plaintiffs' wharf and their ship, the Wagon Mound.

(b) Punitive or exemplary damages- Punitive damages, also known as exemplary damages, are additional damages awarded to the plaintiff over and above the actual harm they suffered. Their purpose is to punish the defendant and deter others from committing similar acts.

Courts generally only award punitive damages if the plaintiff can prove that the defendant acted knowingly or engaged in wanton and willful misconduct.

(2) Specific restitution of property- Specific restitution of property is the third form of judicial remedy. Under this remedy, if a person has been illegally removed or evicted from the possession of his movable or immovable property, he has the right to get that particular property back. In immovable property cases the plaintiff is always given repossession of the immovable property. But in case of movable property, the owner of the property either recovers the property or receives compensation for it in the form of compensation. The object of this remedy is to restore the plaintiff to the position he was in before the wrongful act was committed. In this context, eviction proceedings are taken to reclaim movable property and eviction proceedings are taken to regain possession of immovable property.

(3) Doing business under false name (Passing off) – When a person trades under a false name, mark or trademark whoever sells or makes or trades anything in such a manner that it deceives the public that the said thing is made by some other person - he commits the tort of trading under a false name. It is a general rule that a person cannot represent his things as things to others. If he does this then it is called "passing off" i.e. doing business under a false name. That is a special kind of harmful lie. In this type of tort there is no condemnation of the plaintiff's goods, rather the defendant merely tries to show that the goods are similar to the plaintiff's goods.

“Passing off is a supplement to the trademark law. If a trademark for a thing is registered then passing off constitutes an infringement of the right of registration and in such cases passing off and infringement of the trademark constitute two torts simultaneously.

Whyst Hudson & Company Ltd. Versus Asian Organization Ltd. (1964) 1 W.L.R 1466 The case was heard by the Privy Council on 16 November 1964. In the case, the defendant sold sweets in red cellophane wrappers similar to the plaintiff. This caused many consumers to purchase the defendant's sweets thinking they were the plaintiff's popular cough sweets. The plaintiff in the case sold medicated cough sweets in red cellophane wrappers. The defendant's sweets caused many consumers to buy them, thinking they were the plaintiff's popular cough sweets.

Hiralal Prabhudas vs. Ganesh Trading Company A.I.R. 1985 Bombay This is an application under Section 56 of the Trade and Merchandise Markets Act, 1958. The petitioner Banik Rubber Industries is seeking cancellation of a trade mark which has been registered by the Registrar of Trade Marks in Class 25 under registration number 377580. In the Trade Marks Register. The petitioner-respondent No. 1, Shri K.B. Rubber Industries is also seeking rectification of the Register of Trade Marks by deleting the above entry from the Register of Trade Marks.

(4) Injurious Falsehood and Slander of Title- Injurious false statement means saying such things about a person which cause harm to him, that is, after hearing his slander, people knowingly behave or act towards him in such a way that it causes harm to him. The tort is very similar to the tort of defamation because the statements of both cause harm to the plaintiff. But still there is a lot of difference between the two. In both harmful statement and injurious statement, there is a statement which is harmful towards the plaintiff. But the reputation of the plaintiff in defamation is damaged. But in case of injurious false statement his reputation is not affected but he suffers financial loss. Thus an important type of tort is defamation against the right of ownership. The plaintiff suffers special damage as a result of the defamatory and malicious statement against the ownership rights of the property. If the damage is caused to both corporeal or intangible property of the plaintiff. Statements derogatory to a person's property rights may be in the form of written, printed or spoken words. But the defendant will not be liable for a statement derogatory towards the plaintiff's property if he makes the statement out of laziness. Or it remains that his goods are better than the plaintiff's goods.

Thus, if the defendant knowingly and maliciously makes statements that the plaintiff has stopped carrying on his business and the customers, relying on these statements, stop visiting his shop, then it would be the tort of Injurious Falsehood. Because it results in monetary loss to the plaintiff for which the defendant will be liable. But with the passage of the English Defamation Act, 1952, the situation has changed. According to this, if the words are like this. If the plaintiff is bound to suffer financial loss in connection with his profession, business, employment or occupation, then it is not necessary to prove special damage.

Some elements of the tort of injurious misrepresentation and fraud appear to be similar. The plaintiff suffers loss as a result of the misrepresentation of both. Still, there is some obvious difference between the two which is similar. Danger Or the false statement is made directly to the plaintiff, who suffers loss by acting on it, while the injurious false statement is made to a third party, which causes loss to the plaintiff. In short, the first false statement is made to the plaintiff. In the second, the false statement related to the plaintiff is made to some other person.

(5) Specific restoration of property-The third type of judicial remedy is specific restoration of property. It is granted when the plaintiff has been wrongfully evicted from his land and goods. Thus, a person who has been wrongfully evicted from immovable property or any specific movable property is entitled to recover such property. When a person is wrongfully evicted from his movable or immovable property, the Court may order that specific goods should be restored to the plaintiff. Example- Action for ejectment, recovery of property in aid of action for detainer etc. Specific

According to section 6 of the Eviction Relief Act, 1963, a person who is wrongfully evicted from immovable property is entitled to recover immovable property. As per Section 7 of the Specific Relief Act, 1963, a person who is wrongfully dispossessed of movable property is entitled to recover the movable property. Restitutionary Remedies: These are also aimed at restoring the plaintiff to a state of "wholeness", as close as possible to the position he held before the tort occurred. These may include-

- **Compensatory damages** - These are similar to damages, except that they are calculated based on the tortfeasor's profits rather than the plaintiff's losses.
 - **Replevin** - Replevin allows the victim to recover personal property they lost due to the tort. For example, they can recover stolen property. In some cases replevin can be combined with legal damages.
 - **Eviction** - This is when the court evicts a person who is wrongfully occupying real property owned by the plaintiff. This is common in cases of persistent encroachment.
 - **Property lien** - If the defendant is unable to pay damages, the judge can place a lien on his real estate, sell the property, and give the proceeds to the tort victim.
- (6) Defenses of Defamation** - The defendant in a defamation suit brought by the plaintiff. The following arguments can be presented in defence by the plaintiff-

(1) Truthfulness, (2) Nippon and justified commentary, (3) Devotion, (4) Apology.

(1) Truth - In defamation cases it is not necessary for the plaintiff to prove that the statement of the defendant is false because the law presumes in favour of the plaintiff that the defamatory statement is false but the defendant can refute this presumption by giving evidence that his statement is true. Thus the truth of the defamatory statement is a complete and good basis for defence in civil proceedings for defamation. The basis of this defence is that the law will not allow a person to recover compensation in respect of his character which the person does not possess or which he can never possess. In fact, defamation damages the reputation of a person and if people start thinking ill about him after hearing the truth about that person, then it only indicates that the reputation of that person has been reduced to a real and reasonable level but under criminal law the defence of truth is not considered a complete basis for defence. According to Section 6 of the Libel Act, 1843 of England, the defendant can take advantage of the defence of the truth of the statement only if the publication of that statement was done in public interest. Under the first exception of Section 499 of the Indian Penal Code, 1860, it is necessary to prove that the alleged publication was not only true but also in public interest.

In such cases the burden of proof is on the defendant. The defendant should prove that the statement was true and not the plaintiff that the statement was false. This defence is also very dangerous because the unsuccessful attempt to prove this defence increases the damages. If the defendant has put many allegations on the plaintiff by his statement then the burden of proof is on the plaintiff.

If he has made allegations, he must prove the truth of each allegation.

(2) Fair and bonafide comment - Fair and bonafide comment on matters of public interest And fair and justifiable criticism is a good ground for defence in defamation proceedings. In any time system of law, fair and justifiable criticism is considered essential for the efficient functioning of a public institution and office. In the present era, it has been recognized as an essential element of freedom of expression. For this defence, the following elements must be present.

(i) It should be an expression of opinion and not a firm statement of fact.

(ii) The comments must be justified.

(iii) The comment has been made in public interest.

(i) Expression of property Fair and just- The defence of comment must be an expression of opinion and not an assertion of fact. There is a difference between a comment or criticism and a statement of fact. Comment or criticism means expressing opinion on a particular fact or drawing an inference from that fact. The language used and the context of the statement are relevant in determining whether the defamatory statement is an expression of opinion or an assertion of fact. For this defence it is necessary that the fact on which opinion has been expressed is true and exists. If the fact is imaginary or false or does not exist then this defence will not apply.

(ii) The comment must be justified - Criticism will be considered as a comment only if it is justified. For someone's comment to be justified, it is necessary that the comment is based on true and existing facts. Comment made on false and non-existent facts can never be justified. If the facts on which the comment has been made are false or do not exist, then the defendant cannot argue in his defense that he has made the comment honestly and in good faith.

(iii) The comment should be in public interest- To get immunity from responsibility on the basis of fair and justifiable comment, it is necessary that the criticism on a fact has been made in public interest. Those matters or subjects which attract the attention of the general public or on which the general public is entitled to discuss or criticize are called matters or subjects of public interest. For example, state affairs, public works of ministers and other government officials, administration of justice, public institutions and local authorities etc. are matters of public interest.

(3) Privilege - The right of a person to publish a false and incorrect information under certain circumstances defamation proceedings cannot be initiated against a defamatory statement. This ground of immunity from the liability of defamation is called the defence of privilege. The circumstances or occasions in which this defence can be argued are called 'privileged occasions'. The things said on these privileged occasions are called 'privileged statements'. 'Privileged statements' are an exception to the general rule that a person attacks the reputation of another person at his own risk.

In the words of Prof. Winfield, there are some occasions in which freedom of expression without fear of defamation proceedings is more important than the protection of a person's reputation. Privileges are of the following two types-

(1) Absolute Privilege

(2) Conditional Privilege

(1) Absolute Privilege - Such cases come under absolute privilege. In which absolute freedom of expression is given such supreme importance that under no circumstances defamation proceedings can be initiated. The person insulted by the statement made on the occasions of absolute privilege, even if it is found to be false, insulting and motivated by malicious feelings, is not considered entitled to any legal remedy. The defense of

absolute privilege is based on the public policy that personal interest is subordinate to public interest. This is the reason why fearless speech and freedom of expression are given priority and primacy over the reputation and honor of the person. The defense of absolute privilege applies in the following cases-

(i) Parliamentary Proceedings- Statements or speeches made by members of either House of Parliament during the proceedings of Parliament are considered absolutely privileged. Defamation proceedings cannot be initiated against members of Parliament for such statements or language. In this regard it is immaterial whether the statement was false and defamatory and motivated by malicious intent. It is noteworthy that only those statements of members of Parliament are absolutely privileged which they make within the boundary walls of the House during the proceedings of Parliament (i.e. when the session is going on). Thus a statement made by a member of the House outside the House is not privileged.

In India too, under Article 105 of the Constitution, no defamation proceedings can be initiated against any member of Parliament for a speech delivered in the House, even if the speech is false or motivated by malicious sentiments. Similar immunity is also available to members of state legislatures under Article 194 of the Constitution.

(ii) Publication of Parliamentary and Judicial Proceedings- Publication of parliamentary proceedings with the authority and permission of the House is completely privileged. Under Articles 105 (2) and 194 (2) of the Indian Constitution, such immunity has been provided for publication of proceedings of both the Houses of Parliament and State Legislatures. Similarly, statements made by judges, lawyers, witnesses and parties to the dispute during judicial proceedings are also not allowed to be published. Publication also falls under absolute privilege. In such publication it is immaterial whether the statement was false or was made with malicious intent. This immunity is based on the principle of public policy.

(iii) Judicial proceedings- A defamation suit cannot be instituted for written and physical statements made by the judge, lawyer, witness and parties to the dispute during judicial proceedings in any court. Such statements fall under the category of completely privileged statements, even if the statement is false and motivated by malicious intent without any legal justification. This defence of privilege is not limited to judicial proceedings alone. Rather, it also applies to tribunals and quasi-judicial proceedings. This defence is based on the principle of public interest. The main objective of judicial privilege is to establish an independent judiciary so that the work of judicial administration can be performed impartially without any kind of fear or pressure. Immunity for a statement under this privilege can be obtained only if the statement is made during judicial proceedings and is related to the controversial subject matter.

(iv) State proceedings- Communications sent by one official to another in the discharge of his duties in relation to the state's activities are completely privileged. This privilege is also based on public policy because in order to properly and effectively perform judicial, legislative and state functions, it is necessary to give state officials complete freedom from defamation.

(2) Qualified Privilege- Conditionally privileged statements are those statements which, despite being false and defamatory, are not actionable unless the plaintiff proves malice. In such cases, freedom of expression is given priority over the right to reputation and tort law only to a certain extent. Therefore, conditional privilege is a right under which the uttered is not liable for defamatory words uttered in a particular

situation unless the plaintiff proves that the said defamatory words were directly motivated by malicious intent.

The defence of conditional privilege is based on the fundamental principle that the person making a statement regarding the plaintiff is under a legal, moral or social duty to make such statement or has an interest in it and the person to whom the statement is made.

Conditional privilege can be defended by bringing the following cases-

(i) Statements made in the discharge of duty- Statements made while discharging any kind of duty, whether legal, moral or social, fall under the category of conditional privilege. It is necessary that the person to whom the statements are made should be under the corresponding duty to receive such statements. A police officer submitting a report to his superiors regarding the investigation of a crime is a common example of conditional privilege based on legal duty. For example- A inquires from B about his servant, whom he had fired two years ago for stealing and whom B now wants to employ. In connection with this inquiry, B's statement that the servant is a thief is excusable under conditional privilege.

(ii) Statements made to protect any interest- Statements made by a person to protect his interest even without any legal, moral or social duty are privileged. Under the ninth exception of section 499 of the Indian Penal Code, 1860, it is not defamation to cast aspersions on the character of another. But this is only when it is for the protection of the interest of the person making it or of any other person or for public welfare. The allegation has been made against him with good intentions.

(7) Theories of Negligence - Negligence are considered to be of special importance in tort law because the tort of negligence is expanding to more and more areas of tortious liability. Two conflicting theories are presented regarding the nature and definition of negligence, which are as follows:

(i) Subjective Theory - According to the subjective theory, negligence is a mental state which is different from intention. As a mental element, intention and negligence are usually a way or method of committing some torts. The purpose or feeling which motivates an act is called intention. In fact, intention is a mental act by which the desire is transformed into action. It consists of the combination of the prior knowledge of the result of the harmful act and the desire to achieve that result by the act. Negligence as a mental element means complete or partial ignorance by the defendant about his conduct and the results of the conduct. In some cases, there may be complete knowledge of both the conduct and its results, but in no case is there a desire for those results of the conduct and this is the criterion for the distinction between negligence and intention. For example, a motorist, who is in a hurry, crashes into a pedestrian while driving at high speed on a crowded road. Here the driver does not want to cause an accident and along with his desire to drive at high speed, he also exercises equal caution. He does as much as he can. He is negligent because he has by his carelessness put the pedestrian in danger of accident. Because he is not willing to subordinate his desire for speed to his desire to drive carefully.

(ii) Objective Theory- According to the objective theory, negligence is not a specific mental state but a form of conduct. In other words, negligence is an independent tort. The main proponent of this theory is Parent. According to many, "negligence is the antonym of diligence" and no one describes diligence as a mental state.

(8) Res Ipsa Loquitur- According to the general rule, it is the duty of the plaintiff to prove the negligence on the part of the defendant. But there are some cases in which the plaintiff does not have to prove the negligence on the part of the defendant, rather it is

assumed that in the material circumstances there was negligence on his part. This principle is also known as the principle of 'pratyaksh kim pramasham'. But the cases of self-evidence are exceptions to the said general rule. In some circumstances, the accident itself tells its story and it is sufficient for the plaintiff to present only those facts before the court in which the incident took place. This is also appropriate, otherwise sometimes it becomes a difficult task for the plaintiff to prove negligence on the part of the defendant because only the defendant has full knowledge of the real causes of the accident. In such cases, it is sufficient for the plaintiff to prove the facts and circumstances in which the accident occurred and then the court presumes that there was negligence on the part of the defendant. In such a case, it is sufficient for the plaintiff to prove only that the accident occurred and then the defendant has to prove that the accident occurred due to some other reason and not due to his negligence.

This is a rule of evidence law- In the case of Madhya Pradesh State Road Transport Corporation vs. Sudhakar AIR 1968 M.P. the court has expressed the following opinion about the application of the principle of 'pratyaksh kim praman'. "This principle is not a rule of law, it is nothing more than a rule of evidence affecting liability. It is based on common sense and its purpose is to enable justice to be done in a situation where the facts relating to the cause-effect relationship and the precaution used by the defendant are not known to the plaintiff from the beginning and they are or should be known to the defendant."

There are two conditions for the application of the rule 'cause itself is evidence' –

(1) The thing causing the harm should be under the control of the defendant or his servants.

(2) The event is such that it could not have happened without the negligence.

In the case of Scott vs. Landon & St.'s Atherton Mails Company (1865) 3 H.L.C. 596-601, the above test has been stated in the following words- Generally, in case of negligence, reasonable proof is necessary, but where the thing is shown to be under the control of the defendant or his servants and the accident is such which could not have happened without the negligence of those in whose control it is normally, then in the absence of any reasonable cause shown on the part of the defendant, there is reasonable proof that the incident has happened due to his lack of care.

Byrin v. Bodley (1863) 2 H. & C. 722 In this case the plaintiff was walking on a public road. As he was passing near the house of the defendant, a flour keg fell on his head from the upper floor window and he was injured. All he could say was that while he was walking on the road, suddenly an object fell on him and he became unconscious. The court held that the incident itself proves the negligence of the defendant. In such a situation it is the duty of the defendant to show that proper care was taken on his part because unless there was negligence the keg could not have come out of the warehouse by itself and come out of the window. In such a situation it would be absolutely foolish to ask the plaintiff to call witnesses from the warehouse of the defendant.

Question 11. Define trespass. What are the essential elements of trespass? What are the remedies for trespass? What is provided under the tort law?

Answer-Trespass means entering someone else's land without any legal justification or interfering with the possession of the land. In this way, a person unreasonable interference with another person's right to possession of his land by an unauthorized person is trespass to land. It is well known that every person has the exclusive right to enjoy whatever he pleases. One of the purposes of law is to protect this right. Therefore, any invasion of personal property, however small, is trespass and the defendant is liable for it.

Interference in the right of possession for land trespass it is necessary that there should be direct interference in the right of possession i.e. interference should be done through some tangible object. The mere entry of the boundary is trespass, but entry is not only when someone goes on the land but also when any other object enters someone's land. If the defendant puts one of his feet on the plaintiff's land, then from the point of view of law it is considered equivalent to entering that land up to one mile.

In the case of Allin v. Loftus Iron Company (1874) L. R. 10 C. P. the court held that for the tort of land trespass it is not necessary to actually enter the land. The tort of land trespass is constituted by merely touching the land.

In Gregory v Piper (1929) 9 B. & C., the defendant kept a pile of rubbish on his land which, as it dried, spread out and touched his neighbour's wall. It was held that the defendant was guilty of trespass. Similarly, putting a ladder on a neighbour's wall without his permission is also trespass.

In the case of Madhav Vittal Kuddha v. Madhav Das Vallabh Das AIR (1979) Bombay, the defendant was a tenant of the plaintiff's house and had been living there for years.

He lived on the first floor of the defendant's house. He used to park his car in the compound of the plaintiff's house. The plaintiff alleged that the defendant had no right to park his car in the compound of his house without his permission and that he had committed a trespass by doing so and instituted a suit for a permanent injunction to restrain him from parking the car.

The defendant argued that he had the right as a tenant to park the car in the compound of the plaintiff's house with his permission because parking the car was an essential part of the facilities provided to the tenant and hence he was not guilty of trespass. The court held that tenants living in multi-storey buildings have the right to park their car in the compound of the house if there is space available and it can be done without causing any inconvenience to other persons. This right can be exercised with the permission of the landlord.

Essential Element of Trespass to Land – Trespass to land has the following two essential elements –

- (1) The plaintiff's possession of the land
- (2) Unreasonable interference with this authority.

(1) Possession on the Land- The first essential element for an action for trespass to land is that the plaintiff should have possession of the land. Since trespass is a wrongful act done against the possession of land, therefore, action for trespass can be taken by a person who is in actual possession of the land. A person is considered to be in actual possession of the property who is entitled to maintain immediate and exclusive possession of the property. Thus, for an action for trespass, it is not necessary for the plaintiff to have title or ownership to the property. For such action, mere actual possession of the property is sufficient. Hence If the owner of the property is not in possession of the property, he cannot take action for trespass. For example, a landlord cannot take action for trespass committed against a property which is in the possession of a tenant. In such cases, only the tenant has the right to institute a suit against trespass. **In the case of Lavender vs. Vats (1942) All. E.R. 72,** the same situation holds for the lessor and the mortgagee in cases of lease and mortgage. For trespass against the property held on lease or mortgage, the lessee or mortgagee can not only take action against an unknown trespasser, but he is also entitled to take action for trespass committed by the lessor or the mortgagor. But if the trespasser has caused some actual

damage to the property which affects the vested interest of the landlord's successor in the said property, then the landlord can take action against the trespasser. Action for trespass cannot be taken on the basis of mere physical possession or use of the property without ownership.

For example, a person staying in a lodge cannot file a suit for trespass against the room in which he is staying because he does not have possession of the room. Similarly, a guest staying in an inn or a private house, a passenger sitting in a bus or train, a spectator sitting in a cinema hall and a domestic servant or other member of the family cannot file a suit against a trespasser.

Trespass by Joint Owners- When two or more persons are joint owners of a property, the possession of that property by any one person will be considered as the possession of all the joint owners. As a result, if in the normal course of use of the joint property, any one person destroys the joint house or property, digs out soil from there or does not allow the other joint owner or his servant to enter, then he will be considered guilty of trespass. If a joint owner has built a house on the land of the joint owners, then it can be demolished on the order of the court. The same principle applies in the cases of tenants as well.

(2) Interference with Possession- The second essential element for action for trespass to land is that the defendant has unreasonably interfered with the possession of the land. Trespass to land can take the following forms-

(i) Trespass - Trespass by the defendant into any land or house in the possession of the plaintiff is a very common form of trespass. Even the slightest violation of the boundary of the plaintiff's land is sufficient for trespass, such as putting a hand inside a person's window or sitting on his boundary wall is trespass. Thus, if a person puts only one foot on any land without any legal authority, then under the law it is trespass like walking on that land to a lake. But cutting a person's water or gas pipe or electricity line without violating the possession of the land and depriving him of such facilities is not trespass. A person entitled to enter the land for a particular purpose also becomes guilty of trespass in the event that he enters for some other purpose. The right to move on the road is its main example. Therefore, if a person sits or parks a cart on a road instead of moving on it, then he will be considered a trespasser.

Trespass to Subsoil Generally, the person who has possession of the surface of the land is also the occupant of the subsoil. But sometimes the surface of the land and the subsoil may be in the possession of two different persons. Unreasonable interference with the subsoil is considered trespass against the occupant of the subsoil. For example, the occupant of the subsoil can take action for trespass for activities like extracting soil or minerals from the subsoil, digging a pit under the ground, making a mine, etc.

(ii) Remaining on Land - If a person has been given permission by the landowner to stay on his land for a certain time or for a specific purpose and that person remains on the land even after that time has passed or that purpose has been completed, then that person will be considered an unauthorized trespasser. In this way, a person who enters with the permission of the occupant becomes guilty of trespassing when he refuses to leave the place on the request of the occupant. For example, a person buys a ticket and starts watching a movie in a cinema hall. If he does not leave the cinema hall even after the cinema show is over, then he will be responsible for trespassing.

(iii) Trespass by Placing Things on Land - Trespass can be committed by placing an object on the ground or by making it touch the ground. Hammering a nail on someone's wall, throwing a brick or stone through the window of a house, placing a ladder on the house or hanging a roof, etc.

Remedies for trespass- The plaintiff is entitled to the following remedies for trespass committed on his land.

(1) Re-entry - If a person is evicted from his land without justification, he is entitled to re-enter his land by using reasonable force. Such entry is not a crime of trespass. For example, **in the case of Hemmings v. Stoke Poges Golf Club (1920) 1 R.B. 720**, the plaintiff was the tenant of the house of the defendant. The defendant gave him notice to vacate the house but he did not vacate the house. Thereafter the defendant entered that house and using reasonably necessary force evicted the plaintiff and all his belongings from the house. When the plaintiff instituted a suit against the defendant for assault, assault and trespass, the court held that the plaintiff was not liable because the trespasser can be evicted from the land or premises by using reasonable force.

(2) Action for Ejectment- If a person has been illegally evicted from his land and another person has taken possession of that land, then for that person to regain possession of his land, it is sufficient for the plaintiff to provide proof of possession of the land. In such proceedings, the argument of Jus tertii presented by the defendant is not valid. In India, this remedy has been provided under Section 6 of the Specific Relief Act 1963.

(3) Intermediate profits - The plaintiff is entitled to receive the loss that he suffers after being evicted from his land and during the period of regaining possession of that land. Such compensation is called intermediate or internal profit. Such compensation includes both the profit made by the defendant and the loss caused to the property of the plaintiff.

(4) Distress Damage Feasant - This is an ancient extra-judicial remedy under which disturbing things or animals are stopped on one's own land. The occupant of the land can use this right on such things or animals which are trespassing on his land and causing damage. The occupant can keep the animals or things thus stopped with him until the animals are released Or the owner of the object does not compensate the occupant for the damage caused. But the right to confiscate the damaged object is subject to the following conditions-

(i) The seized animal or thing can only be kept with one until the damage is compensated. They cannot be sold to get compensation.

(ii) The animal or object must be stopped at the time it is causing damage. If the animal is running away after causing damage, it cannot be chased and caught for confiscation.

Question 12. Who is a consumer? Describe the features of the Consumer Protection Act, 2019 and the rights of consumers.

Answer-The main objective of the Consumer Protection Act 2019 is to establish effective administration and necessary authority to solve the problems of consumers in time and also to protect the interests of consumers. In this sense, all of us who receive various types of services will be called consumers. Under this Act, that person is considered a consumer. Who purchases and consumes goods and services to fulfill his needs. This definition covers all types of transactions whether online or offline. It is important to know here that the person who buys goods and services for sale or for commercial purpose is not considered a consumer.

Characteristics of Consumer Protection Act, 2019

(1) Establishment of Central Consumer Protection Authority - The Consumer Protection Act, 2019 provides for the establishment of a Central Consumer Protection Authority which will protect, promote and enforce the rights of consumers. The authority will also look into matters related to unfair trade practices, misleading advertisements and violation of consumer rights.

- The Central Consumer Protection Authority will also have the power to impose penalties on violators and pass orders for recall of goods sold or withdrawal of services, discontinuation of unfair trade practices and refund of price paid by consumers.
- The Central Consumer Protection Authority will have an investigation wing to investigate violations of consumer laws. The Central Consumer Protection Authority will be headed by a Director General.

(2) Rights of consumers: The Act provides six rights to consumers-

- (i) Right to be informed about the quantity, quality, purity, potency, price and standard of goods or services.
- (ii) The right to be safe from dangerous goods and services.
- (iii) The right to be protected from unfair or restrictive trade practices.
- (iv) Availability of a variety of goods or services at competitive prices.

(3) Prohibition and penalty on misleading advertisements – Central Consumer Protection Authority (CCPA) has this power he would be required to impose a fine on those making and promoting misleading or false advertisements (like Lakshmi Dhan Varsha Yantra) and sentence them to imprisonment for up to 2 years.

If a person or company repeats this offence repeatedly, he/she can be fined Rs 50 lakh and imprisoned for up to 5 years.

(4) Consumer Disputes Redressed Commission- This Act provides for the establishment of Consumer Disputes Redressed Commissions (CDR) at the national, state and district levels.

The Consumer Disputes Redressed Commission will resolve the following types of complaints-

- (i) Overcharging or unclear pricing
 - (ii) Unfair or restrictive trade practice
 - (iii) Sale of goods and services dangerous to life
 - (iv) Sale of defective goods or services
- (5) Jurisdiction under the consumer protection Act, 2019

Consumer Protection Act, 2019 - The Consumer Disputes Redressed Commission (CDR) has defined the jurisdiction of the National, State and District Consumer Disputes Redressed Commissions.

The National Disputes Redressed Commission will hear complaints involving amounts exceeding Rs 10 crore while the State Disputes Redressed Commissions will hear complaints involving amounts exceeding Rs 1 crore but less than Rs 10 crore.

Finally, the District Disputes Redressed Commission will hear complaints where the amount of fraud involved is more than Rs 1 crore.

Rights of Consumer - Due to the rapid development of science and technology, the production of technical and high-featured uncomfortable products has created a lot of confusion among consumers about choosing a cheap and good product for their consumption. People buy the product by trusting modern business techniques and attractive advertisements. But it does not live up to their expectations. This problem becomes even more complicated due to the lack of organizations to look after the interests of consumers. In view of this situation, many institutional systems have been started in different countries to protect the interests of consumers.

Consumer rights under the Consumer Protection Act 2019 - The consumer rights suggested by various organizations do not get importance until they are given legally. To smoothly implement the rights of the consumer and give them legal form, the Consumer Protection Act 2019 describes the following consumer rights-

(1) Right to Safety- The first right of a consumer is the right to safety. He has the right to be protected from such goods and services which may harm his body and property. Therefore, keeping in view the safety and health of the people, the trader will be fully responsible to not bring into circulation any such product which may harm them.

(2) Right to get information- Before the implementation of the Right to Information Act 2005 and after the Consumer Protection Act 2019, consumers have the right to get information about the quality, quantity, purity, standard and price of goods or services. This will protect the consumer from wrong behavior by the seller or service provider. Therefore, even before the formation of the Consumer Disputes Redressed Forum, if the traders give wrong information to the customers about the above mentioned matters, they had the right to get justice from the court.

(3) Right to Choice - The Act emphasizes the need for such organization of market and retail services that ensures that the dealer provides such goods or services which are in the interest of the consumers. Under this right, the consumer shall be free to choose any product from among the goods of different brands, varieties, quality, form, colour and price manufactured by different manufacturers.

(4) Right to be heard or appeal- Consumers have the right to present all matters affecting their interests before the appropriate forum. They can use this right to force businessmen and the government to take decisions and make policies in accordance with their interests. The right to be heard is the right by which they can express their complaints and protect their other consumer rights.

(5) Right to Remedy- This right assures the consumer that if the goods or services purchased are not put to proper and satisfactory use, he will have the right to get appropriate compensation for the same.

(6) Right to Consumer Education- Consumers has the right to get education or information about all those things which are necessary for the consumer. Due to the limited information given to the consumers in choosing the product or service according to their need, they are often cheated by the companies knowingly or unknowingly. In this situation, the consumer has the full right to get information. The consumer has the full right to get education or information in that situation.

Question 13. Define negligence and describe its essential elements.

Answer- Under the tort law, negligence has two meanings-

(1) As a specific tort - a breach of a legal duty to bring to notice the circumstances or consequences, or both, of an act or omission which causes injury to another person. The standard of this legal duty is that of a prudent person.

(2) Mere neglect of legal duty, which is required as a mental element of some torts.

In the present times, the first meaning of negligence is considered appropriate and negligence is considered as an independent tort. In the case of **Donoghue vs. Stevenson (1932) A.C. 562**, the House of Lords has also considered negligence as an independent tort. Action in negligence is taken not on the basis of mental state, but on the basis of the conduct of a person. That is, it is seen that there is a danger of harm to someone due to the conduct of the person. There is no element of fault in this. A person can be liable for negligence even without fault. **According to V. Aldson**, "Negligence arises from the absence or omission of some of those actions which a prudent person would have done keeping himself in the circumstances which normally regulate the conduct of human life, or doing those actions which a prudent and reasonable person would not have done."

This principle has been approved in the case of **Grant Australian Knitting Mills (1936) A.C. 85**.

Definition

(1) According to Samand- Negligence involves the breach of the legal duty to exercise caution in cases where caution is required by law.

(2) According to Prof. Benfield - Negligence as a tort is the breach of the legal duty to take care which results in injury to the plaintiff despite the unintentional negligence of the defendant.

'Negligence as a tort is a breach of the legal duty to take care, which results in unintended harm to the plaintiff by the defendant.' Famous authors Chatterworth and Percy in their book On Negligence have defined negligence as follows - "Negligence is a tort" which involves the breach by a person of the duty of care imposed on him and as a result of which injury is caused to the family.

According to him the essential elements of the modern tort of negligence are as follows:

- (a) There is a duty to exercise care which the complainant requires from the defendant.
- (b) Failure to take such precautions as is prescribed by law.
- (c) Injury which is caused to the family by both such breach of duty and such precautions as are legally recognized.

Essential Element of Negligence- In order to establish the liability of the defendant in negligence proceedings, the plaintiff has to prove the following things-

- (1) Legal duty to take care.
- (2) The duty to take care must be towards the plaintiff.
- (3) Breach of duty to take care.

(1) Legal duty to be careful - A person cannot be held liable for every negligence, no matter how much damage it causes to someone. In case of negligence, to prove the liability of the defendant, it is necessary to show that the defendant was duty-bound by law to take necessary precautions and he violated this legal duty, as a result of which the plaintiff suffered damage. According to Pollock, no action can be taken for negligence unless there is a duty to be careful. "Negligence is not actionable unless the duty to be careful exists" i.e. negligence is not actionable unless there is a duty to be careful.

(a) Rule of Proximity and Forecasting- The question arises whether the duty to take precautions is based on a general rule. Is there no general rule for this? This question depends on the facts and circumstances of each case. In the case of **Donoghue v. Stevenson (1932) SC 562**, Lord Atkin has said that the duty of caution arises from various relationships which cannot be enumerated in detail. This is also difficult because from time to time the courts recognize new duties which they consider justified. Lord Macmillan has rightly said that "the categories of negligence are never ending." The concept of legal duties keeps changing with the change in social conditions and norms. Lord Atkin has formulated the following rule in the said case which is universally accepted. He said that we should take reasonable precautions to avoid such actions and actions which we can reasonably foresee will cause harm to our neighbor.

The facts in the case of **Donoghue v Stevenson** were as follows. S bought a bottle of wine from a retailer's shop for a girlfriend. She poured some wine from the bottle into a glass and gave it to her girlfriend. When the remaining wine was poured into a glass, a snail was found in it. The appellant filed a claim for damages against the wine manufacturer. She argued that as a result of drinking the wine she became seriously ill and suffered great loss. She said that the wine bottle was made of opaque glass, so that

the contents could not be seen. The House of Lords, the highest court in England, held that the defendant was liable for negligence because he had a legal duty to the plaintiff to see that the bottle did not contain poisonous substances and if he breached that duty he would be liable for negligence. The Court said that the manufacturer of food, medicines or other similar articles had a legal duty towards its ultimate consumers to see that no poisonous substance was found in the bottle and if it breached that duty it would be liable for negligence.

In Grant v. Australian Knitting Mills Ltd. (1943) 2 All E.R. 448 the Privy Council confirmed the decision in **Donoghue v. Stevens** and held that such a legal duty need not be the result of a contract.

In the case of **Glasgow Corporation v. Muir AIR 1980 Allahabad 165** the defendant was a company. The manager of the company permitted a picnic party to halt for a short time for a tea party at the company. When some members of the party were passing through a narrow passage carrying tea in a large vessel where some children were keeping sweets, the tea-vessel suddenly slipped from their hands and fell causing great injury to the defendant. The court held that the manager of the defendant was not liable for the injury caused to the plaintiff because she could not reasonably foresee that such an event might occur while carrying the tea-vessel. Hence she had no duty to take special care.

(2) The duty to take care must be towards the plaintiff – in a case of negligence the plaintiff must prove that the defendant had a duty to take care towards him.

The plaintiff cannot sue the defendant merely for lack of requisite care. He must prove that the defendant was duty bound to take care towards the plaintiff. If the defendant has no duty to take care towards the plaintiff, then the plaintiff cannot take any action against him, even if he has suffered damage due to the act of the defendant.

Whether the defendant in a given case has a duty to take care of the plaintiff depends on whether the defendant could have reasonably foreseen that the plaintiff would suffer harm as a result of his act or omission. It is not necessary that the defendant knew the person harmed. It is sufficient if the defendant could have foreseen that the person harmed would be caused to him by his act or omission, even if he did not intend to harm any particular person. Lord Russell, quoting the judgment in **Donoghue v Stevenson**, said that the "duty to take care" is only towards those persons who could reasonably be foreseen to be harmed by the defendant's act.

In the case of **Hale vs Electricity Board (1965) A.C. 778**, the defendants dug a pit in the road to lay electric wires. They had the legal authority to dig the pit. They had taken reasonable precautions for the safety of people walking on the road, which were sufficient for normal people with normal vision. The plaintiff, who was a blind person, fell into the pit and got seriously injured. It was found that the precautionary measures were sufficient for normal people but not sufficient for such special people. The court decided that the defendants were liable for negligence. Because they had a duty to take care towards such people, which they had violated. The defendants could have reasonably anticipated that blind, deaf or lame people also walk on the road. And they should also take such care towards them, which is necessary according to their special situation. In this regard, **Charmlandshire County Council vs Libis (1955) A.** The decision of C. 459 is also readable.

(3) Breach of duty of care - Breach of duty means failure to take reasonable care which is required to be taken by the defendant in the particular circumstances. The determination of the question whether the defendant has breached his duty of care or not depends on the facts of each case. Now the question arises as to what is the standard

of care? **Anderson V. in the case of Blair v. Birmingham Water Workers Company (1865) 25 L. J. X. 212** held that negligence is a mistake or omission in doing an act which a prudent man would not make following the principles of human care and foresight.

The level of caution is what a prudent person would exercise in a particular situation. It is necessary to be cautious against dangers which can be easily and reasonably foreseen. Man can be reasonably foreseen. Man is bound to be cautious against reasonably possible events and not against imagined events. If the defendant proves that he acted in accordance with normal and approved practice, he will not be liable for negligence.

In the case of **Dr. Laxman Balkrishna Joshi vs. Dr. Trimbak Babu Gaudbole A.S.R. 1969** it has been held that people engaged in a particular profession or occupation should take as much care as is necessary according to the nature of that profession or occupation.

While determining how much care should be taken in a particular situation, the court should the following points have to be taken into consideration-

(a) Magnitude of Risk

(b) Standard of care towards hazard

(a) Magnitude of Risk- How much caution a person should take in a particular situation it depends on the degree of danger. The level of caution increases with the degree of danger. If a person can foresee that his act or omission is likely to cause a greater danger to the body or property, he should be more cautious and if the danger is less, the level of caution will decrease in the same proportion. For example, a person who walks in a public place carrying a loaded gun is expected to be more cautious than a person who walks in such a place carrying a wooden stick.

In the case of Bolton v Stone (1951) 3 A.G. 850, the plaintiff was standing on a public road passing near a cricket ground. A player hit a ball which crossed the boundary wall of the cricket ground and hit the plaintiff. Such an incident had never happened in the last 100 years. The House of Lords decided that the cricket club was not liable for negligence. Because the risk of injury to the person walking on the road was very low and adequate precautions were also taken by building the boundary wall. But when the possibility of a danger is clear, more care should be taken to prevent it, for example, a person driving a car on a public road should be more careful towards the blind, children or lame people than the normal people.

(b) Standard of caution- The standard of decision of a prudent person- The law does not expect ordinary behavior from a person. The standard of caution should be the same as is taken by an ordinary prudent person in the same circumstances in which the defendant was. To carry on the normal activities of man smoothly, it is necessary to take some amount of risk. Such works are approved from the point of view of public interest and also by law. Driving a motor on the road is not free from danger, but running a motor is also in the interest of the society. Public interest is given more importance than personal convenience or safety. In a case, the court said that "If all trains in the country were restricted to a speed of five miles on hours there would be fewer accidents but our national life would be into lerable slowed down- The purpose to be served of sufficiently important justified the abnormal risk-" The decisions of **Deveron vs Bath Tramways (1946) 2 All. E. 333, 336, Watt vs Hertfordshire County Cancell (1954) W.L.R. and Quinn vs Scout (1965) 1 W.L.R.** are also worth reading. But in such cases, there should be a balance between the utility and importance of the work and the danger resulting from doing it.

Standard of caution in case of dangerous goods Standard of caution of the owner in respect of dangerous goods is high.

In its important decision in M.C. Mehta vs. Union of India A.J.R. 1987 N.C. has held that in case of a dangerous factory (which produces dangerous gas) maximum safety measures are required to be taken. The responsibility of such factories is absolute. In this case, a gas leakage from an oleander gas manufacturing company in Delhi caused serious damage to its employees and nearby residents. The Supreme Court held the company responsible for this damage because the company had not taken care in handling the dangerous gas.

(4) The plaintiff has suffered damage - Apart from negligence, the plaintiff must also prove that the plaintiff has suffered damage as a result of the negligent act of the defendant. If the cause of damage is not the direct and proximate cause of the defendant's act, i.e., it is remote, then the defendant will not be liable for compensation. The determination of compensation depends on the amount of expectation. As the expectation is more or less, damages are awarded accordingly.

B.A.LL.B.-6th Sem. Paper-VI Labour Law and Industrial Law-II

Question No. 1: Review the definition of worker as given in the Workmen's Compensation Act, 1923.

Answer- Workman- The definition of worker has been provided in **Section 2 (1) (d)** of the Workman Act. According to this definition, worker means the following person- whose appointment is not of casual nature and whose appointment is not otherwise than for the purpose of the employer's business or trade. The following persons are included in the definition of worker-

(1) According to **section 2 (34)** of the Railways Act, 1989, railway servant means any person employed by the Railway Administration in connection with the service of the Railway. As per the definition of employee under **section 2 (dd)**, a railway servant is an employee if: he is not permanently employed in any administrative, district or sub-divisional office of a Railway; and he is not employed in any capacity specified in Schedule P to the Act.

(2) the master, seaman or other member of the crew of a ship or the captain or other member of the crew of an aircraft or a person recruited as driver, helper, mechanic, cleaner or in any other capacity in relation to a motor vehicle or a person recruited by a company for work abroad and who is employed outside India in any such capacity as specified in the Schedule and the ship, aircraft or motor vehicle or company, as the case may be, is registered in India; or

(3) Any person employed in any of the capacities specified in **Schedule 2**, whether the contract of employment is entered into before or after the passing of this Act and whether such contract is express or implied, oral or in writing, but does not include a person employed as a member of the Armed Forces of the Union; and in respect of an employee who is injured, where the employee dies, his dependents or this shall include a reference to any of them.

But the following persons cannot be included in the definition of worker-

(1) If the employment of any person is of a casual nature and is for the purposes of the trade or business of the employment has been employed for any work other than.

Kerala Balagram Registered Society v. V.K.M. Kochuman - In this case, it was held that a person employed for the purpose of threshing harvested paddy is an 'employee' within the definition of employee under section 2(dd) of the ECA, 1923.

(2) Any person who is acting in the capacity of a member of the Armed Forces of the Union of India. From the above description it is clear that in order to ascertain who is a workman other than a Railway employee, the following it is important to know three basic things-

(1) The posts specified in **Schedule 2**;

(2) The monthly wages of the worker;

(3) Nature of planning employment of casual nature- A worker whose appointment is of casual nature and who is employed for any purpose other than the employer's business cannot be included in the definition of a worker. It is necessary to clarify two things here- the first thing is that the burden of proving that the employed person is a worker is on the employer. The second important thing is that to keep the employed person out of the definition of a worker, the following things have to be proved: (1) The nature of the worker's appointment was of casual nature; (2) He was employed for any purpose other than the purpose of the employer's business or trade.

In the decision of **T.N. Sitaram Reddiar v. A. Ayyaswamy Goundar AIR 1956 Madras 212** the Madras High Court has expressed the concept that casual employment is employment which is accidentally made necessary by circumstances. The expression is not used in contradistinction to 'permanent or continuous' employment. "Occurring without any plan on the part of the agent, or by mere chance; occurring at uncertain times or without regularity; employment of a labourer or workman being merely irregular."

Madan Mohan Verma v. Mohan Lal (1983) 11 L.L.J. 322 Allahabad Mohan Lal filed an application under **section 3** of the Employee's Compensation Act, 1923 claiming compensation from the respondent Madan Mohan Verma on the following allegations. Mohan Lal was employed by Madan Mohan Verma as mechanic for setting up cotton ginning machine and chaff cutting machine at a daily wage of Rs. 15/- On 8th October, 1973 while Mohan Lal was trialling the chaff cutting machine, his right hand got caught in the teeth of the gear roller of the machine and all the fingers and thumb of his right hand were cut off, resulting in permanent total disability, which also affected his future earning capacity. He claimed compensation from his employer Madan Mohan Verma, but the latter refused to pay any compensation. On this Mohan Lal filed an application under section 3 of the Employee's Compensation Act. His case was that Mohan Lal had sustained injuries in the process of cutting his fodder into pieces in the machine installed by him. Under the circumstances, the employer could not be held liable to pay compensation. Further, the injuries were caused by the negligence of Mohan Lal. It was also denied that Mohan Lal was a workman.

In the decision of **Mahmood vs Balwant Singh (1980) (Allahabad)**, the Allahabad High Court has held that a claim for permanent partial disability can be presented for a person employed in threshing wheat. A person can be included in the category of worker if he is employed in any profession or business, even if the nature of employment is casual.

Question No. 2: Discuss the main features of the Indian Maternity Benefit Act, 1961.

Answer- The Maternity Benefit Act, 1961 is a law that protects the employment of women during maternity. It entitles women employees to 'maternity benefit', which includes fully, paid wages during absence from work and for caring for

their child. The Act applies to establishments employing 10 or more employees. The Maternity Benefit Act, 1961 has been amended through the Maternity (Amendment) Bill 2017, which was passed in the Lok Sabha on March 09, 2017. Subsequently, the said Bill was passed in the Rajya Sabha on August 11, 2016. Further, it received assent from the President of India on March 27, 2017. The provisions of the Maternity Benefit (Amendment) Act, 2017 ('Amendment Act') came into force on April 1, 2017 and the provisions regarding crèche facility (**Section 111A**) came into force from July 1, 2017.

Overview of the Maternity Benefit Act, 1961

The Maternity Benefit Act 1961 was passed by the Union of India on 12 December 1961 after the independence of the country. This law contained conditional benefits for pregnancy, childbirth and their related complications, which were in line with the then international standards. The Act covered a wide range of areas with meticulous precision and took into account many dimensions of considerations affecting maternity benefits, despite the fact that India was still a developing nation and was in its 14th year of independence. The Maternity Benefit Act, 1961 governs maternity benefits in India. Every organisation with ten (10) or more employees is subject to the Act. As per the Act, maternity benefits are available to any woman who has worked for an organisation for at least eighty (80) days. The Maternity Benefit Act, 1961 aims to provide all facilities to the working woman in a dignified manner so that she can pass the state of motherhood 'with dignity, peace and tranquility, without being deterred by the fear of suffering for forced absence during the pre- or post-natal period', as observed by the Supreme Court in the case of *Municipal Corporation of Delhi vs Women Workers (Muster Roll)* (2000). According to the Maternity Benefit Act 1961, if there is a pre-natal delivery and no paid post-natal care, the employer must pay a medical bonus of up to Rs 1,000 to the beneficiary. The central government has increased the medical bonus to Rs 25,000. If the woman experiences a miscarriage or any other pregnancy-related complication, she is entitled to paid leave. After returning to work, the mother is eligible for leave and is granted leave twice a day to breastfeed the child till the age of 15 months. It has also been made compulsory for every firm having fifty or more women employees to provide "creche" facilities at convenient locations. Women will be allowed to avail leave with pay on the basis of proof provided for their tubectomy operation. According to the Act, it is against the law for an employer to dismiss or dismiss a pregnant woman during her absence or on account of her pregnancy, or to give her a notice of dismissal on the day when the period of notice will expire while she is absent, or to alter any of the terms of her employment to her disadvantage. According to the Act, light work allotted to pregnant women and leave for feeding the child are not grounds for pay deduction.

This law applies to all businesses, including government-connected businesses and businesses that employ people to perform horsemanship, acrobatics and other feats for display in factories, mines and plantations. Additionally, it applies to any store or business with ten or more employees. The inclusion of provisions for industrial, agricultural and commercial establishments marked this act as a significant improvement over the rudimentary Act of 1928. The Act covers all maternity benefits in the following sections-

Section 4: Employment or work of women is prohibited during certain periods.

Section 5: Right to payment of maternity benefit.

Section 7: Payment of maternity benefit in case of death of the woman.

Section 8: Payment of medical bonus.

Section 9: Leave for miscarriage etc.

Section 10: Sick leave arising out of pregnancy, delivery, premature birth of a child, miscarriage, medical termination of pregnancy or sterilisation operation.

Section 11: Nursing breaks.

Section 12: Dismissal during absence due to pregnancy.

Section 13: Wages not to be deducted in certain cases.

Section 18: Forfeiture of maternity benefit.

The Act was amended by the Government of India in 2017 to provide more inclusive maternity benefits to women. Among other amendments, a new section, **Section 5(5)**, was added to the Act, under which women requesting maternity leave can avail the benefit of working from home. As per **Section 5(5)** of the Act, the employer may authorise nursing mothers to work from home, if the nature of work assigned to them permits it, under mutually agreed conditions.

Features of the Maternity Benefit Act, 1961

Period of leave - According to the Act a woman is entitled to twelve weeks of maternity leave, of which a maximum of six weeks may be before the date of delivery. This was taken into account in the PST guidelines at that time.

Job security - As per the guidelines of the 1961 Act, it is illegal for an employer to dismiss or let go a woman from her job at any time during or because of her absence. However, if the dismissal or termination is a result of serious wrongdoing, the employer may notify the employee in writing.

Remuneration during leave- Women who fulfil the requirements for maternity leave as laid down in the law are entitled to maternity benefit at the rate of average daily wage for the time they are actually absent from work.

Financial benefits- As per this law, every woman is entitled to maternity benefits and also has the option of getting medical bonus from the employer if prenatal or postnatal care is not provided by the employer free of cost to the employee. The employer is responsible to pay all the debts including maternity benefits to the woman's nominee or legal representative in the event of her death.

Benefits covered under the Maternity Benefit Act 1961

According to the Act, the employer should refrain from employing any known woman in any place for six weeks immediately following the day of delivery, miscarriage or medical termination of pregnancy. During the six weeks immediately following the day of delivery or miscarriage, no woman shall work in any company. The employer shall not employ such women in any work unless requested to do so by the employed woman.

(1) Which has an adverse effect on her pregnancy or the normal development of the foetus?

(2) Any act which may cause a miscarriage or have an adverse effect on her health.

Every woman has the right to maternity benefit, and it is the responsibility of her employer to pay her an amount equal to the average daily earnings for the time she was actually away from work, i.e.-

(1) The time until the day of her delivery.

(2) The day on which she gives birth to the child and for the period immediately thereafter.

Highlights of Amendments to Material Benefits

The Maternity Benefit (Amendment) Bill, 2017 was approved by the Rajya Sabha and Lok Sabha on August 11, 2016, and the President of India gave his assent on March 27, 2017. The provisions of the Maternity Benefit (Amendment) Act 2017 came into force in India on April 1, 2017. However, the clauses relating to childcare facility (**Section 11**) came into force on July 1, 2017. After the change, the Act still follows its basic principles but provides better benefits and promotes better child care. According to our investigation, the following changes have occurred at four levels of this law-

Duration of leave - The amendment provides for 26 weeks of maternity leave, extendable up to 8 weeks from the estimated due date weeks before, unless they have two or more living children. The total period of maternity leave has increased by 117% since the previous act. Additionally, it complies with the ILO's suggestion of 18 weeks or more. This amendment was passed to provide mothers with adequate time for self-healing and to improve child care, which will reduce infant mortality. Adoption is an exception to this rule. A commissioning mother or a woman who adopts a child less than three months old is eligible for twelve weeks of maternity leave.

Job security- The termination and dismissal section of the original Act will remain unchanged.

Financial benefits- No immediate financial benefits have been put into practice. However, the amendment provides that a woman has the right to work from home, provided both her employer and she mutually agree on it. Every business with 50 or more employees must include a crèche facility either independently or as part of the common areas. This is another benefit. The employer will allow the woman four visits to the childcare provider. The most important amendment is to

increase maternity leave from 12 to 26 weeks. According to WHO, the baby should be breastfed for 24 weeks after birth to reduce the mortality risk. Additionally, it should reduce the number of women leaving their jobs as a result of inadequate maternity leave. Additionally, the longer leave period is in accordance with the Maternity Benefit Conference Recommendation (No. 183). Adding maternity leave for women who are commissioning and adopting is an important step that allows them to take care of themselves and their children as well as honor their paternity. Due to these changes, India now ranks third after Canada and Norway in terms of the number of maternity benefits available to women.

Effect of the Maternity Benefit (Amendment) Act, 2017 on employment- The effects of the Maternity Benefit (Amendment) Act, 2017 on employability are listed below-

(1) In private companies, many employers may avoid hiring women who are about to become pregnant, as they are required to provide maternity leave and compensation for that period (up to 26 weeks). Since the amendment, many firms view hiring women as a hardship. The employer's specific obligation to pay all wages in full during the allotted time increases production costs for employers.

(2) Production costs increase because the employer has an exclusive obligation to pay all wages in full during the allotted time, which increases the employer's costs.

(3) This provision causes employers to be concerned about their financial stability, which may make them more willing to hire men than women.

(4) Losses caused by extended maternity leave, which is beneficial to businesses that generally employ female workers.

(5) This reduces employment prospects for female workers, as companies are either reluctant to hire them or ask them to leave the job just before the birth of the child to avoid further liabilities.

Applicability-On reading **Section 2** along with **Section 3(e)** of the Maternity Benefit Act, 1961 ('the Act'), it can be safely concluded that the Act applies to establishments such as factories ('factory' as defined in the Factories Act, 1948), mines ('mine' as defined in the Mines Act, 1952) and plantations ('plantation' means plantation as defined in the Plantations Labour Act, 1951).

The Maternity Benefit Act also applies to Government establishments and to establishments in which persons are employed for the performance of horse riding, acrobatics and other performances as per **Section 2(b)**. The said Act also applies to every shop or establishment as defined under the law which employs ten or more persons in a day during the preceding twelve months and which applies in respect of shops and establishments in a particular State.

Thus, in view of the above, in Delhi the Act applies to all “establishments” and “commercial establishments” who fall within the ambit of **Sections 2(9) and 2(5)** of the Delhi Shops and Establishments Act, 1954. Further, as per the provision of **Section 2** of the Maternity Benefit Act, the State Government may, subject to obtaining approval from the Central Government, declare that the provisions of the Act shall apply to any other establishment or class of establishments which are carrying on industrial, commercial or agricultural activities or any other activity otherwise than under **Sections 5A and 5B**. It is worth noting that the provisions contained in this Act shall apply to all establishments or class of establishments which are carrying on industrial, commercial or agricultural activities or any other activity otherwise than under **Sections 5A and 5B**. The provisions of this Act shall not apply to any factory or other establishment which is covered under the provisions of the Employees’ State Insurance Act, 1948 as per **section 2(2)** of the Act. Further, as per **section 26** of the Act, the appropriate Government has the power to exempt any establishment from the purview of the Act by notification, subject to the conditions specified in **section 26**.

Period for grant of maternity benefit - As per **Section 5(3)** as amended by the Maternity Benefit (Amendment) Act 2017, the maximum time a woman can receive maternity benefit is twenty-six weeks, excluding the eight weeks preceding the day of her estimated due date of delivery. Further, in the event that a woman dies within this time, maternity benefit will be paid only for the days preceding the day of her death. As per subsection (4) of Section 5, a woman who legally adopts a child less than three months of age or a mother who makes an adoption order shall be eligible for maternity benefit for a period of twelve weeks beginning from the day on which the child is delivered to the adopting mother or the commissioning mother, as applicable. As per subsection (5) of Section 5, if a woman's job requires her to work from home.

Conditions for claiming maternity benefit- A woman is eligible to receive maternity benefit only if she has actually worked for the employer from whom she claims maternity benefit, for a period of not less than eighty days in the twelve months immediately preceding the date of her estimated delivery.

How to claim maternity benefit - Any woman who wishes to exercise the right to maternity benefit must submit a notice to her employer in the manner and on the form required by the occupation in which she is employed in order to become eligible to claim the maternity benefit provided by the 1961 Act. The notice should include the following information-

- (1) Maternity benefit and any additional fund to which she may be entitled under this Act.
- (2) The name of the person who should receive such payments.
- (3) A statement saying she will not work in the company while receiving maternity benefits.

(4) The day when his absence from work officially began.

After the woman submits documents certifying her pregnancy, the employer is required to provide the woman with it is necessary to pay maternity benefit in advance.

What if the woman dies during the period of maternity leave?

The maternity benefit which is applicable to a woman lasts only till the date of her death, if she dies within the above-mentioned period of maternity leave. If the mother dies soon after giving birth to a child, as a result of which the child survives, the full maternity benefit shall be payable to her. If the child dies while the mother is still eligible for it, the employer is required to pay the maternity benefit effective up to the date of the child's death. When a woman dies, these payments must be made to the person whom she specified in the notification given under **Section 6(1)** of the Act, or if she has not nominated anyone, to her legal representative.

Filing a complaint under the Maternity Benefit Act 1961- If a woman is denied maternity benefits or medical benefits, is fired from her job, or is dismissed while on maternity leave, she has sixty days to appeal the decision. She can do so by contacting the inspector designated by the Maternity Benefit Act, 1961. If she disagrees with the inspector's requests, she has thirty days to make a counter-proposal to the suggested expert. If she disagrees with the inspector's requests or if a more significant legal issue is raised, she can also file a lawsuit within one year.

Question No. 3- What is wages? Describe the different types of wages.

Answer- According to **section 2(h)** of the Minimum Wages Act, 1948 the term wages means all remuneration expressed in money terms which would be payable to a person in respect of his employment or for any work done in such employment if the express or implied conditions of the contract of employment have been fulfilment and it includes house rent allowance but does not include-

(1) Value

(2) Any house providing accommodation, supply of light and water, medical care or

(3) Any other facility or any service may be excluded by general or special order of the appropriate Government went;-

(4) Any sum paid by the employer under any personal fund or provident fund or any scheme of social insurance any contribution;

(5) Any travelling allowance or the value of any travel concession;

(6) Any sum given to an employed person to meet special expenses falling on him by reason of the nature of his employment, or

(7) Any gratuity payable on retirement;

Types of wages- At present the following four concepts are prevalent in relation to wages-

(1) Minimum Wages - Under the Minimum Wages Act, 1948, the classification was based on agricultural and non-agricultural work. However, under the Code on Wages, the classification has been done on the basis of skill level, and employment has been divided into highly skilled, semi-skilled and unskilled. To determine and revise the minimum wages to be paid by the employer to the employees in certain employments. To fix adequate minimum wages for all employees in the interest of the public. To fix the daily working hours of an employee according to the type of employment. To prevent exploitation of workers. To resolve any issue relating to non-payment or underpayment of wages. To establish and confer powers and duties of Inspectors. To establish and confer powers and duties of Labour Commissioners and other important labour officers. To confer rule-making powers on the appropriate Government. **Section 2(d)** of the Act defines cost-of-living index number as an index number which is prescribed by the appropriate Government in the Official Gazette in respect of employees. Under the Act, the appropriate Government determines scheduled employments in respect of which it notifies the minimum wages to be paid by the employer to the employees. The minimum wages are determined on the basis of the cost of living index number. The cost of living index number reflects the constantly changing cost of living standards. **Section 2(h)** of the Act provides an inclusive definition of wages, which includes all remuneration which can be expressed in terms of money which the employer pays to the employee during the course of employment. It includes house rent allowance. However, it does not include any housing, electricity, water supply, medical service or any other amenity which the appropriate Government may deem fit; any contribution of the employer to a pension fund or provident fund; travelling allowance; special expenses paid; and any gratuity payable on discharge of the employee. According to **Section 2(1)** of the Act, an employee is a person who is employed to perform any skilled or unskilled, manual or clerical work for which minimum wage rates have been fixed. This is an important definition under the Act as it defines the scope of its application. Not all employer-employee relationships are governed by the Minimum Wages Act. Moreover, not all types of employees are eligible for payment of minimum wages as prescribed by the appropriate government are not eligible to claim benefits.

In *Workmen Represented by Secretary v. Reptakos Brett & Co. Ltd. & Ors. (1992)* the Hon'ble Supreme Court took into consideration the Tripartite Committee of the Indian Labour Conference of 1957. The report of the Committee stated that the structure of minimum wage policy should be nothing more than the subsistence level.

In *Municipal Corporation of Delhi v. Ganesh Rajak (1995)*, the Supreme Court held that entitlement to minimum wages under the Act is an existing right of the worker and does not require any decision other than that of the Labour Court.

NM Wadia Charitable Hospital & Ors vs State of Maharashtra & Ors (1986) In this case, the State of Maharashtra appointed a committee to advise on the matter of revision of minimum wages payable to hospital employees. However, the government did not adopt the wage rates recommended by the committee in its report but adopted a higher rate of minimum wages. The petitioners challenged the notification on the ground that the government had not given any consideration to it.

The court held that fixing different rates of minimum wages for different areas was permissible under the Act and did not violate any provision of the Constitution.

Bhikshusa Yamsa Kshatriya v. Sangamner Akola Taluka Beedi Kamgar Union (1958) In this case, the validity of the Minimum Wages Act, 1948 was again challenged before the Hon'ble Bombay High Court. There were various claims under Section 20 of the Act on the applicability of minimum rates of wages in certain districts of the State of Bombay. Among other things, the employers challenged the validity of the Act on the ground that it violates **Article 14** and **Article 19(1)(g)** of the Constitution and that the State of Bombay had not followed the requisite procedure for fixing minimum rates of wages.

Rejecting the arguments of the employers, the Court held that the petitioners had failed to prove that the requisite procedure was not followed by the State of Bombay while fixing and revising the minimum wages and that the provisions of the Act violate either **Article 14** or **Article 19(1)(g)** of the Constitution.

(2) Fair wages - Fair wages means wages which are higher than the minimum wage. It is a mean between minimum wage and living wage. Hence, the lower limit of fair wages should be the minimum wage while the upper limit is the fair wage which is the capacity of the industry to pay and is fixed. Fair wages are primarily paid in comparison with the average pay for similar work in other occupations or trades requiring the same ability. Basically, it is the economic situation and its future prospects on which fair wages depend. Apart from this, there are certain factors such as minimum wages, paying capacity of the industry, level of national income and its distribution, productivity of labour, place of the industry in the economy of the country and wage rates prevailing in the same or similar occupations in the same or neighbouring localities on which fair wages depend. Fair wages refer to the remuneration given to workers for work requiring similar skill, difficulty and hardship.

In the decision of **Shiv Fine Arts Litho Works vs. Industrial Court (1978) L.L.J. 532 S.C.** the High Court has put forward the following concept regarding fair wages- "Fair wages should be between the living wage and the minimum wage.

(3) Living wage- 'The International Labour Organisation (ILO) defines a living wage as the minimum income that an employee needs to maintain a decent standard of living for himself and his family. It is usually higher than the minimum wage, which is the lowest legal hourly wage allowed by an employer. The following factors are considered in calculating the living wage; rent or mortgage, groceries, utilities, transportation, childcare, health, education, recreation, and social needs. **Article 43** of India's 1950 Constitution states that the State should work to ensure that all workers receive a fair living wage, as well as other conditions that allow them to enjoy a decent standard of living. India plans to replace its minimum wage system with a fair living wage by 2025, with the goal of reducing poverty, improving workers' well-being, and addressing workers' concerns.

(4) Living wage- Living wage is defined as the wage which is consistent with providing certain facilities and certain basic needs to the employee. It, therefore, means the wage level which is satisfactory to provide the basic needs and such necessities as are necessary for the betterment of the employee as well as his family according to his social status. Thus, the living wage is defined as-

The living wage should enable the male earner to provide for himself and his family not only the basic needs of food, clothing and shelter but also a measure of frugal comfort including education of children, protection against ill-health, fulfillment of essential social needs and measures for insurance against old age. **Article 43** of the Constitution of India states that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, whether engaged in work, agricultural, industrial or otherwise, a living wage, working conditions ensuring a decent standard of living and the full enjoyment of leisure and social and cultural opportunities. Therefore, the Government of India has adopted as one of the principles of State policy to ensure living wages. The living wage is the wage which is adequate to ensure the worker food, shelter, clothing, frugal comfort, provision for bad days etc. according to the skill of the artisan, if he is an artisan. Thus, living wages do not only mean meeting the basic needs of life of the employee like food, shelter and clothing but it also includes certain rest, leisure and amenities as estimated by current human standards like health, education of children, travel, old age, recreation and social needs etc.

Question No. 4- Explain the objectives and scope of the Minimum Wages Act 1948.

Answer- The Minimum Wages Act, 1948 is a labour law of India. This Act fixes the minimum wage rate for different categories of workers in both organised and unorganised sectors of employment. The purpose of this Act is to ensure fair wages to the workers and to ensure that the minimum wages are followed by the employers. This Act gives the right to fix wages to both the Central and State Governments. According to this Act, an organisation has to pay a minimum

amount to a particular employee for a particular work at a particular time. This amount cannot be less than any contract or collective agreement. The minimum wage should be sufficient to meet the basic needs of a family of four. For this, committees review the capacity of the industry from time to time and are bound to fix the minimum wage. The Minimum Wages Act was passed by the Central Assembly in the year 1948 and it came into force on 15 March 1948. After the implementation of this Act, a sense of equality and justice came among the blue-collar people.

Objectives of the Minimum Wages Act, 1948- The main objectives of the Minimum Wages Act, 1948 are as follows-

- (1) To fix and revise the minimum wages to be paid by employers to employees in certain employments;
- (2) To fix an adequate minimum wage for all employees in the public interest;
- (3) Determining the daily working hours of an employee according to the type of employment;
- (4) To prevent exploitation of workers;
- (5) resolve any issues related to non-payment or underpayment of wages;
- (6) To establish and confer the powers and duties of Inspectors;
- (7) To establish and provide for the powers and duties of Labour Commissioners and other important labour officers;
- (8) To confer rule-making powers on the appropriate Government.

Section 3 of the Act provides for fixation of minimum rates of wages by the appropriate Government. **Sub-section (1)** provides that the appropriate Government shall fix the minimum rates of wages payable to employees in employments specified in **Part I** or **Part II** (scheduled employments) of the Schedule to the Act and shall review the minimum wages for a period of five years. **Sub-section (1A)** provides that the appropriate Government may refrain from fixing minimum wages for any scheduled employment where the number of employees throughout the State is less than one thousand, so long as such number does not remain less than one thousand.

Sub-section (2) provides that the appropriate Government may prescribe the following-

- (1) Minimum Time Rate;
- (2) Minimum piece rates;
- (3) A guaranteed time rate; and
- (4) Overtime rates.

Sub-section (3) empowers the appropriate Government to fix different rates of minimum wages for-

- (1) Various scheduled employments;
- (2) Different types of work in the same scheduled employment
- (3) Adults, adolescents, children and trainees; and different areas

These minimum wages may be fixed on the basis of per hour, per day, per month or any other time period as determined by the appropriate Government.

Section 4 of the Act provides for minimum wage rates. The minimum wage rate will include the following-

(i) a basic rate of wages and a special allowance, which shall be adjusted at such intervals and in such manner as the appropriate Government may direct, so as to keep pace as closely as possible with changes in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance"); or

(ii) a basic rate of wages with or without the subsistence allowance, and the cash value of concessions in respect of the supply of essential commodities at concessional rates, where so authorised; or

(iii) An all-inclusive rate consisting of the basic rate, the subsistence allowance and the cash value of concessions, if any."

Further, **Section 5** of the Act provides that the appropriate Government may fix or revise the minimum wages by appointing committees and sub-committees or by publishing its proposal in the Official Gazette for the purposes of making such proposals public.

A similar view was taken by the Hon'ble Supreme Court in the case of **Airfreight Ltd. v. State of Karnataka & Ors. (1999)**. The Court held that in cases where the minimum wages are linked to the cost of living index, the amount paid on account of dearness allowance should not be taken as an independent component but should be treated as an integral part of the minimum wages.

Advisory Board under the Minimum Wages Act, 1948

Section 7 of the Act establishes the Advisory Board. The scope of the Advisory Board appointed by the appropriate Government is to coordinate the Committees and Sub-Committees established under **Section 5** of the Act and to advise the appropriate Government on fixing and revising the minimum wages for scheduled employment. A Central Advisory Board (CAB) shall be established under **Section 8** of the Act. The Central Government shall establish the CAB and appoint its members. The members shall include equal number of representatives of both employers and employees along with independent members nominated by the Central Government. The Chairperson of the CAB shall be an independent member. The scope of the CAB is to ensure coordination with the Advisory Board and other matters under the Act.

Manner of payment of wages under the Minimum Wages Act, 1948

Under **Section 11** of the Act all wages shall be paid in cash only. However, where there has been a practice of paying wages wholly or partly in kind, authorisation from the appropriate government is necessary. This includes concessions on essential commodities as required.

Section 12 of the Act lays down the manner of payment of minimum wages to employees. The provision states that the employer shall pay minimum wages to every employee working under him within the prescribed time period.

Fixing of hours for a normal working day under the Minimum Wages Act, 1948 **Section 13** of the Act provides that the appropriate Government may fix the working hours in the following manner-

(1) Specify the working hours of a normal day, including one or more specified intervals.

(2) A day of rest shall be provided to all employees or a class of employees in every seven-day period and adequate remuneration shall be paid to the employees on the day of rest.

(3) Employees shall be provided with rest days payment, which shall not be less than the overtime rate.

(4) **Section 14** of the Act provides that where an employee works for more than the number of hours specified in a normal working day, he shall be entitled to receive overtime wages at the rate prescribed under the Act for every hour beyond his normal working hours.

(5) If an employee works less than the prescribed number of hours in a normal working day, he will still be paid the minimum wages prescribed under the Act. However, this provision will apply only if the reduced hours of work are not due to the unwillingness of the employee. This provision is given under section 15 of the Act.

Question No. 5- Describe the nature, objective and importance of the Factories Act, 1948.

Answer- 'The second half of the nineteenth century saw the rise of large scale factories/industries in India. Major Moore, Chief Inspector of the Bombay Cotton Department, in his report in 1872-73 first raised the question of provision of legislation to regulate working conditions in factories. The first Factories Act was enacted in 1881. Since then this Act has been amended several times. The Factories Act 1934 was passed replacing all previous legislations in respect of factories. This Act was framed in the light of the recommendations of the Royal Commission on Labour. Suitable amendments have also been made in this Act from time to time. Experience of the working of the Factories Act, 1934 had revealed many defects and weaknesses which had hindered the effective administration of the Act, and a need was felt for a large scale amendment of the Act to extend its protective provisions to a large number of small industrial establishments. Thus, the Factories Act, 1948, which consolidated and amended the law relating to labour in factories, was passed by the Constituent Assembly on 28 August 1948. This Act received the assent of the Governor General of India on 23 September 1948 and came into force on 1 April 1949. Development of factories and industries-

The history of the Factory Act dates back more than a century. Modern industrialization began in India a century after it began in the United Kingdom. The first cotton textile factory was established in Bombay in 1854. By 1870, a large number of industries had been established in Bombay, Nagpur, Kanpur and Madras. In Bihar, the first iron and steel factory was established in 1873. Jute spinning mills were established in Rishra around 1855. In 1881, 5000 power looms were in operation in Bengal. During the 1870s, the Bally Paper Mill was built in Hooghly and many other tanning and leather factories were established in Kanpur, resulting in the growth of factory establishments in India. Working of women and children at an early age, length of working hours and dangerous and unhealthy working conditions created problems and crises in India and due to these scenarios, laws were established for all factories and industries. The need for protective labour legislation to deal with working conditions, especially for women and children, was recognised as early as 1850, but the British government did little. Shashipad Banerjee founded the Bara Bazar Organisation in 1878 to promote the welfare of jute mill workers. Strikes at the Nagpur Empress Mill in 1877 are on record. Production methods changed during the Industrial Revolution in England between 1760 and 1820. Many mechanical innovations began to develop, such as the steam engine, which gave humans the ability to drive powerful machines.

The objective of the Factories Act, 1948-The main objectives of the Indian Factories Act, 1948 are to regulate working conditions in factories, to regulate health, safety welfare and annual leave and to make special provisions in respect of young persons, women and children working in factories.

1. Hours of work - As per the provision of working hours for adults, no adult worker shall be required or permitted to work in a factory for more than 48 hours in a week. There shall be a weekly holiday.

2. Health - To protect the health of the workers, the Act stipulates that every factory shall be kept clean and all necessary precautions shall be taken in this regard. Factories shall have proper drainage system, adequate light, ventilation, temperature etc. There should be adequate provision of drinking water. Adequate latrines and urinals should be available at convenient places. These should be easily accessible to the workers and should be kept clean.

3. Safety- In order to provide safety to the workers, the act provides that the machines should be fenced, no young person shall work on any dangerous machine, and confined spaces should have provision of manholes of adequate size to enable the workers to escape in case of emergency.

4. Welfare- For the welfare of the workers, the Act provides that every factory must provide and maintain adequate and suitable facilities for the use of the workers, including washing facilities, storage and drying facilities, sitting facilities, first aid appliances, shelter, rest rooms and there should be dining room, crèche etc.

5. Penalties- If any of the provisions of the Factories Act, 1948 or any rule made under the Act or any order in writing given under the Act is contravened, it is an offence. The following penalties are liable to be imposed:-

- (a) Imprisonment for a term which may extend to one year;
- (b) A fine up to one lakh rupees, or
- (c) Both fine and imprisonment.

If an employee misuses any equipment relating to the welfare, safety and health of workers or in connection with the discharge of his duties, he can be fined Rs 500.

Section 92 of the Factories Act, 1948 Save as otherwise expressly provided in this Act and subject to the provisions of **section 93**, if any contravention of the provisions of this Act or of any rule made there under or of any written order made there under occurs in, or in relation to, any factory, the occupier or manager of the factory shall be guilty of each offence and shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both, and if the contravention continues after conviction, with an additional fine which may extend to one thousand rupees for every day on which the contravention continues.

Provided that where an accident causing death or grievous bodily injury has occurred as a result of the contravention of any provision of Chapter IV or any rule made there under or under **section 87**, the fine shall be not less than twenty-five thousand rupees in the case of an accident causing death, and not less than five thousand rupees in the case of an accident causing grievous bodily injury.

Explanation.—In this section and in **section 94** "grievous bodily injury" means any injury which includes, or is likely to cause, permanent loss of the use of any limb or permanent injury or permanent impairment of sight or hearing or injury or fracture of any bone, but does not include fracture of a bone or joint (not being fracture of more than one bone or joint) of an arm or leg and fracture of the toes.

General Manager, Wheel & A.P., Bangalore v. State of Karnataka (1996). In this case it was held that the requirement of obtaining sanction for prosecution is mandatory and in the absence of sanction, taking cognizance of the offence cannot be permitted and should be set aside.

Provincial Government v. Ganpat, AIR 1643 Nag 243. In this case it was held that where the occupier or manager of a factory admits the offence under **Section 62** of the Act but accuses the clerk of the factory to be the actual culprit, the burden of proving innocence is on such occupier or manager, as the case may be.

Main features of the Factories Act, 1948- The important features of the 1948 Act are as follows-

(1) The term 'factory' has been extended by the Factories (Amendment) Act, 1976 to include contract labour while determining the maximum number of employees in a factory to be 10 or 20.

(2) The Act increased the minimum age for children working in workplaces from 12 to 14 years and reduced their daily working hours from 5 to 4 and a half hours.

(3) The Act prohibits women and children from working in factories between 7 p.m. and 6 a.m. The distinction between seasonal and non-seasonal factories has been abolished by the Act.

(4) This Act provides for factory registration and licensing.

(5) The State Government shall ensure that all factories are registered and have valid licences, which are renewed from time to time.

(6) The Act empowers the State Governments to make rules and regulations for the benefit of employees with the assistance of the management and employees union.

(7) The State Government has the power to impose the requirements of the Act on any establishment irrespective of the number of employees and whether the establishment is engaged in manufacturing operations or not.

In **Ravindra Agarwal vs State of Jharkhand (2010)** the Jharkhand High Court held that the Factories Act, the special law would prevail over the Indian Penal Code.

Question No. 6- Discuss the formation, functions and jurisdiction of the Employees State Insurance Court.

Answer- Establishment of Employees State Insurance Corporation- ESI operates through the Employees State Insurance Corporation established under **Section 3** of the ESI Act, which is a body created to maintain social security. It was established on February 24, 1952. The job of the corporation is to provide relief to employees in case of medical emergencies formation of corporation

The structure of ESIC is defined in Section 4, and it is as follows-

(1) Director General.

(2) Chairman, appointed by the Central Government.

(3) Vice-Chairman appointed by the Central Government.

(4) Not more than 5 persons nominated by the Central Government.

(5) One person to represent each State.

(6) 1 person representing the Union Territories.

(7) 10 persons representing employers.

(8) 10 persons representing employees.

(9) 2 persons representing the medical profession.

(10) Members of Parliament (2: Lok Sabha and 1: Rajya Sabha).

Tenure of members of the corporation

Through **Section 5**, the following members are appointed for a term of 4 years-

- (1) Director General.
- (2) Mr. Chairman.
- (3) Vice President.
- (4) Five persons to be nominated by the Central Government.
- (5) Members representing each State.
- (6) Members representing each Union territory.

Power of Employees Insurance Court—The Employees Insurance Court shall function with the same powers as a civil court, including, for enforcing the provisions of the ESI Act, enforcing the attendance of witnesses, compelling the production of documents and physical evidence, administering oath and recording evidence. All costs incurred before any proceedings are at the discretion and liability of the Court.

- Powers.**—(1) The Corporation may call its meetings.
- (2) The Corporation has the power to administer the Fund.
- (3) The Corporation may accept grants-donations and gifts from the Central and State Governments.
- (4) The Corporation is empowered to approve appointments by the Standing Committee for the operation of the Fund.
- (5) The right to own property.
- (6) The Corporation may also borrow money under **section 29 (3)**.
- (7) The Corporation is competent to provide for funds for its staff or any class of them.
- (8) All property acquired before the establishment of the Corporation shall vest in the Corporation.
- (9) All contributions made shall be credited to the Corporation.
- (10) Power to fix the rate of payment of contributions.
- (11) Right to receive returns by employers and to give directions as to their form, etc.

Contribution.—The contribution payable under this Act in respect of an employee shall be called the employee's contribution and the contribution payable by the employer shall be called the employer's share. Both the above types of contributions shall be called contribution under **section 39**.

Contribution shall be paid at the rates prescribed in the First Schedule and in cases where the provisions of this Act apply to any employee or class of employees employed in any factory or in any class of factories or establishments in such a manner that they are excluded from certain benefits under this Act, they shall be required to pay contribution at such rates as the Corporation may determine in this behalf. All payments due in respect of a week shall be payable on the last day of the week and where an employee is employed for part of a week or works for two or more employers within the same week, the contribution shall be payable to both of them as prescribed in the regulations.

The chief employer shall pay the contribution of both the employer and the employed in respect of every employee, whether employed by him directly or employed by or through any competent employer. General provisions regarding payment of contribution.

(1) No employee's contribution shall be payable by or on behalf of any employee.

(2) The contribution (contribution of both the employer and the employed) shall be payable by the principal employer for each week for which the whole or any part of the week in respect of which wages are payable to the employed and not otherwise.

(3) Where wages are payable to an employed person for part of a week, the employer shall be liable to pay the full weekly contribution of both the employer and the employed person but he shall be entitled to deduct the employer's contribution from the wages of the employed person.

Manner of payment of contributions.- Subject to the restrictions contained in the provisions of this Act, the Corporation may make regulations for any matter relating to the payment and collection of contributions payable under this Act or for all matters connected with the payment and collection thereof which shall not be contrary generally to its rights already mentioned.

Cases to be decided by the court - As per **section 75** of the Employees State Laws Act 1948, the following the following types of cases are decided by the court of-

(1) Whether or not a person is an employee under this Act or is liable to pay contribution.

(2) Any person who is, or was, the principal employer in respect of an employee.

(4) A dispute relating to a direction issued by the Corporation under section 45 on reconsideration of any payment of dependant's benefit.

(3) Dispute regarding the entitlement of a person to any benefit, its amount or its duration.

(5) Claim for recovery of principal employer's contribution.

(6) Claim by the principal employer to recover contribution of any nearest employment.

(7) Claim against the principal employer under **section 68**.

(8) Claim to recover profits obtained by illegal recovery.

(9) All such claims as may be made for recovery or other such claims under this Act shall be decided by these Courts.

Question No. 7 - Briefly describe the provisions relating to health, safety and welfare in the Factories Act, 1948.

Answer- The Factories Act, 1948 is a comprehensive law covering all aspects related to factories, including approval, licensing and registration of factories, inspecting officers under the Act, health, safety, welfare, hours of work, employment of adults and minor children, annual leave and penalties. In **Section 2(m)**, a factory is defined as any premises, including its limits 1. where ten or

more employees are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is usually so carried on, or

2. Where twenty or more employees are working, or were working on any day of the previous twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is usually so carried on. Section 85 of the Act empowers the State Government to apply the Act to certain premises in which

1. If the work is being done with the help of electricity, then the number of persons employed there should be less than ten and if the work is being done without the help of electricity, then the number of persons employed there should be less than twenty, or

2. The persons employed therein are not employed by the owner but are working with the permission of or under an agreement with such owner. Accordingly, considering the danger involved, this Administration has in the year 1989 notified 41 manufacturing processes falling under the Factories Act, 1948 vide Government Order No. 35/89-LAB/G dated 12th June, 1989.

Important provisions of the Factories Act, 1948

Obtaining approval, licensing and registration of factories (section 6)-

(1) The State Government shall make rules under this Act, it shall be necessary to formally submit the plans of factories of any class or description, and also to furnish to the Chief Inspector or the State Government, the particulars of the place where the factory is situated, for construction or extension.

(2) This section requires the registration and licensing of factories as well as the payment of fees for such registration and licensing and the renewal of licences.

(3) No licence shall be issued or renewed unless the occupier gives notice to the Chief Inspector.

(4) If the State Government refuses to grant permission for the construction or site of a factory, the applicant may, within 30 days of the refusal, appeal to the Central Government.

Labour and Welfare - The term 'labour welfare' refers to the services provided to employees inside and outside the factory, such as canteens, toilets, recreation areas, housing and any other facilities that support the well-being of the employee. States that take welfare measures care about the overall well-being and productivity of their employees. Early in the process of industrialisation, social programmes for manufacturing workers did not receive adequate priority. In the past, the condition of industrial labour in India was very poor. Due to the increase in industrial activity in the second half of the twenty-first century, several attempts were made to improve the working conditions of employees through the recommendations of Royal Commissions. After becoming aware of the shortcomings and limitations of the previous Act, the Factories Act of 1948 was amended. The definition of 'factory' was expanded to include any industrial

facility employing 10 or more people that uses electricity or any industrial establishment employing more than 20 people that uses electricity does not use it, which was an important development. Other important amendments include-

- (1) Raising the minimum age of children eligible for working from 12 to 14 years.
- (2) Reduction of the number of working hours for children from five to four and a half hours.
- (3) Prohibiting children from working between 7 p.m. and 6 a.m.

Special attention is paid to the health, safety and welfare of all types of employees.

Welfare measures-The three main components of welfare measures are occupational health care, fair working hours and fair remuneration. It refers to the overall health of a person, which includes his physical, mental, moral and emotional state. Welfare measures aim to integrate the socio-psychological demands of the workforce, special technological requirements, organisational structure and processes and the current socio-cultural environment. It promotes a culture of dedication to work in enterprises and society, ensuring happiness of employees and increased productivity.

Washing facilities (Section 42) - (1) All factories shall provide and maintain adequate suitable washing facilities for the use of employees.

(2) Separate, well-maintained facilities must be provided for male and female employees; these facilities must be easily accessible and clean.

Standards for proper and appropriate facilities for washing should be prescribed by the State Government.

Facilities for storage and drying of clothes (Section 43) - This is a specific power with the state government. It states that the state government has the power to direct manufacturers where to store the clothes of workers. They can also tell them how to dry the clothes of workers. This refers to a situation in which workers are not ready for work.

Sitting Facilities (Section 44) - All factories must provide suitable sitting facilities for all workers who have to work standing, so that they can take advantage of the opportunities for rest that may arise during the course of work.

According to the Chief Inspector, workers involved in a particular manufacturing process or working in a specific room in any factory are able to perform their jobs effectively while sitting.

First aid equipment (Section 45)- All factories must have first aid kits or cabinets stocked with the necessary supplies during all working hours, and they must be easily accessible to all manufacturing employees. Accordingly, there should be more first aid boxes or cabinets than the usual ratio of one for every 150 industrial employees, with fewer than that. The first aid box or cupboard should contain only recommended items.

During the operating hours of the factory, each first aid box or cupboard should be kept under the supervision of a specific person who should be

separately accountable for it and should be available at all times during the working hours of the factory.

Canteen (Section 46)- In any specified factory where more than 250 persons are ordinarily employed, a canteen must be provided and maintained by the occupier for the benefit of the workers in such manner as may be prescribed by the State Government. Meals must be served and prices fixed.

Shelters, latrines and dining rooms (Section 47) - Every factory employing more than 150 workers must have proper and suitable latrines or shelters and a lunch room with drinking water where the workers may eat the food brought with them and kept for their use. If a lunch room is provided, the workers must stop eating during work. The shelters or latrines must be well lit, ventilated, clean, cool and in good condition. The State Government prescribes standards.

Crèche (Section 48)- Every factory employing more than 30 women employees must have a room suitable for the use of children under the age of six years belonging to such women. Such rooms must be well furnished, well lighted and ventilated, and must be kept clean and hygienic. Also, they must be under the supervision of women who have received training in infant and child care. In addition, facilities for washing and changing clothes may also be provided for the care of the children of women workers. Any factory may be obliged to provide free milk, refreshments or both to such children. Small children may be fed by their mothers at required intervals in any industry.

Health

Sections 11-20 of Chapter II of the Act relate to the Factory Health Act, 1948.

Cleanliness (Section 11)- Every factory must be kept clean and free from drains, latrines or other nuisances. In particular:

- (1) Floors, benches, stairs and corridors must be cleaned daily by sweeping or by any other means and dirt must be properly disposed of.
- (2) Floors should be washed with disinfectant at least once a week.
- (3) During the manufacturing process, the floor becomes moist; this should be drained out through drainage. Disposal of waste and effluents (Section 12) - Every factory should have a method for treating the wastes and effluents generated from the manufacturing process.

Ventilation and Temperature (Section 13)- (1) To ensure the comfort of workers and prevent health problems, adequate ventilation must be provided to circulate air in the factory, which must be maintained at a specific temperature.

(2) Walls and ceilings should be made of materials designed for a particular temperature and should not exceed that temperature as much as practicable.

(3) Certain precautions must be taken to protect workers in factories where the manufacturing process requires extremely high or low temperatures.

Dust and Smoke (Section 14) - Every factory shall have efficient means for removing or preventing the inhalation and accumulation of dust, smoke or other impurities which are likely to injure or offend employees employed therein.

No factory may operate an internal combustion engine unless the exhaust is directed outside, and no other internal combustion engine may be used. Additionally, precautions must be taken to avoid the build-up of fumes that could endanger the health of any workers inside the room can put.

Overcrowding (Section 16)- Factories should not be overcrowded to the extent that it harms the health of workers. All employees must have adequate space to work in the building.

Lighting (Section 17) - (1) Adequate natural, artificial or both types of lighting shall be installed and maintained in every area of a factory where employees are employed.

(2) In factories, all glass windows and skylights providing light to the work room should be sealed from the inside and should be kept clean from outside.

(3) No manufacturing process should cause strain on the eyes by the production of shadows, and all factories should have preventive measures to prevent glare due to reflection from the source of light or from smooth or polished surfaces.

Drinking Alcohol (Section 18)- (1) All factories shall have suitable establishments and maintain convenient accommodation with an adequate supply of clean drinking water.

(2) The distance between any drinking water and any washing area, urinal, latrine, spittoon, open drain carrying filth or waste, or any other source of contamination in the factory shall be 6 metres, unless the Chief Inspector approves a lesser distance in writing. The labelling shall be legible and in a language which the workers can understand.

(3) All factories employing more than 250 regular employees shall have suitable means for providing cool drinking water during hot weather.

Latrines and Urinals (Section 19)-(1) All factories shall be provided with adequate latrines and urinals of the necessary description and located at such places as are convenient and always accessible to the workers.

(2) There should be separate closed rooms for male and female employees.

These places should be thoroughly cleaned, kept clean and have adequate light and ventilation.

(3) Cleaning staff should be used to keep toilets, urinals and washing facilities clean.

Spittoons (Section 20)-(1) All factories shall have spittoons located in easily accessible places and shall be kept clean and neat.

(2) The State Government may specify the number of spittoons to be provided, their location in any factory, and the manner in which they are to be kept clean and hygienic.

(3) No one shall spit on the premises of a factory except in spittoons designed for the purpose. A notice shall be put up stating that any violation shall attract a penalty of five rupees.

Safety- Safety is covered in **Chapter IV** of the Act and **sections 21-41** of the Factories Act, 1948.

Employment of young person's on dangerous machinery (Section 23):- No young person shall be permitted to operate dangerous machinery unless he has been adequately informed of the dangers associated with the machine and the steps to be taken, and has received suitable training in working on the machine or has received adequate supervision by a person who has full knowledge and experience of the equipment.

Prohibition on employing women and children near cotton machines (Section 27):- Women and children are not permitted to work in any area of a cotton pressing facility while the cotton opener is in operation. Women and children may be employed on that side of the partition where the feed end is situated, if the inspector so specifies.

Hoists and Lifts (Section 28)- Every hoist and lift must be of sound mechanical structure, adequate strength and made of robust materials. They also need to be regularly maintained, thoroughly examined by a qualified person at least once every six months, and a register maintained for mandatory examinations. Properly designed and installed cages must enclose all hoists and lift routes to prevent people from becoming trapped between any equipment.

No more than this weight must be lifted; the maximum safe operating weight must be marked on the hoist or lift. Each hoist or lift gate must be fitted with an interlocking or other effective system that prevents the gate from opening except when landing.

Eye protection (section 35)- The State Government may require the provision of effective screens or suitable goggles for the protection of persons employed in, or in the vicinity of, any manufacturing process carried on in any factory where the eyes are at risk from exposure to excessive light or from particles or fragments thrown up during the process.

Precautions against dangerous fumes, gases, etc. (Section 36)- No person shall be required to enter or leave any room, tank, no person shall be required or permitted to enter a vat, pit, pipe, chimney or other confined space where any gas, smoke, vapor or dust is present to such an extent as to constitute a risk of entrapment of persons, unless such chamber, tank, vat, pit, pipe, chimney or other confined space is provided with adequate manholes or other effective means of egress.

Explosive or inflammable dust, gas etc. (Section 37)- Any factory which is involved in manufacturing processes which produce dust, gas, smoke or vapour which may explode on ignition shall take all practicable precautions to prevent any explosion. Effective enclosure of the plant or machinery. By removing or

preventing the accumulation of such dust, gas, smoke or vapour etc., or by otherwise excluding or effectively shutting off all possible sources of ignition.

Precautions in case of fire (Section 38)- Precautions to be taken to keep persons safe and secure in case of fire to be in place, all factories must have precautionary measures to avoid the occurrence and spread of fire, whether internal or external. The equipment and facilities required to extinguish the fire must also be accessible.

All factory workers must have access to appropriate measures, who are familiar with fire escape routes and have received adequate training on the procedure to be followed in such situations.

Question No. 8 - What defences can be taken in a claim for compensation made under the Workmen's Compensation Act, 1923? Describe.

Answer- Accident Information and Claim- 10 (1). Where an accident occurs on the premises of an employer and accident. Where an accident results in the death or serious bodily injury to a worker, the employer shall, within seven days of the date of death or serious bodily injury, send a report to the Commissioner stating the circumstances attending the death or serious bodily injury. If a worker, who has been continuously employed in any employment specified under sub-section (2) of **section 3**, ceases to be employed and within two years of the cessation of employment develops symptoms of an occupational disease specific to that employment, the employee shall be deemed to have been employed in that employment.

Section 3(2) of the Workmen's Compensation Act, 1923 deals with the employer's liability for compensation. It states that the employer is liable to pay compensation for personal injuries sustained by an employee due to an accident occurring in the course of employment. However, the employer is not liable if the injury does not cause total or partial disablement for a period exceeding three days, or if it does not result in death or permanent total disablement. The employer is also not liable if the injury is caused by-

- (1) Drugs or alcohol
- (2) Refusal by the employee to comply with safety measures
- (3) The employee performing work that was not required and involved serious risk.

Provided that the Commissioner may, if he is satisfied that there was sufficient cause for not giving the notice or not preferring the claim within the reasonable time, entertain and decide any claim for compensation in respect of which the notice has not been sent or the claim has not been preferred within the time provided in **section 10 (1)**.

The notice under **section 10(1)** shall state the following-

- (1) The name and address of the injured workman,
- (2) In simple terms, the cause of the accident and

(3) Date of occurrence of the accident.

10 (2) Every such notice shall give the name and address of the injured person and state in ordinary language the cause of the injury and the date of the accident, and shall be given to the employer or to any one of several employers or to any person responsible to the employer for the management. **Section 10(2)** of the Employees' Compensation Act 1923 states that every notice shall contain the name and address of the injured person. The notice must be given to the employer, any of his employees or any person responsible for the management of the business. It may be delivered personally or sent by registered post. Section 10 also covers claims for compensation and states that the Commissioner may consider a claim even if the notice is not given in time, contains any defect, or the employer has information about the accident from another source got to know.

Section 10 (3) of the Employees' Compensation Act, 1923 states that the State Government may require employers to keep a notice book for injured employees on their premises. The book must be in the prescribed form and must be readily available at all reasonable times to injured employees and to any person acting on their behalf. Notice under this section may be given by:

(1) Deliver them to the person's residence, office, or place of business.

(2) Send them by registered post.

(3) Record it in the notice book, if one is maintained.

"The State Government may require that any specified class of employers shall keep, at their premises where workmen are employed, a notice book in the prescribed form which shall be readily accessible at all reasonable times to any injured workman employed on the premises and to any person acting in good faith."

10 (4) If the injury of the employee results in his death, the employer shall, in addition to the compensation under **sub-section (1)**, deposit with the Commissioner a sum of not less than five thousand rupees for payment to the eldest surviving dependent of the employee towards his expenses.

Power to require statement from employers in respect of fatal accidents-As per **section 10(A)(1)** of the Workmen's Compensation Act, 1923, if the Commissioner receives information that any employee has died while on work, If the worker died in an accident at the time of the accident, he may send a notice to the employer by registered post. The notice requires the employer to submit a reply within 30 days. The Workmen's Compensation Act of 1923 is designed to provide compensation for injuries sustained by workers in accidents. Section 10 of the Act also covers notices and claims, and states that the Commissioner may consider a claim even if it is not filed in time, has defects, or the employer knows about the accident from another source.

According to **Section 10(A)(2)**, if the employer considers himself liable to deposit the amount of compensation, he shall deposit the amount of compensation in the office within thirty days of the receipt of the above notice.

As per **Section 10(A) (3)**, if the employer considers that he is not liable to deposit the compensation amount, he shall specify in his disbursement the sections on which he disclaims liability.

Where the employer has so denies his liability, the Commissioner may, after due inquiry, inform any of the dependents of the deceased workman that he is free to claim compensation and may also give such other information to the dependents as he considers fit.

Mefold State Nallakot Nilgiris v. Krishnan (1985) 2 LLJ 483 (Madras) held that under **section 10(A) (4)** the Labour Commissioner cannot determine the amount of compensation suo motu. He will only send notice to the dependents to submit their claims. The Commissioner has no power to determine compensation if he has disclaimed the liability to pay compensation. In such a situation, apart from filing a writ petition under section 30 of the Act, the aggrieved party can apply for a writ petition under Article 226 of the Constitution.

Reports of fatal accidents and serious bodily injuries- Section 10B (1) of the Workmen's Compensation Act, 1923 requires the person responsible for giving notice of a fatal accident or serious bodily injury to send a report to the Commissioner within seven days. The report should contain details of the circumstances of death or injury, such as-

- (1) Permanent loss of use of any limb.
- (2) Permanent damage to vision or hearing.
- (3) Fracture of the limb.
- (4) The injured person is absent from work for more than 20 days.

However, the State Government may provide that the report may be sent to any other authority instead of the Commissioner can.

Where an employer is required by or on his behalf by any law for the time being in force to give notice to any authority of any accident occurring at his premises resulting in death or serious bodily injury, the person required to give notice, within seven days of the occurrence of the death or serious bodily injury, is required to give notice, by or on his behalf to any authority, within seven days of the occurrence of the death or serious bodily injury. Where an employer is required by or on his behalf to give notice, to any authority of any accident occurring at his premises resulting in death or serious bodily injury, the person required to give notice, by or on his behalf to any authority, within seven days of the occurrence of the death or serious bodily injury, is required to give notice, by or on his behalf to any authority, within seven days of the occurrence of the death or serious bodily injury by.

The State Government may, by notification in the Official Gazette, apply the provisions of **section 10(b)(1)** to any class of premises other than those covered by this sub-section and may specify in such notification the persons who shall send reports to the Commissioner. But nothing in section 10 shall apply to factories to which the Employees' State Insurance Act, 1948 applies.

In the decision of **S. Suppiah vs Chitraprai AIR 1957 Madras 216**, the Madras High Court has held that in case of an accident, the worker has the option to either file an application under this Act or to file a claim for compensation under any other provision of law such as Employer's Liability Act. But the worker cannot avail the benefit of both repeatedly.

The provisions of **section 10(b)** of the Workmen's Compensation Act, 1948, do not apply to factories where the provisions of the State Employees Insurance Act, 1948, are applicable.

Medical Examination.-11(1) Where an employee has given notice of an accident, he shall, if the employer offers to provide him with an examination free of cost by a qualified medical practitioner, before the expiration of three days from the time of the service of the notice, to submit himself for such examination, and Any employee who gives notice of an accident shall, if the employer offers to provide him with an examination free of cost by a qualified medical practitioner, before the expiration of three days from the time of the service of the notice, to submit himself for such examination if the employee dies at the time of service of the notice by the employer, he shall be required to submit himself to such investigation.

Section 11 of the Workmen's Compensation Act, 1923

(1) Medical examination for employees includes-

(1) Where an employee reports an accident, the employer may, within three days of receipt of the report, inform the employee

(2) May offer free testing by a qualified medical professional the employee will have to take the test.

(3) Employees who are paid semi-monthly may also be required to take periodic tests.

(4) Employers cannot require their employees to undergo testing outside the regulations.

(5) If an employee refuses to submit to an investigation or obstructs the investigation, his or her compensation rights are suspended.

Section 11(3) of the Workmen's Compensation Act, 1923 states that if an employee voluntarily leaves his place of work without undergoing examination, his compensation rights are suspended until he returns and submits himself for examination.

Section 11(4) of the Workmen's Compensation Act, 1923 covers medical examination of employees-

(1) Where an employee reports an accident, the employer may, within three days of receipt of the report, inform the employee may offer free testing by a qualified doctor.

(2) The employee must take a test.

(3) Employees who are paid semi-monthly must also take the test when required.

(4) Employers cannot require employees to take a test unless it is in accordance with the regulations.

(5) If an employee refuses to submit to an investigation or obstructs the investigation, his or her compensation rights are suspended.

Section 11(5) of the Workmen's Compensation Act, 1923 states that the compensation credited in respect of a deceased employee shall, after any deductions made under **subsection (4)**, be divided among his dependents.

Question No. 9- What is the procedure for payment of maternity benefit in case of death of a woman? Discuss.

Answer- According to **Section 7** of the Maternity Benefit Act, 1961, if a woman is entitled to maternity benefit or any other amount under this Act and she dies before receiving that amount, then the employer has to pay that amount to the person nominated by the woman. If there is no such nominee, then the employer has to pay that amount to the legal representative of the woman.

According to **Section 5 (3)** of the Maternity Benefit Act, 1961, every woman gets 12 weeks of maternity benefit. However, this section has been amended under the Maternity Benefit (Amendment) Act, 2017. According to this, now women can get a maximum of 26 weeks of maternity benefit. This does not include the time eight weeks before the estimated delivery date. If the woman has two or more children, then she will get only 12 weeks of maternity benefit. This benefit can also be availed six weeks before the estimated delivery date. Under this Act, pregnant women can take maternity leave by giving written notice to their employer. In this, they also have to tell from which date they will be absent from work. Apart from this, women can also apply for maternity leave by informing the HR of the company or by visiting the company's portal. They can also inform their employer about taking maternity leave through email.

The Act states that every woman shall be entitled to 12 weeks of maternity benefit. The Act seeks to increase this to 26 weeks. Also, as per the previous provisions, a woman could not avail the said benefit before 6 weeks from the date of expected delivery.

If the employer does not pay the outstanding maternity benefit payable after the death of the woman who has given birth to the child to the person nominated by her or her legal heir, then no excuse can be made to keep the maternity benefit of the woman's death with oneself. If the woman dies before the delivery, then it is the responsibility of the employer to pay maternity benefit till the day of her death. If the woman dies after giving birth to the child and the child survives, then maternity benefit will be payable till 6 weeks of delivery. But if both the mother

and the child die, then the benefit will be given till the last day of their survival. If the newborn child is alive at the time of the mother's death and dies after the mother's death, then maternity benefit will be payable to him for the three days he remained alive.

According to **Section 6** of the Maternity Benefit Act, 1961, if a woman is entitled to maternity benefit or any other amount under this Act, but she has not been informed, then also she will not be deprived of this benefit. In such a case, the inspector can, on his own or on the application of the woman, order the payment of that benefit or amount within the prescribed time. Under the Maternity Benefit Act, 1961, pregnant women can write a written notice to their employer. She can take maternity leave by giving notice in. She will also have to tell from which date she will be absent from work. Apart from this, one can also apply for maternity leave by informing the HR of the company or by applying on the company's portal. Apart from this, an email can also be sent to the employer.

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

Answer- (1) - According to **section 2(1)(c)** of the Workmen's Compensation Act, 1923, "compensation" means compensation payable under this Act. This Act is designed to provide financial security and support to employees and their dependents by way of compensation in case of any accidental injury occurring during the course of employment. Under this Act, employers have to pay benefits to employees who become permanently or temporarily disabled due to an accident at work place. The amount of compensation payable to the employee depends on the severity of the injury caused by the accident, the monthly salary of the employee, and his age. If an employee dies in an accident during or because of employment, the minimum amount of compensation payable to his dependents is Rs 1.20 lakh and the maximum is Rs 1.50 lakh. The dependents include the widow, minor legitimate or adopted son, unmarried legitimate or adopted daughter, or widowed mother of the deceased employee.

In the decision of **Bharat Heavy Plate & Limited vs. Commissioner of Compensation (1983) 1 LLJ 477 (Allahabad)**, the Allahabad High Court has given a wide interpretation in this context. The court has stated its position that once the compensation amount is determined by the Compensation Commissioner on the basis of a medical certificate, then the earlier compensation amount cannot be denied on the basis of a subsequent certificate, even if the second certificate indicates improvement in the injured part of the worker.

(2) Dependents - According to **section 2(d)** of the Workmen's Compensation Act, 1923, compensation means compensation payable under this Act. Whereas, 'dependent' means the following relatives of the deceased employee: widow, minor legitimate or adopted son, unmarried legitimate or adopted daughter, widowed mother.

Dependent means any of the following relatives of the deceased employee, namely:-

(i) Widow, minor legitimate or adopted son, unmarried legitimate or adopted daughter or widow and

(ii) If at the time of the employee's death he or she is wholly dependent on his or her earnings, his or her son or daughter who has not attained the age of 18 years has attained the age of one year and is a nullius

(iii) If wholly or substantially dependent on the earnings of the employee at the time of his death,

(1) Category I dependents are not required to prove their dependency on the deceased employee at the time of his death. For example, a widow or any other dependent in this category may not be dependent on the earnings of the deceased employee, yet they fall within the definition of Category I dependents and can claim compensation.

The dependents belonging to this category are, if they are completely dependent on the earnings of the employee at the time of his death, his

(2) son or daughter who has attained the age of 18 years and who is disabled. The dependents belonging to the second category have to prove their physical or mental disability as well as their complete dependence on the earnings of the deceased employee. If the dependents prove the above facts, only then they fall under the definition of second category dependents and can claim compensation.

(3) Category-III dependents are those who are fully or partially dependent on the earnings of the employee at the time of his death will have to prove.

R.B. Mundhra & Co. vs. Ms. Bhawari - In this case, the court held that "a widow who is entitled to claim compensation at the time of death of her husband is not debarred by her subsequent marriage".

Laxmirani Behera vs. Commissioner of Employees' Compensation & Assistant Labour Commissioner, Balasore - In this case, the Orissa High Court held that the concubine of the deceased employee is not a widow. Hence the concubine cannot be treated as a dependent and is not entitled to compensation under ECA, 1923.

(3) Employer. - Section 2(1)(m) of the Workmen's Compensation Act, 1923 means any person or institution consisting of the following -

(1) A body of persons, whether such body is incorporated or not;

(2) Managing agent of employment

(3) The legal representative of the deceased employer, and

(4) Where the services of a worker are temporarily lent or let out to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the employer means that other person while the worker continues to work for the employer. In conclusion it may be said that apart from those for whom the term 'employer' is used, some other persons may also be considered as employers in the eyes of the law.

(4) Partial Disability - The Workmen's Compensation Act, 1923 defines partial disability as "reduction in the earning capacity of an employee due to an accident sustained in the course of his employment." The Act divides partial disability into two categories: temporary and permanent.

(1) Temporary partial disability-The employee's earning capacity is reduced in the employment he was holding at the time of the accident, but not in other employment.

Permanent Partial Disability-The employee's earning capacity is reduced in whatever work he was capable of performing at the time of the accident.

In case of partial disability it is necessary that (a) an accident occurs, (b) the accident results in injury to the employee, (c) it results in permanent disability and (d) his earning capacity is permanently reduced as a result.

'Partial disablement' means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident, of which

'resulting in disability, and where the disability is of a permanent nature, such disability as reduces his earning capacity in every employment which he was capable of carrying on at the time Provided that every injury specified in Part II of Schedule I shall be deemed to result in permanent partial disability.

(5) Hazardous process.-'hazardous process' means any process or operation of the type described in the First Schedule, where, unless special care is taken, the raw materials introduced into it may be hazardous; or or intermediate or finished products, by-products, wastes or effluents thereof which-(1) causes or is related to any particular injury to the health of persons working therein, or

(2) Results in general environmental pollution.

Provided that where such a thing happens the State Government may, by notification in the Official Gazette, amend the First Schedule to add, subtract or reduce the number of any factory mentioned in it.

Question 11. Discuss the appointment, powers and functions of the Employees' Compensation Commissioner. Or Explain the appointment process, powers and functions of the Employees' Compensation Commissioner under the Workmen's Compensation Act, 1923.

Answer- Appointment of Commissioner As per the provisions of **Section 20**, the State Government can appoint any person as Workmen Compensation Commissioner for a particular area by issuing a notification in the Official Gazette. The State Government also has the right to appoint more than one Commissioner. Where there is more than one Commissioner, their functions and powers will be determined by the order of the State Government.

Functions- The functions of the Commissioner should be determined only by the order of the State Government. Since the Commissioner is a court under Section 19, his job is to consider the cases and give decisions.

Powers and Duties- Under this Act, the Compensation Commissioner has the following various powers

1. If the employer fails to pay the compensation due under this Act within one month, the Commissioner may order the recovery of the amount of such compensation along with six per cent interest thereon and a penalty up to Rs. 50 from the employer.
2. The Commissioner may reconsider any half-monthly payment due under any agreement or under an order of the Commissioner.
3. Any claim for compensation may be entertained and decided by the Commissioner if the conditions specified in section 10 are fulfilment of the same.
4. The Commissioner may, in the case of any workman of the employer dying in an accident, serve a notice on him calling for information in the prescribed form regarding such fatal accident.
5. Where an employer enters into a contract with a contractor under **section 12** for the execution of any of his works and any workman employed by such contractor is required to pay any compensation to the employer as the principal person, all questions as to the right to receive compensation from such contractor and the amount thereof shall be decided by the Commissioner.
6. The Commissioner may cause the right to receive half-monthly payments under **section 7** to be redeemed by a lump sum payment.
7. Obtaining prior sanction of the Commissioner is a pre-condition for prosecuting a person guilty under **section 18-A**.
8. Any question relating to the liability of any person to compensation and all questions relating to whether a person is a workman or not or the amount of compensation and the extent and nature of the disability shall be decided by the Commissioner under **section 19** and no civil court shall have jurisdiction to decide such questions.
9. The Commissioner may transfer any proceeding pending before him to the Commissioner of such area who has competent jurisdiction to hear and dispose of the same.
10. The Commissioner has all the powers of a civil court under the CrPC for certain matters such as taking evidence on oath and compelling the attendance of witnesses etc. and shall be deemed to be a Court for the purposes of **section 195** and **Chapter 35** of the IPC.
11. The Commissioner has the discretion to make orders under **section 26** as to all costs incidental to any proceedings before him.
12. The Commissioner may refer any question of law to the High Court for decision under **section 27**.

13. The Commissioner has the power to register agreements between the parties under **section 28**.

14. An appeal from the orders of the Commissioner as specified in **section 30** shall lie to the High Court and if such appeal is preferred by the employer, the Commissioner may withhold payment of any amount standing to his credit.

15. The Commissioner may recover from any person who is liable to pay compensation under this Act, whether under any agreement or otherwise, the amount as a dues of land revenue.

Appeal against commissioner's orders

An appeal to the High Court against the following orders of the Commissioner is provided under **section 30(1)**

1. The order by which the compensation is awarded in lump sum or fortnightly the payment is made with a view to redeem or otherwise or which rejects the lump sum amount either wholly or in part.

2. The order by which interest or penalty is imposed under **section 4(a)**.

3. The order which refused to accept the redemption of fortnightly payment.

4. An order providing for the distribution of compensation money among the dependents of a workman or by which the claim of any person to be his dependent is rejected.

5. The order admitting or rejecting a claim for the amount of penalty under the provisions of **sub-section (2) of section 12**, and

6. An order refusing to register a memorandum of agreement or providing for its registration subject to certain provisions.

Provided that no appeal shall lie against any order unless a substantial question of law arises there from and if the order is an order described in clause (a) above, unless the amount in dispute in the appeal is less than three hundred rupees.

There is further provision that no appeal will lie in any case where the parties have agreed to comply with the order.

Provided further that no appeal under **clause (a)** shall be filed by an employer unless the grounds of appeal are accompanied by a certificate of having deposited the amount due.

Period of limitation for appeal: According to **section 30(2)**, the period of limitation for filing an appeal to the High Court against the orders of the Commissioner referred to in **section 30(1)** shall be 60 (sixty) days, that is to say, the appeal should be filed within 60 days from the date of the said orders.

Further, **sub-section (3)** of this section provides that the provisions of section 5 of the Indian Limitation Act, 1963 shall also apply to these appeals. That is, even after the expiry of the said period of limitation, the High Court may accept the appeal by condoning the delay, if the appellant has sufficient reasons for such delay and the High Court is satisfied with those reasons.

Question 12. Explain the theory of "emotional expansion" with the help of important decisions decided. OR Explain the extent of the employer's liability to provide compensation to the employees under the Employees' Compensation Act, 1923. OR Under the Workmen's (Employee) Compensation Act, 1923, the employer will be liable to pay compensation only when the accident or injury "arises out of employment" and occurs or is caused "during employment". In the light of the above statement, explain the employer's liability to provide compensation to the employees.

Answer- Employer's liability for compensation - Section 3 of the Act provides for the employer's responsibilities regarding giving compensation to the workers. This section limits the employer's liability to pay compensation and determines that this liability is subject to the provisions. The employer's liability will be subject to the following conditions-

1. Personal injury to the worker,
2. Such injury is caused by an accident,
3. Such accident has occurred due to employment and in the course of employment,
- 4. Result of injury** - (a) in the form of death of the worker or (b) worker being partially and fully disabled for a period of more than 10 days.

In order to hold the employer responsible, the following things must be clearly proved-

1. The accident occurred in the employer's establishment or in any premises connected to it.
2. The accident occurred during the worker's working hours.
3. The accident occurred in the course of work.
4. The worker has become a victim of that accident.
5. The accident has resulted in disability which is partial or complete, permanent or temporary.
6. The worker concerned has no contributory effect- in the occurrence of the accident.

When will the employer not be liable (whether the employer is liable for compensation or not?) - He will not be liable to pay compensation to the worker in the following circumstances-

1. If such personal impairment causes total or partial disablement not to last for more than three days.
2. The employer can take the following defence for any loss suffered by the **worker other than death or permanent disablement-**
 - (1) The workman was under the influence of liquor or drugs at the time of the accident.
 - (2) The worker has wilfully disregarded any order or rule made for safety.

(3) The worker has wilfully removed any safety measures which he knew were provided or designed for the protection of the worker.

Responsibility of the employer in case of occupational diseases-Sub-section 2 of section 3 of the Act further provides that where a workman who is employed in any employment contracts a disease which is an occupational disease specified in **Schedule 3**-

(1) The contracting of such disease shall be deemed to be an injury,

(2) Such injury shall be deemed to arise out of and in the course of the employment. **Schedule 3**

Any disease specified in Part E of the Act or injury resulting from accident arising out of employment and not related to employment it will be considered in order. For this, the following provisions are made it.

(i) The person concerned has been in the service of the employer for a period of at least six months, and

(ii) The continuous period of employment is spent in relation to such employment in which

3. The disease contracted is an occupational disease specified in Part B of Schedule the condition in respect of any disease specified in **Part C of Schedule III** is continuous service for such period as may be specified by the Central Government in respect of each such employment.

There is no restriction so far on compensation in respect of any disease specified in Part A of the relevant Schedule.

Arising out of and during the course of employment-To recover damages caused to a worker due to an accident, it is necessary that such incident should arise out of employment and should have happened in the course of employment. The expression 'arising out of employment' used in **Section 3** implies finding out or investigating the cause of the accident. Similarly, the expression 'in the course of employment' refers to the place and time of employment. Both these expressions are more important for determining compensation because the worker will have to prove that the incident happened in the 'in the course of employment' that is, it is necessary to establish a direct relationship between the damage caused by an accident and the employment of the worker.

Arising from employment does not mean that the basis of personal injury is only the nature of employment. In fact, it means that the injury is caused in the course of employment due to a risk which is incidental to the nature of employment. If the worker had not participated in the performance of his duties towards his employment, he would not have suffered the injury. In summary, it is very important to establish a cause-effect relationship between the incident and employment.

R.B. Mundada & Co. vs. Bhanwari AIR 1970 Raj 111 - A person was employed as a truck driver by the company. Petrol was being brought by truck. The driver reported that the tank of the truck was leaking. The employer sent the driver

inside the tank for examination but there was no petrol in it at that time. The driver lit a matchstick to find the place inside which caused a fire and the driver died. The court held that the accident happened due to and in the course of the employment.

In the case of **Chairman Madras Port vs. Kamala AIR 1970 Mad 386** it was held that an accident occurring while going for food or refreshment shall be deemed to have occurred in the course of employment and the workman shall be entitled to get compensation.

In the case of **Southern Railway v. Kanagambalam (1995) 11 LLJ 231**, it was held that the death of the pointsman was caused by a culpable homicide by a stranger during the course of his employment. The court held that the death of the worker arose out of and in the course of the employment.

The main difference between 'arising out of employment' and 'in the course of employment' is that sequence indicates time, i.e. it is necessary that the accident occurred at a time when the employer's work was being carried out and 'arising out of employment' indicates that there must be some kind of connection between the employment and the accident caused by that employment as a result of which the worker suffered injury.

Theory of Emotional Expansion or Theory of Imaginary Expansion (Theory of National Extension)-The general principle regarding employment of a worker is that the employment of a worker begins when he reaches the place where he has to work and when he leaves the place of employment, he cannot be said to be engaged in employment. That is, the time taken to reach the place of employment and from that place to home cannot be included in the employment period. If a worker suffers any injury during this time, can he demand compensation from the employer? This principle has been expanded to answer this question.

The purpose of the 'Notional Extension Theory' is to extend the scope of the employer's premises so as to include any injury sustained by a worker by reason of an accident while going to his place of employment and while returning home from such place of employment after the termination of his employment.

Under **Section 3** of the Act, the employer has been made liable to pay such compensation. However, the employer will be liable only if such injury is caused during the employment and due to any accident arising out of the employment.

In the case of **St. Talens Colliery Company vs. Hevilston 1924 AC 59**, an agreement was made between the company and the railway to carry the workers of the factories, in which the workers were given passes to travel at concessional rates. One day, while catching a train, the worker died. A claim for compensation was presented on his behalf. The court invalidated the damage on the ground that the incident of injury did not occur during the employment. Because the workers were not bound to come by the same train.

In the case of **Weaver vs Tredegar Ice and Coal Company**, some workers working in the mine were trying to catch a train from the station of Nickant. One of the workers got injured. The court held that the worker is entitled to get compensation because there was no other means of transportation to and from the workplace that was the only means, so it will be considered a part of employment.

Saurashtra Salt Manufacturing Company v. Bai Bel Raja, (A.I.R. 1958 The decision of the Supreme Court in (Su. 88) serves as a guide in gaining proper understanding of the above principle. Its facts are briefly as follows. There were two ways to reach the salt manufacturing site from Porbandar. One was by boat directly and the other by land route by taking a detour. Workers returning from work in the evening boarded the boat. Due to excess load and storm, the boat sank. A demand for compensation was raised for the seven persons in it. The Compensation Commissioner and the Saurashtra High Court ordered compensation for the above incident of 12 June 1952. Their order was based on the decision that the incident occurred in the course of work. In appeal, the Supreme Court overturned it and formulated an important principle regarding liability. According to the Court, the employment of a worker does not begin until he reaches the place of employment. In this, travel from place of employment to place of employment is excluded.'

In the case of **Works Manager, Carat Wagon Shop v. Mahavir (1954) All India 132** He used to travel from Malhaur to Lucknow by special train. Instead of coming from the over bridge at Lucknow station, he used to cross the railway line from Alambagh workshop. One day at 5:30 am, while crossing the railway line to return from work, his leg was cut by a shunting engine. The court held him entitled to compensation for this and held that the incident occurred during employment.

In the case of **Manager B.E.S.T. vs. Mrs. Agnes AIR 1964 S. C. 193**, the plaintiff's husband was a driver in V.E.S.T. Bombay. He used to leave his bus at the depot and return home by another bus of the depot and for this he had this exemption. One day while returning home he met with an accident in which he died. The court held that the accident happened due to employment and in the course of employment; hence the widow of the deceased is liable to get compensation.

According to the decision of **Pratap Narayan Singh Dev vs. Shri Niwas Savata and others, (AIR 1976 SC 222)**, the liability of the employer begins as soon as the worker suffers physical injury. The liability of the employer is not limited to his establishment only. His liability is also considered to be beyond that. Liability does not arise only when an accident occurs in the establishment or at the place of work. Even if the worker meets with an accident outside it, the employer cannot get rid of his liability by saying that the accident occurred outside the

employer's place. No worker or dependent will be considered entitled to get compensation until he brings out the presence of the necessary elements.

There are two main criteria for the employer's liability to arise in the following circumstances-

1. Did the accident occur at the workplace?
2. Did it happen in sequence?

On further analysis of both the above mentioned criteria, we get to know its extensiveness. For the responsibility of the employer, the following things have to be proved:

(1) The accident occurred in the employer's establishment or in any premises connected with it, (2) the accident occurred during the worker's working hours. (3) The accident occurred in the course of work. (4) The worker has become a victim of that accident. (5) The disability has arisen as a result of the accident. (6) The disability is partial or complete, permanent or temporary. (7) There is no contributory negligence of the worker concerned in the occurrence of the accident.

What is an accident has not been defined, but it means an event over which the employer has no full control, that is, circumstances which are completely beyond the power and control of the employer. In **Janaki Ammal vs Divisional Engineer High Court Key Court (2 M.L.J.)** the meaning of accident was explained as follows: "If an occurrence is unexpected and without design on the part of the workman, it is accident."

if the person has received the wages, then his wages

Question 13. Define deduction. What are the deductions that can be validly deducted under the Payment of Wages Act, 1936?

Answer-What is Deduction? Section 7(1) of the Act states that every payment made by an employed person to an employer or his agent shall be deemed to be a deduction from wages for the purposes of this Act. But the following shall not be deemed to be a deduction-

1. Withholding annual increment or promotion,
2. by promotion to a continuous position or time scale, or by reduction from a continuous position to a time scale,
3. Suspension,

For this it is necessary that it is done as per the rules.

Authorised Deductions - As per **section 7 (2)** of the Act, which of the following deductions can be deducted from the wages of an employed person?

1. Fines - Section 8 provides that if any fine is imposed on an employed person with the prior approval of the State Government, it can be deducted from his wages. But this amount will not exceed 3 percent of the amount payable during the wage period.

If the employed person is below 15 years of age, no fine will be imposed on him. Also, the fine imposed will not be recovered after 60 days have passed

2. Deductions for absence from duty-If an employed person remains absent from work or does not perform his duties as per the terms of employment, his wages can be deducted. In the case of **Surendra Nath vs. Divisional Officer (Railway) 198 (i) L.L.J. 227**, the employees took mass leave to participate in a movement against the railway administration which was not granted. The administration deducted their wages for their absence. The court held that the deduction is valid in these circumstances.

3. Deduction for damages to or loss of goods- Any money loss which is accountable to the employed person and where such loss or damage is directly caused by his negligence, a deduction may be made from his wages. But this deduction shall not be made unless he has been given an opportunity of being heard.

4. Deduction for House Accommodation- A deduction may be made from the wages of an employed person for housing facility provided by the employer or by the Government or under the law in force.

5. Deduction for Amenities and services - If facilities or services are provided to the employed person then deduction can be made for the same.

6. Deduction for recovery of Advances- A deduction can be made for advances paid to an employed person.

7. Deduction for recovery of loans made from the welfare fund- Deduction may be made for recovery of loans made from any fund constituted for labour welfare as per the rules approved by the State Government.

8. Deduction for recovery of loans given for specified purposes for recovery of loan made for specific purpose- Deduction can be made for house construction or for any other purpose as approved by the State Government.

9. Deductor for Income Tax – Deduction of income tax payable by an employed person can be made to the extent of income tax payable.

10. Deduction by the order of the Court- deductions can also be made from the wages of an employed person by an order given by a court or other competent authority.

The following are other deductions which are called authorised deductions-

1. Deductions made towards Provident Fund.
2. Deductions made by any written authority.
3. Deductions made for payments to co-operative societies.
4. Deductions made with the consent of the employed person.
5. Deductions made for labour welfare.
6. Deduction of fees paid for membership of trade association.
7. Deduction for recovery of loss caused due to incorrect return.
8. Deduction for Fidelity Guarantee Fund.
9. Deduction to Prime Minister's Relief Fund.

Extent of deduction - The total amount of deduction under section 7(3) shall not exceed-

1. Up to 75% of the wages in cases where such deductions are made for payments to co-operative societies.
2. Up to 50% of such wages in other cases.