B.A.LL.B.-4th Sem. Paper-I Sociology (Social Problem)

Question No. 1- Explain the concept and types of social problem?

Answer- A social problem is a situation or condition which is considered harmful by most people in society and for whose solution social action is felt to be necessary. It is an indicator of a big difference between social ideals and reality. It is the result of deviation or imbalance in the structure, values and norms of society, which affects the normal functioning of the society.

Main characteristics of social problem-

Harmful nature - social problems bring negative consequences to society or a major part of it.

Element of collectively - The problem of only a few individuals is not called a social problem. When a large number of people consider a situation undesirable and feel the need for its solution, then only it becomes a social problem.

Relation with social structure - Social problems either have an adverse effect on the social structure, or their cause lies in the existing social structure of the society.

Changing nature - Social problems keep changing according to time and place. What was not a problem at one time or place may become a problem at another time or place.

Long-term - Social problems usually persist in society for a long time.

Solution needed- Social problems require social intervention and collective efforts to eliminate or reduce them.

Types of social problems-Social problems can be classified on various basis. Some of the major classifications are as follows-

1. On the basis of source-

Structural Problems- These problems arise due to discrepancies or inequalities present in the social structure.

Example- poverty, unemployment, caste discrimination, gender inequality, regional inequality, problems of minorities.

Family problems- These arise from problems in the structure or functioning of the family.

Examples: Divorce, juvenile delinquency, domestic violence, broken families.

Cultural problems- These problems arise due to deviation or conflict in the cultural values, norms or ideals of the society. Examples- alcoholism, drug addiction, prostitution, corruption, communalism.

Problems Arising from Personal Disorganization- These problems can arise when individuals deviate from social norms.

Example: Crime, mental illness, suicide.

2. On the basis of nature (Classification of Fuller and Mates) -

Natural problems- These problems are related to nature, over which humans have no direct control. However, these problems have a profound impact on social life.

Example- drought, flood, earthquake, epidemic.
Correctable problems- These problems are man-made and can be solved by improving the social system these can be resolved.
Examples – illiteracy, unemployment, poverty, crime.
Moral Problems- These problems arise from the decline or deviation of the moral values of the society.
Example- corruption, prostitution, drug addiction.
3. Other major types-
Economic problems- poverty, unemployment, economic inequality, inflation.
Educational problems- illiteracy, poor quality of education, lack of access to education.
Health problems- malnutrition, infectious diseases, mental health problems, lack of health services.
Environmental problems – pollution (air, water, noise), climate change, deforestation.
Demographic problems – problems of population growth, migration, urbanization.
Crime and law and order problems- crime, juvenile delinquency, terrorism, organised crime, policing problems.
Casteism and Communalism- Caste discrimination, religious conflicts, communal violence.
Women related issues- gender inequality, crimes against women, domestic violence.
Youth discontent – unemployment, lack of education, degradation of social values.

In short, social problems are those undesirable situations which affect a large section of society and require collective efforts for their solution. Their identification, analysis and solution is an important area of sociology.

Question No. 2 - With reference to the impact on the basis of social disorganization, what is the role of family and community? Explain the impact on perception?

Answer- Social Disorganization - refers to a situation where there is disruption or instability in the structure, norms, values and institutions of society. It is a state when different parts of society are unable to perform their normal functions effectively, thereby affecting social order and stability. Social disorganization has deep impacts on the family and community, which are the basic units of society.

Impact on the concept of family-Family is the most fundamental and important unit of society. It is the primary source of socialization, emotional security and fulfilment of physical needs of individuals. Social disorganization has a serious impact on the structure, functioning and stability of the family.

Increase in family disintegration-

Divorce and separation: Social disorganization often leads to economic difficulties, decline in moral values, and personal tensions. These factors increase conflict in marriages, leading to increased rates of divorce and separation.

Broken families - Separation or divorce of parents causes emotional and psychological trauma to children. Such families hinder the proper socialization and development of children.

Single-parent families – Social disorganization, particularly due to poverty, unemployment or crime, can lead to an increase in the number of single-parent families, where one parent bears the entire burden of caring for and raising children.

Disruption in family functions-

Lack of socialization - The family is the primary institution for teaching social values, norms and behavior to children. Due to disorganization, the family is unable to perform this role properly, which can lead to indiscipline, criminal tendencies and disrespect for social values in children. Lack of emotional and **psychological support -** Due to social tensions, economic insecurity and conflict, family members are unable to provide adequate emotional support to each other. This can lead to isolation, depression and other mental health problems within the family.

Economic insecurity - Social disorganization often leads to unemployment, low income and economic instability. This makes it difficult for families to meet their basic needs (food, housing, education, health), which increases tension and conflict.

Inter-generational conflict-

Conflict of values – Changing social norms and values increase the differences in thoughts and behaviour between the younger generation and the older generation, leading to family conflict.

Neglect of Elders- In modern society, where individualism is increasing, neglect and indifference towards the elderly is becoming a serious problem, especially in families where there is lack of economic and social security.

Domestic violence and abuse- The stress and frustration caused by social disorganization often leads to domestic violence this leads to violence (physical, emotional, sexual), which causes serious harm to women and children. Substance abuse and alcoholism can also increase due to social disorganization, which becomes a major cause of domestic violence.

Impact on the concept of community- A community is a group of people living in a particular geographical area who are bound by common interests, values and social ties. Social disorganization directly affects the solidarity, security and functioning of the community-

Decrease in social solidarity-

Rise of individualism – Social disorganisation weakens the community spirit, making people feel isolated become more selfish and self-centred. Community activities and participation decrease. Erosion of trust: Increase in crime, violence and corruption reduces mutual trust among community members. People become suspicious of each other and social networks weaken.

Isolation and loneliness – people feel more lonely and isolated as social connections break down which can lead to increased mental health problems.

Increase in crime and violence- The weakening of social norms, unemployment and lack of education lead to an increase in crime rates. This severely affects community safety Gang violence; drug dealing and other criminal activities create an atmosphere of fear and insecurity in the community.

Disintegration of public services- social disorganization is often due to the inefficiency of local governments and institutions this causes the quality of essential public services such as education, healthcare, sanitation and security to deteriorate or become unavailable lack or deterioration of infrastructure (e.g. roads, electricity, water) affects the quality of life of the community lack of social control- when there are formal (police, law) and informal (family, neighbors, When social control mechanisms (such as religious institutions) weaken, deviant behaviour and crime increase Community members feel freer to violate social norms, leading to a state of disorder and anarchy.

Communal and ethnic tensions-Social disorganisation often leads to tension and conflict between different groups, whether on religious, ethnic or caste grounds Competition for resources, distrust and stereotyping can lead to communal riots and ethnic violence, disturbing the peace of the community.

Conclusion-Overall, social disorganization has a devastating effect on both the family and the community. It weakens the family structure, disrupts its functions and increases tensions among members. In the community, it disrupts social cohesion, increases crime and collapses public services. To deal with these effects, society needs to strengthen its institutions, re-establish social norms and develop support systems for vulnerable groups. An organized and well-organized social structure is essential to ensure that both the family and the community can perform their vital roles.

Question No. 3- Explain with respect to caste, community and religion on the basis of the impact of cultural disorganization?

Answer- Cultural Disorganization - It is a situation where a society there is an erosion, deviation or conflict of values, norms, beliefs and symbols in the cultural system of a society. This situation leads to instability in the social structure and order, thereby affecting the cohesion and functioning of the society. The effects of cultural disorganisation are deep and multifaceted, especially on social institutions such as caste, community and religion.

The concept of cultural disorganisation: Cultural disorganization occurs when a society's culture (both material and non-material) lacks coherence or

integration. This is often due to a rapidly changing social, economic or technological environment where traditional values and norms fail to adapt to new circumstances or new values conflict with them. As a result people do not understand what is right and what is wrong, which weakens social control and increases deviant behaviour.

Effects of cultural disorganisation on caste, community and religion-

1. Effect on caste-The caste system is a distinctive and complex social structure of Indian society, which has traditionally been based on birth, descent and occupational stratification. Cultural disorganization has the following impact on the caste system-

Erosion of caste norms- Modernization, urbanization, westernization and spread of education have led to the relaxation of traditional caste norms and occupations. People are moving away from traditional caste occupations and taking up new occupations they are taking up occupations which are weakening the caste structure.

Increase in inter-caste marriages - Due to cultural disorganisation, the rules of traditional endogamy (madakavahanul) are getting relaxed. The number of inter-caste marriages is increasing in urban areas and among the educated classes, thereby weakening caste identity.

New forms of caste discrimination - Although caste discrimination is constitutionally prohibited, cultural disorganisation can lead to new forms of it. Inequalities in access to education and economic opportunities still persist, causing Dalits and backward castes to struggle.

Politicization - Caste identity has now become a tool for political mobilization and electoral politics rather than social work. Due to the decline in cultural values, caste identity can only be used for vote bank, which hinders real social reforms.

Caste-based violence - Divergence in cultural values and identity crisis can lead to caste-based conflict and violence, especially in areas where the conflict between traditional and modern values is strong.

Identity crisis - Some degree of cultural disorganization may cause individuals to become confused about their caste identity. Younger generations may drift away from their traditional caste identity, but may also be unable to fully form a new, unified identity.

2. Effect on community- Community is a group that is connected on the basis of common values, interests and geographical proximity. Cultural disorganization affects the solidarity and functions of the community-

Decline in community spirit- Due to modern lifestyle, individualism and urbanization, people is getting distanced from their neighbours and community activities. Traditional community institutions (such as panchayats, mohalla committees) are getting weakened.

Conflict of values - Conflict between different subcultures and values can lead to conflict within the community. For example, traditional conservative values may conflict with modern liberal values.

Decreased social control - Informal social controls within the community (e.g., fear of public shame, social exclusion) are weakened. When cultural norms are not clear or not followed, deviant behavior (e.g., crime, drug abuse) increases.

Disintegration of identity - The trend towards globalization and cultural homogeneity can weaken the distinct cultural identity of small, local communities. Younger generations may drift away from their local traditions and customs.

Obstacles to Community Development - When there is a lack of shared values and goals among community members, collective action and community development efforts are hampered.

3. Effect on religion-Religion has been an important source of morality, values and social control in society. Cultural disorganization affects religion in many ways-

Growth of secularism (and challenges with it)- The spread of modern education, science and rationalism has led to questions being raised on religious superstitions and rituals. This increases the tendency of secularism in society, which may reduce the influence of traditional religious institutions.

Rise of religious radicalism- In response to the uncertainty and identity crisis resulting from cultural disorganisation, some individuals or groups may turn to religious radicalism. This can lead to extremism and intolerance, increasing tensions between different religious groups.

Religious sectarianism and conflict – Cultural disunion can strengthen religious identity but it can also lead to conflict and sectarian violence between different religious groups, especially when religion is misused for political purposes.

Individualization of religion - The importance of religion is now focusing more on individual faith and spirituality, rather than community and institutional religious rituals. People are choosing religious practices according to their own preferences, thereby weakening the collective power of religious institutions.

Decline in morality - When religious values and norms lose their influence in society, a moral vacuum may arise. This can lead to a decline in individual and societal morality, leading to an increase in corruption, unethical behavior, and social problems.

Rise of new religious movements- In a situation of cultural disorganisation people often look for meaning and purpose. This can lead to the rise of new religious movements, cults or spiritual gurus who claim to offer direction and security to the people.

Conclusion- Cultural disorganization is a complex process that affects the very fabric of society. Caste, community and religion, which have been important pillars of Indian society, are deeply affected by this disorganization. While on the one hand it may provide an opportunity to weaken traditional rigidities (such as caste discrimination), on the other hand it may also give rise to serious challenges such as identity crisis, social disintegration, crime and conflict. To understand and deal with these effects, sociologists need to deeply analyze the dynamics of cultural change, conflict of values and the changing nature of social control.

Question No. 4- Explain terrorism while describing the effect of corruption in human life?

Answer-A detailed answer is given here in the perspective of sociology about the effect of corruption in human life and the explanation of terrorism.

Description of the effects of corruption in human life- Corruption is a termite that hollows out the society and the nation from within. It is the misuse of public power for personal gain or the benefit of a group. Its effects are deep and negative on every aspect of human life, which can be seen in social, economic, political and psychological dimensions-

1. Social impact-

Erosion of trust - Corruption erodes people's faith in public institutions, the government and the justice system. When people see that decisions are made based on bribes or influence rather than merit, they lose trust in the system.

Increased inequality - Corruption leads to unequal distribution of wealth. It affects the poor and underprivileged the most, as they have to pay bribes to access even basic services (such as health, education). This increases social divisions and widens the gap between the rich and the poor.

Violation of social justice- Corruption weakens the principles of justice. When the rule of law is weak, criminals and culprits roam freely under the influence of money, while innocent people are deprived of justice.

Negative social values- Corruption gives rise to a society where immorality and dishonesty start getting accepted. It promotes the mentality of 'get rich quick' and leads to corruption Weakens the values of hard work and honesty.

Degradation in the quality of public services- When public funds allocated for infrastructure, health care, education and other essential services are siphoned off through corrupt practices, the quality of these services deteriorates, causing harm to the general public.

2. Economic impact-

Hinders economic growth - Corruption leads to inefficient use of resources. It diverts money from productive sectors and discourages investment. It weakens competition and hampers innovation.

Decrease in foreign investment- Investors shy away from investing in countries where corruption levels are high because it increases the cost of doing business and creates uncertainty.

Loss of Revenue – Due to corruption the government loses huge amount of revenue from taxes and other sources, which could be used for development work.

Inflation - Corruption increases the cost of goods and services, which puts a strain on the common man there is a financial burden.

3. Political influence-

Weakening of democracy- Corruption weakens democratic processes. It leads to manipulation of elections, internal corruption in political parties and lack of accountability.

Political instability- corruption can lead to widespread discontent and instability. It tarnishes the image of the government and can lead to political unrest.

Inefficiency of governance- Corruption hinders effective governance. When government officials work for personal gain, they neglect public interest, which affects the quality of governance.

4. Psychological effect -

Frustration and frustration - Citizens affected by corruption feel frustrated and disappointed with the system, which leads to a feeling of cynicism in their mind.

Mental Stress- People facing corruption have to face immense mental stress and anxiety especially when they have to pay bribes even for their rights.

Explanation of terrorism- In sociology, terrorism is seen as a complex social phenomenon, which uses fear and violence to achieve political, ideological, religious or social objectives. Its main characteristics are as follows-

Political/ideological objective- The primary objective of terrorism is usually to advance a political, ideological, religious or social agenda. It is not just criminal violence, but part of a strategy to achieve a broader objective.

Spreading fear - The main goal of terrorists is to spread fear and terror among the public. They try to achieve their goals by targeting innocent civilians, committing large-scale violence and creating an atmosphere of uncertainty.

Non-state actors - Typically, terrorism involves non-state actors (individual groups or organizations) that use violence to intimidate or coerce a government or society.

Inhumane Acts – The acts committed by terrorists are extremely inhumane which includes killing of innocent people, kidnapping, bombings and damaging of public property.

Asymmetric warfare - Terrorism is often seen as a form of 'asymmetric warfare', where the weaker party (terrorist groups) fights against the stronger party (the state) through indirect and non-traditional methods.

Psychological warfare - An important aspect of terrorism is psychological warfare. Its aim is to create a feeling of insecurity in the minds of people, break social unity and weaken the credibility of the government.

Effects of terrorism on society-

Loss of life and property - The most direct and horrific impact of terrorism is the loss of innocent lives there is damage and destruction of property.

Atmosphere of fear and insecurity - It creates a widespread feeling of fear and insecurity in the society, thereby hampering the normal life of the people.

Social disruption – Terrorism fosters distrust and divisions among communities, thereby weakening social unity.

Economic damage – Terrorist attacks disrupt economic activity, discourage investment and harm industries such as tourism.

Violation of Human Rights – Terrorism directly violates fundamental human rights such as the right to life, liberty and bodily integrity.

Political instability- Terrorism can destabilise governments, challenge law and order, and lead to political turmoil.

Radicalisation and retaliation – Terrorism often leads to feelings of radicalisation and retaliation in society, perpetuating the cycle of violence.

Relationship between corruption and terrorism (sociological perspective) - In sociology, corruption and terrorism are often seen as interlinked. Although they are not directly caused by each other, corruption can create a fertile ground for terrorism and strengthen it-

Discontent and Marginalisation- When corruption is widespread, it leads to discontent among the masses, Creates hopelessness and frustration. People, especially the young and the underprivileged, may feel that they have no way to get justice or improve their lives through legitimate means. This hopelessness may push them towards extremist ideologies and terrorist groups, which offer them a way to fight against the 'system'.

Erosion of state legitimacy- Corruption undermines the legitimacy of the government and its institutions. When the public feels that their government is corrupt and does not protect their interests, terrorist groups see this as an opportunity to challenge the state and promote their ideologies.

Weak governance and security- Corruption often leads to weak governance, inefficient law enforcement and weak border controls. This makes it easier for terrorist groups to operate, raise funds, smuggle weapons and recruit.

Terrorist financing – In some cases, terrorist groups may use corruption to finance their activities, such as paying bribes to cross borders or engaging in illegal trade.

Detournement of resources – corruption diverts public resources away from security and development, weakening the state's ability to fight terrorism and address its roots.

In conclusion, both corruption and terrorism are serious challenges to society. Corruption breaks down the social fabric, impedes economic development and increases political instability, creating an environment conducive to the rise and spread of terrorism Terrorism itself is a direct threat to human life, peace and security. To effectively deal with both these problems a multi-pronged approach is needed, which includes good governance, transparency, social justice, economic development and active participation of civil society.

Question No. 5 - Explain the impact of population growth on human life and effective measures for population control?

Answer- Population growth is a global concern, which has a profound and multi-dimensional impact on various aspects of human life. From the perspective of sociology, this impact is visible not only at the individual level but also on social structures, institutions and relationships.

Effect of population growth on human life-The effects of population growth can mainly be divided into social, economic and environmental categories:

1. Social impact-

Pressure on resources - Increasing population puts excessive pressure on basic resources such as food, water, housing, education and health services. This leads to problems like scarcity of resources, unequal distribution and decline in quality.

Poverty and inequality- Overpopulation often leads to unemployment, low per capita income and increased poverty. The unequal distribution of resources increases the gap between the rich and the poor in society, leading to social inequality.

Increase in crime - When the population grows and employment opportunities are limited, some people may turn to crime. Pressure on resources and growing desperation can lead to an increase in crime rates.

Urbanization and congestion- Due to the increasing population, people migrate from rural areas to cities, which lead to congestion in cities, unplanned urbanization, and expansion of slums and lack of civil there is excessive pressure on the facilities.

Family problems and mental health - Small homes and limited living space can lead to increased tension and conflict within families. Overcrowding, noise and a lack of personal space can have a negative impact on people's mental health, leading to increased stress, anxiety and depression.

Social disruption - Rapid population growth can alter social structures and traditional values, leading to social disruption and instability.

Burden on education and health services – Adequate schools, colleges and health facilities for the growing population providing facilities becomes a major challenge, which can lead to a decline in the quality of education and reduced access to health services.

2. Economic impact-

Decrease in per capita income - If the population growth rate is more than the growth rate of the total national income, then the per capita income decreases, which affects the standard of living of the people.

Lack of employment opportunities with the increasing population, employment opportunities are available in sufficient quantity this cannot happen, due to which unemployment increases.

Impact on investment and savings- Overpopulation often leads to lower savings rates and slower investment pace, thus hurting economic growth.

Pressure on Infrastructure – Infrastructure such as roads, transport, power and communication are put under excessive pressure, affecting their quality and availability.

Decrease in agricultural productivity – Continuing pressure on land leads to economic fragmentation of land holdings and reduces agricultural productivity, affecting food security.

3. Environmental impact-

Degradation of Natural Resources – Fuel, minerals, water, forests and other natural resources are over-exploited to meet the needs of the growing population, leading to environmental imbalance and depletion of resources.

Increase in pollution – Urbanization, industrialization and more vehicles lead to increase in air, water and noise pollution, which have negative impact on human health and the environment.

Loss of Biodiversity - Deforestation, destruction of habitats and pollution cause loss of biodiversity, which disturbs the balance of the ecosystem.

Climate Change - Overpopulation and excessive use of resources increase the emission of greenhouse gases, leading to climate change and rise in global temperatures.

Effective measures on population control-To control population growth, it is necessary to adopt a multi-pronged and sensitive approach, which emphasizes on education, awareness, improvement in health services and socio-economic development-

1. Spread of education and awareness-Education of women: Educating women is considered the most effective measure of population control. Educated women understand the importance of family planning, make better use of health services and make more informed decisions about the number of children.

Family planning information- providing accurate and comprehensive information to people about various methods of family planning (contraception, sterilisation, etc.). This should include reliable information sources and counselling services.

Importance of small family- To create awareness about the benefits of small family (better education, health, economic stability).

Eradication of social evils- To run awareness campaigns to eliminate social evils like child marriage, desire for a son and gender discrimination.

2. Improving health services-Availability of family planning services: Making family planning services accessible and affordable in both rural and urban areas, including a variety of contraceptive options and sterilization facilities.

Improving maternal and child health – reducing infant mortality, which can lead to parents needlessly, can avoid having more children.

Reproductive health services – Strengthen reproductive health services, including antenatal and postnatal care, safe abortion facilities, and sexual education.

3. Socio-economic empowerment-

Empowerment of women: Making women financially independent and involving them in the decision-making process. This will help them make informed decisions about their reproductive rights.

Employment opportunities - Providing better employment opportunities, allowing people to become financially stable and reducing dependency on large families.

Social Security- Strengthening social security schemes for the aged and disabled so that people do not have to depend more on children for support in old age.

4. Government policies and programs-

National Population Policy- Formulate and strictly implement an effective National Population Policy, which should include incentives and penalties to encourage small families.

Legal Measures - Rising the minimum age of marriage and strictly prohibiting child marriage.

Incentives and Facilities- Providing incentives like tax exemptions, financial aid, better education and health services to couples adopting a small family.

Adoption promotion - Encouraging families to adopt orphaned children, thereby improving the condition of orphans and reducing the burden on the population.

Responsibility and Accountability – Actively involving local bodies and communities in population control programmes and ensuring their accountability.

5. Research and Innovation-Development of new methods of family planning: Promoting research on more effective and safer contraceptive methods.

Data collection and analysis - Regularly collecting and analyzing data to understand population trends and patterns so that effective policies can be formulated.

In short, population growth is a complex challenge to human life, with social, economic and environmental consequences. Population control requires a holistic approach, incorporating education, healthcare, women's empowerment and effective government policies, to ensure a sustainable and equitable future.

Question No. 6 - What is white collar crime? Explain the impact of white collar crime on human life do?

Answer- "White collar crime" is a sociological concept first introduced by American sociologist Edwin Sutherland in 1939. He defined it as "crime committed by a person of respectable and high social status in the course of his occupation".

Main features of white collar crime-

High socio-economic status- These crimes are mainly committed by individuals who have high prestige, education and economic status in the society, such as businessmen, politicians, doctors, Lawyers, bankers, government officials etc.

Non-violent nature - These crimes are usually devoid of physical violence. These include fraud, these include fraud, embezzlement, bribery, tax evasion, insider trading, money laundering, consumer fraud, environmental crimes, manufacturing and selling of counterfeit products, theft of commercial secrets, etc.

Occupational or professional context - These crimes are often committed in the course of a person's professional or professional activities, or by abusing the positions in which they are employed.

Secretive nature - White-collar criminals are often adept at concealing their activities. These crimes can be difficult to detect and gather evidence against, as they are often committed through complex financial transactions or organized conspiracies.

Lower penalties - White-collar crimes often carry less harsh penalties than traditional crimes, and offenders often escape punishment by taking advantage of their social status and legal resources.

Motivated by greed – According to Sutherland and other sociologists, white-collar crime is often motivated by necessity are more motivated by greed and abuse of power.

Effects of white collar crimes on human life-White collar crimes have deep and far reaching negative effects on human life and society. These effects are often less obvious than those of overtly violent crimes, but their severity can be far greater-

Economic loss-

Personal Loss - The general public, investors and consumers are often the direct victims of white collar crimes. People can lose their savings, property and life savings due to fraudulent schemes (such as Ponzi schemes), fake products or wrong investment advice.

Institutional and national losses-Massive fraud, tax evasion and embezzlement cause huge financial losses to companies, banks and government institutions. This weakens the national economy, which has a negative impact on growth and can lead to a lack of funding for public services.

Increase in income inequality - White collar crime often allows upper class people to earn more money through illegal means, thus increasing income inequality in society.

Erosion of social trust-

Distrust of Institutions – When people see people in high positions violating the law and getting away with it, they begin to lose trust in the government, financial institutions, the legal system, and business organizations. This poses a threat to social stability.

Degradation of morality – White collar crimes send a message to the society that money and power are more important than morality and honesty. This can weaken the moral values of the youth and common citizens.

Pressure on the Justice System – Due to the complex nature of white collar crimes, the justice system is under immense pressure to solve them. These cases often take a long time and the failure to punish the culprits undermines the credibility of the justice system.

Impact on health and safety-

Threat to public health – Some white-collar crimes directly affect public health, such as selling counterfeit medicines, causing pollution by violating environmental regulations, or adulterating food products. These can cause serious illnesses and even death.

Exploitation of workers – Labor fraud, wage theft, and promoting unsafe working conditions are examples of white-collar crimes that directly affect the lives and health of workers.

Undermining democratic processes-

Corruption – Bribery and political corruption are prime examples of white-collar crimes that corrupt democratic processes. This reduces public participation and people in power work for their personal interests and not in the interest of the public.

Policy distortion – Through lobbying and undue influence policies can be made in favour of white collar criminals, causing harm to the general public.

Psychological and social effects -People who are harmed by white-collar crimes often feel despair and frustration because of the lack of justice and their powerlessness.

Feeling of social inequality – Through white-collar crimes, criminals become rich without any consequences, which increases the feeling of injustice and inequality among the deprived sections of the society. In short, white collar crime hollows the fabric of society from within. They not only cause economic losses but also undermine social trust, morality and democratic institutions, which has a deep and devastating impact on human life. To prevent and deal with these, strong legal framework, effective enforcement and public awareness are required.

Question No. 7- While explaining juvenile delinquency; explain the protection of the child from delinquent behavior?

Answer: Explanation of Juvenile Delinquent: Juvenile Delinquent means such a person who has not attained the age of majority, and commits an act that violates the law. In India, a person under the age of 18 is generally considered an 'adolescent' or 'child'. Earlier the term 'juvenile delinquent' was used, but now the term 'child in conflict with law' is used, the purpose of which is to avoid tagging the child as a criminal and to emphasize on his rehabilitation.

Adolescent delinquent behavior is not the result of any single factor, but is a combination of complex interactions of biological, psychological, and social factors. Some major factors are as follows-

Family factors – broken families, overly harsh or absent parental behavior, family violence, parental drug abuse, neglect or abuse of children, and socioeconomic deprivation may promote adolescent delinquent behavior.

Social factors: Poverty, unemployment, lack of education, peer pressure, gang involvement, social exclusion, and high crime rates in the community may push adolescents into delinquency.

Personal factors - emotional and mental instability, learning disabilities, low self-esteem, impulsive behavior, addiction, and psychological problems can also lead to delinquent behavior.

Educational factors - Dropping out of school, poor performance in school, harassment by teachers, or ridicule by students may cause the child to suffer from an inferiority complex and turn to crime.

It is important to understand that a teenager lacks mental and intellectual maturity, and they often get involved in activities that are against the norms of society just to be accepted by the group or for instant gratification.

Protection of child from delinquent behaviour explained-Protection of child from delinquent behaviour means implementing such measures and policies that prevent children from committing crimes and if they get involved in any crime, then ensure their return to the mainstream of society and their rehabilitation. Its main purpose is not to punish but to reform. In India, the Juvenile Justice (Care and Protection of Children) Act, 2015 is an important step in this direction. This Act intends the welfare and transformation of children and emphasizes not to treat children like common criminals.

Efforts are made at various levels to protect the child from delinquent behavior-

1. Protection at the primary level (Prevention) - This is the most important level, where efforts are made to keep children away from crime. It includes-

Strong Family Environment- Educating parents to provide proper care, nutrition, and emotional support to children. Promoting positive discipline practices and preventing family violence.

Quality education and development opportunities - Providing all children with access to education, health care, and opportunities to develop their full potential. Reducing school dropout rates and providing children with a safe and supportive environment at school.

Community-based programs - running programs that engage children in positive activities, such as sports, arts, and community service. Creating employment opportunities for youth and reducing poverty.

Awareness and Education- Educating children, families and communities about the causes and consequences of juvenile delinquent behaviour. Raising awareness against drug and alcohol abuse.

2. Secondary protection (early intervention) - This focuses on children who are at high risk of delinquent behaviour or who have recently committed minor offences. This includes-

Counselling and Guidance - Providing psychological counselling and guidance to at-risk children and their families.

Social support services - providing social support to children who are neglected or abused.

School and community interventions – Implementing programs in school and the community that help children get on the right track, such as peer support groups and mentor programs.

Friendly approach of police and judicial system – Training police and judicial officers to deal with children in a sensitive and friendly manner, so that they do not feel guilty or embarrassed.

3. Tertiary level protection (rehabilitation and reintegration) - This is for children who have been involved in serious crimes and are being managed through the judicial system. This includes-

Juvenile Justice Board- These boards deal with cases of children and Make decisions keeping their best interests in mind.

Special Juvenile Police Unit - This special department of the police treats children sensitively and protects their rights.

Children Homes and Special Homes- In these institutions children are kept in a safe environment where they are provided education, vocational training, counselling and medical facilities.

Aftercare – Even after completing the age of 18 years, children are provided financial and other support to join the mainstream of society.

Reintegration into the mainstream – Efforts are made to return the children to their family and community, so that they can lead a normal and productive life.

In short, protection from juvenile delinquent behaviour is a multi-pronged approach that focuses on prevention, early intervention and rehabilitation. It aims to view children as "children in conflict with law" rather than criminals and provide them a safe and supportive environment so that they can become responsible members of society.

Question No. 8- Explain the impact of gender differences on the welfare of women Please suggest a solution in this regard?

Answer - Impacts of gender differences and solutions in terms of women's welfare Gender inequality refers to discrimination between women and men on the basis of sex, where women are often seen as a weaker section in society. This inequality is a serious problem not only in India but globally, which has far-reaching social, economic and psychological effects.

Effects based on gender differences-

Social impact-

Discrimination and Exploitation – Traditionally in society, women have been victims of exploitation, humiliation and discrimination both at home and outside.

Stereotypes and patriarchal mindset- Deep rooted patriarchal thinking and stereotypes in society restrict the role of women, they are considered suitable only for household work.

Limited opportunities – Girls have fewer opportunities than men in education, health, decision-making power and socio-cultural activities, which hampers the full development of their personality.

Violence and insecurity- Gender inequality gives rise to problems like increasing violence against girls, gender based violence, exploitation and domestic violence, which creates a feeling of insecurity among them.

Impact on mental health – Persistent discrimination and limited opportunities can cause mental health problems among women such as stress, depression and low self-esteem.

Economic impact-

Inequality in the workplace- Women are often paid less than men for the same work. Also, they have limited representation in senior and managerial positions.

Economic dependency - Due to societal thinking, many women are financially dependent on men, which affects their decision making ability.

Obstacle to development- Gender inequality not only hinders the personal development of women, but It also affects the economic and social development of the nation. According to the World Bank report, the inequality in wages between men and women causes huge losses to the global economy. Limited access to resources - Women often face inequalities in access and control over services and resources.

Political influence-

Limited political participation – Women are underrepresented in political participation and decision-making processes, with their voices and issues not receiving adequate importance.

Lack of policy formulation – The formulation of policies and schemes that meet the specific needs of women is hampered because of their low participation.

Measures regarding welfare of women-Achieving women's welfare and gender equality requires a multi-pronged approach that includes legal, social, economic and educational measures.

Education and awareness-

Promote girl child education- Ensuring equal access to free and quality education to all girl children, so that they can realise their full potential.

Gender Sensitization- Promote gender sensitivity by eliminating gender stereotyping in textbooks, films and media. Make both men and women aware of the importance of gender equality in society.

Skill Development - Linking women to vocational training and skill development programmes to enable them to become economically self-reliant.

Legal and policy measures-

Anti-discrimination laws – effective enforcement of stringent laws on equal pay, prevention of harassment at workplace and against gender-based violence.

Gender Budgeting - Adequate funds for women empowerment and child welfare in government schemes to ensure allocation so that the benefits of the schemes reach women.

Legal Aid- Making women aware of their rights and providing them legal aid. economic empowerment-

Promoting self-employment- providing financial assistance and training to women to start small businesses and form co-operatives.

Women Entrepreneurship – Promoting women entrepreneurs through initiatives like Stand-Up India, Mahila e-Haat and Pradhan Mantri Mudra Yojana.

Property Rights- Ensuring property rights to women so that they can be financially independent.

Social and Cultural Change- Challenging Patriarchal Thoughts: Challenging patriarchal ideas, norms and traditions in society and promoting gender equality.

Community Participation- Community participation should be encouraged for the welfare and development of girls Encourage equality, including by addressing barriers such as child marriage and gender-based violence.

Equal domestic roles – for men to play an active role in domestic responsibilities within the household to encourage.

Government schemes and programs-

Beti Bachao, Beti Padhao – To address social problems such as gender-based abortions and low sex ratio and promote education and empowerment of girls.

Pradhan Mantri Ujjwala Yojana- To free women from the smoke of wood or coal by providing LPG cylinders to economically weaker families.

Pradhan Mantri Matru Vandana Yojana- To provide financial assistance to pregnant women and lactating mothers.

Chief Minister Ladli Laxmi Yojana / Kanya Sumangala Yojana- To provide financial incentives to promote the birth and education of girl children.

Mahila Shakti Kendra - Bringing together various schemes and programmes for empowerment of women.

Role of Non-Governmental Organisations (NGOs)Various women's organisations (like the Women's India Association, the National Council for Indian Women, All India Women's Conference) play a vital role in educating and eradicating the social problems of women.

These organisations help in empowering women by providing education, vocational training, awareness of women's rights and psychological support.

In short, gender differences are a complex social problem with wide-ranging negative implications. Women's welfare requires a holistic approach that focuses on education, legal reforms, economic empowerment, social awareness and joint efforts of government and non-government organizations. Only then can we build a society where everyone gets equal opportunities and respect.

Question No. 9 - Explain the impact based on gender differences and suggest measures in the context of women's welfare?

Answer- Understanding the social structure, balance and development of the community as well as social integration in developing India is an important aspect of sociology. It is a complex and multifaceted subject, involving many interrelated concepts.

1. Social structure- Social structure refers to the systematic and regular relationships between individuals and groups in society. It is the foundation of society, which gives it a particular shape and stability. It consists of various units such as groups, associations, institutions, social norms and values, which interrelate to form a well-organized framework. In India, social structure has been historically complex, involving factors such as the caste system, rural-urban divide, religious plurality and linguistic diversity. These factors deeply influence social relationships and interactions.

2. Social balance-Social equilibrium refers to a state of stability and order in society, where various social institutions, groups and individuals function in harmony with each other. It is a dynamic process in which society strives to maintain its solidarity despite its internal and external changes. In a developing country like India, where rapid social and economic changes are taking place, maintaining social equilibrium is a challenge. Industrialization, urbanization, globalization and the advent of new technologies are changing traditional social structures, which may sometimes lead to a state of imbalance. However, society also adapts to assimilate these changes and establish new equilibrium.

3. Development of community-A community is a group of people who live together in a particular area or region based on shared identity, values and interests. Community development is the process of improving the quality of life of people and promoting their collective welfare. It includes economic development, improving education and health services, developing infrastructure, solving social problems and promoting unity and tolerance in the

community. In India, development of both rural and urban communities is important. In rural communities, it is important to overcome problems such as casteism, religious discrimination and untouchability and improve infrastructure, while in urban communities there are challenges such as increasing population, housing, transportation and social isolation.

4. Social integration in developing India-Social integration is the process by which different groups and individuals in society come together on the basis of a shared identity, values and norms and form a cohesive and harmonious unit. It is essential for social solidarity and stability. In developing India, social integration is an important goal, which involves many challenges and opportunities:

Caste and religion- Caste and religion have been historical sources of social divisions in India. Reducing these divisions and promoting tolerance and understanding between different communities is important for social integration.

Rural-Urban Divide- With the rise of urbanisation, the gap in lifestyle, opportunities and social norms between rural and urban areas is increasing. Bridging the gap between these two areas is essential for social integration and to promote rural development.

Economic inequality - Economic inequality is a big challenge in India. For social integration it is necessary to bring the poor and deprived into the mainstream and provides equal opportunities for them.

Education and health - Access to education and health services are important factors of social integration. By providing quality education and health services to people from all sections, equality and solidarity can be promoted in society.

Government policies and laws- The Indian government has implemented various policies and laws to promote social integration, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Effective implementation of these laws is important for social justice and integration.

Globalization and Culture - Globalization has increased the exchange of goods, services, technology and ideas in India. While this provides opportunities for economic growth, it can also impact traditional values and cultural identity. Balancing indigenous culture with global influences is important for social integration.

Youth and social change - India has a large youth population that can play a key role in social change and integration. Empowering youth through education, skill development and inclusive opportunities is crucial for social cohesion.

In short, social integration is an ongoing process alongside the development of social structure, balance and community in developing India. It is based on promoting understanding, cooperation and equality among different social groups, castes, religions and regions. Despite the challenges, India has made significant progress towards social integration, and it is necessary to continue these efforts to build a more inclusive and harmonious society in the future.

Question No. 10- Discuss the concept of social change and its impact on the basis of modern perspective.

Answer- Discussion of the concept of social change and its impact On the basis of modern perspective, social change is a central subject of sociology and its speed and complexity in the modern context is unprecedented. It is not just the sum of sudden events, but a continuous, dynamic process that brings significant changes in the structure, functioning, values, beliefs and behaviors of society.

Concept of Social Change (Modern Approach) - From the modern perspective, social change is not seen as a linear or cyclical process, but it is considered multidimensional and complex. It includes the following major points-

Universality and Continuity - Social change occurs in every society and it is a continuous process. No society can remain stable for a long time. Its speed can sometimes be slow and sometimes fast.

Complexity and interconnectedness - changes in modern society occur simultaneously in different areas (e.g. technology, economy, politics, culture) and affect each other. For example, technological innovations change economic patterns, which in turn affect social relations and cultural norms.

Planned and Unplanned Changes - Social changes in modern society are not only spontaneous but are often planned as well. Governments and various organisations try to bring about the desired social changes through education, health, economic development, etc. However, unplanned changes also play a big role, such as changes caused by natural disasters or unexpected technological breakthroughs.

Multi-factor approach - Modern sociologists do not attribute social change to a single cause. Instead, they value a combination of many factors, such as technological development, demographic changes, economic forces, cultural values, political ideologies, and environmental factors.

Rapidity and far-reaching effects - The pace of social change in the modern era is much faster than in previous centuries. Advances in communication and technology have accelerated the spread of ideas and innovations, making the effects of change more widespread and far-reaching.

Impact of Globalisation: Globalisation has interconnected the world, increasing the exchange of ideas, goods and services. It has blurred traditional boundaries and created new opportunities and challenges for societies around the world, making the nature of social change even more complex.

Effects of social change (modern view)- The effects of social change in modern society are wide-ranging and multi-dimensional. These can be seen in both positive and negative aspects-

Positive impact -

Progress and Development- Social change often leads a society to progress and development. This includes better living standards, health facilities, educational opportunities and technological advancement.

Modernization - It promotes modernization in ideas, lifestyles and institutions. This includes increased urbanization, rising literacy, rising per capita income and increased political participation.

Awareness and empowerment - The spread of education and communication media increases awareness among people, making them more aware of their rights and demanding social justice helps in empowerment of women, Dalits and other marginalized groups.

Innovation and Creativity - Change encourages new ideas, invention and creativity. It helps in finding new solutions to problems and brings innovation in social, economic and cultural fields.

Increased social mobility: The loosening of traditional social structures leads to increased social mobility of individuals, allowing them to achieve better positions based on their merit.

Creating an open and tolerant society – Exchange of ideas makes society more open and tolerant where different cultures and lifestyles are accepted.

Negative impact -

Social disruption and tension - rapid social change can undermine traditional institutions, this can lead to social disintegration and increased tension. Changes in family structure, increased crime rates, and the breakdown of community bonds are some examples.

Cultural Lag - Material culture (technology) changes rapidly, while non-material culture (values, norms) changes slowly. This creates a cultural lag, which can lead to confusion and conflict in society.

Adaptation challenges - some individuals or groups may find it difficult to adapt to rapid changes, leaving them feeling stressed, isolated or marginalised.

Increased inequality - Technological advancement and globalization can sometimes increase inequality, causing some groups to become more prosperous while others are left behind. The digital divide and economic inequality is a major example of this.

Identity crisis - Globalization and cultural mixing can cause individuals and communities to face a crisis of identity, as traditional values and norms are weakened are.

Environmental impacts – Social changes such as industrialization and urbanization often lead to environmental problems, such as pollution, resource depletion, and climate change.

Discussion based on modern perspective-The modern perspective views social change as a dynamic and complex process in which various factors influence each other. It believes that change cannot be viewed only as 'good' or 'bad' but it is important to analyse its multidimensional effects.

Social change is particularly intense in developing countries like India, where conflicts between traditional and modern values are often observed. The Green Revolution, the Information Technology Revolution, the expansion of education, women's empowerment and urbanization are some of the important examples that have influenced Indian society at a deep level. These changes have created opportunities as well as challenges, such as inequality, rural-urban divide and pressure on traditional family structures.

In conclusion - From a modern perspective, social change is a continuous, universal and complex process that affects every aspect of society. To understand its effects we need to make a holistic analysis of its multidimensional factors, planned and unplanned aspects, and its positive and negative consequences. The task of sociologists is to study these changes, understand their causes and consequences, and forecast future directions so that society can be made more equitable and sustainable.

B.A.LL.B.-4th Sem. Paper-II Economics (Public Finance)

Question No. 1- What is meant by public finance. Explain the scope and importance of public finance?

Answer- To explain the meaning, scope and importance of public finance, I will need to know some information.

Public finance is an important branch of economics that studies the financial activities of a government. It focuses on how governments raise money to meet their objectives, how they spend it, and the impact these financial decisions have on the economy and society.

Meaning of Public Finance - Public Finance literally means 'public finance', which is related to the management of government's income, expenditure and debt. Various economists have defined it as follows:

According to Prof. Dalton- "Public finance is a subject which is a subject of mutual discussion between public authorities. "It studies the income and expenditure incurred through cooperation."

According to Prof. Findlay Shiraz- "Public finance is concerned with the income received by public authorities it is in the manner of doing and spending."

According to Ursula Hicks- "Public finance mainly involves the analysis and examination of the means by which state organisations meet collective demand and obtain sufficient funds to achieve their goals."

In short, public finance deals with the management of revenue (income), expenditure (spending) and debt (borrowing) of the government (central, state and local). It includes the fiscal policies and decisions that the government takes to achieve economic and social goals.

Scope of Public Finance- The scope of public finance is very broad and it includes the following major components-

Public Revenue – In this all the sources of income of the government are studied.

Tax Revenue- Various types of taxes like Income Tax, Goods and Services Tax (GST), Corporate Tax Study of taxes, customs duties etc.

It includes principles of taxation, structure of tax system, effect of taxes and policies of taxation are included.

Non-Tax Revenue- It includes duties, fines, license fees, profits from government enterprises, grants received from foreign countries and interest on loans etc.

Public Expenditure- In this, various types of expenditure made by the government are studied.

This includes expenditure on education, health, infrastructure (roads, bridges, electricity), defence, law and order, social welfare schemes (like pensions, subsidies), etc.

Theories of public expenditure, classification of expenditure, its effects on economic growth and income distribution is analyzed.

Public Debt - It studies the debt taken by the government from internal (within the country) and external (from abroad) sources.

It analyses the types of loans, reasons for taking loans, loan management, repayment of loans and its impact on the economy.

Financial Administration - It deals with the management of government financial activities.

It includes budget preparation, budget execution, auditing and financial control. It ensures that public money is used efficiently and accountably.

Fiscal Policy - It deals with the use of revenue and expenditure by the government to influence the economy.

The aim of fiscal policy is to achieve macroeconomic goals such as economic stability (controlling inflation and deflation), full employment, economic growth and equitable distribution of income.

Importance of Public Finance - The importance of public finance has increased manifold in modern economies. Its main reasons and importance are given below point wise-

Economic Stability - The government can control economic fluctuations (recession and inflation) using fiscal policy. During recession, economic activities can be boosted by increasing public expenditure and reducing taxes, while the opposite measures are taken during inflation.

Efficient Allocation of Resources - Government invests in areas where the private sector is not willing to invest (such as public goods defence, roads, parks) or where social benefit exceeds private benefit (such as education, health). This helps in efficient allocation of resources.

Redistribution of Income and Wealth - Government attempts to reduce income and wealth inequality through progressive taxation (higher taxes on higher incomes) and social welfare programmes (such as subsidies, pensions for people below the poverty line). Economic Growth - Public finance promotes economic growth by investing in infrastructure development (roads, electricity, and ports), education and health, which increases productivity and improves the investment climate.

It plays an important role in promoting capital formation and making economic planning successful in developing countries.

Employment Generation – New employment opportunities created by public spending and investment arise, especially in infrastructure projects and government services.

Social Welfare and Justice - The government ensures social security and justice by running various welfare schemes for the poor, deprived and weaker sections. This includes spending on education, health, housing, food security, etc.

Management of Balance of Payments – Fiscal policies can help improve a country's balance of payments by affecting imports and exports.

Government Accountability and Transparency- Financial administration and auditing mechanisms ensure that government funds are used properly, thereby maintaining transparency and accountability in government operations.

In conclusion, public finance is an essential area of economics that is crucial to understanding the role of the modern state. It is not just a record of income and expenditure, but it is a powerful tool of economic policy that governments use to achieve the welfare of their citizens and overall economic growth.

Question No. 2 - Explain the difference between public goods and private goods?

Answer- In economics, goods are mainly divided into two categories- Public Goods and Private Goods. There is a fundamental difference between the two, which affects their

consumption, availability and mode of financing. Let us understand these differences in detail-

Public Goods - Public goods are goods or services that are available to all the people of society these are available equally to members, regardless of whether they have contributed to their production or provision. They have two main characteristics:

Non-Rivalry in Consumption - It means that the consumption of a commodity by one person is equal to the consumption of another person.

Consumption of a good does not reduce its availability or consumption to another person. For example, the benefits of national defence are shared by every citizen, no matter how many people consume it. Security of one person does not have any negative impact on the security of another. Non-Excludability- It means that it is very difficult or impossible to deprive any person of the use of the good, even if he does not pay for it. For example, once a street light is installed, it is difficult to deprive anyone of its light, even if he does not pay the taxes.

Main features and implications of public goods-

Production and financing- Public goods are usually provided by the government and financed through taxes these goods are financed through private sector. It is not attractive for the private sector to produce such goods because they face the "free-rider problem". The free-rider problem arises when people consume a good or service but avoid paying for it because they know they will be able to reap the benefits even if they do not pay.

Example- National defence, street lights, public parks, clean air, law and order, flood control etc.

Market Failure - The market mechanism cannot produce public goods efficiently because private firms find it difficult to make profits. Therefore, the government has to intervene.

Collective consumption - Public goods are consumed collectively, so everyone gets them equally there is benefit.

Private Goods - Private goods are goods or services that are owned by a particular person or group, and their consumption is limited. They also have two main characteristics: Rivalry in Consumption - This means that consumption of a good by one person reduces its availability or consumption quantity for another person. For example, if you eat an apple, no one else can eat that apple.

Excludability - It means that the consumption of the good can be easily denied to those who do not pay for it. For example, a shopkeeper will not give you food unless you pay for it. Main features and implications of private goods-

Production and financing - Private goods are produced and sold by private firms to satisfy the needs and wants of consumers. These are financed at the individual level, where consumers pay to buy the good or service.

Example – Food, clothes, car, mobile phone, personal house, cinema tickets etc.

Market efficiency - the market mechanism produces and distributes private goods efficiently, because private firms have a profit-making motivation and can easily squeeze out those who don't pay up.

Personal consumption - Private goods are consumed by the individual and thus provide personal benefit.

Main differences between public good and private good in tabular form-

Speciality	public good	personal item
rivalry	Non-Rival	Rival
excludability	Non-Excludable	Excludable
consumption	mass consumption	personal consumption
Production	mainly by the government	Mainly by private
financing	Through taxes (collective financing)	Personal Payment (Pe
market failure	Market failure occurs due to the free-rider problem	the market works e

Conclusion-The difference between public and private goods is an important concept in economics. It helps us understand how various goods and services should be provided in society and what should be the roles of the market and the government. While private goods are efficiently provided by the market mechanism, public goods demand government intervention due to market failures so that society can get the required benefits.

Question No. 3- Define budget and discuss its essential elements?

Answer- In economics, a budget is a detailed estimated statement of income and expenditure for a given period (usually a financial year). It is a financial plan that guides the allocation and use of resources for the future. Whether it is the budget of an individual, family, business, or government, it is a financial plan that guides the allocation and use of resources for the future However, the main purpose of the budget is to balance income and expenditure to achieve financial goals and maintain financial stability. The word 'budget' is not mentioned directly in the Indian Constitution; instead the word 'annual financial statement' has been used.

Essential Elements of a Budget-An effective budget has several important elements that help make it successful-

Estimated Income – This includes the estimated amount of money coming from all sources this includes those from which income will be derived.

In the government budget - it consists of tax revenue (income tax, GST, customs duties, excise duties), non-tax revenue (fees, fines, profits of public sector undertakings, dividends), debt (domestic and foreign), and receipts from disinvestment.
In personal/family budget – it includes salary, income from business, income from investments, rent etc. Accurate estimation of income is the basis of budget.
Estimated Expenditure - This is an estimate of all the expenses that will be incurred in a given period.
Government budget- It includes expenditure on various sectors (education, health, defence, infrastructure, social welfare programmes), salaries of employees, interest payments on loans, and transfers to states, etc. Expenditures are usually classified into revenue expenditure (non-developmental, such as salaries, pensions) and capital expenditure (developmental, such as bridge, road construction).
In personal/family budget – it includes daily expenses (food, transport), monthly bills (rent, electricity, and water), savings, investments, and other recurring expenses. It is important to make a detailed and realistic estimate of expenditure.
Objectives and Priorities- Budget is not just a collection of numbers, but it reflects specific goals and priorities.

In a government budget, objectives may include promoting economic growth, job creation, poverty alleviation, reducing income inequality, controlling inflation, and developing infrastructure.
Personal/family budget- This includes buying a home, saving for children's education, retirement these goals may include planning for a new home, or paying off debt. When creating a budget, it is important to keep these objectives in mind and prioritize resources accordingly.
Time Period - The budget is prepared for a specific period, such as a financial year (1 April to 31 March in India). This period provides a framework for future planning and evaluating performance.
Policy Decisions - The policy decisions of the government are clearly reflected in the budget. For example, if the government decides to spend more on education, it will be reflected in the budget as a higher allocation for education these decisions affect various sectors of the economy.
Balance or Imbalance – The budget can be either balanced surplus or deficit.
Balanced Budget - When the estimated income is equal to the estimated expenditure.
Surplus Budget - When the estimated income exceeds the estimated expenditure.
Deficit Budget – When the estimated expenditure exceeds the estimated income.
Each type of budget has different effects on the economy. A deficit budget often leads to the need to borrow, while a surplus budget may provide an opportunity to reduce taxes or fund new programs.
Accounting and Accountability-The budget is part of an accounting system that ensures that money is being used for the intended purposes. It is an important tool for financial transparency and accountability. For the government, it ensures financial accountability to Parliament and the public.
Conclusion-Budget is an important tool in economics that helps in efficient allocation of resources, maintaining economic stability, promoting social welfare and achieving long-term growth. Its essential elements – accurate estimates of income and expenditure,

clear objectives, fixed period, policy decisions and accountability make it an effective financial management tool.

Question No. 4- What is meant by wasteful management?

Answer- "Deficit Financing" refers to the financial system in which the government spends more than its income, which creates a deficit in the budget. To meet this deficit, the government resorts to various methods, the most important of which is taking loan from the central bank (Reserve Bank of India - RBI in India) and issuing new currency.

Meaning and process of marginal management-When the income of the government (tax revenue, non-tax revenue, etc.) is less than the public expenditure (development work, social welfare schemes, defense expenditure, administration, etc.), there is a deficit in the budget. To meet this deficit, the government adopts the following measures:

Borrowing from the central bank: The government borrows money directly from the central bank. The central bank can issue new currency to repay this loan.

Borrowing from the Market – The government borrows money from the general public, banks and other financial institutions by selling various government securities (like treasury bills, bonds, national savings certificates).

Loans from International Financial Institutions – The government borrows from institutions such as the International Monetary Fund (IMF), World Bank, etc. can also take loan.

When new money is printed to cover the deficit, it is called money management. It increases the money supply in the economy.

Objectives of Inferior Management-Inferior management is often used to achieve a number of objectives, including:

Boosting economic development - In developing countries, there is a shortage of capital. Through deficit management, the government can invest in development projects, such as building infrastructure (roads, electricity, irrigation), which boosts economic activity.

Dealing with recession- During recession, private investment and consumption fall, leading to unemployment. Through economic management, the government stimulates demand by increasing public expenditure, which increases production and employment.

Meeting sudden financial needs- During war, natural calamities, or other unexpected financial crises, the government has to incur heavy expenditure. In such a situation, deficit management provides a quick financial solution.

Development of infrastructure- A huge amount of capital is required for the construction of roads, bridges, power plants etc. in the country. Inferior management can help in raising this capital.

Effects of wasteful management- Wasteful management can have both positive and negative effects are-

Positive impact -

Boosts economic growth – If expenditure is made in productive sectors, it increases production capacity and helps in long-term economic growth.

Employment creation – Public investment and expenditure creates new employment opportunities, thereby reducing unemployment.

Lower interest rates – If the government borrows directly from the central bank, there is no direct pressure on interest rates in the market.

Negative impact -

Inflation- This is the biggest negative effect of economic management. When new currency is printed and people's purchasing power increases, the demand for goods and services increases, causing prices to rise. If production does not increase, the risk of inflation increases.

Devaluation of currency - Inflation can cause the international value of a country's currency to decrease.

Increasing debt burden - If the government continuously borrows money to finance the deficit, the public debt burden keeps rising, increasing the pressure on interest payments in the future.

Crowding Out – If the government borrows heavily from the market, the availability of capital for the private sector may decrease, which may have a negative impact on private investment.

Promotion of Non-Productive Expenditure – If the government uses deficit financing for non-productive expenditure (like subsidies, unnecessary administrative expenditure), it may have long term negative consequences and will only promote inflation.

Conclusion- Waste management is a double-edged sword. It can be an important tool to spur economic growth and deal with crises, especially for developing countries where capital is scarce. However, it must be used carefully and judiciously. If it is used excessively or unproductively, it can lead to serious problems such as inflation, debt crises and economic instability. Therefore, governments should pay special attention to controlling inflation, focusing on productive investment and maintaining fiscal discipline when using waste management.

Question No. 5- How can public expenditure be classified?

Answer- Public expenditure, also called government expenditure, is the expenditure made by a country's government on the collective or individual needs of its citizens and on public goods and services. Its main purpose is to enhance the overall welfare of citizens and promote economic growth and stability. Public expenditure can be classified on various grounds, which help in its analysis and policy making.

The main classifications of public expenditure are as follows-

1. Revenue Expenditure and Capital Expenditure – This classification is one of the most important and widely used classifications.

Revenue Expenditure-

1. These are the regular and recurring expenditures incurred by the government for its day-to-day functioning and provision of services.
2. These do not create any assets nor do they reduce the liabilities of the government.
3. Example- Salaries of Government employees, pensions, payment of interest on national debt, various subsidies (like food subsidy, fertilizer subsidy), expenditure on maintaining law and order, administrative expenses, maintenance expenditure on defence services, etc.
4. This expenditure is of consumption nature.

Capital Expenditure-

1. These are expenditures which create assets for the government or reduce the liabilities of the government.
2. These are long term investments aimed at increasing the productive capacity of the country and generating profits in future.
3. Example- construction of infrastructure like roads, bridges, dams, hospitals, schools, power plants,
4. Investment in public sector enterprises, repayment of loans, purchase of machinery and equipment etc.
5. This expenditure is of investment nature and plays an important role in economic development.

2. Developmental Expenditure and Non-Developmental Expenditure – This classification is based on the impact of expenditure on economic development.

Developmental Expenditure-

1. These are those expenditures which are directly related to the economic and social development of the country.
2. Their objective is to increase production capacity, create employment opportunities and improve the standard of living of the people.
3. Example- Expenditure on education, health, agriculture, irrigation, industry, energy, transport, communication etc.
4. This expenditure is directly productive and growth-oriented.

Non-Developmental Expenditure-

1. These are those expenditures which do not contribute directly to the development of the country but are necessary for the normal functioning and existence of the government.
2. They do not have a direct effect on production, but may affect distribution.
3. Example - Defence expenditure, expenditure on law and order, interest payments, pensions, administrative expenses, subsidies (to some extent) etc.

Though these are not directly development-oriented, they support development indirectly by providing a stable and secure environment.

3. Plan Expenditure and Non-Plan Expenditure – This classification was particularly relevant in countries with planned economies like India (though now the concept of "plan" has changed).

Plan Expenditure-

1. These expenditures are made on programmes and projects that were recommended by the Planning Commission (now NITI Aayog) and were part of the Five Year Plans.
2. Their aim is to achieve specific development goals.
3. Example- Planned projects related to agriculture, irrigation, energy, rural development, flood control, and mineral resources.

Non & Plan Expenditure-

1. These are all those expenditures which are outside the scope of planned development programmes.
2. These include the regular and necessary operations of the government.
3. Example- Interest payments, defence services, subsidies, salaries and pensions, expenditure on law and order etc.

4. Functional Classification- This classification is based on the function or purpose for which the expenditure is made. It shows the expenditure made for various services of the government.

Examples- defence expenditure, expenditure on education, expenditure on health care, expenditure on social welfare (like old age pension, scholarship, unemployment allowance), expenditure on transport, expenditure on general administration, expenditure on agriculture and rural development, expenditure on environmental protection.

5. Transfer Payments and Real Expenditure-

Transfer Payments-

1. These are payments made by the government to individuals or institutions without giving any goods or services in return are done.
2. These do not directly generate any production or income in the economy, but lead to redistribution of income.
3. Example- Pension, scholarship, unemployment allowance, subsidies (some types), interest payments.

Real Expenditure-

1. These are expenditures whereby the government directly acquires goods and services, or invests in productive activities.
2. They promote the production of goods and services and income generation in the economy.
3. Example- salaries of government employees (because they provide services), building infrastructure, purchasing defence equipment.

Other Classification- Some economists have also classified public expenditure on other basis-

Fixed Expenditure and Variable Expenditure- Some expenses are fixed and remain forever (eg salary, pension), while some keep changing as per the need (such as emergency expenses).

Primary Expenditure and Secondary Expenditure - Primary expenditures are those which are necessary for the existence of the state, while secondary expenditures are additional.

Productive Expenditure and Unproductive Expenditure - This classification is based on the productivity of expenditure. Productive expenditure increases the productive capacity of the economy, while unproductive expenditure has no direct impact on production.

Conclusion-Classification of public expenditure is done for various purposes, such as budget formulation, economic analysis, determination of fiscal policy, and monitoring the efficient use of public funds. Each classification highlights different aspects of public expenditure and helps the government to effectively manage its financial resources to ensure maximum social welfare and sustainable economic growth. The overall picture of public expenditure can be understood only by analyzing various classifications together.

Question No. 6- What is meant by taxation? Explain the difference between direct and indirect tax?

Answer- Taxation is a process under which the government compulsorily collects financial contributions (taxes) from individuals and businesses to meet its expenses and achieve public objectives. It is a major source of income of the government and through

this the government spends on various welfare schemes, infrastructure development, administrative services and security.

Taxation is not only a means of collecting revenue, but it is also an important tool to achieve economic and social objectives. Its main objectives can be the following:

1. Raising revenue- The financial resources required to meet the regular and planned development expenditure of the government are collected through taxes only.

2. Bringing equality in the distribution of wealth- Taxes can be used to reduce income and wealth inequality, such as progressive tax systems in which people with higher incomes are taxed more.

3. Economic stability and growth- Taxation helps to control inflation, promote investment and it helps in promoting economic development.

4. Allocation of resources - The government can encourage or discourage certain industries or sectors through taxation, so that resources can be allocated in the desired direction.

5. Fulfilment of social objectives- By imposing higher taxes on harmful goods (like alcohol, tobacco), their consumption can be reduced, which will increase social welfare.

Explain the difference between direct and indirect tax-

Taxes are mainly divided into two categories- Direct Taxes and Indirect Taxes. The main difference between these two is the incidence and impact of the tax based on transfer.

1. Direct Taxes - Direct taxes are those taxes whose burden falls directly on the person or organization on which they are imposed, and cannot be shifted to any other person. In this, the tax burden (the one on whom the tax is levied) and the tax payer (the one who ultimately pays the tax) are the same person.

Example-

Income Tax - Tax levied on the income of individuals.

Corporate Tax - Tax levied on the profits of companies.

Property Tax - Tax levied on ownership of property.

Capital Gains Tax - Tax levied on profits from the sale of property, shares etc.

Features of direct taxes-

No transfer of burden- Its burden cannot be transferred to anyone else.

Progressive nature - Usually these are progressive, i.e. the tax rate increases as the income increases. These are helpful in reducing income inequality.

Anti-inflation – helps in reducing the demand for goods and services by reducing income, thereby controlling inflation.

Complexity in collection – Their collection can be relatively complex as it is linked to personal income or profits.

2. Indirect Taxes - Indirect taxes are those taxes whose burden does not fall directly on the person on whom they are first imposed. The burden of these taxes can be shifted to consumers as they are included in the prices of goods and services. In this, the tax payer (such as the manufacturer or seller) and the tax faller (the final consumer) are different persons.

Example-

Goods and Services Tax (GST) - Integrated tax levied on the supply of goods and services.

Customs Duty - Tax levied on imported and exported goods.
Excise Duty - Tax levied on the production of goods (now included in the badge).
Sales Tax - Tax levied on the sale of goods (now included in the badge).
Features of indirect taxes-
Transfer of Load- Their load can be transferred to the end consumer.
Regressive nature - These are often regressive because they apply equally to goods and services, regardless of the consumer's income. They may place a greater burden on the poor.
Broad based – These cover more people because everyone consumes goods and services.
Ease of collection - These are relatively easy to collect as they are included in the prices of goods and services and are collected by business entities.
Reduction in tax evasion - since these are included in the prices of goods and services, consumers pay them can't avoid paying.
Summary of main differences between direct and indirect taxes-

Speciality	direct tax	indirect tax
taxation	on income, assets, profits	on goods and services
load transfer	not possible	possible (from producer to consumer)
taxes and taxes	on the same person	on different people
Nature	Usually Progressive	Usually regressive
tax evasion	comparatively more likely	comparatively less likely
[illegible]	relatively complex	relatively easy
[illegible]	reducing income inequality, earning income	generating revenue, influencing consump

In conclusion, a balanced mix of direct and indirect taxes is necessary to make the taxation system of any country fair and effective. Both types of taxes have their own merits and demerits, and the government has to strike a proper balance keeping in mind economic goals and social justice.
Question No. 7- Discuss the principle of maximum social benefit?
Answer- The Principle of Maximum Social Advantage is an important principle of Public Finance, which has been mainly propounded by economists like Dalton and Pigou. This principle acts as a guiding principle for the income and expenditure decisions of the government, the aim of which is to obtain maximum net benefit for the society.

Meaning and main idea of the theory-This theory states that the government should conduct its financial operations (public expenditure and taxation) in such a way that the overall welfare of the society is maximized. In the words of Dalton, "The best system of public finance is that which produces maximum social benefit through its operations."

According to this theory, maximum social benefit is achieved at the point where the marginal social utility (Marginal Social Benefit & MSB) derived from public expenditure becomes equal to the marginal social sacrifice (Marginal Social Sacrifice & MSS) derived from taxation.

Marginal Social Utility (MSB)- When the government spends on a public project (such as roads, education, healthcare), society benefits from it. The additional benefit derived from each additional unit of expenditure is called marginal social utility. Generally, it is believed that marginal social utility from public expenditure decreases as the government spends on the most important areas first and then on less important areas.

Marginal Social Sacrifice (MSS) - When the government imposes taxes, the public has to give up some income, due to which they experience some disutility or sacrifice. The additional sacrifice caused by imposing each additional unit of tax is called marginal social sacrifice. It is believed that marginal social sacrifice increases with taxation, because when people have less money left, it hurts them more to pay additional taxes.

Point of Equilibrium-Maximum social benefit is achieved at the point where MSB=MSS. Before this point, if MSB>MSS, the government should increase public expenditure and levy more taxes, as this will result in a net benefit to society. If MSB<MSS, the government should reduce public expenditure and reduce taxes, as this will result in a net loss to society.

Explanation by Diagram-If we show public income and expenditure (amount of tax and public expenditure) on the horizontal axis and marginal social utility/sacrifice on the vertical axis on a graph, then-

1. The MSB curve is sloping from top to bottom (due to diminishing marginal utility).
2. The MSS curve is rising from bottom to top (due to increasing marginal sacrifice).
3. Where the MSB curve intersects the OE curve is the point of maximum social benefit at this point, society receives maximum net benefit.

Assumptions of the Principle – This principle is based on some assumptions is-

1. Taxes always lead to sacrifices and public expenditure always leads to benefits- This is a simplifying assumption.
2. Taxes are the only source of income for the government- In the real world, the government has other sources also like loans, duties, profits from public enterprises, etc.
3. The government budget is always balanced – that is, revenue equals expenditure, there is no deficit or surplus.
4. The marginal social benefit from public expenditure diminishes.
5. Taxes increase the marginal social sacrifice.
6. Usefulness and disutility can be measured – This is an important assumption which raises questions on the practicality of this theory.

Criticisms of the Principle - Though the principle of maximum social benefit is theoretically important, it has many practical difficulties and criticisms-

1. Non-measurability of Utility and Sacrifice-The biggest criticism is that it is impossible to measure marginal social utility and marginal social sacrifice objectively. These are subjective concepts that depend on the feelings and preferences of individuals.

2. Vague and Abstract Concepts - Terms like "benefit" and "sacrifice" are vague and abstract. They may mean different things to different individuals and groups. 3. Lack of Divisibility of Public Goods - It is not always possible to divide units of public expenditure and taxation into very small pieces, making it difficult to equate marginal benefits and sacrifices. For example, a large dam project or a defence system cannot be divided into small pieces.

4. Ignores Non-Tax Revenue – This theory focuses only on taxes and ignores other important revenue sources like public debt, duties, fines, profits of public enterprises, etc.

5. Ignores Dynamic Conditions (Assumes Static Conditions)- This theory assumes a static economy this assumes a constant where the effects of income and expenditure do not change over time. The real economy is dynamic and the effects of government policies keep changing.

6. Difficult to Implement in Practice - Governments work under various political, social and economic pressures. It is very difficult in practice to make rigorous economic calculations to achieve maximum social benefits.

7. Changing Nature of Welfare State – In the modern welfare state, the aim of the government is not only to maximize profits but also to reduce income inequality, maintain stability and promote growth.

8. Ignores Macro System – This theory focuses more on the individual effects of taxation and spending, while ignoring their broader, macro-economic effects on the economy (such as inflation or unemployment).

9. Unrealistic Assumption of Balanced Budget – In modern economies, governments often operate deficit or surplus budgets, which may be important for economic stability and growth purposes.

Conclusion-The principle of maximum social advantage, despite its criticisms and practical difficulties, remains a fundamental concept in the field of public finance. It sets an ideal goal for government fiscal decisions and provides a theoretical framework for policymakers to think about maximizing social welfare through public expenditure and taxation. Although it is difficult to put it into practice completely, it provides an important direction for governments to conduct their fiscal operations more efficiently and equitably.

Question No. 8- What is progressive taxation?

Answer- In economics, progressive taxation is a tax system in which the tax rate increases as the taxable income or wealth increases. This simply means that those with higher incomes have to pay a larger percentage of their income as tax, while those with lower incomes have to pay a lower percentage of their income as tax. This concept is based on the principle of "ability to pay", which believes that people who have greater financial capacity should contribute more to society.

Main features of progressive taxation-

Rates increase with income - In a progressive tax system, tax rates are divided into different income brackets. As a person's income moves from one bracket to the next

higher bracket, the tax rate imposed on him also increases. For example, there can be rates ranging from 10% to 37%, where 10% applies to lower incomes and 37% to higher incomes.

Vertical Equity – The main objective of progressive taxation is vertical equity.

This means that people in different income groups should be taxed differently, and those who earn more should contribute more.

Reduction in Income Inequality- This tax system helps in reducing the inequality in the distribution of income and wealth. It enables the government to spend on social welfare programmes, such as education, healthcare, infrastructure, etc., by collecting more taxes from the wealthy individuals, thereby benefiting the poor and underprivileged.

Example-

Personal Income Tax – is the most obvious example of progressive taxation.

In addition, estate tax, capital gains tax and luxury goods tax can also have a progressive impact.

Benefits of progressive taxation-

Reduction in income inequality- This system helps in bridging the gap between the rich and the poor, thereby promoting social justice.

Revenue Generation – Higher taxes from higher income groups generate substantial revenue for the government, which can be used to finance public services and developmental projects.

Social stability - A reduction in income inequality can lead to a decrease in social unrest and crime, leading to greater stability and harmony in society Reduces burden on low-income people: This system reduces the tax burden on low-income individuals, thereby maintaining their purchasing power and enabling them to fulfil their basic needs.

Increased demand - Increasing the purchasing power of lower-income people can increase the demand for goods and services, thereby stimulating economic growth.

Challenges/Disadvantages of Progressive Taxation-

Disincentives to work and save – some economists argue that high tax rates this can discourage people from working more or saving, because a large portion of their income is taken away in the form of taxes. This can reduce economic activity.

Tax evasion and avoidance: Higher tax rates may lead to increased tendency for tax evasion and avoidance, which may have a negative impact on government revenue.

Capital Flight – Countries with very progressive tax rates may experience capital flight, as wealthy individuals may prefer to move their capital to countries with lower taxes.

Complexity – Progressive tax systems can often be complex with multiple tax brackets and deductions, making them difficult to comply with and administer.

Effect on economic efficiency - Some believe that progressive tax systems can stifle investment and entrepreneurship, leading to a decrease in overall economic efficiency.

Conclusion-Progressive taxation is an important economic tool aimed at promoting social justice and reducing income inequality. It helps the government to raise the revenue needed for public services. However, it also has its own challenges, such as potential negative effects on work incentives and the tendency for tax evasion. A successful progressive tax system is one that strikes a balance between these benefits and challenges, so that social objectives can be achieved without impeding economic

growth. In a country like India, where income inequality is a major challenge, the progressive income tax system has been adopted to ensure a more equitable distribution of resources.

Question No. 9- Explain Wagner's public expenditure?

Answer- Adolf Wagner, a German economist, formulated the "Law of Increasing State Activities" in the late 19th century, commonly called Wagner's Law of Public Expenditure. This law states that as a country develops economically, its per capita income and output increase, the size and expenditure of the public sector (government spending) increases as a proportion of total economic activities.

This rule is based on an empirical observation that public expenditure has historically grown steadily in industrial countries. According to Wagner, this growth is not accidental but it is the natural outcome of economic development.

Main points and reasons of Wagner's Law-Wagner gave several reasons for the increase in public expenditure, which can be broadly divided into three categories-

1. Increase in the administrative and protective functions of the state-

Law and order - As the size and complexity of the economy grows the potential for crime, conflict and social unrest also increases. The government has to spend on more police, judiciary and administrative services to deal with these problems.

Defense - The geopolitical role of countries changes as industrial development occurs, which may require greater expenditure on national security and defense.

Complexity of Governance – Modern economies require complex administrative mechanisms to regulate and control various sectors, which increases expenditure on government servants and offices.

2. Increase in social and cultural activities (concept of welfare state)-

Education- Economic development requires skilled manpower. Therefore, governments spend more on education infrastructure (schools, colleges, universities) and teachers.

Health - With increasing urbanization and living standards, people demand better health services. Governments spend more on hospitals, clinics, medical research and public health programs.

Social Security- Urbanisation and the rise of the nuclear family in industrial societies weaken traditional social security nets. Governments spend on unemployment allowances, pensions, disability benefits and other social welfare schemes.

Public amenities – With urbanisation and population growth, the government has to spend more on the development and maintenance of public amenities like water, sewage, electricity, roads, transport.

3. Substitution or complementarily of the private sector by the public sector-Some services, such as infrastructure (roads, bridges, ports) or some heavy industries may not be fully profitable for the private sector or require very large initial investments. In such a situation, governments invest in these areas, increasing public expenditure.

Some services tend to form "natural monopolies" (such as water or electricity supply), where a single provider can provide the service efficiently. In such cases, the government often owns or regulates these services, increasing public expenditure.

As incomes rise, the public demands certain goods and services (such as museums, parks, public libraries) that may not be provided efficiently by the private sector or that have "public goods" properties. Governments spend to provide these services.

Importance and criticism of Wagner's law-

Importance-This rule helps in understanding the long-term trends behind the growth in public expenditure. It highlights the relationship between economic development and the role of the state this is an important concept for public finance policy makers.

Criticisms-

Ambiguity of cause-effect relationship - critics argue that Wagner's law only shows correlation it is not clear whether economic growth leads to increased public expenditure, or increased public expenditure leads to economic growth, or both happen simultaneously.

Variation in empirical evidence Studies conducted in different countries and time periods have produced mixed results in support of Wagner's Law. Some studies find support for it, while others do not.

Ignoring other factors - Wagner's Law ignores political, social, and institutional factors that also affect public spending. For example, war, economic crises, or changes in political ideology can also affect public spending.

Limited explanatory power - This rule is not able to explain all the increase in public expenditure, especially in modern welfare states where the size and functions of government have become very extensive.

Definition of assets - There has also been some ambiguity over the definition of "public expenditure" in Wagner's rule. Does it include only consumption expenditure, or also investment expenditure?

In short, Wagner's Law of Public Expenditure is an important theory that shows a historical relationship between economic growth and public expenditure. Although it has some limitations and criticisms, it still remains a fundamental concept in the study of public finance and helps in understanding the growing role of the government.

Question No. 10- Explain Wagner's public expenditure?

Answer- The Principle of Least Aggregate Sacrifice of taxation is an important principle in the field of public finance, which attempts to determine how the government should distribute taxes across different income groups so that society as a whole suffers the least aggregate loss.

One has to make sacrifices (or suffer). This principle is also called the Principle of Equal Marginal Sacrifice, because it ultimately reaches the same conclusion.

This theory is based on the Law of Diminishing Marginal Utility. According to this law, as a person's income or wealth increases, his marginal utility of money decreases. In other words, a rupee is a loss for a rich person it is not as painful as it is for a poor person.

Explanation of the theory: This theory believes that when the government collects money in the form of taxes from various individuals, every taxpayer experiences some sacrifice (or disutility). The main objective of this theory is to find out the total sacrifice made by all taxpayers should be minimized.

To achieve this goal, the theory argues that the government should impose taxes in such a way that the distribution should be such that the marginal sacrifice made by each taxpayer is equal. Marginal sacrifice refers to the sacrifice made by paying an additional unit of tax.

This can be understood with an example: Suppose there are two persons in the society A(rich) and B(poor) if the government taxes ₹100 from A, it is not much of a

sacrifice for him because he has a lot of income, and ₹100 has very little impact on his total utility on the other hand, if the government taxes B by ₹100, it will be a huge sacrifice for him as his income is low, and a loss of ₹100 can seriously impact his ability to meet his basic needs.

According to the minimum sacrifice principle, the government should levy more taxes from A and less from B, until the additional (marginal) sacrifices made by both are equal. This means that the rich individuals should be taxed more and poor people should be taxed less. It supports progressive taxation system, where tax rates increase as income increases.

Different forms of theory:

The minimum sacrifice principle is often seen in three forms:

1. Least Aggregate Sacrifice: This is the most common form. It means that the aggregate sacrifice made by all taxpayers should be minimum. To achieve this, as explained above, the marginal sacrifice of each taxpayer should be the same.

2. Equal Absolute Sacrifice: According to this approach, the sacrifice made by each taxpayer should be equal in the same absolute amount. If a poor person sacrifices ₹10, a rich person should also sacrifice ₹10. However, due to the law of diminishing marginal utility of money, this will actually put a greater burden on the poor, as sacrificing ₹10 will be more painful for the poor. Therefore, this form is not generally acceptable and is contrary to the principle of minimum absolute sacrifice.

3. Equal Proportional Sacrifice: According to this view, the sacrifice should be equal in proportion to the income of each taxpayer. If a poor person sacrifices 10% of his income, a rich person should also sacrifice 10% of his income. It supports progressive taxation but not as intensely as the principle of minimum total sacrifice does.

Mill's contribution:

J.S. Mill also gave important views on the principles of taxation. He supported the "Ability to Pay Principle", which coincides with the minimum sacrifice principle. Mill believed that the burden of taxes should be distributed among people according to their ability to pay, and this ability to pay depends on their income or wealth. He also argued that the government should not tax the basic needs of individuals.

Purpose and effect of the principle: The main objective of this theory is to maximize social welfare in society through taxation. When the burden of taxes is distributed according to the principle of minimum sacrifice, society suffers less overall, thereby increasing social welfare.

Criticisms: The minimum sacrifice principle, though attractive in theory, has a number of criticisms in practice:

1. Impossibility of measuring utility: The biggest criticism is that utility (or sacrifice) is a subjective concept which is impossible to measure quantitatively. We cannot know how much a sacrifice of ₹100 is for one person and how much for another person. Comparing utility between different individuals (Interpersonal Comparison of Utility) is an economic problem.

2. Assumptions Impractical: This theory is based on the assumption that the government has complete information about the income of every person and his marginal utility of money, which is not possible in practice.

3. Effect on economic efficiency: Highly progressive taxation, as this theory suggests, can reduce the incentive to work, save and invest. This can have a negative effect on

overall economic output and efficiency. If people know that their additional income will be taxed too heavily, they may be discouraged from working hard or investing.

4. Moral conception of the role of the state: This theory advocates the idea of a strong, interventionist state envisions a system that is capable of redistributing the income of individuals. This may conflict with some political ideologies that support minimal state intervention.

5. Other objectives of taxation: Taxation is not just about collecting revenue or minimising sacrifices. It has other objectives too, such as economic stability, allocation of resources, and reducing income inequality. This theory ignores these other objectives.

Despite these criticisms, the minimum sacrifice principle provides an important conceptual basis for taxation policy. It supports the idea that the burden of taxes should fall more on those who are more able to afford it, and thus provides a theoretical justification for progressive taxation, which is a characteristic of the tax systems of modern welfare states is an integral part.

Question No. 11- What is the difference between tax incidence and tax burden?

Answer- In economics, 'impact of tax' and 'incidence of tax' are two important concepts in the context of taxation, which help in understanding the actual burden of a tax. There is a subtle but important difference between the two.

Let us understand these in detail:

1. Impact of Tax-

Tax incidence means the initial or immediate monetary burden of a tax that falls on a person or entity on which the government is legally responsible to levy the tax.

Definition: The tax burden falls on the person who first pays the tax to the government. This is the first burden of tax.

Obligor: This is the person who is legally bound to pay the tax. For example, if the government imposes excise duty on the producer of a commodity, then the burden of this tax falls on the producer, because he has to pay this tax to the government. Similarly, the burden of income tax falls on the person on whose income this tax is imposed.

Nature: Taxation is only related to the legal and initial payment of tax. It does not guarantee that the same person will ultimately bear the burden of tax.

Example:

Excise Duty: The government imposes excise duty of ₹10 per unit on a factory owner. The burden of this tax falls on the factory owner because he has to pay this money to the government.

Income Tax: Income tax is levied on the income of a salaried person. The burden of this income tax falls on the salaried person himself, because he legally pays it directly to the government.

Import Duty: The burden of import duty levied on an importer falls on the importer.

2. Incidence of Tax: Tax incidence means the final or actual monetary burden of tax that falls on the person or entity who ultimately bears the burden of tax and which he cannot transfer to anyone else. Tax incidence is the end result of the process of "tax shifting".

Definition: The incidence of tax falls on the person who ultimately bears the burden of tax and cannot pass it on to anyone else. This is the final blow of tax.

Real burden: This is the point where the actual economic burden of a tax stops. The person who is taxed has a reduction in his purchasing power or loses a part of his income.

Nature: The incidence of tax follows a process of tax shifting. If the taxed person is able to pass the tax on (e.g. by raising prices), the incidence of tax falls on someone else.

Example:

Excise Duty (continuing the above example): A factory owner is charged excise duty of Rs. 10 per unit. Now if the factory owner adds this duty to the price of the commodity and sells it to the consumer, then ultimately the actual burden of Rs. 10 will fall on the consumer. In this case, the burden of tax (factory owner) and the burden of tax (consumer) are on different persons.

Sales Tax/GST: Sales tax or GST is levied on the shopkeeper. The tax burden is on the shopkeeper as he has to pay it to the government. But the shopkeeper recovers this tax from the consumer by adding it to the price of the commodity. Hence, the tax burden ultimately falls on the consumer.

In Direct Taxes: In direct taxes like income tax, the incidence and burden of taxation usually fall on the same person, as the taxpayer cannot usually shift the burden of income tax imposed on his income to someone else.

Main differences between tax incidence and tax burden

basis of difference	Impact of Tax	Incidence of Tax
Meaning	The initial/immediate monetary burden of the tax.	The final/actual monetary bu
first point	It falls on the person who pays tax to the government in the first place.	The burden of tax ultimat who bears the burden o defer it further.
Diffraction	The process of tax shifting starts from the point of tax incidence.	The process of tax inflec point of tax incidence. (If possible)
Durability	This is not permanent, as the tax burden can be carried forward.	It is permanent because burden.
importance of study	The study of tax incidence shows that it is not important from whom the government collects taxes.	The study of tax incic actually bears the b more important for
Example	Excise duty on the producer, import duty on the importer, income tax on the salaried person.	Sales tax/excise duty on c tax on salaried person forward).

In summary:
The tax payer is the person who faces the first blow of tax and pays it directly to the government.
The incidence of tax is the person who pays the tax last, i.e. the person from whose pocket the money comes out finally and which he cannot shift to anyone else. In indirect taxes (like GST, excise duty) the incidence and incidence of tax is different, while in direct taxes (like income tax) they are usually on the same person. In economics, the study of tax incidence is more important as it reflects the real impact of tax on different sections of the society.
Question No. 12- What is the difference between tax incidence and tax burden?
Answer- Tax Shifting is an important concept in economics which states that the actual economic burden (tax incidence) of a tax imposed by the government may be different from the person or entity on which the initial burden (tax incidence) of the tax is legally imposed.
In short, tax shifting is the process by which a person or entity that is legally taxed shifts the burden of that tax, either partially or fully, to another person or entity.
This process occurs when the taxpayer attempts to shift the burden of tax to others by changing his behaviour (e.g. price, output, wages).
Why is tax shifting necessary?
Governments impose taxes for a variety of purposes, such as raising revenue, redistributing income, or discouraging specific behaviours. When a government imposes a tax on a good or service, it is legally obligating a particular entity (such as a producer or seller) to pay the tax it obliges. This is the effect of tax.

However, it is not necessary that the person who is taxed ultimately bears the burden of tax. If that entity has so much power in the market that it can reduce the burden of tax by increasing prices or If it can raise wages by reducing them, it will try to do so. This process is called tax shifting. Ultimately, the person or entity on whom the actual burden of tax falls is called the tax incidence.
Types of tax diversion:
Tax shifting can be mainly of three types:
1. Forward Shifting:
This happens when the tax burden is shifted forward, i.e. towards the consumer.
How it happens: The seller or producer on whom the tax is imposed passes on the burden of tax to the buyer (consumer) by increasing the price of his goods or services.
Example:
GST/Sales Tax: When a shopkeeper has to pay GST or sales tax, he often adds that amount to the final price of the product, causing the consumer to pay more.
Excise Duty: If the government imposes excise duty on the manufacturer of a beverage, the manufacturer will add that duty to the price per bottle of the beverage, and ultimately the consumer will have to pay the increased price.
2. Backward Shifting:
This occurs when the tax burden is shifted backwards, i.e., towards the suppliers of factors of production (such as labour, capital, raw materials).

How it happens: The taxed supplier passes on the burden of the tax to suppliers by demanding a reduction in the prices of his inputs (raw material, labour) or by cutting his payments.

Example:

Corporate Tax: If a company is charged a corporate tax, the company may reduce the wages of workers, demand cheaper raw materials from suppliers, or pay lower dividends to shareholders to maintain its profits. Thus, the burden of tax is shifted to workers, suppliers, or shareholders.

Property Tax on Tenant: If the property tax on the landlord increases, he can shift the burden of tax to the tenant by charging more rent from the tenant (this is a kind of forward shifting). But, if the building tax increases, the landlord can shift the burden of tax to the tenant (this is a kind of forward shifting).

If the owner has to increase taxes and cannot raise rents, he or she might spend less on building maintenance or pay workers less, shifting the burden to workers or service providers.

3-Lateral Shifting or Double Shifting:

This occurs when the burden of tax is shifted from one industry to another or from one product to another.

How it happens: The taxpayer shifts the tax burden to another market by changing his production or consumption pattern.

Example: If the government imposes heavy taxes on a particular industry, resources (labour, capital) from that industry may shift to less-taxed or no-tax industries, reducing production and raising prices in the first industry, while affecting conditions in the second industry.

Factors affecting tax shifting:

The extent and direction of tax diversion depend on several factors:

1. Elasticity of Demand:

Inelastic Demand: If the demand for a commodity is inelastic (i.e. the price if a change in price has little effect on demand), the seller will be able to pass on most of the tax burden to consumers. Essential goods (such as medicines) often have inelastic demand.

Elastic Demand: If the demand is elastic, even a small increase in price will reduce the demand significantly. In this case, the seller will not be able to fully divert the burden of tax to the consumers, and most of the burden of tax will remain on the seller or producer.

2. Elasticity of Supply:

Inelastic Supply: If the supply is inelastic (such as agricultural products whose supply cannot be increased quickly), then most of the tax burden falls on the producers.

Elastic Supply: If the supply is elastic, producers can easily pass on the burden of tax to consumers by reducing production.

3. Market Structure:

Perfect Competition: In a perfectly competitive market, individual firms have little price setting power, so their ability to evade taxes is limited.

Monopoly / Oligopoly: Those with a monopoly or oligopoly In markets, firms have greater market power and can more easily pass on the tax burden to consumers.

4. Cost Structure of Production: If taxes form a major part of the total cost, diversion becomes more important.

5. Time Period: In the short run, the potential for diversion may be limited because production patterns or prices cannot be adjusted immediately. In the long run, both producers and consumers have more time to adjust their behaviour, allowing tax diversion to be more complete.

6. Type of Tax:

Direct Taxes: Diversion of direct taxes like income tax is generally difficult this is because they are levied directly on income or wealth and the taxpayer has no direct mechanism to forward it. Therefore, in direct taxes, the tax incidence and the tax payer often fall on the same person.

Indirect Taxes: Indirect taxes like sales tax, GST, excise duty etc.

Diversions are relatively easy because they are levied on goods and services, and sellers can pass them on to consumers by including them in prices.

Conclusion: Tax diversion is an important aspect of public finance because it shows who the actual burden of taxes falls on, not just who is legally required to pay. It is important for policymakers to understand how tax diversion works, so that they can achieve the intended social and economic effects of taxation. If tax diversion is not estimated correctly, a tax can have unpredictable consequences, increasing income inequality or creating economic inefficiencies.

B.A.LL.B.-4th Sem. Paper-III History (History of India 1707-1747)

Question No. 1- Discuss the cause and effect of Nadir Shah's attack?

Answer- Nadirshah's invasion of India (1739 AD) was an important and devastating event in Indian history. There were many reasons behind this invasion and it had far-reaching and serious effects on India.

Reasons for Nadirshah's invasion:

1. Ambition and expansionist policy of Nadirshah: Nadirshah was an extremely ambitious and warlike ruler. After strengthening his position in Iran, he wanted to expand his empire. After being satisfied in the West, he focused on the East and had his eyes on the immense wealth of India.

2. Economic condition of Iran: Due to continuous wars, the economic condition of Iran had deteriorated. Nadirshah needed money to feed his army and continue his campaigns. Hearing about the immense wealth of India, he felt that the money looted from India could be the solution to this problem.

3. Weakness and Decline of the Mughal Empire: After the death of Aurangzeb (1707 AD), the Mughal Empire was heading towards decline. The central power had weakened, autonomy was increasing in the provinces and internal strife, corruption and administrative inefficiency were at their peak. The Mughal ruler Muhammad Shah 'Rangeela' was immersed in luxury and was unable to control his nobles. The security system of the border areas had also completely collapsed. Nadirshah sensed this weakness and considered it the right opportunity for his attack.

4. Pursuit of Afghans and Capture of Kandahar: Nadirshah had chased away the Afghans in Iran. To completely destroy the power of the Afghans, he invaded Kandahar in 1738 A.D. and captured it. Many Afghan chieftains were taking refuge in the Mughal Empire. Nadirshah had requested the Mughal emperor not to give shelter to these fugitive Afghans, but the Mughal court did not pay any attention to it.

5. Diplomatic humiliation: Some historians believe that Mughal emperor Muhammad Shah did not treat Nadir Shah's envoys properly and did not follow diplomatic etiquette. One of Nadir Shah's envoys was killed by Mughal soldiers in Jalalabad, which Nadir Shah used as an excuse for his invasion.

6. Invitation of Indian nobles: Some Indian chieftains, such as Saadat Khan and Nizam-ul-Mulk, incited Nadir Shah to attack India due to their mutual discord and personal interests. Due to their resentment against the Mughal emperor, they informed Nadir Shah about the weaknesses of India.

Effects of Nadirshah's invasion: Nadir Shah's invasion had devastating and far-reaching effects on India:

1. Economic Destruction:

Loot of immense wealth: Nadir Shah looted immense wealth from Delhi. This included the famous 'Takht-e-Taus' (Peacock Throne) built by Shah Jahan and the

Kohinoor diamond. It is estimated that he looted wealth (gold, silver, diamonds, jewels) worth about Rs 70 crore.

Emptying the Royal Treasury: This plunder completely emptied the royal treasury of the Mughal Empire, causing the empire's finances to collapse.

Persecution of the masses: There was widespread looting and massacre in Delhi and surrounding areas. Those who tried to hide wealth were brutally tortured. The city of Delhi remained in ruins for several days, causing huge losses to trade and economy.

2-Political decline of the Mughal Empire:

Loss of prestige: Nadir Shah's invasion completely exposed the internal weakness and incompetence of the Mughal Empire. The Mughal army, which was once considered invincible, was easily defeated by Nadir Shah's small but disciplined army in the Battle of Karnal. This also ended the remaining prestige of the Mughal Empire.

Rise of Regional Powers: The invasion made the Marathas, the British East India Company and other regional powers realise the weakness of the Mughal Empire. This gave these powers an opportunity to expand their sphere of influence and accelerated the disintegration of the Mughal Empire.

Weakening of the Western Border: All Mughal territories west of the Indus river were handed over to Nadir Shah. This made the north-western border of India completely vulnerable and paved the way for invaders. Which later led to the rise of Mughals like Ahmad Shah Abdali.

3. Social and human damage:

Massacre and climate of fear: Thousands of people were killed in the massacre in Delhi (estimated at 20,000 to 30,000). This brutality created a climate of fear and instability throughout India.

Social disruption: Widespread looting and destruction disrupted the social order and increased the sense of insecurity among the people.

Religious polarisation: To some extent, Nadir Shah's cruelty and genocide also fuelled tensions between religious communities in India.

4. Long Term Effects:

Beginning of the end of the Mughal Empire: Nadir Shah's invasion proved to be the last nail in the coffin of the Mughal Empire. After this, the empire could never regain its old power and glory.

Path of Successive Invasions: Nadir Shah's successful invasion inspired later invaders like Ahmad Shah Abdali to repeatedly invade India, increasing instability. This led to political instability in India.

Rise of Colonial Powers: The decline of the Mughal Empire and the political vacuum in India provided a golden opportunity to European trading companies, especially the British East India Company, to fulfil their political ambitions and establish control over India.

In summary, Nadir Shah's invasion was not merely a military victory but it was a turning point in the process of decline of the Mughal Empire. It had a profound and lasting negative impact on the economic, political and social structures of India which laid the foundation of colonial rule in India.

Question No. 2- Explain the Third Battle of Panipat?

Answer- the Third Battle of Panipat was a very important and decisive event in Indian history. This battle was fought on 14 January, 1761 AD in the plains of Panipat, located about 95 kilometers north of Delhi. This battle was fought between the Maratha Empire and the ruler of Afghanistan, Ahmed Shah Abdali (Durrani). This battle changed the course of Indian subcontinent the political landscape was changed forever.

Reasons for the Third Battle of Panipat:

1. Growing influence and expansionist policy of Marathas: By the middle of the 18th century Maratha power was at its peak. Taking advantage of the weaknesses of the Mughals, they had established their dominance over almost the whole of North India. Their power extended from south to north and they established control over Delhi, Agra, Malwa, Gujarat, Bundelkhand, Punjab and large parts of Rajputana the Marathas had begun to collect chauth (one-fourth of revenue) and sardeshmukhi (one-tenth of revenue) from the Mughals, which annoyed the Mughal court and other regional powers his expansion brought conflicts with the interests of neighbouring states and rulers, especially the Afghan ruler Ahmad Shah Abdali.

2- Ahmed Shah Abdali's ambition and desire to control India:

Ahmad Shah Abdali, as the successor of Nadir Shah, was building a powerful Afghan empire. He was attracted by the immense wealth of India and wanted to make Punjab a part of his empire.

Abdali invaded India several times between 1748 and 1757 and established his claim over Punjab.

3. Dispute over control of Punjab:

The immediate cause of the Panipat war was the struggle for control over Punjab. In 1758 A.D., the Marathas under Raghunathrao invaded Punjab and expelled Abdali's governor Timur Shah Durrani. They Captured Lahore and extended his influence up to Attonk, extending the Maratha flag to the Indus River.

Abdali saw this as a challenge to his prestige and empire. He was determined to regain his lost prestige and control over Punjab.

4. Discontent of Rajputs, Jats and Ruhelas with Marathas:

As part of their expansionist policy, the Marathas had imposed heavy Chauth and other taxes on many Rajput states, Jats and Ruhelas. Due to this, there was deep resentment against the Marathas among these powers.

The Ruhela chieftain Najib-ud-Daula (Najib Khan) was a staunch opponent of the Marathas and invited Abdali to invade India. He secretly mobilized support for Abdali.

Shuja-ud-Daula, the Nawab of Awadh, was also initially neutral, but at the insistence of Najib-ud-Daula and Abdali, he eventually sided with Abdali.

5. Weakness of the Mughal Empire:

The Mughal empire was nominal and the one that controlled Delhi was really weak. The Marathas had taken over Delhi and were using the Mughals as their puppets.

The Mughal emperor Shah Alam II was also dissatisfied with the power of the Marathas and invited Abdali for assistance against the Marathas.

Events of the war and important personalities:

Abdali invaded India in late 1759 AD and entered Punjab with his army. The Maratha army headed towards Delhi under the leadership of Sadashivrao Bhau (cousin of Peshwa Balaji Bajirao). The following prominent figures were involved in the war:

Maratha side:

Sadashivrao Bhau: Chief Commander of the Maratha Army.

Vishwasrao: Son of Peshwa Balaji Bajirao and nominal commander.

Malharrao Holkar, Jankoji Shinde, Ibrahim Khan Gardi: Other prominent Maratha chiefs. Ibrahim Khan Gardi was the chief of artillery in the Maratha army, who trained the Maratha artillerymen in the French method.

Afghan side:

Ahmad Shah Abdali: Supreme commander of the Afghan army.

Najib-ud-Daula: Ruhilla chieftain, Abdali's chief supporter and advisor.

Shuja-ud-Daula: Nawab of Awadh, ally of Abdali.

Hafiz Rahmat Khan: Another Ruhela chieftain.

War events:

Initial clashes: Abdali crossed the Yamuna River and camped near Panipat with the Maratha army. The two armies several small clashes occurred between them.

Strategy and Weaknesses of Maratha Army:

The Maratha army comprised about 45,000–60,000 soldiers, 20,000 Pindaris (irregular troops) and a large number of non-combatants (pilgrims, family members), numbering over 1 lakh.

The Marathas had adopted the Mughal style of warfare, which relied heavily on heavy artillery, but had forgotten their strengths in guerrilla warfare (which was their traditional style).

They did not have adequate logistics, and Abdali had cut off their supply routes, causing starvation in the Maratha camp.

There were also internal differences in the Maratha camp. Some chieftains, such as Malharrao Holkar, disagreed with Bhau's strategy.

Abdali's better strategy:

Abdali's army numbered around 75,000–80,000 soldiers, including better-trained cavalry and artillery.

He cut off the supply routes of the Maratha army and forced them to starve.

He adopted a clever strategy to surround the Maratha army.

Abdali had able war managers and advisors, prominent among them being Najib-ud-Daula.

Day of the Battle (January 14, 1761):

The Maratha army, stricken with starvation and disease, decided to attack Abdali on January 14, 1761.

Initially the Maratha army achieved some success. Ibrahim Khan Garti's artillery caused considerable damage to the Afghan army.

The Marathas almost broke the centre of the Afghan army, but at the crucial moment, when victory seemed close for the Marathas, Vishwasrao was hit by a bullet and died.

As soon as the rumours of Vishwasrao's death spread, there was panic in the Maratha army and they started dispersing.

Sadashivrao Bhau fought valiantly, but he too was killed in the battle.

Abdali took advantage of this situation and moved his reserve army forward, resulting in the complete destruction of the Maratha army.

The war turned into a massacre and thousands of Maratha soldiers and non-combatants were killed. It is estimated that 70,000 Marathas were killed from Rs 50,000.

Effects of the Third Battle of Panipat:

The Third Battle of Panipat had far-reaching and disastrous effects on Indian history:

1. Decline of Maratha power:

This was a tremendous blow to the Maratha Empire. The 'golden generation' of the Marathas came to an end in this war, in which the Peshwa's son Vishwasrao, Sadashivrao Bhau and many other prominent chieftains were killed.

This blow to Maratha power was such that they were never able to fully regain their former prestige and dominance.

Peshwa Balaji Bajirao could not bear this shock and died a few months after the war.

This defeat weakened the Maratha confederacy and led to internal strife. The autonomy of Maratha chieftains like Gaekwad and Bhonsle increased. This led to the rise of Holkar, Shinde,

2. End of Afghan rule:

Although Abdali won the battle, he also suffered heavy losses. His army was weakened and he did not want to stay in India for long.

Abdali returned to Afghanistan and could never establish permanent rule in India again. This proved that the Afghans did not have enough power to rule India.

3-Rise of the British East India Company:

The war proved to be a turning point in Indian history, paving the way for the expansion of British rule in India.

With the weakening of Maratha power, there was no major power left in India that could challenge the British.

After the Battle of Plassey in 1757, British influence was established in Bengal. After Panipat, they got an open field to expand in North India.

The British East India Company took advantage of this power vacuum and consolidated its hold in India over the next few decades, eventually establishing its dominance over the Indian subcontinent.

4-Complete end of the nominal power of the Mughal Empire:

The Mughal Empire was already weak, but this war destroyed its remaining prestige as well. The Mughal emperor became a nominal ruler.

5-Temporary advantage of regional powers:

Regional rulers like the Rohillas and the Nawab of Awadh gained temporary gains by supporting Abdali in this war, but it was short-lived as they too later came under the influence of the British.

6-Economic and human loss:

The war resulted in massive loss of life and property. Thousands of soldiers and non-combatants were killed.

The war caused economic instability in Delhi and surrounding areas.

In short, the Third Battle of Panipat was a tragedy of Indian history, which halted the expansion of the Maratha Empire and paved the way for the emergence of the British East India Company as the dominant power in India. This battle proved decisive in determining the future course of India.

Question No. 3- Discuss the reforms of Warren Hastings' government?

Answer- Warren Hastings (1772-1785 AD) is considered the real founder of the British Empire in India. Although Robert Clive had laid the foundation, Hastings built a well-organized administration on that foundation. He ended the Dual System in Bengal, which was started by Clive and which had become the cause of extreme corruption and administrative chaos. Hastings' reign is known for many administrative, judicial, revenue and trade reforms, although he was also accused of corruption and was later impeached. Major Reforms of Warren Hastings:

1. Administrative Reforms:

End of Dual Government (1772 AD): Hastings ended the dual government system in Bengal. Under this system, the company had the right to collect revenue, while the responsibility of administration lay with the Nawab. This brought financial benefits to the company, but due to lack of responsibility of administration, the public was exploited. Hastings abolished the post of Nawab and took the direct administration of Bengal under the company.

Transfer of Royal Treasury: He transferred the royal treasury from Murshidabad to Calcutta, making Calcutta the capital of British India.
Reduction in Nawab's pension: He reduced the pension of Nawab Mubarakuddaula from Rs.32 lakh per annum to Rs.16 lakh per annum, thereby reducing the financial burden on the Company.
Guardian of Minority Nawab: He appointed Munni Begum, the widow of Mir Jafar, as guardian of minor Nawab Mubarakuddaula appointed guardian.
Collector's post: A collector was appointed in each district, who was responsible for revenue collection as well as judicial and administrative functions. Later, judicial functions were taken away from the collectors, but they remained the centre of revenue administration.
2. Judicial Reforms:
Reorganization of the judicial system (1772 A.D.): Hastings established a new judicial system, which was based on the Mughal system it was based on the 19th century model, but with some significant changes.
Courts in each district: Two types of courts were established in each district:
Diwani Adalat (Civil Court): It was headed by the Collector. Here civil cases and cases involving amount up to Rs 500 were settled. Hindu laws were followed for Hindus and Muslim laws for Muslims.
Faujdari Adalat (Criminal Court): It was headed by Indian officials (Qazi and Mufti) but under the supervision of a European collector. Criminal cases were settled here and Islamic law was followed.
Appellate courts (in Calcutta): Two appellate courts were established in Calcutta:
Sadar Diwani Adalat (Supreme Civil Court): It heard appeals in civil cases.
Sadar Nizamat Adalat (Supreme Criminal Court): It heard appeals in criminal cases.
Codification of Laws: Hastings attempted to codify Hindu and Muslim laws. In 1775, a compilation of Hindu laws titled 'A Code of Gentoo Laws' was made, which was translated into English by Hallabed.
Supreme Court under the Regulating Act 1773: A Supreme Court was established in Calcutta under the Regulating Act of 1773. This laid the foundation of an independent judiciary, although its jurisdiction was often disputed between the Supreme Court and the Governor General's Council.
3. Revenue Reforms:
Five-Year Settlement (1772 AD): To organize revenue collection, Hastings introduced the 'Five-Year Settlement' system of land revenue. Under this, the land was to be given to the highest bidder for 5 years the purpose of this was to ensure a steady and predictable revenue source for the company. However, this system often failed as contractors would place high bids and then exploit the farmers.

Board of Revenue: To improve the revenue administration a Board of Revenue was established in Calcutta.

Changes in land revenue officials: Earlier, the job of revenue collection was with the zamindars. Hastings removed it and placed it under the collectors, giving the company direct control over revenue.

4. Business Reforms:

Abolition of Dastaks: Hastings put an end to the misuse of 'Dastaks' (permissions for free trade given to British company officials). These Dastaks were used by the company employees for their personal trade, causing huge losses to Indian merchants and loss of revenue to the company. Hastings put an end to this practice tried to bring equality in business by ending the practice.

Reorganisation of Custom Houses: He abolished many custom houses and kept only five main custom houses (Calcutta, Hooghly, Murshidabad, Dhaka and Patna).

Flat Fees: He reduced the trading fee to 2.5% for all traders (Indian and European) to streamline trading activities.

End of Dastani Pratha: He also abolished the Dastani Pratha (advance payment for raw material), which was a source of exploitation of weavers and artisans.

5. Other reforms:

Promotion of Indian culture and education: Hastings was keen on Indian languages and culture. He founded a madrasa (1781 AD) for learning Arabic and Persian. He also supported Sir William Jones in founding the Asiatic Society of Bengal (1784 AD), which promoted the study of Indian history, culture and laws.

Police Reforms: He also tried to reform the police system so that crimes could be controlled.

Evaluation of Warren Hastings' Reforms:

Warren Hastings' reforms transformed the company from a trading institution into an effective administrative power. He created a strong administrative and judicial framework for British rule in India. His reforms strengthened the company's financial position and made the administration more centralized.

However, his reforms had some flaws:

Failure of Five Year Settlement: The Five Year Settlement proved to be exploitative for the peasants as contractors tried to extract maximum revenue, leading to increased rural poverty.

Corruption charges: Hastings himself faced several charges of corruption, including the Nand Kumar case, the Chet Singh extortion case, and the Begums of Oudh case. These charges led to his impeachment in the British Parliament, though he was eventually acquitted.

Underrepresentation of Indians: His reforms kept Indians away from higher positions in the administration, which made the population of Indians participation in administration was less.

In conclusion, Warren Hastings' reforms organised the British administration in India and turned it into a powerful political entity. These reforms strengthened the foundation of the British Empire and paved a way for future British governors, although these reforms also had some negative effects on Indian society and economy.

Question No. 4- Discuss the reforms of Lord Cornwallis?

Answer- Lord Cornwallis (1786-1793 AD) is considered another important builder of the British Empire in India, especially for administrative and judicial reforms. He is called the 'Father of Civil Service in India'. He carried forward the reforms initiated by Warren Hastings and gave them a permanent and well-organized form. His aim was to make the company's administration corruption-free, bring efficiency and reorganize the Indian administration on European lines.

Major reforms of Lord Cornwallis:

1. Administrative Reforms (Reorganisation of Civil Services):

Creation of Service Code: Cornwallis created a code of conduct for the company's employees to control corruption.

Europeanization of higher posts: He reserved all higher posts in the company's administration (such as collectors, judges, senior military officers) only for the British. He believed that Indians were corrupt and could not be trusted, while the British were honest and efficient. This policy deprived Indians of higher posts in the administration.

Increase in salaries of employees: To curb corruption, Cornwallis increased the salaries of the company employees substantially. He believed that low salaries were a major cause of corruption. The salary hike motivated the company employees to focus on their official duties rather than focusing on their private business did.

Restrictions on Private Trade: He strictly restricted the private trade of the company employees, which harmed the company's interests and revenue.

Emphasis on merit: He gave importance to merit in appointments, though with the condition of being a European.

2. Judicial Reforms:

Cornwallis completely reorganized the judicial system in India, which is known as the 'Cornwallis Code' (1793 AD). He took the important step of separating the executive (administration) and the judiciary.

Separation of powers: He took away judicial powers from the collectors and restricted them to revenue collection only. The judiciary was made independent from the administration.

Hierarchy of Courts: He established an elaborate hierarchy of civil and criminal courts:

Lowest courts (Munsif courts): These were lower civil courts for minor cases, headed by Indian officials.

Registrar Court: Above the Munsif Court, dealt with some major cases.\
District Civil Courts: These courts were established in each district under the chairmanship of a European judge.
Provincial Courts of Appeal: Four provincial courts were established in Calcutta, Dhaka, Murshidabad and Patna to hear appeals against the decisions of the district courts. Each had three Europeans there were judges.
Sadar Diwani Adalat (Highest Civil Appeal): The Sadar Diwani Adalat in Calcutta was the highest appellate court, consisting of the Governor-General and members of his Council.
Criminal Justice:
Circuit Courts: Four circuit courts were established parallel to the four provincial courts. These courts visited the provinces twice a year and tried serious criminal cases.
Sadar Nizamat Adalat (Highest Criminal Appellate Court): The Sadar Nizamat Adalat in Calcutta was the highest criminal appellate court, consisting of the Governor General and members of his Council and Indian legal experts such as the Qazi and the Mufti.
System of Pleaders: He introduced the system of pleaders in the judicial system so that qualified persons are available for justice.
Rule of Law: Cornwallis attempted to introduce the principle of 'Rule of Law' which meant that all persons in the administration, whether British or Indian, were accountable to the law. This was a revolutionary idea at the time.
Police Reforms: He abolished the old zamindari police system and divided each district into 'Thanas' headed by a daroga (Indian officer) supervised by a European magistrate.
3. Revenue Reforms (Permanent Settlement - Permanent Settlement 1793 AD):
Background: The Five Year Settlement system introduced by Warren Hastings had failed and was leading to exploitation of the peasants. Cornwallis believed that a fixed and permanent system of land revenue was needed, which would develop agriculture and provide a steady income to the Company.
Features of Permanent Settlement:
Making the Zamindars the Proprietors of the Land Under this system, the Zamindars were made the actual owners of the land. Earlier they were only revenue collectors.
Fixed land revenue: The zamindars had to pay fixed land revenue (about 89% of land revenue) to the Company, which was fixed forever. This meant that the Company would always receive a fixed income, whether the crop was good or bad.
Auction of the estate for non-payment of revenue: If the zamindar was unable to deposit the revenue by the due date, his estate was confiscated and auctioned.

Incentives to Landlords: It was expected that becoming owners of land would motivate the landowners to improve agriculture and develop the land, as they would benefit from any additional production.

Effects of Permanent Settlement:

Benefits to the company: The Company got a stable and predictable revenue source.

Benefits to the Landlords: The landholders emerged as a powerful and loyal class who supported the British rule did.

Negative effects on farmers: Farmers suffered the most from this system. They became dependent on the mercy of the landlords, and the landlords often charged arbitrary rents and evicted them. There was no provision to protect the rights of farmers.

Obstacles to agricultural development: many landowners did not invest in the development of land but only relied on collecting rent noticed.

Increase in social and economic inequality: It increased social and economic inequality in the rural society.

4. Business Reforms:

Improvement in the Company's Investments: He streamlined the Company's investment system, thereby bringing greater efficiency to the Company's business operations.

Control over the opium and salt trade He strengthened the company's monopoly over the opium and salt trade, which increased the company's revenue.

Evaluation of the Reforms of Lord Cornwallis:

Lord Cornwallis's reforms had a profound and lasting impact on Indian administration.

Positive aspects:

Efficient administration: He made the British administration more efficient (amongst officials), organised and corruption-free (especially against the company's

Rule of Law: The 'rule of law' and the separation of the judiciary from the executive was an important theoretical development.

Permanent Settlement: This provided the company with financial stability, which was essential for their expansion.

Negative aspects:

Exclusion of Indians from higher posts: This reform had the most important negative aspect. It they were denied higher positions in the administration and confined to subordinate roles. This was based on racial discrimination.

Disadvantages of Permanent Settlement: It encouraged exploitation of peasants and worsened socio-economic condition of rural areas inequality increased.

High administrative costs: The increased salaries and the large number of European officials led to very high administrative costs.

Overall, Lord Cornwallis established a strong, well-organised and centralised administrative and judicial structure for British colonial rule in India. His reforms contributed significantly to the expansion and stability of the British Empire, although they neglected the rights and interests of the Indian people and also created new problems in Indian society.

Question No. 5- Discuss the terms of Lord Wellesley's Subsidiary Treaty?

Answer- Lord Wellesley was the Governor General of India from 1798 to 1805 AD. He is also known as 'Bengal Tiger'. His main objective was to establish British supremacy in India and completely end French influence. To achieve this goal, he effectively used the 'Subsidiary Alliance System', which was started earlier by French Governor Dupleix, but Wellesley gave it a well-planned and comprehensive form. This treaty system was an important and effective means of bringing Indian states under British control proved to be.

Main conditions of Lord Wellesley's Subsidiary Treaty and their discussion:

The Subsidiary Treaty was essentially an arrangement under which Indian rulers acknowledged British sovereignty and in return the British provided them protection from external attacks and internal rebellions. However, these terms had an extremely negative impact on the Indian states.

1. Permanent deployment of the British Army (and its expenditure):

Condition: The Indian ruler who accepted the Subsidiary Treaty had to keep a permanent contingent of British army in his state. The commander of this army was a British officer and this contingent remained under the control of the company.

Discussion:

Financial burden: The entire cost of maintaining this army had to be borne by the respective Indian state. Often, this cost was so high that it put a huge strain on the state's economy, and at times the state had to cede a part of its territory to the British to recoup this cost (e.g. the Nizam ceded some territory in 1800 AD).

Loss of sovereignty: Indian rulers were unable to use their own army and were completely dependent on the British for external security. This was the first and most important blow to their sovereignty.

Expansion of British military power: The British had the advantage of being able to spread their army across Indian states without extra expense and he got an opportunity to strengthen his power.

2. Appointment of British Resident:

Condition: The Indian state which signed the Subsidiary Treaty had to have a British Resident in its capital a representative had to be appointed.

Discussion:

Interference in internal affairs: The Resident constantly interfered in the internal affairs of the ruler. He would exert his opinion and influence in the administration of the state, matters of succession and other important decisions.

This effectively made the ruler a puppet and took away his decision-making power.

Intelligence: Important information for the Resident British Company about the internal situation and policies of the state used to collect intelligence information.

3. Breaking relations with other European powers:

Conditions: The Indian ruler accepting the Subsidiary Treaty had to dismiss all non-British European (especially French) officers from his army and had to seek the Company's permission before employing any European person in his service.

Discussion:

End of French influence: Wellesley's main objective was to completely end French influence from India. This condition was extremely effective in fulfilling this objective, as it closed any foothold for the French in the Indian states.

British Monopoly: It ensured the monopoly of British power and prevented any other European power from gaining a foothold in India.

4. No relations with any other state without the permission of the British Company:

Condition: The Indian ruler could not enter into any treaty, alliance or relation with any other Indian or foreign power without the permission of the Company.

Discussion:

Control over foreign policy: This condition ensured British control over the foreign policy of Indian states. They could not make war or peace at their will, thereby ending their independent identity.

Isolation of Indian States: It isolated the Indian states from each other, making them incapable of working together against the British.

5. Promise of protection from external aggression and internal rebellion (nominal):

Condition: The British company promised to provide protection to the Indian state from any external aggression and internal rebellion.

Discussion:

Hollow promise: This promise often proved to be hollow. In the name of security, Indian states lost their independence. The British army was used to suppress internal rebellion and make them more subservient to the company. But this made the ruler more and more subservient to the Indian state.

Military Dependency: This condition prevented Indian states from developing their own military power, making them completely dependent on the British.

6. Area or financial payments to the company:

Condition: If a state was unable to pay in cash for the maintenance of the British army, it would have to surrender its territory to the Company a part of the land had to be handed over (in lieu of land revenue).

Discussion:

Territorial expansion: This became a major method of territorial expansion of the British Empire. The company captured many fertile and strategically important areas under this pretext.
Shrinkage of the State: Indian states gradually shrank in size and their finances deteriorated.
Results of Subsidiary Treaty:
Establishment of British Paramount: This system played an important role in establishing British paramount in India.
Violation of the independence of Indian states: Indian states which accepted the Subsidiary Treaty lost their independence and they became British puppets.
Nurturing a Huge British Army: The British had the option of maintaining a large and powerful army at the expense of the Indian states got the opportunity.
Economic Exploitation: The Subsidiary Treaty crippled the Indian states economically and their resources were exploited by the British exploited for interests.
Annexation of States: Eventually, many Subsidiary Treaty States were annexed to the British Empire under various pretexts (such as later by Dalhousie under the 'Doctrine of Lapse').
Illusion of Stability: It did create a sort of stability in the areas under British control, but this stability was not limited to Indian territories was at the expense of the rulers.
Major States which accepted Subsidiary Treaty:
Nizam of Hyderabad: First state to accept the Subsidiary Treaty in 1798.
Mysore: 1799 (after the Fourth Anglo-Mysore War).
Tanjore : 1799
Avadh: 1801
Peshwa (Maratha): 1802 (Treaty of Bassein).
The Bhonsles of Berar: 1803.
Scindia : 1804
Rajput States: Many Rajput states also gradually accepted the subsidiary treaty.

In conclusion, Lord Wellesley's Subsidiary Treaty was an extremely clever and effective diplomatic tool that enabled the British East India Company to establish its control over a large part of the Indian subcontinent without much military conflict. It deprived Indian rulers of their own independence and paved the way for the expansion of the British Empire in India.

Question No. 6- Discuss the contribution of Lord Clive in the establishment of the British Empire?

Answer- As per the prompt, I have to discuss the contribution of Lord Clive in the establishment of the British Empire.

Contribution of Lord Clive with respect to the establishment of the British Empire Robert Clive (1725-1774 A.D.) is considered the founder of the British Empire in India. Although the British East India Company was originally a trading entity,

Clive's military and political interventions transformed it into a regional power, which eventually laid the foundation of a vast empire in India. His contribution is mainly related to establishing British dominance over Bengal and paving the way for British supremacy.

Clive's Early Life and Arrival in India: Clive came to Madras (Chennai) in 1744 as a clerk of the East India Company. He soon demonstrated military abilities and made his mark as a soldier. He is particularly known for his role in the Carnatic Wars, where he played a key role in reducing French influence.

Clive's major contributions and policies:

1. Role in the Carnatic Wars (1746-1763):

Siege of Arcot (1751): This was a turning point in Clive's military career. While the French and their Indian allies were besieging the British at Trichy, Clive attacked Arcot, the capital of Karnataka, with a mere 200 European and 300 Indian troops. This sudden attack disoriented the French coalition and forced them to lift the siege of Trichy. The victory at Arcot established Clive as a skilled military strategist and enhanced the prestige of the British.

Reducing French influence: Clive's role in the Carnatic Wars helped weaken French influence in South India and establish British influence. It made it clear that the British would be the most powerful in India among the European powers.

2. Battle of Plassey (1757) and establishment of British dominance over Bengal:

Background: Bengal was the richest province in India. In 1756, Siraj-ud-Daulah, the new Nawab of Bengal, attacked Calcutta and captured Fort William, because he objected to the Company's fortifications and abuse of trading privileges.

Clive's role: Clive took the army from Madras and recaptured Calcutta. After this, he hatched a well-planned conspiracy to overthrow the Nawab. He bribed the Nawab's commander Mir Jafar, banker Jagat Seth and other courtiers and got them on his side.

Battle and Result: The battle fought on the field of Plassey on June 23, 1757 was actually a minor skirmish as Mir Jafar's army remained inactive. Nawab Siraj-ud-Daulah was defeated and later assassinated.

Significance: The Battle of Plassey made the British the de facto masters of Bengal. The company received trading privileges and revenue collection rights in Bengal. Mir Jafar was made the Nawab, but he was a puppet of the British. This victory transformed the company from a trading power in India to a political power that provided the financial and territorial basis for the later empire.

3. Conflict with Mir Qasim and the Battle of Buxar (764):

Background: When Mir Jafar was unable to meet the excessive financial demands of the British, Mir Qasim was made the Nawab with the support of Clive. Mir Qasim was an able ruler and tried to reduce the interference of the Company, which led to his conflict with the British.

Clive's Influence: Although Clive returned to England after Plassey (1760-1765), the system and influence he established set the stage for the Battle of Buxar.
Battle of Buxar: In 1764, at Buxar, British forces led by Hector Munro decisively defeated the combined forces of Mir Qasim, Nawab Shuja-ud-Daula of Awadh and Mughal Emperor Shah Alam II.
Importance: The Battle of Buxar was more decisive than Plassey. It proved the superiority of the British in terms of military power and established their complete dominance over Bengal, Bihar and Orissa.
4. Treaty of Allahabad (1765) and establishment of Dyarchy:
Return and Treaty: After the Battle of Buxar, Clive was appointed Governor of Bengal for the second time in 1765 to improve the deteriorating administrative and financial condition of the Company. He signed the Treaty of Allahabad with the Mughal Emperor Shah Alam II and Nawab Shuja-ud-Daula of Awadh.
Terms of the treaty:
Mughal emperor Shah Alam II handed over the Diwani (right to collect revenue) of Bengal, Bihar and Orissa to the company. In return, the emperor received an annual pension of Rs 26 lakh.
The Nawab of Awadh had to pay Rs. 50 lakhs to the Company as war indemnity and the Company was forced to hand over the districts of Allahabad and Kara to the Mughal Emperor.
The Nawab permitted the company to carry out free trade in his state.
Dual System of Government: Clive introduced the system of 'dual governance' in Bengal. Under this, the Company had the rights of Diwani (revenue collection and financial matters) while the Nizamat (law and order)
The powers of administration and justice were with the Nawab.
Objective: The objective of this system was to maximize revenue for the company without administrative it was a situation of "power without responsibility" for the Company and "power without responsibility" for the Nawab.
Result: This system led to extreme corruption, chaos and exploitation of the peasants in Bengal. Company employees abused their power, which led to the collapse of Bengal's economy and the collapse of the Bengal government in the 1770 the severity of the famine increased.
5. Other administrative and military contributions:
Reorganization of the Army: Clive tried to bring discipline and efficiency into the company's army. He suppressed the 'White Mutiny', which was carried out by the company's European officers in protest against the reduction in their allowances.
Curb Corruption (Short Term): He made some efforts to ban private business of the company employees and reduce corruption, though he was not fully successful and he himself was accused of corruption.

Evaluation of Clive's contribution:
Lord Clive was undoubtedly an important architect of the British Empire.
Positive aspects:
He established the military supremacy of British power in India.
Through wars like Plassey and Buxar he ensured British control over Bengal
Joe British Became the economic base of the empire.
He transformed the East India Company from a trading entity into a political and military power.
Downside:
His policies, especially the dual rule, led to terrible misrule and economic exploitation in Bengal, leading to famine and poverty.
They ruthlessly exploited Indian resources and neglected the interests of the Indian people.
Corruption became rampant during his tenure, for which he later faced impeachment in England (though he was acquitted).

In conclusion, Lord Clive was a courageous soldier and a shrewd politician who laid the foundations of the British Empire in India through his military brilliance and diplomacy. He established the East India Company as a leading European power in India and ensured British control over the rich province of Bengal, which provided the financial and strategic basis for subsequent British expansion. However, his methods and the administrative system he established (diarchy) had a profound and disastrous impact on the Indian masses.

Question No. 7- Discuss the reforms of Lord William Waiting?

Answer- Lord William Bentinck was the Governor General of India from 1828 to 1835 AD. His tenure was a turning point in the history of British rule in India, as he is considered the pioneer of an era of peace, reform and progress. Unlike Dalhousie, who is known for war and expansionist policies, Bentinck focused on reforms and upliftment of Indian society. He is also called the 'Father of Modern Western Education in India'. Lord

Major reforms of William Bentinck:
Bentinck's reforms can be broadly divided into three categories: administrative, social and financial.
1.Social Reforms:
Bentinck's contribution was most remarkable and humanitarian in the field of social reforms.
Abolition of Sati Pratha (1829 A.D.):
Background: The practice of Sati, in which widows were forced to burn themselves on their dead husband's funeral pyre, was a dreadful evil in Indian society. Indian social reformers like Raja Rammohan Roy had been campaigning against it for a long time.

Bentinck's Action: Bentinck considered the practice to be inhuman and barbaric and passed 'Regulation XVII' in 1829 declaring Sati Pratha to be illegal and a punishable offence. Initially it was implemented in Bengal Presidency and later in 1830 it was extended to Madras and Bombay Presidencies as well.
Impact: It was a bold and far-reaching step that brought about a major change in Indian society and established British rule as a social reformer.
Suppression of the Thuggee system (1830 A.D.):
Background: Thugs were an organised gang who robbed and murdered pilgrims and traders. They claimed to be worshipper of Goddess Kali.
Bentinck's Action: Bentinck assigned Colonel William Sleeman the task of eradicating the practice. Sleeman formed a special police force and launched a massive campaign that resulted in thousands of Thugs being arrested, prosecuted and punished.
Impact: The move made roads safer for commuters and traders and helped control crime got great success.
Ban on infanticide:
Background: The practice of female infanticide was prevalent in some communities, especially the Rajputs, due to socio-economic pressure and the dowry system.
Bentinck's work: Bentinck took strict measures to stop this inhuman practice and declared it illegal did.
Suppression of the practice of human sacrifice:
In some tribal areas, especially in the Khond tribe of Orissa, the practice of human sacrifice was prevalent to please the gods and goddesses. Bentinck took effective steps to stop this practice too.
2. Financial and Administrative Reforms:
Bentinck also focused on improving the company's poor financial position and making the administration more efficient.
Reduction in Army Allowances: To improve the company's financial position, Bentinck abolished the double allowance given to army officers, which caused much opposition, but he firmly enforced it.
Frugality in civil services: He also reduced wasteful expenditure in the civil services and cut down government expenditure.
Revenue Reforms (Bengal and North-Western Provinces):
Land Revenue Survey: He ordered a revenue survey to ensure proper valuation of cultivable land.
Mahalwari System: Mahalwari System was implemented in the North-Western Provinces (modern Uttar Pradesh) under the leadership of R.M. Bird. Under this system, land revenue was settled directly with the farmers No, but with the entire village (mahal) or village headmen. This made revenue collection more efficient and stable.

Regulation of Opium Trade: He established control over the opium trade and introduced a licensing system which increased the company's revenue.

Abolition of Provincial Appellate Courts: The four provincial appellate courts established by Cornwallis were abolished (except the Sadar Diwani and Sadar Nizamat courts), which helped speed up the judicial process and reduce expenses.

3. Judicial and Legislative Reforms:

Reorganization of the Courts: He reorganized the judicial system to make justice more accessible. He allowed Indians to be appointed to lower-level judicial positions (such as 'Munsif' and 'Sadar Amin') that were previously reserved for Europeans. This was an important step in increasing the participation of Indians in the judicial system.

Change in official language: Bentinck adopted English in place of Persian as the language of the high court's and the language of administration in 1835. However, local languages continued to be used in local courts.

Legal Codification: The work of codifying Indian laws began during his tenure and resulted in the Indian Penal Code (IPC) under the leadership of Macaulay which was later.

4. Education Reforms:

Macaulay's Minute (1835): Bentinck accepted the recommendations of the Committee of Public Instruction headed by Lord Macaulay, which emphasized the promotion of Western education. Macaulay argued in his famous Minute on Indian Education that English was superior in literature and science compared to Indian languages.

Promotion of English education: By a resolution of 1835, English was made the medium of higher education in India. Western science and literature were introduced in government schools and colleges.

Aim: The aim of this policy was to create a class of Indians who would work for British administration and trade and who could culturally adopt British ideas.

Evaluation of Bentinck's Reforms:

Lord William Bentinck's reforms had a deep and lasting impact on Indian society and administration.

Positive aspects:

Humanitarian Reforms: The abolition of the practice of Sati and Thuggee were his greatest humanitarian contributions, which helped eliminate cruel practices from Indian society.

Efficient Administration: His financial and administrative reforms strengthened the company's financial position and made the administration more efficient.

Foundation of Modern Education: His policy of promoting Western education paved the way for the spread of modern ideas and science in India, though it had its negative aspects too.

Indians to Judicial Posts: The appointment of Indians to lower judicial posts gave Indians some participation in the administration.

Negative aspects:

Opposition to financial austerity: Reduction in army allowances and other austerity measures created discontent among the Company's European officers and soldiers.

Limitations of Western Education: The policy of promoting English education marginalised Indian languages and traditional education and created Westernised elite.

Effects of Revenue Systems: Though the Mahalwari system was considered to be fair to some extent but ultimately all these British revenue systems led to exploitation of the peasants.

Overall, Lord William Bentinck is remembered as a progressive and reformist Governor-General. He attempted to give British colonial rule a more moral and systematic basis, by which The British Empire got a new legitimacy in India. His social reforms played an important role in removing the deep-rooted evils in Indian society.

Question No. 8- Explain the annexation policy of Lord Dalhousie?

Answer- Lord Dalhousie was the Governor General of India from 1848 to 1856 AD. His tenure was one of the most important and expansionist periods in the history of British India. Dalhousie's main objective was to expand the British Empire to the maximum and make British power paramount in India. To achieve this goal, he used one of his major policies called 'Doctrine of Lapse', which is commonly known as 'Doctrine of Lapse'.

What was the Doctrine of Lapse?

Doctrine of Lapse was a policy propounded by Dalhousie under which if an Indian ruler's natural heir (i.e. his biological son) was not adopted and he died, then his kingdom would not be accepted as heir to the throne in the British Empire, if he was not adopted by the British.

Dalhousie argued that Indian states could be divided into three categories:

1. Independent States: States which had never been under any supreme power and had not accepted British protection. These states had the right to adopt children.

2. Tributary or Subsidiary States: States which were earlier under the rule of some supreme power (like Mughals or Marathas) but later accepted British protection. These states had to take permission from the British government to adopt a son.

3. States created by the Company: States that were created or reestablished by the British Company itself. These states had no right to adopt sons, and on the death of the ruler their state was directly annexed to the British Empire.

In practice, Dalhousie applied this policy primarily on the second and third types of states, especially those that were economically or strategically important to the British.

Major states annexed to the British Empire under the Doctrine of Lapse:

Dalhousie used this policy as a powerful tool for the expansion of the British Empire. Under the policy of annexation, the following major states were annexed to the British Empire:

1. Satara (1848 AD): It was the first victim of the policy of annexation. Raja Appasaheb of Satara died in 1848 without any natural heir. Dalhousie refused to accept his adopted son as heir and annexed the state to the British Empire.

2. Jaitpur (1849 AD): This small state located in Bundelkhand was also usurped due to lack of a natural heir.

3. Sambalpur (1849 AD): This state located in Orissa also became a victim of this policy.

4. Baghat (1850 AD): This small state located in Punjab was also annexed.

5. Udaipur (1852 AD): This state was also merged into the British Empire under this policy.

6. Jhansi (1853 AD): After the death of Raja Gangadhar Rao, husband of Rani Lakshmibai of Jhansi, Dalhousie refused to accept her adopted son Damodar Rao as the heir. Rani Lakshmibai strongly opposed this but Dalhousie annexed Jhansi. This became one of the major reasons for the revolt of 1857.

7. Nagpur (1854 AD): Raja Raghuji III of Nagpur died without any natural heir. Dalhousie annexed the state to the British Empire, ending another important power in the Maratha sphere of influence.

Other annexation and expansionist policies:

Apart from the Doctrine of Lapse, Dalhousie also expanded the British Empire in other ways:

1. Annexation of Burma (Myanmar) (1852 AD): After the Second Anglo-Burmese War (1852), Dalhousie annexed Lower Burma (Pegu) to the British Empire. It was an important strategic and trade region.

2. Annexation of Punjab (1849 AD): After the Second Anglo-Sikh War (1848-49), Dalhousie annexed the entire Punjab to the British Empire. Maharaja Dilip Singh of the Sikh Empire was given a pension and sent to England.

3. Annexation of Awadh (1856 AD): By accusing Nawab of Awadh Wajid Ali Shah of 'misgovernance', Dalhousie annexed Awadh to the British Empire. This annexation was not under the policy of annexation because the Nawab of Awadh had his biological heir, but it is also considered a part of Dalhousie's expansionist policy. The annexation of Awadh was extremely unpopular among the Indians, especially the soldiers, and it became a major cause of the revolt of 1857.

4. Other mergers: The titles of the Nawab of Carnatic and the Raja of Tanjore were also abolished and their territories were annexed to the British Empire.

Effects and consequences of the policy of Lapse:

Dalhousie's policy of annexation had far-reaching and disastrous effects on Indian history:

1. Distrust and discontent among Indian rulers: This policy created deep distrust and fear of the British government among the Indian rulers and princely states. They felt that the British government was violating their own established laws and traditions.

2. A major cause of the Revolt of 1857: The annexation of states like Jhansi, Nagpur and Awadh became one of the major causes of the Revolt of 1857. Rani Lakshmibai, Nana Saheb (adopted son of Peshwa Bajirao II), and the talukdars and peasants of Awadh openly revolted against this policy.

3. Expansion of the British Empire: During Dalhousie's tenure, the British Empire expanded geographically to an unprecedented extent, thereby strengthening British control over India.

4. Increased economic exploitation: The annexed states provided the British with additional revenue, which was used for British interests. British administrative and revenue systems were introduced in these areas, often leading to exploitation of the local population.

5. Crisis of Indian Identity: This policy destroyed the centuries old hereditary traditions and cultural heritage of Indian rulers identity attacked.

6. Administrative Reforms: Dalhousie also introduced some administrative reforms (like railways, telegraph, public works department) in the merged states, though their primary purpose was to serve British interests.

Conclusion:

Lord Dalhousie's Policy of Lapse symbolised the expansionist character of the British Empire. It was a policy that violated the traditional rights of Indian rulers and created deep discontent towards British rule. Although Dalhousie's aim was to strengthen the British Empire, his aggressive policy prepared the ground for the great revolt of 1857, which shook the British rule in India.

Question No. 9 - Regarding the actions of Maharaja Ranjit Singh in establishing relations between the British and the Sikhs Please discuss?

Answer- Maharaja Ranjit Singh (1780-1839 AD) was the creator of a powerful Sikh empire in Punjab in the early decades of the 19th century. He is known as 'Sher-e-Punjab' (Lion of Punjab). His tenure was a crucial period for the expansion of the British Empire in India and his relations with the British are considered a symbol of his foresight, military prowess and political acumen. He protected the Sikh empire from the direct influence of the British until his death which was not possible after him.

Factors influencing Maharaja Ranjit Singh's policy towards the British:

1. Security on the North-West Frontier: Maharaja Ranjit Singh expanded his empire and drove out the Afghans from western Punjab, capturing Peshawar and Kashmir. This was important to secure the north-western frontier of his empire.

The British also feared Afghan invasion, which prompted them to maintain friendship with Ranjit Singh.

2. Knowledge of British power: Ranjit Singh was an extremely intelligent ruler. He was fully aware of the growing power of the British East India Company in India, their military superiority and their expansionist policies. He knew that a direct confrontation with the British could be disastrous for his newly formed empire.

3. Modernization of his army: Ranjit Singh trained his 'Khalsa Army' on the European pattern and gave it a Created a formidable force. He appointed French, Italian and other European officers to his army to modernise the artillery and infantry. His army was considered at par with the British Army. This military strength was also a cause of concern for the British and forced them to be cautious with the Sikhs.

4. Pressure from the Sikh Sardars across the Sutlej: The Sikh Misls (Sardars) south of the Sutlej river feared the growing influence of Ranjit Singh. They sought protection from the British, which gave the British an excuse to intervene in the region.

Actions of Maharaja Ranjit Singh in establishing relations between the British and the Sikhs:

Maharaja Ranjit Singh handled relations with the British with a careful and pragmatic approach. He safeguarded the interests of his empire by avoiding confrontation. His major achievements are as follows:

1. Smart initial policies:

Distance from Marathas: When Jaswant Rao Holkar (Maratha chieftain) sought help from the British and proposed to form a united front against the British, Ranjit Singh was cautious. He refused to help Holkar as he wanted to avoid an immediate confrontation with the British. In 1805, the British signed a treaty with Ranjit Singh to expel Holkar from his kingdom, which Ranjit Singh accepted.

Control of Amritsar (1805): Ranjit Singh gained control of Amritsar in 1805 to solidify initial ties with the British.

2. Treaty of Amritsar (1809 A.D.):

Background: In 1808, the British sent Metcalfe to Ranjit Singh's court to forge an alliance against the French threat (Napoleon's potential invasion) and to establish their influence over the Sikh states east of the Sutlej. Ranjit Singh wanted to increase his control over the Sikh states across the Sutlej.

Terms:

The Sutlej River was accepted as the boundary between Maharaja Ranjit Singh's state and the British territories.

Ranjit Singh would give up his claim on the territories east of the Sutlej (i.e. the states south of the Sutlej). British protection was accepted over these states.

The British Government would not interfere in Ranjit Singh's territories north of the Sutlej.
Both sides will maintain 'continued friendship'.
Significance: This treaty was a diplomatic victory for Ranjit Singh. He gave up his claim to the areas east of the Sutlej, but in return received complete freedom to consolidate and expand his empire west of the Sutlej, which the British accepted. This treaty provided the basis for peace and friendship between the British and the Sikhs for the next 30 years.

3. Expansion of the Empire and Military Modernisation (West of Sutlej):

After the Treaty of Amritsar, Ranjit Singh concentrated his energies on expanding the empire west of the Sutlej. He conquered Kashmir (1819), Multan (1818), Peshawar (1834) and other smaller states, creating a vast Sikh empire.
He made his army, the Khalsa Army, highly modern and disciplined. He employed European instructors and paid special attention to artillery, making the Khalsa Army one of the most formidable armies in India. This military strength prevented the British from direct confrontation with the Sikhs.

4. Diplomacy on the question of Sindh:

In the 1830s, the British had their eyes on Sindh as they wanted control over the Central Asian trade route. Ranjit Singh also laid claim to Sindh.
However, when the British pressed into Sindh, Ranjit Singh was careful to avoid direct confrontation. He signed a commercial treaty (for trade in Sindh) in 1832, allowing the Sutlej to be used as a trade route for goods.
Tripartite Treaty of 1838: The British entered into a treaty with Ranjit Singh and Shah Shuja to remove Amir Dost Mohammad of Afghanistan and install Shah Shuja on the throne. In this treaty, the British accepted Ranjit Singh's claim to the territories across the Indus River, provided they help Shah Shuja establish his influence in Afghanistan. This was another diplomatic victory of Ranjit Singh which ultimately benefited the British more (First Anglo-Afghan War) however.

5. Vigilance and foresight:

Ranjit Singh maintained friendly relations with the British, but he was fully aware of their expansionist nature. He never allowed the British to interfere in his internal affairs.
He always ensured that the Sikh Empire remained so strong that the British could not attack it easily. It was only after his death (1839) that the Sikh Empire weakened and the British took advantage of it.

Conclusion:

Maharaja Ranjit Singh maintained a delicate balance with the British by virtue of his military brilliance, diplomatic skills and foresight. He established relations with the British on his own terms and ensured a safe zone for his empire through the Treaty of Amritsar. He made his Khalsa Army so powerful that the British could not dare to directly invade Punjab until his lifetime. Ranjit Singh kept the Sikh Empire free from British domination for almost 40 years, and this was one of

his greatest achievements. After his death, internal strife and weak leadership within the Sikh Empire led to the British gaining control over Punjab, resulting in two Anglo-Sikh Wars and eventually the annexation of the Sikh Empire into British India.

Question No. 10- Discuss the reforms of Lord Ripon?

Answer- Lord Ripon was the Viceroy of India from 1880 to 1884 AD. He is considered one of the 'most popular' and 'reformist' viceroys in India. His liberal outlook and sympathy towards the Indian people set him apart from his predecessors. Ripon believed that British rule should work for the benefit of Indians and give them more participation in the administration. His reforms played an important role in the development of Indian nationalism and promoting the concept of self-rule.

Major reforms of Lord Ripon:

Ripon's reforms can be broadly divided into four categories: local self-government, financial, legislative/judicial and education.

1. Development of local self-government (Resolution on Local Self-Government, 1882):

Lord Ripon is called the 'Father of Local Self-Government in India'. This was his most important and far-reaching reform.

Objective: The main objective of this reform was to give Indians greater participation in the administration, enable them to manage their local affairs and promote democratic principles.

Main characteristics:

He proposed the establishment of local boards (like municipalities and district boards) in urban and rural areas.

These bodies were to have a majority of non-official (elected) members.

Government interference was kept to a minimum, and these bodies were given definite functions and sources of income.

These bodies were given responsibility in areas such as education, sanitation, water supply and roads according to local needs.

Impact: Though the powers of these bodies were limited and bureaucratic influence persisted, this move laid the foundation for democratic decentralisation in India. It gave Indians an opportunity to gain experience of administration and develop political consciousness.

2. Financial Reforms:

Ripon carried forward the policy of financial decentralisation initiated by Lord Mayo.

Classification of Revenue Sources: He classified the revenue sources into three categories:

Imperial Heads: Income reserved for the Central Government.

Provincial Heads: Revenue sources allocated to the provincial governments.

Divided Heads: Revenue sources shared between the Centre and the provinces (like excise stamp, forest, registration).

Greater accountability to provincial governments: It aimed to encourage provincial governments to have greater control over their expenditure and to mobilise resources according to their needs, thereby making them feel more accountable.

Periodic Review: It was also decided to review the financial agreements between the Centre and the states every five years.

Reduction in Salt Tax: He also reduced the salt tax, which provided some relief to the general public.

3. Legislative and judicial reforms:

Repeal of Vernacular Press Act 1882 A.D.):

Background: The 'Vernacular Press Act' was passed by Lord Lytton in 1878, which imposed strict restrictions on Indian language newspapers and prevented them from criticising government policies. It was also known as the 'Gagging Act'.

Ripon's Action: Ripon repealed this oppressive act, thereby giving freedom to the Indian press and enabling them to criticise British rule and express Indian public opinion. This move made him extremely popular among the Indian masses.

Ilbert Bill Controversy (1883 AD):

Background: Before this bill, only European judges could try cases involving European British citizens. Indian judges did not have the right to try Europeans, no matter how senior they were. This was based on racial discrimination.

Ripon's Action: This bill, drafted by Sir Courtney Ilbert (legal member of the Viceroy's Council), was aimed at ending this racial inequality. It made Indian judges and magistrates equal to Europeans provided the right to hear cases involving British citizens.

Controversy and consequences: The bill aroused great opposition from the European community in India, especially the Anglo-Indian community. They considered it an attack on their special rights and it took the form of a 'white revolt'. The widespread opposition led to an amendment to the bill, which provided that if a European person is tried by an Indian judge, he may elect a jury consisting of at least 50% European members can demand.

Significance: Even though the Ilbert Bill could not be passed in its original form, the controversy made Indians realise the depth of racial discrimination and inspired them to organise politically. It also paved the way for the formation of the Indian National Congress (1885).

4. Education Reforms:

Hunter Commission (1882):

Background: Following Wood's Dispatch of 1854, Lord Ripon appointed an Education Commission under the chairmanship of William Wilson Hunter to review the development of education in India.

Recommendations: The commission laid special emphasis on the improvement of primary and secondary education. It recommended placing primary education under the control of local bodies and encouraging private efforts instead of government aid for higher education.

Impact: The recommendations of the Hunter Commission played a significant role in the development of education in India, especially in the expansion of primary education has contributed.

5. Factory Act (1881):

Objective: To improve the condition of workers working in factories in India.

Main characteristics:

It prohibited children below the age of 7 from working.

Working hours for children aged 7 to 12 years were limited (maximum 9 hours per day).

Four holidays in a month and a one-hour break during work were made mandatory.

Rules were made for the safety of machinery.

Limitations: The Act was applicable only to factories that had more than 100 workers and did not apply to tea plantations or coal mines. It did not have any restrictions on the working hours of women. Nevertheless, it was the first step towards labour welfare in India.

6. Restoration of Mysore State (Mysore Rendition, 1881):

The Mysore state was taken under British administration in 1831 on the charge of 'misrule'. Ripon restored the Mysore state to its rightful ruler (Maharaja Chamarajendra Wadiyar X of the Wadiyar dynasty) in 1881. This was a liberal and equitable move that helped win the confidence of Indian rulers.

Evaluation of Lord Ripon's reforms:

The tenure of Lord Ripon is an important chapter in Indian history.

Positive aspects:

His reforms laid the foundation of local self-government in India and trained Indians for participation in administration.

By repealing the Vernacular Press Act he restored freedom of the press, which was important for the growth of Indian nationalism.

Social and industrial reforms (Factory Acts) attempted to protect the interests of the weaker sections.

His policies gave a more humane and progressive face to British rule and his popularity among the Indian masses was unprecedented. He was known as 'Lord Ripon the Good'.

Negative aspects:

The Ilbert Bill controversy exposed the deep racial prejudices of the British community and forced Indians to realise that they should not completely rely on British justice and equality.

His reforms were strongly opposed by the European Community, causing tensions during his tenure.
The Factory Act had limitations and did not cover all workers.

Overall, Lord Ripon attempted to make British rule in India more liberal and accountable. His reforms awakened the political consciousness of the Indian masses and set the stage for future nationalist movements. Although his efforts were not always successful and he faced opposition, he is still considered one of India's most beloved and respected viceroys.

B.A. LL.B.-4th Sem. Paper-IV Interpretation of the Status

Question No. 1- Define interpretation. Differentiate between interpretation and interpretation.

Answer- Interpretation of Statues- Interpretation of laws is an important aspect of law study. It is a process by which the meaning, intent, purpose and nature of a specific act is ascertained. Interpretation is a way by which the true meaning or meaning of a word, provision or provision is understood. Thus, interpretation means interpretation, translation etc. Interpretation is a fact and the method by which interpretation is obtained is called interpretation. If this is possible, then the words are used in the same sense and are considered synonymous with each other, but both of them are different from each other.

Meaning of Interpretation - Interpretation actually means the language of the Act determination of its aspect and true nature from the natural meanings of the words used under it. Whereas interpretation means the process of going beyond the words used in the Act and knowing its aspect and true nature on the basis of its soul. Considering both these words as synonyms, they have been used in the same sense.

The word "interpretation" itself has a wide meaning. Different jurists have interpreted this word differently.

According to Chambers Dictionary, the word "interpretation" means the expression given by the interpreter and his power to interpret, the expression of a word by a person through a drama, etc.

According to Salmond - Interpretation is the process by which the courts find out the meaning of the legislation through the authorized forms in which it has been expressed.

In sum it may be said that the courts have to interpret the language, words and expressions of the statutes.

The process of determination is the interpretation of the statutes.

Objects of Interpretation - Maxwell throws light on the objectives of interpretation it is said that the purpose of any interpretation of a statute is to determine the express or implied meaning of the language used, and in particular to see whether the interpretation given by the interpreter is applicable in the circumstances of the case presented. Thus interpretation is the process in which the courts determine the meaning of a specific legislation.

Types of Interpretation- Interpretation of a statute is the process by which the purpose of bringing legislation is reflected. The legislation should be clear and simple. If the words of the statute are ambiguous or ambiguous, then before using them, it should be seen whether the purpose of bringing the legislation is defeated or not. In **Raghunandan vs Pyarelal (1998) 2 SCJ 413**, the Supreme Court expressed the opinion that if the language of the statute is simple, then there is no need for interpretation.

To achieve the above mentioned purpose of interpretation, interpretation can be essentially divided into two parts.
(1) Literal interpretation
(2) Logical explanation

(1) Literal Interpretation- Literal interpretation is called Litera Scripta or Litera-Legis is also expressed by words. Literal interpretation is used when the language of the statute is clear and unambiguous. Literal interpretation has an important place in the interpretation of statutes. Under this interpretation, the language and words used in the statutes are given meanings accordingly.

(2) Logical Interpretation - Logical interpretation is used when, Whereas literal interpretation may produce undesirable and inconsistent results. This means that when literal interpretation gives different meanings to the words, then logical interpretation is resorted to while keeping other things in mind to find out the intent of the legislature.

Difference between interpretation and meaning

Sr. No	Interpretation	Construction
1	Interpretation means interpretation, translation etc. Interpretation is the meaning of a fact.	Interpretation is the method by which interpretation is achieved.
2	Interpretation is possible.	Meaning is the means of interpretation.
3	Determination of its aspect and true nature is based on the natural meanings of the words used in the language of the Act.	The process of going beyond the words used in an Act and understanding its true aspect and nature beyond its spirit is called interpretation.
4	The judge has to keep two facts in mind while interpreting the statute: (a) What should be its actual meaning? (b) The purpose of the legislature while making the statute.	In the process of interpretation, the meaning of the word has to be found out so that the situation can be resolved. This situation does not arise while making legislation.
5	In interpretation, literal and ordinary meaning is taken.	Sometimes inconsistent and unjust results are visible in the literal interpretation.
6	The intention of the legislature is paramount in interpretation.	In interpretation, the actual meaning of the defined word of the bye-law has to be seen.

Question No. 2- The golden rule of interpretation is not an independent rule of interpretation but is a refined form of the literal rule of interpretation. Explain the above statement with the help of decided cases.

Answer- Golden Rule of Interpretation – The golden rule of interpretation is actually a modified form of literal interpretation. According to the golden rule, literal interpretation is a means of determining the general intention or intent of the law. According to the golden rule, when literal interpretation leads us to meaninglessness or illogical results, the provisions of the Act should be interpreted in such a way that it brings appropriate practical results. Therefore, if the meaning of the provisions is vague, uncertain or of ambiguous meaning or there is any other difficulty, the court can go beyond the words of the law.

Following this principle, the courts generally infer the intention of the legislature from the words used by it in the law on the basis of the natural and innate meaning of the words. If the court finds any ambiguity, inconvenience or futility in doing so, the meaning will be modified only to the extent that this result can be avoided. This rule actually solves the problems arising during interpretation. This is known as the transformation system of interpretation, because under this the literal meaning of a word is transformed as per convenience and need.

According to the golden rule of interpretation, the following things should be followed at the time of interpretation- Necessary conditions-

(1) Among words having multiple meanings, the one which is balanced and judicious should always be accepted.

(2) Unreasonable, inconsistent or inconvenient consequences must be avoided.

(3) Avoid interpretations that would result in an obviously unjust outcome.

(4) Nonsense and irrational interpretations should not be accepted.

The golden rule was first formulated by **Park B in Becke v Smith - (1836) 2 N & W 1991. Park**

According to B., the golden rule of interpretation is that the ordinary meaning of the words used in the law and the grammatical interpretation should be followed, unless it itself is contrary to the intention of the legislature expressed by that law or reveals any clear inconsistency or contradiction. If the words of the law convey a meaning contrary to the intention of the legislation or create inconsistency, then the language of the law can be changed or amended to remove such defect, but it cannot be twisted more than necessary.

In this way, the language of the Act can be changed or amended to avoid meaninglessness or contradiction where the grammar leads us towards meaninglessness or inconsistency. The general rule is that the courts do not interpret the Act and the law according to the rule of literal interpretation-

(1) If there is a semantic error in the article of law.

(2) If an unreasonable result would follow from the text of the statute which would appear to have been the intention of the Legislature or if there is a clerical error in the text such as citing a section by the wrong number.

To avoid such inconsistency in the law, the courts point to the unexpressed saving clauses in the law. This is called the golden rule of interpretation. According to this rule, the words used in the law should be interpreted literally unless there is an inconsistency and if there is an inconsistency, the literal rule can be amended.

In **Gray v Pearson (1857) 6 L.L.C. 61, Lord Bensleydale** said that in interpreting wills, statutes and all written documents, the grammatical and ordinary meaning of the words should be taken, unless the result reaches the limit of any irrationality, or there is no contradiction or inconsistency with other parts of the document. In such cases, the grammatical and ordinary meaning of the words needs to be corrected to the extent that the irrationality and inconsistency can be removed, but no further amendment should be made.

In **Rananjay Singh v. Baijnath Singh**, Viscount Haldane, L.C. held that "we cannot go beyond the natural meaning of the words unless the context on a reading of the whole Act leads us to do so. And the golden rule is that the words of the Act must prima facie be given their ordinary meaning."

In **Enforcement Directorate vs Deepak Mahajan AIR 1995 SC 1775**, the Supreme Court clarified that the court can go beyond the grammatical interpretation of the words to implement the intent of the legislature and the purpose of the Act. So that the intent of the legislature does not become meaningless.

Manubhai F. Patel vs State of Gujarat AIR 2000 Gujarat 120-B. In this case the court said that if two meanings emerge from the statute while interpreting it, then the court will have to take a practical view while interpreting the statute and if necessary, it can interpret the statute according to its own will by going beyond the scope of the words. This will remove the futility and practical inconvenience and achieve the goal of the legislature.

In **Quarry Owners Association v. State AIR SC 2870-B** the Supreme Court held that while interpreting a statute the court must adopt the meaning which is consistent with its purpose.

Hari Singh Nalwa vs Kartar Singh AIR 2001 P & H 88-C Bhadana & Others held that the words used in the statute should be taken in their ordinary sense. There is no need to make necessary amendments, changes or additions to them unless the language of the statute is vague, ambiguous and is not self-explanatory.

Thus, the golden rule is a modification of the rule of grammatical interpretation. According to this, the court will generally infer the intention of the legislature from the words used by it in the law on the basis of the natural meaning of the words. But if in doing so any redundancy, inconsistency, clarity occurs, and then the meaning will be modified only to the extent that this result

can be prevented. Whenever more than one meaning of a provision appears, then that meaning will prevail, which is balanced and unambiguous.

Thus it is clear that according to the golden rule when literal interpretation leads us to meaninglessness or illogical results, the provisions of the Act should be interpreted in such a manner that it brings about proper practical results. Therefore, when the meaning of the original provisions of the interpretation is unclear, uncertain or ambiguous or there is any other difficulty, the court can go beyond the words of the law.

In conclusion, it can be said that according to the golden rule, the following things should be kept in mind while interpreting.

(1) If the language used in a statute is clear, unambiguous and general, it must be construed accordingly.

(2) A statute must be interpreted with a view to giving effect to the intention of the legislature.

(3) If the language of a statute is ambiguous or gives multiple meanings or does not make clear the intention of the legislature

If so, other rules of interpretation can be used to reach the intent of the legislature.

Question No. 3- Define statute. Explain the various parts of statute. Explain the difference between statute and enactment.

Answer- A statute is a formal law or rule. Whether it is enacted by a government, company or other organization, a law is usually written. Local governments can pass all types of laws or written laws to govern their citizens. To study the classification of statutes one needs to know what statutes are and then their classification etc. Black's Law Dictionary defines the term 'statute' as a formal written act of a legislative authority that governs a country, state or city.

Classification in terms of duration This type of mode classifies a statute as follows-

(1) Temporary statute.

(2) Permanent statute.

(1) Temporary Statute- A temporary statute is one whose period of operation and validity is fixed by the statute itself. Such an act remains in operation unless it is repealed earlier, until such time as may be fixed. After the expiry of an act, if the legislature wishes to continue it, a new act is required to be passed. The Finance Act is a temporary act and is required to be passed every year. Whereas, a permanent statute is one in which no such period is mentioned But this does not make the statute irrevocable, but such statute may be amended or repealed by any other Act.

(2) Permanent statute- A permanent statute is one which does not have a fixed term of existence but is amendable from time to time.

In terms of form, constitutions are divided into the following two types-

(1) Mandatory, Prescriptive or Compulsory Statute - A mandatory statute is one which compels the performance of certain things or mandates that certain things should be done in a certain manner or form. A directory statute merely directs or permits a thing to be done without compelling its performance. In some cases, the conditions or forms prescribed by the statute have been held to be essential to the act or thing regulated by it and their omission has been held fatal to its validity. In other cases such prescriptions have been held to be merely directory, their neglect involving nothing more than liability to the penalty imposed for the contravention of the statute.

In **H.V. Kamath v. Ahmed Ishaque** it was held that mandatory provision must be strictly followed while directory provision is sufficient.

(2) Directive or Permissive Statute- A directive or permissive statute merely directs that something should be done but does not compel anyone to do so.

Strict compliance with a mandatory provision is essential, while with a directive provision, mere substantial compliance is sufficient.

With reference to the area, the constitutions can be divided into the following two types-

(1) Public statute- which deals with matters of public policy. Scope of such statutes it is extremely widespread.

(2) Private Law- deals with personal matters.

Classification in terms of purpose-

A law may be classified with reference to its purpose as follows-

(1) Codifying Statute (2) Consolidating Statute (3) Declaratory Statute (4) Remedial Statute (5) Supporting Statute (6) Disabling Statute (7) Penal Statute (8) Taxing Statute (9) Explanatory Statute (10) Revisionary Statute (11) Repealing statute (12) Validating statute

Difference between statute and act

Aspect	Work	Law
Definition	A specific legislative resolution is passed by the legislative body outlining the rules and regulations for a particular subject.	The whole set of rules, regulations, principles and precedents that govern a society.
Development	Before it becomes a law, it is drafted, debated, and voted on by MPs.	Derived from a variety of sources, including statutes, common law, constitutional provisions and legal precedents.
Binding authority	It has the force of law and has legally binding effect within the jurisdiction in which it is enacted.	It represents the framework for regulating human behaviour and maintaining social order enforced by governing bodies and institutions.
Scope	Relating to a specific topic or area of the law, addressing particular issues.	It covers a wide range of legal matters, including civil law, criminal law, constitutional law, administrative law, etc.

Statutory body	Passed by a legislative body, such as Parliament, Congress, or the State Assembly.	It is established and enforced by governmental bodies, including Parliament, the courts and administrative agencies.
Manufacturing process	It is drafted, debated, and amended before it is voted on and formally becomes law.	Develops through legislative processes, judicial decisions, legal precedents, and constitutional provisions.
Legal hierarchy	It may be a component of the broader law of a legal system.	It represents a comprehensive framework of rules and regulations governing society, consisting of various legal components.
Identification	It often has specific titles, numbers and references for easy identification and reference.	Identified through legal principles, doctrines, case names, legal citations or relevant legal provisions.

Question No. 4- What do you understand by internal aids of interpretation? Explain the importance of the Preamble (as an internal aid) in the interpretation of the Indian Constitution. Cite the decided cases.

Answer- Aid is a device which helps. For the purpose of construction or interpretation, the court has to resort to various internal and external aids. Internal aids mean those materials which are available in the statute itself, though they may not be a part of the enactment. These internal aids include long title, preamble, headings, marginal notes, illustrations, punctuation marks, provisos, schedules, transitional provisions etc. When internal aids are not sufficient, the court has to resort to external aids. The external aids may be parliamentary materials, historical background, reports of a committee or commission, official statements, dictionary meanings, foreign judgments etc.

'Internal aids' means those aids which are available in the law itself. Every part of any Act aids in interpretation. However, it is important to understand whether these parts can be helpful in any way in the interpretation of the law. The internal aids to interpretation can be as follows-

(1) Name or title
(2) Reference and introduction
(3) Margin notes
(4) Schedules
(5) Example
(6) Explanation
(7) Proviso
(8) Definitions or Interpretation Clause
(9) Title
(10) Punctuation mark
(11) Exception

In **Ramashraya vs District Panchayat Raj Officer Gorakhpur, AIR 1998, Allahabad 87**, the Allahabad High Court has said that "Where the language of a statute is clear and unambiguous, its literal meaning should be accepted. But in

case of ambiguity of language, the help of preamble etc. can be taken to find out the intention of the legislature."

In **Durgapur Project Ltd. vs. Graphite India Ltd. AIR 1998 Calcutta 319**, the Calcutta High Court said that "while interpreting the statutes, the proviso should be interpreted harmoniously. It should be kept in mind that the proviso does not reduce or eliminate the intention or the obligation imposed by the main section."

Context and Preamble - Context is very helpful in removing ambiguity in the interpretation of an ambiguous statute.

According to Blackstone - "If the word is ambiguous, then we determine its meaning keeping in mind its context" And in doing so, we can compare one word or sentence with other words or sentences and arrive at a definite conclusion to remove ambiguity."

(1) Preamble is included in the context:- In fact, preamble is included in the context itself. It is the introductory statement of the law, which is after the title and in the middle of the enacting clause. The preamble not only declares the policy and purpose of the concerned law but also tells its reason and the purpose to be achieved by it. (In **Kerala Education Bill (1954) SCR 995**)

(2) Preamble is the key to the Act:- The preamble of the Act is an introductory statement, which is given just below the title. It also tells what purpose is to be fulfilled by the Act. The reason or the spirit of every Act can be seen in the preamble. The preamble is unable to express the intention of the legislature very well and convincingly at the time when the Act is made.

(3) The current view is not to give much importance to the preamble:- In modern Acts, only a few Acts have a preamble, hence the importance of the preamble is declining. The preamble helps in understanding the meaning of the Act. It is not necessary that the preamble of every Act can always serve a beneficial purpose or provide guidance at the time of need. Hence it is necessary to read the entire Act.

(4) Preamble has its limits:- Though the preamble is the key to understanding the Acts, yet it has its limits. The preamble is not intended to abridge, restrict, expand or greatly extend the meaning of the enacting part, even though the language of such part is very clear and unambiguous.

In the case of **Rashtriya Mill Mazdoor Sangh vs NTC (South Maharashtra**), the Supreme Court, while interpreting certain provisions of the Textile Undertakings (Takeover of Management) Act, 1983, held that when the language of the Act is clear, the Preamble cannot be invoked to narrow down or limit the scope of an Act. Importance of Preamble in the Interpretation of the Indian Constitution in the case of **Inri Berubari AIR 1960 SC**, according to Chief Dyer, the Preamble is the key to the mind of the constitution makers; it shows what problem was in their mind. Therefore, the Preamble is given special importance in the interpretation of the Constitution. It has even more importance in the

Indian Constitution. Because it is considered a part of the Constitution. Shri Aladhi Krishna Swami, who participated in the making of the Indian Constitution, said, "The Preamble of our Constitution expresses everything about which we have been thinking and dreaming till now."

In the case of **Kesavananda Bharati vs State of Kerala AIR 1973 SC**, Chief Justice of the Supreme Court Mr. S.M. Sikri said- 'It seems to me that the Preamble of our Constitution is very important. The Constitution should be read and interpreted in the light of the great and lofty vision expressed in the Preamble.

Question No. 5- Write short notes on any two of the following.

Answer- (1) Casus omissus- (It is better to validate than invalid) Casus omissus is a Latin term meaning "case omitted." It refers to a situation that is not covered by a law or contract, and therefore, it is governed by case law or new judge-made law. When there is a casus omissus, it is up to the courts to interpret the law and make a decision based on the facts of the case.

For example, suppose a state has a law that requires all drivers to wear a seatbelt while driving. However, the law does not specify what kind of seatbelt is required. If a driver is stopped for not wearing a seatbelt and he or she is wearing a lap belt instead of a shoulder belt, this would be a casus omissus. The court must decide whether or not the driver violated the law. Another example of casus omissus occurs when the contract does not specify what will happen in a certain situation. For example, if the lease agreement does not specify what will happen if the tenant breaks a window, this would be a casus omissus. The court must decide who is responsible for paying for the damages. In short, casus omissus refers to a situation that is not covered by any law or contract, and it is up to the court to interpret the law and make a decision based on the facts of the case.

(2) Role of "Interpretation Clause in Interpretation of Statutes.- It defines certain words used elsewhere in the main body of the statute with a view to avoiding the need for frequent repetition while describing the subject matter and to extend the natural meaning of certain words according to the law. It also defines the intention of the legislature with regard to the words mentioned in the statute and avoids confusion. The rule of interpretation is that whenever the words 'means' or 'means' and 'includes' are used in a definition, it makes the definition exhaustive and does not permit wide interpretation of the definition, but if the word 'includes' is used in the definition, then the definition becomes exhaustive When a definition clause is used, it gives the widest possible interpretation to the definition or expands the ordinary meaning of the word. However, if the definition clause results in any absurdity, the court shall not apply such definitions and the definition clause of an Act cannot be used to interpret the same word used in another statute except in the case of legislation dealing with similar matters.

(3) Events speak for themselves - Res ipsa loquitur (Latin: 'things speak for themselves') is a doctrine in common law and Roman-Dutch law jurisdictions under which a court may infer negligence from the nature of an accident or injury in the absence of direct evidence of how a defendant behaved in the context of a tort suit. Although the specific criteria vary by jurisdiction, an action must generally meet the following elements of negligence: the existence of a duty of care, a breach of a reasonable standard of care, causation, and injury. In res ipsa loquitur, the existence of the first three elements is inferred from the existence of an injury that would not normally have occurred without negligence.

(4) Doctrine of Severability- Explanation- The doctrine of severability or the doctrine of Reparability was formulated by the Supreme Court to resolve the issue of validity of laws that are held to be unconstitutional and due to which the question was raised whether the entire act should be declared unconstitutional even if only a part of the entire act is declared void. Basically this doctrine is linked to **Article 13** because the doctrine through **Article 13** of the Indian Constitution opens the doors for judicial review on any law or part thereof which is found to be unconstitutional or violative of the fundamental rights a, b, and the doctrine of separability as per the article means that a law which is declared void is only to the extent of its inconsistency with or violation of the fundamental rights of the Indian Constitution. The doctrine of separability states that if any provision in a law or an act or any part of a law is inconsistent with or violative of the fundamental rights of the Indian Constitution then such offending part shall be declared void and not the entire law or act. The basic purpose of this doctrine is to remove only the bad provision which violates the fundamental rights under the Indian constitution and not the entire law. So in any act if good and bad provisions are joined together by and or or then in such a case if the good provision is not dependent on the bad provision then the bad provision can be severed and declared void and the good provision will still be considered valid. However in a case where the entire law or act is dependent on a bad provision (provision violating fundamental rights) and it is the essence of the entire law and after removing such provision the entire law will be of no use then in such a case where it becomes impossible to severe the bad provision, the court has the power to declare the entire act void.

Produce

The doctrine of separation is not new, it has not been adopted recently either. Basically this doctrine originated from a case of **Nordenfelt vs Maxim Nordenfelt** Guns and Ammunition Company Limited in England, United Kingdom and the first case of doctrine of separation was decided in a case of United States in the year 1876. This doctrine has been adopted in many other countries like Australia, India and Malaysia apart from the countries mentioned above.

India had chosen the best features from other countries for its constitution like Fundamental Rights from the United States and the doctrine of separation from the United Kingdom and by adopting the principles of separation India upholds the principle of "natural justice".

Question No. 6- Explain the rules related to the interpretation of criminal law/penal law.

Answer- Strict interpretation limits the power of the court to the language of the law. Strict interpretation requires the court to apply the text as it is written, and no further than the meaning of the text has been stated. If the language is clear and unambiguous and there is no scope for ambiguity, the judge should apply the plain meaning of the language and not consider other evidence that would alter the meaning. However, if the court finds that the wording has given rise to absurdity, ambiguity or any defect in the language of the law, the plain meaning does not apply and a construction may be made. A provision is said to be strictly interpreted when the language of the text is ambiguous and no other equitable considerations or reasonable implications can be made of its precise and technical meaning.

Penal Laws- Any law which imposes penal liability on a person who is found guilty of an offence as per the provision of the law is called a penal law. The essential component thus is to punish certain actions or wrongs. The term punishment means some kind of punishment inflicted on a person by order of the state. Examples of some such laws are Indian Penal Code, 1860, Prevention of Corruption Act, 1988, Prevention of Food Adulteration Act, 1954 etc. Penalties for disobedience of law may include fines, confiscation of property, Punishment can be imprisonment and even death. Where the law is enforced not by individual action but by the order of the law in the form of punishment, the law is punitive. Punishment can only be imposed if the letter of the law clearly states so and any doubt must be resolved in favour of the alleged offender.

Strict interpretation of penal law- If any reasonable doubt or ambiguity appears while making a provision in the penal law, it shall be resolved in favour of the person who is liable to the penalty. If a penal provision can be reasonably interpreted in such a way that the penalty can be avoided, it should be interpreted in that way only.

However, if a given provision is capable of two reasonable interpretations of the penal provision, the one which is more lenient should be considered. A person can be punished only if the clear words of the penal provision are capable of bringing that person within its ambit without any extension of the meaning.

The spirit of the law is not taken into consideration while strictly interpreting the law; hence the spirit of any law is not taken into consideration.

Punishment cannot be imposed on the basis of the desired objective of the offence.

According to Maxwell, the strict construction of penal laws is manifest in the following ways-

(1) In requiring clear language to create the offense;

Statutory conditions that require the strict fulfilment of the letter and spirit of the offence before imposing a sentence are prescribed by the tribunal.

(2) In strictly interpreting the words;

(3) In insisting on strict adherence to the technical provisions relating to criminal procedure and jurisdiction.

Unless the words contained in a statute clearly indicate that an act is criminal, it will not be considered criminal. It is the duty of the court to punish a person only when the circumstances of the case are clearly in accordance with the law. All legislations relating to jurisdiction and procedure in respect of imposition of punishment must be strictly interpreted and construed. It is the foremost duty of the court to see that all the procedural requirements laid down in the statute regarding punishment have been duly complied with before sentencing the accused. In case of any doubt in such cases, the benefit of doubt accrues to the accused. Such benefit may go as far as acquitting the accused on the ground of technicality of law. Penal laws follow the principle of prospective operation. Prospective operation states that, "if there is a reasonable interpretation by which the punishment can be avoided, that interpretation should be accepted. And in cases where a provision can be reasonably interpreted in different ways, that particular interpretation should be avoided which causes hardship or injustice.

Thus, while interpreting the penal law, it has to be kept in mind that punishment or penalty can be imposed only when the conduct of the accused clearly falls within the scope of the law.

No enactment involving penal consequences permits violence in any case which is expressed in language which would fall within the express words of the enactment. It is true, however, that a penal law should never be interpreted in such a manner as to restrict its words to exclude cases which would normally fall within its scope. **Moti Bai v. R. Prasad (1970)** it was held that the court should not try to add new words on its own while interpreting the penal code. The courts have to interpret the penal code grammatically. **Spicer v. Holt (1976)** The Court made it clear that if any defect is found in the penal code, the judges have no power to correct it, because it is dangerous to depart from the principle that a citizen has a right to claim that no matter how punishable his conduct may appear, he should not be held guilty unless his conduct falls within the definition of the offence with which he is charged.

Prevention of Corruption Act, 1988

India has been suffering from the disease of corruption for decades. Corruption has been seen as a common practice among businessmen, politicians, supreme leaders and even public servants. Corruption is seen as a major obstacle

in the development of India, and it is imperative to fight this evil and prevent it from becoming an obstacle in the progress of India. Initially, the Indian Penal Code, 1860 was the only law to deal with corruption in India. Despite this, it was observed that this code was inadequate in providing proper provisions for the offence of bribery and corruption and there was a need to create a more efficient act for the emerging issue of corruption. Later, the Criminal Law Ordinance, 1944, Central Vigilance Commission, etc. were established to keep corruption under control and punish the offenders. However, the Prevention of Corruption Act was established in the year 1988, which consolidated all these acts and created a more stringent and precise law specifically for the prevention of corruption by public servants and punished any person violating the given provisions The Act imposes penal liability on public servants, although the scope of the Act extends to private individuals as well under certain provisions.

Question No. 7 - Explain the importance of Hayden case in the interpretation of modern constitutions.

Answer - The mischief rule is a prescriptive rule that judges can apply in statutory interpretation to ascertain Parliament's intent. The use of this rule gives the judge more discretion than the literal and golden rules because it allows him to effectively decide on Parliament's intent. It can be argued that it undermines the supremacy of Parliament and is undemocratic because it takes lawmaking decisions away from the legislature. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and related statutes. This rule is often used to resolve ambiguities in cases in which the literal rule cannot be applied but the related problem that this rule helps to achieve is that the use of this rule is limited because of parliamentary intent. Therefore, according to the author, this modern use of the mischief rule should be understood as one of the components of what is described as the "modern" method of statutory construction, and not as a stand-alone rule (as it was earlier), an alternative to the methods of construction proposed by the plain meaning rule and the golden rule.

The first and most basic thing to note when we read an Act of Parliament is that it is not like reading a book or a newspaper. The legislative text must be read in accordance with the principles and rules laid down by the judges and the law itself. A special skill is required to understand the meaning. This project will discuss this topic briefly, but hopefully it will provide a better understanding of how judges solve problems. David Hume once referred to Pope's Essay on Man, asking whether there is any essential difference between one form of government and another; and whether every form should not be considered good or bad, on the basis of whether its administration is good or bad. Similar questions may arise in the mind of anyone who begins to examine the theory and practice governing the interpretation of law. Does the interpretation of law really depend on the rules that are supposed to regulate it? Does not the judge, according to his

attitude and ability, use these so-called rules to justify a decision he has already arrived at on other grounds? And should the Law Commissions, before beginning to examine the interpretation of statutes, have asked themselves whether their visit was really necessary? Hume's reply to Pope suggests one answer to these questions. He said, he would be sorry, to think that there is no greater stability in human affairs than that which derives from the temperament and character of any particular individual. But applied to the interpretation of statutes today, this answer is unsatisfactory. It is true that a judge may express or manifest some dislike for the policy of a statute and there may be some reluctance to accept that its purpose is to override not only his personal preference (which he would not of course dispute) but also a long-established principle of the common law. That this reluctance may still be of most practical importance can be seen in the decision of the Court of Appeal in Allen v Thorn Electrical Industries. Winn LJ, for example, described the role of the judge in that case as, in effect, the defence of the common law against encroachments of statute.

As Patron, stated in the following very strong terms: "I must reject as utterly inadmissible any argument which, in any case, goes.

(a) That there is an ambiguity in any law in any particular case, and

(b) It is also clearly indicated that Parliament intended that they should have the strictest and most stringent meaning possible, so the court is bound to interpret the section in the sense in which Parliament intended it to have effect, by giving the words the strictest possible meaning.

On the contrary, I think the correct approach is, and I think it has always been, that in such a case of ambiguity, it is resolved in such a way that the law becomes less burdensome to the general public and thus less intrusive than would be the case with existing contractual obligations, whereas in a more strict sense such rights and freedoms would be in accord with existing contractual obligations." Yet I do not believe that we can justify scrutinising the interpretation of statutes simply on the ground that the judiciary look at the statutes in terms of what are the generally accepted values of the society in which they live, or because they read the statutes to some extent in terms of those values. On the other hand, I am very far from suggesting that the present system of interpretation provides the judge with all assistance in determining whether the words of a statute are in fact ambiguous. If I may put the underlying argument of the Working Paper in a few words, I would be tempted to say that just as there are shades of meaning, there are shades of ambiguity; that our tradition in legal interpretation has tended to draw too sharp distinctions The best answer to the questions which initially came before the Law Commissions regarding the interpretation of statutes is to begin with an admission that whatever rules have been formulated for the interpretation of statutes, the task has more of the qualities of art than of science; and that inspired interpretation of statutes cannot be achieved by the mechanical application of a few rules, just as a performance on the piano worthy of Richter

cannot be achieved automatically by painstaking attention to the exercises of Cherny.

But even if we abandon any intention to draw up a comprehensive code of new rules for the interpretation of statutes, we may justify a more modest inquiry and indeed clarify its purpose by another musical analogy. Even a great pianist may be hampered by a bad instrument. The purpose of the Law Commissions is to ascertain the extent to which current law and practice, which is supposed to guide and assist the judge in the task of interpretation, actually fulfils that task; to determine how much of the vast body of knowledge surrounding the interpretation of statutes is meaningful in the light of that task; and to make proposals which will ensure not only that statutes are interpreted better, but at least that the judge is provided with a tool sensitive and flexible enough to respond to the varied and complex demands of modern law. Of far greater importance is the connection established in Lord Simonds' statement between the concept of so-called clear meaning free from ambiguity and the concept of the mischief of law emphasised by the Haydon case. Here again I would say in parentheses that we need not spend too many words on the golden rule, because when a court decides on close scrutiny that particular words of a statute read in the context of ordinary usage are absurd, it implies, though often tacitly, that the construction is absurd because it is inconsistent with the court's conception of the general policy of the law; in other words, the golden rule becomes a disguised version of the mischief rule of uncertain and ambiguous application.

As regards the mischief rule, you will have noticed that **Lord Simonds** accepts that mischief is part of the context and that he says that other sections of the statute, the preamble, the current state of the law and other legislation alike can be used to shed light on that mischief. But you will also have noticed that he refers to "other legitimate" but unspecified means of detecting mischief. This seems to us to be the central problem with the rule in **Heydon,** which has much to recommend it in many respects. Attempts in a number of Commonwealth countries to give statutory effect to the rule in **Heydon** and to make it a central principle of statutory interpretation have produced disappointing results, with little guidance given as to how to detect mischief.

The mischief rule is the oldest rule of statutory interpretation. The mischief rule was established in the case of **Heydon**. In Re Sussex Peerage, it was held that the mischief rule should only be applied when there is ambiguity in the law. The role of the court under the mischief rule is to suppress the mischief that the act is intended to cause and to pursue the remedy.

Mischief Rule - This is a very important rule as far as the interpretation of the law is concerned. It is often referred to as the "Rule in Heddon's Case"[i]. In this very important case reported by Lord Coke and decided by the Barons of the Exchequer in the 16th century the following rule was laid down:

In general, for a fair and accurate interpretation of all laws, whether punitive or remunerative, restrictive or extending the general law, four factors must be considered:
(1) What was the common law before the Act was passed?
(2) What were the mischiefs and wrongs for which the common law did not provide?
(3) What measures did Parliament take and appoint to cure the 'disease of the Commonwealth'.
(4) The right reason for the measure.

And then the office of all judges is always to make such a construction as will suppress the mischief and advance the remedy. Before proceeding further, a word of caution is appropriate. The exact words used by Lord Coke in his report use 'the disease of the Commonwealth' and it is important to note that the words have different meanings. It is necessary to discover their meaning at the time of writing. From the 14th century to the end of the 17th century, disease meant lack of ease, restlessness or distress and Commonwealth of course meant the country. According to an early case, The **Longford (1889) 14 P.D. 34** an Act should be interpreted as if one were interpreting it on the day it was passed. Thus, we ask ourselves what the word meant on the day it was uttered if by analogy we argue that the same can be said of a judgment. The importance of the mischief rule in criminal law can best be shown by considering examples. An Act of Parliament will state the purpose for which it was enacted. If we take the case of **Parkin v Norman [1982, 2 All E.R. 583**, (reserved judgment), it can be seen that the Court decided that the **Public Order Act 1936** was never designed to deal with homosexual behaviour in public toilets. The long title of the Act is as follows-

"An Act to prohibit the wearing of uniforms in connection with political purposes and the maintenance of organisations of a military or similar character by private individuals and to make further provision for the protection of public order at public processions and meetings and in public places."

The purposes of the Act and the mischief rule are, therefore, closely connected, and looking at the long title it is very telling. Another example of the application of the mischief rule is found in **O'Hyson v. Hilton [1975, 2 All E.R. 490**. The facts, briefly, were that a carpenter was going home from work. He got on a train which was overcrowded. Another passenger objected and both subsequently ended up on the platform. The defendant, the carpenter, took out of his briefcase a hammer, a tool of his profession, and struck the other man with it. He was charged under the **Prevention of Crime Act 1953. Lord Widgery, C.J.**, said inter alia-"This is a case in which the mischief at which the legislation is aimed appears to me to be very clear. The criminal law immediately prior to the passing of the 1953 Act was adequate to deal with the actual use of arms in the course of a criminal assault. Where it fell short, however, was that the mere carrying of offensive weapons was not an offence. The long title of the Act is thus-

'An Act to prohibit the carrying of offensive weapons in public places without lawful authority or reasonable excuse'. Parliament is recognising the need for preventive justice, where by prohibiting the carrying of offensive weapons in a public place, it has reduced the opportunity for the use of such weapons. If, however, the prosecutor is right, its scope goes far beyond the intended mischief, and in every case where an attack is made with a weapon and in a public place, an offence under the 1953 Act may be charged in addition to the charge of assault. On the subject of offensive weapons, mention should be made of the decision of the Divisional Court in **Gibson v Wells (1983) 147 J.P. 143,** which decided that a "flick knife" is itself an offensive weapon.

Royal College of Nursing v DHSS Royal College of Nursing was an action challenging the lawfulness of nurses' involvement in carrying out abortions. The Offences against the Person Act 1861 made it an offence for any person to carry out an abortion. The Abortion Act 1967 provided that it would be an absolute defence for a medically registered practitioner (i.e. a doctor) to carry out an abortion provided certain conditions were met. Advances in medical science meant that surgical abortions had largely been replaced by hormonal abortions and it was common for nurses to carry out these. It was held that it was legal for nurses to carry out such abortions. The aim of the Act was to eliminate abortions in backward areas where no medical care was available. The actions of the nurses were therefore outside the scope of the 1861 Act and within the defence under consideration in the 1967 Act.

Corkery v Carpenter The defendant was riding a bicycle while under the influence of drink. Under section 12 of the Licensing Act 1872 it is an offence to be in charge of a 'vehicle' on the highway while intoxicated. It was held:

The court applied the mischief rule and held that riding a bicycle fell under the mischief of the Act because the defendant caused a danger to himself and other road users. According to **section 12** of the **Licensing Act 1872**, a person found to be intoxicated while in charge of a carriage on the highway could be arrested without a warrant. A man was arrested for being intoxicated while in charge of a bicycle. According to the plain meaning rule a bike is not a carriage. Under the mischief rule a bicycle could be a carriage. The mischief that was being attempted to be addressed was that people were transporting intoxicated persons on the road. Therefore a bicycle could be classified as a carriage.

Bengal Immunity Company v State of Bihar In terms of law, the mischief rule is a rule of statutory interpretation that attempts to determine the intent of the legislator. Originating from a 16th-century case in the United Kingdom, its main purpose is to determine the "mischief and wrong" that the law in question sets out to remedy, and what judgment will most effectively enforce this remedy. When the material term is used to describe two or more things, the mischief rule is a rule of law that seeks When words are capable of carrying more

constructions, the most firmly established rule of all laws in general for the construction of such words is the rule laid down in the case of Hayden which is also known as the mischief rule. This rule is also known as purposive construction. The rule lays down that the court should adopt the construction which suppresses the mischief and furthers the remedy.

In the Indian context, the rule was best explained in the case of Bengal Immunity Company v. State of Bihar. The appellant company is an incorporated company carrying on the business of manufacture and sale of various sera, vaccines, biological products and medicines. Its registered head office is at Calcutta and its laboratory and factory is at Baranagar in the 24 Parganas District of West Bengal. It is registered as a dealer under the Bengal Finance (Sales Tax) Act and its registered number is S.L. 683A. Its products are sold extensively throughout the Union of India and abroad. The goods are dispatched from Calcutta by rail, steamer or aeroplane against orders accepted by the appellant company at Calcutta. The appellant company has neither any agent or manager in Bihar nor has any office, warehouse or laboratory in that State. On 24th October, 1951 the Assistant Superintendent, Commercial Tax, Bihar wrote a letter to the appellant company which concluded as follows:-

"Therefore, necessary action may be taken to get your firm registered under the Bihar Sales Tax Act. Please take steps to deposit the Bihar Sales Tax dues in any treasury in Bihar immediately under informing this department."

The main question is whether the tax threatened to be imposed on the sale made by the appellant company and implemented by delivery in the circumstances and manner mentioned in its petition can be imposed by the State of Bihar. This was done by interpreting **Article 286** whose interpretation came into question and the meaning given to it in the case of State of Bombay v. United Motors (India) Ltd.6 was rejected. This raises the question of construction of **Article 286** of the Constitution. It was held that the Bihar **Sales Tax Act, 1947** is unconstitutional, illegal and void in so far as it purports to impose a tax on sales or purchases taking place in the course of inter-State trade or commerce.

The Act in its nature imposes a tax on divisible subjects but does not expressly exclude subjects exempted by the Constitution. In such a situation the Act need not be declared as absolutely null and void. Unless Parliament by law otherwise provides, the State of Bihar refrains from levying sales tax on dealers outside the State in respect of sales or purchases made in the course of inter-State trade or commerce, even if the goods are delivered as a direct result of such sale or purchase for consumption in Bihar. The State has to pay the costs of the appellant in this Court and the lower Court. Bhagwati, J. agreed with the above interpretation.

Advantages and Disadvantages of the Mischief Rule

Benefit-(1) The Law Commission considers this a more satisfactory way of interpreting acts than the golden or literal rules.

(2) It generally avoids unjust or absurd results in sentencing.
(3) Eliminates imperfections
(4) Allows the law to evolve and adapt to changing needs e.g. Royal College of Nursing vs DHSS

Loss-(1) It is considered old because it has been in use since the 16th century, when the common law was the primary source of law and parliamentary supremacy had not been established.
(2) It gives too much power to the unelected judiciary which is considered undemocratic.
(3) Creates a crime after the event e.g. **Smith v Hughes, Elliott v Gray** thus violates the rule of law.
(4) Gives judges a law-making role, violating the separation of powers and judges may bring their own opinions, sense of morality and prejudices to the case, e.g. **Smith v Hughes, DPP v Bull**.

Question No. 8 - Explain the importance of the doctrine of "substance and substance" in interpreting the scheme of division of legislative powers in the Indian Constitution.

Answer- The principle of substance is also an important principle for the interpretation of the provisions of the Constitution. This principle is applicable when there is a conflict between two entries or a law made on the basis of one entry is inconsistent with the scope of the other entry this principle determines when and to what extent such encroachment can be lawful.

In the constitution, legislative powers have been divided between the Union and the states. This division has been done in three lists- Union List, State List and Concurrent List. The sole right to make laws on the subjects mentioned in the Union List has been given to the Parliament and the right to make laws on the subjects mentioned in the State List has been given to both the Parliament and the State Legislatures.

While making laws, it is the duty of the Parliament and the State Legislatures to make laws on the subjects mentioned in their own list. They should not make such laws which touch or affect the subjects mentioned in other lists, but sometimes such laws are made which accidentally or unintentionally touch the subjects of other lists. In such a situation, the question arises whether such a law will be valid? While considering such a question, the court looks at the intention of the legislature. If the legislature intends to make a law on its own subject, then it will not be considered invalid merely because it accidentally touches another subject. In such cases, the essence and nature of the law made is looked at.

Doctrine of pith and substance- The doctrine of pith and substance states that if the essence of a law falls within the legitimate power of the legislature, the legislation does not become unconstitutional merely because it affects a matter beyond its jurisdiction. The 'true nature and character' is what the phrase 'pith

and substance' refers to. Violation of the constitutional limitation of legislative powers in a federal state is the subject matter of this concept. The court uses it to determine whether the encroachment claimed is merely incidental or substantial. Thus, the 'pith and substance' concept holds that the challenged law is basically within the legislative competence of the legislature that has enacted it, but only incidentally encroaches upon the legislative sphere of another legislature. The present article discusses this doctrine and mainly highlights how the Indian Constitution has treated this doctrine.

While the term 'pith' denotes the real nature or essence of anything, 'substance' indicates the most important or vital aspect of something, to break down the concept into its molecular sense. The State and Union legislatures have been made supreme in their respective fields, and they should not interfere in the field demarcated for the other, according to the interpretation of the doctrine.

When a law passed by one legislature is challenged or violated by another legislature, the doctrine of pith and substance applies. This doctrine states that when assessing whether a certain law applies to a specific issue, the court looks at the subject matter of the case. If the subject matter of something falls under one of the three lists, encroachment by a law on any other list does not make it illegal as it is called ultra vires.

Meaning of the Doctrine-To decompose the principle to its atomic sense, essence refers to the real nature or essence of something and substance means the most important or essential part of something. The definition of this principle states that the state and union legislatures are supreme in their respective fields, they should not encroach upon the field demarcated for the other. The doctrine of pith and substance applies when the law made by the legislatures is challenged or violated by other legislatures. According to this principle when the question is to determine whether a particular law deals with a particular subject or not, the court looks at the essence of the matter. If the essence of the matter lies in any one of the 3 lists, then the accidental encroachment by the law on any other list does not make it invalid as they are called inter-alia.

Features of the theory-

(1) This principle applies when the content between two lists appears conflicting.
(2) If every law is held void on the ground that it encroaches upon other laws, the powers of the legislature will be strictly limited.
(3) Principle brings out the true nature and character of the case and divides it into its proper category does.

Doctrine of pith and substance under the Indian Constitution-The doctrine of pith and substance, sometimes known as incidental encroachment, is a product of Canadian jurisprudence that has been applied to the Government of India Act, 1935 and the current Constitution. Sometimes, laws are made under the authority of one of the items in the lists of the Second Schedule. In such cases the idea of pith and substance is used to determine which legislature has the

authority to enact such a law. The court must consider the true nature and character of the law, whether it essentially falls within the jurisdiction of the legislature passing it, and whether it is valid, even if incidentally it touches a matter within the competence of another legislature.

In general, the Parliament and the state legislatures must stay within their allotted areas and not encroach upon each other's jurisdiction. If otherwise, the law will be declared invalid by the judiciary. But first, it will apply the doctrine of pith and substance to determine which substantive authority the above-mentioned law falls under. In other words, the idea of pith and substance is used to identify which category a law falls under. However, the powers granted at each level inevitably intersect at some point. It is impossible to draw a clear line between the competences of different legislatures as they will inevitably overlap at times.

Prafulla Kumar v. Bank of Commerce, Kulna (1947) The Bengal Moneylenders Act, 1940 was passed for the good of the people and fixed a limit beyond which the moneylenders could not charge any money. Even the rate of interest was fixed as the maximum that the moneylenders could charge. Since the loan rate was very low, the moneylenders questioned the validity of the Act. The issue that arose in respect of the case of Prafulla Kumar v. Bank of Commerce, Kulna (1947) was related to the constitutionality of the Bengal Moneylenders Act, 1940, which was adopted by the State Legislatures. This was disputed on the ground that the Act applies only to promissory notes. Since the subject of promissory notes falls under the Union List, it was argued that the State has no right to make laws relating to the matter of the Union. The Privy Council correctly determined that the real purpose, scope and effect of the Act is the lending of money and interest thereon, that the primary issue is not the promissory note, and that the State Legislature may pass legislation to protect the real purpose, extent and effect. In this case, the doctrine of pith and substance is important in interpreting the main subject of the case. This doctrine is used to protect the rigid pattern of power sharing between the State and the Union as the principal subject is the lending of money. Anything which supplements or indirectly affects the law established by the State Legislature must be included in the proper list according to its true nature and character to serve the wider public interest.

The issue of taxation of 'drive-in-cinemas' arose in **State of Karnataka v. Drive-in Enterprises (2001)**. A drive-in cinema is an open-air theatre complex which is generally open to people who wish to watch a film in their cars. The State, in addition to levying entertainment tax, imposed entertainment tax on cars entering the theatre. The dispute arose on whether the State Legislature has the power to levy tax on the entry of cars/motor vehicles into such theatres under Entry 62 of List A of the 7th Schedule. It is to be noted that the State

Legislature has the power to levy tax on 'luxury, entertainment, revelry, betting and gaming' as per Entry 62.

Question No. 9 - Explain the rules of interpretation relating to the interpretation of tax statutes.

Answer- In every country, the state can take the personal property of its citizens for public purpose and can also impose tax on them for this purpose. The state can do this work on the basis of the following two formulas-

(1) The public interest is the supreme law.

(2) The public interest is greater than the individual interest.

Without this power no government can run its affairs smoothly. The principles of interpretation of laws imposing taxes or fiscal statutes are not different from other laws. The underlying principle is that the intent and meaning of the statute should be inferred from the ordinary meaning of the words used therein and not from the Court's notion of what is just and what is not. (**Gwalior Sugar Co. Ltd. v. M.P. Electricity Board and Others, AIR 2000 SC 66-B**) That is, when a statute imposes tax, the intent of the statute should be inferred from the clear and unambiguous language used in it.

In **Grasim Industries Ltd. vs. State of Madhya Pradesh (AIR 2000 SC 66-B)**, the Supreme Court said that the principle of interpretation of tax statute is that the language of the Act should be interpreted strictly. The language of the Act should neither be stretched to favour the State nor should it be narrowly interpreted to favour the taxpayer. But even then the circumstances before the imposition of that tax can be considered.

In the case of **Mathuram Agarwal vs. State of Madhya Pradesh (AIR 2000 SC 109 A & B**), the Supreme Court said that the intention of the legislature in a statute depends on the language of the statute and if the language is clear and unambiguous, then the court cannot go beyond it while interpreting it and neither can anything be added nor subtracted from it, that is, the tax law should be strictly interpreted.

If there are any shortcomings in the interpretation of the tax law, the court cannot fill them. The court has to accept its meaning as provided in the statute and if any doubt arises, then the decision should be given in favour of the taxpayer. But it is not permissible for the court to create any ambiguity to give priority to the relief of the taxpayer. Thus if the language of a tax law is clear, it should be given effect to, regardless of its consequences.

In **Warehousing Corporation, State of Orissa vs. CIT (AIR 1999 SC**) the Supreme Court held that if a provision imposing tax is ambiguous and can reasonably be construed in more than one manner, then such interpretation should be given which is beneficial to the public.

In **Ram Avtar vs Assistant Sales Tax Officer (AIR 1999 SC)** the question was whether "betel leaf is a vegetable and hence its sale cannot be taxed, because under the Bihar Sales Tax Act, 1947 the sale of the word 'vegetable' is completely

exempted from sales tax. Based on the dictionary meaning of the word 'vegetable', the appellant argued in the court that the word 'vegetable' means to relate to, consist of, be made of, be obtained from or get plants or parts of plants, and 'betel leaf' is obtained from the plant itself, hence sales tax cannot be imposed on its sale. Since 'vegetable' has more than one reasonable meaning, in the context of tax law, only that meaning should be considered which benefits the assesses. In opposition to this, the respondent said that in this Act, the meaning of 'vegetable' was to give complete exemption from tax on the sale of 'vegetable'.

The Supreme Court refused to give any technical or botanical meaning to the word 'vegetable'. The Supreme Court said that when the legislature uses a word of everyday use in a law, it means to use that word in the same sense in which the common man understands this word. Therefore, the word 'vegetable' means only vegetables, as the common man understands this word. For this reason 'paan' is not included in it and the imposition of tax on the sale of paan is justified.

In **Indian Cable Company Ltd. Vs. Collector of Central Excise (AIR 1995 SC 64**) the Supreme Court held that while interpreting the meaning of words in a tax law, regard has to be had to the manner in which a particular word is taken in the field of trade and the authority should accept the meaning which is popular there.

From the above description, the following points become visible for the interpretation of tax laws or fiscal laws:

(1) The enforcement of laws imposing taxes or financial burdens is rigorous.

(2) The language of the tax law should neither be stretched to favour the State nor constricted to favour the taxpayer.

(3) Tax laws must be construed according to the ordinary meaning of the words used therein and not on the court’s conclusion as to what is and is not justifiable.

(4) If the person on whom the tax is sought to be imposed by the law honestly and directly falls within the letter of the law, then he should be taxed. But if that person does not fall within the letter of the law, then he is free.

(5) It is true that in cases of ambiguity or vagueness of language in the interpretation of the provisions of the tax laws, the interpretation should be made in favour of the taxpayer and not in favour of the State. But it is not permissible for the court to create any ambiguity in order to give preference to the taxpayer's relief for which it would otherwise be entitled.

(6) If the tax law is so uncertain as to give rise to two different courses of interpretation, one in the interest of the State and the other in the interest of the public, the latter should be adopted.

(7) In interpreting provisions of tax laws, regard should be had not to the scientific or technical meaning but to the meaning given to them by those dealing with them in the commercial sense.

(8) In interpreting tax laws no regard should be given to their effect. The language used in the provision itself should be given due consideration.

Thus, tax laws are strictly interpreted in the sense that if the language of a tax law is clear, it is given effect to regardless of its consequences. While interpreting a tax law, it is not appropriate to look at whether a particular conclusion is desired or not in order to arrive at a conclusion.

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

Answer- (1) Pseudo legislation- Federalism is the basic structure of the Indian Constitution. The sovereign power derived from the Constitution is distributed between two levels of government- the Centre and the States. It The step promotes better governance and also involves development in the nation. Sometimes, one government body attempts to encroach upon the jurisdiction of another government body by making laws that are not within their scope of governance or by passing laws that give them the right to legislate from the domain of another governance. This defeats the basic purpose of federalism, and there is always a risk of one government authority becoming more powerful and imposing its decisions on another government authority.

The doctrine of proxy is to safeguard the legislative power of the government by judicial intervention in order to maintain the balance of power in the country.

Discourages abuse. The doctrine of impermissibility is not explicitly mentioned in the Indian Constitution However, the judiciary has tried to safeguard the federal nature of our country through its judgements.

The doctrine has been explained. Whenever the Centre or a State tries to unconstitutionally extend its legislative sphere,

If an individual attempts to do so, the doctrine gives the judiciary the power to prevent them from doing so.

The following article elaborates on the concept of Doctrine of Proxy and further provides a comprehensive account of the constitutional provisions, significance and limitations of the Doctrine of Proxy.

The doctrine of proxy is a legal doctrine aimed at preventing excessive and unconstitutional use of the government's legislative power. The doctrine is derived from the Latin proverb "Quando aliquid prohibitor ex directo, prohibitor et per obliquam", which means that things which cannot be done directly should not be done indirectly either. Black's Law Dictionary defines proxy, which is called 'colorable' in English, as a legal doctrine.

Type defines-

(1) Appearing to be true, valid, or correct.
(2) Intent to deceive; counterfeit.
(3) Appearance, appearance or appearance .

In the literal sense, the doctrine of proxy means that the government is making laws under the guise of having authority, even though it has no competent authority to do so.

The judiciary has the power to prevent the government from abusing its power. When the government abuses its legislative authority by making laws outside its prescribed jurisdiction, the judiciary has the power to review them and strike them down if found unconstitutional.

The doctrine of proxy is also known as "fraud on the Constitution" because the legislative authority of the government does not make laws according to the provisions mentioned in the Constitution. The legislative authority creates the illusion that it is acting in compliance with the constitutional provisions but in reality it does not.

Justice BK Mukherjee in the judgment of **KC Gajapati Narayan Deo v State of Orissa (1954)** held that "the question whether a law is camouflage depends not on the motive or bona fides of the legislature in passing the law but on its merits." The responsibility for passing that particular law lies with the legislature, and in such cases the courts have to determine whether the legislature, while claiming to act within the limits of its powers, has in fact exceeded those powers, and then covered up the exceedance by what appears, and on proper scrutiny, to be a mere sham or concealment. The whole doctrine of camouflage is based on the maxim that what you cannot do directly, you cannot do indirectly.

In the case of RS Joshi vs Ajit Mills (1977) the Supreme Court defined the terms vicarious exercise of power, fraud on legislative power and fraud on the Constitution which mean that the legislature is incompetent to make a particular law.

According to this theory, the validity of a law is judged on the basis of the legislature's ability to enact a particular law, and not on the basis of the legislature's purposes or intentions. The judiciary, while determining whether a law is meretricious or not, does not take into account the legislature's intentions; it only considers whether the particular law is within the jurisdiction of the government authority.

(2) Retrospective effect of law. - Article 20 (1) says that "no person shall be convicted of any offence unless he has violated any law in force at the time of the commission of such act. He shall not be liable to a greater penalty than that which was punishable under the law in force at the time of the commission of the offence."

Article 20(1) provides protection against territorial laws, but this immunity cannot be claimed against detention or for seeking protection from any individual.

Satwant Singh vs APO, AIR 1967 SC Article 20(1) only prohibits conviction or punishment under any retrospective law, not trial. It is not a fundamental right of an accused that his crime should be tried by a particular court or procedure, but if there is discrimination in the trial, he can object.

A retrospective law which mitigates the severity of an offence is not within the ambit of **Article 20(1).** That is to say, a retrospective law which mitigates the offence or the punishment is not unconstitutional under **Article 20(1).**

In the case of **Rattan Lal v. State of Punjab (4),** the Court laid down the rule of beneficial construction according to which retrospective legislation can be applied only to mitigate punishment. For example, I commits the offence of cheating in a board examination and the law governing it provides for a prison term of 6 months, but an amendment has reduced the punishment to a fine of Rs 2,000. Instead of a prison term of 6 months under **Article 20(1),** I will have to pay a fine of Rs 2,000. A person who is charged with an act to which the retrospective action of the new law applies is entitled to all the remedies that may be available to him.

In **R.S. Joshi v. Ajit Mills Ltd. (5),** the Supreme Court held that **Article 20(1)** deals with the constitutional protection given to persons who have been charged before a criminal court with an offence prohibited by law. This immunity provided in the Constitution is only against punishment governed by the Code of Criminal Procedure for a criminal offence which is covered by a retrospective law, and cannot be claimed against preventive detention, or protection of any kind can be sought from any press house under the Press Act for acts done before the passing of the new law.

(3) Doctrine of Homogeneity- Legal interpretation is done by the courts to find out the meaning of the law. There are many rules for interpretation of law. One of them is the principle of ejusdem generis. This principle is applicable when there are some specified words followed by general words. This principle is applied if there is any ambiguity in the meaning of the general words. This principle provides that the general words coming after the specified words shall be restricted to the same class as the specified words. This is very important principle through which the object or purposes of the law can be achieved and proper justice can be given.

This article will cover the following topics; what is the interpretation of law and rules of interpretation, then the meaning of the ejusdem generis principle and its necessity and when it is applied will be discussed, the next thing that will be discussed is the essentials of the principle which will cover the conditions necessary for it to be applied, after this the limitations of this principle will be provided so as to when this principle is not applicable. Lastly the improper use of this principle by the courts is discussed as to how the courts sometimes do not use this principle properly and thus justice is not provided.

According to Black's Law Dictionary (8th ed., 2004.), "The doctrine of ejudem generis is where general words are followed by particular and specific words enumerating persons or things. Not only are these general words interpreted, but they are also held to apply only to the same general kind of persons or things as those specifically enumerated." This doctrine is also called Lord Tenterden's Rule

which is an ancient doctrine. The doctrine of ejudem generis provides that when general words are followed by a list of specific words, the general words are to be interpreted in such a way as to restrict them to include those objects or things which would be of the same kind as the specific words. In other words, "where a law lists specific classes of persons or things and then refers to them in general, the general statements apply only to the same kind of persons or things as those specifically listed." For example if a law refers to cars, trucks, tractors, bikes and other motorised vehicles, then the general term that is 'other motorised vehicles' will not include any aircraft or ship because the earlier specific term refers to a type of land transport and when the principle of ejusdem generis is applied then the general term will be limited to include things of the same category as the specific term.

Basis of applying the principle of injusdem generis The main objective of homogeneous interpretation is to establish harmony by removing the conflict existing between ordinary words and specific words used in legal language. The following things are necessary to apply the principle of injusdem generis-

(1) Any specific wording in a Statute.

(2) The words constitute or refer to a particular class.

(3) Not all the units falling under a particular category are mentioned.

(4) General words follow specific words.

(5) The legislative intent does not favor giving a wider meaning to general words i.e., any different legislative the intention is not clear.

(6) Such enumeration of the specific words in the Statute does not extinguish the said class.

(4) The doctrine of cover is based on- Article 13(1) according to which pre-constitutional laws would be void on the coming into force of the Constitution to the extent that they become defunct by reason of the enactment of the Fundamental Rights; and they cannot be enforced. This doctrine is related to **Article 13** of the Indian Constitution which talks about laws inconsistent with or infringing the Fundamental Rights. **Article 13(1)** states that any existing law in force in the territory of India before the commencement of the Constitution which is in conflict with or inconsistent with the Fundamental Rights contained in **Part II** of the Indian Constitution becomes void to the extent of such inconsistency. Further, **Article 13(2**) states that any new law becomes void if it infringes the Fundamental Rights, to the extent of such infringement. These provisions are directly in line with the doctrine of severability. This doctrine states that any provision of a law which is in conflict with the Constitution shall be severed from that Act and shall be deemed to be void to that extent only. Thus, the courts can declare that provision void instead of the entire Act. However, **Article 13(4)** states that **Article 13** does not apply to constitutional amendments. This implies that if any constitutional amendment laws are passed

which take away or infringe upon certain fundamental rights, those laws, though inconsistent with the rights, are not yet invalid.

Bhikaji Narayan Dhakaras v. State of Madhya Pradesh (1955) In this case, a provision of the C.P. & Berar Motor Vehicles (Amendment) Act, 1947 authorised the State Government to monopolize the motor transport business in the province. Since it was pre-Constitution legislation, the provision was valid, but when the Constitution of India came into force in 1950, it became void as it was contrary to Article 19(1)(g) of the Constitution. Even though the Constitution (First Amendment) Act, 1951 added clause 6 to Article 19 to authorise the Government to monopolize any business, the constitutional validity of the Act was challenged, and the following issues were raised before the Supreme Court.

B.A.LL.B.-4th Sem. Paper-V Constitutional Law-II

Question No. 1- Describe the constitutional status, functions and powers of the President of India.

Answer- Constitutional position of the President of India- The President is an important person in the Indian Constitution. He is the supreme ruler of India and the head of the three defense forces of India. The President has executive, legislative, judicial and military powers. The President has the power to impose emergency and issue ordinances in the event of a crisis.

Although the President has been given so many important rights and powers, yet a restriction has been imposed on the President that he cannot do any work on his own without taking the advice of the Council of Ministers. Generally, the constitutional position of the President can be explained in the following way-

(1) The President is the supreme authority of the Republic of India under **Article 53 (1)** as is vested with all executive power of the Union and is the Supreme Commander-in-Chief under **Article 53 (2)**.

(2) The President can also be a dictator. In this regard, the President has significant power to impose emergency in the country, make laws as per his wish and implement them immediately. Being the supreme authority of the Indian Armed Forces, he can easily crush any rebellion against him by using the army. The restrictions are as follows: (1) He can issue such an order when any House of Parliament is not in session, (2) The ordinance will be placed before both the Houses of Parliament for approval. If the Parliament does not approve it, it will remain in force only for 6 weeks from the meeting of the Parliament; or if the Parliament repeals it before this, it will expire from the date of repeal.

(3) In the Indian Constitution, the President has executive powers. He will exercise them according to the Constitution either himself or through subordinate officials. He will appoint the top officials of the country. He is the supreme commander of the country's defense force. Therefore, he has the power to declare war or peace against any country. He can pardon any convicted person, declare emergency in the country and issue orders.

In Bharat Kapoor vs Union of India, AIR 1955 SC 537, the Supreme Court held that the formal head of the executive is the President, but the

actual executive powers are vested in the ministers and the council of ministers.

(4) **Article 74(1)** of the Indian Constitution was amended by the Constitutional Amendment Act (**42nd Amendment**) making it legally binding on the President to act on the advice of the Council of Ministers.

(5) The Indian Constitution mandates the President to form a cabinet of ministers through which he exercises his executive powers. If he acts against the advice of the cabinet, the cabinet will resign and it will not be possible for the President to form a minority cabinet because a minority cabinet will not be able to function in Parliament. Since the Council of Ministers is responsible to the elected members of Parliament, the President has to act on that advice.

(6) **Sardari Lal v. Union of India, AIR 1971, SC 1946** held that the President exercises his executive power at his own discretion and his functions cannot be delegated.

(7) **Ramatvaiyan Kapoor v. State of Punjab, AIR 1955 SC 549 and Shamsher Singh v. State of Punjab, AIR 1974 SC 2193** have held that the President and the Governor are constitutional heads who exercise their powers and perform their duties only with the aid and advice of the Council of Ministers.

(8) The **44th Constitutional Amendment Act, 1978** added a proviso to article 74 empowering the President to return the advice tendered by the Cabinet, either on a general basis or otherwise, for reconsideration, but if after such reconsideration the advice is tendered, he shall be bound by it.

By the **58th Constitutional Amendment Act, 1987**, the President has been given the power to translate and publish the Indian Constitution in any recognized language.

Thus, the President is the head of the executive and legislative power and he contributes to the proper running of the nation's affairs. The President is the constitutional head of India who plays an important role in the governance of the country.

Powers of the President of India – In the Indian Constitution, the President is important powers and privileges have been granted. The powers granted to the President by the Constitution can be discussed under the following headings-

(1) Executive power- Under **Article 53** of the Indian Constitution, the President has the power to executive powers have been granted. The

President is the highest official of India. Being the head of the Government of India, all executive actions of the government are done in the name of the President.

The President is the head of the nation. He appoints all constitutional high posts under various provisions of the Constitution. He appoints the Prime Minister, other ministers on the advice of the Prime Minister, judges of the Supreme Court and High Courts of the states, governors of the states, the Attorney General of India and the Comptroller and Auditor General of India, members of the Union Public Commission, special officers for the Scheduled Castes and Scheduled Tribes, commission for scheduled and backward classes and for minorities, special officers etc. and can also remove them.

(2) Military power- He is the first citizen of India and the symbol of the unity of the country. Supreme Commander: The President is the supreme commander of the Indian Armed Forces. Can declare war: The President can declare war or conclude peace on the advice of the Union Council of Ministers headed by the Prime Minister.

(3) Diplomatic power - The Constitution has granted diplomatic powers to the President under which he can appoint ambassadors and diplomatic representatives in foreign countries. The President honours foreign diplomats and ambassadors. He makes treaties and international agreements with foreign countries.

(4) Legislative power - In India, the President is the head of the legislature. The President has they have the power to summon and adjourn either House of Parliament or dissolve the Lok Sabha. However, they can exercise these powers only on the advice of the Prime Minister and his Union Council.

The union legislature of India is called the Parliament. It is made up of the President and two Houses. These two houses are the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Each House has to sit within six months after the last meeting. In some cases, a joint meeting of both the Houses can also be held.

According to **Article 117 (1)** No Bill or amendment making provision for any of the matters specified in clauses (a) to (f) of sub-section (1) of article 110 shall be introduced or moved except on the recommendation of the President. No Bill making such provision shall be introduced or moved in the Council of States. Provided that no recommendation shall be required

for the moving of an amendment making provision for the reduction or abolition of any tax under this clause.
(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only because it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or charges for services, or by reason of its being introduced, or by reason of that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
(3) No Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India, shall be passed by either House of Parliament unless the President recommends to that House the consideration of the Bill.
According to Article 80 (3)- According to **Article 80 (3)** of the Indian Constitution, the President nominates 12 members to the Rajya Sabha. These members have special knowledge or practical experience in matters such as literature, science, art, and social service. There are a total of **250 seats** in the Rajya Sabha, out of which **12 members** are nominated by the President and **238 members** are representatives of the states and two union territories.
(5) Judicial power - According to **Article 72** of the Indian Constitution, the President has been given judicial powers. Under these powers, the President can grant remission, pardon, commutation, remission, and commutation of punishment. Pardon means the revocation of punishment, conviction, and disqualifications of a person. Pardon can be given either fully or partially. It can be given after or before the sentence is passed.
(6) Emergency power- Under **Article 352** of the Indian Constitution, the President has the power to the power to declare a national emergency is when the security of the country or any part of it is threatened by war, external aggression, or armed rebellion. When a national emergency is declared, the President gets more than **120 powers**. If Congress also joins the President in declaring a national emergency, the President gets **13** more powers. These powers extend to many areas, including military, communication channels, and transportation. These powers include appointing members of the Coast Guard as notaries public Emergency powers are special powers that the government or the president can exercise in extraordinary situations. These situations include war,

insurrection, terrorist attacks, environmental disasters, serious industrial accidents, epidemics, or similar situations. A state of national emergency allows the president to take action to maintain the security and integrity of the country. According to Article 360 of the Indian Constitution, the President can also declare a financial emergency. This declaration can be made when the President feels that the financial stability of India or any part of it is in danger.

Question No. 2: Discuss the privileges and immunities of the President of India.

Answer- Privileges of the President of India - Under Article 361 of the Indian Constitution, the President of India has been given some privileges, which are as follows- **(1) Not answerable to the court - Under Article 361** (1) of the Indian Constitution, the Governors of the states and the President have the privilege of not being answerable to the court. This article states-

(1) The President, or the Governor or the Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for anything done or purported to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament to inquire into any charge **under article 61**: Provided that nothing in this section shall be punishable with imprisonment for a term which may be imposed on the Government of India or the Government of any State.

(2) No criminal proceedings shall be instituted or continued in any court against the President or the Governor of a State during his term of office.

(3) No procedure for the arrest or imprisonment of the President or the Governor of a State during his term of office shall be entertained Will not be issued from any court.

(4) No civil proceeding in which relief is claimed against the President or the Governor of a State shall be commenced in any court in respect of anything done or purported to be done by him in his personal capacity during his term of office, whether before or after he enters upon his office as President or as Governor of such State, until the expiration of two months next following after notice in writing has been given to the President or the Governor, as the case may be, stating the nature of the proceeding, the cause of action therefore, the name, description and place

of residence of the party by whom such proceeding is to be commenced and the relief he claims.

(2) Privileges against the criminal proceeding-According to **Article 361 (2)** of the Indian Constitution, no criminal proceedings shall be instituted or continued in any court against the President or the Governor of a State during his term of office. Under Article 361, the President, Governors, and Rajpramukhs enjoy special protection from judicial proceedings during their term of office.

(3) Privileges against imprisonment- According to **Article 361(3)** of the Indian Constitution, no process shall be issued by any court for the arrest or imprisonment of the President or of a Governor of a State during his term of office. Also, no criminal proceedings shall be instituted or continued in any court against the President or a Governor during his term of office.

(4) Privileges against civil proceeding - According to **Article 361(4)** of the Indian Constitution, no civil proceeding shall be instituted in any Court against a President or a Governor during his term of office in respect of anything done by him in his personal capacity, whether before or after he enters upon his office as President or Governor, unless:-

(1) Nature of the proceedings

(2) Cause of action.

(3) The name, address, and description of the party bringing the action.

(4) Description of the relief being claimed.

(5) The notice in writing has been given to the President or a Governor or left in his office.

(6) Two months have not passed.

President's power to pass ordinances-According to **Article 123** of the Indian Constitution, the President has been given the power to issue ordinances during the recess of the country's Parliament. The President can issue ordinances only if, When both the Houses of Parliament or either of the Houses is not in session. The President must be fully satisfied about the urgency of the matter on which he is asked to promulgate the ordinance. The President can withdraw the ordinance at any time. Ordinances work as an Act of Parliament and have the same effect. The ordinance must be approved by Parliament within six weeks of its reassembly. In case of no approval by Parliament, the maximum period for which an ordinance can be promulgated by the President is 6 months and 6

weeks. An ordinance promulgated under Article 123 shall have the same force and effect as an Act of Parliament. However, an ordinance enacted must not abridge or curtail any of the fundamental rights enshrined in the Indian Constitution. If an ordinance under this article makes any provision which Parliament would not be able to enact under this Constitution, it shall be void.

Duration of Ordinance - In India, the maximum duration of an ordinance issued by the President **is 6 months and 6 weeks**. If the Parliament does not approve the ordinance, the duration can be up to **6 months and 6 weeks**. The ordinance expires after **6 weeks**, once both the Houses of Parliament are in session. The Parliament can either pass the ordinance or reject it. It can also expire before **6 weeks** if both the Houses of Parliament disapprove it. If both the Houses of Parliament are called to meet on different dates, these **6 weeks** will be counted from the later date. The President can withdraw the ordinance at any time.

In the case of **A.K. Rai vs. Union of India, AIR 1982 SC**, the Supreme Court said that the ordinance issued by the President under the article of the Constitution is not under the executive power, but it is necessary for the good governance and peace of the country and is the legislative power to handle immediate situations. By ordinance, any previously prevalent act can be repealed, it can be changed and its provision can be implemented as before. Then if emergency is imposed, ordinance can be issued even on the subjects of State List.

Question No. 3- Examine the role and powers of the Prime Minister of India. Is the President of India bound to follow the advice of the Council of Ministers? Mention the relevant articles. Or explain the nature of the relationship between the President and the Council of Ministers. Is the President bound by the aid and advice given by the Council of Ministers? Cite the amendments made in the Constitution in this context.

Answer: The President of India is bound to follow the advice of the Council of Ministers. It can be divided into two parts-

(1) Situation before 42nd Amendment and 44th Amendment - Article 53 of the Indian Constitution provides that "The executive power of the Union shall be vested in the President and he shall exercise it either directly or through officers subordinate to him in accordance with the Constitution."

Article 74 (1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President in the discharge of his functions.
Article 75(1) of the Indian Constitution states that he shall appoint the Prime Minister and appoint other Ministers.
The appointment will be made on the advice of the Prime Minister. **Article 75 (2)** states that ministers shall hold office during the pleasure of the President.
Article 75 (3) makes it clear that the Council of Ministers shall be collectively responsible to the House of the People. On a narrow and literal interpretation of the above provisions, it may be said that the President is the de facto head of the executive and can become a dictator if he so wishes. The wording used in Article 53 gives him the opportunity to become a de facto ruler. It is true that he should act in consultation with the Council of Ministers but the wording of Article 74 does not say that he is bound to act on the advice of the Council of Ministers.

But if we consider the basic spirit underlying the background of our Constitution, then it comes to the conclusion that the above opinion is not correct. Then if we observe the above provision keeping in view **Article 75 (3) and Article 75** of the Constitution, the relations between the legislature and the executive, the system of governance adopted by the Constitution, etc., then it will become clear that the aid and advice which the President has cannot go against the aid and advice of the Council of Ministers. Thus, the function of the Council of Ministers is not only to give aid and advice to the President, in fact the conduct of governance is in the hands of the Council of Ministers which is collectively answerable to the Parliament for its actions. The option to accept the advice of the Council of Ministers could have been given to the President only when the President was answerable to the Parliament. In the Indian Constitution, the President is not answerable to the Parliament but the Council of Ministers is answerable to the Parliament. According to Article 78, the only responsibility placed on the Prime Minister is to keep the decisions of the Council of Ministers related to administrative and legislative matters and policy matters informed and to provide whatever information the President asks for. Thus, the real power lies in the Council of Ministers, not in the President. We can also reach a conclusion on this subject on the basis

of **Article 164** according to the Indian Constitution Can be removed. Mentioning the powers of the Governor in this article, it has been said that he can reject the advice of the Council of Ministers. Such a thing has not been mentioned in **Article 74**. From this, it is clear that the makers of the Constitution had a clear idea that if the President refuses to accept the advice or counsel of the Council of Ministers, then in such a situation, the greater possibility is that since the Council of Ministers is answerable to the Parliament and if the President does not ask for advice, it will be able to take this responsibility upon itself and it will resign.

Now in such a situation, the President will have to form a Council of Ministers from the minority members because according to the provisions of the Constitution, it is necessary to have a Council of Ministers. The Council of Ministers formed from these minority members will not be able to get any bill passed by the Parliament with a proper majority and the work of the Parliament will almost come to a standstill because it will not be able to make any law. Therefore, the overall situation is that it is mandatory for the President to accept the advice of the Council of Ministers. There is no option of not accepting it. In the case of **Ramjawayan Kapoor vs State of Punjab, AIR 1955 SC**, the Supreme Court has said that the President (and Governor) are only nominal heads. The real executive power lies with the Council of Ministers. In the case of **U.N. Rao vs. Indira Gandhi, AIR 1974 SC 1002**, the Supreme Court has held that the Council of Ministers does not end even after the dissolution of the Lok Sabha. The Council of Ministers remains in every situation and continues to advise the President. If the President acts without the advice of the Council of Ministers, it will be against Article 53 (1) and Article 74 and unconstitutional. It is clear from this that the Council of Ministers remains in office even after the dissolution of the Lok Sabha.

(2) **Situation after 42nd Amendment and 44th Amendment Government** activities, judicial decisions and legislative enactments all affect the development and destiny of a country. All nations are governed by their respective constitutions. The constitution is a supportive framework because of its values. Deficiencies in this area can easily collapse the classification and hierarchy of a country. Its presence and extent is limited in a nation with executive supremacy. The strategy of constitutional supremacy is adopted by most democratic countries including India. The **42nd Constitutional Amendment Act** is known for

its inconsistent amendments and additions (1976). The **Swaran Singh Committee appointed by Indira Gandhi** provided recommendations. 40 new sections and 14 new articles were added to the Constitution by this amendment. To keep our discussion brief and clear, we will focus on the most significant changes in the public understanding of the Constitution that took place during the Emergency. The following changes occurred as a result of this change. The fundamental rights of the people have been protected since the US Constitution was enacted. The **42nd Amendment** provides a provision to temporarily suspend the basic rights. **Article 358** suspends constitutionally granted rights in an external emergency. "Emergency laws" are exempted **from Article 19**. When an 'emergency law' violates any fundamental right except **Articles 20 and 21** of the Indian Constitution, the President has the power to suspend the right to a remedy for any harm. According to this article, the President can issue a Presidential Order for a certain period of time or for as long as the emergency lasts. **Article 359** of the Constitution suspends enforcement, although this does not happen automatically. Despite the fact that this amendment is often considered the most controversial in Indian constitutional history, many parts of it have been in force for many years and are still considered useful. For example, free legal aid, children and environmental protection, basic rights and other policies are considered beneficial to individuals and communities alike. However, this amendment has a very bad reputation as a result of its impact and many other factors. When the 45th Amendment Act was signed into law in 1978, it added **Amendment 44** to the Indian Constitution. The 42nd Amendment Act passed in 1976 overturned the will of the Indian people by amending the Constitution. **Article 352** was used by Indira Gandhi's Indian National Congress to declare an emergency. Fortunately, the Constitution Act of 1978 set out to address these loopholes and restore harmony between the government and the people. This article elaborates on the **44th Constitutional Amendment** of India. In both cases, the government declares a state of emergency, and both events are almost identical. The **44th Amendment of 1978** requires a two-thirds majority to pass. For a proclamation to be legally passed, a two-thirds majority of the House and Senate must support it. If neither chamber approves, it would expire after two months if no action is taken. It was a little over a month before the 44th Amendment was signed into law.

After the proclamation of emergency was accepted by both houses of Parliament in 1975, no further review of it was required. The **44th Amendment Act of 1978** required a six-month review of the emergency proclamation and, without fresh parliamentary consent, its expiration after that period. One hundred percent of the members of the Lok Sabha can call a convention to debate the repeal of the proclamation. This has to be made within **14 days.** An easy majority in the special meeting will end the crisis. In most cases, the emergency The state of emergency lasts for one year. The 44th Amendment of the US Constitution passed in 1978 protects this freedom. After the **44th Amendment** Act was signed in 1978, the writ of habeas corpus could be filed in the Supreme Court and High Courts. **Constitutional Amendment 352 (38th Amendment)** made it inapplicable. As of today, due to the removal of clause 5, anyone can challenge any declaration of emergency in court on the ground of bad intentions of the government. National emergency does not prevent the enforcement of **Article 20 and 21** rights.

Although after the **42nd and 44th Constitution**, the scope of the President's privilege has become very limited, yet there are still some situations where the President is not bound to accept the advice of the Council of Ministers. These cases are-

(a) Appointed by the Prime Minister

(b) Dissolution of the Lok Sabha

Question No. 4- Discuss briefly the qualifications and disqualifications to become a member of the Lok Sabha. Or discuss the qualifications and disqualifications to become a member of the Parliament in India.

Answer: The qualifications for Lok Sabha and Rajya Sabha members are given in Article 84 of the Indian Constitution, according to which, to become a member of the Parliament, a person must have the following qualifications:

(a) He is a citizen of India;

(b) A minimum age of 30 years is required for a member of Rajya Sabha and a minimum age of 25 years is required for a member of Lok Sabha.

(c) Has made an oath before some person authorised by the Election Commission according to the form set out for the purpose in the Third Schedule;

(d) He possesses such other qualifications as may be prescribed by any law made by Parliament in this behalf. For example, a person must be registered as a voter in any constituency under the Representation of the People Act, 1951.

The disqualifications of members are mentioned in Article 102 of the Indian Constitution. According to this, a person shall not be eligible to be elected or remain a Member of Parliament if he has the following disqualifications-

(A) if he holds any office of profit under the Government of India or the Government of any State;

(b) If he is of unsound mind and has been so declared by a competent court;

(c) If the undercharged insolvent;

(d) If he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or accepts allegiance or adherence to a foreign State.

(d) If he is declared disqualified by any law made by Parliament. Parliament has prescribed the qualifications and disqualifications of members of Parliament by passing the Representation of the People Act, 1951.

Apart from these, a new clause 2 has been added to **Article 122** by the **52nd Constitutional Act, 1985** which provides that the membership of a Member of Parliament will be terminated on the grounds mentioned in the Tenth Schedule. Apart from this, the disqualifications for membership of Parliament have also been described in the Representation of the People Act 1951. According to this Act, the following persons cannot be Members of Parliament-

(1) Corruption in any election;

(2) Has been convicted of an offence resulting in a sentence of imprisonment for two or more years;

(3) Failure to submit account of election expenses;

(4) Interest or share in a contract for the supply of goods or performance of any work or service for the Government;

(5) Holding any office of profit in any entity in which the Government holds 25 per cent or more shares;

(6) By reason of dismissal from Government service on the ground of corruption or disloyalty to the Government.

Question No. 5- Define Money Bill. Describe the process of passing it. OR Define Money Bill and differentiate it from Finance Bill. What is the procedure for passing a Money Bill? OR What is the procedure for passing a Money Bill? How is it different from the procedure for passing an ordinary Bill? Who decides which Bill is a Money Bill? OR What is the procedure for passing a Bill? If a Bill is passed by the Lok Sabha but the Rajya Sabha rejects it, what is the procedure for passing the Bill?

Answer- Procedure Prescribed for Enacting Law by Ordinary Bill - Under the Indian Constitution, the Parliament has the important right to make laws. The process of law making in the Parliament begins with a bill. When the Parliament makes a law, the draft of the proposed laws is prepared and written down. This proposed law is called a bill. Until the bill gets the approval of the President, it remains a bill, but after the President signs it, the bill takes the form of a law. The procedure for making a law from ordinary bills is as follows-

(1) Ordinary bills can be introduced in either House of Parliament. When a bill is introduced by a Union Minister, it is called a Government Bill. Bills introduced by other Members of Parliament are called Personal Bills.

(2) A Bill introduced in the Parliament is sent to each House of Parliament three times, which is called the reading of the Bill.

(3) If the bill is controversial then the bill is not read in the first reading because every bill is introduced only with the permission of the House. In this reading the title of the bill is read out.

(4) The bill is discussed in the second reading. During this time, the basic policy of the bill is debated in the House. After the basic policy is approved, if the need is felt, the bill is sent to the Select Committee. The Select Committee is a small institution of the Parliament. Here, after a thorough scrutiny of the bill, if any dispute arises, then each of its clauses and sub-clauses is considered. In this reading, amendments can be made in the bill as per the need. The amendments to the bill are considered by majority.

(5) In the third reading, after a fixed time, the entire bill is considered. Here no changes are made in the bill. Finally, after voting on the bill, it is considered to be passed by the first House. After that, it is sent for approval to the second House.

(6) The second House also reads the Bill thrice and after it is approved by a majority, it is sent for the President's assent.
(7) When a Bill is passed by a majority in both Houses and comes to the President, the President has the power to give his assent to the Bill
In this regard, there are the following three rights-
(a) He may assent to the Bill, or
(b) He may reject the Bill, or
(c) He can return the bill for reconsideration.
(8) When a Bill is returned without the President's assent, it comes back to the Houses for reconsideration and is considered in the same manner as before and when it reaches the President after being approved by both the Houses, the President is bound to give his assent to the Bill. If the President does not give his assent to the Bill, the Bill shall be deemed to have lapsed.
(9) On receiving the assent of the President, the Bill shall become a law and the provisions of its sections and sub-sections shall be deemed to have come into force in the country from the day it is signed by the President.
Finance Bill - Finance Bill has been defined in Article 110 of the Indian Constitution. Finance Bill is related to every matter related to finance and is related to imposing tax, reducing or abolishing tax or putting money in the Consolidated Fund, appropriation etc.
Article 109 (1) states that a Money Bill or a Finance Bill can be introduced in the Rajya Sabha only, which is to be introduced in the Lok Sabha.
Procedure of the Finance Bill - It has been clarified in the Indian Constitution that the Finance Bill can be presented only in the Lok Sabha. No Finance Bill can be presented in the Lok Sabha without the recommendation of the President. After being presented in the Lok Sabha, the following procedure is followed in relation to the Finance Bill-
(1) After being passed by the Lok Sabha, the passing bill is sent to the Rajya Sabha for its recommendations. The Rajya Sabha must return the passing bill to the Lok Sabha within 14 days of its receipt. The Lok Sabha has the power to accept or reject the recommendations made by the Rajya Sabha.
(2) If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the Finance Bill shall be deemed to have been passed by both Houses. If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Finance Bill shall be deemed to have been passed by both Houses in the same form.

(3) If the Rajya Sabha does not return the Finance Bill within 14 days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the same form in which it was passed by the House of the People. Thus the Rajya Sabha can delay a Money Bill for a maximum period of 14 days.
(4) After being passed by both Houses, the Finance Bill is presented before the President for his assent because no Money Bill can become an Act without the assent of the President.
(5) The President cannot return a Finance Bill to the Houses for reconsideration. He is bound to give his assent to a Finance Bill.
Money Bill - (a) As per the definition provided in **Article 110 (1),** a Money Bill makes provision only for all or any of the following matters-
(1) To impose, abolish, remit, alter or regulate any tax,
(2) The regulation of the borrowing of money by the Government of India or the giving of any guarantee or the amendment of the law relating to any financial obligations accepted or to be given by the Government of India,
(3) The custody of the Contingency Fund of India or the Consolidated Fund of India or the payment of money into, or withdrawal of money from, any such Fund,
(4) Appropriation of moneys out of the Consolidated Fund of India,
(5) Declaring any expenditure to be an expenditure of the Consolidated Fund of India or increasing the amount of any such expenditure,
(6) the receipt of moneys for the public services of the Consolidated Fund of India, or the custody or issue of such moneys, or the audit of the accounts of the Union or of a State, or
(7) Any matter incidental to any of the above matters.
(b) A Bill shall not be deemed to be a Money Bill merely by reason that it provides for the imposition of fines or other pecuniary penalties, or for requiring the payment of fees for licenses or fees for services rendered, or by reason of the imposition, abolition, exemption, alteration or regulation of tax by any local authority or body.
(c) If a question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.
(d) Every Money Bill, when referred to the Council of States under **article 109**, or to the President for his assent under **article 111**, shall be signed or endorsed by the Speaker of the House of the People a certificate stating that it is a Money Bill.

Procedure of the Money Bill - Article 109 provides a special procedure for the Money Bill. Any money bill can be introduced only in the Lok Sabha and cannot be introduced in the Rajya Sabha. No money bill can be introduced in the House without the permission of the President.

After being passed by the Lok Sabha, the Money Bill is sent to the Rajya Sabha for its recommendations. The Rajya Sabha returns the Bill to the Lok Sabha with its recommendations within 14 days of its receipt. The Lok Sabha can accept or reject any of the recommendations of the Rajya Sabha.

If any recommendation of the Rajya Sabha is accepted by the Lok Sabha, the Money Bill shall be deemed to have been passed with the amendments proposed by the Rajya Sabha and accepted by the Lok Sabha.

If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both Houses in the same form in which it was passed by the Lok Sabha without such amendments.

Difference between an ordinary bill and a money bill

Sr.No.	Ordinary bill	Money Bill
1	All bills are ordinary except the ordinary bill.	When there is a proposal to impose new tax, abolish or amend old tax or spend money from the Consolidated Fund of India, such a proposal is called a Money Bill.
2	Ordinary bills can be introduced in either House.	Money bills can be introduced only in the Lok Sabha.
3	The President's approval is not necessary to introduce an ordinary bill in the House.	It is mandatory to take permission of the President for introducing a Money Bill.
4	The President can reject an ordinary bill.	The President cannot reject the Money Bill.
5	Ordinary bills can be private or government bills.	Money bills are only government bills.

Difference between a Money bill and a Finance bill

Sr.No.	Money Bill	Finance bill
1	A Money Bill is a Bill which deals only with one of the matters specified in Article 110(1).	The Finance Bill deals with matters other than those mentioned in Article 110.
2	Every Money Bill is a Finance Bill.	Every Finance Bill is not a Money Bill.
3	The Money Bill is passed under Article 109.	The Finance Bill is passed under Article 117.
4	The President is bound to give his assent to the Money Bill.	The President can return the Finance Bill for reconsideration.
5	The non-passage of the Money Bill by the Rajya Sabha has no effect.	A deadlock occurs when the Finance Bill is not passed by the Rajya Sabha.

Question No. 6- Briefly explain the organization and civil jurisdiction of the Supreme Court of India. Or Explain the organization and criminal jurisdiction of the Supreme Court of India.

Answer- Constitution of the Supreme Court **Article 124** provides for the establishment of the Supreme Court. **Article 124** says that the Supreme Court shall consist of a Chief Justice and not more than seven other Judges until Parliament by law prescribes a higher number. This number was increased to **18 in 1977**, which included the Chief Justice. In 1986, it was increased to 26, which included some Justices. In 2009, it was increased to 30. Thus, at present, the total number of Justices in the Supreme Court is 30 and the total number of Justices including the Chief Justice is 31. The Constitution does not provide for the minimum number of judges required to hear cases in the Supreme Court but **Article 145** states that for the purpose of deciding a case involving a substantial question of law as to the interpretation of the Constitution, the minimum number of judges to sit for hearing a reference under **Article 145** shall be **5**. This makes it clear that the Supreme Court cannot exercise its constitutional and advisory jurisdiction under **Article 141** unless the minimum number of judges on the bench is **5**.

Civil jurisdiction- Appeal in civil cases (**article 133**) Article 133 provides that an appeal lies to the Supreme Court from a judgment, decree or final order of a High Court in a civil proceeding unless the High Court grants a certificate under **article 139** (a) that-

(1) The case involves any substantial question of law of public importance, and

(2) In the opinion of the High Court the question needs to be decided by the Supreme Court.

Before the **30th amendment** of the Constitution, appeals in civil cases could be made to the Supreme Court only if the amount of the suit was Rs. 20,000 or more. On fulfilling the above conditions of property, a certificate of appeal could be obtained as a right. The said amendment has abolished the condition of property. Now, to appeal to the Supreme Court in civil cases, a substantial question of law of public importance must be involved in the case and in the opinion of the High Court, this question must be decided by the Supreme Court. Both these conditions must be fulfilled. This amendment has been made on the suggestion of the Law Commission, the purpose of which is to end appeals to the Supreme Court only on the basis of property.

Clause (3) provides that no appeal shall lie to the Supreme Court from any judgment, decree or order of a new Judge of a High Court in civil cases, but Parliament may by law provide for an appeal in such cases.

The conditions for appeal under **Article 133** have now become more stringent as it is not sufficient to show that the question is one of general public importance but it is also necessary to show whether the High Court is of the opinion that the question needs to be decided by the Supreme Court. A question on which two courts have expressed different views is required to be decided by the Supreme Court.

There may be cases where the criterion of the subject matter is not money but the decision may have very far-reaching consequences, i.e. where the matter is of great public or personal importance. In such cases a certificate of the High Court for appeal cannot be obtained as a matter of right. It depends entirely on the discretion of the High Court. But this discretion is the discretion of justice and it must be exercised in accordance with the accepted principles which regulate such cases. The mere grant of a certificate by the High Court does not bind the Supreme Court to hear the appeal. Nevertheless the Supreme Court has the power to determine

whether the pre-requisite conditions for proper acceptance have been fulfilled. In the case of **Narsingh v. State of Uttar Pradesh AIR 1954 SC 455** it was held that if on the face of the order it appears that the court has erred or that it thinks that it has absolute discretion when in fact it does not, or that it will exercise any discretion.

(a) Substantial question of law- It is not necessary to have only a question of law but for the certificate the question of law should be of substantial nature. 'Substantial' means a question on which there is doubt or the courts have expressed different opinions.

(b) Question of law of public importance- It is not enough that a question of law is substantial; it must be a question of law of public importance, that is to say, not only the parties to the case but other people are also affected by it.

(c) Decision of the Supreme Court is necessary- The word 'necessary' means that it is absolutely necessary for the question to be decided by the Supreme Court. Such necessity arises in the following cases: (1) it is possible to take two views on a question and the High Court, for which evidence has been called, is of one view, or (2) where some other Court has expressed a different view on the question.

Under Article 132, the Supreme Court shall not interfere with the concurrent findings of fact made by the High Court unless it is shown that there was insufficient evidence to support the finding of the High Court or that any important and material evidence was ignored.

Under Article 133, the appellant cannot raise any new ground before the Supreme Court which he had not already raised before the High Court.

Appeal in Criminal Matters (Article 134) - According to **Article 134**, an appeal to the Supreme Court against a judgment, final order or sentence given in a criminal proceeding by a High Court can be made in two ways-

(a) An appeal can lie to the Supreme Court against the decision of the High Court without a certificate of the High Court in the following cases, if-

(1) The High Court on appeal reverses an order of acquittal of an accused person by a subordinate court and sentences him to death;

(2) The High Court has referred to itself the trial of a case from a subordinate Court and has itself sentenced the accused to death.

But in cases where the High Court has reversed the conviction of an accused in appeal and ordered his release, no appeal will lie in the Supreme Court. The word 'acquittal' does not only mean complete acquittal but it

also includes cases in which the death sentence is commuted to life imprisonment.

(b) By certificate of the High Court as per **clause (c)** of **article 134** If the High Court certifies under **article 134(a)** (added by the 44th Amendment of 1978) that the case is fit for appeal to the Supreme Court, an appeal shall lie to it.

The power to grant a certificate of appeal in criminal matters is a monopoly of the High Court. But the High Court has discretion and it should be exercised in a judicial manner on the basis of well-established and accepted principles which regulate these matters. In the case of **Siddeshwar vs State of West Bengal**, the Supreme Court has laid down the guiding principles which the High Court will follow while granting the certificate.

Under Article 134, the Supreme Court is not like an ordinary court in criminal cases. Its criminal appellate jurisdiction is limited and it exercises it only in exceptional circumstances, i.e. where justice requires that it must intervene.

Generally, the Supreme Court does not re-appreciate evidence under **Article 134(c)** unless it is proved that there was illegality or serious irregularity or serious omission in the decisions of the subordinate courts. In the case of **State of Uttar Pradesh v. Rajnath**, the accused was acquitted on the sole ground that in its opinion the evidence of eyewitnesses was not admissible. The Supreme Court held that grave injustice was caused by the acquittal of the accused; because the High Court had given its decision without properly evaluating the evidence of the witnesses as to why it considered it baseless; hence, the case was remanded back to the High Court for re-decision.

Similarly, **under Article 134(c)**, the Supreme Court does not interfere with the concurrent findings of subordinate courts if no special circumstances exist i.e., the facts have been found to be inconsistent with legal principles.

Under Article 134(2), Parliament can increase the jurisdiction of the Supreme Court in criminal matters. Under this article, Parliament has passed an Act to increase its criminal jurisdiction. Under this, an appeal can be made from the Supreme Court to the High Court in the following cases if the High Court-

(a) In appeal, the accused is sentenced to life imprisonment or imprisonment of more than 10 years by reversing the discharge order of the lower Court; gives the sentence of imprisonment of .
(b) On appeal, he transfers the case from a subordinate court for his trial and sentences the accused to imprisonment for life or for less than ten years.

Question No. 7- Describe the constitutional status and powers of the Governor under the Constitution of India. Or write a note on the power of pardon of the Governor of a state.

Answer- The system of provincial governance in India is the same. **Article 153** of the Indian Constitution provides for the appointment of a governor in each state, but at the same time, under the Constitution, one person can be appointed for two or more states. The governor is appointed by the President.

Tenure of Governor (1) The Governor holds office during the grace of the President.
(2) The Governor may resign from his office by writing. This resignation must be addressed to the President needed
(3) The term of office of the Governor is five years but the President can extend the term of office of the Governor.

Qualifications for appointment of Governor- According to **Article 157** of the Constitution-
(1) A candidate for the post of Governor must be a citizen of India and must not be less than 35 years of age.
(2) The Governor shall be a member of either House of Parliament, or of the State Legislature.
(3) The Governor shall not hold any other office of profit.
(4) The salary and allowances of the Governor cannot be reduced during his term of office.

The Governor gets free official residence and salary and allowances determined by the Parliament. Before assuming his office, the Governor has to take an oath or pledge of allegiance before the Chief Justice of the High Court.

Constitutional status of the Governor- The Governor is considered the constitutional head or head of the state government. To assist him in his work and to give him advice, a council of ministers has been arranged, which is collectively responsible to the legislature. This clearly means that

the responsible government system has been implemented in the states, that is, the governance is done as per the advice of the council of ministers. It is worth noting that the advice of the council of ministers is as per the elected representatives of the people while the Governor is a person appointed by the President. If there is a deep disagreement or conflict between the Governor and the Council of Ministers, then the Governor will have to resign, yet it can be said that in extraordinary circumstances the Governor has the right to work as per his personal decision.

According to Dr. Ambedkar, "The Governor in India has two main functions. First, when and at what time he has to express his displeasure against the cabinet. The second function is to consider the advice, warnings of his ministers and the problem faced by the government and give alternative suggestions on it."

According to **Article 163** the Governor is aided and advised by a Council of Ministers. There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the discharge of his duties, except when he is compelled to do so by or under the Constitution or if he wishes to do so in his discretion. The Governor's Council of Ministers has to aid and advise him, which means that any action to be taken by the Governor must be done only after the aid and advice of the Council of Ministers. The conclusion of the judgment is that the discretionary power of the Governor is not unlimited but limited by the aid and advice of the Council of Ministers.

Powers and functions of the Governor-The Governor is the top executive officer of twenty-eight states and all are elected by the President of India. The Governor will have executive, legislative, financial and judicial powers and functions. The powers and functions of the Governor are written below-

Executive powers:- (1) Whatever the executive does is done in the name of the Governor. They he works through his subordinate employees.

(2) The Governor makes rules on the functions and distribution of work of Ministers.

(3) The Governor appoints the Chief Minister and in consultation with him appoints other ministers. The Council of Ministers is there to assist and advise him. The advice of the Council of Ministers is confidential. The ministers remain in their posts till the end of the Governor's pleasure.

(4) The Governor appoints the Advocate General and the members and Chairman of the State Public Service Commission.
(5) The President appoints the Chief Justice and other judges of the High Court in consultation with the Governor.
(6) To inform the Governor on matters relating to the Chief Minister.
(7) As the head of the state, he looks after the administration of the state. Any necessary matter can be resolved by taking necessary steps can be sent before the cabinet for consultation.
(8) The Governor has the duty of the Chief Minister to introduce proposals relating to administration and legislation.
(9) It is the duty of the Governor to implement the ordinances and instructions issued by the President.
(10) The Governor has the right to govern as an agent of the Centre when emergency situations are declared by the President.
(11) Nominates members for the Legislative Council of the state. The nominated members should have expertise in literature, art, science and social service etc.
(12) The Governor nominates some representatives of the Anglo-Indian community to the Legislative Assembly.

Legislative powers:- When a bill (other than a money bill) is presented to the governor for assent, he either gives his assent, withholds his assent, or returns the bill to the Houses for reconsideration. If the law is re-enacted by the state legislature with or without amendments, he has to either give his assent or reserve the statement for the consideration of the President and the Cabinet. In terms of the legislature, he has the power to summon, adjourn and dissolve the Legislative Assembly if it loses the confidence.

Financial powers- His proposal can be presented to the state legislature only after the annual financial account is filed in the legislature. No grant request can be made unless he recommends it. Money can be taken from the contingency reserve fund to cover unforeseen expenses. Every five years, he appoints a finance panel to assess the financial position of municipalities and panchayats.

Judicial powers- The Governor has many judicial powers under the Indian Constitution. The Governor can pardon certain criminals from punishment by using the judicial powers he has under the Indian Constitution.

The Governor has the power to pardon, suspend, stop or remit or commute the punishment of any person convicted of an offence against any law relating to a subject to which the executive power of the State extends.

This power of the Governor is similar to the power given to the President under the Article but it is limited to the matters of Schedule 2 and to the extent of such law under Schedule 3 which is not inconsistent with the Parliamentary law.

Question No. 8- How is the division of legislative powers done between the Union and the states? Under what circumstances can the Union legislate on the subjects mentioned in the State List?

Answer- Legislative Relations- Articles 245 to 255 of the Constitution mention the legislative relations between the Union and the States. These relations keep changing according to the changing circumstances. These relations can be divided into the following types from the point of view of study-

(a) Division of legislative powers on the basis of region - According to **Article 245**, the Union and the States have been given legislative powers on the basis of regional division, according to which the Indian Parliament can make laws for the entire territory of India or for any part of the territory of India. In other words, the State cannot make a law which is applicable in the territory of another State because the jurisdiction of the State Legislature is limited to that State only. In Article 254 (2), it is provided that if the Parliament makes a law which is going to be applicable outside the territory of India, then that law will not be unconstitutional on the ground that it has the tendency to be prevalent in foreign countries. Although it is difficult to implement such a law, it is not constitutional.

(b) Division of powers according to the subject Article 246- Under the Indian Constitution, three lists have been prepared regarding the subject powers- First, Union List, Second List, State List and Third Concurrent List. The Central Legislature has the right to make laws on all the subjects in the Union List, and the states can make laws on those subjects which are mentioned in the State List. Both the State Legislature and the Parliament can make laws on the subjects mentioned in the Concurrent List. Thus, the Constitution-makers have included all the subjects of national importance in the Union List of the State. And the subjects which are of regional importance have been handed over to the State and both the State and the Centre can make laws on the subjects which are not in the Concurrent List.

If the Parliament has made laws in the Concurrent List and the States have also made laws, then the law made by the Union, if it is contrary to the State law, will be applicable. If both the laws are incompatible, then both the laws will be applicable.

(c) Establishment of inferior courts- The laws made by the Parliament is also enforced by the state judiciary. It may also happen that the state courts are not interested in implementing the laws of the Parliament, which may result in chaos. To deal with this situation, according to **Article 247** of the Constitution, Parliament has been given the right to establish friendly courts for the proper implementation of its laws.

(d) Residual powers- Although the constitution-makers have created three lists and mentioned various subjects in them, still many subjects are left out or new subjects may arise in the future. Parliament has the right to make laws on such subjects.

(D) Emergency powers of Parliament- The President can declare an emergency. If the President declares an emergency, the Parliament gets the power to make laws for the entire territory of India during the period of the emergency.

(c) Right to make laws for the states- Every state has its own legislature which makes laws for the state but in **Article 252**, it was provided that the law made by the Parliament will be applicable in those states which have requested the law of the Parliament. Under this, the Parliament can make laws only on those subjects for which the state requests.

(g) Rules for the formulation of international constitution- According to **Article 253**, Parliament can make laws for international treaties, conventions and international conferences, institutions or bodies. State legislatures have no right to make laws on these subjects.

(j) Legislation during the period of President's rule in states- If the legislature of a state is dissolved and President's rule is imposed, and then until a new legislature comes into existence, the Parliament has the right to legislate on the subjects of that state. While making such a law, the Parliament makes laws on those matters on which the legislature had the right to legislate. During the period of dissolution of the legislature, the budget of that state is also passed by the Parliament.

Power of Parliament to legislate on subjects of the State List- Under normal circumstances, it is necessary to strictly maintain the division between the Centre and the States and no government can interfere in the

area of the other. But under certain special circumstances, the distribution of the said power is either suspended or the Centre gets the power to legislate on subjects of the State List. Those circumstances are as follows-

(1) National interest- According to **Article 249** of the Indian Constitution, Parliament can legislate on any subject in the State List. For this, the Rajya Sabha must pass a resolution by a two-thirds majority of its members present and voting. This resolution must state that it is necessary for Parliament to legislate on any subject in the State List. According to **Article 250**, if a proclamation of emergency is in operation, Parliament will have the power to legislate on any subject in the State List.

(2) During the period of emergency - According to **Article 250** of the Indian Constitution, while a proclamation of emergency is in operation, Parliament is empowered to make laws on any matter in the State List. This law can be made for the whole or any part of the territory of India. According to **Article 250**, no law made by Parliament, which could not be made without a proclamation of emergency, shall take effect after a period of six months. After the expiry of this period, the operation of the proclamation shall cease, except as regards things done or to be done.

(3) Law made with consent of States.-If it appears to the Legislatures of two or more States that matters in respect of which Parliament has no power to make laws for the States, except as provided in **articles 249 and 250**, should be regulated in such States by law by Parliament, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State after it is adopted by a resolution passed in that behalf by either House or, where there are two Houses, by each House of the Legislature of that State. Any Act passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in the same manner, but shall not, as respects the State to which it applies, be amended or repealed by an Act of the Legislature of that State.

(4) Legislation to give effect to international agreements- Article 253 deals with the provisions relating to legislation to give effect to international agreements. It further states that notwithstanding anything in the preceding provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India to implement any

treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

(5) In case of failure of constitutional machinery in the States - Article **256** deals with the responsibility of the States and the Union. It states that the executive power of every State shall be exercised so as to secure compliance with the laws made by Parliament and any existing law in force in that State, and the executive power of the Union shall extend to the giving of such directions to the State as appears to the Government of India to be necessary for that purpose.

Question No. 9- On what grounds can an emergency be declared in a state? How long can it last in the absence of approval from Parliament? Or under what circumstances can the President proclaim an emergency under Article 352. What effect does such a proclamation have on fundamental rights?

Answer – (1) Emergency provisions in the Indian Constitution have been divided into three parts- National Emergency (**Article 352**), Failure of Constitutional Machinery in States/President's Rule **(Article 356**) and Financial Emergency (**Article 360**).

(2) We will discuss only the national emergency in detail here.

Emergency Provisions in the Indian Constitution-(1) The emergency provisions have been taken from the Government of India Act, 1935.

(2) The provisions relating to Emergency are contained in **Articles 352 to 360 in Part XII** of the Constitution of India.

(3) These provisions enable the Centre to deal effectively with any unusual situation.

(4) The purpose of adding these provisions in the Constitution is to protect the sovereignty, unity, integrity, democratic political system and the Constitution of the country.

Proclamation - Article 352 states that the President can declare a national emergency if the security of the whole or any part of India is threatened by 'war', 'external aggression' or 'armed rebellion'.

(1) The original Constitution used the term 'internal disturbance' instead of 'armed rebellion'.

(2) The words 'internal disturbance' were deleted and substituted with 'armed rebellion' by the **44th Constitutional Amendment Act, 1972**.

(3) When an emergency is declared on the ground of war or external aggression, it is known as external emergency.
(4) On the other hand, when it is declared on the ground of armed rebellion it is known as 'internal emergency'.
(5) A proclamation of national emergency can apply to the whole country or only to a part of it. In the **Minerva Mills case (1980)**, the Supreme Court held that a proclamation of national emergency can be challenged in the court.
Procedure and Duration of Proclamation- (1) Under **Article 352**, the President cannot proclaim a national emergency unless the Union Cabinet receives a proposal in writing to the effect that it is necessary.
(2) This provision was added by the **44th Constitutional Amendment Act**, 1978.
(3) A resolution for such proclamation shall be passed by a majority of the total membership of each House of Parliament and by a majority of 263% of the members present and voting.
(4) A proclamation of national emergency is laid before each House of Parliament and within one month

If approval is not received it ceases to be in operation, but once approval is received it can remain in operation for six months.
Termination of Proclamation- (1) A Proclamation of emergency may be terminated by the President at any time by a second Proclamation.
(2) Such a Proclamation shall not require the approval of Parliament.
(3) In addition, it is necessary for the President to cancel a proclamation if the Lok Sabha rejects the resolution approving its continuation.
Effect of Proclamation - Article 257 of the Indian Constitution deals with the control of the Union over the States in certain matters.

According to this article, the executive power of every state will be used in such a way that it does not interfere or negatively affect the executive power of the Union. The executive power of the Union can give such directions to the state, which the Government of India deems necessary. The President, after consultation with the Governor of the state, can give such directions to the state, which seems necessary in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign countries or people. The President can also issue directions necessary for the security of railways within the jurisdiction of the state. According to **Article 257**, if more money is spent in fulfilling any direction

given to the state than what is spent in the discharge of the normal duties of the state, then the Government of India will have to pay such amount to the state as may be agreed upon. If no agreement is reached, then an arbitrator appointed by the Chief Justice of India will decide how much amount should be given to the state regarding the additional cost incurred by the state. **Articles 256 and 257** of the Indian Constitution provide that the states must comply with the laws made by Parliament in certain matters. Further, the state provisions shall not be allowed to impede or prejudice the exercise of the executive power of the Union of India.

State of Rajasthan v. Union of India AII 1977 SC 1361 is a case of the Supreme Court of India. The case arose in 1977, when the Congress Party lost elections in six states, including Rajasthan, 19 months after the Emergency. In this case, the Union of India was made a party to the writ petition because it had rejected the revision application of the state government.

In the case of **Sundarlal Patwa vs Union of India 1993 J.V.L. 387**, it was held that the order imposing President's rule is illegal because it is again outside the scope of 356. An illegal order does not become legal after being approved by the Parliament.

In the case of **S.R. Bombay vs. Union of India (1994) 3 SCC 1**, the Constitution Bench of 9 judges of the Supreme Court gave a historic decision and laid down the following guiding principles regarding the imposition of President's rule in the states under **Article 356**-

(1) The power of the President to impose prorogation in a State and to dissolve the Legislative Assembly under **Article 356** is conditional, not unlimited, and it has to be shown that the circumstances based on which the President could act under **Article 356(1)** existed.

(2) President's rule cannot be imposed without a written report to the Governor.

(3) Secularism is the basic structure of the Indian Constitution. And if any government acts against its orders. Then **Article 356** can be used there.

(4) State governments cannot be removed simultaneously unless they are ruled by the opposition.

(5) If President's Rule is imposed only on political grounds out of mala fides, the Court can revive the assembly.

(6) Imposing President's rule and dissolving the Assembly cannot be done simultaneously. The President can dissolve the Assembly only after the proclamation has been approved by Parliament. Until such approval is given, the President can be investigated by the court.

Question No. 10- Describe the amendment process of the Indian Constitution. Can the Constitution be amended to such an extent that the basic structure is destroyed? Or what are the limits of amendment by the Parliament? Can the Fundamental Rights be amended? Explain with the help of decided cases.

Answer- The constitution is the supreme law of the country. Therefore, the process of amendment is difficult to maintain its supremacy. The Indian constitution has a unique blend of flexibility and rigidity. There are only a few provisions of the constitution in which a special process has been followed to make changes. But in most cases, changes can be made only by passing an ordinary law by the Parliament. The special process of amendment is also simpler than other federal constitutions of the world. For this reason, the constitution has been amended 79 times till January 1994. From the viewpoint of amendment, the provisions of the constitution can be divided into the following categories-

(1) By simple legislative process- According to this policy, provision has been made for constitutional amendment according to the ordinary process of law-making. These amendments will be considered as amendments in the Constitution. These changes are as follows-

(a) Under **Articles 2, 3 and 4** of the Constitution of India, the Parliament has the power to admit new States into the Union, to create new States, to increase or decrease the area of any State, to alter the boundaries of any State, to alter the name of any State and to make supplementary, incidental and consequential provisions relating thereto.

(b) Schedule II of the Constitution provides for the salaries and allowances of the President, Governor, Supreme Court Judges, High Court Judges, Auditor-General, Speaker of the Lok Sabha, Deputy Speaker, Chairman and Deputy Speaker of the Rajya Sabha and some other officials. Under **Articles 75, 98, 125, 248, 164 and 221**, Parliament has the power to amend these by law.

(c) **Article 124 (1)** of the Indian Constitution provides that the Supreme Court shall consist of a Chief Justice and, until Parliament by law otherwise provides, not more than seven Judges. Parliament by **Act No. 48 of 1977**

has now increased this number from **7 to 17**. The number of judges has now been increased to **25** by the Supreme Court (Number of Judges) Amendment Act, 1986.

(2) By special majority - Article 368 (2) provides that the process for amendment of the Constitution may be initiated by introducing a Bill in either House of the House. When the Bill is passed by a majority of the total membership of each House and by a two-thirds majority of the members present and voting, it shall be presented to the President and shall come into force after the President has given his assent to it.

(3) By special majority and Ratified by the States - The proviso **to clause (2)** of **article 368** provides that ratification of the states is also necessary for amendment of the following provisions-

(1) The election of the President,
(2) The extent of the executive power of the Union and the States,
(3) The Union and State Judiciary,
(4) Division of legislative power between the Union and the States,
(5) The Schedule relating to the representation of the States in Parliament,
(6) In any of the lists in the Seventh Schedule, and
(7) Under the provisions of **article 368**.

In this category, those provisions are kept which are related to the federal structure. A difficult procedure has been adopted for these provisions. When such a constitutional bill is passed by a two-third majority in each house, then it is sent to the legislatures for ratification. If the legislatures of at least half of all the states pass that amendment bill by resolution, then that bill is presented before the President for approval. The constitution is amended as soon as the President's approval is received.

No amendment of the basic structure of the constitution- The provisions of the constitution cannot be amended which are related to its basic structure. In our constitution, parliamentary system of government is the system of government. It cannot be amended in such a way that a presidential system of government is made in the constitution. In the case of Minerva Mills vs Union Bank of India AIR 1980 SC 1789, the court held that the Parliament can amend the constitution without disturbing the basic structure doctrine. The Parliament can amend the fundamental rights as long as they are in accordance with the basic structure doctrine. The court struck down the part that restricted judicial review.

This decision did not go well with the law, then the **42nd Amendment Act, 1976** was passed which mentioned that all or any of the Directive Principles of State Policy will take precedence over the Fundamental Rights of **Articles 14 and 19**. Further **clauses (4) and (5)** added stated that constitutional amendment under Article 368 is outside the scope of judicial review. This amendment was passed to nullify the effect of the decision passed in the **Kesavananda Bharati** case so that any law could be implemented without the fear of judicial scrutiny.

Question 11. Briefly discuss the powers, privileges and immunities of the Parliament and its members. Or What are parliamentary privileges? What privileges are given to the legislative houses in India?

Answer-The privileges of the Parliament and the State Legislatures are the same. **Article 105** of the Indian Constitution provides privileges to the Parliament and **Article 194** to the State Legislature. Parliamentary privileges are those special rights which are enjoyed by each House of the Parliament collectively and the members of the House individually, without which they cannot perform their functions and these are much more than the rights enjoyed by ordinary citizens or bodies.

These are the rights which are essential for the discharge of the numerous duties of the **MPs. Article 105** provides special privileges to the Parliament and to the legislators. **Clauses (1) and (2)** of this article mention two privileges respectively-

(1) Freedom of Speech,

(2) Right to publication of proceedings.

Clause (3) of the Article provides that until such time as Parliament by law defines other privileges, the privileges of the House shall be those which they had immediately before the commencement of **section 15** of the Constitution (**44th Amendment**) Act, 1978, of the House and of its members and Committees.

(1) Freedom of speech. Freedom of speech as provided in **Article 105 (1)** of the Constitution is different from the freedom of speech as provided under the Fundamental Rights. Freedom of speech as provided under **Article 19 (1) (a)** of the Constitution does not give an individual absolute freedom. This freedom is limited but under parliamentary rights, a person has complete freedom that as a member of Parliament he can say whatever he deems fit in Parliament and he cannot be prosecuted in any other court

for whatever he has said in Parliament. But if he has said something objectionable from the point of view of common law and he has published his statement outside Parliament, he will be responsible for that objectionable statement and he will not be entitled to get exemption on the basis of parliamentary immunities. It is immaterial whether the objectionable thing said in Parliament is published outside Parliament verbally or in writing or in print.

Article 105 (1) of the Constitution clearly states that "Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament." There are two such restrictions on this right. According to the rules of the Lok Sabha, obscene language and uncivil conduct are prohibited in Parliament. **Article 121** of the Constitution states that no discussion shall be held regarding the conduct of a judge of the Supreme Court in the discharge of his duties.

2. Right to publish proceedings of the House- Article 105 (2) provides that no proceedings shall be instituted against any person in any court in respect of the publication of any reports, votes or proceedings by or under the authority of either House of Parliament.

The above protection is available only to those publications which are published with the authority of either House of Parliament. In the case of **Surendra vs Navakrishna A.I.R. 1958 Orissa 163**, the editor of a newspaper published a statement made in the House without the authority of the House, which amounted to contempt of the High Court. The court held him guilty of contempt of court. In 1956, the (Parliamentary Proceedings of Publication) Act was passed, according to which it was provided that if a person publishes a substantially true report of any proceedings of the House, then any action can be taken against him only if it is proved that he has published the report with malicious intent or has done so despite the order of the Speaker of the House that this part of the proceedings is being removed from the proceedings of the House and its publication should not be done without his permission.

The right to publish the proceedings of the House has now been given constitutional protection by the Constitution (**44th Amendment**) Act, 1978 by inserting a new **Article 361**. This protection is the same as under the Parliamentary Proceedings (Protection of Publication) Act, 1956. But this immunity will not be available in respect of publication of secret sessions of the House.

3. Other Privileges:-All the following privileges which were enjoyed by the Indian Legislatures and their members before the enactment of the **44th Amendment** of the Constitution, 1978 shall continue to be available to them:

A. Right against arrest- Members of Parliament have freedom against arrest in civil proceedings during the session of Parliament and forty days before and after the session.

b. Right to exclude outsiders from the House - On certain important occasions, in order to maintain secrecy, entry of outsiders into the House can be prohibited.

C. Power to ban publication of proceedings- Parliament has the power to ban discussions, reports or proceedings. After **M.S.M. Sharma vs. Sri Krishna Sinha A.I.R. 1959 SC 395**, the Supreme Court said that Parliament and State Legislatures have the power to ban the publication of such proceedings which are true and in good faith.

d. Right to regulate internal proceedings- The Houses have the exclusive right to regulate their internal proceedings themselves and to decide the disputes arising in the House themselves. No proceedings of the House can be challenged in any court.

E. Right to punish members or outsiders for contempt of themselves- The Houses have the right to decide their contempt and punish the person committing contempt. The courts cannot interfere with this right, but if the court accepts the bail of the person punished by the Houses and orders his release, then it cannot be considered as interference in the privileges of the Parliament or the Legislature.

For contempt of the House, the House can suspend a member, expel him, warn him or sentence him to imprisonment. The punishment of imprisonment lasts only till the session of the House. The punishment also ends when the session of the House ends or is adjourned. The effect of the punishment of expulsion is that the member is no longer a member of the House and his place in the House automatically becomes vacant.

Parliamentary Privileges and Fundamental Rights- Article (19) (1) (a) of the Constitution provides freedom of 'speech and expression' to every citizen of India. Under **clause (2)** of this article, reasonable restrictions can be imposed on this freedom. The right granted by **Article 105** is a

completely free right but the freedom granted by **Article 19 (1) (a)** is subject to reasonable restrictions.

In the case of **M.S.M. Sharma vs. Sri Krishna Sinha in 1959**, the Supreme Court held that parliamentary privilege is not subject to **Article 19** but it goes beyond it.

But in **Keshav Singh's case, AIR 1956 SC 845**, the Supreme Court held that parliamentary privilege is subject to the right to personal liberty under **Article 21** and any person can challenge it in court on the ground that he has been deprived of his personal liberty without due process of law. If Parliament or the Legislature makes any act related to its privileges under **Article 105**, then it can be challenged in court on the ground of invasion of fundamental rights.

Question 12. Critically examine the original jurisdiction of the Supreme Court.

Answer: The Supreme Court has original jurisdiction under **Article 131 and Article 32** of the Indian Constitution. The original jurisdiction of the Supreme Court has been provided in **Article 131**. Therefore, from the point of view of the provisions of the Constitution, the original jurisdiction of the High Court has been mainly divided into two parts.

(1) Jurisdiction relating to Union matters, and

(2) Jurisdiction relating to enforcement of fundamental rights

(1) Jurisdiction relating to Union matters- Article 131 gives the Supreme Court original jurisdiction in Union matters. Under Article 131, the Supreme Court is empowered to decide a case between the following parties:

The dispute and original jurisdiction are-

(i) Between the Union and one or more States

(ii) The Union and a State on one side and a State on the other side

(iii) Between two or more States.

Disputes of the above nature will be initially presented before the Supreme Court. Under original jurisdiction, the Supreme Court will accept only those disputes which involve a question of fact or law on which the existence of a legal right depends. Legal right means that right which is recognized by law and enforceable by the courts.

The guiding case on this subject is **Union of India vs State of Rajasthan AIR 1984 SC**, in which the Supreme Court held that the claim of damages by the State against the Centre under Section 80 of the Railway Act is not a

dispute between the State and the Centre under **Article 311 (1)** of the Indian Constitution. Hence, it is outside the jurisdiction of the Supreme Court. In the case of **Bihar State vs Union of India AIR 1970 SC**, the Supreme Court held that such cases cannot come within the purview of original jurisdiction, in which the Government of India and the State Government or the States are not in dispute there may be any other party except.

In the case of **State of West Bengal vs Union of India AIR 1963 SC**, the Supreme Court said that the matter coming under original jurisdiction should be related to federalism. Chief Justice **Shri M.H. Vaig**, while expressing his opinion, had said that **Article 131** is a part of 'federalism'.

Exception - The Supreme Court cannot exercise its original jurisdiction under **Article 131** in the following disputes-

(1) In any dispute arising out of any treaty, agreement, covenant, commitment, charter or other instrument made and in force before the commencement of the Constitution.

(2) Any dispute arising out of a treaty or agreement etc. which provides that such dispute arising out of such treaties or agreements etc. cannot be settled in the original jurisdiction of the Supreme Court. But such suits can be transmitted to the Supreme Court by the President under **Article 143**.

(3) The provisions of **article 131** of the Indian Constitution are subject to the other provisions of the Constitution and, therefore, the jurisdiction conferred by this article is subject to the following other limitations-

(a) When Parliament by law provides that no dispute arising out of or in connection with the use, distribution or control of the water of any river or an inter-State valley or river shall be heard by the Supreme Court.

(b) Disputes referred to the Finance Commission under Article 280 of the Indian Constitution, and

(c) Disputes relating to adjustment of expenditure incurred between the Centre and the States under **Article 290**.

(2) Original Jurisdiction Relating to Enforcement of Fundamental Rights - Article 32 of the Indian Constitution gives original jurisdiction to the Supreme Court to grant remedies to citizens against the violation of fundamental rights. Under this, every citizen has been given the right to approach the Supreme Court by appropriate proceedings for the enforcement of his fundamental rights. For this purpose, the Supreme Court has the power to issue such directions, orders or writs, including

habeas corpus, mandamus, prohibition, quo warranto and certiorari, as may be appropriate.

In case of violation of fundamental rights under **Article 32**, remedy can be sought directly from the Supreme Court.

Question 13. In the light of the latest judicial decisions, critically examine the process of appointment of Supreme Court judges in India. Or Describe the process of appointment of a Supreme Court judge. Also describe the process of vacating the post of a Supreme Court judge.

Answer- Process of appointment of a judge of the Supreme Court According to **Article 124 (2)** of the Indian Constitution, the President appoints the judges of the Supreme Court. But the President does not have any discretionary power in this matter. **Article 124 (2)** says that the President will appoint judges only after consulting such judges of the Supreme Court and High Courts as he considers necessary for this purpose. The President can always consult the Chief Justices also while appointing other judges. The President's power to appoint judges is a formal power, because he works in that matter with the advice of the Cabinet. The Constitution has not given absolute power to the executive in relation to the appointment of judges. The executive has no discretionary power to appoint judges In the matter of appointment it is necessary to consult persons who are fully qualified to give advice on the subject.

Regarding the Chief Justice, under **Article 124**, the President has the power to appoint any person having the qualification prescribed by the Constitution as the Chief Justice. But in the case of appointment of other judges, the President is bound to consult the Chief Justice. There is no mention in **Article 124** that only the senior-most judge of the Supreme Court can be appointed as the Chief Justice. Despite there being no such compulsion in the Constitution, there was a tradition from the beginning to appoint only the senior-most judge of the Supreme Court as the Chief Justice.

The Law Commission had suggested in 1956 that the appointment of the Chief Justice should not be made only on the basis of seniority but on the basis of the qualities and suitability of the judges. Even after this recommendation of the Law Commission, the government follows the tradition of appointing the Chief Justice on the basis of seniority only. This

clearly shows that the government did not consider the recommendation of the Law Commission appropriate or ignored it.

Primacy of Executive (Transfer of Judges Case) In the case **of S.P. Gupta v. Union of India AIR 1982 SC 149**, the validity of the circular issued by the Law Minister of India to the Chief Ministers of the States asking them to give their consent regarding the transfer and proposed appointment of judges from one High Court to another was challenged. The order of transfer of the Chief Justice of Patna High Court to Madras High Court and the order of not extending the tenure of a puisne judge of Delhi High Court were challenged on the ground that they were made without 'consultation' of the Chief Justice of India. In this case, the President preferred the opinion of the Chief Justice of Delhi High Court. A full bench of 7 judges of the Supreme Court held by a majority of 4/3 that the word 'consultation' used in **Article 124** means 'full and effective consultation'. But the majority has made it clear that the President is not bound to accept the said 'advice'.

The primacy of the court in the appointment of judges-SC Advocates on Record Association Decision In its landmark judgment in the case of SC Advocates on **Record Association v. Union of India (1993) SC 44**, the Supreme Court reversed the judgment of S.P. Gupta v. Union of India which had held that the government has absolute power in the matter of appointment and transfer of judges and held that the decision of the Chief Justice of the Supreme Court in the said matter shall be final. The Court has laid down detailed guidelines in the matter of appointment of judges of the Supreme Court and transfer of Chief Justice and other Judges of the High Courts. A nine-judge bench of the Court by a majority of 7-2 held that in the matter of appointment of judges, the opinion of the Chief Justice of the Supreme Court expressed in consultation with his colleagues shall be given supreme weight and the executive shall be permitted to stop only ineligible appointments which it may do by giving reasons to the Chief Justice. The role of the executive will be limited to this. While giving the decision of the majority, it was said that the appointment of a judge of the Supreme Court and High Court cannot be made unless it is in accordance with the opinion of the Chief Justice of the Supreme Court. Only in exceptional cases and when there are sufficient reasons which will be disclosed, a person whose reasons have been recommended cannot be appointed on the basis of disqualification. But if the judges do not accept the reasons disclosed and

reiterate their recommendation, then as per healthy tradition, the same person will be appointed. The majority decided that only the senior-most judge of the Supreme Court will be appointed to the post of Chief Justice of India. The word 'consultation' has been included to make it clear that in the appointment of judges, the decision of the Chief Justice of India will be given priority and not the government. The majority also said that in the case of appointments and transfers of judges, challenges can be made in the court only on limited grounds. The decision given by the majority is laudable and it will help in restoring the lost independence and impartiality of the judiciary.

Current Status-In the case of Presidential Reference, a nine-member Constitution Bench of the Supreme Court has unanimously held in the case of **Shri Presidential Reference AIR 1999 SC 01** that the executive is not bound to accept the recommendations made by the Chief Justice without following the consultation process laid down in the 1993 decision in the matter of appointment and transfer of judges in the Supreme Court and High Courts. Under **Article 143**, the President had asked the Supreme Court to give its advice on nine questions. The President had asked whether the Chief Justice is bound to accept the recommendation sent without consulting other judges. In the case of S.C. Advocates on Record, it was decided that the recommendation of the Chief Justice will be given primacy in the appointment of judges of the Supreme Court but other judges will not be allowed to do so After this decision, in many cases the Chief Justice started sending recommendations without consulting other judges. Such allegations continued to be made.

This question became more serious when the previous **Chief Justice Mr. M.M. Punchhi** sent his recommendation for appointment of judges to the BJP government. It was found that he had sent his recommendation to the President arbitrarily and without consulting other judges. The government stopped it and sought the advice of the Supreme Court on it. Justice **Mr. S.P. Bharucha**, delivering the judgment of the 9-member Constitution Bench, further elaborated the consultation process and held that in the case of Supreme Court judges, the Chief Justice should send his recommendation to the President only after consulting a colleggium of four senior-most judges of the Supreme Court. The 1993 judgment had the obligation to consult only two senior-most judges.

The group of judges should include the judge who would be the future Chief Justice of India. The word 'consultation' used in **Article 124 (2)** means consultation with plurality of judges. The Court clarified that the advice taken from other judges regarding appointments and transfers of judges should be in writing and the Chief Justice of India should send the advice of other judges along with his recommendation to the government. The Court held that the personal advice of the Chief Justice is not 'consultation' under **Article 124 (1)**. The Court also clarified that if the government sends necessary material and information to the Chief Justice of India regarding not appointing a person recommended as a judge, then the Chief Justice cannot take any action on it without consulting other judges of the Supreme Court.

In the present context, the above mentioned creation of the Supreme Court is appropriate. Although the supremacy of the judiciary will remain in the matter of appointment and transfer of judges as per the 1993 decision, but now it will be more democratic, transparent and impartial. The Chief Justice will not be able to act arbitrarily. He will have to send the recommendation regarding appointment only after consulting the Collegium of four senior most Judges of the Supreme Court. The above mentioned process is more democratic and the possibility of its misuse will be acceptable.

Procedure for removal of a judge of the Supreme Court - The procedure for removal of a judge of the Supreme Court from his post is mentioned under **Article 124 (4)** of the Indian Constitution. This procedure is called 'impeachment'.

Judges of the Supreme Court can be removed from office by order of the President only on two grounds—proven misbehaviour or incapacity. A motion to remove a judge of the Supreme Court must be supported by a majority of the total number of members of each House (Lok Sabha and Rajya Sabha) and by a majority of not less than two-thirds of the members present and voting in each House. The motion will then be placed before the President and on his order, the judge will be removed from office. Such a motion must be proposed and adopted in the same session of Parliament. The procedure for the introduction of such a motion in Parliament and for the investigation and proof of the misbehaviour or incapacity of the judge will be regulated by law by Parliament.

In an important decision in **K. Veeraswamy v. Union of India I (1991) 3 SCC 655**, the Supreme Court held that judges of the Supreme Court and the High Courts are liable to be prosecuted for offences under the **Prevention of Corruption Act, 1947**. The words proven misconduct used **in Article 124(4)** have a very wide meaning and include criminal misconduct as specified in **section 5(1)** of the Prevention of Corruption Act, 1947.

The Judges (Inquiry) Act, 1968 has been passed by the Parliament under which any inquiry into the 'misbehaviour' or incapacity of a judge will be conducted by a committee to be constituted by the Speaker of the Lok Sabha or the Chairman of the Rajya Sabha, as the case may be.

Forcing a Judge to Resign is an Attack on Independence of Judiciary- In the case of **C. Ravindran Aiyar v. Justice M.M. Bhattacharya (1995) 5 SCC 457** the Supreme Court has held that only the Chief Justice of India Girish can take action against a Judge of High Courts or its Chief Justice on any charge short of impeachment. In this case the Supreme Court held that the act of forcing the Chief Justice of Bombay High Court to resign by passing a resolution by the Advocates Association on the ground of alleged misconduct is unconstitutional and it amounts to contempt of court and it attacks the independence of judiciary which is an essential element of rule of law. Provisions for this have already been made in the Constitution in **Articles 124 (4) and (5)**. Outside this any person or institution like C.B.I., Ministry of Finance, R.B.I., etc. can take action against the Chief Justice of Bombay High Court. also does not have the power to inquire into the conduct of any court Therefore, it may be concluded that the removal of a Judge of the Supreme Court shall be done only in accordance with the procedure provided in **Article 124 (4) and (5)** of the Constitution of India and not by any other procedure.

Question 14. "The President can seek advice from the Supreme Court of India." In the light of this statement, explain the advisory service power of the Supreme Court of India.

Answer-Advisory Jurisdiction (Article 143) - Article 143 provides that when at any time it appears to the President that (a) any question of law or fact has arisen or is likely to arise; (b) is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court, he may refer the question to its consideration. The Court shall, after such hearing as it may think fit, give its opinion thereon to the President. Under **clause (2)**, if the President refers any such matter as is mentioned in the

proviso to **Article 131** to the Supreme Court for its opinion, the Court shall be bound to give its opinion thereon.
(2) The President decides which questions are to be referred to the Supreme Court. This decision of the President cannot be challenged. The opinion given by the Supreme Court under **Article 143**, though worthy of respect, is not binding on the courts.

That opinion does not fall under the word 'law' used in **Article 141**, so the court is not bound to follow it. But in practice its effect is binding.

But in the context of the Special Court Bill 1978, the Supreme Court has changed its above opinion and has held that under **Article 143**, the Supreme Court is bound to give its opinion to the President. The court has also said that the opinion given by the Supreme Court is binding on all courts. But the court has given the opinion that only specific questions should be referred to the court for its opinion. If such questions are vague or of general nature, then the Supreme Court will not be bound to give its opinion.

In the present case, the opinion of the court was sought on the important question whether Parliament has the power to establish special courts for the trial of crimes committed during the emergency? The Supreme Court held by a majority of 6:1 that Parliament has the power to establish special courts for the trial of such crimes, provided that such a bill makes adequate provision for procedural safeguards. The court held that if the following three things are included in the bill, then the bill will be valid (1) 'Serving' judges of the High Courts will be appointed to the special courts, not retired judges; (2) Such appointment will be made only with the concurrence of the Chief Justice and not merely by consultation; (3) The accused should have the right to apply to the Supreme Court for transfer of his case from one court to another. Accepting the decision of the court, all the amendments were incorporated in the government's bill.

The facts of the case of **Cauvery Water Disputes Tribunal AIR 1992 SCC 522** were as follows. There was a dispute between the States of Karnataka and Tamil Nadu regarding sharing of the waters of the Cauvery River. The Central Government appointed a Tribunal to settle the dispute. In June 1991, the Tribunal ordered the State of Karnataka to release a certain amount of water from the river to Tamil Nadu. The State of Karnataka opposed this order and issued an ordinance empowering the Government not to abide by the decision of the Tribunal. The State of Tamil

Nadu strongly opposed this action. Seeing the dispute escalating, the President referred the matter to the Supreme Court for advice under **Article 143** of the Constitution. The Supreme Court held that the ordinance proposed by the State of Karnataka was invalid as it was appointed under a Central Act (Inter-State Water Disputes Act, 1956) made under **Article 262**. The said Ordinance is against the rule of law and it assumes the role of a judge in its own case which is now unconstitutional as it violates the rule of law and the principles of natural justice.

In **Ismail Farooqui v. Union of India**, the Constitution Bench held that the Supreme Court cannot admit for consideration a question which is 'irrelevant and unnecessary' or which does not serve the purpose of the Constitution or is contrary to secularism.

Special Reference, 2002 case AIR 2003 S.C. 87 Case of holding election due to premature dissolution of Gujarat Legislative Assembly- In this case, the important question came up for consideration before the court whether after the dissolution of the Legislative Assembly, as per the requirement of **Article 174** which states that there should not be a gap of six months between the last meeting of one session and the first meeting of the next session, in such a situation the Election Commission is bound to hold election of the Legislative Assembly under **Article 324**. On 2 February 2002, the then The Chief Minister had advised the Governor to dissolve the Assembly before time and hold elections in the state. It was argued before the court that the court is bound to give advice in this matter under **Article 143**. A bench of five judges of the court ruled that when a question has arisen or is likely to arise on such a matter which is of public importance and there is no decision of the Supreme Court on it, then under **Article 143** the Supreme Court is duty bound to give advice to the President for resolving his doubts.

In the case of the dissolved assembly of the state of Gujarat, the Supreme Court held that **Article 174** applies to a 'living assembly' and not to a 'dissolved assembly'. Hence, in the case of a dissolved assembly, the Election Commission is not bound to hold immediate elections. No time limit is mentioned under **Article 174**. It was also argued that if no time limit is mentioned in this case, it is possible that the Election Commission may not hold elections at all and thus the democratic system itself may collapse. The court said that this is not so and after the dissolution of the assembly; it should immediately start the process of election and hold

elections within 6 months. This decision resolved the doubts regarding the provisions of the Constitution and ended a dispute between the government and the Election Commission.

Question 15. What do you understand by 'independent judiciary'? What are the factors that ensure the independence of judiciary in India? Discuss the constitutional provisions.

Answer- Independence of Judiciary- Only an independent and impartial judiciary can protect the rights of citizens and can provide equal justice to everyone without fear and bias. For this it is very important that the Supreme Court is completely independent in performing its duties and free from all kinds of political pressures. In the cases of transfer of judges, the Supreme Court has said that the independence of the judiciary is the basic structure of the Constitution. In the Indian Constitution, there are provisions for maintaining the independence of the judiciary.

The following provisions have been incorporated for-

(1) Separation of the judiciary from the executive,

(2) Protection of the tenure of judges,

(3) The salaries, allowances, etc. of judges are beyond the vote of the legislature,

(4) Parliament may enlarge, but cannot abridge, the jurisdiction of the Supreme Court.

(5) There is a prohibition on discussion in Parliament of the conduct of a judge in the performance of his duties.

(6) Power to punish for contempt.

(1) Separation of Judiciary from Executive- Article 50 directs the State to Endeavour to separate the judiciary from the executive in the public services. The independence of the judiciary from the control of the executive is essential for independence and impartiality. In many states, the judiciary has been separated from the executive.

(2) Protection of tenure- A judge, once appointed, cannot be easily removed from his post. The Constitution provides for a special procedure for removing him. Firstly, he can be removed only on the grounds given in the Constitution; secondly, a motion moved by the President for this purpose must be passed in each House of Parliament by a majority or by a two-thirds majority of the members present and voting. The motion must be proposed and passed in the same session of Parliament. It is clear from the above procedure that it is not easy to remove judges from their posts.

(3) Salaries, allowances etc. of judges are beyond the legislative power- The salaries of the judges of the Supreme Court are fixed by the Constitution and are charged on the Consolidated Fund of India. It is not voted upon in Parliament. There can be no change in their salaries and allowances during their tenure. There is only one exception to this, that is, in times of financial crisis in the country; necessary cuts can be made in their salaries and allowances.

(4) Parliament can increase, but not abridge, the power and jurisdiction of the Supreme Court.-Parliament can alter the pecuniary limit of appeals to the Supreme Court in civil cases, and thereby enlarge its jurisdiction. It can increase its criminal jurisdiction, it can confer ancillary powers to enable it to exercise its jurisdiction more effectively and it can confer power to issue directions, orders or writs, including prerogative writs, for any purpose other than those mentioned in **Article 32**. It is worth noting that under the above-mentioned articles, Parliament can increase, but cannot abridge, the powers and jurisdiction of the Supreme Court.

(5) Prohibition on discussion in Parliament on the conduct of judges in the discharge of their duties-No discussion can be held in either House of Parliament or in any House of the State Legislature on the conduct of a judge in the discharge of his duties. This is essential for their independence.

(6) Power to punish for contempt of court-Article 129 of the Constitution empowers the Supreme Court and **Article 215** empowers the High Court to punish any person for contempt of court. This power is essential to safeguard the independence and impartiality of the courts. This does not mean that the court or the judges cannot be criticized. Fair and true criticism of the court or the judges is not prohibited.

Question 16. Briefly throw light on the emergency provisions of the Indian Constitution. What are the consequences of the declaration? Can it be challenged in court?

Answer: The Constitution of India is federal but as soon as the President declares emergency, the Constitution starts functioning like a unitary Constitution, the central power becomes powerful and it gets complete control over the financial system.

Part 18 of the Constitution describes the emergency powers of the President. The emergency contemplated in the Constitution is of three types-

(1) Crisis arising from war or internal disturbance.-If the President is satisfied that there exists a grave danger which endangers the security of India or any part of the territory thereof, whether by war or external aggression or armed rebellion, he may, by Proclamation, make a "Declaration" to that effect. Such a Proclamation may be made even if no actual event of war or external aggression or armed rebellion has occurred but there is an imminent danger of such event occurring.

(2) In case of failure of constitutional machinery of the state- Article 356 of the Indian Constitution provides that if the President is satisfied on the report of the Governor of a state or on his own discretion that such a situation has arisen in that state that it is difficult to run the government of the state according to the provisions of the Constitution, then the President declares an emergency for that state. In this situation, the President can vest all the powers of that state in any body or authority of the state or can take all or any power in his hands. The President declares that the powers of the State Legislature will be appointed by the authority of the Parliament. The President will also have the right to make such relevant and irrelevant provisions which he deems necessary or desirable to give effect to the purpose of that declaration. But this declaration cannot suspend the operation of any provision relating to the High Court's either wholly or partially.

It is clear from the phraseology used in **Article 356** that the President can take such action even if he does not receive any report from the Governor of the State. For this, it is sufficient that the President is satisfied that the constitutional machinery has failed in the State. It is possible that the Governor of that State meets the Chief Minister and does not send information to the President about the failure of the constitutional machinery. In this situation, the Centre will have to perform its duty and act on its own. It is clear from Article 355 that the President's 'satisfaction' is the satisfaction of the Cabinet. The phraseology used in Article 355 "the governance of the State cannot be carried on in accordance with the provisions of the Constitution" means that only the President will decide this and the President's decision is the decision of the Union Cabinet.

(3) Financial Emergency- Article 360 of the Constitution provides that if the President is satisfied that a situation has arisen which endangers the financial stability of India or any part thereof, he may proclaim an emergency. During the period when such proclamation is in operation the executive power of the Union shall extend to the State to direct such principles of financial propriety as may be specified in the directions and to give such other directions as the President may deem fit to give. Effects of declaration of emergency on central and state relations the following are the consequences of an emergency proclamation:

(1) Extent of executive power of the Union-According to **Article 353**, when a proclamation of emergency is in operation, the executive power of the Union will extend to giving directions to a State regarding the manner in which the State should exercise its executive power. Such directions can be given to any State other than the State in which the emergency proclamation is in force. The result of this is that the State Government is not suspended but still remains under the complete control of the Union Government.

(2) Extent of legislative power of Parliament-Article 250 provides that while a Proclamation of Emergency is in operation, Parliament can legislate on any subject in the State List. Extent of legislative power of the State Legislature Legislative powers are not suspended, but if it is contrary to the law made by the State Legislature, then despite being a subject of the State List, the law of the Parliament will be valid and not the law of the State Legislature.

(3) Effect on distribution of revenues between the Union and the States.-According to **clause (1)** of **article 354**, while a Proclamation of Emergency is in operation, the President may, by order, direct that all or any of the provisions of **articles 268 to 279** shall continue in operation during such period as may be specified in the said order and which shall in no case extend beyond the financial year in which the operation of the Proclamation ceases, with such exceptions or modifications as he may think fit.

In case of a proclamation of financial emergency, there may also be provision for reserving Money Bills or other Bills to which the provisions of **Article 207** apply, after they have been passed by the State Legislatures, for the consideration of the President.

Effect of Emergency Proclamation on Fundamental Rights- As long as the emergency proclamation under **Article 352** remains in force, nothing in **Article 19** shall restrict the power of the State to make laws or take executive action. Thus, during the operation of the emergency proclamation, the provisions of **Article 19** are automatically suspended and no separate order is required for this. The laws made by the State during the emergency cannot be challenged in the court on the ground that they are in violation of the fundamental rights. But the rights granted in **Article 19** are suspended, not abolished. When the emergency situation ends, the fundamental rights are revived.

In the case of **Bennett Coleman vs Union of India AIR 1973 SC 106**, the Supreme Court determined that the suspension of **Article 19** even during the operation of the emergency proclamation does not mean that any action of the executive cannot be challenged on the basis of violation of **Article 19**. The Supreme Court said that the implementation of the emergency proclamation can be challenged in the following three circumstances-

1. When the executive action is not authorised by any Act.
2. If the executive action is taken under an Act passed before the Proclamation of Emergency and at that time itself violates **Article 19**.
3. When the executive action is to continue or further any previous action which was initiated in violation of **Article 19**.

The Constitution (**44th Amendment**) Act, 1978 made an important change in this regard that **Article 19** will not automatically be suspended even in the case of internal armed rebellion.

While an emergency is in operation, the President may declare that the right to enforce any of the rights conferred by **Part III** of the Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of such rights as may be specified in the order, shall be suspended for such period as may be specified in the order. Such an order may apply to the whole of India or to any part of it.

After the Constitution (**44th Amendment**) Act, 1978, the President cannot suspend the enforcement of the Fundamental Rights under **Articles 20 and 21** during an emergency. This constitutional amendment also made it clear that only those laws which are related to the emergency proclamation will be protected under **Article 358** when challenged in the

court. Before these amendments, the validity of other laws could not be challenged in the courts.

The **44th amendment** of the Constitution has proved to be a boon for the fundamental rights of citizens during the emergency. The tendency of the executive to arbitrarily abolish the rights of citizens by taking advantage of the emergency will be reduced.

Question 17. "The doctrine of basic structure is a judicial invention. It is not mentioned in the Constitution." Criticize. Describe the doctrine of basic structure with the help of decided cases.

Answer- Doctrine of Basic Structure - In the case of **Kesavananda Bharati**, the majority ruled that the 'basic structure' of the Constitution cannot be destroyed by the exercise of the power of the Constitution. The question is what are the essential elements of the basic structure? The majority mentioned some basic elements but also clarified that they are only illustrative and it will be determined on the facts of each case what is the basic structure of the Constitution. According to Chief Justice Mr. Sikri, the following are examples of the basic structure of the Constitution, which are easily visible in the Preamble and the entire scheme of the Constitution-

(1) Supremacy of the Constitution, (2) Republican and democratic form of government, (3) Secular nature of the Constitution, (4) Separation of powers between legislature, executive and judiciary, (5) Federal nature of the Constitution.

According to **Justice Shri Shelat and Grover, examples of the following basic structure are -** (1) Supremacy of the Constitution, (2) Republican and democratic form of government and sovereignty of the country, (3) Secular and federal nature of the Constitution, (4) Separation of powers among the legislature, executive and judiciary, (5) Dignity of the individual as enshrined in Part 3, ensured by various freedoms and fundamental rights and welfare enshrined in Part (4) Direction on establishment of the State, (6) Unity and integrity of the country. Justices Hegde and Mukherjee have described (1) India's sovereignty, (2) democratic system of the country, (3) unity of the country, (4) individual liberties, (5) basic framework for establishing a welfare state.

The majority supported Justice Shri Khanna on the above question and set aside its decision. He said that Anu. The power of amendment under **Article 368** does not include the power to completely abrogate the Constitution and substitute a completely new Constitution in its place.

Amendment of the Constitution does not mean repealing the Constitution but merely making necessary changes in it. Undoubtedly, this means maintaining the basic structure and outline of the old Constitution. Retaining some provisions of the old Constitution, when the basic structure and outline of the Constitution has been destroyed, will not be considered as maintaining the old Constitution. 'Amendment of the Constitution', no matter what may be the scope or extent of the phrase, within which the basic structure of the Constitution and its outline can neither be destroyed nor can they be abrogated. The secular nature of the state, according to which the state will not discriminate against any citizen merely on the basis of religion, cannot be abolished. The provision related to amendment of the Constitution can neither be used as an excuse to destroy the structure of the Constitution nor Article. **Section 368** can be interpreted in such a way that it becomes a noose around the neck of the Constitution or a provision can be made in it for such a sanction which can be called lawful death (Hara Kiri). Such destruction or destruction is prohibited under Article. The amendment contemplated by **368** cannot be made.

The principle of 'Basic Structure' propounded in the case of **Kesavananda Bharti** has been implemented in many decisions.

In the case of **Indira Gandhi vs. Rajnarayan AIR 1975 SC 2299**, the Supreme Court first declared a constitutional amendment invalid on the basis of the principle of 'Basic Structure'. The Allahabad High Court declared the election of the Appellant void on the ground of corrupt practices and disqualified him from being an election candidate for 6 years. The Parliament, by the **39th Constitutional Amendment, 1975**, by adding a new **section 329 (a)** to the Constitution, abolished the decision of the High Court and declared its elections valid. **Clause (4)** of the amendment provided that the election of the appellant was valid, is valid and will remain valid. Although the Supreme Court declared the election of the Appellant valid, it declared **Clause (4)** of the **39th Amendment Act** invalid on the ground that it destroys the basic structure of the Constitution. Justice Shri Khanna said that 'democracy' is the basic structure of the Constitution and for the success of democracy, it is essential for elections to be free and fair. Chief Justice Shri Chandrachud said that Anu. The 'rule of law' contained in **Article 14** is the basic structure of the Constitution and **clause (4)** of the amendment destroys it and is therefore illegal. Thus, in

the present case the following things have been considered as essential elements of the 'Basic Structure' of the Constitution -

1. Rule of law
2. Power of judicial review,
3. Democracy which is based on free and fair elections.

In the case of transfer of judges, it has been held that under Art. Highest under 32 the jurisdiction of the court is the basic structure of the Constitution. In the case of **Minerva Mill AIR 1988 SC 1789**, the Supreme Court has held that the following-

The 'fundamental elements' are-

1. Limited power of Parliament to amend the Constitution,
2. Harmonization of certain rights and directive principles of state policy,
3. Fundamental rights in certain cases,
4. Power of judicial review in certain cases.

Independence of the judiciary is part of the basic structure.

'Basic Framework' - is actually a set of foundational principles extracted from the provisions of the Constitution itself. This is not an imaginary theory derived by the judiciary on its own behalf.

42nd Constitutional Amendment and Article 368 – By this Amendment Act. Two new **clauses (4) and (5)** were added to **Article 368**. **Clause (4)** provided that amendments to the Constitution (including Part 3) made under **Article 368**, whether made before or after the **42nd Amendment**, shall not be challenged in any court on the ground that they were not made in accordance with the procedure prescribed by this article. In short, Clause (4) made it clear that the validity of any constitutional amendment under **Article 368** could not be challenged in any court on any ground whatsoever (whether it is the basic structure of the Constitution or procedure). **Clause (5)** declared, for the removal of doubts, that there shall be no limitation on the constitutional power of Parliament to amend, add, vary or repeal the provisions of the Constitution under this article.

The 42nd Constitutional Amendment was passed to remove the difficulty arising out of the decision given by the Supreme Court in the case of **Kesavananda Bharati** in which it was held that the power of amendment of the Constitution by the Parliament cannot be used to make changes in the 'basic structure of the Constitution'. According to Shri Swarn Singh, Chairman of the Constitutional Amendment Committee, this amendment made it clear that the amending power of the Parliament is

supreme and there is no limitation or restriction of any kind (express or implied) on it. Shri Swarn Singh claimed that the Parliament is supreme, not the judiciary because it represents the will of the people. The doctrine of 'basic structure' propounded by the Court is vague and creates difficulties.

Clause (4) clearly prohibits judicial review of constitutional amendments. But unless the **Kesavananda Bharati** decision is reversed by the Supreme Court, the court can consider the validity of the amendments on the basis of whether it causes any harm to the basic structure of the Constitution. Although according **to clause (1)**, it is necessary to follow the procedure, but according to the new **clause (4)**, it is not necessary. What will happen in case of conflict between these clauses? Can it be challenged in court if the procedure is not followed? In my opinion, the answer is in the affirmative.

In the decision of **Minerva Mills v. Union of India AIR 1980 SC 1789**, a five-judge bench of the Supreme Court (Chief Justice Shri Chandrachud, Justices Shri Gupta, Shri Untwalia, Shri Kailasam and Shri Bhagwati) unanimously held that **clauses (4) and (5)** inserted in **Article 368** by the **42nd Amendment Act**, by which the power to amend was made unlimited, are unconstitutional as they confer unlimited power to amend the Parliament and thus destroy the 'basic structure' of the Constitution. The Court has made it clear that the Constitution is supreme in India and not the Parliament. Parliament cannot exceed its limited power to amend the Constitution. The 'limited power' of constitutional amendment and 'judicial review' are essential elements of the 'basic structure' of the Constitution.

In the case of **Waman Rao v. Union of India AIR 1981 SC 271**, the Supreme Court has held that all constitutional amendments up to April 24, 1993 (the date on which the Court decided the **Kesavananda Bharati case**), including those which amended the Ninth Schedule from time to time, are valid and constitutional. But the validity of all constitutional amendments made in the Ninth Schedule after this date can be challenged on the ground that they are ultra vires the constitutional power of Parliament and destroy the basic structure of the Constitution.

“Judicial Review” is the basic structure of the Constitution – it cannot be excluded even by Constitutional Amendment.

In the case of **M.P. Sampath Kumar v. Union of India AIR 1987 SC 386**, the validity of **Article 232A** and certain provisions of the Administrative Tribunals Act, 1985 made thereunder was challenged on the ground that they destroyed the power of judicial review which is the basic structure of the Constitution by abolishing the jurisdiction of the High Court's under **Article 226** over administrative agencies. The Supreme Court held **Article 322** and the Administrative Tribunals Act to be valid as the suggestions made by it were incorporated in the Act and the deficiencies therein were removed. The Supreme Court held that though the Act abolishes the jurisdiction of the High Courts under **Articles 226 and 227** in service matters, it does not abolish judicial review in the said matters under **Article 32 and Article 136** and hence the Act is valid. The 42nd Constitutional Amendment does not destroy the basic structure of the Constitution because it has taken away the power of review from the High Courts and vested it in an alternative institution which is no less effective than the High Courts.

In **M. Chandra Kumar v. Union of India AIR 1988 SC 1125**, a 7-member Constitution Bench of the Supreme Court unanimously held that **clause 2(c)** of **Article 323** and **clause 3(c)** of **Article 223(b)** by which the jurisdiction of the Supreme Court under **Article 32** and the High Court's under **Articles 226 and 227** was taken away from administrative agencies are unconstitutional and illegal as they destroy the power of judicial review which is the 'basic structure' of the Constitution. Following its judgment in **Kesavananda Bharati's** case, the Court held that the power of review over legislative action (law-making power of the legislature) vested in the High Court's under **Article 226** and the Supreme Court under **Article 32** is void It is the basic structure of the Constitution which cannot be abrogated even by a constitutional amendment. The court also declared Section 28 of the Administrative Tribunals Act, 1985 unconstitutional which abrogated the jurisdiction of the Supreme Court and the High Court's over the Administrative Tribunals.

This decision has now put to rest once and for all the controversy as to whether the power of judicial review is a basic structure of the Constitution or not. In short, now any constitutional amendment passed by Parliament in future cannot prevent the courts from examining its validity.

In the case **of M. Nagaraj v. Union of India AIR 2007 SC 71**, three amendments to the Constitution, **77th (by adding clause (4A)** to **Article 16** allowing reservation in promotions for Scheduled Castes), 85th Amendment by changing the wording of **clause (4A)** allowing reservation to be implemented with retrospective effect and **81st Amendment** by removing the 50% limit on promotions for these classes. The petitioners argued that the said amendments destroyed the 'basic structure' of the Constitution. Hence, they are unconstitutional. But a five-judge bench of the Supreme Court held that the said amendments do not destroy the basic structure of the Constitution in any way and are constitutional. **(4A) and (4B)** have been added to **Article 16** which are enabling provisions for the State. The said amendments do not destroy the basic structure of the Constitution. They do not eliminate constitutional requirements such as efficiency under **Article 355**, filling of posts on roster basis and 50 per cent ceiling. There are two criteria for the application of the Constitution, one is the 'limit' and the other is the 'identity'. Catch-up rule and consequential seniority are not required in **Article 16(1)(4)**. Eliminating these rules does not eliminate the equality code under **Articles 14, 15 and 16**. If the State is satisfied that the class is 'backward' and is not adequately represented in the State services, it can grant reservation. But while granting reservation, it must fulfill the appropriate requirements i.e. 50 per cent ceiling, roster system and excluding the advanced classes (creamy layer). Reservation cannot be revoked, there is a limit when it should be revoked.

In **I.R. Sailo and State of Tamil Nadu AIR 2007 SC 86**, the validity of various Acts in the 9th Schedule of the Constitution was challenged on the ground that they destroyed the basic structure of the Constitution by excluding them from judicial review. On 24 April 1973, the Supreme Court propounded the doctrine of 'Basic Structure' in the case of **Kesavananda Bharati**. A Constitution Bench of 9 Judges of the Court unanimously held that the validity of Acts added in the 9th Schedule after 24 April 1973 would be challenged if they violate the fundamental rights of citizens and destroy the basic structure of the Constitution. The 9th Schedule was added to the Constitution by the First Amendment Act, 1951. Its main purpose was to prevent the land reform laws passed by the Centre and the States from being challenged in court. Later, such acts were added to it which were not related to land reforms but were aimed at snatching away the

basic rights of the citizens. Tamil Nadu's 69 percent reservation act was also included in this and it was kept out of judicial review.

Thus far, the Supreme Court has recognized the following 'basic framework'

1. Rule of law
2. Right to equality and principle of separation of powers
3. Supremacy of the Constitution
4. Federalism
5. Secularism
6. Sovereign, democratic republican structure of the country
7. Parliamentary system of government
8. Independence of the Judiciary
9. Power of Supreme Court under **Articles 32, 136, 141 and 142**
10. Fundamental Rights in certain cases
11. Parliament has limited power to amend the Constitution
12. Judicial Review .

Question 18. Write a note on freedom of trade, commerce and intercourse. Or what do you understand by inter-state trade and commerce? Mention the constitutional provisions for inter-state trade and commerce in India. Answer: In every federal constitution, an attempt is made through constitutional provisions to create and protect the economic structure of the nation and to remove the obstacles in the way of inter-state trade and commerce by removing local barriers in economic activities and thus to make the state an independent economic unit so that the economic resources of various units can be used for public benefit.

Article 301 of the Indian Constitution declares that trade; commerce and intercourse shall be free throughout the territory of India**. Article 301** of the Indian Constitution is based on the ideals of **Section 92** of the Australian Constitution which provides that "trade, commerce and intercourse shall be absolutely free between the States." But this freedom in India is more comprehensive than the freedom given in Section 9 of the Australian Constitution because **Section 92** provides only for inter-State trade while **Article 301** covers both; inter-State and intra-State trade and commerce. Thus it places restrictions on the legislative power of Parliament and the State Legislatures. The term 'absolute freedom' used under the Australian Constitution gave rise to various difficulties. Here the effect of this term was that trade and commerce could not be regulated by

the Central Government. The courts had the right to decide whether the restrictions imposed on it are reasonable or not. But this difficulty has been removed by not using the word 'absolute' in Article 301 of the Indian Constitution and it is clear that the state has the power to regulate this right.

In India, the law can be imposed on the person who receives it under **Article 301**. The law is written in **Article 302 and Article 305**. This is necessary because no one is yours (Absolute). Now this status can be hacked in Australia also.

Article 301 applies not only to the borders but also to the commerce and intercourse within the State. Thus, if any control is imposed on the border of the State, either before or after the State, then the application of **Article 301** will be invoked. Freedom conferred by **Article 301** means freedom from all restrictions except those restrictions mentioned in **Articles 302 to 305** of this Part. The freedom conferred by this Article is limited only by the restrictions imposed under **Articles 302 to 305**. This right cannot be taken away by an executive order. It may be noted that **Article 301** provides protection against restrictions which directly and immediately impede the free flow of trade and not against incidental or indirect restrictions.

In the case of **Atiyabari Tea Company v. State of Assam AIR 1961 SC 232**, the Assam Taxation (on Goods Carried by Road or Inland Waters) Act, 1954 was held invalid on the ground that it violates **Article 301** of the Constitution. The petitioner was carrying on the business of production of tea and its export through the State of Assam to Calcutta. Under the said Act, tax was imposed on black tea transported through the State of Assam. The Supreme Court held that the Act in question clearly and directly provides for tax on the transport of goods. Therefore, it falls within the ambit of **Article 301** and is valid. The Court said that taxes are admissible if they directly and substantially restrict trade. The tax imposed in the present case undoubtedly adversely affects the free flow of trade.

Such taxes can be imposed only if the conditions of **Article 304 (b)** are fulfilled, that is, the state must obtain the prior approval of the President before making such a law. This is to ensure that the economic unity of the country is not disrupted by the legislation. In this case, the conditions of **Article 304 (b)** were not fulfilled. The court said that the right provided by **Article 301** will become a mere illusion if the traffic or transportation of

goods is obstructed by imposing a tax without fulfilling the conditions of **Articles 301 to 304**.

In **Automobile Transport Ltd. v. State of Rajasthan AIR 1952 SC 1406**, the State Government imposed a tax on motor vehicles kept and used within the State of Rajasthan. The court held that the tax was valid because it was a regulatory measure providing a countervailing tax to promote trade, commerce and intercourse.

In the case of **M/s V. R. Enterprises v. State of Uttar Pradesh AIR 1999 SC 1867**, the petitioners challenged the validity of the Lottery (Regulation) Act passed by the Government of Uttar Pradesh on the ground that it violated their rights under **Articles 301, 302 and 303**. The Government of Uttar Pradesh passed an order under Section 5 of the said Act prohibiting the sale of lottery of other states in Uttar Pradesh. Their argument was that lottery is a business and as it is run by the State, it cannot be prohibited. The Supreme Court refused to accept their argument and held that lottery involves an element of chance and hence it cannot be trade and commerce **under Article 301**. As the element of chance is present, lottery is a form of gambling. Merely because the sale of lottery tickets is authorized by the State, it cannot fall under the category of 'trade and commerce' as is commonly understood under **Article 301**. Therefore, the Act passed by the State of Uttar Pradesh does not violate **Articles 301 and 302** and is constitutional.

On the basis of the decisions given in the above decisions, the following principles emerge regarding **Article 301** Are-

(1) **Article 301** ensures freedom of trade, commerce and intercourse between the States and within the States.

(2) The terms trade, commerce and intercourse have very wide meaning and include movement of both persons and goods.

(3) This freedom includes protection not only against laws made under powers conferred by the Legislature relating to trade and commerce or the production, supply and distribution of goods, but also against all laws imposing taxes.

(4) Only laws which have a direct and immediate effect to restrict the freedom of trade or commerce shall be outside the purview of **Article 301**.

Restrictions on trade and commerce- The following restrictions can be imposed under **Articles 302 to 304** on the freedoms granted by A**rticle 301**-

(1) Power of Parliament to regulate trade and commerce in public interest.-Article 302 authorizes Parliament to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of the Union of India as may be required in the public interest. Whether restrictions imposed by Parliament by law are in the public interest or not shall be a subject of judicial scrutiny. In the **Atiyabari case** it has been held that Parliament has been given full power under **Article 322** to determine the restrictions to be imposed in the public interest. In a case it has been held that restrictions imposed on the transport of grains under the rules of the Defence of India Act are in the public interest.

The power of Parliament under Article 302 has been limited by **Article 303(1)**. **Article 303(1)** provides that notwithstanding anything contained in **Article 302**, Parliament shall have power to make any law giving or authorising the giving of preference to one State over another by virtue of any entry in any of the Seventh List relating to trade and commerce. Under **sub-section (2)** of this Article, Parliament may make distinctions between States if it is declared by law that it is necessary so to do for the purpose of dealing with any situation arising out of scarcity of commodities in any part of the territory of India. Parliament alone has the power to determine the question whether a situation of scarcity of commodities exists in any part of India.

(2) Power of States to regulate trade and commerce- Article 304(A) empowers the States to impose taxes on goods imported from other States at the same rate as is levied on similar goods manufactured or produced in that State, without making any distinction between imported goods and such manufactured or produced goods.

In the case of **State of Madras v. Bhailal Bhai AIR 1964 SC 1006,** the State of Madras enacted a law imposing sales tax on imported tobacco, but exempted tobacco produced locally from sales tax. The court held that the tax imposed was discriminatory and hence illegal.

Sub section (2) of this article empowers the State to impose reasonable restrictions on trade, commerce and intercourse as may be required in the public interest. But no Bill or amendment for this purpose shall be introduced in the State Legislatures without the previous approval of the President. Any law made by the State to regulate inter-State trade or

commerce shall require the State to fulfill the following conditions given under **Article 304 (b)**:

(1) The previous approval of the President must be obtained,

(2) The law must be in the public interest and

(3) The restrictions imposed must be reasonable.

Thus it becomes clear that Parliament has sufficient power to regulate trade and commerce. The power of the State is subordinate to the regulation making powers of the Parliament. No State can enact regulation making laws without the recommendation of the President. In the case of **Atiyabari**, the tax imposed on the transport of goods was held illegal because it was passed without the approval of the President.

Question 19. Protection given to public servants under Article 311 of the Indian Constitution. Or Doctrine of Pleasure.

Answer- Doctrine of Pleasure (Article 310)- It is a general rule in England that public servants hold their posts during the pleasure of the Emperor. This means that they can be dismissed from their jobs at any time without showing any reason. Even if there is a contract of employment between the Emperor and the servant, the Emperor is not bound by it. In other words, if a public servant is dismissed from his job, then he is not bound by it Even if he is removed before the term of his office, he cannot claim the outstanding salary or any other claim from the emperor. The 'Principle of Prasad' is based on public policy.

Article 310 of the Indian Constitution incorporates the rule of the common law of England. **Article 310** provides that every person who is a member of the Defence Service or Civil Service or All-India Service of the Union, or holds any post connected with defence under the conflict or any civil post, holds office during the pleasure of the President. Similarly, members of the State Services hold office during the pleasure of the Governor. This is a general rule but exceptions have also been given in the Constitution, where the 'Principle of Pleasure' does not apply.

Restrictions on 'Prasad's Doctrine' In the Constitution of India, 'Prasad's Doctrine' has a very limited application. The opening phrase used in **Article 310** puts a restriction on the application of Prasad's Doctrine 'except as expressly provided by the Constitution' and prescribes the limits of its application. Thus, in India a public servant can sue the government for his arrears of salary. In the case of **State of Bihar v. Abdul Majeed**, a police sub-inspector was dismissed from service on the ground of

cowardice. Later he was reinstated but the government refused to pay salary for the period of dismissal. The Supreme Court held that he was entitled to get the arrears of salary as he had worked under a service contract.

Just as the government has the power to compulsorily retire a servant as per the service conditions, similarly a servant also has the right to voluntarily resign from his post by giving three months' notice, whether the state accepts it or not.

The Indian Constitution imposes the following restrictions on the 'Principle of Prasad':

(1) This doctrine is subject to **Article 311**, that is, it can be exercised only in accordance with the procedure prescribed in **Article 311**. If **Article 311** is violated, the application of the "Prasad Doctrine" would be invalid.

(2) It does not apply to the following officers- The Judges of the Supreme Court (**Article 124**) and the High Court's (**Article 218**), the Accountant General of India (**Article 148(2**), the Chief Election Commissioner (**Article 324**), the Chairman and Members of the Public Service Commission (**Article 317**) hold office during the pleasure of the President or the Governor.

(3) The doctrine of Prasad is subject to fundamental rights, that is, its use should not infringe upon the fundamental rights of the citizens.

Constitutional Protection of Public Servants (Article 311)- Under **Article 311**, the following constitutional protections have been provided to public servants against arbitrary removal from their posts-

(1) No public servant shall be dismissed or removed from his office by any authority inferior to that by which he was appointed [**Article 311(1)**,

(2) No person shall be dismissed or removed from his office or reduced in rank unless he has been informed of the charge against him and given a reasonable opportunity of being heard in respect thereof.

The above protection is available only to persons holding 'civil service' (civil post). It is not available to persons working in military service or defence related services. Hence they can be dismissed without showing any reason. There is no definition of civil service in the constitution, but according to the provisions of **Articles 310 and 311**, it appears that other posts except defence posts are public posts. 'Civil service' means appointment to civil posts of administration. The relationship of master and servant is established between the state and the person holding the

post when the following elements are present (1) Right of the state to select and appoint the servants of that post (2) Right to control the manner in which he works (3) Right to pay remuneration or salary for him from the state treasury.

(1) Removal by authority inferior to the appointing authority barred.- Article 311 (1) says that no public servant can be dismissed or removed from his office by any authority inferior to the appointing authority. This does not mean that dismissal can be done only by the authority which made the appointment or by an authority superior to him. It is sufficient that the removing authority should be of the same grade as the appointing officer. For example, in the case of Mahesh v. State of Uttar Pradesh, the applicant was appointed by the Divisional Officer of the Railways and was dismissed by the Superintendent of Powers. The Supreme Court held that his dismissal was valid because both the officers belonged to the same grade. Similarly, if the dismissal is done by an authority superior to the appointing authority, then **Article 311 (1)** will not be violated and the dismissal will be valid. **Article 311 (1) Article 311** does not require that dismissal or removal from office can be done only by the authority making the appointment.

(2) Reasonable opportunity of being heard- Article 311(2) provides that any civil servant a person cannot be dismissed or removed or reduced in rank unless he has been given a reasonable opportunity of being heard against the charges against him on which action is proposed to be taken. Before **the 42nd Amendment**, there was a provision for giving public servants an opportunity of being heard at two places: (1) at the time of enquiry against him which is required according to the rules of 'natural' justice. No person can be punished without giving him an opportunity of being heard; and (2) at the time of awarding punishment when the charge against him has been proved as a result of the enquiry and any of these three punishments, dismissal, removal or reduction in rank, is proposed. The right to hearing or reasonable opportunity given to civil servants at the second level has been abolished by the **42nd Constitutional Amendment**, 1976.

In one of its important decisions in the case of **Managing Director E.C.I.L. vs. B. Karunakar (1993) 4. SC 727**, a full bench of 5 judges of the Supreme Court has unanimously held that when the Inquiry Officer is not the Disciplinary Officer, the delinquent employee has the right to receive

the report of the Inquiry Officer so that he can present his defence before the Disciplinary Officer in a reasonable manner. In the above case, the disciplinary proceedings are divided into two parts, the first stage ends when the Disciplinary Officer reaches a conclusion on receiving the report of the Inquiry Officer of evidence and the reply of the employee and the second stage begins when he decides to impose punishment on the basis of the findings. The refusal of the Inquiry Officer to give the report is not giving the employee a reasonable opportunity to prove himself innocent and this violates the principles of natural justice and violates **Articles 14 and 21**. If any rule or standing order deprives an employee of this opportunity, it would be illegal. The rule prescribed in this case will apply to all government, non-government, public and private sector undertakings.

The majority confirmed the decision in the case of **Union of India vs. Mohammad Ramzan (1991) 1 SCC 588**, which held that even after the **42nd Amendment** of the Constitution, delinquent employees would be entitled to the report of the Inquiry Officer. But the court clarified that this rule will be prospective i.e. applicable from time to time and will not revert to the situation before the **42nd Amendment**. It will not apply even where the disciplinary officer is himself the Inquiry Officer.

By the **15th Amendment Act of the Constitution**, 1963, a new provision has been put in place of **clauses (2) and (3)** of **Article 311** of the Constitution. By this amendment, Parliament has accepted the interpretation of the term 'reasonable opportunity' by the Supreme Court, but has limited the scope of the second opportunity of hearing. The second opportunity of hearing will be available only on the basis of the evidence which was given during the investigation. But the said right will not be available to civil servants in the following circumstances-

Exception to Article 311 (1)- According to **clause (2)** of **Article 311**, a Government servant is not entitled to be given a reasonable opportunity in the following circumstances-

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct for which he has been charged with or convicted of an offence; or

(b) Where the officer dismissing or removing a person or reducing him to a rank is satisfied that for reasons to be recorded by that officer, it is not reasonably practicable to provide such opportunity of being heard.
(c) Where the President or the Governor is satisfied that it is not expedient in the interest of the security of the State such investigation should be done.

In the important case of **Union of India vs Tulsi Ram Patel (1985) 35 SC 398**, the Supreme Court has held that the punishment imposed by the disciplinary authority in the above cases without investigation and without giving an opportunity of being heard was constitutional. On this basis, the court reversed its decision given in the case of Divisional Personnel Officer Southern Railway vs T. R. Chalappan, in which it was held that an opportunity of being heard should be given while imposing punishment.

But the court clarified that the aggrieved government servant still has two remedies. One is departmental appeal against the above punishment and the other is the right of judicial review in which the court will examine whether the concerned authority has acted with malice or has wrongly applied the service rules or the punishment is arbitrary or excessive in proportion to the crime when will dismissal be considered a punishment?

The Supreme Court has prescribed the following criteria to determine when dismissal or removal from the post will be considered a punishment-
(a) Whether the civil servant has the right to hold a particular post or grade.
(b) Has he been ordered to face the consequences?

If a servant is entitled to hold a particular post or grade under a contract of service or under the terms of the conditions of service, his dismissal or removal from that post or reduction in rank shall be a punishment within the meaning of **Article 311 (2)**.

In the case of **Purushottam Lal Dhingra v. Union of India AIR 1958 SC 36** the appellant Dhingra was a Class III servant in the Railways. He was appointed as acting Class II post. After two years he was reinstated to Class III post on the ground of unsatisfactory performance. The order stated that this would not in any way impede his future promotion if his work or conduct was found satisfactory in future. The Supreme Court held that he had no right to hold Class II post as he was working as acting post which was temporary and could be terminated without notice. Secondly, the appellant was not reduced to a class II post as he was not deprived of the

opportunity of promotion etc. He cannot claim the protections under **Article 311(2)**.

In the case of **Risal Singh vs State of Haryana AIR 2014 SC** the Supreme Court held that the removal of a public servant without inquiry would be legal only if the reasons for the same are recorded in writing, otherwise the removal order would be tainted and can be set aside.

Protection of **Article 311** is available to both permanent and temporary employees- Supreme Court made it clear in the case of **Purushottam Lal Dhingra vs Union of India** that the constitutional protection provided in Article 311 is available to all types of state employees, whether permanent or temporary, because no such distinction has been made in the provision of **Article 311**. But it is necessary that permanent or temporary public servants should be removed from the post or reduced in rank as a punishment.

In the case of **State of Punjab vs Sukh Bahadur**, the Supreme Court has reconsidered all the decisions related to temporary civil servants and probationers and laid down the following principles in relation to them-

(1) Temporary civil servants shall cease to enjoy the protection of **Article 311** if their services are terminated in accordance with the terms of their employment.

(2) The circumstances preceding and subsequent to the order of termination of service shall be examined to determine whether the termination has been made as a punishment or not. The reason for which it was given is immaterial.

(3) If the inquiry is held by a superior officer only to determine whether a civil servant should be retained or not and as a result of it the services of a temporary civil servant are terminated, he will get the protection of **Article 311**.

(4) If a full departmental inquiry, as prescribed in **Article 311**, results in an order of termination, the protection of **Article 311** will be available. A full inquiry includes the following things: appointment of an inquiry officer, serving of a charge sheet, giving an opportunity of defence and considering it, etc.

In the case of H**.D.B.K. Das vs. F.L.A. Collector**, the Supreme Court has held that if the order terminating the services of a temporary or probationer servant is of a penal nature, then it would violate **Article 311** and the order would be illegal.

Conclusion-On the basis of the above mentioned legal provision and the decision obtained in judicial interpretation, any public servant can be given the right to do so. Can be removed which seems to be correct in conclusion otherwise it would be unconstitutional.

Question 20. Can Parliament amend the Fundamental Rights? Support your arguments with important judgments. OR Briefly discuss the power of amendment of the Indian Parliament.

Answer- Fundamental rights are described in **Chapter 3** of the Indian Constitution. The question whether the fundamental rights mentioned in this part of the Constitution can be amended under **Article 368** or not first arose in the case of **Shankari Prasad vs Union of India, AIR 1951 SC 458**. In this case, the validity of the First Amendment Act of the Constitution, 1951 AD was challenged. The basis of this challenge was that this amendment violates the fundamental rights given in **Part 3** of the Constitution which are prohibited by **Article 13 (2)**. Therefore, this amendment act is illegal. **Article 13** provides that the state will not make any law which reduces or takes away the rights given to the citizens in **Part 3**. It was also argued that the constitutional amendment passed under **Article 368** is also a law within the meaning of the word 'law' mentioned in **Article 13**.

The Supreme Court rejected the above argument and held that the power to amend the Constitution, including the Fundamental Rights, is not contained in **Article 368**. The word law used in **Article 13** includes only laws made by the exercise of normal legislative power and not those which are constitutional Amendment laws are passed by exercising constitutional power. Hence, constitutional amendments passed under **Article 368** will be constitutional even if they violate the Fundamental Rights.

Similarly, in the case of **Sajjan Singh vs Rajasthan Government, AIR 1965 SC 845**, the Supreme Court, accepting the earlier decision given in the case of **Shankari Prasad vs Union of India**, has said that according to **Article 368**, Parliament can change the fundamental rights by amending the Constitution. In this case, the validity of the **17th Amendment Act** of the Constitution was challenged. In the majority decision of the Supreme Court, it was said that the meaning of constitutional amendment is that if the Constitution makers had wanted to keep the fundamental rights

beyond amendment, then they would definitely have included a clear provision about it in the Constitution.

But in the case of **Golaknath vs. State of Punjab, AIR 1967 SC 1643**, the Supreme Court by majority changed the decision given in the case of **Shankari Prasad and Sajjan Singh** and decided that Parliament has no power to amend Part 3. The following principles have been propounded in this case –

(1) The power to amend the Constitution lies in **Articles 245, 246 and 248** of the Constitution, not in **Article 368. Article 368** provides only the procedure for amendment, not the power of the Constitution.

(2) A Constitution Amendment Act is a law within the word 'law' used in **Article 13** and is therefore void if it takes away or abridges the Fundamental Rights. The word 'law' includes all kinds of laws whether ordinary laws or constitutional laws.

(3) Parliament cannot make any amendment in **Part III** relating to the fundamental rights of citizens which would abridge or abolish them.

(4) Previous decisions of the Supreme Court are not binding on it.

To remove the complexities arising out of the decision given by the **Supreme Court in the Golaknath dispute**, the Parliament passed the **24th Constitutional Amendment Act, 1971**. By this, **Article 13 (2)** was amended and it was provided that "it shall be laid before the President who will give his assent to the bill." It is clear from this that the President will be bound to give his assent to the Constitutional amendment. A new **clause 4** has been added to this article which provides that any law passed by the Parliament under **Article 368** also has inherent power. A new clause has been added before **clause 2** of **Article 368** which not only provides for the amendment process but also provides that the amendment of the Constitution will not come under the word law under **Article 13 (2)**. **Article 368** only provides that "Parliament will be able to amend the Constitution in the form of addition, change or repeal of any provision in accordance with the procedure given in this article."

In the landmark case of **Kesavananda Bharati vs State of Kerala, AIR 1973 SC 1461**, the validity of the **42nd Amendment Act** was challenged in the Supreme Court. The main question to be considered in this case was whether **Article 368** of the Constitution gave the power to Parliament to amend the Fundamental Rights. What is the limit of this power of the

Constitution granted to the Parliament? The majority court in the Supreme Court reversed its earlier decision given in the Golaknath case.

The Supreme Court was of the view that **Article 368** as it originally stood contained both the power to amend the Constitution and the procedure for the same. The **24th Amendment** does nothing more than clarify in express language what was implied in **Article 368**. The said amendment does not extend the power conferred by the original article, therefore the change made in the marginal note is of no significance, nor is the insertion of the words "addition", "alteration" or "repeal" therein, because these words only prescribe the manner in which the amendment may be made, and are not necessarily contained in the word "amendment". Since the power conferred by the original article is a limited power, the words added in the amendment article are of no significance. On these grounds the **24th Constitutional Act** is valid.

Justice Khanna supported the majority but gave a separate judgment. He said that the power to amend under **Article 368** does not include the power to abolish the Constitution completely and replace it with a completely new Constitution. Amendment of the Constitution does not mean abolishing the Constitution but only making necessary changes in it. The word Constitution means that the old Constitution continues to exist even after changes have been made and its original form never ends. Undoubtedly it means maintaining the basic structure or outline of the Constitution. Subject to the basic structure and outline of the Constitution, the power to amend is complete and includes the power to alter or repeal various articles, including those relating to fundamental rights. No restriction can be imposed on the power to amend except in respect of that part of the Constitution which relates to the basic structure or outline of the Constitution.

Justice Shri Dwivedi has said that the word amendment used in **Article 368** is so wide that under it every provision of the Constitution including **Part 2** can be changed, repealed or abrogated.

In this dispute the following principles were propounded by the majority:

1. The decision of Golaknath was repealed.
2. It was established that the Parliament can amend the Constitution including the Fundamental Rights.
3. **Constitutional Amendment Acts 24th, 26th and 29th** were declared valid.

By adding **clauses 4 and 5** to **Article 368** of the Constitution, the 42nd Amendment Act provided that no amendment to this Constitution, including the provisions of **Article 3**, which are to be amended under this article and have been made before the Amendment Act (**42nd Amendment Act, 1976 AD**), will be challenged in any court on any ground. But in an important case decided recently, **1997 AIR SC 1125 L. Chandra Kumar vs Union of India**, it has been held that **clause 2 (c)** of **Article 323** of the Constitution and **clause 3 (c) of 323 (b)** are unconstitutional and illegal, because they eliminate the power of judicial review of the Supreme Court and the High Court, which is the basic structure of the Constitution and it cannot be abolished even by amending **Article 368** of the Constitution.

Therefore, now it is clear from the above decision that if any constitutional amendment is made by the Parliament in future, its validity can be challenged in the courts.

Question No. 21 – Write short notes.

Answer- Protection given to public servants- Under **Article 311** of the Indian Constitution under **Article 311**, the following constitutional protections have been provided to public servants against arbitrary removal from their posts:

(1) No public servant shall be dismissed or removed from office by any authority inferior to that of his appointee **Article 311 (1)**.

(2) No person shall be dismissed or removed from his office or reduced in rank unless he has been informed of the charge against him and given a reasonable opportunity of being heard in respect thereof.

The above protection is available only to persons holding 'civil service'. It is not available to military servants or persons working on defence related services; hence they can be dismissed without showing any reason. No definition of 'civil service' has been given in the Constitution, but according to the provisions of **Articles 310 and 311**, it appears that other posts except defence posts are public posts. 'Civil service' means - appointment to civil posts of administration. The relationship of master and servant is established between the state and the person holding the post when the following elements are present - The right of the state to select and appoint servants for that post and to pay remuneration or salary for it from the state treasury.

(1) Dismissal barred by authority inferior to the one who appointed him- Now we will discuss this article first clause i.e. **311(1)** of the Indian Constitution. According to this provision, no civil servant of the Union or State Government can be removed or dismissed by any authority subordinate to the authority which appointed him. For example, in **Mahesh v. Uttar Pradesh**, learned counsel for the appellant argued that the Constitution and the Railway Act are inconsistent with the Constitution.

As both the Rules of the Code require that the authority competent to remove should be either the same authority who appointed or some other authority directly superior to the appointing authority in the same Department, we do not think that this argument is tenable. The requirement of the Constitution is that a person should not be removed by the authority who appointed him and the rule laid down in the Railway Code is essentially the same, viz., "the authority competent to remove should not be inferior to the one who made the appointment". These provisions cannot be read to mean that the removal should be done by the same authority who made the appointment or by his direct superior. We find it sufficient that the removing authority should be of the same rank or grade. In the present case it is not known to which particular branch of the Department the appellant was taken, first in 1944 under ex. f. But the evidence of PW4, who is the Head Clerk in the office of the Divisional Superintendent, shows that the office of the Running Shed Foreman in which the appellant was a clerk in 1951 was directly under the Superintendent Power. He was clearly the most appropriate officer to grant the sanction provided he was not lower in rank than the Divisional Personnel Officer.

(2) Reasonable opportunity of being heard - Article 311(2) provides for a reasonable inquiry while dismissing, removing or removing a civil servant. It states that every civil servant who is to be dismissed, removed or removed from office must be given a reasonable opportunity of being heard. He must be given an opportunity to receive and admit evidence and to prove his case. However, such inquiry may be waived if the authority thinks it fit to do so. Such an exception to **Article 311(2)** applies when a civil servant is charged with criminal offences, if the authority considers it fit or if there is a question of the security and sovereignty of the nation. This reasonable opportunity of being heard was originally given to the civil servant at the investigation stage as well as the penalty stage. However,

changes were made to this by the 42nd Amendment to the Indian Constitution. The **Amendment Act of 1976** removed the penalty stage. The penalty stage is when the investigation is completed and the charges against the civil servant are proven beyond reasonable doubt. Thus, when the punishment is considered appropriate to be effective, the civil servant does not get an opportunity to speak and make representations against the punishment being decided for him. Thus, the current stand is such that, a civil servant against whom there is an allegation of the application of **Article 311** gets a reasonable opportunity to make representations at the investigation stage and not thereafter. Once the allegations levelled against him are proven, he no longer has the right to present his case before the jury.

Union of India and Others vs. Tulsiram Patel (1985) In the case of Union of India and Others vs. Tulsiram Patel, the Supreme Court of India discussed the exceptions to **Article 311(2),** i.e., cases where a disciplinary inquiry can be waived by the authority. The Supreme Court held that the prudence test should be applied. The test should be what a reasonable person of ordinary prudence would do in a situation given the facts and circumstances. The Court further held that if a civil servant is convicted of criminal charges, he can be dismissed or removed from his post without any departmental inquiry.

Exceptions to Article 311-The exceptions to both the clauses of **Article 311** are given below:-

(1) Article 311(1) contains an exception according to which the provisions of the article shall apply only to civil servants, that is, public servants or public officers. This does not apply to defence personnel or any other civil servant under the Union or State Governments.

(2) **Article 311(2)** says that there must be a proper inquiry and a reasonable opportunity of being heard must be given, with certain exceptions-

(a) Where a person is dismissed, removed or reduced in rank due to a criminal charge against him and he is convicted, an inquiry under **Article 311 (2)** is not required.

(b) Where the authority entitled to dismiss, remove or reduce in rank of such civil servant considers it necessary to hold any further inquiry, he has the power, for reasons to be recorded in writing, not to hold such inquiry before dismissing, removing or reducing in rank of such civil servant.

(c) Where the President of India or the Governor of a State is convinced that in order to preserve the security and sovereignty of the State it is necessary to dismiss or remove such civil servant from his office, he may, without any inquiry, direct such dismissal or removal.

(2) Doctrine of substance and substance - It emerges when a law made by a legislature encroaches upon the domain of another legislature. In other words, when a law made by one legislature encroaches upon the domain of another legislature, the court applies the doctrine of substance to determine whether the legislation in question is within the powers of the legislature which made it. Often, there are provisions in Acts which encroach incidentally upon the subjects of legislation of another legislature. If a literal selection is made, such legislations will be invalid. But if the substantial or real object of the legislation relates to a subject on which that legislature is competent to make laws, it will be declared valid, even though it encroaches incidentally upon a subject falling within the domain of another legislature. To find out the true nature and character of the legislation, the entire Act will be considered and its object and extent and the effect of its provision will be examined.

Prafulla Kumar v. Bank of Commerce, Khulna In this case the validity of the **Bengal Money Lands Act, 1946** was challenged which imposed restrictions on the amount and rate of interest on any loan which it gave. This was illegal on the ground of the law of the Bengal Legislature relating to money lending as the law relating to money lending is a Union subject. The Privy Council held that the Bengal Money Lending Act was in essence dealing with money lending and money lenders and it is a State subject. Of course it entered into the Union jurisdiction somewhat accidentally. The purpose of saying is that if a law is basically made in one's own jurisdiction then it can be accepted even if it enters into the jurisdiction of another to some extent.

In the case of **State of Bombay v. Balsara**, the constitutionality of the Bombay Prohibition Act, which prohibited the purchase and possession of intoxicants in the state, was challenged on the ground that it encroaches upon the subject mentioned in the Union List, 'import and export of intoxicants', because prohibiting the purchase, sale and use of intoxicants would adversely affect their import and export. The Supreme Court held

the Act void Held bond because according to him the main purpose of the Act was related to the subject of the State List and not the Union List.

(3) Freedom of trade, commerce and intercourse- Article 301 talks about freedom of trade, commerce and intercourse throughout the country. It states that subject to the other provisions under **Part XII**, the freedom to carry on these activities shall be free. Freedom here means the right to freedom of movement of person, property, things, which may be tangible or intangible, unhindered by barriers within the state (intra-scale) or outside the states (intra-scale).

The three key words used in this article are-

Trade- Trade means buying and selling of goods for the purpose of earning profit. Under **Article 301** the term trade means a genuine, organized and structured activity with a definite purpose. For the purpose of **Article 301** the term trade is used interchangeably with business. Commerce- Commerce means the transmission or movement of goods by air, water, telephone, telegraph or any other means. Under **Article 301** what is essential to commerce is transportation or transmission that's the benefit.

Movement-It means carrying goods from one place to another. It includes both commercial and non-commercial dealings. It would include travel and all forms of dealing with others. However, it is argued that the freedom guaranteed in **Article 301** does not extend to movement in its widest sense. There are two reasons for this.

(1) Firstly, the word 'intercourse' is used interchangeably with the words 'trade and commerce' and therefore here the word would mean 'commercial intercourse' and not 'purposeless movement'.

(2) The second reason is that though **article 301** puts a limitation on the powers of the Legislature and Parliament (as conferred on them under **articles 245 and 246**), the word intercourse is not included as a subject matter of legislation under the **7th Schedule**; as the word trade and commerce is included and hence the word intercourse here cannot be construed in a wide sense.

(3) The use of the word 'free' in **Article 301** does not mean freedom from the laws and regulations governing the country. There is a clear distinction between laws which impede freedom and laws which contain rules and regulations for the smooth and easy conduct of business activities.

(4) Session, prorogation and dissolution of Parliament- Necessary provisions have been made in **Article 25** of the Constitution regarding session, prorogation and dissolution of Parliament. This article empowers the President of India to summon the session of Parliament, to prorogue the Parliament or to dissolve the Parliament. The essential provision regarding summoning the Parliament is that the period between the last day of one session of Parliament and the first day of the next session should be less than six months.

(5) Mandamus - Mandamus means command or order. It is a writ which is used to order a person, corporation, lower court, government or any public officer to refuse to perform a public duty. Before a mandamus can be issued, the following conditions must be fulfilled:

(1) The petitioner must show that he has a legal right.

(2) The duty is imposed by law.

(3) The petitioner has applied to the authority to perform the statutory duty but the authority has not done the same and he has refused to do so.

(4) The public authority is acting under a law which is unconstitutional.

In the following cases the writ of mandamus will not be issued-

(1) Where there is discretion to do or not to do an act.

(2) A mandamus shall be issued against a private person or organization only if they are performing a public duty has been assigned.

(3) This writ cannot be used to enforce a contract against the Government. This writ can be issued in the form of legislative estoppels.

(4) Against any company, even if it is a Government company.

A writ of mandamus cannot be issued against the following – the President, Governor in a State, a High Court, or a Judge or Justice acting in a judicial capacity but it can be issued against a Judge or Justice acting in an administrative capacity.

6. Prorogation - The session is ended by prorogation. Therefore, it should be considered different from adjournment and the session is not ended by it. Meeting of Parliament Adjournment is in the hands of the House but prorogation can only be done by the President.

The President has the right to dissolve the Lok Sabha. But the question arises that although the President has the right to dissolve the Lok Sabha, is there any definite rule or custom in this regard? In this matter, the rights of the President of India and the custom of dissolving the Lok Sabha are similar to that of the King of England.

7. Joint Sitting of the Houses- The President has the power to call a joint sitting of both the Houses of the Parliament, (1) when a Bill other than a Finance Bill has been passed by one House and rejected by the other House or (2) when one House finally disagrees with the amendment to be made in the Bill or (3) when the Bill has not been passed by the other House and six months have elapsed since the receipt of the Bill. Note that if a Bill is presented in a joint sitting and is passed by a majority of those voting, then that Bill will be deemed to have been passed by both the Houses.

8. Writ of Habeas Corpus- Habeas Corpus means bring the body. Through this writ, the court can present a person who has been detained or kept in prison before the court. When this happens, the court examines the reasons for detaining that person. If there is no legal justification for detention, then he is released. The Supreme Court has held that presenting the body of the prisoner before the court is not an essential feature of this writ. This opinion was given in **Kanhu Sanyal vs District Magistrate, 1974 SC** the writ is issued under the following circumstances-

(i) Where the detention is in violation of procedure.
(ii) The order of arrest violates any law.
(iii) A person is detained by a private individual.
(iv) A person has been detained under a law which is unconstitutional.
(v) The detention order is mala fide.

The general rule under the law is that the person who files a writ should be the person whose rights have been violated, but this rule does not apply to the writ of habeas corpus. A person who is imprisoned faces many difficulties. The law understands this and allows a petition to be presented on behalf of the prisoner by his relative, friend or social worker or even by an unknown person.

A writ of habeas corpus cannot be issued if the answer to the writ states that a person is imprisoned by order of a competent court. This writ is not issued when physical restrictions have been imposed under a valid law. Where it is shown that the petitioner was arrested and imprisoned without the authority of law or with malicious intent, the court can also award the above-mentioned compensation in the form of money, as given in important cases (1) **Rudal Shah vs State 1983**, (2) **Bhim Singh vs State of Jammu and Kashmir 1986 SC**

9. Prohibition - As the name of this writ suggests, its function is to prohibit someone. In fact, this is the writ which is issued by the High Court to the subordinate court with the intention that it stops the subordinate court or tribunal from taking any action pending or being taken before it which is being done without the law or jurisdiction or is being done in violation of it completely or partially. In fact, the main purpose of this writ is to correct the judicial errors committed by the subordinate courts.

Sometimes the formation of a subordinate court or tribunal is unconstitutional or it acts beyond its powers. The High Court or the Supreme Court can also issue a prohibition writ to stop such action. If the subordinate court violates the principles of natural justice, then the High Court or the Supreme Court can issue a writ to stop it from doing such an act. In short, the High Court or the Supreme Court can issue a prohibition writ in the following circumstances: (1) When the lower court or tribunal takes action in prohibited matters. (2) Where the lower court has acted beyond its jurisdiction. (3) Where the lower court has acted without having jurisdiction. (4) Where the court instead of following the principles of common law or natural law violates them or acts in a manner different from that specified by law.

10. Writ of certiorari - The Supreme Court or the High Court issues this writ to its subordinate court. Through this writ or writ, the lower court is ordered to send all the papers of the case decided in the discharge of its judicial or equitable duties to it (High Court or Supreme Court) so that the case decided by the lower court can be examined or if a procedural error is found, the decision of the lower court can be declared void or it can be cancelled.

The purpose of this writ (Certiorari Writ) is that the High Court or the Supreme Court keeps an eye on the functioning of the lower courts.

11. Quo Warranto - The purpose of Quo Warranto is to examine the claim, right etc. of the person holding the public office whether he has usurped the public office illegally or whether he should be prevented from using it. The literal meaning of Quo Warranto is, "What is your right?" It is called Quo Warranto because through this the office holder is questioned i.e. he is asked under what authority he is holding that office. If the court is of the opinion that the person is holding the said office illegally then the court orders the office holder to leave that post. On this, the court can make the

said query only against a public office by writing and the court can also issue the said writ against such a post.
A post in private service cannot be the subject matter of this writ.

11- Doctrine of Colourable Legislation - If the Constitution divides legislative power between the Centre and the States and sets necessary limits on them in the form of fundamental rights, as is the case under our Constitution, then questions may arise whether the Legislature has exceeded the constitutional limits in the exercise of power or has acted beyond its powers? Such an encroachment may be direct or indirect. Sometimes it happens that although the Legislature apparently acts within its powers in making a law, yet in essence or in reality it exceeds the constitutional limits. Such indirect legislation is called 'pseudo legislation'. In such cases the substance of the Act is important, not its external form. If the subject matter of legislation is essentially outside the power of that legislature, then its external form will not save it from being declared invalid by the court. The legislature cannot exceed the constitutional limits by adopting any indirect or covert method. **R.S. Joshi vs Ajit Mills Ltd**. (Colourability) means 'incompetence'. A thing is colourable when it is not in the form in which it is presented. In Indian terminology it is called 'shmaaya'. There is no element of malice in 'colourability'.

The basis of this principle is that the work which the legislature cannot do directly, it cannot do indirectly also. That is, if it does not have the power to make a law on a subject, then it cannot make a law on it indirectly. In such cases, the courts will examine the actual nature and form of the legislation and not its motive which is directly visible in it. But if the legislature has the power to make a law on a subject, then it does not matter for what purpose it has been made.

Kameshwar Singh vs State of Bihar is the only decision of the Supreme Court on this subject in which an Act has been declared invalid on the principle of pseudo-legislation. In this, the validity of the **Bihar Land Reforms Act, 1950** was challenged. By this Act, the land of the landlords was acquired and there was a provision to give them compensation. The compensation was to be given to the landlords on the basis of the income received in the form of land revenue. According to this, the outstanding amount before the acquisition of land was to be vested in the state and half of it was to be given to the landlords as compensation. The court declared the Act invalid because it did not actually prescribe any basis for

determining compensation. Although an attempt was made to do so superficially, the landlord did not get any compensation as a result of the provision given in the Act.

12. Repugnancy - The general rule is that in such a case, the Central law will prevail over the law of the State Legislature. **Article 254** provides that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to make or of any existing law specified in the Concurrent List, then, subject to the provisions of **clause (2)**, the law made by Parliament, whether passed before or after the law made by the State Legislature, shall prevail over the State law and the law made by the State Legislature shall be void to the extent of the law made by it. **Clause (2)** contains an exception to this rule. According to this, if a law made by the State on a subject mentioned in the Concurrent List contains any provision which is repugnant to the law made by Parliament on that subject or to any existing law specified in the Concurrent List, then the Central law will prevail over the State law If it is against the present law, then such law made by the state or the present law, if it has got the assent of the President, will prevail in that state. There is an exception to the above exception. According to the proviso to **clause (2)**, the Parliament can make a law on that subject even after the assent of the President and can add, change or repeal the law made by the state. The supremacy of the central law is clear in the above rule.

The case of **Javerbhai vs Bombay State** is a good example on this subject. In 1946, the Central Legislature passed the Essential Commodities (Temporary Powers) Act, according to which its violators could be punished with a maximum of 3 years imprisonment or fine or both under **Section 3**. The legislature of Bombay State considered this punishment to be less and passed an Act increasing this punishment to 7 years imprisonment or fine or both. This Act got the approval of the Governor General and thus the Central Act was repealed. But in **1957**, the **Parliament amended its 1946** Act and made considerable changes in the punishment prescribed in **Section 3**. The Supreme Court decided that the Bombay Legislature Act was implicitly repealed by the amending Act of Parliament in 1957, hence the Central Act is constitutional.

13. Collective Responsibility - Collective responsibility of the Council of Ministers is the main basis of parliamentary government. In England, this principle is based on an important convention. The Indian Constitution has

protected this principle by clear provision. According to **Article 75 (3)**, the Council of Ministers is collectively responsible to the Lok Sabha. Collective responsibility means that the ministers are responsible to the Lok Sabha as a team for their actions. The ministers work as a team and all decisions taken in the cabinet are joint decisions of its members. No matter how much disagreement there may be among the ministers on any subject in the cabinet meeting, but once the decision is taken, all the ministers will have to accept it and support it in the legislature or outside it. Lord Salisbury has said that whatever decision is taken in the cabinet, all the ministers who do not resign from it are fully responsible and later they cannot say that they agreed there on the advice of others, but in reality they do not agree with it. If any minister disagrees with the policies of the Prime Minister or the Council of Ministers, then there is no other option for him except resigning. This is the biggest weapon in the hands of the Prime Minister through which he maintains unity and discipline among his colleagues in the Council of Ministers. According to this principle, the Council of Ministers is collectively responsible to the Lok Sabha. This means that if the Council of Ministers loses the confidence of the Lok Sabha, that is, if it is defeated on a question of policy, then the Council of Ministers has to resign.

14. Administrative Tribunals- It has its origin in **Article 323** of the Constitution. It adjudicates disputes and complaints relating to recruitment and service conditions of persons appointed to public services and public offices in relation to subjects of the Union and the States.

When the government constitutes an independent judicial type agency apart from the general courts, it is called administrative tribunal or quasi-judicial agency. These powers are also given by the government. Their source can also be the constitution. Civil service tribunals are established keeping in view the importance of administrative adjudication in administration.

1. Income Tax Appellate Tribunal
2. Railway Rates Tribunal
3. Labor Court
4. Industrial Tribunal
5. Rent Tribunal.

B.A.LL.B.-4th Sem. Paper-VI Family Law-II (Muslim Law)

Question No. 1- Discuss the various sources of Muslim law.
Answer- Sources of Muslim law refer to the subject matter from which law can be derived. Sources of Muslim law are divided into two parts-
(a) Primary Sources.S
(b) Secondary source or secondary source.
(a) Primary sources or main sources- Primary sources are again divided into four parts which are the following-
(1) Quran - The word Quran is derived from the Arabic word 'Qurra' which means 'to read' or that which should be read. Muslims believe in the Quran as the word of God. Quran is a divine book which was revealed through Prophet Muhammad for the welfare of the people. From the point of view of chronology, Quran is considered the primary source of Muslim law. According to chronology, it is the primary source because the present Muslim society was born from the Quran, although the Prophet
Mohammed sahab used to say that Islam is not a new religion; it is as old as the hills. The first divine messages kept coming to Prophet Mohammed sahab from time to time till his lifetime but they were not collected and arranged during the lifetime of Prophet sahab. Abu Bakr, who became the Caliph of Prophet sahab and died in 632 AD, for the first time collected various parts of Quran and compiled them and gave them the form of a systematic book which was called Quran. Hence every word of Quran, the collection of divine messages, is considered to be the message of God (Allah) himself. Mohammed sahab was only a messenger (Rasool) and used to tell his companions to memorize Quran and write it down. This is the reason why Muslims have so much love and attachment for this holy book that even after almost a thousand years of its collection, it is present in its original form. Quran has the following characteristics-
(1) The Quran is of divine origin. Under Islam, every word in this holy book is believed to be a gift from God Almighty. The Prophet merely uttered these words, not created them. Since these are a compilation of divine words, every word is immutable, infallible and irrevocable. Being of divine origin, the Quran is considered supreme and final as a source of law goes.
(2) The Quran is the primary source of Muslim law in chronological terms. The present Muslim community has emerged as a result of the religious teachings contained in the Quran. Therefore, any study of Islamic law must begin with the Quran.

(3) The Quran is divided into Surahs or Ayats. Each stanza or verse is called an Ayat. There are 6237 Ayats in the whole Quran and 114 chapters, which are called Surahs. These chapters are not arranged in a chronological order, except for the first chapter, the largest chapter comes first, then the smallest one, etc.
(4) The Qur'an is a mixture of religion, law and morality. In some cases, religious, moral and legal rules are either of law or of only religious or moral. It is believed that the verses of the Qur'an related to religion and morality were revealed from Mecca and the verses related to law were revealed. The number of verses related to law is 200 which are scattered in different chapters and only these verses are recognized as the source of law.
(5) The legal verses in the Quran are given in various forms, some of which are revealed to abolish objectionable and evil practices (such as polygamy, gambling, charging high rates of interest, and killing of newborn girls, etc.) or to solve problems occurring in real life.
(6) The words and verses contained in the Quran are of divine origin and it is not possible to make even the slightest change in them. Being immutable, the verses cannot be amended or changed according to the changing needs of the society. Therefore, if a specific meaning of a verse has already been given by the jurists of Shia or Sunni sect, then the courts have no right to give any other meaning to that particular verse.
(7) The Quran is not a complete code of Muslim law. Most of the verses are related to religion, philosophy and morality. There are only 200 verses in the Quran which mention legal rules and out of these only 80 verses deal with individual law Is related. Thus the Muslim personal legal interpretation is very brief. Only the general outline of the individual method has been given. There is no detailed mention of these in the Quran.

Thus, the Quran is a source of Muslim law which has been received directly in the form of divine messages; hence it is considered the highest and best source.

(2) Sunnah or Ahadith (Tradition of the Prophet) - The literal meaning of the word 'Sunna' is 'strict path'. It refers to certain practices and examples of the Prophet, whatever the Prophet said or did without reference to God, and is regarded as his traditions. This is the second source of Muslim law. Traditions are the command of Allah in the words of the Prophet. Where the words of Allah could not provide authority for a given legal precept, the words of the Prophet were considered an authority because his words were also believed to be inspired by Allah. According to Muslim law, revelations are of two types i.e. manifest (zaheer) and internal

(batin). The revealed or expressed revelations were the words of Allah and came to the Prophet through the angel Gabriel. Such revelations became part of the Quran. On the other hand, inner revelations were those which were the 'words of the Prophet' and did not come through Gabriel, but through Allah's inspired thoughts in his sayings. Such internal revelations became part of the Sunna. Therefore, traditions differ from the Quran in the sense that the Quran contains the words of God whereas the Sunna is in the language of the Prophet.

The following traditions of the Prophet are contained in Sunna:

(a) Sunnah-ul-Fail- The conduct of the Prophet Sahib is embodied in such traditions, that is, the actions of the Prophet himself come under the category of such traditions.

(b) Sunnah-ul-Kaul- In such traditions, the Prophet Sahib's own teachings come i.e. the teachings given by the Prophet Sahib the law and His words.

(c) Sunnah-ul-Takrir- i.e. silent support of Prophet Mohammad i.e. whatever is said without being in his presence.

Despite their objection, the Prophet's silence regarding any situation or event is considered to be his silence.

Traditions were considered authentic sources of law in the form of Sunna only when they were described by a competent and competent reciter. A qualified reader should have the following qualifications-

(1) He should be adult and of healthy mind. (2) His memory power should be sharp. (3) He should be a Muslim and (4) should have ethical conduct. The following three generations of the Prophet have been considered worthy recites -

(a) Companions of the Prophet - Those people who had the privilege of being with the Prophet are called companions of the Prophet.

(b) Successors of the Companions – Persons who did not have the privilege of being with the Prophet. But those who had the privilege of living with the Prophet's companions are called successors.

(c) Successors of the successors - After the demise of the successors of the companions, the traditions certified by the successors of these successors were also valid, but these were considered the least reliable, hence from the point of view of importance, the Sunna of the successors of the successors has been placed at the third place.

On the basis of authenticity, traditions have been divided into three parts-

(a) Ahadith-e-Mutawatir – The entire Muslim society considers such traditions as authentic. The number of such traditions is limited to only 5-6 generations. Such traditions are considered as authentic as the verses of the Quran.

(b) Ahadith-e-Mashhoor - Such traditions of Muhammad Sahib which were recognized by the majority of the Muslim society and became quite famous were called 'Ahadith-e-Mashhoor'.

(c) Ahadith-e-Ahad – This category of Sunna was neither unanimously accepted nor was it always prevalent. Only a minority of people in the society followed them and the prevalence of this type of Sunna in the society remained limited in the form of isolated traditions. Most of the jurists did not consider Ahadis-e-Ahad as Muslim law.

(3) Ijma- When a rule was found in the Quran and Sunna for a new problem, a new law was obtained by the unanimous decision of the jurists. This type of unanimous decision is called Ijma, which is considered the source of Muslim law, that is, the consensus given on a specific subject by Muslim jurists of some time is Ijma.

The principle of Ijma is based on the following commands of the Quran - "Allah obey His servants (people), obey the messenger from him and obey those among you in authority, if you have knowledge then ask those who have knowledge." Ijma represents the third source of Islamic law which is like delegated law. It is defined as the consensus of jurists over a period of time on a religious matter. This This is considered a sufficient means for action because the Prophet of Islam said, "My community will not acquiesce in any error."

Creation of Ijma-When there was a need for a new rule on any subject of law, the jurists who were called Mujhatjid, used to make the desired rule by their consensus. Thus, the rule of law made by the consensus of the Mujtahid was called Ijma. Some special people were selected by Ijma for the law on the basis of their qualification. The minimum qualification of Mujtahids was-

(1) They should be Muslims. (2) They should have knowledge of law. (3) They should have the ability to take independent decisions needed.

The entire process of formation of Ijma is called Ijtahid. Ijma has been classified into three categories based on the importance and superiority of Ijma-

(a) Ijma of the Companions: The companions of the Prophet Muhammad were considered to be the best class jurists.

(b) Ijma of jurists - In the absence of the unanimous opinion of Prophet Muhammad, the ijma of other jurists was accepted. Most of the Hanafi rules were propounded by this category of ijma.

(c) Ijma of the masses- The opinion of the majority of the Muslim community is placed under this category but as a source of Muslim law, this category of Ijma has no value due to the following two reasons. First- It was almost impossible for the majority of such a large Muslim community to gather at one place and express their opinion, hence an absolute majority was never achieved. Second- All Muslims cannot be considered jurists.

(4) Qiyas- Qiyas is essentially a tool of interpretation and not a means of changing the existing law, rather it can be used only to find a legal principle in accordance with the Quran and Sunnah for a new factual situation. Ijtihad means "personal reasoning". It includes both knowledge of the rules of Islamic law and the practice of one's judgment. Qiyas would also be impossible if jurists were not allowed to apply their own reasoning.

To obtain rules by the method of Qiyas only the following two conditions were necessary.

(1) Must have been a Mujtahit i.e. jurist who established analogy, and

(2) He must have derived the rule from a specific text of the Qur'aan, Sunna or ijma.

Two things are noteworthy in the context of Qiyas as a Muslim method:

(1) Unanimity of jurists is not necessary. One jurist alone is enough to issue a rule.

(2) The method of deriving laws by inference is very scientific.

Question No. 2- "According to Muslim law, this is a purely civil contract. Explain.

Answer- In Muslim law, no religious rituals are legally necessary for marriage to take place but every law has some provisions which are necessary for the recognition of marriage. In Muslim law, the following are the essential elements for marriage, if not done; the marriage either becomes ineffective or irregular. These essential elements are as follows-

(1) Proposal and acceptance (2) Consent (3) Sakshi (witness)

(4) Ability to marry (5) Absence of forbidden relationships

(1) Proposal and acceptance- Like other contracts, marriage is also complete by proposal and acceptance. It is necessary that one party to the marriage proposes to marry the other party. The marriage is complete only when the other party accepts the proposal. Therefore, we say that as a practical institution, marriage has the same status as any other contract.

In the case of Musammat Vashiran vs. Mohammad Hussain, it has been said that no specific method of making proposal and acceptance has been prescribed. The evidence that the woman has given her vote to marry and the man has agreed to give dowry is sufficient for marriage. The words expressing proposal and acceptance should be pronounced so that both the parties can hear each other's statement.

The proposal and acceptance must be completed in one meeting. If the proposal is done in one meeting and the acceptance in another meeting, then the marriage will not be considered valid.

(2) Consent - The free consent of the parties to the marriage is essential. Not only this, their consent should be free from fear, undue pressure or fraud. That is, for a marriage to be valid, the consent of the parties or their guardians is necessary. In the case of a boy or a girl who has not attained majority, the marriage will not be valid unless the legal guardian has given permission for it. If the parties to the marriage are of sound mind and adult, then in such a situation, their consent is required to be given by them themselves.

Consent can be expressed or implied. Smiling, laughing or keeping quiet is called an implied consent. Where consent for marriage has been obtained by pressure, threat, undue influence or any other kind of coercion, such consent cannot be said to be free consent. Consent obtained under pressure is considered a marriage It makes the marriage invalid, but the Hanafi sect is of the opinion that marriage is valid through pressure. In the case of **Kulsum Bibi vs Abdul Qadir (1921) 43 Bombay 151,** it was said that concealment of pregnancy by the wife at the time of marriage does not make the marriage invalid consent should not be based on any condition or event.

(3) Witnesses - Under Sunni law the proposal and acceptance must be made in the presence of two male or one male and two female witnesses who are of sound mind and adult Muslims. The absence of witnesses does not make the marriage void but irregular. Under Shia law witnesses are necessary not at the time of marriage but at the time of pronouncing divorce. Hence a marriage solemnized in the absence of witnesses under Shia law is considered perfectly valid.

(4) Capacity to marry - Every minor and adult person who is a Muslim is considered capable of marriage. He is considered eligible to be a husband and wife. A person who is an adult and of sound mind can marry on his own and a minor or insane can marry only through the mediation of his

guardian. For capacity to marry, the following three things are necessary - (1) Sound mind (2) Free consent (3) Adulthood.

Guardianship in the marriage of a minor and a lunatic - In the case of **Abdul Qasim vs. Musammat Jameela Khatun (1040) Calcutta 251** it was held that the marriage of a minor without the permission of the guardian is void unless it is ratified after the person attains majority.

If the parties to a marriage are minors, the persons mentioned in the following order have the right to enter into the contract in their place: (1) Father, (2) Grand father, irrespective of the number of generations above, (3) Real brother, (4) Sibling brother, (5) Son of real brother, (6) Son of real brother, (7) Real uncle, (8) Sibling uncle, (9) Son of real uncle, (10) Son of sibling uncle.

After these male guardians, the following female and kin guardians are included: (1) Mother, (2) Grandmother, (3) Grandmother, (4) Real sister, (5) Sibling sister, (6) One blood sister, (7) One blood brother, (8) Descendant of one blood brother, (9)

Descendants of one blood sister, (10) paternal aunt, (11) maternal uncle, (12) maternal aunt, (13) paternal uncle's daughter and her descendants. Under Shia law only the father and the grandfather, irrespective of the number of generations they may be in, have the right to contract marriage of an insane or insane.

The marriage guardian must be an adult of sound mind and a Muslim.

(5) Absence of prohibited relations - There must be no impediment to the marriage of the parties. There are few absolute prohibitions which make the marriage void.

Question No. 3- Briefly describe the nature and extent of the "option of adulthood". To what extent have its provisions been amended by the legislature."

Answer- Option of youth - Option of adulthood A minor boy or girl, whose marriage contract has been made by the guardian, has the right to accept or confirm the marriage on attaining adulthood. In certain special circumstances, a Muslim boy or girl, whose marriage contract has been made by the marriage guardian, has the option to reject the marriage on attaining adulthood. This right of minor children is called option of adulthood and the marriage is valid till the time of rejection.

The Bombay High Court held in **Abdul Karim v. Amina Bai (1935) 59 Bombay 529** that the option of repudiation given to the wife is based on principles repeatedly emphasized in the Quran. It is one of the means of

custody by which Islam reduces the pre-Islamic customs which put harsh pressure on women and children.

Muslim jurists divide a person's life into three stages - (1) Saghir, (2) Sariri, (3) Bulugh. Saghir is the stage when the boy or girl is below seven years of age. Sariri is the age between seven and fifteen. Bulugh begins as soon as the age of fifteen is completed. A marriage performed in the Saghir stage is void whether it is with the consent of the guardian or not. In Sariri stage, the consent of the boy or girl is not valid for marriage, but the boy or girl can be married by his or her guardian. On attaining the Bulugh stage, the boy or the girl is considered an adult for the purpose of marriage and he or she can marry even without the consent of the guardian.

If the marriage of a boy or a girl is solemnized by his/her guardian in the second stage, then he/she gets the right to ratify or reject the marriage solemnized by the guardian in the third stage. Thus it is seen that this right of option arises in the second stage and its benefit is availed in this third stage, when he/she completes the age of fifteen years.

Ancient Muslim law regarding choice of sexuality If the marriage of a minor is solemnized by the father or grandfather, the marriage is valid and binding on the minor and on attaining majority, the minor can have no child except Cannot be rejected without very special circumstances. If the father or grandfather arranges the marriage of a minor, then the minor can get married after attaining adulthood only if the father or grandfather is fraudulent or negligent or when the marriage causes direct harm to the minor. For example, if the father or grandfather marries the minor to an insane person or the groom is sick or has a dull mind, then in such a situation, after becoming a minor, the minor can reject the marriage arranged by the father or grandfather. After becoming an adult, the minor can reject or ratify a marriage arranged by a guardian other than the father or grandfather without giving any reason.

If the girl is aware of the marriage, then on attaining adulthood she must exercise her right of choice immediately. Any undue delay will deprive her of the right of choice and the option is lost.

The man's option to reject the marriage remains until he ratifies the contract by (1) express declaration, (2) payment of dowry, or (3) intercourse. The following is the quismus (modern) law related to the option of puberty under Muslim law:

(1) There is no right to option of puberty in a marriage conducted by the father or grandfather. The marriage of a minor conducted with the consent of the father or grandfather is generally considered binding on the minor

but if it is proved that the father or grandfather conducted the marriage of the minor fraudulently or through negligence then the minor has the right to cancel or annul the marriage on attaining puberty.
(2) Before 1939, the above rule regarding option of puberty was the same for both husband and wife, but under Section 2(7) of the M.V. Act, 1939, the wife has the right to option of puberty even in marriages solemnized by the father or grandfather.
(3) According to Section 2 (7) of the M.V. Act, 1939, the right to option on puberty is available to the wife only till the age of 18 years i.e. after attaining the age of 15 years, the wife must exercise this option only after attaining the age of 18 years otherwise the right to option ceases.
(4) Once the sexual intercourse has taken place, the right of choice of puberty is lost for either the husband or the wife. If the sexual intercourse has taken place against the wishes of the wife or has taken place with a minor wife, then the wife's right is lost.
(5) The annulment of marriage by the option of puberty does not automatically result in divorce. Divorce requires confirmation by the court.

In the case of **Peer Mohammad vs Madhya Pradesh AIR (1960) M.P. 24**, it was said that for divorce, only formal confirmation of the court is sufficient, the decree of the court is not necessary. If any party dies during the confirmation of the court, then the living couple can inherit the property of the deceased person or wife.

Question No. 4- Define Mehr. What right does a wife have against her husband in lieu of Mehr? Or what right does a Muslim widow have over her husband's property in lieu of Mehr?

Answer - Before the advent of Islam, the father of the wife used to receive the money of Mehr at the time of marriage. After marriage, the wife was considered the property of the husband. According to the ancient custom, the husband was required to give some money to the abandoned woman for her living. In the absence of proper law, this rule was mostly disregarded. If the husband falsely accused the wife of adultery, then the wife was not entitled to Mehr, but Islam gave the wife the right to divorce on the basis of false accusation of adultery and the wife was made entitled to Mehr. At that time, a custom was prevalent by the name of Shigar marriage, in which a man would give his daughter or sister to another person as a reward for marriage and he himself would marry his sister or daughter. In this way, no wife would get Mehr. Accusations of impurity were leveled against the wife to deprive her of Mehr.

Definition - According to Wilson, Mehr is the reward for the surrender of the body by the wife. The word 'Dawar' is the Muslim technical synonym of the Arabic word Mehr. According to Aamir Ali, Mehr is compensation for the use and benefit of the wife. According to Mulla, "Mehr is such a sum of money or property which the wife is entitled to receive as compensation for marriage."

According to Tayyab Ji, "Mehr is the amount of money which is given by the husband to the wife after marriage as per the agreement of the parties or as per the law. It is either immediate or deferred."

Justice Mahmud in Abdul Qadir v Salima compared marriage to a contract of sale and the mehr as the consideration for such a contract and said, "Mehr may be regarded as the consideration for marital intercourse in accordance with a contract of sale. A woman's right to resist her husband until the mehr has been paid is akin to a seller's lien on goods sold until they are in his possession" and until the price or any part thereof has been paid and her surrender to the husband is complete. Delivery of the goods to the seller.

Mehr is considered equal to dowry and the wife is entitled to recover it along with other debtors. After the death of the husband, she can also recover it from his property. This right of the wife is not greater than the right of any other unsecured debtor. If the wife has lawfully obtained possession of the whole or any part of the property of the husband in return for her dowry without any fraud or coercion, she is entitled to retain that possession as against other debtors until she receives the dowry. Such a wife who has not obtained possession of her husband's property in return for dowry cannot inherit it and cannot expel other debtors from possession. This right is called a right of lien but it is not legally considered a fixed right. In the case of **Hameera Bibi v. Zubeda Bibi [4]**, the Judicial Committee held that dowry is an essential incident to the condition of marriage under Muslim law, to the extent that when it is unspecified at the time of marriage contract, the law declares that it should be decided on definite principles.

(1) The right to retain possession does not exist during the marriage. The right to retain possession arises only after the death of the husband and not before the divorce. Thus, if a moneylender obtains a sale against the husband and the husband's property is sold in an Ijra sale during his lifetime, the wife has no right to retain possession against the purchaser and she must hand over possession to the purchaser.

In the case of **Hashmi Miyan Dada Miyan vs. Asim Unnisa, the Bombay High Court** held that the independent consent of the heir is sufficient to obtain possession of the property; consent for succession is not necessary.

(2) Actual possession - The right of retention means the right to continue to possess the property until the mehr debt is paid. Therefore, after the divorce, the wife or widow must be in actual possession of the property and if the wife or widow does not have actual possession of the property, she cannot retain possession.

(3) Right of retention not incidental to mortgage- The wife or widow has no interest in the property, she has retained the property as mortgage. But in the case of mortgage, the mortgagee retains the property under an agreement between him and the owner of the property and in the case of mortgage by the wife or widow, the right is conferred on him by law.

(4) It does not affect property. - The right of possession does not affect the property of the husband. The claim of a Muslim widow to mahr does not affect any specific property of her deceased husband, but if the widow has without force or fraud come into possession of the property of her deceased husband in lieu of mahr, she can retain it against the heirs of her husband until her mahr debt is paid.

If there is a lien of possession on the property- The wife is only entitled to collect her Mehr, she can collect it only as rent of the property. The right of possession does not give her any ownership or title over the property, the interest of the property always vests in the real owners of that property i.e. the heirs of the husband. The wife cannot mortgage the property by sale, if she mortgages then the sale of only her share is valid.

(5) The widow is bound to account for the profits and rents derived from the property to the other heirs of her deceased husband, while she is entitled to recover interest on the dowry payable to her and to adjust it against the husband. Net profit.

(6) The widow has a right to retain possession of the property for a specific purpose and hence she has to pay the dowry amount out of that property as soon as possible. If the widow does not own the property or has lost the property, she cannot claim possession of the property.

(7) The right of the widow to possession of her husband's property for payment of her dower does not bar the heirs from exercising their rights. The heirs have a right to possession of their share of the property, they can sue for possession and the court can also pass a sale decree in their favour,

but such sale is subject to their paying within the prescribed time the amount of dower in proportion to their share.

(8) Right to retain possession is only the right to retain possession of the property; she does not have the right to transfer the property to anyone else. If the wife gives up possession with her free consent, then her possession is considered to be over. There is difference of opinion in different High Courts on the question whether retention i.e. right to retain possession is a transferable right or not. In the case of **Zuber Ahmed vs. Jayanandan Prasad AIR 1960 Patna 147**, according to the High Court, possession of the husband's property in lieu of Ad Mehr is not allowed The right to retention cannot be vested in anybody else by separating it from the personality of the widow. Hence, the right to retention of a widow is not a transferable right.

Question No. 5 - On what grounds can a Muslim wife obtain a decree of divorce under the Muslim Divorce Act, 1939?

Answer- the Muslim Divorce Act of 1939 brought revolutionary changes in the earlier Muslim law. According to Section 2 of the present Act, any wife whose marriage has been solemnized under Muslim law can present her marriage for dissolution by a decree of the court on any one of the following grounds: Is-

(1) Husband missing for 4 years - Under Muslim law, a married woman is entitled to a divorce decree when her husband is missing for 4 years. The decree passed by the court on this basis can be implemented only when 6 months have elapsed since the decree was passed. If within 6 months from the date of the court decree, the husband is ready to perform marital duties either by himself or through an agent, the court can cancel the decree passed. In the meantime, if the husband returns or informs the court of his presence through some other means, the decree is cancelled and the divorce cannot take place.

(2) Failure of husband to pay maintenance.- A wife can also file an application for divorce on the ground that her husband has not maintained her for two years or has neglected her. Whatever may be the reason for non-maintenance, the court is not concerned with it. The husband cannot defend the suit on the ground that he could not maintain her due to his poverty, ill health, unemployment, imprisonment or any other ground (such as personal property of the wife) unless it is pleaded that the conduct of the wife has been such as to disqualify her from receiving maintenance under Muslim law.

In the case of **Rabia Khatoon vs Mukhtar Ahmed AIR 1966 Allahabad 548**, the court said that a wife cannot get a marriage decree even if she does not get maintenance for living separately from her husband without any reason. In the case of **Yusuf Roshan vs Soramma AIR 1971 Kerala 261**, the Kerala High Court held that if the wife lives separately from her husband without any justifiable reason and the husband is unable to arrange for her maintenance, then the wife can get a marriage decree under section 2 (b). With due respect to the court, it can be said that this decision is not reasonable and should be reconsidered.

(3) Imprisonment of the husband- When the husband has been sentenced to imprisonment for seven years or more, the wife can obtain a decree of marriage from the court. In such cases, the court cannot grant a decree of marriage unless a final order of punishment has been received regarding the punishment of the husband.

(4) Failure of the husband to perform his marital obligations- that the husband has without valid excuse failed to perform his marital obligations for a period of three years: The Act defines "marital obligations of the husband". Under Muslim law, the husband has certain marital obligations. However, the ultimate purpose of this statement is to examine the inability of the husband to perform only those marital duties which are not covered by any of the conditions of **Section 2** of this Act.

(5) Impotence of the husband.-Which the husband was impotent at the time of marriage and continues to be impotent. To obtain a divorce on this ground, the wife has to show that the husband was impotent at the time of marriage and will continue to be so till the trial. Before passing a declaration of divorce on this ground, the court will undoubtedly give the husband one year's time to improve his potency, provided he applies for it.

(6) Insanity of the husband- If the husband has been insane for two years or is suffering from uncleanliness or a harmful venereal infection, his insanity must have lasted for at least two years before filing the complaint. In any case, this conduct has no bearing on whether the mental illness is curable or not. The disease may be white or dark in colour and may cause shrinkage of the skin. It may be curable or life-threatening. A venereal disease is a sexual organ infection. The Act stipulates that the condition must be of a serious nature. Further, whether the wife is herself at fault for the husband's illness or not, she is entitled to divorce on this ground.

(7) Annulment of marriage by husband.- If a girl is married before the age of 15 years [13], under Muslim law she has the right to repudiate the marriage after she attains the age of 18 years, unless the marriage has been

consummated. For this purpose she is entitled to a decree of divorce. (1) She was under 15 years of age at the time of the marriage.
(2) After attaining the age of 15 years but before attaining the age of 18 years, she seeks dissolution of the marriage did it and
(3) There has been no marital intercourse.
(8) Cruelty by husband – If the husband treats his wife with cruelty, she can file an appeal for a judicial separation decree on the same ground.
Following are some of the ways in which the grounds of cruelty can be claimed:
(1) Physical attack
(2) Making defamatory statements affecting his or her reputation.
(3) Forces him to live an immoral life.
(4) Preventing him from practising his religion.
(5) The husband has more than one wife and does not treat them equally.

In **Syed Ziauddin v. Parvez Sultana [14],** Parvez Sultana was a science graduate and she wanted to take admission in a college to study medicine. She needed money for her studies. Syed Ziauddin promised to give her money if she married him. He did. Later she filed a divorce petition on the non-fulfillment of the promise on the part of the husband. The court granted her divorce on the ground of cruelty. Thus we see the attitude of the Court in giving a wide meaning to the expression cruelty. In **Zubeda Begum v. Sardar Shah [15],** a case of Lahore High Court the husband sold the jewellery of the wife with her consent. It was submitted that the conduct of the husband did not fall in the category of cruelty. **Abubakar v. Mamu Koya** the husband forced his wife to wear saris and go to the movies. The wife refused because in her opinion doing so was against the Islamic way of life. She requested divorce on the ground of mental cruelty. The Kerala High Court ruled that the husband's actions were not extreme because mere departure from the standards of oppressive orthodoxy is not considered un-Islamic behaviour. The Allahabad High Court held in **Itwari v. Asgari 22** that Indian law does not recognise different types of cruelty, such as Muslim cruelty, Hindu cruelty, etc., and the test of cruelty is based on universal and human standards; i.e., conduct by the husband which causes such physical or mental suffering as to endanger the safety or health of the wife.
(9) Any other ground recognised by Muslim law.- Apart from the above-mentioned grounds, a Muslim wife can file a divorce suit on any other ground which is recognised as a valid question in Muslim law. This is the

residual ground on which a wife can file a divorce suit. This section covers divorce by ila, zihar, khula mubarat, lien and tafweez.

Question No. 6- Review the law of 'maintenance' under Muslim law. To what extent has this law been changed by the Indian legislature and courts? Explain.

Answer- Maintenance means the expenses incurred on a person's food, accommodation, clothing etc. There is a bog of.

According to Muslim law, there are three grounds for the right to maintenance-

(1) Marriage (2) Blood relation (3) Property

Therefore, the following persons are entitled to get maintenance-

(1) Wife (2) Parents and their parents (3) Minor sons and unmarried daughters (4) Subject to a barring decree incoming relatives

A wife has a legal right to receive maintenance from her husband, even if she has the financial capability to manage herself without the financial help of her husband, but they said capability does not end her right to receive maintenance. This right arises in the following manner-

(1) A husband shall maintain his wife when she attains the age of puberty and becomes capable of sexual intercourse.

(2) The wife is entitled to have sexual intercourse with the husband except at times when it is illegal or improper you are always ready and follow your husband's orders.

(3) Even after divorce the wife has the right to maintenance from the husband or from his property during the period of **iddat (Rashid Ahmed v. Anisha Khatun (1932) 59 L.A. 21**).

(4) If the wife is living separately from the husband without any valid reason and depriving him of sexual pleasure, then her right to maintenance ends. The courts decide in which circumstances her living separately is justified and in which circumstances it is not. According to **Tayyab ji**, the wife's right to maintenance does not end in the following circumstances-

(a) When the wife has any lawful right to refuse sexual intercourse to the husband.

(b) When intercourse is not possible due to the minority of the husband, the absence of the wife with the permission of the husband, or the wife's illness or deformity of the genitals.

Maintenance of wife under Code of Criminal Procedure, 1973- Under **Section 125** of **the Code of Criminal Procedure, 1973 (CrPC)**, if a person has sufficient means to maintain himself and his wife but refuses to maintain his wife, a first class magistrate may order him to pay a monthly

allowance. The amount of this allowance depends on the earning capacity of the husband. The higher the income of the husband, the higher will be the maintenance. Under **Section 125** of the **CrPC**, a wife can get an allowance for maintenance or interim maintenance and expenses of proceedings. However, if the wife wants to get an allowance for any of these things, she must fulfil the following conditions:

(1) A wife must live with her husband.

(2) A wife should not without sufficient cause refuse to live with her husband

(3) The wife and husband should not be living separately by mutual consent.

(4) The wife must not live in adultery.

If the wife is involved in adultery, she cannot get maintenance allowance. Apart from this, the income of the woman is also not taken into consideration if adultery is proved. Under Section 125 of the CrPC, not only the wife has the right to maintenance. Rather, the children also have the right to maintenance for their living and other expenses.

In the case of **Saira Bano vs. Ghafoor AIR 1987 Supreme Court 1103**, the Supreme Court has held that under Section 125 (3) of the Code of Criminal Procedure, 1973, the justification for maintenance to a Muslim husband and wife is that despite having the legal right to marry a second time while having one wife under the Personal Law Section (22513), if the husband marries a second wife and lives separately from the first wife, the demand for maintenance would be justified.

While expanding the explanation to **Section 125(3),** the Supreme Court held that so far as a neglected wife is concerned it makes no difference whether the other woman entering into her marital life is a married wife or a concubine. According to the Supreme Court, the provisions of **Section 125** should be interpreted keeping in view the violation of the conjugal rights of the wife and not the legal rights of the husband.

In Muslim law, there is a practice of giving some monthly allowance to the wife for her personal expenses, especially in upper class families. This is known as Kharch-e-Paandaan or Mewa Khoori. Its arrangement is made by mutual contract between the husband and wife or their guardians. Hence, under this, it is an independent right of the wife to keep receiving some amount from her husband as pocket money or maintenance. On the contrary, the basis of the wife's right to maintenance is the marital relationship between the husband and wife and not any contract. Hence, once the validity of the wife's claim for maintenance is established, the

husband cannot be freed from the responsibility on the basis that under the matrimonial contract, the wife has been receiving sufficient amount as maintenance and will continue to receive it in future as well.

Maintenance under Muslim Personal Law- Under Muslim Personal Law, a divorced wife is entitled to receive maintenance from her former husband during the period of Iddat. According to Muslim Personal Law, a wife is not entitled to maintenance after the expiry of the Iddat period under any of the circumstances mentioned in Muslim law. Muslim law does not accept any commitment on the part of a husband to maintain his former wife after he has pronounced divorce. Under Section 125 of the Code of Criminal Procedure, 1973, the term wife includes a wife and a wife who has obtained divorce from her husband and has not remarried. It states that after divorce, if the wife is not willing to maintain herself, she is entitled to receive maintenance from her husband until she remarries. The Act also applies this provision to Muslim women who are not entitled to maintenance after the expiry of the Iddat period. This Act makes it obligatory for the husband to provide maintenance to the wife even after the completion of Iddat.

Under **Section 127(3) of** the Code of Criminal Procedure, the maintenance of a divorced wife stands cancelled and she shall not be entitled to maintenance under the following circumstances

(1) If she remarries.

(2) If he has received the full amount due to him under any customary or personal law.

(3) If she voluntarily gives up her right to maintenance after divorce.

In the context of the amount payable on divorce under customary or personal law, it is worth noting that the right to Mehr of a Muslim wife is considered a completely different right. The practical aspect of Mehr is that in case of divorce, arrangements can be made for the maintenance of the wife, but this does not affect her right to maintenance.

In the case of **Bai Tahira vs. Ali Hussain, AIR 1979 Supreme Court 362**, the Supreme Court has clearly stated that even after receiving the full amount of Mehr, a Muslim wife has the right to receive maintenance under **Section 125**.

In Zohra Khatoon v. Mohd. Ibrahim2, the Supreme Court held that the term 'wife' mentioned in Section 125 (1) Explanation (b) of the Code of Criminal Procedure, 1973 includes women who have been divorced or women who have obtained a decree of dissolution of their marriage under any of the provisions of the Muslim Marriage Dissolution Act, 1939. Maintenance

under the Muslim Women (Protection of Rights on Divorce) Act, 1986 This Act limited the applicability of Section 125 of the CrPC and passed certain provisions in favour of Muslim Personal Law. This Act states that the husband is obliged to maintain his wife only during the period of iddat and not thereafter and even during the period of iddat he has to provide her with a fair and reasonable amount of maintenance. Even after the Iddat period is over if the wife is not able to maintain herself and remains unmarried then in that case she can demand maintenance from the Wakf Board or her relatives or the relatives of her ex-husband or those who will get her property after her death. The Muslim Women (Protection of Rights on Divorce) Act, 1986 made the use of sections 125 to 128 of the Criminal Procedure Code optional. Nothing is clearly mentioned in this act and it has created various confusions within the judiciary and it has been considered vague. The confusion of this act has been resolved by the Supreme Court of India under this case.

Question No. 7- Is it necessary to give possession for the validity of donation (hiba) in Muslim law? If yes, then under what circumstances is it not necessary to give possession? Explain.

Answer- According to Muslim law, a Muslim can legally donate his property during his lifetime. Or he can transfer his property by will, which will be effective after his death. The first transfer is called settlement between two living persons and the latter transfer is called testamentary settlement. In the case of settlement of property between living persons, he can transfer his property to any extent, whereas in testamentary settlement he can donate only 1/3 of the entire property.

Hiba is done in two ways- (1) Hiba while alive, (2) Hiba by will Any Muslim can give away his entire property as Hiba during his lifetime and in this regard he has the right to there is no restriction on the above in Muslim law. But transfer by will is restricted to one-third because Hiba is given by willIt takes effect after the death of the testator.

Definitions- According to **Hedaya** "Hiba is an unconditional transfer of ownership in an existing property, made immediately without any consideration."

According to **Ameer Ali** "Hiba is a voluntary gift of property by one person to another without consideration, so that the recipient is deemed to be the owner of the subject-matter of the gift."

According to **Mulla** “Hiba is the transfer of property by one person to another immediately and without any payment.

"Hiba is an immediate and unqualified transfer of a corpus of property without any return."

Essential elements of Hiba- The requisites or essential elements of a valid Hiba are three-

(1) Parties to the Hiba

(2) Subject matter of the Hiba

(3) Extent of subject matter

Subject matter of Hiba or donation-

General principle - The general principle is that the thing can be donated-

(a) Over which ownership or property rights can be exercised, or

(b) Which can be occupied, or

(c) Which exists in the form of (1) a specific thing or (2) a right of execution, or

(d) Which falls within the meaning of the word 'goods'.

Muslim law does not distinguish between ancestral or self-acquired property, immovable or personal property, movable or immovable property. Under Muslim law, property is called 'goods'. It includes all kinds of property which can be occupied. Anything which can be occupied or a right which can be exercised or anything which can be kept in possession and which exists as a special entity, or any enforceable right or thing which actually comes within the meaning of goods, can become the subject matter of gift.

A gift of property which does not exist- A gift of property which does not exist at the time of making the gift and which is going to come into existence at some future date shall be void.

Limitation of the power of the donor to make a Hiba- The general rule is that the power of the donor to make a donation of his property is unrestricted. He can give any part of his property to anyone.

The policy of Muslim law appears to be to prevent the testator from encroaching upon his sons in the course of the lawful devolution of property, though he may give a particular portion, which may be up to one-third, to a stranger. But it also appears that a property-holder may, to some extent, defeat the policy of the law by giving his entire property or a portion thereof to one of his sons during his lifetime, provided certain formalities are observed.

Formalities of Hiba-It is often assumed that the term 'gift' reflects exactly the same meaning as the term 'shahiba'. Gift is a broad and general concept while Hiba is a narrow and well-defined legal concept. Juridically, in Islamic law, Hiba is considered similar to a contract which involves an offer to give

something on the part of the donor and acceptance on the part of the recipient. Thus three essential formalities have to be fulfilled to make Hiba.
(1) Declaration of gift by the donor
(2) Acceptance of the gift by the donee
(3) Delivery of possession by the donor and taking of possession by the donee
These three formalities are discussed in detail below:
(1) Declaration of gift by the donor-A declaration merely signifies the intention of the donor to make a gift. It is a confirmation of the intention of the donor to transfer ownership of the property to the donee. Verbal or written: The donor may declare the gift of any kind of property either verbally or by means of a written deed.

In the case of **Mohammed Hesabuddin v. Mohammed Hesaruddin [2]**, a Muslim woman gifted her immovable property in favour of her son. The gift was written on ordinary paper and it was not a registered deed. The court held the validity of such gifts in this case as follows- "Under Muslim law, writing is not necessary for the validity of a gift, whether it is of movable or immovable property. Therefore, the gift in this case was held to be valid because writing and registration of the gift are not essential requirements for making a valid gift.
Express Declaration-The gift must be declared in clearly worded terms that the donor is fully acknowledging his ownership of the property. A gift made in vague terms is invalid.
(2) Acceptance of the gift by the donee-For a gift to be valid, it must be accepted by the donee. Acceptance reveals the intention of the donee to take the property and become its new owner. Without acceptance, the gift is considered incomplete. Since under Islamic law, Hiba is regarded as a bilateral transaction, therefore, it is important that the offer made by the donor to transfer the ownership of the property must be accepted by the donee.
Minor - If the recipient is a minor, the acceptance on behalf of the minor must be given by the guardian of the minor's property may go.
Juridical Person – If a gift is made in favour of an institution or any other juridical person, the acceptance of the gift is done either by the manager or any other competent authority.
Two or more donees- A gift made in favour of two or more donees must be acknowledged by each person separately. If the share of each person is clearly specified by the donor, they will get separate possession in the manner declared by the donor. But if under a gift the share is not specified

and no separate possession is given by the donor, the gift is still valid and the donees will hold the property as tenants in common.

(3) Delivery of Possession - The formalities prescribed for gifts under **Section 123, Transfer of Property Act, 1882** do not apply to Muslim gifts. Under Islamic law, a gift is complete only after the donor has handed over possession and the recipient has taken possession. Thus, it is imperative that the delivery of possession of the property must be accompanied by a declaration and acceptance. The gift is effective from the date when possession of the property is delivered to the recipient and not from the date when the declaration was made by the donor. Delivery of possession is a major aspect in Islamic law. The importance is to the extent that without handing over possession to the recipient, the gift is void, even if it is made through a registered deed. To make the gift complete the donor has to give up not only the ownership but also the possession in favour of the recipient. Muslim law does not recognize the transfer of ownership right from the donor to the recipient without express delivery of possession of the property. **In Noor Jahan v. Muftakhar [4]**, a The donor gifted certain property to the donee, but the donor continued to manage the properties and took the benefit himself. Till the death of the donor, no mutation was done in the name of the donee. The court held that since no delivery of possession was made, the gift was incomplete and ineffective in nature.

Question No. 8- What is a will? Who can make a will? Which formalities are not necessary for a valid will? Explain.

Answer- Fatwa-e-Alamgiri defines will as follows- "Donation of property rights in any particular object, profit, benefit or profession which comes into effect after the death of the testator." Thus, "will is a legal declaration of a person's intention regarding his property, which he wants to implement after his death." If the definition of will is divided into two parts, then the following elements of will come to light-

(1) A will is a conferral of property rights by one person to another.

(2) The grant of this power takes effect after the death of the person conferring such power (the testator) the document of the will is called the will.

No formalities required Any Muslim, who is of sound mind and under the Indian Majority Act under this Act; the person is of majority and is competent to make a will.

General rule-No formalities are generally required to make a will. It is only necessary that the testator should declare that after his death the ownership of his property should pass to the testator.

Requirements of a valid will- Under Muslim law, the following are the essential requisites of a valid will-

(1) The testator must be competent to make a will.

(2) The legatee must be competent to receive the will.

(3) The subject matter of the donation by will must be valid.

(4) Donation by will must be within the limits of the testamentary power of Muslims.

In **Abdul Mannan Khan vs Murtaza Khan**, the Patna High Court has held that every Muslim who is of sound mind and of adult age can transfer his property by will. Here as far as will is concerned, there is no prescribed format or formality prescribed by law for it. A clear expression of the testator can fulfil this purpose.

Requirements of a valid will-

(1) The testator (testator) must be competent to make a will.

(2) The testator (testator) must be competent to receive the inheritance or bequest.

(3) The subject matter of the will (property) must be valid (qualitative requisite). The will must be within the limits imposed on the testamentary power of a Muslim (quantitative requisite). The testator and his capacity (Who can make a will?) Every major Muslim (above 18 years) of sound mind can make a will. The age of majority is governed by the Indian Majority Act, 1875, under which, a person attains majority on completion of 18 years (or on completion of 21 years, if he is under the supervision of the Court of Wards). Thus, at the time of execution of the will, the age of the testator must be 18 or 21 years, as the case may be. At the time of execution of the will (i.e. when it is being made), the testator must be of sound mind. Under Muslim law, the testator must have a fully disposing mind i.e. the testator must be fully capable of knowing the legal consequences of his actions not only for a brief period when the declaration was made but also thereafter. A will executed in anticipation of death is valid, but under Shia law, if a person executes a will after attempting suicide, the will is invalid. A minor is incompetent to make a will (such a will is invalid) but a will made by a minor can be validated by his ratification later on when he attains majority. A will obtained by undue influence, coercion or fraud is not valid, and the court is very cautious in accepting the will of a veiled woman. Thus, a will must be executed by the testator with his free consent. The testator

must be a Muslim at the time of making or executing the will. A will takes effect only after the death of the testator; it is merely a declaration made before his death by virtue of which the testator may inherit property in the future. If a will is executed by a Muslim who ceases to be a Muslim at the time of his death, the will is valid under Muslim law. Further, the will is governed by the rules of the school of Muslim law to which the testator belonged at the time of execution of the will. For example, if the person who wrote the will was a Shia Muslim at the time, only the Shia law of wills applies. The testator and his capacity (for whom the will is made) Any person capable of owning property (Muslim, non-Muslim, insane, minor, child in the womb of his mother, etc.) can be a legatee under a will. Thus, sex, age, creed or religion are no bar to making a will. The legatee (including a child in the womb of his mother) must be in existence at the time of making the will. Thus, a will made to an unborn person is void. A will can be validly made for the benefit of a juristic person or an institution (but it should not be an institution which promotes a religion other than the Muslim religion such as a Hindu temple, Christian church, etc.). A will made for the benefit of a religious or charitable object is valid. It is illegal to make a will to benefit an object contrary to Islam such as an idol in a Hindu temple, as idol worship is against Islam. No one can be made the beneficial owner of shares against his will. Therefore, title to the subject matter of the will can be completed only after the death of the testator with the express or implied consent of the testator. The testator has the right to refuse. The person who has caused the death of the testator cannot be a competent testator. A will becomes effective only after the death of the testator, therefore, a greedy and impatient testator may cause the death of the testator to obtain the property immediately. However, it is also immaterial whether the testator was aware of being a beneficiary under the will or not.

Joint Wills - Two or more legates may be willed jointly, and when no specific share of any one of them is mentioned, the property is divided equally among all the legates. But, where the legatee himself has specified the respective shares of the legatees.

Subject-matter of the Will (the bequeath able property) and its validity The testator must be the owner of the property to be disposed of by the will; the property must be capable of being transferred; and, the property must be in existence at the time of the testator's death, it is not necessary that it was in existence at the time of making the will. Any kind of property, movable or immovable, corporeal or incorporeal, can be the subject-matter of a will. To be a valid will the grant in the property bequeathed must be complete or

entire. The will must be unconditional. If a condition is attached, say that the testator will not alienate the subject-matter of the legacy, the condition is void and the will is effective without any condition. Similarly, a will in futuro is void, and similarly a contingent will is also void. However, an alternative will of the property (i.e. not to one person or to the other) is valid. Thus, when the testator willed that if his son is alive at the time of his death he will take the legacy, if not in existence then his son's son will take the legacy, and failing both it will go to a charity, it was held valid (**Advocate General v. Zimbabai**). Under Sunni law the creation of a "life estate" is not acceptable; a will of a life estate in favour of a person will operate as if it were an absolute grant. However, under Shia law, a will of a life estate in favour of one person and the vested remainder to another after his death is valid. Testamentary power and its limitations (testamentary one-third) a Muslim does not have unlimited power to make dispositions by will. There are two kinds of restrictions on the power of a Muslim to dispose of his property by will, which are with regard to the person in whose favour the will is made, and the extent to which he can dispose of his property. This is obvious, since the purpose behind this restriction is to safeguard the interests of the heirs of the testator.

No Muslim can bequeath more than one-third of his net estate after payment of funeral fees and debts. If the estate bequeathed exceeds one-third, the consent of other heirs is required (Sunni and Shia law).

Bequest of the entire estate to one heir to the exclusion of the other heirs is void **Husseini Begum v. Mohd. Mehdi** Where the heirs refuse to give their consent, the bequest will be valid only to the extent of one-third of the estate and the remaining two-thirds shall be given as intestate succession.

In respect of the bequest of one-third to an heir, the consent of the other heirs is required in Sunni law, but not in Shia law. In the case of a non-heir (stranger), the consent of the heirs is not required in either case.

(1) The above rule of one-third legible shall not apply in a case where the testator has any is not an heir. The right of the Government to take the property of an heirless person shall not, in any way, restrict the right of any person to dispose of his property as he pleases. Thus the Government is not the heir of an heirless person.

(2) A will made for pious purposes is valid under both Sunni and Shia laws up to the extent of the estate or one-third.

(3) If a Muslim marries under the Special Marriage Act, 1954, the '1/3 limitation' rule will not apply as he then has all the powers of a testator under the Indian Succession Act, 1925.

Consent of heirs – The consent should be of the heirs and not of the presumptive heirs.

Whether a person is an heir or not will be determined at the time of the death of the testator because a person who is an heir at the time of making a will cease to be an heir at the time of the testator's death and vice versa. Under Sunni law, consent by heirs will be given only after the death of the testator, while in Shia it may be before or after the death of the testator.

The consent must be definite, whether expressed or implied by positive conduct, and mere silence on the part of an heir will not constitute implied consent. The attestation of the will by the heirs and the consent of the testator to the possession of the property have been held to be sufficient consent. In cases where only some of the heirs give their consent, the shares of those who consent will be binding, and more of the legacy will be paid from the share of the heir who consented. The consent of insolvent heirs has been held effective in making the will valid. Consent once given cannot be revoked later. Similarly, consent cannot be given after an heir has already disclaimed it.

Legacies to heirs and non-heirs.-Where the testator makes legacies to heirs as well as non-heirs by the same legacy, the legacy shall not be void as a whole for want of the consent of the heirs, but shall be effective only as regards the non-heirs. The rule is that the will shall, so far as possible, be given the maximum effect possible.

For example, if the testator leaves his entire estate to one heir and one non-heir, without the consent of the heir, the non-heir will take one-third of the estate and the remaining two-thirds will go to him. Heirs of the testator by inheritance Muhammad v. Aulia Bibi.

Revocation of Will - Muslim law provides the testator with an unfettered right to revoke his will. A Muslim testator can revoke any will made during his lifetime, expressly or implicitly. Thus, if he sells, gifts or in any other way deals with the bequeathed object such as building a house on a piece of land previously bequeathed, this would mean revocation. For example, where the testator gives land to his friend under a will, but a year later gifts the same land to his daughter, the will made in favour of the friend is automatically revoked. Where a testator makes a will, and by a subsequent will gives the same property to someone else, the earlier will is revoked. But a subsequent will (though of the same property) to another person in

the same will does not operate as a revocation of the earlier will, and the property will be divided in equal shares between the two testators. It is not necessary that a second will has to be made to revoke an earlier will. A will may be revoked by a simple and clear declaration to that effect or by a formal deed revoking or rescinding the will.

Question No. 9- "The Shariat Act, 1937, brought uniformity and unity in Muslim law by making all practices contrary to Muslim law invalid and ineffective." Discuss this statement.

Answer- The partition of India in 1947 not only divided India into two independent domains but also completely changed the laws applicable to the country. Before the partition of 1947, the subjects of inheritance, succession, marriage, divorce, family relations and dowry were regulated under the able guidance of religious laws that had their roots in centuries-old customs. Such laws were often altered by various legislations due to the underlying ideologies that formed such laws. The reason behind enacting the Muslim Personal Law (Shariat) Act, 1937 was to eradicate the traditional practices that existed with regard to Muslims. Earlier, this Act was not applicable in the North-West Frontier Province as they had their own law with different features by the name of NWFP Muslim Personal Law (Shariat) Application Act, 1935. But as of now, the Act of 1937 is applicable throughout India as provided under Section 1(2) of the Act. The aim of this article is to provide a detailed analysis of this Act of 1937.

Muslim Personal Law (Shariat) Act, 1937-The Muslim Personal Law (Shariat) Act, 1937 is a short law having only five provisions. As each provision has its own importance, individual analysis of each of them is relevant. Here is the scheme of the Act of 1937-

Section 1-Short title and extent
Section 2- Application of personal law to Muslims
Section 3- Power to make declaration
Section 4- Power to make rules
Section 6 – Repeal

Application of the Act, 1937-Section 2 of the Muslim Personal Law (Shariat) Act, 1937 talks about the application of personal law to Muslims. The provision is as follows “Notwithstanding any custom or usage to the contrary, all questions in respect of intestate succession (except questions relating to agricultural land), special property of women, including personal property inherited or acquired under contract or gift or any other provision of personal law, marriage, divorce, ila, zihar, lian, dissolution of marriage including khula and mubarat, maintenance, mehr, guardianship

gifts, trusts and trust properties, and wakf (other than charities and charitable institutions and charitable and religious endowments) rules in cases where the parties are Muslims shall be decided by the Muslim Personal Law (Shariat). This provision thus covers ten subjects under its umbrella which are-

(1) intestate succession; (2) dissolution of marriage including all forms of divorce such as talaq, ila, zihar, lian, khula and mubarat; (3) maintenance; (4) dowry; (5) special property of women; (6) marriage; (7) guardianship; (8) gifts; (9) trusts, and properties appurtenant thereto; and (10) wakf.

In order to interpret this provision, it is necessary to highlight two essential phrases present in this section, which are-
"Notwithstanding any custom or usage to the contrary" and "there shall be the Muslim Personal Law (Shariat)."

Section 3-Power to make declaration- Like **Section 2** of the Act, **Section 3** also clearly excludes women from making declaration regarding beneficiaries of agricultural land. The provision is as follows,

(1) Any person who satisfies the prescribed authority

(a) that he is a Muslim, and (b) that he is competent to contract within the meaning of **section 11** of the **Indian Contract Act, 1872 (9 of 1872), and (c)** that he is a resident of the territories to which this Act extends, may, by a declaration in the prescribed form and filed before the prescribed authority, that he desires to obtain the benefit of the provisions of this section, and thereupon the provisions of **section 2** shall apply to the declarant and to all his minor children and their descendants as if wills and legacies, except in cases of adoption, had also been specified.

(2) Where the prescribed authority refuses to accept a declaration under **sub-section (1),** a person desirous of so doing may appeal to such officer as the State Government may, by general or special order, appoint in that behalf, and such officer may, if he is satisfied that the appellant is entitled to the declaration, order the prescribed authority to accept it.

Section 3 of the Act talks about the power to make declaration. Now, to exercise this power, a person has to fulfil three criteria provided by this provision, which are;

Power of State Governments to make rules under the 1937 Act- **Section** 4 of the **Muslim Personal Law (Shariat) Act, 1937** empowers the State Governments to make rules in accordance with the provisions and purpose of the Act. The section reads thus,

(1) The State Government may make rules for carrying out the purposes of this Act.
(2) In particular and without prejudice to the generality of the foregoing powers, such rules may apply to all of the following or may provide for any matter, that is to say
(a) To determine the authority before which and the form in which proceedings under this Act may be initiated; Announcements will be made;
(b) to prescribe the fees to be paid for the filing of declarations and for attendance at the private residence of any person in the discharge of his duties under this Act; and to prescribe the times at which such fees shall be payable and the manner in which they shall be levied.
(3) Rules made under the provisions of this section shall be published in the Official Gazette and shall thereupon have the same effect as if enacted in this Act.
(4) Every rule made by the State Government under this Act shall, as soon as may be made, be laid before the State Legislature.

This provision along with **Section 3** of the **Act of 1937** governs the procedure for declaration by a Muslim as provided under **Section 3(1)**. The authority prescribed for filing the declaration and the fee to be deposited before such authority are to be decided by the State Governments. It is to be noted that the **Act of 1937** is a Central legislation and at the time of its promulgation it could not have been specifically made for the States. Because of this, the Act appears to be flexible enough to incorporate the rule making power of the State Government to suit the needs of the Muslims of that State, provided the purpose of the Act should not be defeated in any manner.

Repeal under the Muslim Personal Law (Shariat) Act, 1937 – Section 6 of the Shariat Act of 1937 talks about repealing certain provisions of certain laws which appear to be inconsistent with the provisions of the **Shariat Act of 1937**. These Acts have given powers to the courts of India to apply Muslim law in force before the Shariat Act was promulgated in 1937.

Question No. 10- What do you understand by Iddat? Discuss the rights and duties during the period of Iddat.

Answer- The literal meaning of 'Iddat' is 'to count'. Under Muslim law, Iddat is the period during which a widow or divorced woman is prohibited from remarrying after marriage. Generally, after divorce, the marital relationship between husband and wife ends and they become an independent man and woman. Immediately after divorce, the husband has the right to remarry, but the wife cannot remarry for a certain period. The

fixed period after divorce during which the wife (widow or divorcee) has to wait to remarry is called Iddat.

During this period, the wife has to live a virtuous life by living alone and the prohibition of her remarriage during this period is a very meaningful objective of the prohibition of remarriage of such a woman. In fact, if the husband and wife had intercourse a few days before the divorce, it is difficult to find out whether the wife has conceived as a result of the intercourse or not. In such a situation, if the wife, like the husband, is given the right to remarry immediately after the divorce, then it becomes doubtful whether the paternity of her possible pregnancy should be considered to be of the former husband or the second husband. To overcome this situation, the Muslim law has prescribed that after divorce, the wife should wait for a certain period (Iddat) so that the status of whose possible pregnancy it is becomes clear. By the end of the period of 'Iddat', the status of the possible pregnancy becomes clear automatically through physical symptoms. The period prescribed for Iddat after divorce in different circumstances is as follows-

(a) In case of divorce by talaq

(1) If sexual intercourse has taken place between the husband and wife, the period of iddat is three menstrual cycles. If the wife does not menstruate, the period of iddat is three lunar months.

(2) If the divorce by talaq takes place before sexual intercourse, the wife does not have to observe iddat.

(3) If the wife is pregnant at the time of divorce, the period of iddat lasts until the miscarriage or the birth of the child.

(1) If the cause of divorce is the death of the husband, the widow has to observe Iddat for four months and ten days. Secondly, even if there has been no sexual intercourse, Iddat of four months and ten days is compulsory for a widow.

(2) If the wife is pregnant at the time of the death of the husband, the period of iddat shall be four months or till the birth of the child, whichever is earlier if the period is longer, it is considered.

(c) Death of husband during the period of divorce - The period of divorce is three menstrual cycles or three to four months. If the former husband of the divorced wife dies while she is observing the period of divorce, then she has to start a new period of four months and ten days from the date of her husband's death.

Example- If a divorced wife's ex-husband dies after two months of her Iddat, then she will have to observe Iddat for four months again. In this way, some period of Iddat will become six months.

(d) The time of commencement of Iddat- The period of three months or four months which a woman has to observe, starts from the date of divorce or death of the husband and not from the day when she receives the information of the death or divorce of the husband. After the prescribed period of Iddat has ended, if the woman receives the information of divorce or death of the husband, then there is no need for her to observe the prescribed Iddat.

Shia Law (1) Among Shia Muslims, a woman is not required to observe Iddat if she has not yet reached the menses of menstruation or has stopped due to old age or if her menstruation is irregular or has stopped due to some other reasons.

Such a rule is correct because in the above circumstances there is no possibility of pregnancy, therefore the main purpose of Iddat, that is to ensure the possibility of pregnancy, would be futile.

(2) A marriage with a woman who is observing iddat is void under Shia law.

Question No. 11- What is Muta marriage? What is its necessity and legal consequences?

Answer- According to Islamic jurisprudence elaborated by several schools of thought, the main purpose of a marriage contract is to legitimize sexual intercourse between a man and a woman. It also legitimizes the offspring of such a union. Mut'ah or Muta is one such type of marriage under Islam. Mut'ah marriage is temporary and for a fixed period of time. This feature distinguishes Muta from other types of marriages. Mut'ah is practiced only under Shia Muslims Ithna is performed by the followers of the Ashari school. It is considered invalid under Sunni law. Shias believe that performing Muta strengthens them as a believer. The word Mutah means 'pleasure, bliss or enjoyment'. It is considered a marriage done for pleasure and enjoyment. The duration is fixed at the time of marriage itself. However, Muta marriage is rarely found in India. It is a unique kind of arrangement and is followed in some Islamic countries around the world. It is most prevalent in Arab countries like Iran and Iraq. It is also prevalent in Britain and the United States. Mutah is a different practice. In Islam, marriages are of a contractual nature, and Muta marriage is a form of it.

Marriages under Islamic law are contractual by their very nature. Mut'ah marriage is one form of it. The contractual nature of such marriages allows Islamic people to change the agreement at the time of marriage and include

conditions according to their choice. They can include anything, as far as it is legally permitted in that country. The marriage agreement and conditions will be legal and enforceable in a court of law. In the Quran, Mut'ah marriage is stated as, "And you are permitted to seek wives of decent conduct from your wealth, but not in adultery, but repay them according to your word what you have suffered from them."

In Mutah marriage, the partners have to determine the Mehr and the duration of the contract in advance. Wives cannot claim maintenance from the husband on divorce, unless it is clearly included in the agreement beforehand. The Calcutta High Court has taken a different stand on this matter which we will discuss further in this article. The wife cannot claim any right in the husband's property. This is an important and exceptional nature of Mutah marriage. Over time, there have been certain legal developments which are discussed further in this article.

Bachchu v Bismillah (1935) In this case, the husband had agreed to pay a fixed amount of maintenance to the wife for a fixed period. The Allahabad High Court held that failure to do so could be considered a ground for divorce and the contract itself would be a talaqnama. Since the husband failed to perform his duty, the wife has the right to divorce. The divorce by default became effective without any pronouncement.

Shohrat Singh vs Mussamt Jafri Bibi (1914) In this case, the court considered the meaning of Muta marriage and its importance among Muslims. It was stated that according to Islamic law, Muta marriage is followed by Muslims of the Shia sect. It is a temporary marriage for a fixed period. This type of marriage does not give the woman any right over the husband's property. Mehr is a major component of such marriages. Children born out of wedlock are considered legitimate and are capable of inheriting from their father. Nikah is a religious ceremony, whether permanent or temporary, and thus confers the woman the status of a full-fledged wife.

Syed Amanullah Hussain & Ors. vs. Rajammand & Ors. (1976) In this case, a Shia man Habibullah entered into a muta marriage with Rajamma. This marriage lasted until the death of the husband in 1967. After his death, Rajamma inherited all his property. Habibullah's brother challenged this inheritance because this marriage was a muta marriage, and in such a marriage the wife has no right of inheritance. Upon careful consideration and interpretation, the court held that the duration of the muta marriage was not specified in their contract. If the duration is not specified, it will be considered as a normal permanent marriage. The most important feature of

a muta marriage is the fixed duration, therefore, if the duration is not mentioned in the contract, it will not be considered as a muta marriage. Therefore, the marriage was considered as a permanent marriage, and the wife had the right of inheritance over her husband's properties. The brother's claim was not accepted by the court.

Luddan v. Mirza Kumar (1882) In this case, the petitioner filed an application under **Section 536** of the Code of Criminal Procedure to obtain an order of maintenance for herself as a wife. She was in a muta marriage. Both parties to the marriage were Shias. She alleged that the period was 50 years, while her husband alleged that it was only for one and a half months. The magistrate held that according to Shia law, the wife of a muta marriage has no right to claim maintenance. However, this does not take away the statutory right to maintenance under **Section 536** of the Code of Criminal Procedure. The right to maintenance becomes the subject matter of a civil suit, depending on the applicable personal law. Therefore, the Calcutta High Court held that the wife was eligible to claim maintenance under the Code of Criminal Procedure.

Essential elements of Muta marriage-

(1) The duration of cohabitation must be fixed.
(2) The amount of dowry must be fixed.
(3) If the dowry is fixed but not the period, the marriage will be deemed to be permanent or regular.
(4) If the period of dower is not fixed, the marriage shall be void.
(5) The duration of cohabitation should be decided at the time of marriage. This period could be one day, one month, one year, or several years.
(6) The amount of dowry must be clearly mentioned in the marriage contract.
(7) In Muta marriage the number of wives is not limited to four.
(8) The parties to the marriage must be of the age of puberty and of sound mind.
(9) The consent of both parties must be free.
(10) The parties must not be within the prohibited degrees of relationship.
(11) There must be a proper contract and declaration and acceptance is necessary.

Marriage consequences of Muta marriage- Muta marriage will have the following legal consequences-

(1) The wife shall be allowed to live separately.
(2) The husband shall not be granted conjugal rights.

(3) In extreme circumstances a wife may have the right to divorce.
(4) A right to dowry may arise.
(5) The marriage may be dissolved immediately.
(6) Spouses have no reciprocal rights of inheritance.
(7) The wife is not entitled to claim maintenance under personal law.
(8) If the husband resides with the wife, the wife is entitled to receive the full dowry, but if he does not reside with her, the wife is entitled to receive half the dowry.
(9) Divorce is not recognised under Muta marriage.

Question No. 12 - What is the meaning of the statement "Marriage is a civil contract under Islamic law (Mohammedan Law)" Critically examine.

Answer- Under Muslim law, marriage is a civil contract, the purpose of which is to give legal form to sexual relations and legitimize children. According to **Heday,** marriage is a special type of contract, which is used to legitimize children.

Legally it can be said that Muslim marriage is a civil contract in the eyes of law. The purpose of the marriage contract can be mainly divided into two parts-

To provide legal recognition to the husband-wife relationship, and legitimizing children born out of wedlock.

If the marriage contract is not valid then the relationship between a man and a woman is considered illegal. Marriage not only legalises such relationships but also provides the status of a legitimate child to the child born out of the marriage.

Thus, from the legal point of view, Muslim marriage is a contract, and is contractual in nature.

Though elements of contract are found in Hindu marriage too, yet Hindu marriage is considered to be of sacramental nature because it requires religious rituals.

Justice Mahmood defined Muslim marriage as a civil contract, as no religious formalities are required to solemnize a Muslim marriage.

However, this definition reflects only the legal aspect of Muslim marriage. In addition, Muslim marriage is also seen as a social and religious institution. Legally, Muslim marriage is considered a contract, because the elements that constitute a marriage and the process by which it is completed closely resemble the process of a civil contract.

The contractual nature of Muslim marriage can be understood from the following facts (here you can add further points like – Ijab and Kabul, Mehr, witnesses, conditions, divorce etc.)-

1. Like a contract, it is necessary for the parties to a marriage to be competent. Just as the competence of the parties is necessary to make a contract valid, similarly, it is necessary for the parties to be legally competent for marriage.
2. As in a contract, marriage is also not considered valid without the offer, acceptance, consideration and free consent of the parties or their guardians. A marriage contract is valid only when all the contractual elements are fully present in it.
3. Like a civil contract, the terms of a marriage contract can be determined by the parties among themselves, within the legal limits. The parties to a marriage contract have the right to determine certain terms, provided they are not contrary to Islamic law and public policy.
4. Just as in a normal contract there are legal rules to regulate the rights and duties of the parties in the event of breach, similarly in a marriage contract also there are legal provisions to regulate the rights and duties of the parties.

Therefore the concept of Muslim marriage is similar to a civil contract. But to conclude that Muslim marriage is only a civil contract on the basis of the essential elements of a contract is not completely correct from the legal point of view. In its form or appearance it may appear like a contract, but in its reality it is not a contract.

A Muslim marriage is considered valid only when it is legally recognized by the court. The following conditions are required to be fulfilled for a valid contract- (Here you can list the conditions further like offer, acceptance, capacity of parties, etc.)-

For a valid Muslim marriage, the following essential conditions must be fulfilled-

1. Competency of Parties to the Marriage - Both the parties to the marriage, i.e., husband and wife, must be legally competent to marry.

2. Free Consent - Of the parties involved in the marriage or their guardians The consent should be free, i.e. there should be no coercion, fraud or undue pressure.

3. Fulfilment of Required Formalities - For the validity of marriage which the necessary formalities are prescribed and they must be followed properly.

4. There should be no prohibition or impediment in marriage - There should be no legal prohibition or impediment in solemnizing the marriage. At the time of marriage, both the parties i.e. boy and girl, should be competent to enter into the marriage contract should be.

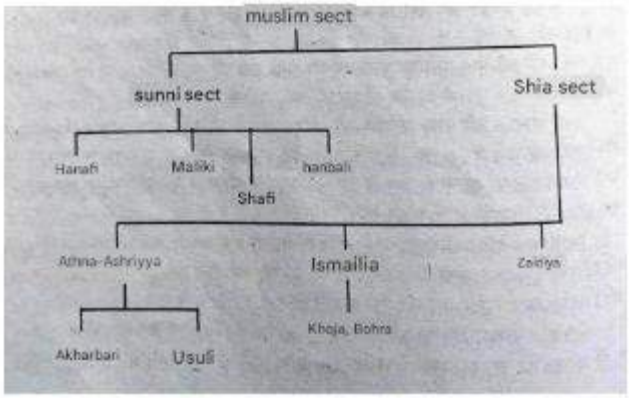
Parties are deemed to be competent if-

1. He/she has attained the theoretical age (Age of Puberty),
2. They should be of sound mind, and
3. Both parties should be Muslims.

Question 13- Describe the main differences between Shia sect and Sunni sect of Muslim law.

Answer: The two main schools of thought in Muslim law are Sunni and Shia. These two sects are also divided into many schools of thought. Most Muslims are Sunni, so unless there is evidence to the contrary, it is presumed that the parties to a case will be Sunni only.

In the case of **Raja Deedar Hussain vs. Rani Zehrunnisa**, the Honourable Judges of the Privy Council held that it is the duty of the civil judge to apply the law of the community or school of thought to which he is a party in every case.



Sunni Sects (i) Hanafi - Abu Hanifa was a religious and virtuous man, he never accepted any government post, due to which he became a victim of the rulers. In 132 A.H. he formed a committee of 40 members to compile Islamic law. It is said that he solved five lakh legal problems. The collection he made is known as Kutub Abu Hanifaash. The principles of Imam Abu Hanifa were based on the Quran and Hadith, according to him the Quran is eternal in its original form, it is a collection of the teachings and words of God and it cannot be separated from God.

(ii) Maliki-The Maliki school of Muslim jurisprudence, also known as the Madani school, originated in Medina, the main centre of learning. They based their arguments on the customs and traditions of the Prophet and the

evidences given by his followers In this sect, emphasis is given on the rights of the head of the family and his wife over the property and children. In this sect, a married woman is not the complete owner of her property.

(iii) Shafi- The founder of this school of thought was Muhammad Abu Shafi. He was famous for justice; he established the principles for the first time and spread Muslim jurisprudence. He spread Ijma and Qayas completely. He paid more attention to customs than Hanafi but less than Maliki. The principles of his sect are less favorable for women. This sect is popular in South India, Sri Lanka and Arabia.

(iv) Hanbali- Its founder was Ahmad Ibn Hanbal. He has especially emphasized on traditions. He has reduced the use of Ijma and Qiyas to a certain extent.

Shia Sects (i) Athna Asriya - Most of the Shias in India follow this system.

(ii) Ismailia-Khojas and Bohras of Bombay belong to this ideology.

(iii) Zaidi- These are not in India. Shias of Yemen in South Arabia, descendants of Zaida, son of the fourth Imam Ali Asghar. People regard them as Zaidi Imams.

There are differences/differences between Sunni and Shi'ite sects on the following issues.

(1) Method of Marriage - (i) Temporary (Muta) marriage is valid among Shias but it is illegal among Sunnis. (

(ii) In Shia law only the father and the grandfather can be guardians for marriage, Sunnis recognize a long list of other guardians for marriage besides the father and the grandfather.

(iii) Sunni law prescribes the presence of two male witnesses at the time of marriage but Shia law does not require witnesses.

(iv) In Shia method the maximum gestation period is ten months but in Sunni method it is two years.

(2) Mehr - Under the Sunni system the minimum amount of Mehr is ten dirhams (a silver coin weighing 2.97 grams). However, the Shia system does not fix any minimum amount.

Under Shia law, the fair amount of Mehr should not be more than 50 dirhams. Sunni law does not prescribe a higher amount of Mehr. Where it is not decided at the time of marriage whether Mehr is payable immediately or deferred, then according to Shia law, the total Mehr is considered to be immediately payable and according to Sunni law, some part of Mehr is considered to be immediately payable and some part is deferred and its ratio is determined keeping in view the customs, the status of the parties and the amount of Mehr.

(3) Divorce- (i) Under Sunni law, divorce can be either oral or written, but under Shia law, divorce must be given orally and in the presence of two witnesses. Written divorce is valid only when the husband is unable to give divorce verbally.
(ii) Under Shia law, it is necessary to give 'talaq' according to Sunnat, so Shia law does not consider 'talaq-il-widdat' strange, but Sunni law recognizes it.
(iii) If the words used in giving divorce are clear, even if they are pronounced under compulsion or intoxication, Sunni law considers it as a talaq. But Shia law does not recognize divorce given in such a situation.
(4) The donation of- an indivisible share in property is irregular according to Sunni law, unless a specific condition is fulfilled. However, donation is valid under Shia law.
(5) Under Sunni law, in all cases the woman who gives birth to a child is considered the mother; no child is considered a mother.

Under Shia law, a child born to a virgin woman is considered the mother, but if a married woman gives birth to a child, she will be considered the mother of that child.
(6) Under Sunni law a testator cannot give any immovable property to any heir without the consent of the other heirs, but under Shia law no estate is required if the thing given does not exceed the legal one-third share and where it exceeds one-third the property can be given even during the lifetime of the testator. Under Sunni law a will made in favour of a stranger is not valid if the property exceeds the legal one-third share, unless the heirs give their consent after the death of the testator, but under Shia law the heirs can give their consent even during the lifetime of the testator.

Question 14. Describe the different types of divorce under Muslim law.

Answer: According to Muslim law, the contract can be terminated in the following ways-
(a) On the death of either the husband or the wife.
(b) By the acts of the husband—
(1) By divorce,
(2) By Ila,
(3) By Jihar
(c) By the acts of the wife
(4) By Talaq-e-Tafweez,
(d) By mutual consent-

(5) By opening,
(6) By Mubarat,
(e) By a judicial decree-
(7) Under the Muslim Divorce Act, 1939.
(a) Divorce by husband-What are the methods by which Muslim Vedic law gives the husband the right to divorce through Talaq, Ila and Jihad?
(i) Talaq- Talaq is an Arabic word which literally means to release or abandon or reject. Under Muslim law, getting rid of the bonds of marriage or ending the marital relationship is called Talaq.
For a legal divorce the following conditions must be fulfilled-
1. Capacity - Any Muslim who is of the age of adulthood and of sound mind can divorce. The guardian of a minor has no right to divorce or if the party is of unsound mind etc. then the Qazi or the court can take the divorce. But if the divorce is in the interest of the unsound minded husband then the guardian can take the divorce.
2. Free consent- Shia, Shafi, Maliki and Hanbali require that the person giving divorce be a person of free will while in Sunni law free consent is not necessary.
3. Whether verbal or written- Divorce can be given verbally or in writing. In Sunni law, witnesses are not required for divorce. In Shia law, divorce is given only verbally in Arabic language and not in writing. It can be given in writing only when the husband is unable to give divorce verbally, as Jammu and Kashmir High Court determined in the case of **Dil Sada Masoom vs Ghulam Mustafa, AIR 1986** Jammu and Kashmir 80 that in Shia law, divorce should be given in Arabic language in an implicit format, it is also not necessary that the husband himself knows Arabic language, he can appoint any Arabic person for this. But when a person knowing Arabic is not available, divorce can be given in any language. Divorce given by gestures understood by a dumb person is valid.

Similarly, in the case of **Shahida Begum vs Abdul Majid in 1998**, the Rajasthan High Court held that under Muslim law, oral divorce can be given but a Muslim who cannot speak or is dumb can break the marriage by gestures.
4. Words spoken for divorce should be clear- For a legal divorce, it is necessary that the words spoken for divorce should also be clear. Apart from this, if the words of divorce are not clear, then the intention of divorce should be clear. Where the words or intention of divorce are not clear, the divorce is illegal. As the Calcutta High Court had determined in the case of **Farchand Hussain vs Janu Bibi, (1878) 4 Cal, 588** that divorce will be

illegal where the words of divorce are not clear, in this case, divorce was given in front of the lawyer without taking the name of the wife, so it was considered illegal.

Similarly, where the words of divorce are not clear, the intention of the person giving divorce is seen, like in the case of **Mohammad Irfan vs. Mussamamat Hindi, AIR 1952**, it was agreed between two brothers that if I am not successful in taking the bottle of honey, then divorce should be considered between my wives.

5. Divorce should be done in the presence of wife- Divorce given in the absence of wife is not ineffective or void but divorce should be given only in the presence of wife. But if the divorce is not done in the presence of wife then it is necessary to give divorce by taking the name of wife.

In Sunni law, divorce given due to intoxication, joking, mistake of a youth, playing or under compulsion is valid. But if the intoxication is done against the will then the divorce is not valid. Under Shia law, divorce given through the above mentioned method is invalid.

There are the following ways of giving divorce:

• Talaq ul Biddat .

• Divorce Ul

Sunnat-Talaq- Those Sunnat are divided into two parts-

(a) Divorce is intolerable, (b) Divorce is hasan.

(ii) Ila: When an adult or sound minded Muslim husband vows not to have sexual intercourse with his wife for a period of four months or more and does not have sexual intercourse for a period of four months or more, it is called divorce by Ila.

The words used for 'ila' can be expressed or implied. For example, "I swear by Allah that I will not have intercourse with you" meaning "I swear by Allah that I will not come near you."

The following conditions are necessary for a recognized Ila –

(i) The Muslim husband should be an adult and of sound mind.

(ii) The husband has undertaken not to have sexual intercourse with his wife for a period of four months or more.

(iii) Has not had sexual intercourse for a period of 4 months or more.

(iii) Jihar-When a healthy and adult Muslim husband compares his wife with his mother or any other woman falling within the forbidden relationship and does not repent for such comparison, it is called divorce by Jihar. If the husband has not repented for the objectionable comparison, the wife has the right to obtain a decree of divorce or restitution of conjugal rights after four months from the date of comparison.

(c) Divorce by wife- Delegated divorce or Talaq-e-Tafweez- In Muslim law it is not necessary for the Muslim husband to give divorce himself. The Muslim husband can either give divorce himself or delegate the right to give divorce to someone else. Such other person can be the wife herself. This is called Talaq-e-Tafweez or delegated divorce.

Thus, the right to divorce that a Muslim wife has is basically given by the husband. The husband can delegate the right to divorce to the wife forever and also for some time. The right to divorce given to the wife for some time cannot be taken back, but if the husband has given it forever, then he can take it back. It can also be conditional or unconditional. In conditional divorce, the wife gets the right to divorce only when the condition is fulfilled. Apart from this, after the delegation of the right to divorce, the husband's right to divorce remains unaffected. The Calcutta High Court held in the case of **Waftan Bibi vs. Sheikh Maimuna Bibi, AIR 1950 Cal. 304** that before marriage, there was an agreement between the wife and the husband that if the husband and wife do not get along, that is, if there is animosity between the husband and wife, then the wife will have the right to live separately from the husband and in such a situation, the husband will maintain the wife. It was decided that the agreement was reasonable, so if the husband is unable to maintain the wife, then the wife can divorce him.

(d) Divorce by mutual consent-

1. Divorce by mutual consent is not valid unless the following conditions are fulfilled- (i) both the husband and wife are adults and of sound mind.

(ii) The wife has made the proposal and the husband has accepted it,

(iii) Both husband and wife talked to each other,

(iv) The wife has given or agreed to give some consideration to the husband in the future,

2. Mubarat- Mubarat means mutual release. Divorce by mutual agreement or consent is called Mubarat. A proposal for divorce by Mubarat can be brought by any party. No party has to pay any consideration because both the parties are willing i.e. agree for divorce.

5. Divorce by the court- Section 2 of the **Muslim Divorce Act, 1939** mentions nine rights on the basis of which a Muslim wife can file a petition for divorce, which are as follows-

- When the husband goes missing,
- In case of failure to provide maintenance

• If the husband is sentenced to 7 years imprisonment,
• Failure to perform his/her marital obligation,
• When the husband is impotent,
When suffering from insanity or venereal disease,
• When the wife exercises the option of puberty,
• On the grounds of cruelty,
• Any other basis.

Question 15. What are the essential conditions for acknowledgement of legitimate paternity in Muslim law? Discuss. Explain the legal effect of acknowledgement.

Answer-Acknowledgement of Paternity-Adoption is not possible in Muslim law. It is mentioned in a book called Fatwa-e-Alam Giri that "the lineage once established cannot be dissolved or cancelled and neither can it be transferred from one person to another but Muslim law does not allow the legitimacy of a child to be acknowledged apart from paternity It is determined by acknowledgement i.e. a man can declare about a child that he is my child and such child will be the legitimate child of the acknowledger in all matters.

For an acknowledgement to be valid the following four conditions must be met-

1. Paternity is unknown - the father of the child is not believed to be any man other than the acknowledgment person.

2. The child should not be anyone's illegitimate child- An illegitimate child cannot be accepted even if it is that of the adopter. That is, a child who is proved to be illegitimate due to a legitimate relationship between the parents cannot be adopted by adoption.

3. Circumstances are not contrary to the presumption- When the father-child bond is not possible, the acceptance of a child is not established. Example- When the accepting man is younger than the child or is of the same age or is only so much older that the difference between the ages of the two is less than what is usually the case, or where a man gives acceptance of a woman or daughter when the age difference between the man and the woman is so much that at the time the child was conceived, there was no possibility of intercourse between the man and the woman. Hence a 20-year-old man cannot accept a 16-year-old son.

4. The child has supported the acknowledgement- After the child has made the acknowledgement, the acknowledger cannot revoke or cancel the acknowledgement. But for the person whose acknowledgement is valid, it is

also a condition that the child expresses his consent to this acknowledgement either by confirming it or by maintaining silence.

In the case of **Mohammed Allah Dad Khan vs Ismail Khan**, the Allahabad High Court held that once an acknowledgement is made, this status cannot be destroyed by any act of the acknowledger or by the act of any of his legal representatives. The parties in this case were Sunni Muslims. A man named Ghulam Gaus Khan married a woman named Moti Begum and had a son and three daughters. After the death of Ghulam Gaus Khan, Mohammed Allah Dad Khan filed a suit against his brother Mohammed Ismail Khan and three sisters for his 2/3 share of the zamindari property of some villages in Meerut on the ground that he was the eldest son of the deceased Ghulam Gaus Khan. Mohammed Ismail Khan and others countered on the ground that the appellant Mohammed Allah Dad Khan was not the son of their father but was a step-son and was born before the marriage of his mother Moti Begum with Ghulam Gaus Khan. Then the plaintiff contended that even if he could not prove that he was the son of the deceased, since the deceased had several times acknowledged him as his son, he was entitled to succession as the legitimate son of Ghulam Gaus Khan. He also produced in evidence some letters and other documents in which the deceased had addressed or referred to him.

The full bench of the Allahabad High Court decided that the appellant had been acknowledged as the son of the deceased Ghulam Gaus Khan and was entitled to inherit the property. The court concluded that-

(1) Moti Begum was not related to Ghulam Gaus in such a manner that her marriage with the deceased could be deemed to be illegal or repudiated.

(2) It is not proved in any way that she was married to anybody else before her marriage to Ghulam Gaus Khan.

(3) She was married to Ghulam Gaus Khan.

(4) It is not possible to ascertain the date of birth of the candidate due to lack of any reliable evidence

He was born before the marriage of the deceased, as the exact date of the marriage is not known properly.

(5) Moti Begum lived with the deceased Ghulam Gaus Khan for many years and the deceased acknowledged her to be his lawful wife.

(6) The appellant Mohammed Allah Dad Khan was acknowledged to be his son by the deceased and acknowledged to be so.

(7) There is no express mention in such acknowledgement as to whether Mohammed Allah Dad Khan was the step son, legitimate son or illegitimate son of the deceased.
(8) Other daughters of Moti Begum, the respondent Mohammad Ismail Khan and other members of the family had also acknowledged and accepted him as the legitimate son of Ghulam Gaus Khan.
Legal effects of acknowledgement- A valid acknowledgement presupposes marriage between the acknowledger and the mother of the acknowledged person and when this is not denied, he gets the right of inheritance as the son of a son and similarly his mother gets the right. Thus it is known that acknowledgement has two effects i.e.
(1) In favour of the person claiming to be a son, and
(2) In favour of a woman claiming to be the wife (only the mother of the acknowledged child).
Question 16. What do you understand by Hiba-bil-Awaz and Hiba-bil-Sharratul Awaz, how are they different from each other?
Answer-Hiba-Bill-Evaz-Hiba Bill-Evaz is a completely unique concept in Muslim personal law. Hiba means donation and Evaz means consideration or exchange, hence Hiba Bill-Evaz means donation with consideration. It is noteworthy that in all the legal systems of the world, donation is recognized as a transfer in which the ownership of property is transferred without consideration. But despite this, Muslim law imagines a very special type of donation like Hiba-Bill-Evaz as is clear from the following lines- The reality is that although in Muslim law, a transfer like 'Hiba Bill-Evaz' is considered necessary, whereas Indian courts do not consider it as Hiba and consider it either as sale or exchange. Hence Hiba Bill-Evaz is only a nominal donation.
Hiba-will-in-lieu means a pure donation in return for which another donation is made by the donee. For example, if 'A' gifts some properties in favour of 'B' and after the completion of the gift, 'B' voluntarily gifts his motor car in favour of 'A' saying that the gift of the motor car is in return for the properties made in his favour, then the gift of properties will be called 'in will-in-lieu'. The gift made by the donee 'B' will be considered as a consideration for the first gift. Thus we see that the first gift is actually a pure gift, but as soon as the donee makes another gift in favour of the donor in return, the first gift gets converted into 'in will-in-lieu'.
Legal effects of Hiba-Bill-of-Exchange (1) A Hiba-Bill-of-Exchange is a sale or exchange of goods. If money or a sum of money is given in consideration for the original Hiba, the original Hiba is treated as a sale.

If the consideration is any movable or immovable property, then the original Hiba will be considered as an exchange, hence the rules of Hiba of Muslim law cannot be applied in Hiba Bill-in-Lieu. Hiba-Bill-in-Lieu is not considered legally valid merely by the formalities of declaration, acceptance and delivery of possession. For its validity, it is mandatory to follow the same conditions which are prescribed for any sale or exchange. According to section 54 of the Property Transfer Act, 1882, sale of movable property can be done by transfer of possession, but if the property is immovable and is worth more than 100, then for the sale to be valid, it is mandatory to have it verified in writing and registered. Similarly, according to section 118 of the said Act, for the validity of exchange, if the property is worth more than ₹ 100, then the sale must be valid if the property is worth more than ₹ 100.
(2) Delivery of possession which is an essential part of Hiba is not necessary for a Hiba bill.
(3) Hiba-vis-in-lieu is irrevocable because it is a sale or exchange.
(4) The Law of Moses applies to Hiba and not to a bill of exchange which has the legal form of a sale or exchange.
Hiba-bil-Shartu-Ewaz-A donation made with the condition of giving an item or property as a consideration is called Hiba-bil-Shartu-Ewaz. If a Hiba is made with the condition that first the donee should make a Hiba of a certain property in his favour to the donor, then he will make a Hiba of his property in favour of the donee, then the transfer will be called Hiba-bil-Shartu-Ewaz.

The giving of the previous Hiba is a condition of the Hiba and not a consideration. Hence, unless it is given by the donee, the Hiba made in his favour does not become effective.
Legal effect of Hiba bil-Sharaat-ul-Awaz (1) in its entire process, two separate Hiba are involved independently, so legally this transfer is considered Hiba. The conditions necessary for its validity are the same as those considered necessary for a Hiba under Muslim law. The formalities of declaration, acceptance and delivery of possession are sufficient for this, registration is neither mandatory nor sufficient.
(2) It is initially revocable but becomes irrevocable after payment of a consideration specified as a condition.
Difference between Hiba Vill Waja and Hiba Bil Shartul Waja (1) In Hiba Vill Waja, the 'in lieu' is given voluntarily by the donee while in the latter, the giving of the in lieu by the donee is a necessary condition preceding the Hiba.

(2) In a Hiba bill, the consideration depends on the wish of the donee while in the other, the consideration is as per the wish of the donor which he stipulates as a condition.
(3) Hiba-bill-for-exchange is not Hiba from the legal point of view; either it is treated as a sale or an exchange while the other is a Hiba in the pure form.
(4) Hiba-bil-Ewaz is not considered a Hiba at all, so the principle of Musa in Sunni law is not applicable to it, while the principle of Musa may be applicable in others.

Question 17-Define Waqf. How can a private Waqf be established? And also explain the main features of the Waqf Validation Act, 1913.

Answer-Definition of Waqf-Waqf is a permanent dedication made by a Muslim of his property for religious, charitable or philanthropic purpose. It is considered a religious act under Islamic law.
Waqf is a permanent dedication by a Muslim of his property for a religious, charitable or philanthropic purpose. It is considered a religious act under Islamic law.

Main features of Waqf-

1. Permanent Dedication - Under Waqf, the property is dedicated for a religious or charitable purpose forever. It is not temporary.
2. Irrevocable - Once a property is declared a waqf, the waqfkar (waqif) cannot retain ownership over it. It is considered dedicated in the name of God (Allah).
3. Beneficiary – Waqf must have a clear beneficiary or recipient, such as a mosque, religious institution, educational institution or a particular individual.
Waqf alal Aulad - This is a type of private Waqf, in which the Waqf maker dedicates his property for the welfare of his family.

Main points-

1. It is made for the benefit of the family of the waqf maker.
2. After fulfilling the needs of the family, the surplus income can be used for some purpose done for a public or charitable purpose.
3. Its construction should also be according to Islamic law.

Muslim Wakf Validating Act, 1913 – This Act was enacted with the aim of validating and legally organizing the Wakf system in India.

Key Features-

1. Validity of Existing Waqfs- This Act validated existing Waqfs created before 1913. Declared Waqfs as valid and gave them legal recognition.

2. No Impact on Prior Rights- The rights, titles, liabilities etc. were present, they were not affected.
3. Foundation for Future Regulation- The Act was not a full-fledged law, But it laid the foundation for future laws relating to waqf in India.
Establishment of private Waqf (Waqf alal Aulad)-
1. Waqf's Intent - The person creating the waqf must have a clear intention that he is dedicating the property for the benefit of his family.
2. Use of Surplus Income - It should also be decided that the income which remains after meeting the needs of the family will be used for some charitable or public purpose.
3. Legal Requirements – The waqf must be established in accordance with Islamic law, which usually requires a written document or waqf nama.
Question No. 18- Write short notes on any four of the following.
Answer - (1) Lien - 'Lien' means 'false allegation of adultery' by husband against wife. If a healthy and adult Muslim husband falsely accuses his wife of adultery and calls her adulterous, then the wife can obtain a decree of divorce from the court. If the husband makes a false allegation, the wife has to file a suit informing the court of the situation. The court compels the husband to prove his allegation under oath or withdraw it. The husband can withdraw his allegation any time before the hearing of the case. Tufail Ahmad Name Jameela Khatun AIR In the case of 1962 Allahabad, 570 the court said that if the husband withdraws his allegation before the hearing of the case or proves the allegation then the wife does not get the decree of divorce, but if the husband neither withdraws the allegation nor is able to prove the allegation then the court will consider it as a false allegation and on the basis of lien a decree of divorce is passed in favour of the wife.
(2) Mubarat - In Khula, the divorce is with the consent of both the husband and wife, but it is considered to be of the willing because the proposal of Khula is prompted by the wife. In Mubarat also, the divorce is by mutual consent of both, but in this both the husband and wife are equally willing for the divorce. Mubarat can be considered a divorce purely by mutual agreement. No party has to pay any consideration, because both are equally willing to dissolve the marriage. In the contract of 'Mubarat', the proposal for divorce can be made by the husband also. When the other party accepts it, the divorce is complete. Like Khula, in Mubarat also, it is essential that the husband and wife are competent.
(3) Khula (lit.)- Literally, khula means 'opening the garment'. In legal terms, khula means divorce by the wife with the consent of the husband, by paying some compensation to him. The Quran stipulates regarding khula

that: "If you fear that the husband and wife will not be able to keep the limits of Allah, then they may give something and get rid of the wife; there is no blame on either of them. These are the limits of Allah.

In the case of **Munshi Buzlul Rahim vs Latifunisha Nisha**, the Privy Council said that Khula is a method of divorce in which the wife takes the initiative to free herself from practical bondages. In exchange for getting rid of the marriage, the wife gives some consideration to her husband or agrees to give some amount or property as consideration in future. The essential conditions of a valid Khula are as follows-

(1) A proposal for divorce must be made by the wife.

(2) Redemption requires acceptance of the offer in exchange for consideration.

(3) The proposal must be accepted by the husband.

For divorce under Khula, both the parties to the Khula must be (1) adult (2) of sound mind. In Shia law, (3) free consent and (4) willingness is required for entering into Khula.

Once the wife accepts the proposal by copy it becomes an irrevocable divorce.

(4) Wakf - The literal meaning of the word 'wakf' is 'restraint', 'restraint' or 'restriction', that is to say, to take away the ownership of the dedicated property from the dedicator and to entrust it to the Almighty.

The word Wakf literally means possession. In the legal context, Wakf means to keep a property in one's possession so that its produce or income is always available for religious or charitable purposes. When a Wakf is created, the property is taken into custody or pledged in perpetuity and thereafter becomes non-transferable. This project defines the meaning and different types of Wakf. There is a purpose behind the creation of a Wakf. The office of Mutawalli (Manager) is very important. There are many ways of creating a Wakf, which are described in this project. Wakf is binding and enforceable by law, it has legal consequences which are dealt with in this project. The law of Wakf is "the most important branch of Mohammedan law because it is connected with the entire religious, social and economic life of the Muslims."

When a Muslim person acts for any charitable purpose and for the benefit and upliftment of the society under religious faith and sentiments and donates his property in the name of Allah, it is called Waqf. Waqf literally means 'custody' to stop or bind, which means that the ownership of the dedicated property is taken away from the person doing the Waqf and is

transferred and taken into custody by God. Details about the Waqf done by the Prophet are given in the old texts.

The Wakf Act, 1954 defines wakf as, "Wakf means the permanent dedication of any movable or immovable property by a person professing Islam for any purpose recognised by Muslim law as religious, pious or charitable."

Necessary conditions for a valid Wakf - The necessary conditions for a valid Wakf are as follows-

1. Permanent dedication - The dedication of Wakf property must be permanent and the Wakf itself must dedicate such property and give it for any purpose recognised by Muslim law, such as religious, pious or charitable. If Wakf is made for a limited period it will not be a valid Wakf and there should also be no condition or contingency attached to it otherwise it will become invalid. The motive behind Wakf is always religious. In Karnataka Wakf Board v. Mohd. Nazir Ahmed the dedication of a house by a Muslim for the use of all travellers regardless of religion and status was not held to be Wakf on the ground that under Muslim law a Wakf must have a religious purpose and it must be only for the benefit of the Muslim community, and if it is secular in character, the charity should be only for the poor. When Wakf is constituted, it is presumed that a gift of certain property has been made in favour of God. Through a legal fiction it has been ensured that the Wakf property becomes the property of God.

2. Qualification of Wakf-Who can create a Wakf? The person who creates a Wakf of his properties is called the 'founder of the Wakf or, the founder of the Wakf'. The person dedicating the property in Wakf should be a competent person. To be a competent Wakf, the person should have the capacity as well as the right to form a Wakf. As far as the capacity of a Muslim to create a Wakf is concerned, there are only two requirements-

(a) Soundness of mind and, (b) Majority. A person of unsound mind has no capacity to create a wakf as he is incapable of knowing the legal consequences of the transaction. A wakf created by a lunatic or a minor is void. The person dedicating the wakfru by a non-Muslim should profess Islam i.e. should believe in the tenets of Islam, he need not be a Muslim by religion. The Madras and Nagpur High Courts have held that a non-Muslim can also create a valid wakf provided the object of the wakf is in accordance with the principles of Islam The Patna High Court has also held that a valid wakf can be formed by a non-Muslim. However, according to the Patna High Court, a non-Muslim wakf can only be a public wakf; a non-Muslim cannot create a private wakf (such as an Imambara).

3. Right to constitute a wakf- A person who has the capacity but no right cannot constitute a valid wakf. The ownership of the subject matter of the wakf must vest in the wakfee at the time when the wakf is created. Whether a person has the right to constitute a wakf depends on whether the dedicator has the legal right to transfer ownership of the property.

A widow cannot create any wakf of the property which is held by her in lieu of her unpaid mehr as she is not the full owner of that property. Where the wakf is a pardaanshin woman, the beneficiaries and the mutawalli will have to prove that she had used her independent mind in forming the wakf and fully understood the nature of the transaction.

Amount of property: A person can bequeath his entire property, but in case of testamentary waqf, not more than one-third of the property can be bequeathed.

(5) Talaq ul Sunnat and Talaq Ahsan- Talaq ul Sunnat is based on the Sunnah of Prophet Muhammad and has been recognized as the divorce approved by Islam. Talaq and Sunnat are divorces according to the union. In fact, divorce has always been considered a bad deed, but if for some reason it becomes necessary to divorce through divorce, then the best method for it would be the one in which there remains a possibility of its revocation after giving divorce so that the bad consequences of divorce can be prevented from becoming effective. Under this concept, Prophet Muhammad has approved only revocable divorce. Talaq ul Sunnat is a revocable divorce because after pronouncing the words, there remains a request to take it back or cancel the divorce. In other words, after pronouncing divorce, the divorce does not happen immediately. Even after pronouncing the divorce, there is enough time for a compromise between the husband and wife. Talaq ul Sunnat is also called Talaq ul Raje.

Talaq Ahsan- It literally means excellent, best, very good. Talaq Ahsan is considered the best type of divorce. It was recognized by the Prophet himself. In this -

(1) The words of talaq are uttered by the husband in a single sentence.

(2) At the time of pronouncing it, the wife must be in a pure state (not in her menstrual period). If the woman is not under menstruation (due to old age or any other reason) or the husband and wife are away from each other, then it is not necessary that the divorce be pronounced in the pure state of the wife. And if the marriage has not been consummated, then the divorce can be pronounced when the wife is in her menstrual period.

(3) The wife has to complete the period of Iddat and must abstain from sexual intercourse during this period.

Talaq-Hasan - The meaning of the word "Talaq-Hasan" is 'best', 'good'. After Talaq-Ahsan, this is considered to be the second best way of divorce. In this, the word Talaq is pronounced three times at different times and for this it is necessary that at the time of each pronunciation, there has been no sexual intercourse between the two.

For example, if a husband divorces his wife in writing or verbally in three months, i.e. at an interval of one month each, and if he divorces his wife in the third month, it becomes formally valid. If the husband has sexual intercourse within these three months, then this divorce becomes revoked and if sexual intercourse is not done, then the divorce becomes irrevocable. That means the following conditions must be fulfilled in Talaq Hasan-

(1) The words of talaq shall be uttered three times at intervals of thirty days.

(2) If the wife is menstruating, the pronunciation must be done in the pure state,

(3) And at the time of each pronunciation the husband is required not to have sexual intercourse with his wife.

Talaq-ul-Biddat is also called Talaq-ul-Bain and is considered to be a disgusting or sinful form of divorce. Shafi'i and Hanafi law may recognize this divorce but it is considered disgusting even in these laws. Talaq-ul-Biddat is not recognized in Shia law. This law considers it a condemnable or sinful divorce. The following things were necessary for divorce in Talaq-ul-Biddat-

(a) In this, the sentence of divorce is uttered only once, like "I divorce you, I divorce you, I divorce you" or "I divorce you thrice".

(b) In this, the word Talaq is pronounced only once in the woman's Tuhr (pure state) in which the intention of dissolution of marriage is clear.

In the case of **Saira Bano vs Union of India (AIR 2017 SC 4609),** the Supreme Court declared Talaq-ul-Biddat illegal and unconstitutional and said that Talaq-ul-Biddat i.e. triple talaq is legal in Muslim society It is not a part of freedom of religion and it is also not in accordance with the law of Quran. In its majority decision, the honourable court, while abolishing triple talaq or talaq-ul-biddat, said that by being effective immediately and irrevocable, it violates Articles 14, 21 and 25 of the Constitution and it is arbitrary and one-sided. Because in talaq-ul-biddat, the words of divorce are pronounced only once, which makes this divorce irrevocable, due to this reason it is one-sided and arbitrary.

According to the cases of **Amiruddin v. Khatun Bibi (1917, 39 Allahabad 371) and Sara Bhai v. Raviabai (1905, 30 Bombay 537)** the divorce becomes irrevocable upon pronunciation of the sentence of talaq once and it is not necessary to complete the period of iddat for such a divorce to be irrevocable.

(6) Hiba-bil-e-Vez- Gift and exchange are two separate transactions, which together are called Hiba-bil-e-Vez. Hiba-bil-e-Vez are of two kinds: one as per the original gift and the other as Iwaz or exchange. In Muslim law gifts are called Hiba. It is an unconditional transfer of ownership in existing property, which is done without any condition.

This is done immediately upon receipt of the consideration. Some elements of Hiba:

(1) A gift given by a married woman is valid.

(2) A gift given by a veiled woman is valid.

(3) A person can make Hiba even in case of bankruptcy.

Constitutionality of Hiba- Hiba, the act of gifting under Muslim law, receives constitutional backing in India through **Section 129** of the **Transfer of Property Act, 1882**. This provision recognizes the unique nature of Hiba and exempts it from the provisions of the Act. By including Hiba in the **Shariat Act, 1937**, governed by Muslim Personal Law, the constitutionality of this exemption has been upheld. It upholds religious freedom and respects the importance of religious practices in the personal lives of individuals. This legal framework allows Muslims in India to engage in Hiba without interference from general property laws, making room for religious diversity and accommodating their beliefs.

Essentials of Hiba- Hiba needs three essential elements-

(1) Declaration by the donor

(2) Acceptance by the recipient

(3) Declaration of possession

The donor must clearly express his intention to give the property, which can be done verbally or in writing. The recipient must accept the gift, either explicitly or implicitly. The donor must then transfer possession of the gifted property to the recipient, either physically or symbolically.