B.A.LL.B.-8th Sem. Paper-I Political Science (Public Administration)

Section-A Long Answer Questions

Question No. 1- Describe the definition, nature and scope of public administration.

Answer- Public Administration, a vital branch of political science, deals with the implementation of government policies and the delivery of public services to citizens. It is not merely about enforcing rules and laws; it is also the art and science of managing public resources, promoting socio-economic development, and ensuring the well-being of the populace.

Let's explore its definition, nature, and scope in detail:

1. Definition of Public Administration:

Various scholars have defined public administration from different perspectives, highlighting its multifaceted nature:

- **L.D. White:** "Public administration consists of all those operations having for their purpose the fulfillment or enforcement of public policy."[1] This definition emphasizes public administration's focus on policy implementation.
- **Woodrow Wilson:** Considered the "Father of Public Administration," he defined it as "a detailed and systematic execution of public law. Every particular application of general law is an act of administration."[2] Wilson advocated for a clear distinction between politics (policy-making) and administration (policy execution).
- **J.M. Pfiffner:** "Public administration consists of getting the work of government done by coordinating the efforts of people so that they[3] can work together to accomplish their set tasks."[4] This highlights the managerial aspect.
- **Modern View:** In a broader sense, public administration refers to all governmental activities aimed at caring for the people. It encompasses the art and science of managing public programs and policies, ensuring their effective execution for the benefit of society.[5] It includes all government functions that translate policies into action and directly impact citizens.

In essence, public administration is the part of governmental activity that is concerned with the formulation, implementation, and evaluation of policies to achieve public objectives.

2. Nature of Public Administration:

Understanding the nature of public administration requires considering various viewpoints:

- **Art and Science:** Public administration is often regarded as both an art and a science.
  - **As a Science:** It involves the systematic study of principles, techniques, and methods aimed at making administration more efficient and effective. This includes data analysis, study of organizational structures, and scientific evaluation of decision-making processes.
  - **As an Art:** It involves human elements such as leadership, motivation, communication, and problem-solving, which require creativity, intuition, and practical skills. A skilled administrator must possess the art of making decisions according to circumstances and interacting effectively with various stakeholders.
- **Integral View:** According to this view, public administration encompasses all government employees, from top to bottom, and all the activities they perform. This includes policy formulation, implementation, supervision, and even public relations. It views administration as a holistic process.
- **Managerial View:** This perspective primarily views public administration as concerned with the functions of management, such as Planning, Organizing, Staffing, Directing, Coordinating, Reporting, and Budgeting (POSDCORB). According to this view, public administrators are those engaged in managerial functions.

- **Politics-Administration Dichotomy vs. Continuum:**
  - **Dichotomy:** Early scholars like Woodrow Wilson and Frank Goodnow emphasized a clear separation between politics and administration. They believed that politics formulated policies, while administration implemented them impartially and efficiently.
  - **Continuum:** Modern views reject this dichotomy. They argue that politics and administration are inseparable. Administrators not only implement policies but also play a significant role in policy formulation by providing expert input based on their experience. Furthermore, administrators often have to make discretionary decisions during policy implementation, which itself is a political act.
- **Focus on Public Interest:** Unlike private administration, the primary objective of public administration is to serve the public interest. Its goal is not profit-making, but to provide services to citizens, ensure social justice, and promote collective welfare.

3. Scope of Public Administration:

The scope of public administration is extremely broad and dynamic, constantly evolving with the expanding functions of the state and the growing expectations of citizens. It can be understood from several perspectives:

- **POSDCORB View (Technique-Oriented):**
  - Propounded by Luther Gulick and Lyndall Urwick, this view focuses on seven major functions of administration:
    - **P**lanning: Determining goals and developing strategies to achieve them.
    - **O**rganizing: Establishing organizational structure and allocating tasks.
    - **S**taffing: Recruitment, training, and development of personnel.
    - **D**irecting: Motivating and supervising employees' work.
    - **CO**ordinating: Establishing harmony among different units and individuals.
    - **R**eporting: Providing information to superiors and the public.
    - **B**udgeting: Financial planning and control.
  - This view emphasizes the technical and managerial aspects of administration. However, it is criticized for focusing more on "how" to do things (techniques) rather than "what" is to be done (subject matter).
- **Subject Matter View:**
  - This perspective emphasizes that public administration is not merely concerned with general managerial techniques, but also with the specific departments of government and their specialized functions. Examples include defense administration, health administration, education administration, agricultural administration, law and order, etc.
  - According to this view, an efficient administrator must possess not only managerial skills but also knowledge of the specific subject matter in which they are working.
- **Broad View:**
  - This view considers public administration to be concerned with the activities of all three branches of government—the legislature, the executive, and the judiciary. It is not limited to the executive branch but also includes the formulation of laws and the implementation of judicial decisions.
  - This perspective encompasses all governmental functions performed to achieve public objectives.
- **Welfare State Perspective:**
  - In a modern welfare state, the scope of public administration has expanded tremendously. Governments are no longer limited to maintaining law and order; they work for the welfare of citizens in various fields such as education, health, social security, employment generation, poverty alleviation, and environmental protection.
  - Therefore, the scope of public administration includes all these public welfare activities.
- **Modern View:**

- Modern public administration has become an interdisciplinary field, drawing knowledge and techniques from various disciplines such as political science, economics, sociology, psychology, law, and management.
- It also includes new dimensions like Good Governance, E-Governance, Public-Private Partnerships, Citizen-Centric Administration, and Accountability.
- Its scope also covers specific sub-fields such as Public Policy Analysis, Public Financial Management, Human Resource Management, Organizational Behavior, and Development Administration.

Question No. 2- Describe the definition, nature and scope of public administration.

Answer- The importance of public administration in modern states cannot be overstated. It is not merely a component of the governmental machinery but rather the **bedrock of the state's existence and functioning**. In today's era, where the state's role has expanded far beyond merely maintaining law and order, the significance of public administration has multiplied manifold. As L.D. White rightly put it, "Public administration is an essential part of civilized society, a major element in modern life, and the state has assumed a form that is called the administrative state."

Let's delve into the importance of public administration in modern states:

1. Foundation of the Welfare State:

A defining characteristic of the modern state is its welfare orientation. Governments are no longer confined to providing only security and justice; they offer extensive services in education, health, social security, housing, employment, environmental protection, and more, all aimed at improving citizens' quality of life. It is **public administration that translates these welfare schemes and programs into tangible benefits** for the citizens. Without a robust public administration, the concept of a welfare state would remain incomplete.

2. Implementation of Public Policies:

Governments formulate policies, but it is the task of public administration to **put these policies into action**. Whether it's an agricultural policy, industrial policy, health policy, or education policy, a strong and efficient administrative apparatus is indispensable for effectively implementing, managing, and achieving the desired outcomes of these policies. Public administration transforms abstract policy ideas into concrete results on the ground.

3. Maintenance of Law and Order:

A primary function of any state is to ensure the security of its citizens' lives and property. This crucial task is carried out by public administration, involving police forces, the administrative wings of the judiciary, prisons, and other security agencies. No society can progress without peace and order, and public administration plays a central role in maintaining it.

4. Instrument of Economic Development and Planning:

Modern states actively participate in promoting economic development. This includes formulating economic policies, allocating resources, developing infrastructure (roads, bridges, energy), regulating industries, and managing international trade. All these functions require a well-organized and expert public administrative system that prepares and executes economic plans.

5. Tool for Social Change and Development:

Public administration serves as a powerful instrument for social change. It designs and implements programs to address societal inequalities, poverty, and backwardness. It spreads awareness through education, empowers disadvantaged sections, and plays a vital role in ensuring social justice. In developing countries, public administration has virtually become synonymous with **development administration**.

6. Providing Stability and Continuity:

Public administration acts as a significant force in establishing stability within society. Governments may change, political parties may come and go, but the administrative machinery

remains. This continuity ensures that public services continue uninterrupted and government functions run smoothly. It acts as a bridge between old and new administrations and programs.

7. Expertise and Efficiency:

Modern administration has become highly complex, requiring specialized expertise in various fields. Public administration brings together experts from diverse domains (such as engineers, doctors, scientists, economists, educators) and utilizes their expertise for the public good. It employs scientific management techniques and modern technologies (like e-governance) to ensure efficiency and effectiveness.

8. Management of International Relations:

In this era of globalization, the international relations of a modern state are immensely important. Public administration plays a crucial role in formulating foreign policy, implementing international treaties, managing embassies, and representing the country on international forums.

9. Public Relations and Grievance Redressed:

Modern public administration is increasingly citizen-centric. It acts as a bridge between citizens and the government. It provides information about government policies and programs through public relations and establishes grievance redressed mechanisms to resolve citizens' complaints and problems. This makes the administration more responsive and accountable to the public.

10. Crisis Management and Disaster Relief:

During natural disasters, pandemics, or other crises, public administration plays a critical role in rapid response and relief operations. It coordinates the distribution of relief materials, rescue missions, rehabilitation efforts, and public health measures.

In conclusion, it is no exaggeration to call the modern state an "Administrative State." Public administration is not merely a part of the government, but its **active and operational arm** that directly or indirectly influences every aspect of a citizen's life from birth to death. Its importance lies in the fact that it not only implements public policies but also drives socio-economic development, maintains law and order, and works tirelessly to improve the lives of citizens. Without an efficient, effective, and accountable public administration, no modern state can achieve its objectives or fulfill the aspirations of its citizens.

Question No. 3- Describe the line and staffing agency.

Answer- In public administration, the concepts of 'line' and 'staff' are fundamental to understanding organizational structure and functioning. These concepts originated in military administration, where soldiers directly engaged in combat were referred to as 'line,' and the headquarters personnel providing support and advice were called 'staff.' These concepts have been adopted in civil administration to effectively distribute and coordinate tasks.

1. Line Agency:

Line agencies are often called "main" or "operational" agencies. These are the agencies directly responsible for fulfilling the primary objectives of the government or directly implementing public policies. They are in direct contact with the public and deliver services directly to citizens.

Characteristics of Line Agencies:

- **Direct Objective Fulfillment:** Their primary function is to directly achieve the government's objectives. For instance, the main objective of the education department is to provide education, the health department to provide healthcare services, and the police department to maintain law and order.
- **Command and Control:** Line agencies possess the authority to issue commands and exercise control. A line officer can directly instruct their subordinate employees and supervise their work.
- **Direct Public Contact:** These agencies interact directly with the public and address their problems.

- **Accountability:** Line officers are directly accountable for the implementation and outcomes of the policies for which they are responsible.
- **Examples:** Various government departments such as the Ministry/Department of Education, Ministry/Department of Health, Ministry/Department of Home Affairs, Public Works Department (PWD), Agriculture Department, Ministry of Railways, etc., are examples of line agencies.

Functions of Line Agencies:

- **Policy Implementation:** Implementing policies and programs formulated by the government at the ground level.
- **Providing Public Services:** Directly providing services to citizens (e.g., education, healthcare, security).
- **Maintaining Law and Order:** Enforcing laws and maintaining peace and order.
- **Decision-Making:** Making operational decisions within their jurisdiction.
- **Resource Management:** Utilizing human, financial, and physical resources to achieve defined goals.

2. Staff Agency:

Staff agencies are those that assist, advice, and provide expertise to line agencies to help them perform their functions more effectively. Their role is not to directly implement policies, but to provide the necessary input and support to line agencies in achieving their objectives. They are also known as "auxiliary" or "advisory" agencies.

Characteristics of Staff Agencies:

- **Advisory Nature:** Staff agencies generally do not have the authority to issue direct commands (with some exceptions where specific powers are delegated). Their main function is to advise, suggest, and provide information.
- **Specialization:** These agencies possess expertise in specific fields (e.g., legal, financial, research, personnel management).
- **Indirect Function:** They do not directly interact with the public but operate indirectly through line agencies.
- **Support and Assistance:** Their purpose is to assist line agencies in their operational functions to make them more efficient and effective.
- **Examples:** The Ministry of Finance (which provides financial advice to other ministries), the Department of Personnel and Training (which advises on recruitment and training), the Planning Commission/NITI Aayog (which assists in plan formulation), the Cabinet Secretariat (which coordinates between various ministries) are examples of staff agencies.

Functions of Staff Agencies:

- **Consultation and Advice:** Providing expert advice to line agencies and the chief executive on policy formulation and implementation.
- **Research and Analysis:** Conducting research on various issues, collecting data, and analyzing it to facilitate better decision-making.
- **Planning:** Assisting in the formulation of long-term and short-term plans.
- **Coordination:** Helping to establish coordination among different line agencies to ensure smooth operations.
- **Information Provision:** Collecting and providing necessary information and data to line officers.
- **Evaluation and Assessment:** Evaluating the impact of programs and policies and suggesting improvements.
- **Personnel Management:** Advising on recruitment, training, salary fixation, and employee welfare.
- **Financial Management:** Assisting in budget preparation, financial policy determination, and financial control.

Relationship and Importance of Line and Staff Agencies:

Effective coordination and cooperation between line and staff agencies are crucial in public administration. Both are complementary to each other and essential for the success of any organization.

- **Importance:**
  - **Increased Efficiency:** Staff agencies enhance the efficiency and effectiveness of line agencies by providing expert advice and support.
  - **Better Decisions:** Line officers can make more informed and better decisions based on the information and analysis provided by staff.
  - **Benefit of Specialization:** The organization benefits from specialized expertise for complex and specific tasks.
  - **Coordination and Integration:** Staff agencies help in coordinating among various line units, making it easier to achieve the overall objectives of the organization.
  - **Reduced Workload:** Staff agencies reduce the burden on line officers, allowing them to focus on their core operational functions.
- **Potential Problems:**
  - **Confusion of Authority:** If the roles of line and staff are not clearly defined, there can be confusion regarding authority and accountability.
  - **Conflict:** Staff agencies might feel their advice is ignored, while line officers might perceive staff as impractical or out of touch with ground realities.
  - **Clash of Importance:** There can be conflicts over the relative importance of both.
  - **Over-Staffing:** Unnecessary staff agencies can lead to bureaucratic expansion and increased costs.
  - **"Ivory Tower" Approach:** Staff agencies might develop an "ivory tower" approach, providing advice that is not always practical or feasible for implementation by line agencies.

To avoid these problems, it is essential to clearly define the roles and responsibilities between line and staff agencies, establish effective communication channels, and foster mutual respect and understanding. The chief executive plays a vital role in coordinating between the two and ensuring that they work together towards the overall goals of the organization.

Question No. 4- Write a comment on of the following.

Answer- (a) Promotion- In Political Science, specifically within Public Administration, **promotion** refers to the advancement of a public servant from their current position to a **higher-ranking post** within the organizational hierarchy. This advancement typically involves **increased responsibilities, greater authority, higher salary, and enhanced social status**.

Key Aspects:

- **Purpose:** Promotions serve to motivate employees, enhance efficiency, retain talented individuals, and facilitate career development within the public service.
- **Bases:** The two primary bases for promotion are:
  - **Seniority:** Based on the length of service. It offers objectivity but can overlook merit.
  - **Merit:** Based on performance, skills, and qualifications. It promotes efficiency but can be subjective. Most modern public administrations, like in India, use a "seniority-cum-merit" system to balance both.
- **Significance:** A well-structured and fair promotion system is crucial for boosting morale, ensuring accountability, and improving the overall quality of public service delivery.

(b) Planning- In Political Science, planning refers to the deliberate and systematic process by which a government or public organization defines its future goals, objectives, and the strategies or action plans to achieve them. It involves foresight, rational decision-making, and the allocation of resources to address public needs and achieve policy aims.

Key aspects include:

- **Goal Setting:** Identifying what the government intends to achieve (e.g., economic growth, poverty reduction, improved healthcare).
- **Policy Formulation:** Developing broad guidelines and specific programs to realize those goals.[1]

- **Resource Allocation:** Deciding how financial, human, and material resources will be distributed.
- **Implementation Strategy:** Designing the methods and procedures for putting plans into action.

Planning is crucial for effective governance, enabling governments to be proactive rather than merely reactive, ensuring efficient use of public resources, and providing a framework for public accountability.

(c) Budget - Political Science, a **budget** is a **comprehensive financial plan** typically prepared annually by a government or public organization. It details the **estimated revenues (income)** and **proposed expenditures (spending)** for a specific fiscal period.

Key Significance in Political Science:

- **Policy Document:** The budget is a crucial political document reflecting the government's priorities, policies, and allocation decisions. It shows "who gets what, when, and how" from public resources.
- **Accountability and Control:** It serves as a primary tool for legislative (parliamentary) control over the executive branch, ensuring that public funds are raised and spent according to law and public will. It promotes transparency and enables citizens to hold the government accountable.
- **Economic Management:** Governments use the budget to influence the economy, manage inflation, control public debt, stimulate growth, and reallocate resources for social and economic objectives (e.g., poverty reduction, infrastructure development).
- **Planning Tool:** It translates long-term plans and goals into concrete financial commitments for the upcoming year, guiding the administration's actions.

Question 5-. Describe executive legislative and judicial control over public administration.

Answer- Public administration, the machinery that translates government policies into action, operates within a framework of accountability in democratic states.[1] This accountability is primarily ensured through a system of checks and balances exercised by the three main organs of government: the executive, the legislature, and the judiciary. This tripartite control mechanism is crucial for preventing the abuse of power, promoting efficiency, and safeguarding the rights of citizens.[2]

Let's delve into each type of control:

1. Executive Control over Public Administration:

The executive, comprising the political executive (President/Prime Minister, Ministers) and the permanent executive (civil servants/bureaucracy), is at the apex of public administration. Consequently, its control over the administrative apparatus is the most direct and pervasive. Executive control aims to ensure that the administration functions in alignment with the government's policies and objectives.[3]

Methods of Executive Control:

- **Policy Formulation and Direction:** The executive branch formulates public policies and issues clear directives to administrators for their implementation.[4] Administrators are legally bound to follow these instructions. This ensures that the administrative actions reflect the political will of the government in power.
- **Appointment, Transfer, and Removal:** The executive holds significant power over the personnel of public administration through its authority to appoint, transfer, and remove high-ranking administrative officials. This power acts as a strong leverage point to ensure compliance and accountability. For instance, the selection of secretaries and heads of departments by ministers allows them to exercise substantial control over their respective ministries.
- **Budgetary and Financial Control:** The executive, particularly the Ministry of Finance, prepares the national budget and presents it to the legislature. Public administrators must operate within the allocated budget.[5] The executive exercises continuous financial control through internal audits, financial rules and regulations, and the power to sanction

expenditures, re-appropriate grants, and design financial codes of conduct for officials.[6] This "power of the purse" is a potent tool for influencing administrative priorities.

- **Delegated Legislation (Executive Legislation):** Legislatures often pass broad laws, delegating the power to create detailed rules and regulations (bylaws, statutory instruments) to the executive. This delegated legislation provides specific guidelines for administrators to follow, thereby giving the executive control over the operational aspects of law implementation.
- **Supervision, Direction, and Performance Review:** Ministers and senior executive officials constantly supervise and oversee the work of their subordinate departments and officers. They can demand reports, review performance, issue specific instructions, and conduct efficiency surveys to identify areas for improvement.[7] This continuous oversight helps prevent policy drift and ensures that agencies remain aligned with executive priorities.
- **Administrative Reforms:** The executive is often responsible for initiating and implementing administrative reforms to enhance the efficiency, effectiveness, and responsiveness of public administration. This proactive approach ensures that the administrative machinery remains adaptable to changing needs.
- **Codes of Conduct and Disciplinary Action:** The executive establishes codes of conduct for public servants.[8] In cases of misconduct, dereliction of duty, or violation of rules, the executive is empowered to initiate disciplinary proceedings, which can range from warnings to suspension or even dismissal.[9]
- **Public Opinion and Feedback:** While not a direct legal control, the executive can leverage public opinion and feedback to exert moral pressure on the administration, especially when there are perceived deficiencies in policy implementation or service delivery.

Limitations: Despite its extensive nature, executive control can be limited by bureaucratic inertia, lack of specialized knowledge on the part of political executives, and the potential for political interference leading to politicization of the bureaucracy.

2. Legislative Control over Public Administration:

The legislature, as the representative body of the people, exercises control over public administration to ensure that it acts in accordance with the will of the public and that public funds are utilized judiciously. This control is fundamental to parliamentary democracy, where the executive is ultimately responsible to the legislature.[10]

Methods of Legislative Control:

- **Law-Making (Legislative Enactment):** The most fundamental form of control is the power of the legislature to make laws. All administrative actions must conform to the laws passed by the legislature. No administrative action can contravene the provisions of a duly enacted law.
- **Financial Control:** This is a crucial aspect of legislative control.
  - **Budgetary Approval:** The legislature approves the budget, granting the executive the authority to spend public money.[11] No funds can be spent without legislative sanction. During budget debates, members can scrutinize the proposed expenditures of various ministries.[12]
  - **Discussion on Demands for Grants:** During the discussion on demands for grants of different ministries, legislators can critically examine the performance and policies of the respective departments, often leading to cut motions to express disapproval.
  - **Audit and Scrutiny by Committees:** The Comptroller and Auditor General (CAG) audits government accounts and presents reports to the legislature.[13] Parliamentary committees, such as the Public Accounts Committee (PAC), Estimates Committee, and Committee on Public Undertakings,[14] meticulously examine these reports and scrutinize the financial performance and efficiency of administrative agencies.[15] These committees conduct in-depth investigations and make recommendations.

- **Parliamentary Questions and Zero Hour:** During parliamentary sessions, members can ask questions to ministers regarding the functioning of their departments.[16] This "Question Hour" is a vital tool for extracting information, pinpointing administrative shortcomings, and holding ministers accountable.[17] "Zero Hour" allows members to raise urgent matters of public importance, often pertaining to administrative issues.[18]
- **Motions and Debates:** Various motions (e.g., adjournment motion, no-confidence motion, calling attention motion) and general debates in the legislature provide opportunities to discuss administrative actions, criticize government policies, and hold the executive and by extension, the administration, accountable.[19]
- **Control over Delegated Legislation:** While the legislature delegates law-making power to the executive, it retains oversight to ensure that the rules and regulations framed by the executive are within the scope of the original law and do not exceed the delegated authority.[20] Parliamentary committees on subordinate legislation are specifically constituted for this purpose.[21]
- **Resolutions and Petitions:** Legislators can move resolutions on matters of public importance related to administrative functioning. Citizens can also submit petitions to the legislature regarding administrative grievances, which are then examined by the Committee on Petitions.

Limitations: Legislative control can be limited by the sheer volume of legislative business, lack of specialized knowledge among members, party discipline (especially in parliamentary systems where the executive often commands a majority), and the non-binding nature of some committee recommendations.

3. Judicial Control over Public Administration:

The judiciary acts as the guardian of the Constitution and the protector of citizens' rights.[22] Its control over public administration ensures that administrators act within the bounds of the law, respect constitutional provisions, and do not abuse their discretionary powers. Judicial control primarily focuses on the legality and constitutionality of administrative actions.[23]

Methods of Judicial Control:

- **Judicial Review:** The power of the judiciary to review the constitutionality and legality of administrative actions, rules, regulations, and even laws.[24] If an administrative act is found to be ultra vires (beyond its legal authority) or unconstitutional, the courts can declare it null and void.[25] This is a powerful check on executive overreach.
- **Writs:** Under Articles 32 and 226 of the Indian Constitution, the Supreme Court and High Courts can issue various writs to protect the fundamental rights of citizens against administrative arbitrariness.[26]
  - **Habeas Corpus:** To release a person unlawfully detained.
  - **Mandamus:** To command a public authority to perform a duty that it is legally bound to perform.[27]
  - **Prohibition:** To prevent a lower court or quasi-judicial body from exceeding its jurisdiction.
  - **Certiorari:** To quash an order passed by a lower court or quasi-judicial body that acted without jurisdiction or committed an error of law.
  - **Quo Warranto:** To challenge a person's claim to a public office and determine by what authority they hold it.
- **Suits against the Government/Public Officials:** Citizens can file civil suits against the government or individual public officials for breach of contract, torts (civil wrongs), or damages caused by their unlawful administrative actions. Criminal proceedings can also be initiated against officials for criminal acts committed in their official capacity.
- **Judicial Review of Administrative Tribunals:** Many administrative bodies perform quasi-judicial functions (e.g., tax tribunals, service tribunals).[28] The judiciary retains the power to review the decisions of these tribunals to ensure they adhere to principles of natural justice and operate within their legal mandate.

- **Injunctions:** Courts can issue injunctions (stay orders) to restrain administrative authorities from performing certain actions that might be unlawful or cause irreparable harm.
- **Principle of Natural Justice:** Courts enforce principles of natural justice (e.g., right to fair hearing, rule against bias) in administrative decision-making, ensuring that individuals are treated fairly by the administration.[29]

Limitations: Judicial control has its limitations, including the reactive nature of judicial action (courts usually act only when a case is brought before them), the time-consuming and expensive nature of litigation, and the judiciary's reluctance to intervene in purely policy matters, often deferring to the executive's discretion unless there is a clear violation of law.

Question 6-. What do you mean by 'decentralized administration'?

Answer- In the realm of Political Science, 'decentralized administration' refers to the transfer of powers, authority, and responsibilities for public functions from the central government to lower levels of government or other quasi-independent entities. It's a complex and multifaceted concept that goes beyond simply dispersing administrative units; it fundamentally reconfigures how governance occurs.

Understanding Decentralized Administration:

To fully grasp decentralized administration, it's crucial to distinguish it from related concepts and delve into its various forms and implications:

1. Core Idea: Shifting the Locus of Decision-Making

At its heart, decentralization means moving decision-making closer to the people who are directly affected by those decisions.3 Instead of all authority residing at the top of a centralized hierarchy (e.g., the national capital), it is distributed to regional, municipal, or local governments, or even to semi-autonomous public bodies and the private sector.4

2. Forms of Decentralization:

Political scientists often categorize decentralization into different types, with administrative decentralization being a key component:

- **Political Decentralization (Devolution):** This is the most profound form, involving the transfer of *political authority* and decision-making power to elected local governments that are accountable to their local constituencies. This often involves constitutional or statutory guarantees of autonomy and the establishment of local electoral jurisdictions. The goal is to enhance citizen participation and make governance more representative.
- **Administrative Decentralization:** This focuses on redistributing *administrative authority, responsibility, and financial resources* for providing public services.[6] It can take several forms:
  - **Deconcentration:** This is the weakest form, involving the redistribution of administrative responsibilities within the central government itself.[7] Central government agents or field units are geographically dispersed, but they remain upwardly accountable to the central government.[8] There's no real transfer of authority between levels of government.
  - **Delegation:** This involves the transfer of managerial responsibility for specific functions to semi-autonomous organizations (e.g., public corporations, special purpose authorities) that are outside the direct control of the central government but are still accountable to it for

results. These entities often have considerable discretion in decision-making.
    - **Devolution:** While primarily a form of political decentralization, it also has strong administrative implications. Here, the central government transfers authority, responsibility, and sometimes financial resources to sub-national government units (like states, provinces, or municipalities) that have their own legal identity, budget, and independent decision-making powers. These local governments are accountable to their local populations.
- **Fiscal Decentralization:** This involves transferring financial resources and revenue-generating powers (e.g., local taxation) from central to local governments, allowing them to fund their own services and development initiatives.
- **Market Decentralization (Privatization):** This involves transferring responsibility for public functions to the private sector or voluntary organizations, either through divestment of state-owned enterprises or contracting out public services.[11]

Arguments for Decentralized Administration (Benefits):

Decentralized administration is often advocated for a variety of reasons, aiming to improve governance, service delivery, and democratic participation:

- **Improved Responsiveness and Tailored Solutions:** Local governments are closer to the people and better understand their specific needs, preferences, and local conditions.[13] This allows for the development and implementation of policies and services that are more relevant and effective for diverse communities, rather than uniform, top-down approaches.[14]
- **Enhanced Efficiency and Effectiveness:** By decentralizing decision-making, administrative bottlenecks and bureaucratic red tape can be reduced.Local officials can make quicker decisions and adapt more readily to changing circumstances, leading to more efficient service delivery.[16] It can also foster innovation as local units experiment with different approaches.
- **Greater Accountability and Transparency:** When decisions are made at the local level, citizens can more easily monitor the actions of their elected representatives and local officials, leading to increased accountability.[17] This also creates opportunities for greater transparency in resource allocation and service provision.[18]
- **Increased Citizen Participation and Democratic Deepening:** Decentralization empowers citizens by providing more avenues for their involvement in public policy processes.[19] This can take the form of electing local representatives, participating in local planning, or holding local officials accountable, thereby strengthening grassroots democracy.
- **Capacity Building and Leadership Development:** Decentralization provides opportunities for local leaders and administrators to develop their skills in planning, management, and governance.[20] This builds a pool of competent individuals capable of addressing local challenges.

- **Reduced Burden on Central Government:** By delegating routine tasks and responsibilities, central governments can focus on broader policy formulation, strategic planning, and national-level issues, leading to more effective overall governance.
- **Addressing Regional Disparities and Promoting Equity:** Decentralization can help in allocating resources more equitably across regions and addressing the specific development needs of marginalized communities that might be overlooked by a centralized system.[21]
- **Conflict Resolution:** In ethnically or regionally diverse countries, decentralization can provide a mechanism for different groups to have some autonomy and control over their affairs, potentially reducing tensions and promoting national unity.

Challenges and Considerations in Decentralized Administration:

Despite its numerous advantages, decentralized administration is not without its challenges and potential drawbacks:[22]

- **Capacity Deficiencies:** Local governments often lack the financial resources, human capital (trained personnel), technical expertise, and institutional capacity to effectively carry out their new responsibilities.[23] This can lead to inefficient service delivery or even corruption.
- **Fiscal Imbalances and Dependence:** Local governments may struggle to generate sufficient revenue internally and remain heavily dependent on transfers from the central government, which can undermine their autonomy and limit their ability to prioritize local needs.
- **Corruption and Elite Capture:** While decentralization can enhance accountability, it can also create new opportunities for corruption if local institutions are weak or captured by powerful local elites who may divert resources for personal gain.
- **Inter-Jurisdictional Conflicts and Coordination Issues:** Without clear lines of authority and effective coordination mechanisms, decentralization can lead to conflicts between different levels of government or between neighboring local units.
- **Uneven Development:** Decentralization can exacerbate existing regional disparities if some local governments are more capable or resourceful than others, leading to uneven development outcomes across the country.[27]
- **Lack of Political Will:** Central governments may be reluctant to genuinely cede power and resources, often maintaining significant control through various means, thereby hindering the true spirit of decentralization.
- **Accountability Mechanisms:** Establishing effective mechanisms for accountability, both upward (to the central government) and downward (to citizens), can be complex and challenging.

Policy Incoherence: If local governments make decisions that are not aligned with national policies or priorities, it can lead to fragmented and uncoordinated development efforts.

Section b short answer questions

Question1-. Differentiate between public administration and private administration.

Answer- In Political Science, the term "department" carries significant meaning, especially when discussing the structure, functioning, and public administration of a government. It refers to a major administrative unit within the executive branch of a government, responsible for a specific area of public policy or governmental function.

Here's a breakdown of what "department" means in Political Science, in long answer form:

1. Functional Specialization and Division of Labor:

The most fundamental meaning of a department is its role in **dividing the vast and complex responsibilities of a modern government into manageable, specialized units.** Just as a large corporation has different divisions for manufacturing, marketing, and finance, a government creates departments to handle distinct policy areas. This allows for:

- **Expertise:** Each department can employ and develop expertise in its specific field (e.g., the Ministry of Health focuses on healthcare, the Department of Education on schooling).
- **Efficiency:** By concentrating resources and personnel on a particular function, departments can streamline operations and potentially deliver services more efficiently.
- **Accountability:** It becomes easier to assign responsibility and hold individuals or groups accountable for performance within a defined policy area.

2. Hierarchical Structure and Bureaucracy:

Departments are quintessential examples of **bureaucratic organizations** within the government. They are characterized by:

- **Hierarchy:** A clear chain of command, with a minister or secretary at the top, followed by various levels of civil servants (e.g., additional secretaries, joint secretaries, directors, under-secretaries, etc.).[2]
- **Rules and Procedures:** Departments operate according to established laws, rules, and regulations, ensuring consistency and impartiality in decision-making and service delivery. This is often linked to the concept of "rule of law."
- **Impersonality:** Decisions are meant to be based on objective criteria and established procedures, rather than personal relationships or biases.[3]
- **Specialization of Tasks:** Each individual within a department has a defined role and set of responsibilities, contributing to the overall function of the department.

3. Political and Administrative Heads:

A key feature of a government department, especially in parliamentary systems, is the distinction between its political and administrative heads:

- **Political Head (Minister/Secretary of State):** This is an elected official (or appointed by the elected executive) who is a member of the cabinet. The minister is responsible for setting policy, representing the department in the

legislature, and is ultimately accountable to the public and the prime minister/president for the department's performance.[4] They provide the political direction and vision.

- **Administrative Head (Secretary/Permanent Secretary):** This is usually a senior civil servant (e.g., an IAS officer in India) who is the professional and administrative head of the department.[5] They are responsible for the day-to-day operations, implementation of policies, and providing expert, politically neutral advice to the minister. They ensure continuity of administration regardless of changes in political leadership.

4. Relationship with Ministries and Other Bodies:

In many governmental structures, especially in India, the term "department" is often used in conjunction with "ministry":[6]

- **Ministry:** A ministry is typically the highest executive authority in the government responsible for one or more broad sectors of public policy.
- **Department:** A department is usually a part of a ministry, focusing on a more specific area within that ministry's responsibility. For example, the Ministry of Home Affairs in India has several departments like the Department of Internal Security, Department of Border Management, etc.[7]
- **Attached and Subordinate Offices:** Departments often have "attached offices" (providing executive direction and technical advice) and "subordinate offices" (field establishments responsible for detailed execution of policies) under them to extend their reach and implement policies at the ground level.[8]

5. Role in Policy Formulation and Implementation:

Departments are central to both the **formulation and implementation of public policy**:

- **Policy Formulation:** While political leaders set the broad policy agenda, departments play a crucial role in developing the details of laws, regulations, and programs. They conduct research, consult stakeholders, analyze policy options, and draft proposals for ministerial approval and legislative enactment.
- **Policy Implementation:** Once policies are approved, departments are the primary agencies responsible for translating those policies into action. This involves designing programs, allocating resources, managing personnel, delivering services directly to citizens, and monitoring outcomes.

6. Basis of Departmental Organization (Luther Gulick's 4 Ps):

Public administration scholar Luther Gulick famously outlined four bases for organizing governmental departments, often referred to as the "4 Ps":[9]

- **Purpose:** Organizing departments based on their main objective or function (e.g., Department of Health, Department of Education). This is the most common basis.
- **Process:** Grouping activities that use similar skills or processes (e.g., a Department of Engineering, though this is less common at the highest level of government).

- **Persons/Clientele:** Organizing departments around the specific groups of people they serve (e.g., Department of Tribal Affairs, Department of Women and Child Development).

Place/Territory: Organizing departments based on a specific geographical area (e.g., a regional development department, though typically, a national department operates across all regions).

Question2-. What is the meaning of the department?

Answer- The term 'department' has a deep and important meaning in political science, especially when we discuss the structure, functioning and public administration of a government. It is a department within the executive branch of government.Major administrative unit refers to an agency that is responsible for a specific area of public policy or government function.

Let us understand in detail what is meant by 'department' in political science:

1. Functional Specialization and Division of Labor:

The most basic meaning of department is the division of the vast and complex responsibilities of modern government into manageable, specialized units. Its role in dividing Just as a large corporation has separate divisions for manufacturing, marketing and finance, a government also creates departments to handle specific policy areas. This makes it possible to:

- **Specialization:**Each department can develop and use expertise in its specific area (for example, the Ministry of Health focuses on health care, the Department of Education on school education).
- **Efficiency:**By focusing resources and personnel on a particular task, departments can streamline operations and potentially provide services more efficiently.
- **Accountability:** It becomes easier to assign responsibility for performance within a defined policy area and to hold individuals or groups accountable.

2. Hierarchical Structure and Bureaucracy:

Departments within the government **Bureaucratic organizations** Typical examples of . They have the following characteristics:

- **hierarchy:**A clear chain of command, with a minister or secretary at the top, followed by various levels of civil servants (such as additional secretaries, joint secretaries, directors, under secretaries, etc.).
- **Rules and Procedures:** Departments operate in accordance with established laws, rules and regulations, which ensure consistency and fairness in decision-making and service delivery. This is often associated with the concept of "rule of law".
- **Impersonality:** Decisions should be based on objective criteria and established procedures, not on personal relationships or prejudices.
- **Specialization of functions:** Each individual within a department has a defined role and set of responsibilities, which contribute to the overall function of the department.

3. Political and Administrative Heads:

A key feature of a government department, especially in parliamentary systems, is the distinction between its political and administrative heads:

- **Political Head (Minister/State Secretary):**This is an elected official (or appointed by the elected executive) who is a member of the cabinet. The minister is responsible for setting policy, representing the department in the legislature, and is ultimately accountable to the public and the Prime Minister/President for the department's performance. They provide political direction and vision.
- **Administrative Head (Secretary/Permanent Secretary):**This is usually a senior civil servant (such as an IAS officer in India) who is the professional and administrative head of the department. They are responsible for day-to-day operations, implementation of policies and providing expert, politically neutral advice to the minister. They ensure continuity of administration regardless of changes in political leadership.

4. Relationship with Ministries and Other Bodies:

In many government structures, especially in India, the term "department" is often used interchangeably with "ministry":

- **Ministry:**A ministry is usually the highest executive authority in a government responsible for one or more broad areas of public policy.
- **Department:**A department is usually part of a ministry, focusing on a more specific area within that ministry's responsibility. For example, the Ministry of Home Affairs in India has several departments such as the Department of Internal Security, Department of Border Management, etc.
- **Attached and Subordinate Offices:** Departments often have "attached offices" (which provide executive direction and technical advice) and "subordinate offices" (which are field establishments responsible for detailed execution of policies) under them to extend their reach and implement policies at the grassroots level.

5. Role in Policy Formulation and Implementation:

Department of Public Policy**Creation and implementation**Central to both are:

- **policy making:**While political leaders set the broad policy agenda, departments play a key role in developing the details of laws, regulations, and programs. They conduct research, consult stakeholders, analyze policy options, and prepare proposals for ministerial approval and legislative enactment.
- **Policy Implementation:**Once policies are approved, departments are the primary agencies for turning those policies into action. This includes designing programs, allocating resources, managing personnel, delivering services directly to citizens, and monitoring results.

6. Basis of Departmental Organization (Luther Gulick's 4 Ps):

Public administration scholar Luther Gulick famously outlined four pillars for organizing government departments, often referred to as the "4 Ps":

- **Objective:** Organizing departments based on their main purpose or function (for example, health department, education department). This is the most common basis.

- **Process:**Grouping activities that use similar skills or processes (for example, an engineering department, although this is less common at the highest levels of government).
- **Persons/Clientele:** Organizing departments around the specific groups of people they serve (for example, Department of Tribal Affairs, Department of Women and Child Development).

Place/Territory: Organizing departments based on a specific geographic area (for example, a regional development department, although usually, a national department covers all regions).

Question3-. What is the difference between public welfare state and police state?

Answer- In political science, 'welfare state' and 'police state' are two diametrically opposed concepts that define the nature, role and relationship of the state with its citizens. Both these concepts make clear the fundamental difference between the scope of the state and its impact on the lives of its citizens.Let us understand the difference between these two in detail:

1. Welfare State

The welfare state is a concept in which the primary objective of the state is to provide welfare to its citizens.**Promoting social, economic and political welfare**In this, instead of playing a passive role, the state actively tries to help the weaker sections of society, ensure social justice and provide a minimum standard of living for all citizens.

Key Features:

- **Emphasis on public welfare:**Its central objective is not only to maintain law and order but also to provide a wide range of public services like education, health, employment, social security (pension, unemployment allowance), housing, poverty alleviation, etc.
- **Positive role:**The state acts as an interventionist. It intervenes in the economic and social spheres to correct market failures, reduce income and wealth inequalities, and ensure equality of opportunities.
- **social justice:**It is based on the principles of social justice, which means that the state provides special assistance to weaker and marginalized groups so that they can join the mainstream. Efforts are made to eliminate discrimination on the basis of caste, religion, gender, class, etc.
- **Wide Scope of Rights:**Along with civil and political rights, emphasis is also placed on economic and social rights (such as right to work, right to education, right to health).
- **Democratic Processes:**Generally, a welfare state operates within a democratic framework where citizens have the right to political participation, freedom of expression and other fundamental rights. The government is accountable to the people.
- **Accountability and Transparency:**The government is accountable to the public and strives to maintain transparency in the use of public funds.
- **Striving for economic equality:**It does not claim perfect equality, but aims to reduce inequalities in the distribution of income and wealth, often through progressive taxation and social transfers.

Example: The Scandinavian countries (Sweden, Norway, Denmark), Germany, Canada and, to some extent, India also adopt the concept of a welfare state.

2. Police State

The concept of 'police state' is clear from its name that in it**The role of police and security system is paramount** It is a state where the government exercises its power primarily through force, surveillance and control to maintain law and order and suppress internal opposition. It considers the freedoms and rights of citizens secondary.

Key Features:

- **Repressive Control:**The primary function of the state is to exercise strict control and surveillance over every aspect of citizens' lives. The police and intelligence agencies exercise extensive authority and power.
- **Lack of personal freedom:**Personal liberties of citizens (such as freedom of speech, assembly, association, media) are severely restricted or absent. Critics of the government are often arrested or repressed.
- **Excessive emphasis on law and order:**Arbitrary arrests, interrogations, and brutal suppression of dissent are often carried out in the name of maintaining "law and order."
- **Unjust judicial system:**The judiciary is often under the control of the executive and is unable to provide impartial justice. The 'Rule of Law' does not apply in the real sense.
- **Centralisation of Power:**Power is highly centralized, and there is no room for citizen participation in the decision-making process.
- **Dominance of Army and Police:**The power of the state is primarily manifested through its large and powerful police and military forces. These forces are often exempt from accountability.
- **Climate of fear:**There is a constant atmosphere of fear and insecurity among citizens, making them afraid to criticize or stand up against the government.
- **violation of privacy:**There is no respect for the privacy of citizens. The government monitors the activities of citizens through phone tapping, online surveillance and other means.

Example: Historically, Nazi Germany, the Soviet Union (to a lesser extent), and some totalitarian regimes (such as North Korea) can be seen as examples of police states.

Main differences between a welfare state and a police state:

Basis of difference	**welfare state**	**police state**
Role of the State	Proactive, interventionist, focused on public welfare.	Oppressive, controlling, focused on law and order.
primary purpose	Promotion of socio-economic welfare, justice and equality.	Maintaining internal order, suppressing opposition.

rights of citizens	Comprehensive (political, civil, economic, social).	Limited or absent (especially political freedoms).
instrument of state	Public services, policies, laws, democratic processes.	Force, surveillance, repression, fear.
Governance system	Generally democratic, accountable.	Often authoritarian, unaccountable.
Relationship with citizens	Emphasis on collaboration, support, empowerment.	Controller, monitor, emphasis on subordination.
Judiciary	Independent and unbiased.	Subordination to the executive or lack of impartiality.
economy	Mixed economy, regulation and redistribution.	Complete state control or complete dominance over the market.
Transparency	Striving for a high level of transparency.	Secrecy and obscurity.

Question4-. What is the difference between public welfare state and police state?

Answer- In political science, a public corporation is a specific type of government organization established to fulfill public purposes. It has a blend of characteristics of both a government department and a private company. Public corporations are often preferred to perform functions where a balance is needed between the rigid bureaucracy of government departments and the profit-oriented approach of private companies.

Let us understand the concept of 'Public Corporation' in detail:

Definition of Public corporation:

a public corporation**Semi-autonomous government enterprises**which is established by an Act passed by the Parliament or the State Legislature**Special Laws (Acts)**It is established under the Government of India Act 1961. The Act clearly states its objectives, powers, functions, management structure, financial arrangements and its relationship with the government.

Different scholars have defined public corporation in different ways:

- **According to Herbert Morrison:**“Public corporation is a combination of government stability, public accountability and business management for public purposes.”
- **According to Ernest Davies:**“Corporations are joint-stock companies created by the public power, with definite powers and functions and financial independence.”
- **According to Dimock:**"A government corporation is a government enterprise created under federal, state, or local law to carry on a specific business or achieve a specific financial purpose."

It is clear from these definitions that a public corporation is a body which is established to fulfill some specific objectives of the state and it enjoys some degree of autonomy in arranging its own management and finance.

Salient features of a public corporation:

1. **Establishment by special act:**Public corporations are formed under a specific Act passed by the Parliament or the State Legislature. This Act provides legal existence and powers to the corporation.
2. **Separate Legal Existence:**A public corporation has an independent and separate legal existence from the government. It can buy and sell property, enter into contracts, sue and be sued in its own name.
3. **Financial Autonomy:**Public corporations usually have some degree of autonomy in financial matters. They are allowed to generate their own revenue, make budgets and spend according to their own rules, although they may also receive government grants. They are not part of the public treasury and their accounts are not subject to direct government audit (although there may be inspection by Parliament or the Comptroller and Auditor General).
4. **Managerial Autonomy:**Public corporations are usually managed by a board of directors or board whose members are appointed by the government. This board is responsible for the day-to-day operations of the corporation and enjoys greater flexibility than government departments.
5. **Nonprofit or service-oriented:**The primary objective of public corporations is not to earn profits but to provide essential goods or services to the public at reasonable prices. However, they may try to be financially self-sufficient and avoid losses.
6. **public accountability:**Although they enjoy autonomy, public corporations are not completely uncontrolled. They are accountable to parliament or the legislature, under which their functioning can be discussed, and ministers are responsible for their performance.
7. **Own karmic rules:**Public corporations have their own personnel rules and service conditions, which differ from those applicable to employees of government departments. This gives them greater flexibility in recruiting employees on the basis of merit and rewarding their performance.

8. **Business Approach:**Public corporations are often designed to function in a more professional and efficient manner than the bureaucracy of government departments. They can respond more quickly to market conditions.

Reasons and objectives for the establishment of public corporations:

Public corporations are set up for a variety of purposes, including:

- **Conducting business functions:**To run industrial and commercial operations which cannot be run efficiently under the rigid functioning of a government department (like railways, electricity boards, insurance companies).
- **Providing Public Utilities:**Providing essential public utility services (such as water supply, gas, transport) where the private sector is either unwilling or prone to monopoly.
- **Social Justice and Welfare:**To reduce social and economic inequalities, provide assistance to weaker sections and implement social welfare programmes (like Food Corporation).
- **Promoting economic development:**To undertake investments and initiatives in sectors crucial to the economic development of the nation, especially in areas where private investment is inadequate.
- **Protection from political interference:**Protecting these institutions from day-to-day political interference, so that they can function professionally and objectively.
- **Financing Facility:**Ability to raise funds directly from the financial markets.

Advantages of Public Corporations:

- **Flexibility and Efficiency:**They have greater flexibility than departmental enterprises, allowing them to make quicker decisions and respond more efficiently to changing market conditions.
- **Specialization:**Are able to develop and maintain expertise in specific areas.
- **Freedom from political interference:**Although there is parliamentary control, there is a certain degree of freedom from day-to-day political interference.
- **Quick decision:**The lack of bureaucratic procedures leads to faster decision making.
- **Focus on public service:**Instead of earning profit, you can focus on public service.

Limitations/Problems of Public Corporations:

- **Lack of real autonomy:**Often, despite declared autonomy, government and political interference is faced.
- **Red Tape:**Over time, some public corporations may also fall prey to bureaucracy and red tape like government departments.

- **Accountability Issue:**Striking a balance between autonomy and accountability can be difficult. Too much autonomy can reduce accountability, while too much control can impede flexibility.
- **Disadvantages:**Because of their focus on public purposes, they can often be unprofitable and a burden on the public exchequer.
- **The Problem of Promotion and Motivation:**Often there are not as attractive incentive systems as in the private sector, which can impact employee motivation.

Public Corporations in the Indian Context:

Public corporations have a long history in India, especially in the post-independence era when the government played a key role in economic development. The Reserve Bank of India (RBI), Life Insurance Corporation of India (LIC), State Bank of India (SBI), Food Corporation of India (FCI), Damodar Valley Corporation (DVC) etc. are prominent examples of public corporations. These corporations have contributed significantly to the economic and social development of India. However, in the era of liberalisation and privatisation, many public corporations have been restructured, and their role is constantly debated.

Question5-. What is meant by Independent Regulatory Commission?

Answer- In political science, an Independent Regulatory Commission (IRC) is a specialised administrative body established by a government to regulate a particular sector or industry, but which has significant autonomy from direct control of the executive branch and from political pressure. They emerged primarily in the United States, but the concept is now prevalent in many countries around the world, especially following liberalisation and privatisation.

Let us understand in detail the intent behind independent regulatory commissions:

Meaning and purpose of Independent Regulatory Commission:

Independent regulatory commissions are institutions that work to maintain a balance between the government and the public. They work in areas where government intervention is necessary, but complete control may be inappropriate or inefficient. Their main purpose is to implement policies keeping in mind the public interest, maintain competition and ensure compliance with rules.

Main objectives:

1. **Fair Regulation:**Preventing unfair trade practices, controlling monopolies and maintaining healthy competition in any sector.
2. **Consumer Protection:**To protect the public from exploitation, unfair pricing and illegal activities.
3. **Effective Implementation of Policies:**To properly implement the government's development plans and reforms with technical expertise.
4. **Balance between Private and Public Sector:**Protecting private companies from unnecessary government interference, but also ensuring that they act in the public interest.

5. **Institutional Autonomy:**To maintain their decision making ability by remaining independent from government and industry so that they can take unbiased and technically correct decisions.

Key features of independent regulatory commissions:

1. **Establishment by special act:**These commissions are established under a specific Act passed by the Parliament or the Legislature. This Act determines the composition, powers, functions and limitations of the Commission.
2. **Independence from the Executive:**This is their most important feature. Though the members and chairperson of the commission are appointed by the executive (President/Prime Minister), once appointed, they enjoy security of tenure and cannot be removed easily (e.g. only on the grounds of impeachment or grave misconduct). This enables them to work without political pressure.
3. **Quasi-legislative, Quasi-executive and Quasi-judicial Functions:**
   - **Quasi-Legislative:**The commissions draft and promulgate rules and regulations pertaining to their field, which have the status of law.
   - **Quasi-Executive:**They enforce the regulations they make, monitor industries, issue licenses and ensure compliance.
   - **Quasi-Judicial:**They hear disputes over breaches of rules, impose fines and redress grievances in their area. Their decisions can often be challenged in the courts.

4. **Expertise and Technical Proficiency:**Commissions usually consist of experts in the relevant field (engineers, economists, legal experts). This helps them make informed decisions on complex technical and economic issues, which may be difficult for ordinary government departments.

5. **Multi-member bodies:**Most independent regulatory commissions are not run by a single individual, but by a multi-member board or commission. This helps incorporate different viewpoints and make decisions after more deliberation.

6. **Financing:**They are usually funded from government budgetary allocations, but are also ensured financial autonomy so that they can perform their functions independently.

7. **Accountability to Parliament/Legislature:**Although they are free from the direct control of the executive, they are accountable to the legislature (Parliament/Assembly). The legislature can review their work and ask for reports.

Importance of Independent Regulatory Commissions in Political Science:

In political science, the study of independent regulatory commissions is vital to understanding the relationship between government and society, administrative systems, democratic accountability, and economic policies:

1. **Democratic Governance and Administrative Reforms:**In a democracy, it is the responsibility of the government to ensure the proper use of public resources and protect the rights of citizens. But at times, decisions taken by the government may be biased or come under political pressure. Independent regulatory commissions help to reduce this influence of the

government and implement policies impartially. They bring expertise and efficiency to the administrative system.

2. **Addressing the Complexity of Governance:**In modern society, the economy and technology have become increasingly complex. Traditional departments of government may not be able to regulate these complex and technical areas efficiently. Regulatory commissions provide expertise in these specific areas and can adapt regulations in a flexible manner.
3. **Ensuring justice and fairness:**These commissions resolve disputes through their quasi-judicial functions and ensure that no industry or consumer is subjected to unfair treatment. It promotes the principle of justice and fairness in governance.
4. **Evolution of the Role of the State:**In the era of liberalisation and privatisation, the role of the state has changed. The state is no longer just a provider of services but also a facilitator and regulator. Independent regulatory commissions are important in this changing role, as they provide a transparent and fair framework for the private sector to operate.
5. **Fostering public confidence and investment:**When regulatory bodies are independent and impartial, they increase investor and consumer confidence in industries. This is vital for economic growth and stability. Investors invest knowing they will be treated fairly and consumers use services knowing their interests will be protected.

Examples of independent regulatory commissions in India:

In India, there are several important independent regulatory commissions that have played a vital role in various sectors:

- **Telecom Regulatory Authority of India (TRAI):**Regulates quality of services, tariffs and competition in the telecommunications sector.
- **Securities and Exchange Board of India (SEBI):**Regulates the stock market and securities market to protect the interests of investors.
- **Reserve Bank of India (RBI):**It is the central bank of India, which regulates monetary policy, the banking system, and financial stability.
- **Insurance Regulatory and Development Authority of India (IRDAI):**Regulates the insurance sector.
- **Competition Commission of India (CCI):**Ensures healthy competition in the market and prevents monopolistic practices.
- **Central Electricity Regulatory Commission (CERC):**Regulates tariff, inter-state transmission etc. in the electricity sector.
- **Election Commission of India (ECI):**Although it is a constitutional body, due to the autonomy of its functions and regulatory capacity it is often treated as akin to an independent regulatory commission, which ensures that elections are conducted freely and fairly.

Union Public Service Commission (UPSC): Ensures fairness in recruitment to civil services.

Question6-. How there is legislative control over public administration?

Answer- In political science, 'Legislative Control over Public Administration' refers to the process and mechanism by which the legislature (such as the

Parliament or state legislatures in India) monitors, reviews and controls the actions of the executive and the public administration subordinate to it. It is an essential aspect of democratic governance, as it ensures that the administration remains accountable to the public and does not abuse its powers.

In modern democratic states, especially in parliamentary systems, legislative control over the administration is extremely important. Ministers and their departments are collectively accountable to the Parliament/Legislature. The legislature, as representatives of the people, attempts to ensure that the administration in its activities acts in accordance with the laid down policies, laws and public interest.

The following are the various methods and instruments of legislative control over public administration:

1. Legislative or Legal Control:

- **Law Making:**The legislature makes laws that determine the organization, functions, powers and procedures of the administration. Any department can exercise its powers only within the scope of laws that have been passed by the legislature.
- **Control over Delegated Legislation:**In modern complex governance, the legislature cannot make laws containing all the details. It delegates the power to make rules in some cases to the executive (administration). The legislature controls this subordinate legislation through various committees (such as the Subordinate Legislation Committee) to ensure that the rules made do not go beyond the scope of the original law.

2. Financial Control:

Financial control over public administration is one of the most powerful tools of the legislature, since the principle of 'no taxation without representation' is the basis of democracy.

- **Approval of Budget:**The executive cannot spend any money unless the legislature approves the annual budget. The legislature can make cuts to the budget, which directly affects the financial resources of departments.
- **Demands for Grants:**Each ministry has to demand grants from Parliament for its proposed expenditure. These demands are discussed at length, and members can criticise the policies and performance of the administration.
- **Finance Bill and Appropriation Bill:**After the budget is approved, the legislature passes the Finance Bill (dealing with taxes) and the Appropriation Bill (dealing with spending), which give the government legal permission to raise and spend money.
- **Supplementary Grants, Excess Grants, etc.:**If additional funds are needed during the financial year, the administration has to seek permission from the legislature for supplementary grants, which provides another avenue of control.
- **Role of Comptroller and Auditor General (CAG):**The CAG is an independent constitutional body that audits the accounts of the government and submits its report to the President/Governor, who lays it before the

legislature. The CAG report is an important check on the proper and efficient use of funds by the administration.

- **Financial Committees:**The Parliament has three major financial committees that exercise financial control over the administration:
  - **Public Accounts Committee (PAC):**It examines the reports of the CAG and ensures that public money is spent in accordance with the law.
  - **Estimates Committee:**It examines estimates and makes suggestions for improving administrative efficiency and economy.
  - **Committee on Public Undertakings:**It examines the accounts and performance of public sector undertakings.

3. Deliberative and Debating Control:

The legislature exercises control over the administration through various types of discussions and debates:

- **Question Hour:**Every session of Parliament/Assembly begins with Question Hour, where members ask ministers questions on matters of public importance. This keeps ministers and their departments alert and accountable.
- **Zero Hour:**It is an informal mechanism where members can raise matters of urgent public importance without any prior notice.
- **Short Duration Discussion:**Members may demand a short-duration discussion on any urgent matter of public importance.
- **Calling Attention Motion:**It is used by members to draw the attention of the minister to an urgent matter of public importance and to make a statement on it.
- **Adjournment Motion:**It is a solemn device where the normal business of the Parliament is suspended to discuss a matter of urgent and serious public importance. If passed, the motion expresses no confidence in the policy or action of the government.
- **No-Confidence Motion:**In a parliamentary democracy, if the executive loses the confidence of the legislature, a motion of no confidence may be moved. If it is passed, the government has to resign. This is the final and most powerful political check on the administration.
- **General Discussion on Budget:**During the debate on the budget, members can discuss and criticise not only the financial proposals but also the overall policies of the government and the performance of the administration.
- **Motion of Thanks on President's/Governor's Address:**The President/Governor's address is a blueprint of the government's policies and future plans. During the motion of thanks on it, the members review and criticise in detail the policies of the government and the functioning of the administration.

4. Committee Control:

Parliamentary committees, as the "mini-legislature" of the legislature, exercise detailed and intensive control over the administration. Apart from the financial committees, other important committees are:

- **Departmental Standing Committees:**These committees relate to various ministries/departments and examine their budget estimates, bills and annual reports. This ensures constant and detailed control over the functioning of the ministry.
- **Committee on Government Assurances:**This committee examines the implementation of assurances, promises and pledges made by the ministers in the House.
- **Committee on Petitions:**It considers petitions presented by the public and investigates complaints against the administration.

5. Other types of control:

- **Scrutiny of Administrative Reports:**Annual reports, performance reports and other documents submitted by the administration are reviewed by the legislature.
- **Interrogation and Seeking Clarification:**Members of Parliament exercise control on various occasions by asking questions and seeking clarifications directly from ministers or concerned officials.

Limitations of the Effectiveness of Legislative Control:

Though legislative control is important, it has certain limitations too:

- **Dominance of the Executive:**In a parliamentary system, the ruling party has a majority in parliament, making it easier for the government to escape legislative control.
- **Lack of expertise:**MPs/MLAs do not have detailed knowledge of the complex and technical aspects of administration, making effective monitoring difficult.
- **Lack of time:**The legislature has a lot of work to do, and there is not enough time to discuss in detail every aspect of public administration.
- **Politicization:**Instruments of control are often used for political score-settling or to stage protests, thereby undermining their real purposes.

Increase in Delegated Legislation: The direct control of the legislature is reduced to some extent due to the increased scope of delegated legislation.

Question7-. How public administration is governed by judicial control?

Answer- Political science, 'Judicial Control over Public Administration' refers to the process through which the judiciary, by interpreting the constitution and laws, examines the legality, propriety and constitutionality of public administration (actions of the executive branch). It is an important mechanism for maintaining the principle of separation of powers and 'rule of law' in a democratic system of governance.

The judiciary ensures that the administration exercises its powers within the limits of the Constitution and the laws made by the Parliament and that the rights of the citizens are not violated.

Following are the various methods and instruments of judicial control over public administration:

1. Judicial Review:

It is the most powerful and comprehensive tool of judicial control. Judicial review means**The power of the courts to examine the constitutionality and legality**

of laws passed by the legislature and administrative actions taken by the executive. If any law or administrative action is found to be in violation of the provisions of the Constitution or any fundamental law, the court can declare it unconstitutional or illegal and null and void.

- **Review of Administrative Functions:**The judiciary specifically examines administrative decisions, rules, by-laws and policies. Its main bases are as follows:
  - **Lack of Jurisdiction:**If any administrative authority or officer acts beyond his prescribed powers or jurisdiction.
  - **Abuse of Power:**If any administrative authority uses his power for malicious or improper purposes.
  - **Procedural Impropriety:**If established procedures, principles of natural justice (such as right to be heard, fairness) have not been followed in taking administrative decisions.
  - **Irrationality/Unreasonableness:**If the administrative decision is so illogical or irrational that no reasonable person could have arrived at that decision (also known as the Wednesbury test).
  - **Violation of Constitutionality:**If the administrative action violates any provision of the Constitution, especially the fundamental rights.
  - **Proportionality:**If the administrative measure adopted is disproportionate to the objective sought to be achieved.
  - **Legitimate Expectation:**If an administrative authority has by its prior conduct or declarations created a legitimate expectation in any person, and then deviates from it without reasonable cause.

2. Writ Jurisdiction:

In India, the Supreme Court (under Article 32) and the High Courts (under Article 226) have the power to issue various types of writs for the enforcement of fundamental rights and for the violation of other legal rights. These writs establish direct and effective control over the administration:

- **Habeas Corpus:**This writ orders a person who has been illegally detained to be produced before the court so that the legality of his detention can be inquired into. It is the most important protector of personal liberty.
- **Mandamus:**This writ commands a public officer or authority to perform his legal duty, if he fails to do so.
- **Prohibition:**This writ is issued by a higher court to restrain a lower court or tribunal from exceeding its jurisdiction or doing an act which it does not have the power to do.
- **Certiorari:**This writ is issued by a higher court to set aside a decision given by a lower court or tribunal, if the decision was without jurisdiction or there was a clear error in law.
- **Quo warranto:**This writ is issued to question the validity of a person's right to hold a public office. It ensures that a person does not hold a public office illegally.

3. Statutory Appeals and Revisions:

Many laws provide for appeal or revision of administrative decisions in courts. Citizens or affected parties can challenge an administrative decision directly in court. This is particularly seen in specific areas such as tax, environmental, labour laws, etc., where appeals can be made against decisions of administrative tribunals.

4. Suits against the Government:

Citizens can file civil and sometimes criminal suits against the government or its officers on various grounds.

- **Contractual Liability:**If the government or its departments violate any contract, the aggrieved party can file a suit against the government.
- **Tortious Liability:**If a person is harmed because of negligence or wrongful action by a government official in the course of his or her duty, the aggrieved party can sue the government or official for a tort (for example, property damage caused by police negligence).
- **Suit against private officer:**Individual officers may also be subject to criminal or civil action if they act unlawfully while on duty.

5. Public Interest Litigation (PIL):

Public interest litigation in India has become a revolutionary tool of judicial control. Through this, any person or organization can approach the court in matters related to public interest, even if it is not the directly aggrieved party. Under this, the courts can direct the administration to protect the rights of the weaker sections of the society and to effectively implement public policies. It has made the administration more accountable in areas like environmental protection, elimination of child labor, protection of human rights, etc.

Importance of Judicial Control:

- **Guardian of the Constitution:**The judiciary maintains the supremacy of the Constitution and ensures that the executive and the administration do not exceed the limits of the Constitution.
- **Defender of the rights of citizens:**It protects individuals from arbitrary action and abuse of power by the state, and safeguards their fundamental rights.
- **Upholding the Rule of Law:**The principle that no one is above the law (be it an official or an ordinary citizen) is enforced through judicial control.
- **Administrative Accountability:**Judicial review forces the administration to follow rules and procedures, to be fair and rational, and to be accountable to the public.
- **Determination of rights and obligations:**It provides clarity regarding the rights and duties of the government and citizens.
- **Principle of Checks and Balances:**This is an important 'check' of the judiciary on the executive under the principle of separation of powers, which prevents centralization of power by any branch of government.

Limitations of Judicial Control:

- **Lack of self-induced intervention:**Courts do not interfere in any administrative action on their own; they act only when a citizen or an affected party seeks their intervention.

- **Lack of technical expertise:**Courts do not have expertise in all the technical and complex aspects of administrative work, which sometimes makes it difficult for them to make appropriate decisions.
- **Time consuming process:**The judicial process is often slow and expensive, which can make it difficult for all citizens to access justice.
- **Extent of Intervention in Policy Matters:**Courts generally do not interfere with government policy decisions unless they are in clear violation of the law or the Constitution.

Criticism of Judicial Activism: Judicial activism is sometimes criticized on the grounds that it leads the judiciary to encroach into the domain of the legislature or the executive, thereby weakening the principle of separation of powers.

Question8-. How the executive controls public administration?

Answer- In political science, 'Executive Control over Public Administration' refers to the process through which the executive branch, which includes the President/Prime Minister, the Cabinet and the political heads of various ministries, supervises, directs and regulates the functioning of the public administration (i.e. bureaucracy and government departments). This control is extremely important in a democratic system, as it ensures that the policies and programs of the elected government are implemented effectively, and the administration is able to achieve its goals.

Executive control over public administration is necessary because the administration, though expected to be impartial and neutral, ultimately acts on the instructions of representatives elected by the people (the executive).

The following are the various methods and devices of executive control over public administration:

1. Political Leadership and Policy Formulation:

- **Policy Formulation:**The executive, particularly the cabinet, determines the policies and programmes of the government. These policies serve as guidelines for public administration. The bureaucracy has to draft the laws, rules and procedures required to implement these policies.
- **Leadership and Direction:**Ministers are the political heads of their respective departments. They give directions to department officials, set goals and ensure that the department functions in accordance with the broad policies of the government. They provide clear instructions to bureaucrats on what is to be done and how it is to be done.
- **Review of Administrative Decisions:**The ministers review important administrative decisions of their departments and make amendments or changes in them as necessary.

2.Personnel Management:

- **Recruitment, Promotion, and Transfer:**Although independent bodies like the Public Service Commission carry out recruitment, the executive has a significant role in appointments, promotions and transfers to senior administrative positions. They can appoint officers of their choice to key administrative positions who are more committed to their policies.

- **Disciplinary Action:**The executive has the power to take disciplinary action against officials if they violate rules or fail to perform their duties.
- **Service Conditions:**The executive determines the service conditions, salaries and allowances of civil servants, which can influence their behaviour and performance.

3. Financial Control:

- **Budget Formulation and Approval:**The executive (especially through the Ministry of Finance) prepares the annual budget, which sets out financial allocations for various departments. The budget is approved by the legislature, but its preparation and initial control rests with the executive.
- **Financial Allocation and Expenditure Control:**The executive allocates funds to departments and enforces rules and procedures to ensure that funds are used for approved purposes and efficiently. The finance ministry or finance department exercises tight control over administrative expenditure.
- **Audit and Reporting:**Although the Comptroller and Auditor General (CAG) is independent, its reports provide the executive with a basis to control administrative irregularities and financial mismanagement. The executive takes action on these reports.

4. Supervision and Coordination:

- **Direct Supervision:**The minister and senior officials under him (such as the secretary) directly supervise the functioning of the department through regular meetings, reports and inspections.
- **Coordination:**The Cabinet and Cabinet Committees coordinate policies and programmes between various ministries and departments. This ensures that government policies are implemented in a harmonious manner and there are no conflicts between different departments. The Cabinet Secretary and the Prime Minister's Office (PMO) play an important role in coordination.
- **Reporting System:**The administration has to regularly report to the executive on its progress, challenges and performance. This reporting system helps the executive to keep track of the functioning of the departments.

5. Administrative Reforms:

- **Reorganization and Restructuring:**The executive may, as necessary, reorganise and restructure the structure, functions and procedures of government departments and agencies so as to improve efficiency and effectiveness.
- **Changes in Working Methods:**The executive may introduce new rules, procedures or technology to improve the way the administration works (such as e-governance).
- **Training and Capacity Building:**The executive promotes training and capacity-building programmes for administrators to improve their skills and expertise.

6. Ordinance Issuing Power:

When Parliament is not in session, the executive (President/Governor) has the power to issue ordinances, which have the same effect as laws. This allows the

executive to immediately provide a legal basis to control the administration in emergencies or when there is an urgent need.

7. Prime Minister's/President's Office (PMO/PRO):

- The Prime Minister's Office (PMO in the Indian context) exercises extensive control over all departments and ministries of the government. It plays a key role in coordinating policy decisions, influencing key appointments and monitoring the performance of various ministries. It provides the Prime Minister with a powerful instrument of direct control over the administration.

Limitations of the Effectiveness of Executive Control:

Though the executive has extensive control over the administration, it also has certain limitations:

- **Bureaucratic Expertise:**Bureaucracy often has in-depth knowledge and technical expertise on policy matters that ministers do not have. This allows bureaucracy to escape effective control to some extent or to implement policies in its own way.
- **Administrative Complexity:**Owing to the vastness and complexity of modern administration, it is difficult for the executive to exercise detailed control over every aspect of every department.
- **Political Instability and Short Tenures:**Frequent changes of ministers or their short tenures prevent them from establishing deep control over the administration, and bureaucratic continuity prevails.
- **Bureaucratic Resistance:** Bureaucracy may often resist changes brought about by political leadership because of its vested interests or established procedures.

Potential for Politicization: Excessive executive control, especially through political appointments, can lead to the politicization of the bureaucracy, affecting its impartiality and neutrality.

B.A.LL.B.-8th Sem. Paper-II Law of Evidence

Question No. 1- What do you understand by 'res-geste'? Explain with the help of examples.

Answer- Doctrine of Res-gestae - The basis of Section 6 is that a fact may be relevant for the decision even if it is not a contentious issue, because it is a part of some action, but for this section to be applicable, it is necessary that they are part of the same transaction. Section 6 of the Indian Evidence Act mentions that those facts which are so connected with the contentious fact that they are part of the same transaction are relevant facts. This has been named Res-gestae in English law. This word is a Latin word, which means the work that has been done. Its English translation means such statements or actions that have happened with a transaction, He Res.

According to Woodroffe, "The term res gestae may be taken to mean those circumstances which are spontaneous or irregular occurrences of some action relating to a particular subject and which are relevant at the time of analysis of such an action."

Res geste broadly means matters incidentals to the main fact and explaining it, including acts and words which are so closely related in that they form part of the same transaction and without the knowledge of which the main fact cannot be properly understood.

Section 6 of the Indian Evidence Act is as follows-

Relevance of facts forming part of the same transaction- Facts which are not contentious but are so connected with the facts in dispute that they are part of the same transaction are relevant even though they occurred at different times and places in the same transaction.

Facts forming part of the same transaction - Stephen has said about 'transaction' that "a transaction is a group of facts which are so related to each other that they can be specified by only one legal name, such as contract, crime, mistake or any other subject of investigation which is a controversy."

To be part of the same transaction, it is not necessary that all the facts have happened at the same time or at the same place. Facts happening at different times and places can also be part of the same transaction. For example, if it is questionable whether a contract was made between merchant 'A' of Varanasi and merchant 'B' of Calcutta or not, then letters written between the merchants of Varanasi and Calcutta at different times can be presented as evidence of whether the contract was completed or not.

Because they would be part of the same transaction, as the contract was a transaction of which those letters were part. In the case of R.M. Malkani vs. State of Maharashtra, AIR 1973, SC 157, the Supreme Court held that if any conversation is going on in relation to a crime and such conversation is relevant as a part of criminal transaction and such conversation is taped, then it will be called res-gestae.

In the case of Radheshyam vs. State of U.P., 1993 Cr. Law J. 3709, where the deceased husband was going to his duty and told his wife that he would return for lunch but he was shot dead in the office itself. The court held that the above statement is admissible under section 6 as it is part of the same transaction.

Ambiguities of Doctrine of Res-gestae Prof. Wigmore says that the term res-gestae has not only become meaningless but also harmful for a long time. His view is correct. The reason is that the facts for which the term res-gestae is used are also consistent

with other rules of evidence and those rules are used properly. Hence the term res gestae has become completely meaningless and has no use under the English evidence law.

Mr. Stephen, who drafted the Indian Evidence Act, was aware of this weakness of the word impress geste. That is why he has not used this word anywhere in the Act and has included the necessary elements in some sections of the Act.

Question No. 2- What do you understand by relevant facts? Is there any difference between admissibility and relevance?

Answer- Relevancy and Admissibility- Relevancy and admissibility can be understood in the following way-

Relevancy - The word relevant means that any two facts in relation to which it is used are so related to each other that in the normal course of events either alone or in connection with other facts they prove or make the past, present or future existence or non-existence of the other probable.

The definition of relevant facts has not been given in the Act. It has only been stated that relevant facts will be those which are described in the chapter on relevance. Hence, the facts which have been stated as relevant under 5 to 55 will be relevant facts.

Although the relevant facts mentioned in sections 5 to 55 are admissible, it is wrong to believe that all relevant facts are admissible. Because the confession given before a police officer is relevant but not admissible. Therefore, relevance cannot be taken to mean admissibility. Relevant facts are those facts which are closely connected to other relevant facts or contentious facts.

Example- A claims against B on the basis of a promote issued by B to him in favour of A. B denies the execution of the promoter. The following facts will be relevant in this case-

1. That at the time when the execution of the promote is warranted, B was in need of money and did not have money.
2. That soon after the alleged execution of the promoter, B paid the old debt.
3. That sometime after the alleged execution of the pronote, 'B' told his neighbour that he had borrowed money from 'A'.

Thus it is clear that a relevant fact is not the subject matter of the dispute but is a fact on the basis of which it helps in reaching the conclusion whether the fact in question is true or false.

Admissibility- Admissibility means acceptability as a means, which is a question of law which is determined by the court.

The basis of relevance of facts is based on logic while admissibility is based on law. All relevant facts are not necessarily admissible as evidence. On the contrary, even those facts which are not relevant in any way, can be accepted as evidence by the court.

Under Section 136 of the Indian Evidence Act, these two terms 'consistency' and 'grahaata', separateness and distinctness have been used.

According to section 136 of the Evidence Act, section 136 of the Evidence Act is as follows-

Court to decide as to admissibility of evidence- When either of the parties proposes to give evidence of any fact, the Judge may ask such party how the alleged fact would be relevant if proved, and if the Judge considers that the fact would be relevant if proved, he shall admit the evidence and not otherwise.

Consistency and acceptability are not co-extensive- The correct statement about 'consistency' and 'acceptability' would be that these two terms are neither synonymous nor co-extensive nor included in each other.

There are two propositions in this regard- the first proposition states that not all relevant facts are necessarily admissible. To prove this we can refer to section 126 of the Indian Evidence Act. Under this, the confession made by the counsel to the advocate, though it is highly relevant, is not admissible in the court.

The second proposition states that all the facts which are admissible need not be relevant. Sections 146 to 155 state the format of questions which may be asked of a witness in cross-examination. Though those facts may not be relevant in any way and may not be connected with the facts in issue as shown in sections 6 to 55, yet they have been declared admissible under the said sections. For example- 'A' files a claim against 'B' on the basis of a promissory note. 'C' a witness is produced by 'A' to prove that debt. 'B' may ask him questions about how many times he went to jail and thus impeach his credibility. Such questions have nothing to do with proving or disproving the debt but they are admissible before the court. It is clear from the above discussion that except some exceptional circumstances, all the relevant facts are admissible in the court.

Difference between Relevancy and Admissibility - Some important differences are as follows -

1. For the relevance of a fact it is not necessary for it to be admissible whereas for admissibility it is necessary for that fact to be relevant.
2. All relevant facts are not necessarily admissible while all admissible facts are relevant.
3. Coherence is a species while acceptability is its sub-species.
4. The issue of relevance has been described in sections 5-55 of the Evidence Act, while under section 136, the admissibility of evidence is decided by the court.
5. The scope of compatibility is very wide whereas the scope of acceptability is limited.

Question No. 3- What do you understand by confession? Explain the difference between confession and acceptance. Is the confession made to a police officer or in police custody admissible in criminal cases or not? Explain.

Answer-Confession - Confession is a type of acceptance, that is, all confessions are confessions. When an admission is made in civil cases, it is called acceptance and if such admission is made in criminal cases, it is called confession. Through confession, the accused accepts the crime committed by him. In other words, confession is Iqbal-e-crime.

Definition of Confession- Confession has not been defined anywhere in the Indian Evidence Act, however, following are some definitions of confession-

According to Stephen- Confession is an admission made by a person who is accused of a crime and such statement either makes it clear or gives rise to an inference that he has committed the crime.

According to the Privy Council- The Privy Council held in the case of Pakala Narayan v. Emperor, AIR 1939, PC that a confession should be one in which either the crime has been fully admitted or almost all the facts related to the crime have been accepted. Any fact admitted by the accused which conclusively proves the accused guilty cannot be a confession. According to the Supreme Court, the definition given in the case of Pakala Narayan is considered the supreme

The court followed the case of Palwinder Kaur v. State of Punjab, AIR 1952, SC. In the case of Sahu v. State of UP, AIR 1966, SC, it has been stated that when the admission mentioned in section 17 is made in civil cases, it is called only admission, but when such admission is made by a person who is accused of a crime, it is called a confession.

On the basis of the definitions given above, a confession is an acceptance made by a person who is charged with any offence and who indicates any inference about any issue or relevant fact a statement is a confession that the accused has committed the crime. Essential elements of a confession- A statement will be called a confession only if the statement-

(1) Has been committed by the accused person,
(2) Is done before a Magistrate,
(3) Is done freely and voluntarily, and
(4) The accused confesses to the crime.

Types of Sanctions - Sanctions are of the following types-

(1) Judicial Confession- The confession which is made before a magistrate or in a court during judicial proceedings is called a confession. In such a confession, the accused admits his crime. On the basis of the confession, he can be convicted.

(2) Extra-judicial Confession - The confession which is made outside the court is called extra-judicial confession. Such confession is not made before a magistrate. Extra-judicial confession must be voluntary. It is also necessary that such confession is not obtained through threat, inducement and temptation.

Inadmissible or irrelevant confession- A confession made under the following circumstances is inadmissible or irrelevant-

(1) Confession obtained by inducement, threat or promise (Section 24)- Sometimes a confession is obtained by luring, threatening, intimidating or promising the accused and such a confession is inadmissible in evidence. Such inducement, threat or promise, whether express or implied, direct or indirect, makes the confession inadmissible in evidence.

Mahaveer Biswas v. State of Best Bengal, 1995, SCC In the said case the Supreme Court held that before relying on a confession it must be established that the confession was voluntary and it was not obtained by inducement or threat etc.

(2) Confession made before police (section 25)-Not to be proved against section 25 of the Evidence Act.

Under this section, the confession made in front of a police officer is not admissible. Therefore, the statement given in front of a police officer is inadmissible as evidence. The police beats the accused and behaves in a cruel manner to get information about the crime. Sections 25 and 26 have been created in the Indian Evidence Act to prevent these.

(3) Confession made in police custody (Section 26) According to Section 26 of the Indian Evidence Act- "No confession made by any person while in the custody of a police officer shall be proved against such person unless it is made in the presence of a Magistrate."

Since the police are notorious for extracting confessions by physical torture and beating, Section 26 has been enacted. Section 26 says that no confession shall be proved against the accused which is made by the confessed accused-

(1) In police custody,
(2) Not in the presence of a Magistrate.

Thus, Section 24 declares the confession obtained by inducement, threat or promise as inadmissible, Section 25 declares the confession made before the police as inadmissible and Section 26 declares the confession made in police custody as inadmissible.

Admissible or Relevant Confession - The confession made under the following circumstances is admissible or relevant. On the basis of such confession the accused can be convicted-

(1) Confession not made before police officer- Under section 25, only that confession cannot be proved against the accused which is made before the police.

But if it is not made before the police, the confession will be relevant as in the case of Sitaram. State of U.P., 1966, CABB, the accused had written a letter addressed to the police near the dead body of the deceased and confessed the crime committed by him. It was held that such confession was admissible in evidence because the police was not known when and where such letter was written and kept by the accused.

(2) Confession made before police in departmental proceedings- The Supreme Court in the case of Commissioner of Police, Delhi A. In the case of Narender Singh, 1986, 2006, it has been held that the bar imposed on the admissibility of confession by section 25 of the Evidence Act does not apply in departmental proceedings, i.e., the confession made by the criminal before the police is admissible in departmental proceedings.

Thus, if the confession is made in the presence of a magistrate, then the confession made in police custody is also admissible. Section 26 applies when a person in police custody makes a confession while talking to another person. As in the case of Queen Sagin, 1986, 1948, the accused had admitted his crime while talking to another person during police custody, which was heard by a constable, such confession was considered to be a confession made in police custody and was considered inadmissible in evidence.

Exceptions to Sections 25 and 26- Sections 25 and 26 have the following exceptions:

(i)Personal presence of magistrate- Section 26 makes an exception that the crime committed in police custody if the confession is made in the personal presence of the magistrate, then such confession can be proved against the accused. The personal presence of the magistrate means the presence of the magistrate at the same time and in the same room in which the accused has made the confession.

In the case of U.P. State Singhara Singh, 1964, SC it has been held that in the personal presence of the magistrate a confession made is admissible only if it is made in the manner described in Section 164 of Cr.P.C. (ii) On discovery of facts pursuant to confession made to police (Section 27) - According to Section 27, "Where any fact is testified as having been discovered in consequence of information received from a person accused of an offence who is in the custody of a police officer, then, so much of such information, whether amounting to a confession or not, as is clearly related to the fact thereby discovered, may be proved."

Thus, if some facts or things are discovered on the basis of the information given by the accused making the confession, then only that part of the information will be proved in evidence against the accused as is related to the facts obtained from the information given by the accused.

Conditions required under Section 27
(i) Any information relating to any offence has been given by an accused of any offence,
(ii) Any fact disclosed by such information,
(iii) On the basis of such information some things, like the weapon used in the murder, any shoe of the deceased, etc. have been recovered,
(iv) The accused has given such confession in police custody,
(v) Such information should be clearly related to the fact discovered,
(vi) Only that part of the information will be proved against the accused as is related to the facts discovered, such as the weapon used in the murder and the clothes worn by the deceased etc.

Generally, Section 27 is applicable when a person while in police custody removes any hidden object from a place. For example, dead body, weapon, ornaments etc. which is related to the crime of which the accused is accused. In the case of Pulukuri Kotayya A. Emperor, AIR 1947, PC, the Privy Council held that only that part of the statement of the accused can be proved under Section 27, which is clearly related to the fact recovered, the rest of the statement cannot be proved.

In the case of State of U.P. A. Devman Upadhyay, AIR 1950, SC, the accused Devman was arrested for the murder of Mrs. Sukhdei. Devman told the police that he killed Sukhdei with an axe. He had borrowed the axe from someone else. He threw the axe in the pond and ran away after taking a quick bath. In the presence of the police officer and witnesses, Devman took out the axe from the pond. The Supreme Court decided that except the part of the statement of the accused in which he said that "he had killed Sukhdei", the rest of the statement was admissible in evidence. Justice Shah stated that only that part of the confession of the accused under Section 27 is admissible from which information about a fact is obtained.

Question No. 4- What is called dying declaration? If a dying person becomes alive, then the declaration made at the time of his death is called dying declaration. What is the evidentiary value of the declaration? Explain.

Answer- Meaning of Dying Declaration - When a person makes a statement before his death, which is either related to the cause of his death or about the circumstances in which he died. It is called a dying declaration. Such a death can be by murder or suicide.

The provision relating to dying declaration is made in Section 32(1) of the Indian Evidence Act as follows-

According to section 32 (1) of the Evidence Act- A dying declaration is admissible in evidence when it is made by a person as to the cause of his own death or as to any circumstance of the transaction which attended his death, in cases where the cause of his death is in question.

Such statements are relevant whether the person who made them was expecting to die at the time they were made or not and whatever be the nature of the proceedings in which the cause of that person's death is in question.

Essential conditions for a dying statement to be admissible in evidence the following conditions must be fulfilled- A dying statement is admissible in evidence when (1) Such statement must be made in relation to the cause of death.--A dying declaration shall be relevant under section 32(1) if it relates to the cause of death of the declaring. If

the dying declaration does not relate to the cause of death of the declarant, such declaration will not be relevant.

Example- A is injured by a knife and later a dies. Before his death A makes a statement that B has injured me by stabbing me. This statement of A will be relevant in the trial of B for A's murder, because this statement is related to the cause of A's death.

(2) Statement is made about circumstances which resulted in death If the deceased has made any statement before his death in respect of any transaction which resulted in his death, the statement about such circumstances shall be admissible in evidence as a dying declaration, even if the deceased did not anticipate his death. In the case of Pakala Narayan Swamy A. Emperor, AIR 1939, PC, the wife of the appellant Pakala Narayan borrowed Rs. 2000 from the deceased Kurri Nakaraju in 1936 at the rate of interest of 18%. On 20th March, 1937, the deceased received a letter signed by the wife of the appellant, summoning him to Berhampur to collect the money. The deceased showed the letter to his wife and said that he was going to Berhampur to collect the money. On 23rd March, the body of the deceased was found cut into 7 pieces in a trunk at Puri station.

Thus, in this case, on 20th March, 1937, the deceased told his wife that he was going to Berhampur Pakala to get money. On 23rd March, the body of the deceased was found cut into pieces in the truck which the washerman had bought for the appellant Pakala. The statement of the deceased to his wife was related to the circumstances of the transaction which resulted in the death of the deceased.

(3) The narrator must have died after making the statement. In order for a dying declaration to be admissible as evidence, it is necessary that the narrator must have died after making the statement. If the narrator survives, the statement will not be admissible as a dying declaration. Rather, such a statement can be used as corroborative evidence under section 157 and, if there is a discrepancy in the statement, to contradict the statement under section 145.

(4) Cause of death of the person making the statement is in question. The word death in section 32 includes both suicide and homicide. A statement by a person about the cause of his own death becomes relevant when the cause of his death is in question, even if the person was not expecting to die at the time of making the statement. Dying Declaration by Gestures and Signs. Dying Declaration may be written, oral, by gestures or signs. If a person is unable to speak for any reason, then he may make a statement regarding the cause of his death.

Then he can make his dying declaration by gestures or signs. In the case of Queen A. Abdullah, (1885) ILR, the Allahabad High Court had propounded the principle that a statement made by signs will also be admissible in evidence. In this case, Dulari, a prostitute, whose throat was cut by a sharp weapon, was unable to speak even though she was conscious. In response to the questions asked by the police officer, magistrate and surgeon, she told the name of the person who injured her by gestures. This was considered as a dying declaration.

Conviction on the Basis of Dying Declaration or Evidentiary value of dying declaration - Although the dying declaration is not made on oath and is not cross examined, it is still admissible as evidence. The main reason for this is that a dying person cannot be expected to lie.

In the case of Khusrav Rao v. State of Bombay, AIR 1958, S.C. the Supreme Court has laid down the following principle-

(1) There is no principle that a dying declaration is weak evidence. Its evidentiary value is the same as that of other evidence.

(2) There is no rule that an accused cannot be convicted merely on the basis of a dying declaration without corroboration of additional evidence.

(3) The evidentiary evaluation of a dying declaration has to be based on the facts and circumstances of each case.

(4) A dying declaration recorded by a competent Magistrate in the words of the deceased in the form of questions and answers is more reliable evidence than the ordinary dying declaration.

(5) The reliability of a dying declaration must be examined having regard to all the circumstances of the case.

In the case of Mohanlal and others v. State of Haryana, AIR 2007, S.C. the Supreme Court has held that the dying declaration must be true and voluntary to base a conviction without additional corroboration.

If the person making the statement survives, then the value (use) of his statement. For a dying statement to be admissible as evidence, it is necessary that the person who made the dying statement has died. If the dying statement maker does not die, that is, survives, then such a statement cannot be admissible as evidence as a dying statement. But such a statement will be admissible as corroborative evidence under section 157 of the Evidence Act, that is, such a statement can be used to corroborate the statement of the person making the statement.

If the dying declaration is in writing, it can be used under Section 154 of the Evidence Act when the person making the statement appears before the court to give his statement after surviving and gives a statement different from the dying declaration, then the previously written dying declaration can be used in cross-examination to contradict his statement.

That is to say, if the narrator survives after the deathbed statement, his statement can be used to confirm his statement under Section 157 or to contradict his statement under Section 145.

In the cases of State of Assam v. Mafizuddin Ahmed, AIR 1983, SC and Darshan Singh v. State of Assam, AIR 1983, SC, the Supreme Court has held that when the person making the dying declaration does not make it but is still alive, then his statement will not be considered as a dying declaration. Such a statement can be used only as corroborative evidence under Section 157.

Question No. 5 - Who is an expert? What is the evidentiary value of expert property? When is the opinion of a handwriting expert relevant?

Answer- The general rule is that a person can testify in the court only about those things about which he himself has knowledge. But sections 45 to 51 are exceptions to this rule. In these sections, the opinions of other persons (experts) have been considered relevant.

Who is an Expert? Generally a person is called an expert if he has special knowledge in the subject on whom he wants to give his opinion. It is not necessary for an expert to have special knowledge in his subject Must have a special degree. If a person has practical experience in a subject then he is considered an expert in it.

In the case of Abdul Rehman v. State of Mysore, (1972) Cri. L.J. the opinion of an ordinary goldsmith was accepted on the question of purity of gold though he had no qualification on the subject except past experience.

Section 45 and 45-A of Evidence Act make expert's opinion admissible and relevant, which are as follows- Opinion of experts (Section 45)- When the court has to form an opinion on any matter of foreign law or science or art or about the uniqueness of handwriting or fingerprints, then the opinion of persons specially skilled in such foreign legal science or art or in questions relating to the uniqueness of handwriting or fingerprints are relevant facts. Such persons are called experts.

Illustrations: The question is, was the death of 'A' caused by poison? The opinions of experts as to the symptoms produced by the poison which is presumed to have caused the death of 'A' are relevant.

Section 45 declares the opinion of experts on the following matters as relevant-

(i) Foreign law- The law which is not applicable in India is called foreign law. When the court has to form an opinion about a foreign law, it calls a legal expert of the concerned country for information about the foreign law.

(ii) On the subject of science or art- The opinions of experts on the subject of science or art are relevant. 'Science or art' is used in a broad sense. It includes all those subjects which require special knowledge, skill, study or experience to understand or are beyond the understanding of a person of common sense.

In the case of Shiva Kumar v. State (by Inspector of Police), AIR 2006, SC, the wooden part and the iron part of the gun used in the crime were recovered separately by the police on the indication of the accused. The iron part of the gun was tested by the forensic laboratory. It was held that the opinion of the forensic expert was relevant in this case and hence there was no reason to disbelieve his opinion.

(iii) Handwriting or finger impression-When the court has to examine the authenticity of the handwriting or finger impression of a person, the court takes the opinion of an expert in the subject.

(iv) Other technical matters-There are certain technical matters on which the opinion of experts may be admissible in evidence under Section 45. Though they are not specified in Section 45, these may be the following-

(A) Dog-assisted investigation: In the case of Abdul Razzaq v. State of Maharashtra, AIR 1970, SC, the Supreme Court held that dog-assisted investigation is a subject of science.

(B) Type writings - In the case of State v. S.J. Chaudhary (AIR 1990, SC) it was opined that type writing can be treated as a subject of art or science in the same manner as ballistic experts are treated and type writing can be made the subject of expert opinion under section 45.

(C) Brain Mapping Test- Opinion of Examiner of Electronic Evidence (Section 45)- Section 45 of the Evidence Act is as follows-

When in any proceedings the Court has to form an opinion on any matter in respect of any information transmitted or stored in a computer device or in any other electronic or digital form of information, the opinion of the examiner of electronic evidence is a relevant fact.

For the purposes of section 45, an examiner of electronic evidence shall be deemed to be an expert person.

Evidentiary Value of Experts Opinion - The Act only talks about the relevance of the experts' opinion, not about the evidentiary value. Experts' evidence is considered to be of less value. Experts' evidence should be viewed with more caution. Experts' opinion is not binding on the judge. The expert's evidence should be evaluated by the judge.

Expert evidence is not considered to be substantial evidence because of the following reasons-

(i) The expert is liable to make mistakes or may deliberately lie.

(ii) The expert's evidence is merely an opinion which may not be absolutely correct.

(iii) The expert may show favouritism to the party who has called him.

The court should consider the veracity of the evidence before accepting the evidence of the expert. In the case of Raza Pasha v. State of Madhya Pradesh, AIR 1974, SC, the question was how far was the bullet fired? The Supreme Court gave more importance to the opinion of the ballistic expert. In the case of Murari Lal v. State of M.P., AIR 1980, SC, the Supreme Court upheld the conviction of the accused because the letter left by the murderer was in the handwriting of the accused in the opinion of the experts.

Relevancy of the Opinion of Hand, Writing Expert - The Relevancy of the Opinion of Hand, Writing Expert makes the following provisions for the relevance of the opinion of the handwriting expert-

When opinion as to handwriting is relevant (Section 47)- Opinion of person acquainted with the handwriting of a person is relevant when the Court is of the opinion that-

(i) The document was written or signed by the same person who is presumed to have written or signed it.

(ii) Is the opinion of a person acquainted with the handwriting that the document was written or signed by that person or that it was not written or signed by that person.

Illustrations: The question is: Is a certain letter in the handwriting of A, a London merchant?

'B' is a merchant in Calcutta who has addressed letters to 'A' and has received letters purporting to be written by him. 'C' is B's clerk whose duty it was to see and file the correspondence stock of 'B'. 'D' is B's broker before whom 'B' used to keep the letters purporting to be written by 'A' in order to consult him about them.

The opinions of 'B', 'C' and 'D' on the question whether the letter is in 'A's' handwriting are relevant, although neither 'B' nor 'C' nor 'D' ever saw 'A' writing it.

Modes of proving handwriting- The following methods of handwriting recognition are prescribed in sections 45 and 47-

(i) By the author himself - The author himself can identify the handwriting in question. He can tell the court that the handwriting in question is his.

(ii) By an expert- when the author denies claiming that the handwriting is his own handwriting can be proved on the basis of expert opinion. In the case of Ram Narayan v. State of U.P., AIR 1973, SC, the Supreme Court held that the letter written for ransom money was in the handwriting of the accused on the basis of expert opinion and convicted him.

(iii) Any manuscript by the opinion of a person acquainted with the manuscript; or But it can be proved.

(iv) By virtue of section 73 Under Section 73 the court may prove the handwriting or signature in question by either admission of the person to whom the handwriting or signature is said to be or by comparing it with the handwriting of the person whose handwriting it is said to be.

In the case of Fakhruddin A. State of Madhya Pradesh, AIR 1967, SC the Supreme Court has held that handwriting would be direct evidence if it is proved by the testimony of the person in whose presence it was written.

(v) Proof of verification of digital signatures (Section 73A)- To ascertain whether the digital signature appears to be that of the person whose signature it appears to be, the court may order that the person or the controlling authority shall produce a digital signature certificate or any other person shall verify, using the method specified in the digital signature certificate, that the signature is that of the person.

Opinion of Certifying Authority (Section 47-A) Information Technology Act, 2000 Section 47-A in Evidence Act has been added which states that "where the court has to form an opinion about the authenticity of a digital signature, the opinion of the Certifying Authority who has issued the Digital Signature Certificate shall be relevant."

Question No. 6- Who is considered a competent witness? What is the criterion on which the truthfulness of a witness is tested? Is it? Give an example.

Answer-As a general rule, all people have the capacity to give evidence, incapacity is an exception. According to Section 118 of the Indian Evidence Act, "All persons shall be competent to give evidence, unless the court is of the opinion that they are prevented from understanding the questions put to them or from giving reasonable answers to those questions by reason of tender age, old age, disease of body or mind or any other cause of similar nature."

According to section 118 of the Act, all persons shall be competent witnesses unless the Court considers that any person is prevented from understanding and answering the questions put to him due to the following reasons-

(1) Tender age, or

(2) Old age, or

(3) Physical or mental illness, or

(4) Other similar reasons.

Child (Child Witness) - In Section 118, childhood has been mentioned as one of the reasons for incapacity. The court will also determine the capacity of the child by asking questions, and if the child is intelligent enough to understand the questions and give logical answers, then the evidence given by him will be valid. Children up to 5-6 years are also considered competent to give evidence, but if children below 12 years of age appear as witnesses, they are not administered oath.

Old Age- Diseased and Lunatic Person- Sometimes after becoming very old because of this, a person's understanding also decreases and if the court finds that due to old age, the witness is unable to understand the questions and give logical answers, then his evidence will not be taken. Similarly, due to physical or mental illness, the court can declare a person incapable of giving evidence. But in all such cases, the criterion for testing the capacity is the same and that is intelligence, understanding and ability to understand the questions and give logical answers to them.

Regarding an insane person, it is stated in the Explanation to Section 118 that "No insane person is incompetent to give evidence unless he is prevented by his insanity from understanding the questions put to him or from giving reasonable answers to them."

Dumb Witness- If a witness is unable to speak, he will not be considered incapable of giving evidence. A person may be unable to speak due to illness, due to taking a vow of silence or may be born dumb. A dumb person is not considered an idiot and the evidence given by him will be valid as per Section 119.

A dumb person can appear in court and give his evidence by means of gestures. It will be the duty of the court to interpret and decipher those gestures or signs.

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement and such statement may be video recorded.

Husband and Wife – As per the provisions of section 120-

(1) In civil proceedings, the parties to the claim and the spouse of a party shall be competent witnesses will be.

(2) The husband or wife of a person against whom any criminal proceedings are being conducted shall be a competent witness. In the case of Himmat Sukhdev Bahukhan vs State of Maharashtra, AIR 2009, SC 2292, the evidence of a 13-year-old child was considered and accepted as reliable evidence by the Supreme Court. In the case of Dharamvir vs State of Uttar Pradesh, AIR 2010, SC 1378, the Supreme Court said that merely because the eyewitness was also related to the enemy party, his evidence cannot be rejected.

Question No. 7- Describe main examination, cross-examination and re-examination.

Answer-Section 135 says that taking evidence in civil and criminal proceedings in the same manner as in law and procedure.

The order of evidence will be established by the court in the same manner as is prevalent. This matter mainly depends on the discretion of the judge as to how the evidence should be accepted.

Section 136 prescribes that evidence should be confined to relevant facts. The judge may require the party giving evidence to confine his evidence to relevant facts only.

Section 138 prescribes the order of examination of witnesses, namely, examination in chief, cross-examination and, if necessary, re-examination.

Examination-in-chief - According to Section 137 of the Indian Evidence Act, the examination of a witness by the party who calls him is called his examination-in-chief. For example, if a case is going on in the court between 'A' and 'B' and 'D' is called as a witness on behalf of 'A', then the examination of 'C' and 'D' by 'A' or his leader will be called the chief examination of the witness.

According to section 138, the examination in chief should be related to the relevant facts and questions irrelevant to the case should be considered in the main examination cannot be asked in examination. Witnesses other than experts cannot express their opinions about facts. They can only express their knowledge about the facts.

The second rule is that if an objection is raised by the opponent, which is usually raised, then a leading question cannot be asked in main can be asked.

The third rule regarding the main examination is that without the permission of the court, questions that test the credibility of a witness called by it cannot be asked in the main examination.

The purpose of the main examination is to obtain the material facts related to his knowledge. It should also be kept in mind that the witness should speak only about the facts, not about any opinion or conjecture or belief.

Cross examination - According to section 137, when the same witness is examined by the opponent after the main examination, he is called cross-examined. Cross-examination is usually done by the opposite party. For example, if in a case going on between 'A' and 'B', 'C' and 'D' have been called as witnesses in the court on behalf of 'A' and the main examination of 'C' and 'D' has been done, then the examination of 'C' and 'D' by 'B' or his leader will be called cross-examination.

The main purpose of cross-examination is to strengthen one's case at the hands of the witness of the opposing party and to demolish the case of the opposing party. Also, the veracity of the evidence is tested through cross-examination.

According to Section 138, the questions asked in cross-examination may be relevant to the case, but it is not necessary that they be limited to relevant facts only. It is also not necessary that only those questions should be asked in cross-examination which are related to the questions or facts asked in the main examination. The purpose of cross-examination is to try to break a witness or to show that his statement cannot be relied upon.

The purpose of cross-examination is to test the credibility of the witness; it is the strongest method to reveal the truth.

In the case of Pranayar vs State of Tamil Nadu, AIR 2010 SC 85, the Supreme Court held that the purpose of re-examination is to clarify the doubts raised in cross-examination.

According to Section 143, leading questions can be asked to the witness during cross-examination.

Section 145 provides that if a witness has already made a written statement or his statement has been recorded, then during cross-examination a question can be asked about that statement without showing or proving it to the witness.

Re-examination - According to section 137, re-examination is that which is done by the party who had called the witness and had earlier examined him in main. For example, if in a case between 'A' and 'B', 'C' and 'D' appear as witnesses and after the main examination by 'A', cross-examination is also done by 'B' and those witnesses are examined again by 'A', then it is called re-examination of the witness.

Once the chief examination and cross-examination of a witness are over, the party who had called him as a witness can examine him again to clarify some points or facts that came up in the cross-examination.

Even during re-examination, leading questions cannot be asked to the witness without the permission of the court.

The purpose of re-examination is to give the party calling the witness an opportunity to remove the shortcomings of the main examination which have been

discovered during cross-examination. No new matter should be asked without the permission of the court.

Question No. 8- Who is the co-accused? Briefly explain the rules for admissibility of evidence of co-accused.

Answer-Co-criminal is a person who has personally participated in committing a crime. When some people commit a crime together, they are called co-criminals.

Two provisions of the Act throw light on this subject. According to Section 133, "Any accused shall be a competent witness and no conviction is invalid merely because it is based on the uncorroborated testimony of a convicted person."

The court may sentence a person on the testimony of an accomplice. Such a conviction shall not be invalid merely on the ground that it is based on the testimony of an accomplice for which no supporting evidence has been produced.

The second provision is found under Section 114(B) which says that the court may presume that "an accomplice is unfit to be believed unless he is corroborated in material particulars." This means that the accomplice is unfit to be believed unless his evidence is supported by other evidence.

Section 133 clearly gives the court full power to convict on the basis of uncorroborated testimony of an accomplice but since such person is himself a criminal, he cannot be reliable in every situation and therefore the court is guided by section 114(B) that if necessary, the court may presume that his statement is not worthy of belief, unless supported by other evidence. Justice Chandrachud in the case of Dagdu v. State of Maharashtra, (1977) 3. SCC 74 held that there is no contradiction between sections 133 and 114(B) because the precedent only calls for a presumption and not a conclusive presumption. A reading of both together makes it clear that the accomplice is a competent witness and conviction can be based on his uncorroborated testimony. A criminal who has been pardoned will abide by the conditions of his pardon and it may be dangerous to rely on him. On this subject, in the case of Bhuboni Sahu v. King, (1949) 76, I.A. 147, the Privy Council said that the English law regarding the evidence of an accomplice is the same. The court should follow the rules of caution. Independent evidence against the accused should also be relied upon. Who is an accomplice for the purposes of this section has been given by the House of Lords in the case of Davis v. Director of Public Prosecutions, (1954) A.C. 373. In a criminal trial, when an accomplice gives evidence on behalf of the government, then conviction can be made on his evidence, but conviction without corroboration is dangerous If the conviction is based on lack of corroboration, it may be set aside, even if there is sufficient support from the evidence of the accomplice. The Supreme Court of India held in the case of R. K. Dalmia v. Delhi Administration, AIR 1962, SC 1821 that there is no formal definition of an accomplice. But a person who participates in an alleged crime is an accomplice.

Two things should be kept in mind in this regard-

(1) As he is himself a criminal, his evidence should not normally be given any weightage.
(2) Since he has breached trust with his criminal friend, he may also have defrauded the government.

The way to save the innocent from the guilty should be that there should be an independent other who to some extent involves each accused. In the case of King vs. Baskerville, (1916) K. B. 658, it was said that the evidence of the accomplice is admissible but before giving punishment on the basis of his uncorroborated testimony,

the court should use its discretion and should not impose punishment on the basis of his evidence alone.

In the case of Rameshwar Kalyan Singh vs. State of Rajasthan, AIR 1955, SC 327, the Supreme Court said that no definitive rule can be made as to what is the criterion of corroborative evidence? But it can certainly be said that corroboration should be related to independent evidence. It is necessary to prove the criminal's connection with the crime.

In the case of Renuka Bai vs State of Maharashtra, (2006) 7, SCC 442, Chief Justice K.G. Balakrishnan of the Supreme Court said that the court should take strict action in such cases-

The following principles should be kept in mind as a precaution-

(1) Independent evidence is not necessary as to every material circumstance.
(2) There must be some independent evidence which makes the evidence of the witness reasonably reliable.
(3) Confirmation should be obtained from an independent source.
(4) Not every evidence is necessary to prove that the accused committed the offence, but only evidence of the circumstances it must be that the accused was connected with the crime.

Question No. 9- What do you understand by the doctrine of estoppels? Discuss its essential elements.

Answer-Restriction is based on the principle that if a person by his representation or conduct asks another person to do something and he acts on that representation and not in any other way, then it would be highly unethical if the person who made the representation is allowed to refuse or deny compensation to the person who acted on the representation by his previous statement.

Meaning of Estoppels - The English word 'Estoppels' is derived from the French word 'Estoppels' which means 'to stop' i.e. a person's previous actions or acceptance prevent him from stating the actual facts or the truth. Section 115 of the Indian Evidence Act states about the rule of estoppels that, when a person by his declaration, act or omission has caused or caused other persons to believe that a thing is true and has caused or caused to be acted upon such belief, then neither he nor his representative shall be allowed to deny the truth of that thing in any suit or proceeding between himself and such person or his representative." For example, if A intentionally and falsely induces B to believe that a certain land belongs to A and thus induces B to purchase it and pay its price, then later if that land becomes A's, he wishes to cancel the sale on the ground that he did not have title to it at the time of sale, then he will not be allowed to prove his lack of title.

Section 115 is based on the case of Picard v. Sipers (1837) 6. Adv. E.I. 469, in which it was held that "where a person by his words or conduct intentionally leads another person to believe that a fact exists, and induces that other person to act on that belief, so as to alter his previous position, the first person shall be stopped from stating otherwise than by that fact."

Essentials of Estoppels- The following elements are necessary for estoppels to apply-

1. There should be a representation in any form, by words, action or omission;

2. The representation must be in respect of a fact and not about any future act or promise;
3. The person making the representation must have intended that his representation should be believed. It is not necessary that there should be a fraudulent intention behind making the representation. Even if the representation is made under misconception, it can be an estoppels. (Sarat Chandra Dey vs. Gopal Chandra Laha, I.L. 20. Cal. 296);
4. There must be someone who has believed the representation;
5. The person making the belief has made some change in his or her situation;
6. The party who seeks the aid of the rule of estoppels must not have known the truth.
Kinds of Estoppels-
1. Estoppels by Record - A decision given by a competent court on any matter acts as estoppels and the parties to the suit in which the decision has been given are prevented from taking the same matter to the court again or making it controversial. 'Estoppels by matters of record apply to all those matters which existed at the time of the decision and the parties had the opportunity to bring them before the court.' 'Estoppels by record has not been adopted in the Evidence Act.
2. Estoppels by Deed- "If a particular fact is expressly stated in a description of a stamped document and a contract is made in terms of that description, it is an undisputed fact that as between the parties to that document and in any action based thereon, the parties thereto cannot deny that description. Estoppel by deed does not apply in India.
The following points are important in this regard-
(1) They apply to deeds of engagement between parties and covenants.
(2) No estoppels which does not purport to impose an obligation shall apply.
(3) No estoppels shall apply if the deed is vitiated by fraud or illegality.
3. Estoppels by Conduct (Estoppels in Pais) - Conduct estoppels arises from the act, representation or conduct of the parties. Section 115 of the Indian Evidence Act recognizes conduct estoppels only. This estoppels applies when a person through his words or conduct makes another person believe something and the other person changes his position by believing it.
Estoppels by action occurs where a person by his actions convinces another of the truth of the existence of a fact.
Can my silence even amount to estoppels?
Mere silence is not misrepresentation, but where there is a duty to speak, deliberate silence is considered equivalent to misrepresentation and estoppels arises there. In other words, when the situation is such that if silence is maintained, fraud will be committed on the opponent, then estoppels can occur there.
Exceptions
1. When the truth is known to both the parties- When the truth is known to both the parties, the principle of estoppels does not apply. In Mohri Bibi vs Dharmodas, 30 Kal. 559 P.C. it was held that the rule of estoppels does not apply where a person has made a statement about a fact, the truth of which is known to both the parties.

2. On Question of Law - Section 115 applies 'when a question of fact is in question' the doctrine of estoppels does not apply on a question of law. Estoppels cannot be against the Act.

3. Against Government Policy as Sovereign - There can be no estoppels against the Government in respect of sovereign acts and governmental acts.

4. Minor - The principle of estoppels does not apply to a minor, because representation is necessary for estoppels, which can be done only by a person capable of making a contract. That is, estoppels cannot be done by a minor.

Question No. 10- What is meant by presumption? What are the matters about which presumption can be made? Discuss.

Answer- Presumption- There is some facts which are so common or natural in them that the court's time can be saved by not proving them. The court makes an assumption about such facts, which we call a presumption.

Presumption is an inference by which the existence or non-existence of certain facts is believed there must be some basis behind the presumptions. These presumptions are made according to other proven facts, court's knowledge or the directions of law.

There are two types of presumptions: facts relative and legal. Therefore, the concept can be made in both these cases-

1. Presumption of Fact or (May Presume) - Presumption of facts means such facts which are generally believed to exist.

It is natural that the court should believe in their existence by making an assumption. The basis of such an assumption is logic and not the direction of law. If a person came inside from outside and it is raining outside, then it can be assumed that his clothes must have got wet. Such an assumption is called a presumption related to facts. In the language of law, the presumption related to facts is expressed by the sentence "may presume". Wherever the provision starts with the words "may presume", there is an impression of a presumption related to facts and the court is not barred from making such a presumption this can be done. The court can do this and can also ask to prove whatever facts it wants.

According to Section 4 of the Evidence Act- In Section 4 of the Indian Evidence Act, the presumption or assumption of facts has been mentioned as follows-

"May presume"- Wherever it is provided by this Act that the court may presume any fact, the Court may either presume such fact to be proved, if and unless it is disproved, or may call for proof thereof.

2. Presumption of Law - Presumption of law means to presume some facts by law. Such presumption is beyond the discretion of the court. The court has to make a presumption as per the instructions of law. Presumptions related to law are also of two types. First one is refutable and second one which cannot be refutable (irrefutable).

(i) Rebuttable Presumption or Shall Presume - In the Indian Evidence Act, the rebuttable presumption is addressed by the sentence 'shall presume'. Sections 107, 108 etc. are examples of 'rebuttable' presumptions (but such presumption can be disproved. The court will believe in the existence of facts, but if the other person wants to disprove it, then the court will have to give permission). For example, Section 108 of the Evidence Act presumes death. In the case of S.R. Wadekar v. Union of India, AIR, 1993 Bom., it has been said that a person who has not been heard about for seven years will be presumed to be dead.

According to Section 4 of the Evidence Act "Shall Presume"- Wherever it is specified by this Act that the court shall presume a fact, the court shall presume the fact to be proved if and until it is disproved.

(ii) Irrefutable Presumption or Conclusive Evidence - The presumption of law that is irrefutable means that it is necessary for the court to make such a presumption and the court cannot exercise discretion, but this presumption is conclusive. The court cannot allow the disproving of such facts. For example, according to Section 82 of the Indian Penal Code, if a child below 7 years of age commits a crime, he will be considered ignorant. If it is proved that the age of the criminal is less than 7 years, then it becomes necessary for the court to believe that the child was ignorant. Also, the party cannot be allowed to prove that the child was not ignorant. The decisions given by the competent court are conclusive evidence for the other court for the same things. Sections 41, 112 and 113 of the Act are also examples of this.

According to section 4 of the Evidence Act- "Conclusive Evidence" Where by this Act one fact has been declared to be conclusive evidence of another fact, the Court shall, upon the proof of that one fact, presume that other to be proved, and shall not allow evidence to be given for the purpose of disproving it.

To conclude, we can say that the Act recognises three types of presumptions-

(1) A presumption may be drawn which depends on the discretion of the court. These presumptions can be refuted.

(2) A presumption which is necessary to be followed by the law but is rebuttable.

(3) Such presumption is conclusive in it and cannot be rebutted.

Difference between presumption of law and presumption of fact some important differences between presumption of law and presumption of fact the differences are as follows-

(1) In presupposing the law the Court does not exercise its discretion while presupposing the fact while the court exercises its discretion in a wide manner so as to arrive at the right conclusion.

(2) Presumptions of law are rules of law and are themselves part of the law, while presumptions of fact do not contain any such does not happen.

(3) It is mandatory for the court to make presumptions of law while presumptions of fact assumptions may or may not be made.

(4) The presumptions of law are of two kinds-

(i) Which can be rebutted (rebuttable presumption),

(ii) Which cannot be refuted (irrefutable presumption) whereas there is no such distinction in the presumption of fact?

Question No. 11- Comment-

Answer: (1) Identification parade: Identification parade relates to a person accused of committing a crime or to an object in respect of which a crime has been committed.

Identification means that if there is a suspicion about a person who has committed a crime, then it is necessary to investigate him and the investigation can be done only by a person who knows him. Identification parade or identification is considered a part of investigation.

In this way, identification means determining the personality of the person by proving that it is the same person who has done the act or that person is pretending to be some other person.

The purpose of the identification parade is to correctly identify the accused or the object, otherwise the investigation will fail. The identification parade helps in providing true justice to the prosecution witnesses. In this way, the memory of the eyewitnesses is also tested.

Under Section 9 of the Evidence Act, the identification parade is relevant as per the law of evidence. The facts of the identification proceedings are also relevant, such as identification of the accused by showing his photograph to the witnesses or by making them stand in a parade was also accepted as relevant evidence. The Supreme Court has said in State vs. B.C. Shukla that identification of an accused by witnesses in the court, when the identification proceedings have not been conducted before this, would be useless evidence.

If a witness cannot be identified in the identification proceedings, then the identification proceedings in the court will be futile. (Parasnath vs State of Bihar (1988) (1), A.C.C. 15) Identification of articles is also a relevant fact. In the case of A.S. Madarappa vs Karnataka (A.I.R. 1983, S.C. 446) before the Supreme Court, some sarees and ornaments of blood and loot were recovered. The women of that house identified that they belonged to the deceased woman. Against this, it was argued that sarees like clothes, chains, bangles are found in every house and it cannot be said that they belong to that particular woman. But the Supreme Court clarified that it is common that women have the ability to identify their articles, especially the things of personal use in the family. 1 Apart from this, the fact in the statement that the sarees were of costly silk and of special design is an important matter of identification. The facts related to the time or place of the parties are relevant. Under Section 9, all such facts which indicate the time or place and tell about the parties, such as defamation, reason for quarrel, reason for breaking of business etc. Similarly, the report of an expert is relevant to determine the place or time of a murder.

(2) Mute witness. - Section 119 of the Evidence Act provides the following regarding mute witness: - Section 119 Witness unable to communicate verbally. - A witness who is unable to speak may give his evidence in any other manner which can make it intelligible such as by writing or by signs, but such writing shall be in writing and by signs expressed in open court and the evidence so given shall be deemed to be oral evidence.

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement and such statement may be video recorded.

Thus, the following things are noteworthy about section 119-

(1) A mute witness must give his evidence in writing or by signs,

(2) Such writings or indications shall be made or written in open court.

(3) He may also give his evidence in his own manner in which he can make the evidence understandable.

(4) The evidence of a mute witness shall be treated as oral evidence.

Mute or dumb witness-Section 119 talks about the competence of a mute person as a witness. It is not necessary for him to speak to testify. If he cannot speak, he can express

facts through his gestures. Section 118 cannot be kept aside here. For the competence of a mute, it has to be seen whether he can understand the questions presented to him and give logical answers. If he can give logical answers to the questions through his gestures, then the mute person will also be considered a competent witness. The evidence of a mute person will either be in writing or through gestures. Evidence given through gestures is considered equivalent to oral evidence.

Lakhan Singh v. King Emperor (1942) In the Patna case, a person who had kept mum wanted to give evidence by gesturing. He had taken an oath not to speak as per his religion, the court allowed him to give evidence by gesturing. Such a person should be treated as a mute witness.

Kishan A. State, 1995, Cr.L.J. (Raj.)- Where a witness had become physically incapable of giving statement due to having become dumb, it was held that no adverse inference could be drawn against the prosecution due to his not being examined.

Public Prosecutor, A.P. High Court v. Lingi Setty Seenu, 1997-In this case the prosecutrix was a mute who was the victim of rape. Therefore the evidence of the Principal of the Government Residential School as her translator for the goons is expert evidence and his testimony with the help of such translator can be relied upon.

(3) Burden of proof - When a person is bound to prove a fact, it is said that the burden of proof is on him. Burden of proof means the responsibility of proving a fact. Every party has to prove such facts which are in his favour and against the other party. Generally, when a person is bound to prove the existence of a fact, it is said that the burden of proof is on him. There is burden of proof.

Burden of proof has two meanings-

(a) The burden of establishing a case, and

(b) Burden of Producing Evidence.

(a) Burden of establishing a case- Such burden lies on the party, whether plaintiff or defendant, who substantively supports the positives of the facts in dispute. Such burden of proof is determined at the trial itself on the basis of pleadings as a question of law. It remains constant throughout the trial. This rule is contained in section 101.

According to this section whoever wants the court to give an opinion about any such legal right or liability in a judgment which depends on the existence of the facts which he asserts, he must prove that those facts exist. When a person is bound to prove the existence of a fact it is said that the person is bound to prove the existence of the fact.

The burden of proof is on A. Example- 'A' wants the court to give a decision to punish 'B' for a crime about which 'A' says that 'B' has committed the offence. 'A' has to prove that 'B' has committed the offence. (b) Burden of evidence - The burden of proof in the sense of producing evidence does not remain constant. The burden is on one party to produce sufficient evidence to prove the presumption of fact or law made by the other party in favour of the other party. The burden of proof shifts to the other party. This rule is contained in section 102.

According to Section 102, the burden of proof in any suit or proceeding lies on the person who would fail if no evidence is led on either side.

Illustrations: A sues B for some land which B is in possession of and which A alleges was given to A by a will of A's father, C.

If no evidence is given on either side, then 'B' will be entitled to retain his possession. Hence the burden of proof is on 'B'.

In the case of Kashiram vs. M.P. State, (2002) 1SCC, the Supreme Court held that while taking the right of defence, the burden of proof is on the accused, but it is not equal to the burden of proof imposed on the prosecution, because the prosecution has to prove its case beyond any reasonable doubt, while under section 105 the accused has to prove his case to the satisfaction of a prudent man. 4) Presumption - Presumption in law means the rule of law in which the court and the accused have to prove their case beyond any reasonable doubt.

(Judges draw a particular inference from a particular fact or particular evidence until it is proved. The famous scholar Best has given the following meaning of the word 'hypothesis'- "The term presumption in its largest and most comprehensive signification- may be defined to be an inference, affirmative or disaffirmative of the truth or falsity of a doubtful factor proposition, drawn by a process of probable reasoning from something proved or taken as granted." Presumptions are drawn from the course of nature. For example, the presumptions that there will be night after day etc. are derived from that process.

It is based on detailed experience which lies between two facts. Hypotheses also originate from human relations, social usage and types of business. The literal meaning of the word 'hypothesis' is to assume something to be true without investigation or proof. According to Russell, "When we if we infer the existence of a fact from the existence of another fact, it is called a presumption. According to Best, "Presumption is a conclusion which is drawn by the court using probable reasoning to infer the positive or negative existence of some facts from some other truth or accepted truth."

In the case of Sodhi Transport Company v. State of U.P., A.I.R. 1986, S.C. 1099, Justice Venkataramiah observed regarding 'presumption' that a presumption is not itself 'evidence' but creates a 'prima facie case' for the party in whose favour it exists. It indicates the person on whom the burden of proof lies. When the presumption is 'conclusive' it eliminates the need for any further evidence to be produced, but when it is rebuttable it only indicates to the party who properly and reasonably produces evidence on the fact presumed that the actual fact is not what has been presumed, the presumption is overturned.

(5) Admission. - Admission, as defined in this section, is oral or documentary evidence given by a party to a case or his representative as to the subject-matter of the case or as to relevant facts thereof.

Stephen has defined it in paragraph 15 of his 'Digest of Evidence' as follows - "Admission is a written or oral statement made by a party or any other person on his behalf, which indicates an opinion regarding a fact in dispute or a relevant fact."

In other words, we can say that admission is a voluntary acknowledgement made by a party or by a person who has a legal interest in the existence of certain issues or relevant facts.

Although admissions are weak evidence, they still have an important place in evidence law. When a fact is accepted, then there is no need to prove it by any other evidence.

(6) Hearsay Evidence - Hearsay evidence is very weak because it is based only on the personal knowledge of the witness. The word Hearsay - is made up of two words Hear meaning to hear and Say meaning to say. In other words, hearsay evidence means giving evidence after hearing. Sometimes it means that a person says something on the basis of information received from another person, as held by the Bombay High Court in the case of Lim Yam Hong vs Lam Choon Co - "Hearsay Evidence which ought to have been rejected as irrelevant does not become admissible as against a party merely because his counsel fails to take objection when the evidence is tendered."

Example- 'A' filed a complaint against 'B' and alleged that 'B' stabbed him and injured him. 'C' was produced to give evidence. 'C' said that he did not see the incident himself, but he has heard about it. The credit of seeing the incident will go to someone else, not to witness 'C'. This is hearsay evidence.

Therefore, we can say that anecdotal evidence is that evidence which the person giving it has neither seen nor heard himself nor experienced it directly through his senses, but has come to know about that fact through some other third person.

B.A.LL.B.-8th Sem. Paper-III Code of Civil Procedure and Limitation Act

Question No. 1- What do you understand by decree? Describe the essential elements of a decree. Differentiate between preliminary and final decree.

Answer- Decree is defined in **Section 2**, **Subsection 2** of the Civil Procedure Code. It is as follows: "Decree means the formal expression of an adjudication which determines the rights of the parties with respect to all or any of the matters in controversy in the suit, so far as the court expressing it is concerned. It may be preliminary or final. A decree is preliminary when further action is to be taken before the latter can be fully disposed of. A final decree is one which finally decides the rights, when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

Any decree contains the following essential things:

(1) The suit has been settled.

(2) The dispute has been disposed of by the court.

(3) The settlement has been finalised by a civil or revenue court.

(4) The rights of the parties have been definitely determined.

(5) The order does not expressly state that the suit is dismissed in default.

In the case of **Chhola Ram vs. Mask**, it has been held by the Rajasthan High Court that the order barring the suit or appeal is not a decree, because it does not decide the rights of the parties.

In the case of **Rattan Singh v. Vijay Singh** it has been held that an order dismissing the appeal barred by delay by rejecting the application filed for condonation of delay is a degree of not there.

In the case of **Sinnamani vs G. Vetrivel** it has been said that the order passed by the High Court under **Article 226** of the Constitution does not come under the definition of decree. From time to time, the Supreme Court and High Courts of India have given decisions regarding decree.

Essential elements of a decree-(1) A decree means a judicial determination of the matter in dispute and the action of adjudicating. In order that a judgment of a court be equivalent to a decree, there must be a decree. In other words, if there is no judicial determination of the dispute between the parties, there cannot be a decree, for example, an appeal dismissed by default, or an order dismissing a decree for non-appearance of the parties does not amount to a decree for there is a judicial determination of the matter in dispute. Moreover, such a decree must be by a court.

(2) In a suit.-The second essential element of a decree is that the judgment mentioned above should be given in a suit. Here a natural question arises- what is a suit. The word suit has not been defined in the Code.

In **Hansraj v. Dehradun-Mussoorie Electric Tramways Company Ltd.,** the Court has defined suit in the following words- The word suit has its ordinary meaning and, except in certain contexts, should be taken to mean a civil proceeding instituted by the presentation of a plaint. Thus, every suit is

commenced by the presentation of a plaint and when there is no civil suit there is no decree. But as mentioned above, the definition does not appear to be exhaustive because there are certain civil proceedings which though commenced with an application are treated as a civil suit and a judgment therein amounts to a decree. Thus, a dispute probate proceeding though commenced by the presentation of an application is still equivalent to a civil suit. Similarly, a proceeding in which an application is made for filing a settlement to refer the matter to arbitration under the Arbitration Act, 1940, may be treated as a civil suit. Certain proceedings under the Hindu Marriage Act, 1955, and the Land Acquisition Act, may also be treated as civil suits. A judgment of the Kerala High Court held that proceedings under **Section 110-A** (started by an application) of the Motor Vehicles Act are in the nature of a suit under the Code of Civil Procedure 2, hence proceedings have also started on an application made under it. The UP Farmers Act was also treated as a suit. Apart from these proceedings, any other proceeding under any other Act cannot be treated as a civil suit cannot be construed as a decree and, therefore, any decision made under it shall not amount to a decree within the meaning of **section 2(2).**

(3) Right of parties in case of dispute.-By virtue of **section 2(2),** the above mentioned award has given the right to settle the dispute.

The adjudication must have determined the rights of the parties to the dispute in respect of all or any of the matters. In other words, there must have been adjudication on the rights of the parties. It is not, however, necessary that the adjudication must have determined all the matters in dispute. To clarify the matter it may be said that where the issue involved in a suit is as to who is in possession of the disputed house, whether the landlord or the tenant, any decision of the Court on such issue would be an adjudication on rights. Such adjudication would amount to a decree. But where the decision of the Court is not on the rights of the parties, such a decision cannot be said to be a decree. Thus, an order dismissing a suit for default of appearance or an order refusing permission to sue in forma pauperis or an order dismissing an appeal for default or an order under Order 9, Rule 2, when summons is not served amounts to dismissal of a suit. An order dismissing an application for execution for failure to pay court-fees by the plaintiff or for non-prosecution is not a determination on the rights of the parties and hence not a decree. The rights of the parties mentioned here are rights relating to status, limitation, jurisdiction, frame of suit and accounts etc. Again such rights are substantive rights and not procedural rights. Thus, where the question to be decided in a suit is as to which of the disputing parties has a real right over the property in dispute, it is a question relating to substantive rights. But where the question is whether the summons has been duly served on a particular party or not, the question relates not to substantive rights but to procedural rights. The word parties implies the parties and they are generally the plaintiffs who have a cause of action against the other as the defendant. Thus, an

order passed by the Court on an application made by a third party will not be deemed to be a decree. Parties to a suit refer to the person whose names are recorded as parties at the time of framing of the suit and may also include an arbitrator but shall not include a person who dies during the course of the suit and whose name is recorded in the suit by mistake. Similarly, a party who withdraws from the suit and whose name is struck off is not a party to the suit. The word parties also does not include a person who has been made a party to the suit.

(4) Final Determination- To be a decree, the decision of the court must be conclusive in nature i.e. it must be complete and final as regards the court which passed it. A decree becomes final in two ways viz. when the time for filing an appeal expires without appeal being filed or in cases decided by decree of the Supreme Court; where the decree completely disposes of the suit so far as is concerned by the court passing it. An interlocutory order which does not finally decide the rights of the parties is not a decree. Thus, an order refusing a stay or an order by the appellate court deciding certain issues and remitting other issues to the trial court for determination will not be a decree. Whether a decision is a decree or not will be directly determined by its pith and substance. If a decision is final and conclusive in pith and substance, it will be a decree, otherwise not.

(5) Formal expression- Such judgment must be expressed in a formal manner. All the requirements of form must be complied with. Generally formal expression means acceptance or rejection of any or all the reliefs claimed in the PLA and contained in the draft declaration. An order made in the form of a decree will not make it a decree, if all the requirements of form are not complied with and the decree is drawn up accordingly. No appeal will lie against such a judgment. However, the decree need not be in any particular form. However, not all formal expressions will amount to a decree, unless the subsequent conditions are also complied with. Where the trial court passed an order that the suit is barred by limitation and liable to be dismissed the expression of the words "dismissible by limitation" means that the suit is dismissed and may be the same as a formal expression of dismissal.

Difference between preliminary decree and final decree-

Preliminary decree	Final decree
The formal statement made by the court to determine the rights of the parties involved in the issues of the case is known as the preliminary decree.	A final order completely resolves the case and leaves no issue for future decision.
The court can determine the rights of the parties and wait for the final judgment to be given	Once the rights and liabilities of the parties have been established by the final decree, there is nothing left to decide.
The initial decree may be modified if circumstances change.	The final decree must always be consistent with the preliminary decree.

A preliminary order may be issued more than once.	More than one final order may be issued.
According to **Phoolchand v. Gopal Lal (1967)** a preliminary decree can be issued more than once.	As per **Shankar v. Chandrakant Shankar 1995**, there can be more than one final decree

Question No. 2- Explain the principle of Pralakshti Praangnyaya with examples. Does Praangnyaya apply to ex parte decree? Describe.

Answer- Constructive res judicata- The rule of constructive res judicata in section 11 of the Code of Civil Procedure is an artificial form of res judicata. It provides that if a plea has been raised by a party in a proceeding between him and the defendant, he shall not be permitted to raise the plea against the same party in a subsequent proceeding in respect of the same matter. This is against the public policy on which res judicata is based.

The rule of constructive res judicata helps to raise the bar. Hence this rule is known as the rule of constructive res judicata, which is actually an aspect of enhancement of the general principles of res judicata.

In the case of **State of Uttar Pradesh v. Nawab Hussain**, M was a Sub-Inspector and was dismissed from the service of D.I.G. He challenged the order of dismissal by filing a writ petition in the High Court. He contended that he did not get a reasonable opportunity of being heard before the order was passed. However, the argument was negated and the petition was dismissed. He again filed a petition on the ground that he was appointed by the I.G.P. and he had no authority to dismiss him. The defendant contended that the suit was barred by constructive res judicata. However, the trial court, the first appellate court as well as the High Court held that the suit was not barred by the doctrine of res judicata. The Supreme Court held that the suit was barred by constructive res judicata because the plea was in the knowledge of the plaintiff, M and he could have taken this plea in his earlier suit. The doctrine of constructive res judicata has been laid down in the Code of Civil Procedure, 1908.

This has been incorporated in Explanation 4 to **Section 11** of the CrPC. Explanation 4 provides that all matters which should have been made the basis of defence or should have been added to the suit but were omitted shall also be deemed to be directly or substantially in issue in such suit. If a party fails to adduce a proper ground of defence or attack during the suit, such issue is deemed to have been decided against the defaulting party. The basis of every judicial action is the cause of action. When the Court pronounces a final order, the cause of action is deemed to have extinguished. Thus, the same cause of action cannot be raised again to claim relief which should have been claimed in the initial suit. The cause of action cannot survive even after the judgment and is deemed to have been absorbed in the judgment.

Nemo debet bis vexari pro una et eadem causaru This maxim means that no person shall face prosecution twice for the same act. The aim of this principle is

to protect the offender from frivolous litigation. The aim of the criminal justice system is reformation, not vexatious prosecution of the offender.

Res judicata pro veritate acipitur- the decision of the judicial authority must be recognized as duly correct. If the judicial decision is not respected as conclusive, there will be indefinite litigation, leading to confusion and chaos.

Interes republica ut sit finis litium- The interest of the state lies in the end of litigation. It is a part of the public policy of the country that the courts should not be burdened by filing repeated suits on the same subject. The jurisprudential importance of these three principles makes res judicata a universal concept.

Directly and substantially in issue- Merely because a matter was in issue in a previous suit will not be sufficient to apply the principle of res judicata. It is necessary that the matter should be directly and substantially in issue in the previous suit There must be a substantial issue. It must be alleged by one party and admitted or denied by the other. The admission or denial may be made expressly or by necessary implication.

The doctrine of res judicata applies when the issues in two suits are similar in nature. Thus, even if the cause of action, object and relief claimed in two suits are different, the doctrine of res judicata can be applied as long as the issues are similar. A suit may also involve certain ancillary issues that are secondary to the primary issues. Issues that are ancillary to the substantive and direct issues are known as collateral or incidental issues. The doctrine of res judicata cannot be applied in respect of these collateral or incidental issues.

Judgment on Merits A judgment of a court will act as res-judicata only if it is given on the merits of the case. Thus, if a suit is dismissed for absence of jurisdiction or if a compromise decree is passed by the court, such dismissal or dismissal of the suit will not act as res-judicata. Similarly, if a suit is dismissed on procedural grounds such as wrong joining of parties or failure to provide security, such judgment will not act as res-judicata.

Question No. 3- What do you understand by non-coordination and miscoordination of the parties? Can the suit fail due to this reason? Explain.

Answer- On the above point there are the above provisions in Orders 1 and 9 of the Civil Procedure Code-

Misjoining or non-joining.-No suit shall be failed by misjoining or non-joining of the parties and the Court shall, in every suit, settle the matter in controversy so far as the rights and interests of the parties actually corresponding with it are concerned.

Suit in the name of wrong plaintiff (1) Where a suit has been instituted in the name of a wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the true plaintiff or not, the Court may, if it is satisfied at any stage of the suit that the suit has been instituted by a bona fide mistake and that it is necessary so to do for the determination of the real matter in

controversy, make an order for some other person being substituted or added as plaintiff on such terms as it thinks fit.

Court may delete or add names of parties (2) The Court may, at any stage of the proceedings, with or without an application by either of the parties and on such terms as appear to the Court to be just, order that the name of any party improperly added either as plaintiff or as defendant be deleted, and that the name of any person whose presence before the Court is necessary to enable the Court to prospectively and fully adjudicate and dispose of all the questions involved in the suit be added.

(3) No person shall be added as a plaintiff who is bringing a suit without representation, or as a representative plaintiff who is subject to an undisqualified, without his consent where defendant is added, plaint to be amended.

(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary and amended copies of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant also.

(5) Subject to the provisions of **section 22** of the Indian Limitation Act, 1877, proceedings shall be deemed to have commenced on the service of summons so far as any person added as a defendant is concerned. (Order 7 Rule 10 of the Code of Civil Procedure)

Question No. 4- What is an inter-pleader suit? When and by who is it presented? Describe it.

Answer- Inter-pleader suit means an inter-pleader suit in which the actual dispute is between the defendants and the plaintiff has no interest in the subject matter of the suit. In this suit, the defendants themselves plead against each other and plead in relation to such debts or claims in which the plaintiff has no interest and which he is ready to grant to the "official defendant" who is entitled to that property.

According to Mulla- In every inter-pleader suit there must be some debt or money or other property divided between the defendants only and the plaintiff must be a person who has no interest other than the burden and expenses of that money and property and who is ready to give or deliver that property to the defendant whom the court declares entitled to that property.

Subject matter: Dispute regarding debt, money, movable or immovable property.

Prerequisites-

(1) Some defendants against each other, such as AEB S against each other.

(2) Claim to be the owner of the property, such as a claim to be the owner of a diamond ring.

(3) Which is held by some other person, such as the plaintiff?

(4) The other person has no claim to the disputed property except the charges and expenses; for example, plaintiff D has no claim to the amount of Rs. 1,000.
(5) That other person is willing to deliver the property to the rightful owner, for example, the plaintiff is willing to deliver the diamond ring to the rightful owner.
(6) In such a situation, the other person shall, in order to avoid any trouble, institute an inter-plead suit against all those defendants, like the plaintiff shall, in order to avoid any trouble, institute an inter-plead suit against all those defendants, in which he shall pray to the court to determine the real owner of the property and may demand his burden and expenses.

Provided that no such interlocutory suit shall be instituted where a suit is pending in which the rights of all the parties can be properly determined process procedure is given in Order 35.

Order 35 Rule 1 In an inter-pleader suit, the following statements shall be included in addition to the essential statements-
(1) A statement that the plaintiff has no claim for any interest, other than a claim for charges and costs, in the subject matter of the dispute; doesn't do it in the object.
(2) It shall state that the defendants are making separate claims.
(3) It shall be a statement that there is no collusion between the plaintiff and the defendant.

Order 35 Rule 2 Deposit of thing claimed in Court- Where the thing claimed is such that it may be deposited in Court or kept in the custody of the Court, the Court may order that the plaintiff shall deposit or keep the same before he becomes entitled to any order in the suit.

Order 35 Rule 3 Procedure where defendant is suing plaintiff- Where any of the defendants to an inter-pleader suit is actually suing the plaintiff on the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed of the same by the Court in which the inter-pleader suit was instituted, stay the proceedings against the plaintiff.

Order 35 Rule 4 Procedure at First Hearing- At the first hearing, the court may discharge the plaintiff from all liabilities. The court may discharge him from the suit by awarding him litigation costs.

If necessary in the interest of justice or convenience, the court may keep all parties in the suit until the case is settled.

Order 35 Rule 5 Who cannot file an inter-pleader suit - Under Order 35 Rule 5, an agent cannot file an inter-pleader suit against his principal or a tenant against his landlord.

The situation will be different where such other person is claiming through such land owner or proprietor in such cases the agent or the tenant may file an inter-pleader suit.

Example of inter-party dispute-

(1) A and B claim certain property which is in the possession of C and C does not claim any interest in the property and is ready and willing to deliver the property to such person as may be declared by the Court to be entitled to receive such property.

A shall institute an inter-pleader suit making A as plaintiff and B as defendants. From the suit so instituted, 'C' shall be removed from the suit on the first hearing after providing for the charges or litigation costs incurred by him and A and B shall be inserted in the suit for inter-pleading as if one were the plaintiff and the other the defendant.

But before removing plaintiff C from the suit, he will have to deposit the disputed property in the court.

In the case of **National Insurance vs Dhirendra Nath,** the Allahabad High Court has held that C (plaintiff) can apply to the court to get his name removed.

(2) A deposits a box of jewellery with B as his agent, C alleges that the jewellery was wrongfully obtained by A from him and he claims to have them back from B. B cannot institute an interlocutory suit between A and C.

Question No. 5- Explain the civil nature of suits under the Civil Procedure Code with the above mentioned examples.

Answer- Meaning and scope of suits of civil nature- CPC defines suit as a civil proceeding, which is initiated by presenting a complaint or written statement before the court. A suit of civil nature refers to a legal action which falls within the ambit of civil law and is governed by the CPC. Civil law covers a wide range of disputes, including disputes relating to property, contracts, torts, family law, etc. The scope of suits of civil nature under the CPC is wide and includes various types of civil disputes. These may include suits for recovery of money, suits for specific performance of contracts, suits for declaration of rights, suits for injunctions, suits for partition of property, suits for damages and many other suits. The CPC provides a procedural framework for the conduct of these suits, ensuring that civil disputes are resolved through an orderly and fair legal process.

Types of civil cases-

The CPC classifies civil suits into different categories depending on the nature of the dispute. Some of the common types of civil suits under the CPC are as follows:

(1) Suits for the recovery of money- These are suits in which one party seeks to recover an amount of money owed to him by the other party. This may arise from a contract, a debt or any other legal obligation.

(2) Suits for specific performance of contracts- These are suits where one party seeks to enforce performance of a contract by the other party. Specific performance is a discretionary remedy, and the court may grant it under certain circumstances.

(3) Suits for declaration of rights- These are suits in which a party seeks a declaration from the court confirming his legal rights or position. For example, a suit for declaration of ownership of a property.

(4) Suits for injunctions- These are suits in which one party asks the court for an order to restrain another party from doing a certain act or to compel him to do a certain act. Depending on the circumstances, an injunction may be temporary (interim) or permanent.

(5) Suits for partition of property- These are suits where co-owners of a property want partition of the property amongst themselves.

(6) Suits for compensation- These are suits in which one party seeks compensation for loss or damage caused by the wrongful act of the other party demands compensation for.

Provisions governing suits of civil nature under CPC-

There are several provisions in the CPC which govern the filing, procedure and disposal of civil suits. Some of the major provisions relating to civil suits under the CPC are as follows:

Jurisdiction- The CPC defines the jurisdiction of courts to entertain and try civil suits. It specifies territorial jurisdiction, pecuniary jurisdiction (based on the value of the claim) and subject-matter jurisdiction (based on the nature of the dispute).

Pleadings- The CPC lays down rules for filing a plaint (the document by which a suit is commenced) and a written statement (the reply to the plaint) in civil suits. It lays down the essential contents of a plaint, such as the parties involved, the facts of the case and the relief sought.

Evidence - The CPC lays down rules for the presentation and admissibility of evidence in civil suits. It includes provisions relating to the examination of witnesses, production of documents and the burden of proof.

Interim Orders- the CPC provides for interim orders in civil suits to protect the rights of parties during the pendency of the trial. This includes temporary injunctions, appointment of a receiver and attachment of property.

Appeal- The CPC outlines the procedure for filing and disposing of appeals against orders and decrees passed in civil suits. It lays down rules relating to the appellate jurisdiction of high courts, grounds of appeal and limitations on the power of appellate courts.

Execution of Decree-The CPC provides for the enforcement of decrees passed in civil suits. It includes provisions relating to execution of decree for payment of money, delivery of property and other reliefs granted by the court.

Importance and Significance of Civil Suits- Civil suits play a vital role in the Indian legal system as they provide a legal mechanism to resolve civil disputes between parties. They are important for several reasons-

Protection of rights and interests- Civil nature lawsuits allow parties to assert their legal rights and seek appropriate relief from the court. They provide a

platform to resolve disputes related to property, contracts, torts, family law and other civil matters, ensuring that the parties get an opportunity to present their case and obtain a fair settlement.

Ensuring compliance with legal procedures- The CPC lays down a comprehensive procedural framework for the conduct of civil suits, including provisions relating to jurisdiction, pleadings, evidence, interim orders, appeals and execution of decrees. It ensures that civil disputes are resolved in an orderly and systematic manner, thereby maintaining the integrity and fairness of the legal process.

Facilitating access to justice - Civil suits under the CPC are designed to provide access to justice to parties who have suffered legal wrongdoing. They provide parties a way to seek redressed of their grievances through the formal legal process, regardless of their socio-economic status or background.

Setting legal precedents- Judgments and decisions passed in lawsuits of a civil nature often serve as legal precedents that guide the interpretation and application of the law in future cases. These legal precedents help develop and evolve legal jurisprudence, ensuring stability and predictability in the legal system.

Resolving disputes amicably- Civil litigation also provides parties with an opportunity to resolve their disputes amicably through alternative dispute resolution mechanisms such as mediation, conciliation and arbitration, which are encouraged and facilitated by the CPC. This helps reduce the burden on courts and promotes timely and cost-effective resolution of disputes.

Upholding the rule of law- Civil suits under the CPC are essential to upholding the rule of law in the Indian legal system. They provide a mechanism to resolve disputes in a fair, impartial and transparent manner, ensuring that parties are held accountable for their actions and legal rights are protected **section 9** of the C.P.C.

Section 9 of the Code of Civil Procedure (CPC) is a provision in the civil procedure laws of India that deals with the jurisdiction of courts to try a suit. **Section 9** of the CPC is as follows-

"9. Courts shall have jurisdiction to try all civil suits unless barred. Courts shall (subject to the provisions herein contained) try all suits of a civil nature, except suits the cognizance of which is expressly or impliedly barred." **Section 9** of the CPC lays down the general principle that civil courts in India have jurisdiction to try and try all civil suits unless the cognizance of a particular suit is expressly or impliedly barred by law. This means that, by default, civil courts in India have jurisdiction to try and decide civil suits unless there is a specific statutory provision which expressly or impliedly prohibits them from doing so. CPC. The expression "expressly or impliedly barred" in **section 9** of the CrPC means that the bar on the jurisdiction of the court may be expressly stated in a statute or

statutory provision, or it may be inferred or implied from the nature of the suit, the parties involved, or the legal relationship between them.

For example, if there is a specific law or statute that prohibits the court from hearing a particular type of lawsuit, such as a lawsuit involving a matter that falls under the exclusive jurisdiction of a particular tribunal, then the court's jurisdiction may be expressly barred. On the other hand, if there is a legal principle or doctrine that suggests the court should not consider a particular type of lawsuit, even if there is no express provision, then the court's jurisdiction may be impliedly barred.

Section 9 of the CrPC is an important provision which lays down the general rule of jurisdiction for civil courts in India and serves as the basis for determining whether a court has jurisdiction to try a particular civil suit.

Question No. 6- Describe the procedure followed in penal suits. Can the defendant be allowed to defend as penal suit? Describe.

Answer- The term 'poor person' refers to a person who suffers from extreme poverty, impoverishment, or who lacks the basic resources required in normal life. In legal language, a poor person does not have the financial capacity to pay court fees. For the purpose of providing justice to such persons, **Section 33** of the Code of Civil Procedure, 1908 has been made Provisions were introduced under the CrPC. Any person who wishes to be represented as an indigent person has to file an application before the competent court declaring himself to be an indigent person. If the court is satisfied with such application and agrees that such person has no means to pay the court fees, the court shall declare such person to be an indigent person. Primarily, before the introduction of the expression "indigent person", the term "poor" was used to denote the underprivileged class of the society. However, it was later replaced by the term "indigent person". Rules 1-18 of Order 33 of the Code of Civil Procedure deal with suits filed by indigent persons.

(a) Persons permitted by the Code to bring beggarly suits- As soon as a civil suit is filed in the court, the plaintiff(s), at the time of filing their suit, is required to deposit the requisite court fees as prescribed by the Court Fees Act, 1870. However, Order 33 of the Code of Civil Procedure protects indigent persons from this by relieving them of the liability to pay the required court fees. It then allows such persons to be sued as beggars, subject to certain conditions under Rule 1 of Order 33 of the CPC.

Procedure for ascertaining the paucity of the plaintiff- First of all, the chief officer of the court shall inquire whether the plaintiff is pauper or not. Rule 1 (a) If the plaintiff has acquired any property after applying for permission to bring a pauper suit but before the decision thereof, such property shall be taken into account for making such inquiry. Explanation of Rule 2 If the plaintiff has filed the suit in a representative capacity, the question whether he is pauper or not shall be decided by reference to the resources which are in his possession in that

capacity. Explanation of Rule 3 If the court thinks fit, it may examine the applicant or his representative with regard to the property of the applicant and the merits of his claim. Rule 4 Even a company can bring a pauper suit because it is a legal person.

The Hon'ble Supreme Court discussed the definition of indigent person in **Union Bank of India vs Khadar** International Construction. The Court observed that indigent person is one who does not have sufficient amount (other than the property exempted from attachment in execution of decree and the subject matter of the suit) to enable him to pay the fee prescribed by law for the plaintiff in such suit. If no such fee is prescribed, such person would be indigent if he is not entitled to property worth one thousand rupees other than the property exempted from attachment in execution of decree and the subject matter of the suit.

In the case of **A.A. Haja Muniuddin v. Indian Railways** the court held that "access to justice cannot be denied to a person merely because he does not have the means to pay the prescribed fee." Rule 1 gives us the definition of an indigent person. Any person who does not have sufficient means to pay the requisite fee prescribed by the Court Fees Act. However, Rule 1 also states that considering the sufficient means, the property owned by an indigent person shall be exempted from attachment in the execution of the decree and the subject matter of the suit. The property so exempted is the basic necessity of living for the persons. Thus, as per the law, attachment of the same is not permissible. In cases where no such fee has been prescribed by the Court Fees Act and if the applicant does not have property worth one thousand rupees, or where the value of the property is less than one thousand rupees, then in such a case the person would be treated as an indigent person. However, there is the same exception to this rule as mentioned above. It said Section 60 of the Code of Civil Procedure will have to be kept in mind while calculating the valuation of the property.

Rejection of application- As per Rule 5 of Order 33 of CPC, the court shall prima facie dismiss an application seeking permission to sue as an indigent in the following cases-

(1) In a case where the application is not made and submitted in the prescribed manner. Here, the term 'prescribed manner' means that the application must comply with Rule 2 and Rule 3 of Order GXPP. Rule 2 and Rule 3 deal with the subject matter of the application and its submission respectively.

(2) If the applicant is not an indigent person the application may be refused by the court.

(3) The application may be dismissed by the court if the applicant has fraudulently disposed of any property within two months from the presentation of the application. It may also be dismissed if the applicant makes the application dishonestly for the sole purpose of obtaining permission from the court to sue as an indigent person.

(4) The court has the power to dismiss an application filed by an indigent person in a case where there is no cause of action.
(5) In a case where the applicant has entered into an agreement with a third party and such agreement relates to the subject matter of the suit in which the other party (other than the applicant) acquires interest, then, this is one of the grounds for rejection. It shows the intention of the applicant to deceive the court.
(6) The application is rejected if the allegations indicate that the suit is barred by any law.
(7) The application is rejected in cases where another person enters into an agreement with the applicant to help him financially in the litigation.

In the case of **Dhanalakshmi v. Saraswathi**, the valuation of the plaint was found to be low. Therefore, it was returned to be presented before the court with proper valuation and court fees. One month's time was given to do so and the plaintiff filed the plaint within the prescribed period. Subsequently, the plaint was presented before the Sub-Court along with another petition seeking permission to sue as indigent persons, to which the court observed that the petition was filed under Rule 1 of Order GXPP but one cannot say that the application was filed under Rule 2. Because permission to sue as indigent persons cannot be refused as per Rule 5 of Order 33 CPC. An analogy was drawn between Order 33 Rule 5 and Order 7 Rule 11 of CPC. While Order 7 Rule 11 is used for rejecting a plaint and Order 33 Rule 5 deals with the rejection of an application for permission to sue as indigent persons.
(1) Order 33 Rule 6 provides that the court is required to issue notice to both the opposite party and the public prosecutor. After which a day is fixed on which evidence is received. On such day the applicant leads evidence in support of his application. The opposite party or the public prosecutor can also lead evidence opposing the indigence of the applicant.
(2) Order 33 Rule 7 provides for the procedure to be followed in hearing the application. The court shall examine the witnesses (if any) produced by both the parties and hear arguments on the application or evidence (if any) admitted by the court. Thereafter, the court shall either allow the application or dismiss it. Rule 8 of Order 33 explains the procedure to be followed after admission of the application. After admission, the application should be numbered and registered. Such application shall be treated as a plaint in a suit. Thereafter, such suit shall proceed in the same manner as an ordinary suit.
(3) Order 33 Rule 9 states that the court also has the option to cancel the permission granted to a plaintiff to sue as an indigent person. The court may exercise this discretionary power on an application from the defendant or the Public Prosecutor in the following circumstances- (a) where the applicant is guilty of vexatious or improper conduct during the suit; or

(b) Where the means of the applicant are such that he would not continue to sue as an indigent person; or (c) where the applicant has entered into a settlement under which some other person has acquired an interest in the subject-matter of the suit have received.

In the case of **R. Jayaraja Menon v. Dr. Rajakrishnan and others**, the Kerala High Court, while deciding an application regarding withdrawal of permission to sue as an indigent, held that Rule 9 of Order 33 provides for a situation where the plaintiff, who was initially allowed to sue as an indigent, ceases to be an indigent after the suit is filed. If a plaintiff ceases to be an indigent, the Court shall compel him to pay the court fees which he would have paid if he had not been allowed to sue as an indigent. This is clearly a part of the order under Rule 9 of the Code directing the plaintiff to pay the court fees which he would have paid if he had not been allowed to sue as an indigent.

Procedure for filing suit as an indigent person - Before filing a suit as an indigent person, it is important to add all the relevant material to the application seeking permission to be an indigent person Rule 2.1 As per Rule 2 of Order 3, the application should contain the same details as mentioned in the plaint and all the movable or immovable properties of the indigent applicant along with their estimated value. The indigent person/applicant shall personally present the application before the court. In case such person is exempted from appearing before the court, an authorized agent may present the application on his behalf. In certain circumstances where there are two or more plaintiffs, any one of them may present the application Rule 3. As soon as the application to sue as an indigent person is duly presented before the court, the suit commences. Thereafter, the indigent applicant shall be called for summons by the court However, if the applicant is being represented by his agent, in such a case, the court may examine the applicant by commission under Rule 4.

Question No. 7- Explain the inherent powers of the court. When can the court use these powers? Explain.

Answer- 'Inherent' means something permanent, absolute, inseparable, essential or characteristic. Inherent powers of the courts are the powers which the court can exercise to do complete justice between the parties before it. It is the duty of the courts to render justice in every case, whether it is provided in this Code or not, it brings with it the substantial power to do justice in the absence of a specific or separate provision. This power is called inherent power which is retained by the court though not conferred. **Section 151** of the Code of Civil Procedure deals with the inherent powers of the court.

Provisions of Sections 148 to 153B of CPC- The law relating to the inherent powers of the court is mentioned in **sections 148** to **153A** of the Code of Civil Procedure, which deal with the exercise of powers in different situations. Following are the provisions of inherent powers of the courts-

(1) **Sections 148** and **149** deal with grant or extension of time;
(2) **Section 150** deals with transfer of business;
(3) **Section 151** protects the inherent powers of the courts; and
(4) **Sections 152**, **153** and **153A** deal with amendment of judgments, decrees or orders or in separate proceedings.

Extension of time- Section 148 of CPC states that where any period is fixed by the Court for doing any act provided by the CPC, it is the discretionary power of the Court to extend such period from time to time notwithstanding the period originally fixed. In simple words, when a period is fixed by a provision for doing any act, the Court has the power to extend such period up to 30 days. This power is exercisable notwithstanding any specific provision which reduces or disallows or prohibits the period. The power is limited to the extension of time fixed by the Court and is discretionary in nature.

Payment of court fees- As per **section 149** of CPC, where the whole or any part of any fee as may be prescribed by the applicable law relating to court-fees for a certificate has not been paid, the Court may, in its discretion, at any stage, allow the person by whom such fee is payable to pay the whole or any part of such court fees; and on such payment, the document in respect of which such fee is payable shall have the same outcome as if such fees had been paid at the initial stage. This allows the Court to require a party to reduce the court fees payable on notice of complaint or appeal etc., even after the expiry of the period of limitation for filing the suit or appeal etc. Payment of the requisite court fees is mandatory for any document charged with court fees to be produced in the Court. If the requisite court fees are paid within the time prescribed by the Court, it cannot be negotiated as time-barred. Such payment made within the time prescribed by the court retrospectively validates a defective document. The power of the court is discretionary and must be exercised only in the interest of justice.

Transfer of business - According to **section 150** of CrPC, save as otherwise provided, where the business of any Court is assigned to another Court, the Court to which the business is assigned shall have the same powers and perform the same duties as are successively assigned or were assigned under this Code to the Court from which the business is assigned.

For example - when the business of a Court A is transferred to another Court B, then Court B shall exercise the same powers and perform the same duties as are conferred on the transferring Court by the CPC.

Section 151 of CrPC- Section 151 deals with the protection of the inherent powers of the court. This section states it is held that nothing in the CPC shall be construed to restrict or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the course of the court. It is not mandatory for the court to wait for a law made by Parliament or an order of the higher judiciary. The court has discretionary or inherent power to make such orders which are not provided under the statutes

for the protection of justice or to prevent abuse of the course of the court. The scope of the exercise of **section 151** of the CPC may be illustrated by some cases as follows-

(1) The court may re-examine its orders and remedy errors;

(2) When the case is not covered by Order 39 or does not amount to a revocation of an 'ex parte' order, a provisional ban may be issued;

(3) Illegal orders passed without jurisdiction are liable to be set aside;

(4) Subsequent events in the case may be taken into account by the court;

(5) Power of the Court to continue a trial 'in camera' or to prevent disclosure of its proceedings. The Court may expunge remarks made against a judge; and

(6) The court may reform the suit and rehear the case on the merits or re-examine its order.

Purpose of justice-

In the case of **Debendranath vs Satya Bala Das**, the meaning of "end of justice" was explained. It was held that "end of justice" are serious words, moreover, the words are not just a polite expression according to the judicial method. These words also indicate that justice is the pursuit and end of all laws. However, this expression is not a vague and indefinite notion of justice according to the laws of the land and statutes.

The court is allowed to exercise these inherent powers in matters such as re-examining its own order and correcting its own error, passing injunctions not covered by Order 39, and passing ex-parte orders against a party, etc.

Abuse of the process of court- Section 151 of CPC provides for the exercise of inherent powers to prevent violation of the process of court. The party to whom the abuse of the powers of the court causes injustice should be relieved on the ground that no one will be prejudiced by the act of the court. When a party commits a fraud on the court or on a party to a proceeding, the remedy should be provided on the basis of inherent power. The term ‘abuse’ occurs when a court uses a method to do something which is never expected of it is guilty of the said abuse and there is a failure of justice. The injustice done to the party should be relieved on the basis of the principle of actus curiae neminem gravabit (an act of the court will not prejudice anyone). A party to a case will become guilty of misbehaviour in cases when the said party commits a fraud on the court or on the party to the proceeding.

Amendment of Judgments, Decrees, Orders and Other Records- Section 152 of CPC deals with “Revision of Judgments, Decree and Order”. As per **Section 152** of CPC, the court has the power to alter errors arising from scribal or arithmetical mistakes or unforeseen omissions or imperfections in judgments, decrees or orders (either of its own action or on the application of any party). **Section 153** deals with “General Power of Revision”. This section empowers the court to amend any mistake and defect in any proceedings and also to make all necessary corrections in order to settle the issues raised or grounded in such proceedings.

Sections 152 and **153** of CPC make it clear that the court can at any time correct any mistake in their experiences.

The power to amend the decree or order where an appeal is dismissed and the place of trial is considered to be an open court is defined under **section 153** and **153B** of CPC, 1908.

Limitation - There are certain restrictions in the exercise of inherent powers such as-

(1) They can be enforced only in the absence of specific provisions in the Code;

(2) They cannot be applied in conflict with what is expressly provided in the Code;

(3) They may be applied in rare or exceptional cases;

(4) In exercising the powers, the court has to follow the manner shown by the legislature;

(5) The courts may not exercise jurisdiction not delegated to them by law;

(6) Observance of the principle of res judicata, that is, not to reopen issues which have already been finally decided have done;

(7) Selecting an arbitrator to render a fresh award;

(8) The fundamental rights of the parties should not be taken away;

(9) To limit a party from bringing proceedings in court; and

(10) To cancel an order which was valid at the time of its issuance.

Summary of the provisions of inherent powers of the courts-The gist of **sections 148** to **153B** is that the powers of the court are quite deep and wide to extend to the following-

(1) Reducing litigation;

(2) Avoiding multiplicity of proceedings; and

(3) To provide complete justice between the parties.

Question No. 8- What is temporary injunction? When and in which cases can temporary injunction be granted? Also mention the Civil Procedure Code (Amendment) Act, 1999 in this context.

Answer- Meaning of Temporary Injunction Temporary injunction is a court order given while a case is going on so that things remain as they are until the case is finally decided. Its main purpose is to prevent a person from causing serious harm to another party during the legal process. This idea was clarified in the case of "**Gujarat Potling Company Limited and others vs Coca Cola Company and others (1995)**".

The rules for temporary injunction are given in the Code of Civil Procedure 1908 and they are as follows-

(1) **Section 94** of the Act is about preventing interference with the course of justice. **Part (c)** deals with the granting of temporary injunctions and contains rules for making sure people obey them, such as putting someone in civil prison or selling their property to enforce their obedience.

(2) **Section 95** provides that if the plaintiff's claim is dismissed the court may consider awarding money to the defendant.
(3) Order 39 of the Code of Civil Procedure (CPC) contains several rules regarding temporary injunctions temporary injunction in C.P.C.
Temporary injunctions in India are regulated by the Code of Civil Procedure, 1908 and the specific rules for their grant and enforcement are as follows-
Order XXXIX, Rule 1: This rule allows the court to grant a temporary injunction under the CPC when it is considered just and proper to do so in order to prevent the breach of an obligation or to prevent harm arising from a real fear of such breach.
Order XXXIX, Rule 2: This rule lays down the conditions necessary for the grant of a temporary injunction. These conditions include a strong preliminary case, balance of convenience and likelihood of irreparable injury.
Order XXXIX, Rule 3: This rule explains the procedure for obtaining a temporary injunction in CPC and what you need to do, including submitting an application supported by an affidavit.
Order XXXIX, Rule 4: This rule covers the power of the Court to transfer property when it is necessary to ensure that the temporary injunction is not weakened.
Order XXXIX, Rule 5: This rule allows the court to vary or revoke a temporary injunction at any time during the proceedings, if it is justified by the situation.
Order XXXIX, Rule 6: This rule deals with how long a temporary injunction in a case lasts. It may remain in effect for a specified period or until the court otherwise orders.
Order XXXIX, Rule 7: This rule states what happens if a person violates or disobeys a temporary injunction. It includes contempt of court proceedings and other remedies for the aggrieved party.

These rules set out the structure for the granting and administration of temporary injunctions under the CPC. It is important for both parties seeking or challenging a temporary injunction to be familiar with these rules and to follow the rules outlined it is important to follow the procedures.

Grounds for temporary injunction in CPC-

In the case **of Dalpat Kumar and others vs Prahlad Singh and others (1991)**, three key requirements have been established for applying for temporary injunction under CPC and for grant of temporary injunction. They are-
Prima facie case- This means that in the suit, there must be a serious and disputed question for a temporary injunction in CPC. The facts surrounding this question must indicate that the plaintiff or the defendant is entitled to the relief. It is important to note that a prima facie case does not require an irrefutable argument that is certain to succeed in the suit. Rather, it means that the case presented for an injunction must have sufficient merit so that it cannot be dismissed outright.

Irreparable Harm - It would be a grave injustice if a person suffers irreparable harm related to a lawsuit before his or her legal rights have been determined at trial. However, it is important to understand that losses such as the emotional value of an item will not usually be considered irreparable. On the other hand, losses that cannot be adequately repaired through legal means, especially when there is no fair or reasonable solution, may be considered irreparable. Irreparable harm can also refer to situations where the injury is continuous or repeated, or where it can only be repaired through multiple legal actions.

Sometimes, the term "irreparable harm" refers to the difficulty of determining the amount of damages, but the mere difficulty of proving the injury does not establish irreparable harm.

Balance of convenience - the court must evaluate the circumstances of both parties and compare the likely harm or inconvenience caused by withholding the injunction versus the granting of it. In short, the court must determine whether the harm or inconvenience caused by not granting the injunction will outweigh the harm or inconvenience caused by granting the injunction.

These three requirements serve as important criteria for deciding whether to grant a temporary injunction in legal cases.

In **Mandati Ranganna v. T. Ramachandra (MANU/SC/7567/2008: AIR 2008 SC 2291)**, the Court held it was emphasised that while considering an application for grant of temporary injunction in CPC, it is not sufficient to consider only the fundamental elements such as existence of a prima facie case, balance of convenience and irreparable injury.

The granting of an injunction is an equitable remedy and the court must also take into account the conduct of the parties involved. In particular, if one party has remained silent for a long period of time and allowed another party to exclusively deal with a property, they may not be entitled to an injunction. The court will not intervene simply because the property concerned is valuable. The primary goal of the court is to protect the interests of all concerned parties.

In **Pedsetty Bhankanarayana v. Pedsetty Rajeswara Rao (AIR 1999 Ori 92)** the Court held that it is not always necessary for the plaintiff to prove his absolute right to the disputed property. It is sufficient if the plaintiff can raise a valid question about the existence of the right he claims. Further, if the plaintiff can convince the court that the property in question should be preserved in its existing condition until the legal question is resolved, this may justify the granting of an injunction. This highlights that in some cases, the party seeking an injunction does not need to establish absolute ownership but must show a genuine claim and a need to protect the property during the legal proceedings.

How long does a temporary injunction stay in effect?

The duration of the temporary injunction is determined by the court at the time of issuing the injunction. As per "Order XXXIX, Rule 6 of the Code of Civil

Procedure 1908", the temporary injunction may remain in effect for a specified period of time or until further orders are issued by the court.

The duration of temporary injunction in CPC depends upon the type of injunction granted-

Pendente Lite Injunction – This type of injunction remains in effect until the ongoing legal proceedings are over and the court issues a final decision. If the case is dismissed, the temporary injunction is also lifted.

Permanent Injunction Litigation In cases involving permanent injunctions, the temporary injunction issued by the court may be made permanent as part of the final decree. This means that the temporary injunction under the CPC effectively becomes a permanent remedy determined by the final decree of the court.

In short, the validity of temporary injunctions in the CPC varies depending on the nature of the injunction. For pendente lite injunctions, it lasts until the conclusion of the legal proceedings, while in suits for permanent injunctions, the temporary injunction may become permanent through a final order of the court.

Can an injunction be granted to the defendant?

The Supreme Court issued notice in the case of **Tammineedi Ramakrishna etc vs N. Jayalakshmi**. The main issue was whether the respondent had the right to seek injunction under Order XX Rule 1(c) of the Code.

The SLP (special leave petition) challenges the order of the Karnataka High Court, which affirmed the trial court's decision and granted a temporary injunction in favour of the defendant under Order GGG Rule 1(a), (b) and (c) read with **Section 151** of the Code. The High Court attempted to distinguish the three sub-rules of Order GGG Rule 1, suggesting that sub-rules (b) and (c) primarily provide remedies for the plaintiff, while sub-rule (a) is a more general provision.

Various High Courts have expressed different opinions on whether a defendant can seek an injunction against a plaintiff without filing a counter claim. The Travancore and Kochi (formerly) High Court and several other High Courts have held that a defendant can seek a temporary injunction against a plaintiff if their claim is related to or connected with the plaintiff's cause of action.

Question No. 9-The Limitation Act only prohibits remedies, not rights. Explain this statement along with its exceptions under the Limitation Act, 1963.

Answer- The limitation law finds its roots in the dictum “Interes Republicae ut sit finis litium” which means that there should be a limitation of litigation in the interest of the whole State and “Vigilantibus non dormientibus jura subvenient” which means that the law will only help those who are vigilant about their rights and not those who ignore it. The limitation law specifies the statutory time limit within which a person can commence legal proceedings or any legal action can be taken. If a suit is filed after the expiry of the prescribed time it will be barred by limitation. It means that a suit brought before the court after the expiry of the

time within which the legal proceedings should have been commenced will be barred.

History of the Act- The limitation law evolved through several stages and finally took the form of the Limitation Act of 1963. Before 1859, there was no limitation law applicable to the whole of India. It was only in 1859 that a law relating to limitation (Act GPT of 1859) was enacted which was applicable to all jurisdictions. The Limitation Act was subsequently repealed in 1871, 1877, 1908. The Limitation Act, 1908 was repealed by the Third Law Commission and the Limitation Act of 1963 came into force. The Act of 1908 mentioned only foreign contracts while the Act of 1963 talked about contracts made in the territory of Jammu and Kashmir or in a foreign country.

Purpose of the Act- The Limitation Act prescribes a time period within which a right can be enforced in the court. The time period for various suits has been provided in the schedule of the Act. The main purpose of this Act is to prevent litigation from being prolonged and to dispose of cases quickly leading to effective litigation. As per the Jammu and Kashmir Reorganisation Act, 2019, the provisions of the Limitation Act will now apply to the whole of India. The Limitation Act, 1963 contains provisions related to calculation of time for limitation period, condemnation of delay, etc. The Limitation Act has **32 sections** and **137** articles and the articles are divided into 10 parts.

Retrospective operation - In **BK Education Services Pvt Ltd v Parag Gupta & Associates**, the Supreme Court clarified that since the law of limitation is procedural in nature, it will be applied retrospectively. In **Thirumalai Chemicals Ltd v Union of India** the Supreme Court held that the laws of limitation are retrospective in so far as they apply to all legal proceedings brought after their operation to enforce previously accrued causes of action. In **Ministry of Excise and Taxation v M/s Frigoglass India Pvt Ltd**, the Punjab and Haryana High Court ruled that it is well established that the law of limitation is a procedural law and operates retrospectively unless it has been differently provided in the amending legislation. In other words, unless a contrary intention appears from the express or necessary implication of the law

Limit bar solution-Section 3 lays down the general rule that if a suit, appeal or application is brought before the court after the expiry of the prescribed time, the court shall dismiss such suit, appeal or application as time-barred. The statute of limitation only bars judicial remedies and does not extinguish the right. In other words, it means that the statute of limitation only prescribes the period within which legal proceedings have to be initiated. It does not restrict any period for setting up defences to such actions. Therefore, the substantive right to sue is not barred. **Section 27**, however, is an exception to this rule.

In **Punjab National Bank and others v. Surendra Prasad Sinha** the Supreme Court held that statutes of limitation are not meant to destroy the rights

of the parties. **Section 3** only bars the remedy but does not destroy the right to which the remedy relates.

As against the decision in the case of **AS 15/1996 vs KJ** Anthony the Court held that in a suit a defendant can raise any defence, however such defence may not be enforceable in the court as it is barred by limitation.

In **Bombay Dyeing & Manufacturing Co. v. State of Bombay** it was held that the statute of limitation only bars the remedy but does not extinguish the debt.

Limits do not prevent rescue-The law of limitation does not bar the defendant if he puts forward a valid plea in his defence, even if the suit is time-barred. It was held in **Rulia Ram Hakim Rai v. Fateh Singh** that the bar of limitation is not limited to the defence of the accused It only stays the action and only its recovery is time barred. There is no provision which prevents or prevents the debtor from paying his time-barred dues.

In **Shrimant Shamrao Suryavanshi v. Prahlad Bhairoba Suryavanshi,** the Supreme Court held that the Limitation Act deprives the plaintiff of the remedy to enforce his rights by suing in court but it does not put any bar on the defendant to put up a defence though such defence is barred by limitation and cannot be enforced in court.

Application to court-Under **Section 3(c),** an application may be made to the High Court by notice of motion when the application is presented before the proper officer of that Court. If the period prescribed for an application expires on a day on which the Court closes, **Section 4** provides that the application shall be made on the day on which the Court reopens.

Duty of the Court to plead limitation period-If a suit is filed after the time prescribed by the Limitation Act then the court is bound to dismiss it. The provisions of **Section 3** are mandatory and if the suit is not filed due to limitation then the court will not proceed with it. Under **Section 3** of the Act, it is clearly mentioned that every suit, appeal and application filed after the prescribed period shall be dismissed. Even if limitation is not set up as a defence.

In **Craft Centre v. Koncheri Coir Factories** it was held that it is the duty of the plaintiff to convince the Court that his suit is within time. If it is out of time and the plaintiff relies on any acknowledgment to save limitation he has to plead or prove the same if denied. The Court further held that the provision of **Section 3** is absolute and mandatory and if limitation has expired in a suit it is the duty of the Court to dismiss the suit even at the appellate stage even if the issue of limitation is not raised. **In ICICI Bank Ltd. v. Trishala Apparels Private Limited** it was held that there is no doubt that the Court is bound to dismiss the suit in a case if limitation has expired thereon even if no such plea is taken by the opposite party.

In **Mukund Limited v. Mumbai International Airport** it was held that it is clearly evident that when a suit is barred by limitation, the Court is barred from proceeding on the merits of the disputes and is in fact bound to dismiss the suit.

Starting point of the range-The time from which the limitation period starts depends on the subject matter of the case and a specific starting point of such period has been elaborately provided by the Schedule to the Act. It generally starts from the date when the summons or notice is served, or the date on which the decree or judgment is passed, or the date on which the event forming the basis of the suit occurs. In **Trustees Port Bombay v. Premier Automobile** the Supreme Court held that the starting point of limitation is the accrual of the cause of action.

Expiry period of limitation on closure of court-When a court is closed on a particular day and the period of limitation expires on that day, any suit, appeal or application shall be taken up in the court on the day on which it reopens. This means that a party is barred not by his own fault but by the closure of the court on that day. **Section 4** of the Limitation Act provides that when a period of limitation has been prescribed for any suit, appeal or application and such period expires on a day on which the court is closed, such suit, appeal or application shall be instituted, tried or made on the day on which the court reopens. The Explanation to this section states that a court shall be deemed to be closed on any day within the meaning of this section if it is closed on that day during any part of the normal business of the court.

For example, if a court reopens on 1 January and the time to file an appeal expires on 30 December (the day the court is closed), the appeal can be filed when the court reopens on 1 January.

Condemnation of delay

Condemnation of delay means the extension of the time limit granted in certain cases provided there is sufficient cause for such delay. Section 5 talks about the extension of the period prescribed in certain cases. It provides that if the appellant or applicant satisfies the court that he had sufficient cause for not preferring the appeal or application within that period, such appeal or application may be admitted after the prescribed time. This section further mentions that any provision of Order GPP of the Code of Civil Procedure, 1908 (5 of 1908) shall not apply to such court for any reason The Explanation states that in ascertaining or calculating the prescribed period when the applicant or appellant has been misled by any order, practice or judgment of the High Court. This shall be sufficient cause within the meaning of this section.

However, if a party does not show any solid ground for the delay then the application, suit or appeal will be dismissed by the court.

In **State of Kerala v. K.T. Shaduli Joseph**, whether there is sufficient cause or not is a question of fact which a Court held, to condone the delay depends on the circumstances of the particular case.

Sufficient reason-Sufficient cause means that the court must have sufficient cause or reasonable ground to believe that the applicant was prevented from proceeding with the application to the court.

In **State (NCT) v. Ahmed Jan**, it was held that the expression "sufficient cause" should get a liberal construction. In **Balwant Singh (Dead) v. Jagdish Singh & Ors.**, the Supreme Court held that it is mandatory for the applicant to show sufficient cause due to which he was prevented from continuing with the proceedings in the suit. In this case, there was a delay of 778 days in filing the application for bringing the legal representatives on record.

In **Ornate Traders Pvt. Ltd. v. Mumbai the Bombay** High Court held that where sufficient cause is shown and the application for condemnation of delay is made in good faith, the court will ordinarily condone the delay, but where no explanation for the delay is offered and the delay is inordinate apart from negligence and inadvertence, the discretion of the court will ordinarily go against the applicant.

In **Brij Inder Singh v. Kansi Ram the Bombay** High Court held that the correct guide for the court while exercising jurisdiction under **section 5** is whether the plaintiff has acted with prudence and due diligence in prosecuting the appeal.

Whether the applicant has given sufficient reasons or not depends on the discretion of the court and the circumstances of each case. For example, the court may condone a delay on medical grounds.

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

Answer- (1) Cause of Action- According to the Code of Civil Procedure (CPC), 1908, cause of action means a set of facts which on application entitle the plaintiff to seek relief against the defendant. In the 1996 case of **South East Asia Shipping v Nav Bharat Enterprises**, the Supreme Court held that cause of action is essentially a set of facts which give rise to a dispute. It is the cause of action which gives the plaintiff the legal right to move the court. Therefore, plaintiffs who do not come before the court with a proper motive are not entitled to be heard and in fact, such persons are not entitled to any relief from any judicial forum. Keeping this in view, Order 7 Rule 11 has been added in the CPC to enable the court to dismiss plaints which do not disclose a proper cause of action. Though Order 7 Rule 11 of CPC gives other factors which may lead to the dismissal of a plaint but they are all clerical in nature, but when a plaint does not disclose its cause of action, it lies with the court to interpret it (in the light of various decisions of the Supreme Court) as to which plaint discloses its cause of action and which does not.

(2) Second Appeal: Under **Section 100** of the Code of Civil Procedure (CPC), 1908, a second appeal can be filed in the High Court against the judgment of the subordinate court in the first appeal. However, this right can be exercised only for important legal issues that arise at the time of admission of the appeal or thereafter. If a legal issue in the case directly affects the rights of the parties or is a matter of concern to the general public, it will be considered important.

The Commission has powers to adjudicate an appeal filed under **Section 19(3)** of the RTI Act and pass an order directing supply of required information where it has not been provided by the Central Public Information Officer (CPIO) or the First Appellate Officer.

According to **Section 100** of the Code of Civil Procedure, an appeal can be made to the High Court against the decision of the District Court. An appeal is possible if the decree is passed ex parte.

If the High Court finds that an important legal issue exists it will give judgment. It should be mentioned that the second appeal is based on an important legal issue rather than factual inaccuracies.

Second Appeal under CPC : About The provision for a second appeal under CPC is made under **Section 100.** It states that, unless there are specific rules to the contrary, an appeal against the decision given by the subordinate court in the first appeal lies to the High Court. However, the right granted by this section is limited to substantial legal issues raised at the time of the admission of the appeal or subsequently. A second appeal under **Section 100** of the CPC can be made to the High Court if an important and substantial issue is raised. If the legal issue in the case directly and significantly affects the rights of the parties or is a matter of concern to the general public, it will be considered substantial.

Second Appeal: Nature and Scope-

Nature-The capacity to appeal is established by law rather than being inherited. The capacity to sue is innate in nature. This right becomes effective from the date of filing the suit.

The decision of the appellate court is conclusive. Before declaring a right void, the law must consider it void have to declare.

Scope-The following are the only situations in which a second appeal can be used-

(1) A question of law has been raised.

(2) The legal question must be important.

(3) Additional Explanation specified in **section 100** of CPC.

(4) Wrongly resolved question of fact should not be the criterion for a second appeal.

What is the ground for second appeal under CPC?

According to **section 101**, “Second appeal cannot be filed on any other ground- No second appeal can be filed on any ground other than the ground mentioned in

section 100." Consequently, it is clearly not possible to file a second appeal on any ground other than **section 100**.

The Constitution prohibits a second appeal on grounds of cause. The following are the justifications for a second appeal:

(1) The appeal must raise an important legal issue which the court can develop or the party can rise in the memorandum of appeal;

(2) That a second appeal may be filed where the decree was passed ex parte; **Second appeal:** decision of the case in **Annapoorani Ammal vs G. Thangapolam** it was held that the High Court may decide only when can intervene when there is an important legal issue.

In **Gyanoba Bhaurao vs Maruti Bhaurao Marnor**, it was held that there is no issue of law and the determination of fact is contrary to the preponderance of the evidence.

(3) Decree holder-Section 2(3) of the CPC defines the term decree holder. Decree holder means any person in whose favour a decree has been passed or any order executable has been made. The term decree holder refers to a person in whose favour a decree has been passed.

Characteristics of a decree holder-

Decree or order in favour- The primary characteristic of a decree-holder is the existence of a decree or executable order in their favour. This means that the decree or order must confer a right or impose an obligation that can be enforced through the execution process.

Not limited to parties to the lawsuit-The decree-holder need not be a party to the original suit. This aspect was emphasised in **Dhani Ram Gupta v Lala Shri Ram**, where the Supreme Court clarified that a decree-holder can be any person in whose favour a decree has been passed, irrespective of his participation in the original proceedings or not.

Legal right of execution-The decree-holder must be legally entitled to demand the execution of the decree. This right may arise from the terms of the decree or from the legal rights of the decree-holder determined by the court.

Judicial interpretation on decree holder

Dhani Ram Gupta vs Lala Shri Ram In this case, the Supreme Court highlighted that the term "decree-holder" is wide and includes any person in whose favour a decree has been passed. The court said- "So long as the person whose name appears on a decree is the person in whose favour the decree has been passed, such person should be presumed to be the decree holder." This decision emphasises that the name mentioned in the decree is important for the identification of the decree holder, but it is not necessary that the person is the plaintiff.

In the case of Ajudhia Prasad vs State of U.P., a Division Bench of the Allahabad High Court has laid down the scope of "decree holder".

Told in further detail-"It is now clear from this that the person in whose favour the executable order has been passed is also the decree holder.

It is also clear from this definition that the decree holder need not be a party to the suit. He can be "any person." This case highlights that a decree-holder can be any person who has the benefit of an executable order, and emphasises the wide applicability of the term.

(4) Judgment debtor. - Judgment debtor is defined in **section 2(10)** of the CrPC. Judgment-debtor means any person against whom a decree has been passed or an order executable has been made.

This definition does not include the legal representative of a deceased judgment debtor.

(5) Powers of the Appellate Court-(1) The Court may, by notification under **Section 107** of the Appellate Court, issue a notice in writing to the Court of Appeal under **section 107** of the said Act, to the effect that the Court may, by notification under **Section 107** of the said Act, effect a notice in writing to the Court of Appeal under section ... effect a notice in writing to the Court of Appeal Using your powers regarding the part.

(2) Making of cost orders.

(3) The order of the appellate Court shall be enforced in the same manner as the order of the court of first instance is done.

(4) Subject to **section 12 (3)** of the Regulations, or unless otherwise ordered, the Appellate Court shall not admit oral evidence or evidence which was not before the lower Court.

(5) At the hearing of an appeal, a party may not rely on any matter not included in his application unless the Appellate Court allows it.

B.A.LL.B.-8th Sem. Paper-IV Law and the Child

Question No. 1- Discuss the fundamental rights given to children under the Constitution of India.

Answer: Special provisions for children: Article 15 (3) provides that nothing in Article 15 shall prevent the State from making any provision for women and children. Clauses (3) and (4) are actually exceptions to the general rule given in clauses (1) and (2). Although clauses (1) and (2) prohibit discrimination on the basis of gender, yet according to clause (3) special arrangements for children will be possible. Due to clause (3), the arrangement of separate sitting or exit for women in buses, trains or public places cannot be said to be against the Constitution.

Section 497 of the Code of Criminal Procedure, 1898, forbade the release of any offender on bail, except children below sixteen years of age and women, if he was accused of an offence punishable with death. This section was declared unconstitutional in M. Choki vs Rajasthan and Dattatreya vs Mumbai.

In State of Andhra Pradesh v. Vijay Kumar, the Supreme Court held that Article 15(3) and Article 16 must be interpreted harmoniously. Article 16(2), which prohibits discrimination on the basis of sex, must be construed as subordinate to Article 15(3).

Free and compulsory education for children Article 21A-A new article 21A has been inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. Article 21A provides that the State shall provide free and compulsory education to every child of the age of 6 to 14 years in such manner as may be determined by law.

Before this amendment, the provision for free and compulsory education was in Article 45 which is in the chapter of Directive Principles. Article 45 provided that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they attain the age of fourteen years. This provision

Being in the chapter of Directive Principles of State Policy, it was not enforceable by the court, although in Unnikrishnan vs. Andhra Pradesh the Supreme Court considered it included in the right to live with human dignity under Article 21. The 86th Amendment included it in the chapter of Fundamental Rights by directly providing for it in Article 21A. There are two important differences in the provisions of Article 21A and 45: 1. There is no time limit in Article 21A, it is effective immediately. 2. The Fundamental Rights in Article 21 are available only to children between 6 years and 14 years. Now provision has been made in Article 45 for children below 6 years. Apart from this, by adding clause (V) in Article 51A, it has been made the fundamental duty of the parents or guardians to provide education to children between 6 years and 14 years.

Right against exploitation Articles 23 and 24-Articles 23 and 24 give all individuals, whether citizens or non-citizens, the right against exploitation. Article 23 prohibits traffic in human beings and forced labour. It has been declared a punishable offence. Article 24 prohibits the employment of children below the age of fourteen years in hazardous work in factories, mines etc. so that their health is not affected and their proper development is not hindered.

1. Prohibition of traffic in human beings and forced labour- Under the slavery system, human beings were bought and sold like any other property or domestic animals. Slavery was prevalent in some form or the other in most countries. Men were

bought and sold for labour and women for labour or prostitution. This type of situation was against the democratic system.

In this context the following were provided in Article 23 –

(i) Traffic in human beings and forced labour and other similar forms of labour are prohibited. And any violation of this provision shall be an offence punishable in accordance with law.

(ii) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such service the State shall not discriminate on grounds only of religion, race, caste or class or any of them.

In Bandhua Mukti Morcha vs Union of India, the Supreme Court said that it is the responsibility of the state to ensure that no one's fundamental rights are violated. This responsibility is especially towards those who are members of the weaker sections of society and who cannot fight a legal battle against the exploiting strong sections. In Neerja Chaudhary vs Madhya Pradesh, the Supreme Court even said that identifying and freeing bonded labourers is not enough, their proper rehabilitation is also necessary. Otherwise, due to poverty and helplessness, they will again become slaves.

2. Compulsory service by the state- Clause (2) of Article 23 provides that notwithstanding anything contained in this article, the State may make provision for compulsory service but in enforcing compulsory service the State shall not discriminate on the basis of religion, race, caste or class. It is not necessary that the State should pay for compulsory service.

3. Restrictions on employing underage children in factories etc. - Article 24 prohibits that no child below the age of fourteen years shall be employed in any factory or mine or for any hazardous work. The purpose of this article is to protect the health of children so that they are not employed in hazardous work due to economic pressure. Article 39 (D) contains the directive principle that the state shall conduct its policy in such a manner that it is ensured that the tender age of children is not misused and they are not forced by economic necessity to take up such jobs which are not in accordance with their age or strength. Article 39 (C) also directs that children should be given opportunities and facilities for healthy development in a free and dignified environment and children and young person's should be protected from exploitation. Article 45 also had a directive to provide free compulsory education to children till the age of fourteen years, but now the Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A after Article 21, in which it has been provided that the State Government will make arrangements for free and compulsory education for children between 6 and 14 years. Thus, in this form it has become a fundamental right. It has also been provided in Section 67 of the Factories Act, 1948 that no child below 14 years of age will be employed in any factory.

Question 2- Write an essay on the importance of United Nations Child Rights Act 1989.

Answer-United Nations Convention on the Rights of the Child, 1989- The "march of humanitarianism" regarding children culminated in the Convention on the Rights of the Child in 1989. India has given belated approval to the Convention which underlines -

1. Children are a special category of human rights claimants.

2 The standards of human rights in respect of children may vary from time to time, and are even higher than those in the case of adults.

3. The obligations arising from the human rights of the child affect not only the state or society but also the parents themselves are bound.

Definition of a child - The Convention specifies in Article 1 that all persons below 18 years of age shall be treated as children unless they have attained majority earlier under the specified laws of the member states applicable to children. The definition of 'child' may vary under various labour laws, juvenile justice acts and child education laws.

Scope and extent of child rights-Under this Act, the Convention has given the most comprehensive and farsighted recognition to the rights of the child. Although most of these rights can be placed in traditional groupings, they are divided into three groups (a) civil and political rights, (b) economic and cultural rights, and (c) social and cultural rights. The Convention has specified some new conceptual categories of rights such as the right not to be affected by narcotic drugs and psychotropic substances. Such an extension given to child rights makes the Convention an agenda that can be gradually achieved in the future.

Laws related to delinquent and neglected children- The Convention on the Rights of the Child 1989 specifically recognizes the rights of children labelled as delinquents or ex-delinquents. Article 40 specifically deals with delinquent children and provides for humane, decent and fair procedure for processing the cases of children who are alleged to have violated criminal laws. Article 37 prohibits certain inhuman punishments and arbitrary arrests, etc. Article 25 also stipulates that the care, protection and transaction services provided to children by the State should be reviewed from time to time. Articles 26 and 27 are of special importance for neglected adolescents whose social security and all-round development have been recognized as the responsibility of the State. The Juvenile Justice Act, 1986 lays down a comprehensive framework for providing care, protection, etc., to delinquent juveniles as well as neglected juveniles.

Question 3- What do you understand by the natural guardian of a Hindu minor? Discussion of the rights of the natural guardian do it.

Answer- Hindu Minority and Guardianship Act, 1956- In this Act minor means -

(a) “Minor” means a person who has not attained the age of eighteen years.

(b) Guardian means a person having the care of the person or property of a minor or both the person and property and includes—

(i) Natural guardians,

(ii) A guardian appointed by the will of the father or mother of the minor,

(ii) A guardian appointed or declared by the Court, and

(iv)Any person empowered to act in the capacity of a guardian by or under any enactment relating to any Court of Wards.

(c) “Natural guardian” means any of the guardians mentioned in section 6.

Natural guardians of a Hindu minor the natural guardians of a Hindu minor are the persons in respect of the person of the minor and also in respect of his property (except his undivided interest in the property of an undivided family). The following are-

(a) In the case of a boy or an unmarried girl, the father and thereafter the mother, but the minor has not attained the age of five years the custody of the child shall ordinarily be in the hands of the mother,

(b) In the case of an illegitimate boy or an illegitimate unmarried girl, the mother and thereafter the father,

(c) The husband in the case of a married girl, but any person

(a) He has ceased to be a Hindu, or
(b) He has completely and finally renounced the world by becoming a Vanaprastha or a Yati or a Sanyasi, then he shall not be entitled to act as the natural guardian of a minor under the provisions of this section. Explanation. In this section the expressions "father" and "mother" do not include a step father or a step mother.
Natural guardian of an adopted son - The natural guardianship of an adopted son who is a minor passes on adoption to the adoptive father and thereafter to the adoptive mother.

Powers of natural guardian

(1) Subject to the provisions of this section, the natural guardian of a Hindu minor has power to do all things which may be necessary or reasonable and proper for the benefit of the minor or for the acquisition, protection or benefit of the property of the minor, but the guardian cannot in any case bind the minor by any personal covenant.
(2) Without the previous permission of the Natural Guardian Court
(a) Shall not mortgage or charge or transfer by sale, gift or exchange or otherwise, any part of the immovable property of the minor, and
(b) Lease any part of such property for a period exceeding five years or for a period exceeding one year from the date on which the minor enters into adulthood.
(3) Any disposal of immovable property made by a natural guardian in contravention of sub-section (1) or sub-section (2) shall be voidable at the instance of the minor or of any person claiming under the right derived there from.
(4) No Court shall permit a natural guardian to do any of the acts mentioned in sub-section (2) except if it is necessary or for the welfare of the minor.
(5) In respect of obtaining the permission of the Court under sub-section (2), the Guardians and Wards Act, 1890, shall apply as if the application were an application for seeking the permission of the Court under section 29 of that Act, and in particular,-

The proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof, the Court shall follow the procedure and have the powers as specified in sub-sections (2), (3) and (4) of section 31 of that Act; and an appeal from an order of the Court refusing to permit the natural guardian to do any of the acts specified in sub-section (2) of this section shall lie to the Court to which appeals ordinarily lie from decisions of that Court.
(6) In this section “Court” means the City Civil Court or a District Court or a Court empowered under section 4A of the Guardians and Wards Act, 1890, within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such Court, means the Court within the local limits of whose jurisdiction any portion of such property is situate.

Welfare of the minor shall be of paramount importance. In appointing or declaring any person to be the guardian of a Hindu minor by the Court, the welfare of the minor shall be of paramount consideration.

Question 4- What protection is provided to a minor under the Indian Contract Act, 1872? Explain with the help of statutory provisions and decided cases.

Answer-Who is a minor - On the basis of the age determined for adulthood, a minor means a person who has not attained the age of majority, i.e. a minor means a person

who is not an adult. In this sense, a person below 18 years of age is a minor. If a person is being appointed as the guardian of the body or property of a minor, then for this purpose a person below 21 years of age is also a minor.

Nature of minor's agreement According to section 10, it is necessary that the party is capable for the contract and section 11 says that minors are not capable for the contract, only an adult can enter into a contract. But both these sections do not tell that if there is any agreement without a minor, then that agreement will be void or voidable. Since there is no clear provision in the Acts, the answer to this question is given by various judicial This can be given only by referring to the decisions. Till 1903, various High Courts of India had given contradictory decisions on this subject. This contradiction was resolved in 1903 by the Privy Council in a historic case called Mohari vs. Dhamdas Ghose and it was decided that the minor is not competent to enter into a contract. Therefore, the agreement made by the minor is void.

In this case, a minor named Dharmadas Ghosh took a loan of Rs. 20,000 at 12% interest from a moneylender of Calcutta, Brahmadatta (husband of Mohri Bibi), by mortgaging some of his houses on 20 July, 1895. The lender Brahmadatta immediately paid Rs. 10,500 in lieu of this loan. Brahmadatta also got Dharmadas Ghosh to write a declaration that he had become an adult on 17 June. On 10 September, 1895, minor Dharmadas Ghosh, under the guardianship of his mother, made her his next friend and filed a case in the court that when he had written the mortgage, he was necessary. Therefore, this contract should be declared void.

Defendant Brahmadatta said in his defence that Dharmadas was an adult at the time of writing the mortgage deed and he did not know that he was a minor. Even if he was a minor, the declaration written by him shows that he was an adult. He had made this written declaration to deceive the defendant. Therefore, the plaintiff (Dharmadasa Ghosh) is not entitled to any kind of relief. He should not be given any help and even if he is given, then Rs 10,500 should be returned to him (Brahmadasa). Both the lower courts of Calcutta (including the High Court) gave the decision in favour of Dharmadas. Brahmadatta appealed against this decision in the Privy Court. While the appeal was going on, Bhatt died, as a result his wife Mohri Bibi started the appeal proceedings. The Privy Council held that the agreement made with a minor was void, not voidable; hence, the agreement was not a contract; hence, the mortgage was void as the agreement was not enforceable by the courts and Dharmadas Ghosh was not bound to repay the loan amount that had been paid.

Another case of the Privy Council, Sarwan Jan vs Fakhruddin Mohd Chaudhary, is noteworthy. In this case, the guardian of a minor made an agreement to purchase some immovable property on behalf of the minor, but when the minor filed a suit to acquire that property, the Privy Council decided that even the guardian is not entitled to enter into a contract on behalf of the minor. Therefore, specific performance of such a contract cannot be done.

Question 5- What are the main features of the Juvenile Justice Act, 2000? Discuss.

Answer- Main Features of Juveniles Justice Act, 2000- The following are the main features of the Juvenile Justice Act 2000

1. Common Law Juvenile Justice- Before the Juvenile Justice Act, 2000, the Juvenile Justice Act, 1986 was in force. That legislation was not able to fully implement its

objectives. There was no law for international standards on child rights. This Act has been brought into effect to fulfil this objective.

2. Objective of the Act - The objective of the Act is stated in the preamble of the Act. The objective of the Act is to "amend and consolidate the law relating to juvenile delinquents for their ultimate rehabilitation through various institutions established under this Act in the best interest of children by making arrangements for proper care of those in need of care and protection, (their) protection and nurturing their developmental needs, adopting a child-friendly concept in treatment and adjudication and disposal of cases."

3. Definitions - Various terminologies have been defined in Section 2 of the Act. The Act clearly defines terms such as begging, child communication home in need of care and protection, probation officer, etc. The above definitions are completely helpful in explaining the provisions of the Act.

4. Competent Authority and Board- In chapter two of the Act, Juvenile Justice Board, communication home etc. have been mentioned to safeguard the rights of juveniles to achieve the objectives of the Act. Their rights and powers have been explained.

5. Social Protection of Juvenile - It has been specifically mentioned in this Act that the rights of juvenile should be socially protected. For this, provisions like Child Welfare Committee, Children's Home, Social Review have been provided in the Act.

6. Re-Habilitation- The Act lays down the procedure required for rehabilitation of juveniles. It also emphasizes on the usefulness of after care organisation.

7. Other Provisions: Many provisions have been mentioned in the Act in the context of international standards for juveniles.

Question 6- What are the objectives of the Child Labour (Prohibition and Regulation) Act, 1986? Has the Act been successful in fulfilling those objectives? Discuss.

Answer- Child Labour (Prohibition and Regulation) Act, 1986- There were many Acts prohibiting child labour below 14 or 15 years of age in certain specified employments. However, no procedure was specified in any law to decide in which employments, occupations or processes the employment of children should be prohibited. There was also no law to regulate the working conditions of children in most of such employments where they were prohibited from working under exploitative conditions. Therefore, an attempt has been made in this Act to fulfil the following objectives-

(1) It amends certain Acts to uniformly prohibit the employment of children below 14 years of age. Prior to this Act, the definition of a child in the various Acts prohibiting child labour was not uniform.

(2) The Act prohibits the employment of children below 14 years of age in specified occupations and processes. Section 3 provides that no child shall be employed or permitted to work in any of the occupations excluded in Part B of the Schedule or in any workshop in which any of the processes excluded in Part D of the Schedule is carried on except where the processing is carried on in any workshop by the occupational practitioner with the aid of his family or by a school established with or receiving aid or recognition from the Government. Part A of the Schedule enumerates occupations relating to the following-

1. Transportation of passengers, goods, mail by railways.
2. Cinder picking, clearing of ash pits or construction operations in railway premises.

3. Work at a Railway Station under Catering which involves the movement of any of its workers or vendors.
4. Work connected with the construction of a railway station or any other work where there is a crossing between or between railway lines any such work is carried out in close proximity.
5. Any port authority within the limits of a port part of the Schedule specifies the following processes:
1. Making bidis.
3. Manufacture of cement including cement bags.
2. Weaving a carpet.
4. Textile printing, dyeing and weaving.
5. Manufacture of matches, explosives and fireworks.
6. Cutting and breaking of mica.
7. Lacquer manufacturing.
8. Soap Manufacturing.
9. Cutting leather.
10. Cleaning wool.
11. Building and construction industry.

All the occupations and processes mentioned in the Schedule involve danger to life, limb or health. Though an attempt has been made to enumerate these occupations and processes, it cannot be said that there are no other hazardous occupations or processes.

In the case of Priyadarshini Jatu Workers vs. Food Corporation of India, it was held that where workers are being openly exploited, the court cannot close its eyes. In the case of M.C. Mehta vs. State of Tamil Nadu, directions were issued to the concerned states to eliminate child labour.

Question 7- Briefly explain the causes of juvenile delinquency and also tell what measures should be taken to solve this problem?

Answer - Reasons for juvenile crime- At present, juvenile crime has assumed the form of a worldwide problem. Despite various remedial efforts for the prevention of juvenile crime, the tendency of insolence, violence and violation of law among adolescents is increasing day by day. There has been an unprecedented increase in juvenile crime in the last few years. The main reasons for the increasing crime among adolescents are as follows -

1. Industrialization - As a result of industrial and economic development in India, villages and towns are being urbanized at a rapid pace, due to which many problems like family disintegration, housing, slums, overcrowding etc. have arisen.

2. Media- Some criminologists have also considered the mass media, cinema, television etc. as the cause of juvenile delinquency and have said that the pictures shown by these media have an impact on the tender minds and brains of teenagers and children Obscene or gruesome scenes have a bad impact and they tend to follow them in their real life and make them criminals. Similarly, obscene literature also has a bad impact on them.

3. Family disintegration - Due to industrialization and urbanization, joint families have rapidly disintegrated and family members have dispersed here and there for industry, job or business. This has had an adverse effect on children. In the present scientific age,

every person is so busy that he does not even get time to pay proper attention to his children.

4. Dysfunction in marital relations- In present times, the number of divorces and marital disputes has increased tremendously due to which family solidarity has been shattered. Due to the strong feeling of equality among women with men, the control of the head of the family is almost ending.

5. Biological and physical reasons- Another reason for misbehavior in adolescents can be their premature physical immaturity or slow development of intellect. Nowadays, girls attain puberty 3 or 4 years earlier than usual. Biological symptoms of puberty start appearing in girls from the age of about twelve or thirteen years, while mentally they do not have the ability to understand these changes properly. As a result, they become victims of sexuality for momentary pleasure without thinking, whose serious consequences they cannot even imagine.

6. Administration of helpless, destitute and abandoned children- Unclaimed children who are neglected and abandoned by their parents often start living in slums where they fall into the bad company of anti-social elements and end up in delinquency.

7. Poverty - There is no doubt that it is a possible cause of delinquency. Due to poverty of parents or family members, children are attracted towards illegal activities to satisfy their hunger which makes them delinquents.

8. Illiteracy, ignorance etc- Apart from the above-mentioned reasons, the tendency of delinquency is increasing among adolescents due to illiteracy, ignorance and child labour etc. Child labourers working in hotels, shops or factories due to their young age and ignorance do not understand where to spend their earned money. Hence they misuse it and fall into bad habits and become delinquents.

Measures to solve juvenile crime- The following are the measures to solve juvenile crime-

1. Support of the family - The family members should have full support towards the child so that the child can have all-round development and he can become a leader in the society by developing his talent in a positive way.

2. Keep an eye on the activities of the children - Parents should keep an eye on the activities of the children. Like when the child goes somewhere, who is his friend, etc. By paying attention to these things, parents can keep an eye on the activities of the children.

3. Teaching children what is right and what is wrong- Family members should keep teaching children what is right and what is wrong so that they can recognize the difference between good and bad in society and make their life easier.

4. solving the questions of children - Children are always curious by nature and this curiosity increases their knowledge. Children's questions should be answered appropriately and accurately so that they do not get confused. Juvenile crime can be solved by following the above facts. By freeing the society from juvenile crime, a new dimension can be given to the lives of children. So that they can increase the pride of their family, society as well as their country.

Question 8- Discuss the Directive Principles of State Policy which strive for the welfare of Indian children?

Answer- Directive Principles of State Policy - The following provisions have been made regarding the rights of children in Part IV of the Constitution, which specifies certain Directive Principles of State Policy

1. Article 39 provides that the State shall direct its policy towards the attainment of the following in particular-

(i) That the health and strength of workers, men and women and children of tender age should not be misused and citizens should not be forced by economic necessity to enter occupations unsuitable for their age or strength.

(ii) That children should be given opportunities and facilities to develop in a healthy manner and in freedom and in dignified conditions and childhood and youth should be protected from moral and physical abandonment.

In the case of M.C. Mehta v. State of Tamil Nadu, the problem of employment of children in match factories at Sivakasi in Kamaraj District of Tamil Nadu was considered by the Supreme Court in a petition through public interest litigation. A large number of children were employed at meagre wages. Citing Article 39 (c), the Supreme Court held that employment of children in match factories directly connected with the manufacturing process up to the final production of match sticks or fireworks should absolutely not be permitted.

(2) Article 41 provides that the State shall make effective provisions for securing the right to education within the limits of its economic capacity and development.

(3) Article 45 provides that the State shall, within a period of ten years from the commencement of the Constitution, endeavour to provide free and compulsory education for children until they attain the age of 14 years.

The Constitution makers had realized that a judicially enforceable right to education would not be practical. Hence, Article 41 allows the State to provide for a general right to education within the limits of economic capacity and development but provides for compulsory education up to the age of 14 years. The Constitution has only fixed a time limit of 10 years. However, years after the enactment of the Constitution, the country has failed to achieve that goal. The spirit of the constitutional provisions is that children should not be exposed to dangers and should not be employed till the age of 14 years because childhood is a formative period and it is necessary to provide them free and compulsory education as per the terms of Article 45. However, this directive principle could not be enforced because economic necessity compels the grown-up children to seek employment. Thus, the Supreme Court held in the case of M.C. Mehta vs. State of Tamil Nadu that children can be employed in the process of bundling, but this bundling should be done in an area away from the place of manufacture so that the risk of accident can be avoided.

The Court observed that the soft hands of children are better suited for the process of sorting and bundling manufactured products. The Justice held that considering their special adaptability, at least 60% of the minimum wage fixed for an adult employee in factories should be given to children for doing the same work. However, the Court clarified that its indication of minimum wages would not stand in the way of fixing a higher rate provided the State is satisfied that the higher rate is detrimental to development. The Court emphasized that special facilities for education, recreation and opportunities for socialization should be provided. School timings should be so scheduled that employment is not affected.

Though these provisions, unlike the Fundamental Rights, are not justifiable in a court of law, they have been declared by the Constitution as fundamental in the governance of the country. Hence, it is the duty of the State to make laws in accordance with the principles specified in Part I.

Question 9- What is juvenile crime (delinquency)? Can juvenile offenders be given the death penalty?

Answer- Meaning and definition of juvenile delinquency Word- Etymologically, delinquency which is called 'Delinquency' in English language is derived from Latin word delinquer which means, 'to disappear'. In Roman period this word was used for such persons who used to fail to do the work or duty assigned to them. William Coxson was the first person who used the word 'delinquent' in 1484 for those people who were found guilty of any conventional crime.

In simple words, delinquency means deviating from the standards of conduct generally accepted by society or engaging in conduct (misbehaviour) that is contrary to the accepted norms of society.

Criminologists have interpreted juvenile delinquency in different ways. Generally, delinquency refers to such behaviour of children and adolescents which is not considered good by the people of the society and for which, from the viewpoint of public interest, reprimand, warning, punishment or any corrective measure of the delinquent is considered necessary. Hence, the meaning of delinquency is very wide which includes contempt, hatred, rude or indecent behaviour of adolescents towards other persons and indifference towards society etc. Some other acts committed by adolescents and children such as begging, loitering, staying in bad company, obscenity, roaming around unnecessarily till late night, pick pocketing or stealing small things, drug addiction, gambling etc. also come under 'delinquency' which the wayward people of the society are often seen doing.

It is clear from the above definition of 'delinquency' that it is different from criminality. Crime is an act which is punishable under the penal law, whereas 'delinquency' is an act which the society does not consider good but it is not necessary that there is a provision of punishment for it in the law. Therefore, it can be said that delinquency is the precursor to criminality which can further convert the delinquent into a criminal. Delinquency is a term which is associated with children or adolescents, that is, if the same act is committed by an adult person, be it a man or a woman, then the society do not take it seriously, but if it is committed by adolescents, the society expresses its anger or displeasure. Therefore, it is clear that delinquency includes many such acts which are of non-criminal nature and are pardonable if committed by adults.

Regarding the definition of juvenile delinquency, Cohen has said that delinquency refers to the conduct in question which is related to a set of rules. Due to differences in the social rules of different communities, these vary according to country, time and circumstances. Hence, there is a lack of certainty in the definition of delinquency.

According to Ruth Shonie Cavan, despite the legal definition, a child is also called a delinquent who causes harm or pain to others by his anti-social behavior or whose family members find it difficult to control him because he becomes a cause of serious concern and problem for the society.

Whether the criminal is a juvenile or not will be decided on the basis of the day (date) of the crime - The Constitutional Bench of five judges of the Supreme Court, by a majority of 41, reversed its decision given in Arnit Das vs. State of Bihar on 2-2-2005 and decided that if the age of the person is less than 18 years on the day of committing the crime, then he will be considered a juvenile under the Juvenile Justice Act, 2000 and not from the day of first appearance for investigation or trial before the Juvenile Welfare Board, i.e. if the age of the boy or girl is less than 18 years on the date of committing the crime, then the proceedings will be conducted under the Juvenile Justice (Care and Protection of Children) Act, 2000. Even if his age has exceeded 18 years on the day he is presented before the Juvenile Justice Board for the first time.

Generally, the amount of punishment and its determination depend on the gravity of the crime and the possible danger to society due to it. The criminal is given more or less punishment according to his criminal tendency. The criminal is ready to pay the price of the happiness or benefit resulting from the crime in the form of the threat of punishment. If the pain of punishment is more painful (costly) than the happiness from the crime, then he will be afraid of committing the crime. The same attitude of the criminal applies to death penalty as well.

An objective analysis of criminal jurisprudence shows that death penalty is appropriate only for the most serious crimes like murder or rape which are likely to cause serious problems for the society. Experience has proved that even if reformative methods are given priority in the penal system, it is necessary from the penal point of view to retain the death penalty in rare cases so that the existence of unwanted and dangerous criminals for the society can be eliminated. The same approach has been adopted towards death penalty in Indian penal policy also therefore, a juvenile offender cannot be given death penalty.

Question 10- "The functioning of juvenile courts is not satisfactory." Comment on this statement.

Answer- Juvenile Justice System in India- In India also, delinquency in the context of juvenile has the same meaning as 'crime' in the case of adult criminal. Hence, there is no difference in the subject matter of 'crime' and 'crime'. The only difference between these two is that the trial of crime committed by an adult takes place in a normal criminal court, whereas the delinquency committed by a juvenile is resolved by the Juvenile Justice Board by adopting an informal procedure.

Special provisions have been made regarding the process of trial of juvenile delinquents which have been mentioned in Section 360 and 27 of the Criminal Procedure Code, 1973. Apart from this, there are provisions regarding criminal responsibility of children in Section 82 and 83 of the Indian Penal Code. It is clear from these provisions that a liberal policy has been adopted towards children even under the penal law. Apart from these, other statutory laws have been enacted to adopt a therapeutic method towards juvenile delinquents.

The laws relating to the criminal treatment of juvenile and young delinquents are mainly contained in two central Acts which are (1) Juvenile Justice (Care and Protection of Children) Act, 2000 and (2) Probation of Offenders Act, 1958. Under the Probation Act, an attempt is made to reform juvenile offenders by keeping them on probation. The basic principle contained in both these laws is that juveniles are naturally playful and mischievous; hence they should be treated with tolerance and generosity. Apart from

this, the state of mind of a juvenile delinquent at the time of committing a crime is not the same as that of a normal criminal. Hence, it is not appropriate to consider and punish both of them equally.

Review of the functioning of the Juvenile Justice Board: The trial of a juvenile delinquent takes place in a specially constituted Juvenile Justice Board so that the juvenile is protected from the rigours of the normal criminal law and at the same time the informal procedure adopted for this purpose cannot be challenged under Articles 16 and 21 of the Constitution on the ground of unfair discrimination.

It is justified to adopt a special informal procedure for the trial of juvenile offenders because if they had to go through the judicial process of arrest, prosecution, defence, burden of proof, conviction etc., the very purpose of juvenile justice would have failed. Under the normal judicial process of criminal law, the juvenile offender or the juvenile in conflict with law would have first been arrested and taken into custody by the police and then presented before the judicial magistrate for trial and sent to prison after conviction. In this way, the delinquent juvenile's contact with the police and adult criminals in prison would have been more likely to turn into a dangerous habitual criminal. In addition, since he had once lived in the company of bad criminals in the polluted environment of prison, it was futile to hope for his reformation later by keeping him in a reformatory home. Some criminologists believe that the present juvenile justice system is also not satisfactory because even now the police and the magistrate are not able to intervene in the trial of a juvenile offender The judicial magistrate plays an important role. According to him, the trial of juveniles should be conducted completely from beginning to end by some civil or reformatory institutions or volunteers. But keeping in mind the prevalence of juvenile delinquency, it is not appropriate to agree with this idea from a practical point of view and it would be inappropriate from a judicial point of view as well.

The Supreme Court of India held in the case of Rohtas vs. State of Haryana that even in the case of a crime punishable with death penalty or life imprisonment, the juvenile should be tried in the juvenile court and not in the sessions court. In this case, the argument was presented that according to the provisions of the Juvenile Act, 1960 and the Code of Criminal Procedure, 1973, if a juvenile has committed a crime which is punishable with death penalty or life imprisonment, then his trial should be done by the sessions court only. In the present case, the juvenile was accused of a crime punishable with life imprisonment. The Supreme Court, being lenient towards the juvenile offender, decided that the juvenile should be tried only under the Haryana Juvenile Act, 1974.

The above decision was again confirmed by the Supreme Court in the case of Sheela Barse vs Union of India. The court gave clear instructions that despite the statutory provisions in this regard, juvenile offenders should not be kept in jail and they should be kept in juvenile home or any other reform institution by giving them the benefit of juvenile justice.

Question 11- What do you understand by maternity benefit? What rights have been provided in relation to maternity benefit under the Maternity Benefit Act, 1961?

Answer- Maternity Benefit- Maternity Benefit Act, 1961 has been made with the objective of providing social justice to women workers. In interpreting the provisions of this Act, the court should follow the liberal rule so that not only the women workers can

be maintained, but they can also regain their weakened strength, raise their children and maintain their previous working capacity.

Employment of woman or employment of woman during prohibited period in certain establishments.- This section prohibits an employer from employing any woman, who is known to him, in any establishment for a period of six weeks from the day of her conception or abortion.

According to the provision of section 6, without prejudice to the provisions of section 6, no woman, even if she herself requests, shall be engaged in the following works from one month before the expected day of her delivery and the day of commencement of the said six weeks and also she shall not be engaged on these works during the period of six weeks in which the benefit of leave of absence to the pregnant woman has been given under section 6-

(1) Any work of arduous nature,

(2) Any work which requires standing for many hours.

(3) Any work which in any way affects her pregnancy or prevents the normal development of the foetus or is likely to cause abortion or otherwise adversely affects her health. Payment of Maternity Benefit (1) every woman shall be entitled to maternity benefit. Her employer shall be bound to pay this benefit to her. This benefit shall be paid to a woman worker an amount equal to her average wage for a period of six weeks immediately following the date of confinement.

The period for which she has kept herself absent for maternity benefit shall be counted at the rate of one rupee per day, but whichever is higher of the two shall be deemed to be payable to her. Hence the qualifying period of 160 days shall not be necessary as a pre-requisite for claiming maternity benefit.

Continuation of payment of maternity benefit in certain cases.-Every woman who is entitled to maternity benefit under this Act shall continue to be entitled to such benefit notwithstanding the operation of the Employees' State Insurance Act, 1948, in the factories or other establishments in which she is employed, until she becomes eligible for maternity benefit under section 50.

In the case of Ram Bahadur Thakur vs Chief Inspector of Plantation, a female worker had worked for 157 full days and 4 half days in a year, so the courts clarified that it would be calculated as 161 days. That is, 4 half days will be added to make 4 full days.

Payment of maternity benefit in certain cases such woman-

(i) Who is employed in any factory or other establishment to which the provisions of the Employees' State Insurance Act, 1948 apply.

(ii) Whose one month's wages (excluding remuneration for over-time work) exceeds the amount covered under section 2 of this Act, exceeds the amount specified in sub-section (b) of section 9, and

(iii) Which fulfils the conditions specified in sub-section (2) of section 5.

Under this Act, the woman shall be entitled to receive maternity benefits.

Claim of maternity benefit and notice of payment thereof- Any woman who is employed in an establishment and is entitled to receive maternity benefit under this Act may give a notice in the prescribed form to her employer.

The notice must state that the amount of maternity benefit or any other amount payable under this Act should be paid to her or to the person she names in the notice.

In the case of a pregnant woman, the notice shall mention the date from which the woman worker will be absent from her work for maternity benefit.

Payment of maternity benefit in case of death of woman- If a woman entitled to maternity benefit or any other sum payable under this Act dies before receiving such maternity benefit or sum, or where an employer is liable to pay maternity benefit under the proviso to section 5(3) of this Act, such employer shall pay such benefit or sum to such person as may be specified by the woman under section 6. Provided that if the woman does not nominate any such person, the maternity benefit or any other benefit shall be paid to her legal representative.

Dismissal in case of absence of woman or pregnancy. If a woman is absent from work under the provisions of this Act, it shall be unlawful for the employer to dismiss her from work on account of such absence or to give her notice of her removal or dismissal to the employer unless the period of such notice is comprised in the period of such absence or in the event of her being absent from work, or

Deduction in wages- From the normal and daily wages of any woman who is entitled to maternity benefit only the following deductions shall be made cannot be done due to the reasons-

(a) By reason of the nature of the functions assigned to it under section 4(3) of this Act,
(b) Due to the period of rest provided in section 11.

Appointment of Inspectors.-The appropriate Government may, by publication in the Official Gazette, appoint such Inspectors as it may deem fit and also determine the limits of the jurisdiction within which they are to function under this Act.

Powers of Inspector and Maternity Benefit- Under Section 16, it is provided that the inspector will be a public servant. Powers of the inspector are described under Section 17. Employed women have also been given the facility of diversion of maternity benefit.

Exemption of actions done in good faith: According to section 24, no suit, prosecution or any legal proceeding shall be instituted against any person in respect of anything which is done by him in good faith in furtherance of the provisions of this Act or of any rule made there under.

Power of Central Government to issue directions: Section 25 states that the Central Government may issue such directions to the State Government as it may deem fit for carrying out the provisions of this Act and the State Government will have to comply with those instructions.

It is clear from the above provision that comprehensive and concrete rules have been made regarding maternity benefit. If these are implemented properly, employed women can get a lot of benefits.

Question 12- What are the valid eligibility criteria for Hindu adoption under the Hindu Adoption and Maintenance Act, 1956? Explain.

Answer- Meaning of adoption- Adoption means adopting someone else's child as your own child, i.e. a childless person becomes a father. According to Manu, "A son is called an adopted son who is given by the parents to a childless person who belongs to the same caste and is given with affection by sprinkling water on him."

Who can adopt-Ancient law - A childless adult of sound mind could only adopt a son. A wife did not have the right to adopt during the lifetime of her husband. A wife could adopt with the permission of her husband and on behalf of the husband. Women had no

right to adopt independently, as Vashishtha states that no woman could adopt or give away a son without the consent of her husband.

Present law: Section 6 of the Hindu Adoption and Maintenance Act, 1956 mentions four essential conditions which if not complied with, make the adoption void. These are as follows:

(i) Capacity to adopt (Sections 7 and 8) - The person adopting a child must have the legal capacity and right to do so.

(ii) Capacity of the person to be adopted (Section 10) - The person giving his child for adoption must be capable of doing so.

(iii) Capacity of the adoptive parent (Section 9) – The person being taken in adoption must be capable of being adopted.

(iv) Conformity to conditions mentioned in Section 11 (Section 11) - Adoption requires the fulfilment of the conditions mentioned in Section 11.

The Supreme Court in the case of Pentakota Satyanarayana and others vs. Pentakota Sidharatnam refused to accept the adoption as valid and legal where neither the date of adoption was mentioned in the plaint nor the adoption deed was executed.

Capacity of the adopter (Section 7 and 8)- This is for the male or female adoptive parent.

It is necessary that the person has the legal capacity to adopt and he should have the right to adopt. For this he should be an adult and of sound mind.

Consent of wife: If the wife is alive, the consent of the wife is mandatory for the husband to adopt.

But under the following circumstances a person can adopt without the consent of his wife-

(i) On the final retirement of the wife from the world, or

(ii) The wife ceases to be a Hindu, or

(ii) Upon the wife being declared of unsound mind by a court of competent jurisdiction.

Apart from the above circumstances, the consent of the wife is mandatory for adoption, as the Madhya Pradesh High Court has held in the case of Bholu Ram vs Ramlal that the consent of the wife is mandatory in adoption even if the wife is living somewhere else or has gone somewhere or is leading a highly immoral life. In the case of Prafulla Kumar vs Shashi Bewa, it has been held that the consent of the wife will be presumed where the wife has participated in the adoption ceremony along with the husband.

Power of women to adopt (Section 8)- Before the enactment of the Act, a widow could adopt only if her deceased husband had authorised her for adoption. The present Act gives the right of adoption to widows and unmarried women. A widow can adopt without the authority of her husband. But a married woman does not have the right of adoption under normal circumstances. Section 8 gives the right of adoption to a woman in the following circumstances, when she

(1) Be an adult,

(2) Be of sound mind,

(3) Unmarried, or if married, then the husband

(i) Has died, or

(ii) Has ceased to be a Hindu,

(iii) Has been divorced, or
(iv) Has finally renounced the world or has become a Sanyasi, or
(v) Has been declared to be of unsound mind by a court of competent jurisdiction.
Ability to give a child in adoption (Section 9)- In ancient law, the husband had the complete right to give a son in adoption. Generally, the husband used to do this with the consent of the wife, but it was not mandatory for the husband to take the consent of the wife.
The present law - Section 9 mentions the persons who are competent to give a child in adoption-
(i) The mother, father and guardian only,
(ii) The father has the right to give the gift with the consent of the mother if the father is alive,
(iii) The right to be given to the mother if the father is not alive,
(iv) Guardianship rights with the full permission of the court, where both the parents are dead.
Who can be taken in adoption (Section 10) Present law (Section 10)- Section 10 of the Act provides for adoption makes provision for the qualifications required for the person to be appointed.
According to section 10 a person shall be eligible for adoption if-
(i) Is a Hindu (son or daughter),
(ii) Has not been a previous adopter, that is, he has never been adopted before,
(iii) Is unmarried or unmarried,
(iv) Is below 15 years of age.
Other conditions for a valid adoption (Section 11)- The following are the essential conditions for a valid adoption
(i) Where the adoption is of a son, any Hindu son, grandson or great-grandson (whether by legitimate blood or should not be alive, (Section 11(1),
(ii) Where the adoption is of a daughter, the adoptive father should not have any Hindu daughter, granddaughter or great-granddaughter (whether by religious blood relationship or by adoption) living, but if the wife is pregnant, the adoption can take place.
(iii) Where the adoption is of a girl by a man, there must be a minimum age difference of 21 years between the adoptive father and the adopted daughter.
(iv) When the adoption is of a girl by a woman, the difference in the age of the adoptive woman and the girl should be 21 years,
(v) The boy or girl has been given in adoption by the natural father and has been accepted by the adoptive father,
(vi) The same child cannot be taken by 2 or more persons simultaneously.

Hanumant Laxman Saluke (deceased) Law Representative has held in the case of A. Shri Rang Narayan Kanse that the provision mentioned in section 11 (iv) that at the time of adoption there should be a minimum age difference of 21 years between the adoptive mother and the son to be adopted is mandatory in nature. In this case the difference between the age of the adoptive mother and the boy being adopted was less than 21 years. The court considered this breach fatal to the adoption.

Question 13- Explain the main reasons for the increase in child sexual crimes in India.

Answer- Main reasons for the increase in child sex crimes in India- At present, child sex crime has assumed the form of a global problem. Despite various remedial efforts for the prevention of child sex crime, the tendency of insolence, violence and violation of law among children seems to be increasing day by day. The main reasons for child sex crimes are as follows-

1. Family disintegration - Due to industrialization and urbanization, joint families have rapidly disintegrated and family members have dispersed here and there for the sake of industry, job or business. This has had an adverse effect on children. In the current scientific age, every person is so busy in the hustle and bustle of life that he does not even get time to pay proper attention to his children. As a result, children feel neglected and in the absence of the desired love and protection of parents, they start getting attracted towards delinquency.

2. Dysfunction in marital relations- In present times, the number of divorces and marital disputes has increased a lot due to which family solidarity has been shattered. Due to the feeling of equality with men becoming strong among women, the control of the head of the family is almost ending. The discriminatory behavior of parents towards their children has a deep impact on their mentality and they start considering themselves neglected. These neglected children often go astray due to not being able to control themselves, which creates a favorable environment for delinquency. Sometimes, seeing the quarrels, misbehavior, beating, abuse etc. between husband and wife, innocent children get confused, and are unable to understand which of their parents they should support. This situation also creates a favorable environment for delinquency.

3. Modern fashion- Nowadays, there is a competition among the youth to run after fashion. Western culture has a great influence on the Indian youth civilization has had such a deep impact that they are forgetting their original Indian civilization and culture. The way of eating, drinking, sitting, dressing, grooming etc. of today's youth has changed so much that a situation of cultural conflict has arisen and it has become difficult for children to decide which behavior is right and which is wrong. Movies, television, radio, discos, cabarets etc. have completely changed the Indian civilization.

The minds of children and adolescents have been distorted and the tendency of children and adolescents is moving towards violence, killing, drug addiction, sexuality etc. Most of the films of today are crime-oriented or lust-oriented, which pollute the mentality of children, which later becomes the reason for making them delinquents.

4. Physical changes- Another reason for delinquent behavior in adolescents can be their premature physical immaturity or slow development of intellect. Nowadays, girls reach puberty 3 or 4 years earlier than usual. The biological symptoms of puberty start appearing in girls from the age of about twelve or thirteen years, while mentally they do not have the ability to understand these changes properly. As a result, they become victims of sexuality for momentary pleasure without thinking, about the serious consequences of which they cannot even imagine. Therefore, it is necessary that parents, especially mothers, should make their daughters well aware of the ill effects of illicit sexuality in time so that they remain alert.

5. Media- Some criminologists have also considered mass media, cinema, television, etc. as the cause of delinquency and said that the photographs, obscene or gruesome scenes shown by these media have a bad effect on the tender minds and brains of teenagers and children and they are inclined towards following them in their real life and become criminals. Similarly, obscene literature also has a bad effect on them. Therefore, restrictive action should be taken against such unwanted films, serials, and books so that the young generation can be saved from their bad effects. This problem has assumed an even more serious form due to the existence of internet cafes.

6. Pornographic literature- Nowadays, pornographic magazines in the society have a negative impact on the tender minds of children. Due to this, they are attracted towards petty crimes. They put their precious lives in danger for momentary pleasure.

7. Poverty- Poverty is a possible cause of delinquency. Due to poverty of parents or family members, children are attracted towards illegal activities to satisfy their hunger, which makes them delinquents. Sometimes parents themselves indirectly encourage children to commit crime due to their selfishness naturally Because of the support of their parents; these children are unable to understand that whatever they are doing is a delinquent or illegal act, which is not considered good by the society. In this way, they unknowingly develop the habit of delinquency.

8. Illiteracy, ignorance etc.- Apart from the above reasons, the tendency of delinquency is increasing among adolescents due to illiteracy, ignorance and child labour (Bipasak Sanivanat) etc. Child labourers working in hotels, shops or factories do not understand where to spend their earned money due to their young age and ignorance. Hence, they misuse it and fall into bad habits and become delinquents. Although child labour is prohibited by law, but in practice this evil practice still exists today.

Question 14 - Can a minor be admitted into partnership? If yes, what will be his rights and liabilities during his minority and after attaining majority? Discuss.

Answer-Inclusion of minor in the benefits of partnership Section 30 (1), (Minors Admitted to the Benefits of Partnership) A minor cannot be a partner in a firm but he can be included in the benefits of partnership if all the partners of the firm give their consent. In the partnership agreement, the partners can either make such an agreement that the partnership will not end on the death of any partner but the minor heir of the deceased partner will be included in the benefits of partnership or after the death of the partner, all the partners can give such consent. But in no case can the partners make such an agreement which makes a minor a partner. In the case of Income Tax Commissioner A. Shah, in the partnership deed of a firm, the partners had agreed among themselves that on the death of any partner, even if the heir of the deceased partner is a minor, he will become a partner of the firm in place of the deceased. The Supreme Court held that a partnership deed is void (vacancies) to the extent that it tries to make a minor a full-fledged partner. In the case of Dharamvir A. Jagannath of Punjab it has been held that even if a minor is made a partner in a partnership agreement, the minor does not get the status of a partner. The Supreme Court held in the case of Commissioner of Income Tax vs. Dwarika Das Khaitan & Co. that a minor cannot be a partner in a firm.

Rights and liabilities of a minor joining for benefits- When a minor joins a firm for the benefits of the firm, the following rights and liabilities arise for him-

(1) Right to inspect profits and accounts and bar to sue Sections 30 (2) and 30 (4). **-** A minor is entitled to such share in the property and profits of the firm as has been agreed upon by the partners among themselves. Apart from this, he can see, inspect and get a copy of the accounts of the firm. But a minor cannot sue for the accounts or for payment of his share in the property or profits of the firm. This bar continues to operate so long as he continues to be in the firm i.e., he can sue for profits and accounts even after severing connection with the firm. A minor can inspect the accounts of the firm but cannot inspect the confidential accounts.

(2) Minor not personally liable for debts and liabilities Section 30(3): A minor has no personal liability for the debts and liabilities of the firm; only his share is liable for the debts of the firm. For example, if a partner of a firm is liable for a debt of Rs 10,000 and a minor is also liable to the same extent, but the value of the property and profits of the minor's share in the firm is Rs 5,000, then the minor's property in the firm worth Rs 5,000 will be taken for the debts of the firm, but the minor will not be liable for the Rs 5,000 remaining outstanding.

(3) Right to elect under Section 30(5), a minor, on attaining majority, has the right to choose whether he will become a partner in the firm or not within six months from the date of his attaining majority. The period of six months is counted from the day on which he attains majority or the day on which he is informed that he has been admitted into the firm for the benefits of partnership, whichever is later. The burden of proving that he was informed lies on the minor. He has to give a public notice within six months to declare whether he will become a partner in the firm or not. If the minor does not give such notice, he shall automatically become a partner in the firm after six months.

In the case of Shiva Gowda A. Chandrakant, Neel Kant Sadalage decided by the Supreme Court, two partners were running a firm. After some time, they included a minor X in the firm for the benefit of partnership. The appellant owed Rs 1,72,000 to the firm. In the meantime, the firm was dissolved. After the dissolution of the firm, the minor X became an adult but he did not exercise the option of not becoming a partner. The appellant demanded that X and the two partners be declared insolvent. It was held that X was not liable because the firm was dissolved before X became an adult and after the dissolution of the firm, it is not necessary to give notice of becoming or not becoming a partner.

Rights and liabilities when a minor decides not to become a partner of a firm Section 30(8)(a)(b)(c),

(i) His rights and liabilities shall, as of the date of the public notice given by him, be the same as they were when he became a minority.

(ii) His share shall not be liable for any act of the firm after the date of the notice.

(iii) Shall be entitled to sue other partners for his share in the property and profits.

Question 15- Describe the objective and features of passing the Juvenile Justice (Care and Protection of Children Act, 2000).

Answer- The Juvenile Justice (Care and Protection of Children) Act, 2000 came into force on 30.12.2000. The purpose of this Act is to consolidate and amend the law relating to juvenile offenders in conflict with law and children in need of care and protection, to provide for proper care, protection and treatment while meeting their developmental needs and to adopt a child-friendly approach in the best interest of the

child in adjudicating and disposing of related matters and for their ultimate rehabilitation through various institutions established under this Act.

Again, the provisions of Article 15, including clause (a) of Article 39, clause (d) and clause (g) of Article 39, Articles 45 and 47 impose primary responsibility on the State to ensure that all the needs of the children are met and one of the main objectives of this Act is to ensure full protection of their basic human rights. Also, the Convention on the Rights of the Child has been adopted by the General Assembly of the United Nations on 20-11-1989 and the Convention on the Rights of the Child has prescribed certain norms which have to be followed by all the States Parties to achieve the best interests of the child and the Convention on the Rights of the Child has emphasized on reintegrating the victimized children into society to the extent possible without resorting to judicial proceedings.

Main Features of The Juvenile Justice Act, 2000 - Following are the main features of the Juvenile Justice Act, 2000

1. Common Law on Juvenile Justice - Before the Juvenile Justice Act, 2000, the Juvenile Justice Act, 1986 was in force. That legislation was not able to fully implement its objectives. There was no law for international standards on child rights. This Act has been brought into effect to fulfil this objective.

2. Objective of the Act- The objective of the Act is stated in the preamble of the Act. Objective of the Act:- "To amend and consolidate the law relating to juvenile delinquents for their ultimate rehabilitation through various institutions established under this Act in the best interest of children by making arrangements for proper care of children in need of care and protection, (their) protection and treatment by nurturing their developmental needs, and adopting child-friendly concept in adjudication and disposal of cases."

3. Definitions - Various terminologies have been defined in Section-2 of the Act. The Act clearly defines terms such as begging, child in need of care and protection, communication home, probation officer, etc. The above definitions are completely helpful in explaining the provisions of the Act.

4. Competent Authority and Board- In chapter two of the Act, Juvenile Justice Board, communication home etc. have been mentioned to protect the rights of juveniles to achieve the objectives of the Act. Their rights and powers have been explained in this chapter itself.

5. Social Protection of Juvenile- It has been specifically mentioned in this Act that provisions like Children's Home, Social Review have been made to protect the rights of juvenile.

6. Rehabilitation- In chapter four of the Act, the process required for rehabilitation of juvenile has been mentioned; along with this the usefulness of after care organization has also been emphasized.

7. Other Provisions - Many provisions have been mentioned in the Act in the context of international standards for juveniles.

Question 16- Discuss the formation, functions and powers of the Juvenile Justice Board.

Answer- Constitution of Juvenile Justice Board- Provisions regarding the constitution of Juvenile Justice Board have been mentioned in Section 4 of the Act. According to the provisions of Section 4-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, by notification in the Official Gazette, constitute one or more Juvenile Justice Boards for a district or group of districts as specified in that notification to exercise the powers and perform the duties conferred or imposed on such Board under this Act in relation to juveniles in conflict with law.

(2) The Board shall consist of a Bench consisting of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two Social Justice Ministers, at least one of whom shall be a woman, and every such Bench shall be vested with the powers conferred on a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, by the Code of Criminal Procedure, 1973, and the Magistrate appointed to the Board shall be designated as the Chief Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be nominated as a member of the Board unless he has been engaged for a period of not less than seven years in health, education or welfare activities relating to children.

(4) The term of office of such members of the Board and the manner in which such members may resign shall be such as may be prescribed.

(5) The State Government may, after an inquiry, terminate the appointment of any member of the Board if-

(i) He is found guilty of abusing any power vested in him under this Act.

(ii) He has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted a full pardon in respect of such offence.

(iii) Fails to attend the proceedings of the Board for three consecutive months without any valid reason or fails to attend less than three-fourths of the meetings held in a year.

Procedure in relation to Board- Provisions have been made in Section-5 regarding how the Board will conduct its proceedings. According to Section-5-

(1) The Board shall meet at such times, and it shall transact the business at its meetings shall communicate such rules of procedure in the matter as may be prescribed.

(2) When the Board is not in session, any child engaged in unlawful activities may be produced before any one member of the Board.

(3) The Board may act even in the absence of any member of the Board, and no order made by the Board shall be invalid merely by reason of the absence of any member at any stage of the proceedings. Provided that at the time of final disposal of the case at least two members including the Chief Magistrate shall be present.

(4) In the case of any interim or final disposal, in the event of any difference of opinion amongst the members of the Board, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Chief Magistrate shall prevail.

Functions and powers of the Juvenile Justice Board – According to Section 6, the Juvenile Justice Board has the following work will be done-

(1) Where a Board has been constituted for a district or group of districts, then, notwithstanding anything contained in any law for the time being in force, but save as otherwise expressly provided in this Act, such Board shall have power to deal

exclusively in respect of all proceedings under this Act relating to juveniles involved in anti-law activities.
(2) The powers conferred on the Board by or under this Act may also be exercisable by the High Court and the Court of Session where any proceedings come before them otherwise than on appeal or revision.

In the case of Sant Das v State of Uttar Pradesh 2003 (1) AIR 92 (Alld) a Juvenile Justice Board was not constituted. All the powers of the Board were given to the Sessions Court. There the application for declaring the accused as a juvenile and for his bail was presented in the Sessions Court. The High Court held that such an application cannot be made directly to the Sessions Court but it should have been presented before the Magistrate. According to Section-14- "Where a juvenile accused of an offence is produced before the Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may make such order in respect of the juvenile as it may deem fit." Provided that an inquiry under this section should be completed within four months from the date of its commencement unless it is extended by the Board after recording the reasons in writing for its extension having regard to the circumstances of the case and in special circumstances.

Section 15 mentions those investigations in respect of which the Board can pass appropriate orders and Section 16 mentions those orders in respect of which the Board has no powers.

Question 17- What are the characteristics of the procedure of the Juvenile Court? Review.

Answer- Juvenile courts play an important role in the administration of justice related to juvenile delinquents. The duties of these courts are of a different nature from other normal criminal courts. They work on the assumption that they are the guardians of the juvenile delinquent, so the decision taken by them should be in the interest of the juvenile. This is the reason why the functioning and procedure of the juvenile court is completely different from the procedure of normal criminal courts. The procedure of the juvenile court has the following characteristics-

(1) Informal hearing - The process of hearing in the juvenile court is relatively simple and informal. In this, instead of trying the delinquent on the basis of legal principles of evidence as usual, the judge, probation officer, delinquent, his parents or guardian, social worker, all sit together in a group and consider the crime of the delinquent and its reasons. In this, the report of the probation officer is very important. Although this report is confidential in nature, its essence is still communicated to the juvenile and his parents or guardian so that they can present any evidence relevant to the matter stated in the report.

(2) Secret hearing- The proceedings of the juvenile court are confidential in nature, that is, apart from the competent officers of the court, only the delinquent, his parents or guardians and the police officers related to the proceedings are involved in it. The lawyer can be allowed to participate in the proceedings only with the special permission of the court. If the court deems it necessary, it can order any person to go out of the court during the interrogation of the delinquent. Printing of the identity or photograph of the juvenile is prohibited unless it is in the interest of the juvenile delinquent.

(3) Judge of Juvenile Court- Section 6 (3) of the Juvenile Justice Act, 1986 clearly states that no person shall be appointed as Magistrate of a Juvenile Court unless he, in the opinion of the State Government, has special expertise in child psychology and child welfare. According to this Act, out of the two honorary social workers of the Juvenile Court, at least one shall be a woman and both these honorary members should have the prescribed qualifications. They will assist the competent authority (Magistrate) in taking decisions regarding the juvenile.

(4) Protection from legal consequences and stigma of conviction- The main objective of establishing juvenile courts is to reform the delinquents and to ensure that the legal consequences of their criminal acts do not have an adverse effect on their future life and their character is not tarnished. This is the reason why juvenile delinquents are called delinquents and not criminals. Similarly, when he is found guilty, instead of giving him punishment, an order is passed on conviction so that he can avoid the stigma of being called a criminal prisoner. According to Section 25 of the Juvenile Justice Act, even if a juvenile is found guilty of a crime by the Juvenile Court, he will not be subject to any such disqualification in future life, which is associated with the conviction of a criminal under the law.

(5) Limited Appeal - In the procedure of normal criminal courts, there is usually provision for two appeals against the conviction or acquittal of the offenders. But in the procedure of juvenile court, the right of appeal has been kept extremely limited so that the juvenile has to remain under the judicial process for a minimum time. There can be no appeal against the juvenile court finding the juvenile innocent or if the juvenile welfare board finds that the juvenile is not neglected, that is, the decision of the juvenile court or the board, as the case may be, will be final. But an appeal can be made to the Sessions Court against the juvenile's conviction or being declared 'neglected' by the board, whose decision will be final.

(6) Separated from Prison- Even if the juvenile delinquent is convicted, he is not sent to prison but is ordered to be kept in a juvenile home. The purpose of keeping the delinquent completely separate from the prison and the proceedings and process of the ordinary criminal court is to save him from the company of adult criminals. As far as possible, the delinquent is sent home to live under the supervision of his parents, guardian or any capable person, if none of these is available, then he is kept in a juvenile home. But under no circumstances can he be sent to prison. The delinquent can also be released on probation of good conduct.

Ordinary Criminal Courts and Juvenile Courts differ from each other in the following respects-

(1) In a criminal court, the magistrate decides the guilt of the offender while in a juvenile court focuses on the circumstances of the delinquent juvenile which led to his delinquency.

(2) A Criminal Court punishes a convicted offender whereas a Juvenile Court does not punish a delinquent juvenile but orders him to be placed in the custody of his parents or guardian or other competent person or to be sent to a juvenile home.

(3) While the trial proceedings in a normal criminal court are public, the trial proceedings in a juvenile court are confidential (camera proceedings).

(4) During the trial, the Judge of the Criminal Court concentrates his entire attention on whether the accused is guilty of the offence charged on the basis of evidence or not, while the Magistrate of the Juvenile Court gives more importance to the relativity and circumstances of the acts of the delinquent juvenile other than the "delinquent" act.
(5) In a criminal court, the prosecution tries to prove the crime of the accused on the basis of evidence and the accused presents his defence through his lawyer. But the proceedings of the juvenile court are conducted after the report of the probation officer about the juvenile delinquent. In this, the lawyer or advocate does not have the right to plead unless prior permission of the competent authority has been obtained for this.
(6) The Magistrate of the Juvenile Court is required to have special knowledge of child psychology and child welfare. Whereas this is not necessary for the judges of the general criminal courts.
(7) Principle: Magistrates of the Juvenile Court pay more attention to the treatment, after-care and outcome of the juvenile delinquent while the sole function of the judges of the Criminal Court is to pronounce conviction and sentence the offender if found guilty.

Question 18- Discuss the formation, functions and powers of the Child Welfare Committee.

Answer-Constitution of Child Welfare Committee - Under Section 27, the State Government shall constitute a Child Welfare Committee for each district and ensure that all the members of the Committee are appointed, trained and sensitized within two months from the date of notification. The Committee shall consist of a Chairperson and four other members of whom at least one shall be a woman and one shall be an expert dealing with child related matters. No person shall be appointed as a member of the Committee for a period exceeding three years. The District Magistrate shall review the work of the Committee quarterly. The Committee shall function as a Bench and shall have the powers of a Metropolitan Magistrate or a First Class Judicial Magistrate under the Code of Criminal Procedure.

The District Magistrate shall be the Grievance Redressed- Authority for the Child Welfare Committee and any person concerned with the child may file a petition before the District Magistrate who shall consider it and pass appropriate orders. The Child Welfare Committee shall meet at least twenty days in a month. The Committee shall consider the inspection of the existing child care institution and its functioning and the welfare of the children. In case of difference of opinion among the members of the Committee while taking any decision, the opinion of the majority shall prevail but where there is no majority, the opinion of the Chairperson shall prevail. At least three members shall be present at the time of final disposal of the case.

Section 29 provides the powers of the Child Welfare Committee and Section 30 provides the functions and responsibilities of the Committee.

According to Section 29, the Committee will have the authority to dispose of cases for the care, protection, treatment and rehabilitation of children in need of care and protection and to make arrangements for their basic needs and protection.

Where a Committee has been constituted for an area, such Committee, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, shall have power to deal exclusively with all proceedings under this Act in relation to children in need of care and protection.

The following are the functions and responsibilities of the committee:
(i) To take and receive cognizance of the child produced before it.
(ii) To inquire into all issues relating to and affecting the protection and well-being of children under this Act.
(iii) To direct the Child Welfare Officers or Probation Officers or District Child Welfare Unit or Non-Governmental Organisations to conduct social investigation and submit a report to the Committee.
(iv) To conduct screening to declare persons fit to care for children in need of care and protection.
(v) To direct that the child be placed in foster care.
(vi) Ensure protection, proper rehabilitation or repatriation of children in need of care and protection, based on the individual care plan of the child and pass necessary directions in this regard to parents or guardians or appropriate persons, children's homes or suitable facilities.
(vii) Select a registered institution for placement of every child in need of institutional assistance, based on the age, sex, disability of the child and keeping in view the available capacity of the institution.
(viii) Undertake at least two inspection visits per month of residential facilities for children in need of care and protection and recommend actions for improvement in the quality of services to the District Child Protection Unit and the State Government.
(ix) Certifying the execution of the renunciation by the parents and ensuring that they are given time to reconsider their decision, and making all efforts to keep the family together.
(x) To ensure that all efforts are made to restore abandoned or lost children to their families following such due procedure as may be prescribed.
(xi) To declare an orphan, abandoned or forsaken child as legally free for adoption after due investigation.
(xii) To take suo motu cognizance of cases and cases of out-of-reach children in need of care and protection who have not been produced before the Committee. But such decision is taken by at least three members. A child in care and guardianship is produced before the Committee under section 31.

A child in need of care and protection may be produced before the Committee by any of the following persons-
(i) Any police officer or Special Juvenile Police Unit or Designated Child Welfare Police Officer or District Child Welfare Police Officer or any officer of the District Child Protection Unit or Inspector appointed under any labour law for the time being in force,
(ii) Any public servant,
(iii) Child line services or any voluntary non-governmental organisation or any agency as may be recognized by the State Government,
(iv) The Child Welfare Officer or the Probation Officer,
(v) Any social worker or any citizen moved by public sentiment, or
(vi) By the child himself,
(vii) Any nurse, doctor or manager of a nursing home, hospital or maternity home,

Provided that the child shall be produced before the Committee within a period of twenty-four hours without any loss of time but excluding the time required for travel.

Question 19- Explain the fundamental rights against exploitation with the help of illustrative cases.

Answer- Human commerce and forced labour are prohibited in Articles 23 and 24 of the Constitution. Article 23 prohibits the purchase and sale of human beings, forced labour and other similar forced labour and declares the violation of this provision a punishable offence. Article 23 not only provides protection against the state but also against private individuals. These provisions have ended two big blemishes of Indian society. First, the purchase and sale of women and second, the practice of forced labour; both these evils were prevalent in India for a long time. This article prohibits not only forced labour but any other type of forced labour. The landlords, kings, nawabs or other powerful and rich people of Indian society used to make the poor and poor people do forced labour and they did not even get wages. Due to poverty, people used to buy and sell human beings for the greed of money. It was necessary to eliminate these inhuman practices. Therefore, these provisions have been included in the Constitution.

In the case of Dina v Union of India AIR 1983, SC 1155 it was held that making prisoners work without proper remuneration is forced labour and violates Article 23. Prisoners have a right to fair wages for their work and the court has a duty to enforce their claim.

In the case of Neerja Chaudhary vs. State of Madhya Pradesh (1984) 3 SCC 243, it was held that under the Bonded Labor System (Abolition) Act, 1976, the duty of the government is not only to free the bonded laborers but also to make proper arrangements for their rehabilitation, in the absence of which they can not be exploited again. Non-implementation of the above Act is a blatant violation of Article 23.

In the case of Bandhua Mukti Morcha v. Union of India, AIR 1984, SC 802, the High Court held that when an allegation is made in a court through a public interest litigation that there are bonded labourers at a place, the State should welcome it as it gives the Government an opportunity to investigate both whether the labour is being taken from the workers as well as how it can be abolished. This is a constitutional duty of the Government under Article 23. Article 23 has abolished the bonded labour system and for this purpose Parliament has passed the Bonded Labour System (Abolition) Act, 1976.

Prohibition of Employment of Children in Hazardous Employments - (Article 24) Article 24 of the Indian Constitution makes provisions for the protection of public health interests and the lives of children. This article prohibits the employment of children below the age of fourteen in any factory or mine or any other hazardous work. The purpose of this article is to protect the health and life of young children because today's children are the future citizens of the country. Apart from this article, Article 39 of the Constitution also imposes the duty on the state to protect the health and efficiency of its citizens and to ensure that people do not adopt professions that harm their age and physical ability due to economic necessity. In fulfillment of this duty, the state has passed the Child Employment Act, 1938, Child Labor (Abolition) Act, 1933 and Child Labor (Prohibition and Regulation) Act, 1986. The Employment of Children Act, 1938 prohibits the employment of children below the age of 14 years in railways and other transport related works. Factories Act, 1948, Mines Act, 1952, Merchant Shipping

Act, 1958, Motor Transport Workers Act, 1961, Plantation Labour Act 1951, Infants Act 1961, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 etc. many other Acts prohibit the employment of children below the age of 14 years in factories, mines and other hazardous employments.

In the case of People's Union for Democratic Rights vs. Union of India, AIR 1983, SC 1473, it was argued before the Supreme Court that the Employment of Children Act, 1939 does not apply to building factories because 'construction work' is not mentioned in the schedule of the Act. The Supreme Court rejected this argument and held that building construction work is a hazardous work within the meaning of Article 24 Therefore, children below fourteen years of age cannot be employed in building construction work even if it is not mentioned in the schedule of the Act. Justice Shri Bhagwati expressed his grief and advised the State Governments to take immediate steps to include building construction work in the Act and ensure that the constitutional mandate of Article 24 is not violated in any part of the country. The Supreme Court also applied this decision in the case of Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir, AIR. 1984, SC 177.

Question 20- Write a note on the following.

Answer - (1) Juvenile Court-Constitution of Juvenile Justice Board- Section 4 of the Act states the provisions regarding the constitution of the Juvenile Justice Board. According to the provisions of Section 4

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the State Government may, by notification in the Official Gazette, constitute one or more Juvenile Justice Boards for a district or group of districts specified in such notification to exercise the powers and perform the duties conferred or imposed on such Boards under this Act in relation to juveniles in conflict with law.

(2) The Board shall consist of a Bench consisting of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two Social Justice Ministers, at least one of whom shall be a woman, and every such Bench shall have the powers, powers, and powers, as provided in the Code of Criminal Procedure, 1973, to constitute a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be the powers conferred on the Magistrate, and a Magistrate appointed to the Board shall be designated as the Chief Magistrate.

(3) No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be nominated as a member of the Board unless he has been engaged for a period of not less than seven years in health, education or welfare activities relating to children.

(4) The term of office of such members of the Board and the manner in which such members may resign shall be such as may be prescribed.

(5) The State Government may, after an inquiry, terminate the appointment of any member of the Board if-

(i) He is found guilty of abusing any power vested in him under this Act.

(ii) He has been convicted of any offence involving moral turpitude, and such conviction has not been reversed or he has not been granted a full pardon in respect of such offence.

(iii) Fails to attend the meetings of the Board for any valid reason for a period of three consecutive months or fails to attend less than three fourths of the meetings of the Board in a year.

Procedure in relation to Board- Provisions have been made in Section-5 regarding how the Board will conduct its proceedings. According to Section 5

(1) The Board shall meet at such times, and shall prescribe such rules of procedure for the transaction of business at its meetings as may be prescribed by the Board shall communicate the same to the Authority as may be prescribed.

(2) When the Board is not in session, any child engaged in anti-law activities may be produced before any one member of the Board.

(3) The Board may act even in the absence of any of its members and no order made by the Board shall be invalid merely by reason of the absence of any of its members at any stage of the proceedings. But at the time of final disposal of the case at least two members including the Chief Magistrate shall be present.

(4) In the case of any interim or final disposal, in the event of any difference of opinion amongst the members of the Board, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Chief Magistrate shall prevail.

(2) Transfer for the benefit of unborn child or unborn person - Section 13 deals with transfer of property in favour of an unborn person. Section 13 states that if the transfer of property is made in favour of a person who is not in existence at the time of transfer, such transfer may be made by creating an interest in a living person and it shall be effective only if the transferor has transferred the entire residuary interest.

According to section 13, property can be transferred to an unborn person in the following manner -

(1) Property cannot be transferred directly to an unborn person as he does not exist at the time of transfer. Therefore, transfer in favour of an unborn person is a transfer of property to a living person to a certain extent (life interest).

In the case of Girijesh Dutt vs. Dattadin, the Privy Council had decided that if a property is to be transferred to an unborn person, then first it has to be transferred to a living person to some extent or till he is alive. After his death, the property will vest in the unborn person.

For example, a person named A transfers a house to a person named B for life. After that he transfers the property to the son (unborn) of B. As soon as B has a son, the property will vest in the son but the right to enjoy that property will remain suspended till the son attains the age of 18 years.

If B dies before the unborn is born, the property will go back to A and on A's death, to his heirs. If the son dies after being born alive, the property will go to the heirs of the son.

Before the unborn comes into existence, property can be transferred from one person to another for the benefit of life. But the last transferee (Ajaat) should get full interest in the property and not limited interest. Transfer of limited interest will be void.

(2) The unborn person must be born before the first interest ceases. If the living person in whom the first interest was created dies before the birth of the unborn person, the property reverts to the transferor. For example, A transfers property in favour of the

unborn son of B. Such a transfer is made for the benefit of B for life. B dies before B has a son. The property reverts to A.
(3) The transfer to the unborn person must be the full interest in the property and not the living interest. If the life interest is transferred, the transfer will not be valid.

For example, A transfers property to B for his life, and then to his unborn son for his life, and then to the unborn son of the unborn son, such a transfer will be void.

After transferring the property to an unborn person, the transferor cannot give instructions to transfer it to another unborn person. Section 13 of the Transfer of Property Act does not recognize double possibility.

(3) Children's Homes- According to section 34 of the Act regarding Children's Home
(1) The State Government may, by itself or in association with voluntary organisation, establish and maintain in every district or group of districts, as the case may be, children's homes for receiving children in need of care and protection during the pendency of any inquiry and for their care, treatment, education, training, development and rehabilitation thereafter.
(2) The State Government may, by rules made under this Act, provide for the standards for the management of children's homes and the nature of services to be provided by them and the circumstances and the manner in which, certification of a children's home or recognition to a voluntary organisation may be granted or withdrawn.

According to Section 35- The State Government may appoint Inspection Committees for Children's Homes, for the State, district, city, as the case may be (hereinafter referred to as the Inspection Committees), which shall exist for such period and for such purposes as may be prescribed.

The State, District or City Inspection Committee shall consist of such number of representatives from the State Government, local authority, committee, and voluntary organisation and such other medical experts and social workers, as may be prescribed.

According to section 36, the Central Government or the State Government may monitor or evaluate the functioning of children's homes within such time period or through such person and institution as may be specified by the Government.

(4) Shelter Homes - Section 37 provides for provisions regarding shelter homes. According to Section 37, (1) The State Government may recognize reputable and capable voluntary organizations and provide assistance to them to establish and administer as many shelter homes for adolescents or children as may be necessary. (2) The shelter homes referred to in sub-section (1) shall function as informal centres for children who are in need of immediate care and who have been brought to such homes by persons referred to in sub-section (1) of Section 32.
(3) as far as possible, shelter homes should have such facilities as may be prescribed by rules.

(5) Juvenile in conflict with law – As per section 2(1) of the Act Juvenile in conflict with law means a Juvenile who is alleged to have committed an offence in the legislation prior to this Act; such a child was called a juvenile delinquent.

The Juvenile Act 1960 defines a juvenile delinquent as: “A juvenile delinquent is a child who has been found guilty of a crime.”
According to Dr. P.N. Verma, juvenile delinquency is a neglect or violation of duties, a mistake.

According to Robbins, juvenile delinquency means tendencies like vagrancy, begging, ill-treatment, mischievousness etc.
According to Dr. M.J. Sethna, juvenile delinquency includes wrongful acts of a child or such a young person who are within the age specified by the law for the time being in force.
(6) According to section 2(e) of the Begging Act, begging means-
1. Soliciting or receiving alms in a public place, or entering any private premises for the purpose of soliciting or receiving alms, under any pretext whatsoever.
2. Exposing or displaying, with the intent to obtain or induce illness, any wound, injury, deformity or disease of oneself or any other person or living thing "begging" means- alms- request or receipt
Soliciting – Petition or Receipt
1. Soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms whether under any pretence.
2. Exposing or exhibiting with the object of obtaining or extorting alma] any sore wound, injury, deformity or disease, whether of himself or of any other person or of animal.
(7) According to section 2(a) of the Child in need of care and protection Act, "child in need of care and protection" means a child who-
1. Who is found without any shelter, or fixed place or habitation and without any visible means of subsistence?
2. A person who lives with someone (whether he is the guardian of the child or not) and such person-
(a) Has threatened the child with killing or causing harm to him and there is a likelihood of the threat being carried out, or
(b) Has killed, abused, neglected or abused another child or children, and where the child in question is reasonably likely to have been killed, abused or neglected by any person.
1. A child who is suffering from mental or physical problems, or is a bad child or is suffering from a terminal disease or an incurable disease. There is no one to take care of him.
2. Who has a parent or guardian and such parent or guardian is unfit or incapable of maintaining control over the child.
3. A child who is orphaned and whose parents are not willing to take care of him or her, or who is a missing or runaway child and whose parents cannot be traced even after reasonable investigation.
4. Who is obviously being exploited and tortured, or is being exploited for the purpose of sexual exploitation or illegal acts, or who is likely to be so (exploited).
5. Who has been found vulnerable and is likely to get involved in drug abuse or trafficking.
8. One who is involved in bad deeds for unwise gains or who is likely to get involved in such deeds.
7. Who is suffering from any armed conflict, civil commotion or natural calamity (8) Section 2(k) of the Juvenile Act provides that a juvenile or child means a person who has not attained the age of eighteen years.

In the Juvenile Justice Act 1986, different age limits were set for both boys and girls. According to the said Act, if a boy is a teenager then a person up to 16 years of age and if a girl is a teenager then a person up to 18 years of age was considered a teenager, but the Constitution Act has abolished this division.

To determine the juvenile age of a person, the court should consider all the evidence and proof available before it. It is not right to form an opinion regarding age on the basis of physical build and height, ignoring the age-related entry in the school register. Similarly, it is also not justified to form an opinion on the basis of medical examination alone.

If an accused person states before the court that he was a child or a juvenile at the time of committing the crime, then the court should properly investigate this fact and reach a conclusion regarding his age.

(9) International Monetary Fund- The establishment of the International Monetary Fund is a shining example of monetary cooperation among different nations of the world. The International Monetary Fund (IMF) was established on 22 July 1944 under an agreement at the United Nations Monetary and Finance Conference (Brentwoods, New Hampshire, USA). This agreement came into effect on 27 December 1945 and the International Monetary Fund started its work from 1 March 1947. Its relationship with the United Nations is determined according to an agreement of mutual cooperation which came into force on 15 November 1947. The first amendment to the articles of the Fund was made on 28 July 1969 in which provision for Special Drawing Rights (SDR) was made the Second Amendment came into force on August 1, 1978.

Objectives - The main objectives of the International Monetary Fund are as follows-

(1) To promote global cooperation by providing mechanisms for consultation and cooperation on international currency issues;

(2) Helping to promote the balanced growth of international trade and contributing to the development of productive capacity,

(3) To promote exchange stability and orderly exchange management and to prevent competitive exchange devaluations to take measures,

(4) Strengthen multinational payment and transfer systems for current transactions and make efforts to eliminate foreign exchange restrictions which impede the growth of world trade.

(5) To make the Fund's normal resources available, on a temporary basis, under appropriate security, to member countries to enable them to meet their balance of payments difficulties without undue damage to national or international prosperity.

(6) Reducing the duration and magnitude of payments imbalances.

In short, the objective of the Monetary Fund is to develop a system that facilitates foreign exchange for member countries. International trade can be encouraged and member countries can progress economically.

There is a Board of Administrators for the management of the fund which works as the General Assembly. There is a Board of Managers for the day to day functioning of the fund. Its chairman is the Managing Director (MD). This Board must have at least 24 members. Out of which 5 are permanent and the rest are temporary. According to the law, the head office of the fund will be in the country which has the largest fund. At present, since America has the largest fund, the office has been kept in Washington D.C. (America).

(10) Fundamental right to education- The Constitution (86th Amendment) Act, 2002 added a new Article 21-A to the Constitution, making free education a fundamental right for children between the ages of 6 and 14. The original text of Article 21A is as follows -

"The State shall provide, in such manner as may be determined by law, for free and compulsory education for all children from the age of 8 to 14 years."

Undoubtedly, this is an important provision made by the 86th Constitutional Amendment, because even after a long period of independence, about 40 percent of children are deprived of education. Education for children up to 14 years of age was declared a fundamental right by the Supreme Court long ago in the case of Unikrishnan vs State of Andhra Pradesh. This decision of the Supreme Court has now been confirmed by adding Article 21-A in the Constitution.

In the case of Shafiq S. Manager vs State of Kerala, the High Court has held that invalid and unauthorised educational institutions cannot avail the protection available under Article 21A. Persons who are running educational institutions unauthorised for private gain cannot claim protection under Article 21A.

B.A.LL.B.-8th Sem. Paper-V Criminal Procedure code-II Juvenile Justice Act and Probation of Offenders Act

Question No. 1- Define charge. What is the content of charge? Can the charge be changed by the court? Explain.

Answer - The word charge is a word related to common life. We repeat it many times, it is a part of common conversation. In the legal field it is generally understood that the complaint before the police is an allegation whereas it is not an allegation. Charges are made by the court. This is a stage of any case. A case is fixed for charge only after the police submit its final report.

After this the court decides the charges. In this article the charge in criminal cases is being discussed. The charge is also called 'blaming'. It has an important place in the trial. In fact the trial is conducted in two ways: It all starts with allegations.

Section 2(b) of the Code of Criminal Procedure, 1973 defines charge as follows-

"Charge includes any head of charge when it has more than one head." This is the only definition of charge given in the Code of Criminal Procedure but it is not the literal definition of charge. Charge can be defined as follows: "Charge is a written statement of information about the crime against the accused in which along with the grounds of accusation, the time, place, person and thing about which the crime has been committed are also mentioned. In simple words, it can be said that the description of the crime committed by the accused is the charge. The charge is framed so that the accused knows what he is accused of and how he has to defend himself. Provisions regarding charge have been made in **Sections 211** to **224** of the Code of Criminal Procedure, 1973.

Contents of the charge- This is very important. **Sections 211, 212** and **213** of the Code mention those things have been made which are required to be included in the charge.

The charge mentions the following:

(1) The name of the offence with which the accused is charged,
(2) The law under which the offence is covered and the name of the offence
(3) A brief definition of the offence, if it is not named in the law,
(4) Section relating to the offence (**section 211**)
(5) The time of the commission of the offence,
(6) The place of commission of the offence,
(7) The person or thing against which the offence is committed (**section 212**), and
(8) Manner of committing the offence (**section 213**)

In this manner, all those things are required to be mentioned in the charge so that the accused knows clearly what the charge i.e. the accusation is against him.

Some important points regarding the allegation The following points are worth noting regarding the allegation:

(1) The charge must be written in the language of the court.
(2) The charge should be in brief. It should briefly mention the incident's time, place, person and thing etc. should be done.
(3) Where necessary, the manner in which the offence was committed may be stated.
(4) If the accused is charged with being a member of an unlawful assembly, there must be a "common object" should be mentioned.
(5) If the allegation is defamatory, it must mention the ‘words’ which are harmful.
(6) If the case is of kidnapping of a minor girl from guardianship, the statement of “age” of the girl in the charge should be given.

Change in charge- The court can change or add to the charge at any time. This is mentioned in **Section 216**. According to **Section 217**, when the charge is changed or added, those witnesses who have already been examined can be called again for examination. It is worth mentioning

here that the framing of the charge is done in such a manner that the court does not require any evidence to be found the trial does not automatically become vitiated merely because the trial is not made or there is some error in the charge. It all depends on the circumstances of the case. The general rule is that there should be a separate charge for a separate crime.

For every distinct offence of which a person is accused, there shall be a separate charge and each such charge shall be tried separately. It is clear that according to **Section 218,** there shall be a separate charge and trial for every distinct offence. Its violation is not preventable.

Exceptions - But there are some exceptions to **section 218**, such as

(1) Up to three offences of the same kind committed in the same year may be charged together. This is mentioned in **section 219**.

For example, the dishonour of cheques issued at an interval of two months can be charged together and tried together. But in a case it has been said that the dishonour of three cheques issued on different dates cannot be charged together because they are not part of the same transaction. (2) According to **section 220**, multiple offences constituting the same transaction by the same person can be charged together and tried together.

For example, the accused can be charged simultaneously under **Section 302** of the Indian Penal Code, 1860 and **Section 27(3**) of the Arms Act and tried together.

(3) Under **Section 223**, all persons accused of the same offence committed in the course of the same transaction may be charged together.

(4) The charges of 'abetment' and 'attempt' may be levelled together with the principal offence.

Though it is the duty of the court to frame the charge, however, the advocate should also take care as to whether the charge has been framed properly or not.

Question No. 2 - For every different offence of which a person is accused there shall be a separate charge and such each charge will be tried separately. Describe.

Answer- This provision says that, there shall be a separate charge for every separate offence and every such charge shall be tried separately.

Provisions- On an application made by the accused to the court in writing, the Magistrate may, if in the opinion of the Magistrate, try the accused simultaneously on all or any of the charges against him. **Section-218(2)** is an exception to the general rule contained in **section 218(1).** This subsection says that "Nothing in **sub-section (1)** shall affect the operation of the provisions of **sections 219, 220, 221** and **223**."

Exception 1- Three offences of the same kind committed within a year can be charged together. This section has been made so that multiplicity of proceedings can be avoided when the offences are of the same kind. There are two circumstances in this-

1. According to **Section 219 (1)**, if a person is charged with three offences of the same kind, that person can be tried for all the offences together if they were committed within a period of twelve months from the first to the last offence.
2. **Section 219(2)** talks about offences which are of the same kind, and punishable with the same punishment.

Exception 2- Offences committed in the course of the same transaction and tried together. This includes the following-

1. If a person has committed several acts which are so connected with each other that they constitute a single transaction, such offences shall be charged together and tried together. The term 'transaction' is not defined under the Code.
2. In case of their concomitant offences of criminal breach of trust or dishonest misappropriation of property and falsification of accounts. Sometimes the offences of criminal breach of trust or dishonest misappropriation of property are committed simultaneously with offences like falsification of accounts etc., and the latter offence is committed for the purpose of the first offence. In such cases, **Section 220(2)** empowers the courts to try such offences together.

3. If the same act falls under different and distinct definitions of offences, such different offences shall be tried together as mentioned under **section 220(3)**. For example: If a person X wrongfully assaults a person Y with a cane, X may be charged and tried separately under section **352** and **section 323** of the Indian Penal Code or may be tried and convicted together.
4. If the acts constituting an offence constitute separate offences when taken and tried separately or when taken in groups, such offences shall be treated as one offence at one trial. For example if A commits the offence of robbery on B, and in the course of doing so he voluntarily causes hurt to B, A may be separately charged with and convicted of the offences mentioned under sections **323, 392** and **394** of the Indian Penal Code.
Exception 3- Section 221 provides for cases in which there is some doubt regarding the circumstances and events that occurred during the crime. According to this section, if the accused has committed several acts which create confusion about the facts to be proved, the accused may be charged with any or all of such offences or may be charged with alternative offences. In such cases, the accused is charged with one offence and during the stage of evidence, if it is proved that he has committed a different offence, he may be convicted of the same even though he was not charged for the same.
Exception 4-Section 223 talks about the class of persons who can be tried jointly. This section allows joint trial of several persons under specified circumstances, as there exists some connection between the different offences committed. The different classes will not be treated as mutually exclusive and can be clubbed together if necessary. As per this section, the following classes of persons can be tried and charged together-
1. Accused persons who have committed the same offence during the same transaction.
2. Persons who have committed a particular offence and those who have instigated the commission of the offence.
3. Persons who fall within the purview of **section 219**.
4. Persons who have committed different offences during the same transaction.
5. Persons who have committed crimes such as theft, extortion, fraud or criminal misappropriation of property, as well as persons who have obtained, possessed, disposed of or assisted in the concealment of property, the possession of which is illegal and alleged to be illegal.

6. Persons charged with offences under **sections 411** and **414** of the Indian Penal Code or under those sections in relation to stolen property, the possession of which is already lost by another person convicted of another offence
7. Persons who have been charged with any offence relating to counterfeit coins under **Chapter XII** of the Indian Penal Code are charged.

The accused whose cases do not fall under any of the classes of Section 223 cannot themselves claim joint trial. The provision of this section curbs the discretionary power of the court. Rules from **Sections 218** to **Section 223** have been made for the benefit of the accused. Sections of different classes need not be treated as mutually exclusive. Courts have been empowered to combine the provisions of more than two sections. Joint trial of several persons by applying partly one section and partly another section has also been authorised.
Question No. 3- Describe the procedure of trial of summons cases by Magistrate.
Answer- Procedure for hearing in summons cases-
Explanation of details of offence-Section 251 provides that it is not compulsory to frame a charge but the section does not preclude explaining the details of the offence when the accused is brought or produced before the court. This is done to make the accused aware of the charges levelled against him. If the accused is unable to state the details of the case, it shall not affect the trial proceedings and it shall not prejudice the accused as such irregularity is rectifiable under

Section 465 of the Code. Under **Section 251** the court shall ask the accused whether the accused pleads guilty, and on such plea of guilty it is necessary to comply with **Sections 252** and 253 for conviction.

Conviction on plea of guilty - Sections 252 and **253** provide for conviction on plea of guilty. **Section 252** deals with plea of guilty in general and **section 253** deals with plea of guilty in petty cases. If the accused pleads guilty, then if the answer is in the affirmative, the court as per law shall record the plea in the exact words of the accused, on the basis of which the accused may be convicted at the discretion of the court. If not in the affirmative then the court is required to proceed with **section 254**. If the accused pleads guilty, and the charges against him do not make out any offence then the accused cannot be convicted by mere plea. Since the Magistrate has the discretion to convict or not convict on the plea, if the accused is convicted on the plea then the Magistrate shall convict the accused as per **section 360** The Magistrate shall proceed otherwise than to hear the accused on the question of sentence and sentence him according to law. If the plea of guilty is not accepted the Magistrate shall proceed according to **section 254.**

Procedure if the accused is not convicted on plea- If the accused is not convicted under **sections 252** and **253**, **section 254** provides for the case of both prosecution and defence.

Prosecution case-The Magistrate will hear the accused and take all evidence. At the hearing the prosecution will be given an opportunity to open its case by setting out the facts and circumstances forming the case and by highlighting the evidence it relied upon to prove its case. On the application of the prosecution the Magistrate will issue summons to any witness to attend and produce any document or thing. The Magistrate will prepare a memorandum of evidence as per **section 274**. In summons cases as in other trials the Magistrate will follow the provisions of **section 279** i.e. explanation of evidence to the accused and **280** i.e. recording of demeanour of witnesses.

Hearing of Defence (Defence Case)- After examining the evidence of the prosecution under **section 254** and the defence under **section 313,** if it continues, the court shall hear the defence under **section 254 (1).** In hearing the defence the accused shall be asked to put forth his case against the evidence of the prosecution. In any case the absence of hearing of the accused shall amount to fundamental defect in the criminal trial and cannot be cured under section 465. The evidence adduced by the accused shall be recorded in the same manner as in the prosecution case under **sections 274, 279, 280**. After the defence evidence is adduced, he shall be allowed to put forth his arguments under **section 314**.

Acquittal or Conviction - After recording evidence under **section 254**, if the magistrate finds that the accused is not guilty, he will acquit him. If the accused is guilty, the magistrate will precede as per **section 360** or **325** or else sentence him as per law.

Absence or death of complainant- According to **section 256,** the absence of the complainant on the date fixed for the appearance of the accused shall entitle the court to acquit the accused, unless the court has reason to adjourn the case to another day. **Section 256 (1)** also applies in case of death of the complainant. If the representative of the deceased complainant does not appear at the place where the respondent appeared for 15 days, the respondent may be acquitted by the Supreme Court. 4,

Discharge in summons cases- I discharge summons cases instituted in cases other than complaint. **Section 258** empowers the first class magistrate to stay the proceedings at any stage with the previous sanction of the Chief Judicial Magistrate. Hence if he stops the proceedings 'after the record of evidence' it amounts to a judgment of acquittal, and if the proceedings are stopped 'before the record of evidence' it amounts to discharge which has the same effect as immunity. It is debatable that in a summons case instituted on a complaint the magistrate has no power to quash the case even if he does not have sufficient ground to proceed against the accused. This is because if the magistrate does so he would be withdrawing his own order. The Supreme Court held that the issuance of process is an interim order of the magistrate, not a judgment, hence it can be withdrawn. In such circumstances no provision is required to give the magistrate power to quash the case. In summons cases initiated on complaint, the Magistrate cannot quash, review and withdraw the order of issuing process. The case cannot be dropped, the trial court has to complete the hearing. 6 In summons cases the Magistrate of the trial court has no power to quash the proceedings in the absence of such provision in the law. In such circumstances a person can approach the High Court under **section 482** of CrPC

Analysis- The hearing of summons cases is less formal than other trial processes, so that speedy treatment is possible. Therefore, **Section 258**, which does not empower the Magistrate to drop the case even in the absence of sufficient grounds, is somehow prejudicial to the accused. In KM Mathew case, the Court was of the opinion that if the allegations against the accused do not prove the commission of any offence, the Magistrate has the inherent power to drop the case. It has disagreed in various judicial pronouncements. In Arvind Kejriwal case, the Supreme Court held that the law does not specifically empower the Magistrate to drop the case under **Section 258** and referred the matter to the High Court for disposal under **Section 482**. But the point needs to be considered that the High Court also needs to re-look at the case to find out whether there is any sufficient ground to proceed against the accused; all this will hamper the main purpose of summons case i.e. speedy trial. Though this issue has been raised before the Supreme Court in various cases, it needs to be re-examined to avoid jeopardising the fair trial and rights of the accused in such circumstances.

Question No. 4- Describe the procedure of trial of warrant cases instituted on the basis other **than police report.**

Answer- Sections 244 to **247** and **248** to **250** of the Code of Criminal Procedure are related to the procedure of trial in a case instituted on the basis other than police report. Such cases are tribal by a magistrate. Their procedure is as follows-

Section 244 Prosecution Evidence- Section 244 states that in warrant cases initiated in any manner other than a police report and in cases filed directly with the magistrate, the accused is produced before the magistrate who begins the trial process by calling the witnesses nominated by the prosecution and taking into account all evidence produced. All evidence must be considered and entered on record by the magistrate under Section 138 of the Indian Evidence Act.

Section 245- Section 245 of CrPC states that if no case has been made out against the accused by the prosecution, the accused shall be acquitted by the Magistrate, who may, if not challenged, convict him. And if the allegations presented by the prosecution are considered by the Magistrate to be unfounded, nothing prevents the Magistrate from acquitting the accused at any previous stage.

Section 246 Procedure where accused is not discharged- a. Once all the evidence has been adduced before the Magistrate by the prosecution and the said evidence has been examined by him, the Magistrate is of the opinion that there are reasonable grounds for the allegations mentioned in the complaint and the accused is capable of committing the offence, the charge is framed and a fair trial is held. The accused is given an opportunity to defend himself. In the case of **Ratilal Bhanji Mithani v. State of Maharashtra, 1978**, it was held that there were reasonable grounds to believe that the accused had committed the offence, and the Magistrate started the trial proceedings by refusing to dismiss the case under **Section 246(1)**.

Section 246 (2) states that the charge against the accused should be read out and explained to him, and he shall be asked whether he wishes to plead guilty to the charges or contest the said charges by going to trial. **Section 246 (3)** gives the accused an opportunity to plead guilty and present himself before the court. The Magistrate has the power to record a plea of guilty, convict the accused and sentence him as he deems fit. If the accused does not plead guilty, a trial shall be held later and the accused shall be given a fair trial. The Magistrate may state in writing that he is not willing to give any evidence to the accused The Magistrate considers the reasons for recalling the witness for cross-examination and if so, which are the prosecution witnesses whose evidence has been recorded. The same reasons are recorded and the prosecution witnesses are recalled for cross-examination by the Magistrate. Subsections (5) and (6) under **Section 246** give the accused the right to recall and cross-examine or re-examine any witness named by the accused, following which they are acquitted. The evidence of the remaining witnesses produced by the prosecution is taken and they are acquitted after cross-examination and re-examination as required. Its application can be seen in the case of **Varisai Rowther and others vs. Unknown, 1922**.

Section 248- Section 248 states that after the Magistrate has arrived at a decision after examining the evidence, the judgment is pronounced. If the accused is found not guilty, an order of acquittal shall be recorded by the Magistrate under **section 248(1).** If the accused is found guilty, the Magistrate shall, after hearing the accused, pronounce sentence on him, if he does not proceed according to the provisions of **section 325** or **section 360**. And this order of conviction shall be recorded under **section 248(2).** In a case where there is a previous conviction under the provisions of **section 211(7)** and the accused does not admit that he has been convicted earlier as per the charge, the Magistrate may collect evidence regarding the alleged previous conviction after the conviction of the accused and record that finding. However, no charge shall be read out by the magistrate, the accused shall not be asked to plead and no previous conviction shall be mentioned or produced by the prosecution unless the accused has been convicted under **Section 248(2)**.

Section 250 Compensation for prosecution without reasonable cause- Section 250 discusses the procedure relating to cases where a case is registered on a complaint made to a magistrate or a police officer and the magistrate finds that there are no grounds against the accused person. The accused shall be acquitted immediately. The complainant shall be called upon to justify his complaint and explain why he should not pay compensation to the person against whom the complaint was made. The magistrate shall then order the accused to pay compensation of a certain sum not exceeding the amount of the fine if he is satisfied that the reasons for filing the complaint are baseless and have no foundation.

If there is more than one accused person, the magistrate will order the complainant to pay compensation to all the accused. This can be seen in the case of **Valli Mitha vs Unknown, 1919**.

In the case of **Abdur Rahim v. Syed Abu Mohammed Barkat Ali Shah, 1927**, the Court had declared that the compensation amount would be given only to the accused and not to his relatives or any other person.

In case the complainant fails to pay the compensation, he shall be liable to simple imprisonment for a term not exceeding 30 days. If the person is already in prison, **Sections 68** and **69** of the Indian Penal Code shall apply. And the person who is directed to pay the compensation shall be exempted from any criminal or civil liability in respect of the complaint. **Section 250 (6)** states that an appeal lies against the complainant or informant for an order made by a Magistrate of the second class under sub-section (2) exceeding one hundred rupees to pay compensation, as seen in the case **of A.M. Pereira v. D.P. Demelo, 1924**. The compensation shall not be paid before the expiry of the period of appeal or after the Court has decided the appeal. And in cases not connected with the appeal, the amount shall be paid after one month from the date of passing of the order.

Question No. 5- Explain the powers of the appellate court. Can the appellate court take additional evidence?

Answer- Under the Code of Criminal Procedure, the powers of the appellate court are-

(1) Powers of Appellate Court under section 386.- Section 386 of the Code provides that if the Court, after perusing the record and hearing the appellant and the Public Prosecutor, is of the view that there are no grounds for interference in the appeal, it may dismiss the appeal.

(a) On an appeal against acquittal, reverse the order of the subordinate Court and direct further investigation or order commitment for trial.

(b) In the case of an appeal against conviction, (1) may reverse the finding and sentence and acquit or discharge the accused or order the case to be retried or committed for trial.

(2) May alter the finding while maintaining the sentence.

(3) Alter the nature or consequence of the sentence with or without altering the finding, but not in a manner that enhances the sentence.

(c) In an appeal for enhancement of sentence (1) when the prosecution or the complainant is aggrieved by the sentence passed by the original Court after conviction of the accused following a trial by the original Court, And when an appeal is made for enhancement of punishment, what powers does the appellate court get here, it has been mentioned in sub-section 2 of section 386 of the Code of Criminal Procedure.

(2) The court may reverse the finding and acquit or discharge the accused or order the trial of the accused to be conducted by a competent court.

(3) May alter the finding while keeping the sentence intact.

(4) Alter the nature or magnitude of the sentence, either by increasing or decreasing it, with or without altering the finding.

(5) If the appeal is against any other order, the appellate Court may alter or reverse such order.

(2) Power to suspend sentence and release appellant.--Under **sub-section (3)** of **section 389** of the Code of Criminal Procedure, 1973, the sentence of a person convicted of this offence may be suspended for such time as is reasonable for preferring an appeal.

A person convicted of a crime has this right as a matter of right, that is, he can ask the court giving punishment to suspend the sentence for such a period as is reasonable for appealing. But under **section 389 (3)** of the Code of Criminal Procedure, this right is available to the convicted person on 2 conditions-

(1) When the person so convicted is sentenced to imprisonment for a term of up to three years while on bail.

(2) The person so convicted has been convicted of an offence which is bailable

If the court refuses to release the person convicted in such a case on bail, it will have to mention the special reasons for such refusal as to why such convicted person cannot be released on bail and why his sentence cannot be suspended.

In the case of **Kashmira Singh vs State of Punjab 1977 Supreme Court 2147**, the Supreme Court has said that the policy of releasing the accused sentenced to life imprisonment on bail should be seriously reconsidered because excessive delay in disposal of the appeal is

detrimental to the appellant. Also, if the appellant is granted special leave to appeal in the Supreme Court, then he should generally be released on bail.

(3) Power to order arrest of accused in case of acquittal.-If an order of acquittal is passed in a case instituted on a complaint and the High Court, on an application made by the complainant in that behalf, grants special leave to appeal against the order of acquittal, the complainant may prefer such appeal to the High Court.

Taking of additional evidence by the Court of Appeal Generally, the Court of Appeal does not take additional evidence or hear witnesses. However, in some cases, the Court of Appeal has the power to take additional evidence under exceptional circumstances. For this, the conditions prescribed under Order 41 Rule 27 of the Code of Civil Procedure must be fulfilled. In the Bhagwan Das case, the Court held that additional evidence can be accepted at the appeal stage only if the additional evidence is taken by the Sessions Court or Magistrate, then it will certify it to the Appellate Court. After this, the Appellate Court can go ahead and dispose of it. When additional evidence is taken, the accused or his lawyer also has the right to be present. If the Appellate Court decides to take additional evidence, it will also have to record why it did so. Also, it has to decide whether the additional evidence sought is necessary to pronounce the verdict or not.

Question No. 6- The purpose of Section 144 of the Code of Criminal Procedure is not to restrict the freedom of citizens but to immediately remove the threat of breach of peace. Explain.

Answer- Section 144 Purpose-Section 144 of the Code of Criminal Procedure empowers a Magistrate to issue a direction against any person that the person should not do any particular act or should take any appropriate order with respect to any specific property in his possession or under his protection so as to prevent any obstruction, annoyance or damage to any person lawfully authorized or danger to human life, health or safety or disturbance of public tranquillity or riot or riot. The order given by the Magistrate under **Section 144** is of judicial or executive nature.

The Supreme Court has also clearly stated in one of its recent decisions that the purpose of the order given under Section 144 is to prevent the danger of sudden breach of peace. It can neither be permanent nor semi-permanent (**Acharya Jagdishwaranand Avdhoot and others vs Commissioner of Police, Calcutta and others AIR 1984 SC 51**)

Remedies and orders to prevent breach of the peace, etc.- In cases where, in the opinion of the District Magistrate, Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government, the breach of the peace is unlawful under this section There is sufficient ground for taking action and immediate prevention or speedy remedy is desirable, such Magistrate may, by an order in writing stating the material facts of the case and served in the manner provided by **section 134**, direct any person to abstain from any act or to take certain order with respect to any property in his possession or under his management, if such Magistrate considers that such direction is likely to cause or is likely to prevent hindrance, annoyance or injury to any person lawfully employed, or to endanger human life, health or safety, or to cause a breach of the public peace, or to cause a riot or affray. An order under this section may be passed ex parte in an emergency or in cases where the circumstances do not permit timely service of notice on the person against whom the order is made.

An order under this section may be issued in respect of any particular person, or persons residing in any particular place or area, or the general public visiting any particular place or area. No order under this section shall remain in force for a period longer than two months from the date on which it is made. Provided that if the State Government considers it necessary so to do in order to prevent danger to human life, health or safety or to prevent riot or affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period, not exceeding six months, from the date on which the order would

have expired but for such order, as it may specify in the said notification. Any Magistrate may, either suo motu or on the application of any aggrieved person, cancel or alter any order made under this section by himself or by any Magistrate subordinate to him or by his predecessor.

The State Government may, on its own motion or on the application of any aggrieved person, cancel or alter any order passed by it under the proviso to **sub-section (4).** Where an application is received under **sub-section (5)** or **sub-section (6),** the Magistrate or the State Government, as the case may be, shall give the applicant an early opportunity of being heard appearing before him in person or through pleader and showing cause against the order and if the Magistrate or the State Government rejects the application either wholly or in part, he or it shall record the reasons for so doing in writing.

Execution of the order **Section 144** of CrPC is imposed to maintain peace or to avoid any emergency. There is a possibility of any kind of security, health related threat or riot. Where **Section 144** is imposed, five or more people cannot gather together in that area.

Duration of order - No order under this section can remain in force for a period exceeding 2 months. The state government may, at its discretion, choose to extend the validity for two months, with a maximum validity of six months. **Section 144** can be lifted when the situation becomes normal.

Alteration or rescission of order- A Magistrate may, of his own motion or on the application of any person, alter or rescind any order made by him or by any subordinate Magistrate or a predecessor Magistrate.

The State Government may also, on its own motion or on an application by any person, alter or rescind any order made by it, provided that it does not consider it necessary to continue for a period of six months.

On receipt of an application for modification or repeal of the order, the Magistrate shall give such person an early opportunity of being heard and if the Magistrate or the State Government rejects his application either partially or fully, the reasons for the same shall be recorded in writing.

Power of an Executive Magistrate to impose restrictions under **Section 144** and **144** As we have discussed above, the Code of Criminal Procedure gives extraordinary power to an Executive Magistrate to issue ex parte order to prevent the commencement or taking place of any activity which is likely to result in causing great harm to any person, lawfully employed, public property or the society at large. This section provides for an order by an Executive Magistrate, which may remain in operation for 2 months and may be extended to six months by order of the State Government, it also provides that such order can also be revoked by the Magistrate or any aggrieved person, by way of an application to the Magistrate or the State Government, and such application has to be first considered and the authorities may, if they consider it fit and proper, act in accordance with the request. However, in **M.D. Ghulam Abbas & Ors. Vs.** In the case of **Ibrahim and others (1978),** the Supreme Court while discussing the provisions under **Section 144** of the CrPC in a revision petition also said that the order under this section can sometimes be issued against a person who is doing a certain legal act on his property, but such act is posing a threat to human life and public peace. For example, if a person shouts provocative slogans from the roof of his house, then in such a situation it would be appropriate to issue an order. Such an order by any Executive Magistrate directing a particular person to restrict himself or to refrain from doing a certain act or to prohibit the assembly of four or more persons in a specific area is not an order of the State Restricting movement of people, where traffic is also restricted by the government in that specified area. Some of the features under such an order are no movement of the public, no public gathering, closure of all educational institutions until the order is withdrawn, as well as blocking the internet in some cases, etc.

Though this section gives more power to the Executive Magistrates, it does not mean that they can misuse it, or act under any political pressure. A three judge bench of the Supreme Court of India held in the case of **Ghulam Abbas and others vs State of Uttar Pradesh (1982)** that the power under section 144 should be exercised by the Magistrate to protect the established rights of any victim, as was the case of the petitioner and the action of the Magistrate should be directed against the wrongdoer and not against the wrongdoer.

Question No. 7- Briefly describe the procedure related to trial before the Sessions Court.

Answer- Initially, the Magistrate takes cognizance of the offence and thereafter as per **Section 209**, he commits the case to the Court of Session. Under **Section 190**, the Magistrate is empowered to take cognizance of an offence on a complaint, on a police report, on information from any person other than a police officer or on his own knowledge. As per **Section 193**, the Court of Session cannot take cognizance of an offence directly, but the Court of Session is permitted to take cognizance of an offence without the case being committed if the Magistrate commits the case to it or if it functions as a Special Court. Under **Sections 207** and **208** the Magistrate is required to supply copies of documents such as the First Information Report, statements recorded by the police or the Magistrate, etc. to the accused. Under **section 209**, if the Magistrate finds that the offence is triable only by the Sessions Court, he may transfer the case to the Sessions Court and send all documents and records to it and either grants bail or take the accused into custody and shall also inform the Public Prosecutor. The procedure for trial before the Sessions Court is stated in **sections 225** to **237**. According to **section 225**, every trial before the Sessions Court is conducted by the Public Prosecutor.

Defence Counsel (Section 225)- In a trial before the Sessions Court, the prosecution shall be conducted by the Public Prosecutor. The accused has the right to appoint a lawyer of his choice. If he is unable to appoint a defence counsel, the court appoints one at the state's expense. Copies of documents such as police reports, FIR, etc. are provided to the accused before starting the trial.

Opening of the case (Section 226) - The public prosecutor begins the case by describing the charge against the accused. He briefly states the evidence on the basis of which he intends to prove the crime. The duty of the prosecutor is not to secure a conviction but to place the facts of the case before the tribunal whose job is to do justice.

Discharge of accused (Section 227)- After hearing both the parties, if the court finds that there is no sufficient ground to proceed against the accused, it may discharge him and record the reasons for doing so. There is no scope for examining any witness, but both the parties have the scope to put forth their arguments in favour of framing of charges or discharge.

Framing of Charges (Section 228)- After hearing both the parties, if the court believes that the accused may have committed the offence then- If the offence is exclusively triable by the Court of Sessions, a charge is framed in writing. If the offence cannot be exclusively tried by the Court of Sessions, it frames a charge and transfers the case to the Chief Judicial Magistrate. In the case of **Kanti Bhadra Shah and others vs State of West Bengal**, it was held that the judge exercising powers under **section 228** of CrPC need not record his reasons for framing a charge against the accused. While framing a charge, only a prima facie case is to be seen. At this stage the judge is not required to record the detailed order required to see whether the case is beyond reasonable doubt or not, as held by the Supreme Court in **Bhavana Bai vs Ghanshyam and others**.

In the case of **Rukmini Narvekar vs Vijaya Satardekar**, the Court had held that the accused cannot lead any evidence at the stage of framing of charges and only those materials which are specified in **Section 227** can be considered while framing charges.

Explanation of charge and enquiry into plea (Section 228(2)) – The contents of the charge must be explained to the accused to enable him to plead guilty to the offence or to claim trial. In Banwari v. State of Uttar Pradesh the Court held that failure to read out or explain the charge to

the accused will not affect the trial unless it is shown that non-compliance with Section 228 has caused prejudice to the accused.

Conviction on plea of guilty (Section 229)- If the accused pleads guilty, the judge may convict him of the crime.

The court shall record the plea and may in its discretion convict him. In **Queen Empress v. Bhadoo** it was held that the plea of guilty must be in clear terms otherwise such a plea is equivalent to a plea of not guilty. **Section 229** states that if an accused pleads guilty the judge shall in his discretion convict him and record the same. The court cannot convict an accused on the basis of a plea of guilty where the offence is of such a nature the punishment for which is death or imprisonment for life. In **Hasruddin Mohammed v. Emperor** the court held that it would be reluctant for the court to convict a person who is charged with an offence on the basis of his plea of guilty the punishment for which is death or imprisonment for life. If the accused is convicted on the basis of his plea of guilty the right of appeal of the accused is curtailed by **Section 375**.

Date for prosecution evidence (Section 230)- If the accused refuses to plead or does not plead or claims that he will be tried or has not been convicted under **Section 229**, the Judge shall fix a date for the examination of the witness or order the attendance of any witness or production of any object/document.

Evidence for the prosecution (Section 231)- On the date fixed above, the judge shall admit all evidence in support of the prosecution. The judge may, in his discretion, defer the cross-examination of any witness until any other witness has been examined or recall a witness for further cross-examination. In Ram Prasad v. State of Uttar Pradesh, the Supreme Court held that, if the court finds that the prosecution has not examined a witness for reasonable or rational reasons, the court would be justified in drawing an inference adverse to the prosecution. In **State of Kerala v. Rasheed**, the Court observed that while deciding an application under **Section 231(2),** a balance has to be struck between the rights of the accused and the privilege of the prosecution to adduce evidence. The following factors have to be considered.

Examining the accused- This has to be done without administering oath. It enables him to prove the facts alleged against him by the prosecution to give an opportunity to clarify the circumstances.

Acquittal (Section 232)- After hearing both the parties, if the Judge finds that the accused has not committed the crime then he can record an order of acquittal of the accused.

Admission of Defence (Section 233)- If the accused is not acquitted, he shall be called to present his defence. The court may at any stage summon or examine any person as a witness before the court.

Arguments (Section 234)- After the defence has been recorded the prosecutor summarises his case and the accused or his lawyer is entitled to reply. In case the defence raises any legal issue the prosecutor may be allowed to put his side.

Judgment of acquittal or conviction (Section 235)- After hearing the arguments of both the parties, the court pronounces a judgment of acquittal or conviction. On this point, the Supreme Court in **Santa Singh v State of Punjab** held that the judge should first pronounce a judgment of conviction or acquittal. If the accused is convicted, he will be heard on the question of sentence and only then will the court proceed to pronounce sentence against him. In **Bachan Singh v State of Punjab** the Court ruled that this section provides for a bifurcated hearing and specifically gives the accused person the right to a pre-sentence hearing which may not be entirely relevant or connected with the particular offence under investigation but may have a bearing on the choice of sentence.

The Court of Session taking cognizance of an offence under **sub-section (2)** of **section 199** shall try the case in accordance with the procedure for the trial of warrant cases instituted on grounds other than a police report before the Court of a Magistrate. Every trial under this

section shall be held in camera, if any party so desires or the Court thinks fit so to do. If in any such case the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the charge against them or any of them, it may examine its order of discharge or acquittal, and may direct the person against whom the offence is alleged to have been committed to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more accused than one. The Court shall record and consider any reasons which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the allegation, it may order that compensation of such sum as it may determine, not exceeding one thousand rupees, be paid by such person to the accused or to each or any of them. The compensation awarded under **sub-section (4)** shall be recovered as if it were a fine imposed by a Magistrate No person directed to pay compensation under this section shall be exempted from any civil or criminal liability in respect of a complaint made under this section. A person who is ordered to pay compensation under **sub-section (4)** may appeal to the High Court. Where an order is made to pay compensation to an accused person, the compensation shall not be paid before the expiry of the period allowed for presenting the appeal or, if an appeal is presented, before the appeal has been decided.

Question No. 8- Describe the procedure to be followed in relation to neglected adolescents.

Answer- In the previous article related to the Juvenile Justice Act, a general introduction to this Act and definitions of special words given in this Act were studied. Under this article, the procedure to be adopted in relation to juvenile offenders and the formation of Juvenile Justice Board is being discussed. Juvenile Justice Board- Section 4 of this Act is the section related to the Juvenile Justice Board. Juvenile Justice Board has been constituted under this section. This section also has provisions for the formation of Juvenile Justice Board for investigation and hearing etc. in the cases of juveniles involved in anti-law activities and the appointment of its members, their qualifications and removal from office. The Board will have three members, out of which one will be a Metropolitan Magistrate or First Class Magistrate, and two social workers. It is mandatory for at least one of the two social worker members of the Board to be a woman. The Board has been given the powers of Metropolitan Magistrate or First Class Judicial Magistrate as the case may be under the Code of Criminal Procedure, 1973. Subsection (5) of this section provides that (i) the appointment of any member of the Juvenile Justice Board may be terminated by the State after due enquiry if he has misused any of his powers or (ii) has been convicted of any moral turpitude and has not been pardoned for the offence, or (iii) has been absent from the proceedings of the Board for three consecutive months without any reasonable excuse or has not attended less than three-fourths of the meetings of the Board in a year. The main objective of the establishment of the Juvenile Justice Board is to reform juvenile offenders and to ensure that the legal consequences of their criminal acts do not have an adverse effect on their future life and their character is not tarnished. This is the reason why juveniles are called criminals and are called juvenile offenders. Similarly, when a juvenile who is in conflict with the law is found guilty, instead of sentencing him to death, an order of conviction is passed so that he can avoid being called a prisoner.

In the case of **State of Karnataka vs Harshad,** the High Court held that where Juvenile Justice Boards have been set up under Section 4 of the Juvenile Justice Act, the Board will have exclusive jurisdiction to try juveniles in conflict with law and the Sessions Court or Fast Track Courts will not have jurisdiction to try cases of such juveniles. In this case, since the Juvenile Justice Board had been constituted under the notification of 27 July 2003, the order to send the convicted juvenile to a suitable home under **Section 15** was justified because punishing him would be against the purpose of the Act. The right to appeal against the order passed by the Juvenile Justice Board has been kept extremely limited so that the juvenile in conflict with law has to remain under the judicial process for a minimum period of time. If the Board finds the juvenile

innocent or if it finds that he is not an abandoned or neglected person, then the Board can release him. There is no appeal against this order, i.e. the decision of the Juvenile Justice Board will be final but only one appeal can be made against the juvenile being declared guilty or neglected by the Board in the Sessions Court, whose decision will be final. In other words, the decision of the Sessions Court in the case of a juvenile will be final and there is no provision for appeal against it in the High Court. In the case of a juvenile in conflict with the law, the High Court has only the power of revision and not of appeal. Rule 13 (6) (a) of the Juvenile Justice Rules, 2007 provides that the Board should dispose of the case of juvenile offenders within a period of one month, which may extend to two months in special circumstances.

Observation Home- Section 8 of this Act has provision about Observation Home. Observation Home houses those juvenile offenders who are in conflict with law against whom any investigation is pending. Such Observation Homes can be established by the State Government or by private organisations under an agreement.

In these, along with residential facilities, maintenance and medical examination and treatment arrangements for the adolescents, useful livelihood facilities are also provided to them.

In the case of **Sanjay Prasad Yadav vs. State of Bihar**, the question before the Supreme Court was whether a juvenile convicted under **Section 302/34** of the Indian Penal Code and ordered to be kept in a remand home during investigation, should be transferred to prison as a result of attaining the age of adolescence. On this the Supreme Court decided that even after the juvenile attains the age of adolescence, he will not be transferred to prison or elsewhere and he will be kept in the remand home till the final decision of the case.

Special Homes- Section 8 provides for remand homes for temporary keeping of juveniles under trial, while **Section 9** provides for special homes for juveniles in conflict with law. In these special homes, there is a provision to keep juveniles convicted of crime for their reform. In these homes also, juveniles are classified on the basis of age, nature of crime and mental and physical status and are kept separately so that arrangements can be made for their care and rehabilitation. Here, facilities of education and technical training are also provided to the juveniles so that they can become normal citizens.

In the case of **Sheela Barse vs Union of India**, the Supreme Court gave clear instructions that juvenile offenders should not be sent to jail under any circumstances and they should be given the benefit of the provisions of the Juvenile Justice Act and kept in a special home or any other reformatory institution like a juvenile home.

In the case of **Hawa Singh vs. State of Haryana,** a juvenile offender was convicted under **Section 302/34** of the Indian Penal Code and sentenced to life imprisonment and sent to a hostel institution under the Punjab Hostel Act, 1926. As a result of completing the age of 21 years there, he was transferred to a prison to serve the remaining sentence and he spent the next seven years in jail. The Supreme Court, while ordering the immediate release of the appellant, decided that since the accused was tried by the Sessions Court, he had completed the maximum period of detention of seven years. Therefore, he should be released immediately.

According to **Section 11** of the First Information Report on Juvenile Offenders, the police should refrain from registering First Information Reports against juvenile offenders who have committed crimes punishable with less than seven years of imprisonment and which are not of a serious nature. Instead, the police should record the crimes committed by such juvenile offenders in their general daily diary.

Similarly, under **Rule 11 (9)** of the Juvenile Justice Rules, 2007, it is prohibited to arrest juvenile offenders unless it is necessary to do so in the interest of justice. However, child or juvenile offenders committing serious crimes like murder, grievous hurt, rape etc. can be arrested but they should also be produced before the magistrate as soon as possible so that he can take appropriate decision about them and send their case to the Juvenile Justice Board. It is

clear from the provisions of **Section 12** of this Act that showing generosity towards juvenile offenders; arrangements have been made to release them on bail as far as possible. Under this section, it has been recommended to release juvenile persons. Unless there is a possibility that by releasing on bail, the juvenile may fall into the bad company of a serious criminal or a moral danger may arise for him or there is a possibility of failure of the purpose of justice.

In the case of **Sunil and others vs. State of Madhya Pradesh**, the Sessions Court rejected the bail application of a juvenile offender on the ground that on the basis of his medical report he had attained adolescence.

But the High Court ruled that the responsibility of proving age was not on the accused and the court should have determined it on its own initiative and ensured whether the accused can be released on bail by giving the benefit of Juvenile Justice Act 1956 or not. The meaning is that generally a juvenile should be released on bail by giving the benefit of **Section 12** unless there is a reasonable reason for not doing so.

In the case of **Sandeep Kumar vs State**, the juvenile was found guilty of raping a six-year-old girl and his bail was rejected. It was clear from this that the juvenile was of criminal nature and his mother had no control over him. In the case of Jack Ahmed Sheikh vs State, the Rajasthan High Court decided that it would be wrong to infer from the words "will be released on bail" used in Section 12 that the court has no other option except releasing the juvenile on bail. If the nature of the crime is such that releasing the juvenile on bail poses a threat to society, then his bail can be rejected. In this case, the accused was a juvenile but he was involved in the illegal trade of smuggling and there was evidence against him of being active in the gang of smugglers. Therefore, it was considered appropriate to reject his bail under **Section 12**.

Orders to be passed in respect of juvenile **Section 15** of this Act mentions in this regard. Where a Board, upon inquiry, is satisfied that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks fit, after making a proper inquiry against the juvenile and advising and reprimanding him and after counselling his parents or guardian, permit the juvenile to go home. When a juvenile accused of any offence is produced before a Juvenile Justice Board, the Board may pass orders under the provisions of this section.

They are as follows-

The juvenile can be allowed to go home with his parents or guardians after giving warning and advice. If the crime is not of a serious nature, the Juvenile Justice Board can release the offender by giving a warning. Similar provisions are also there in **Section 3** of the Criminal Probation Act 1958.

Question No. 9-What is meant by probation? Describe the factors that are taken into consideration while selecting a person for release on probation.

Answer- This Act is based on the reformative approach which has come from the deterrence theory over the years. It has been observed that the re-adjustment of the offender into the society after release is low. They may also face problems while dealing with professional criminals. This has an undesirable effect on the convicted person and his later life. The Probation of Offenders Act, 1958 protects minor offenders from becoming regular criminals. This is done by giving them a chance to reform themselves instead of going to jail. The probation officer reaches out to the needs and difficulties of the accused in a cordial manner and tries to solve the problem. This is done for a person convicted for minor crimes. The Probation Officer is the main person in the process of probation management. He has direct contact with the probationer. He is responsible for maintaining the provisions of the probation order of the court. He performs two primary functions which include current investigation of the probation offender and monitoring of the offender. The purpose of the Probation of Offenders Act 1958 is to release the accused after due warning if he is not found guilty of any offence not punishable with death or life imprisonment. It has been enacted to provide an opportunity to the offenders

to prove that they can reform their behaviour and live in the society without causing any harm. It should also be kept in mind that reformation is not always effective. Sometimes the crimes are so heinous and disgusting and the criminals are so reckless that punishment for such crimes becomes necessary. In some cases reformation is not useful and for the safety of the society it is best to sentence them to life imprisonment.

Purpose and Objective of Probation- The main purpose and objective of probation is to permanently reform the law breakers. It involves moulding the habits in a constructive manner through rehabilitation and reformation. Its objective is to give the antisocial person a chance to cooperate voluntarily with the society. This will also provide him social security and protection. It is an alternative to imprisonment. Imprisonment will not always serve the purpose of eliminating crime. The purpose of the probation law is to reform the offender more than to punish him. This is what we generally call probation. In simple words, it can be understood as the conditional release of the offender on the promise of good behaviour. The purpose of this section was to reform young offenders, who might commit crime under the influence of bad company or ignorance. Its purpose is to save and reform them from hardened criminals, who might take them on the path of crime. This section also helps persons of mature age, who might have committed crime under influence. They are expected to become good citizens of the country.

Statutory Provisions under the Act- This provision is broadly classified into procedural and substantive common laws which deal with the probation of offenders. The first provision to deal with probation was in **Section 562** of the Code of Criminal Procedure, 1898. After amendment in 1973, probation was included in **Section 360** of the Code of Criminal Procedure. This section states that if any person not below the age of twenty-one years and convicted of any offence punishable with imprisonment for seven years or any offence punishable with fine or any person not below the age of twenty-one years or any woman convicted of any offence not punishable with imprisonment for life or death sentence and there is no previous conviction against the offender appears before the Court, irrespective of the circumstances under which he committed the offence, the Court may release the offender on a promise of good conduct. The court may release the offender on furnishing a bond for good conduct and peace instead of sentencing him to imprisonment. In this case of **Jugal Kishore Prasad v. State of Bihar**, the Supreme Court held that the object of the law is to prevent juvenile offenders from becoming stubborn criminals as a result of their interaction with experienced adult criminals in case they are sentenced to imprisonment in jail. It is observed that this Act is in line with the current trend of penology which says that influence should be exerted to change and reshape the offender and not to avenge justice. Modern criminal jurisprudence holds that no person is born a criminal. A lot of crimes are the result of the socio-economic environment. The Probation of Offenders Act, 1958 excludes the application of **Section 360** of the Code of Criminal Procedure, 1973, whenever the Act comes into force. **Sections 3 to 12** of the Probation of Offenders Act, 1958 deal with the procedures of the court in dealing with the release of offenders. The important aspects of the provisions are discussed in five ways-

Warning - Section 3 of the Probation of Offenders Act, 1958 deals with the power of the court to release the offender after warning him. Warning in the literal sense means a strict warning or reprimand. **Section 3** explains how the offender is benefited on the basis of warning after fulfilling the following conditions-

(1) When any person is found guilty of committing an offence under **section 379** or **section 380** or **section 381** or **section 404** or **section 420** of the Indian Penal Code, 1860 or any offence punishable with imprisonment for a term exceeding two years or with fine or with both under the Indian Penal Code or any other law for the time being in force.

(2) An offender must not have been previously convicted of the same offence.

(3) The court considers the nature of the offence and the character of the offender.

(4) The court may, instead of sentencing the offender, release him on probation of good behaviour under **section 4** of the Act.
(5) Instead of sentencing the offender, the court may release him after giving him an appropriate warning.

Keshav Sitaram Sali v. State of Maharashtra, AIR 1983 SC 291 In this case, the appellant was an employee of the Railway at Paldhi Railway Station. He assisted in the commission of the offence of theft of charcoal committed by Bhikan Murad in the case before the Special Judicial Magistrate First Class (Railways), Bhusaval, who was accused of stealing charcoal. The learned Magistrate acquitted the appellant of that offence, and the State Government filed an appeal before the Bombay High Court against the judgment of acquittal passed by the learned Magistrate. He was fined Rs. 500 and in default of payment was sentenced to undergo rigorous imprisonment for two months. The subject matter of the theft was a quantity of coal costing Rs. 250. 8. The Supreme Court held that in cases of petty thefts the High Court should give the benefit of **section 3** or **section 4** of the Probation of Offenders Act, 1958 or **section 360** of the Code of Criminal Procedure, 1973 instead of imposing a fine.

Basikesan v. State of Orissa, AIR 1967 Ori 4 In this case, a 20 year old youth was found guilty of the offence under **Section 380** of the Indian Penal Code, 1860. It was held that the youth had not committed the offence intentionally and hence **Section 3** of the Probation Act should be applied in the case and he should be released after a warning.

Ahmed v. State of Rajasthan, AIR 1967 Raj 190 In this case, the court held that the benefit of the Probation of Offenders Act does not extend to a person who was involved in any activity which resulted in creating an explosive situation and causing communal tension.

Probation on good conduct- Section 4 of the Probation of Offenders Act, 1958 talks about the release of the offender on the basis of good conduct. This is a very important section of the Act. The important points to remember for the application of this section are-
(1) **Section 4** of the Act does not apply if the offender is found guilty of an offence punishable with death or imprisonment for life.
(2) The court has to consider the circumstances of the case, including the nature of the offence and the character of the offender.
(3) The court may pass a supervision order to release the offender on probation of good conduct. The supervision period must not be less than one year. In such a case, the probation officer must supervise the person for such a period. The supervision order must list the name of the probation officer.
(4) The Court may direct the offender to execute a bond, with or without sureties, to appear and undergo sentence during such period not exceeding three years.
(5) The Court may release the offender on the ground of good conduct.
(6) The court may impose reasonable conditions in a supervision order and the court making the supervision order may explain the conditions of the order to the offender. Such a supervision order must be served on the offender immediately.

The report of the probation officer is not mandatory for the enforcement of this rule, but if the information is required on record, the court shall take into account the information of the probation officer before passing a probation order for good conduct.

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

Answer - (1) Juvenile Delinquent- Any juvenile under the age of 8 who commits a crime is considered a juvenile delinquent. Legally, any child over the age of 8 and under the age of 16 committing any unlawful act is considered a juvenile delinquency. For juvenile offenders, juvenile detention is a system separate from prison. Juvenile detention centers provide age-appropriate resources to help rehabilitate young offenders. Some causes of juvenile

delinquency: poverty or socio-economic status, poor school preparation or performance, peer rejection, desire for protection from violence or financial hardship.

To prevent juvenile crime, proper supervision is required at home and school. The role of parents and teachers is important in the healthy mental development of children. Serious efforts should be made to accuse the culprit and bring about his social and psychological reform.

(2) Review- The provisions relating to review are present under **Section 114** and Order 47 of the Code of Civil Procedure. Review is a provision provided under the Code under which the judgment passed by the court in a particular situation and its facts are examined. The Latin principle 'Functus officio' applies to any judgment passed by a court following due process of law. The principle means that if the judgment has been passed after a fair and impartial hearing and trial in the case, then the case cannot be reopened. In other words, the jurisdiction of the court ends once it has completed its functions for which it was appointed.

The right to file a review is an exception to the Latin concept of functus officio. A review can be filed against-

(1) Any order or decree against which an appeal is provided under the Code of Civil Procedure, but no appeal has been made.

(2) Against any order or decree for which no appeal is provided under the Code of Civil Procedure.

(3) Decision passed on direction of Small Causes Court.

It is important to know that the application for review can be filed only in the same court in which the required order has been passed by the court.

Review of an order can be granted only on the following grounds-

(1) The discovery of new evidence and important matters of evidence which, after the exercise of reasonable diligence, were not within the knowledge of the applicant or could not have been produced by him at the time the decree was passed or order was made

(2) Due to any mistake or error which is apparent from a mere glance at the record.

(3) For any other sufficient reason (which may be deemed to be analogous to the other reasons specified above).

Is review an inherent power of the court or is it granted by law? Various High Courts have given their views in this regard. Some High Courts believe that review is an inherent power of the court.

The power of review is vested in every court having full jurisdiction to prevent gross injustice or to correct grave and manifest error. The High Court is a court of full jurisdiction and therefore has the power to review its own order. (**T. Krishnappa v. H. Lingappa, AIR 1982 Karn. 58**) But another opinion held that **Section 114** and Order 47 Rule 1 clearly confer the power of review on the civil court. Hence the court can exercise this power only under these provisions.

This cannot be done under **section 114** even if the review application claims to be under this section. It is well settled that the power of review is not an inherent power. It must be conferred by the law either specifically or by necessary implication. (**Kumaran Vaidyar v. K.S. Venkateswaran, AIR 1992 Ker-26**)

(3) Difference between appeal and revision-

(1) Legal Right to Appeal or Change- The right of a person who loses in court is the right to appeal, which is written in the Constitution. Amendment, on the other hand, is up to the court. This means it may or may not happen.

(2) An appeal is heard in court like any other case, but a revision case is not heard in court.

(3) Type of court According to the Code of Civil Procedure, a request is considered by the court which is superior to the previous court. This means that it cannot be the High Court. The High Court can only make some changes.

(4) In an appeal the Court may interfere in any way, but in a revision it may do only this can do

(5) Number of stages in appeal vs. number of stages in revision in appeal, there is only one stage,

which is the hearing of the case. However, in revision there are two stages: one initial and one final.
(6) An appeal occurs when a court trial on a certain matter continues while revision occurs when the court examines whether the law was followed during the case.
(7) What kind of examination is involved in an appeal or revision? An appeal looks at the fundamentals of the law and the facts. Revision, on the other hand, looks at the legal actions, the jurisdiction and the procedure used to arrive at the decision.
(8) Time limit in an appeal, a party has a certain time to file an appeal. This time starts immediately after the trial court gives its final judgment. In a revision, there is no set time limit. A party can request it at any time, but the time limit must be reasonable.
(9) It is necessary to apply for an appeal. The person appealing must appeal. However, it is not necessary to apply for a revision.

(4) Difference between instruction and revision- The following difference is found between Reference and revision is-

Sr. No	Reference	Revision
1	A reference involves a question regarding the validity of an Act, Ordinance or Regulation.	Revision involves a question as to the accuracy, validity or propriety of any record, judgment or sentence.
2	References may be made only in pending cases.	Revision may be made in both pending and decided cases.
3	A reference can be made only to the High Court.	Revision may be made both by the High Court and the Court of Session.

(5) Juvenile justice board- Section 4 of the Juvenile Justice Board Act provides for the formation of a Juvenile Justice Board. The power to constitute such a board is vested in the State Government. Such a board can be constituted for a district or group of districts specified in a notification issued by the State Government.

Section 4(2) provides for the composition of the Board. The Board shall consist of a Metropolitan Magistrate of the first class or a Judicial Magistrate, as the case may be, and two social workers of whom at least one shall be a woman. Every Bench of the Board shall have the powers of a Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, under the Code of Criminal Procedure, 1973.

Sub-section (3) of **Section 4** provides the qualifications of a Magistrate who may be appointed as a member of the Board. **Sub-section (4)** provides for the tenure of the members of the Board and **sub-section (5)** provides the grounds on which the appointment of a member of the Board may be terminated.

(6) Powers of Juvenile Justice Board- (1) Where a Board has been constituted for a district [* * *], such Board shall, notwithstanding anything contained in any other law for the time being in force, but save as otherwise expressly provided in this Act, have exclusive powers to act in respect of all proceedings under this Act relating to a juvenile in conflict with law.
(2) The powers conferred on the Board by or under this Act shall be exercised by the High Court the Board shall have exclusive power to decide all proceedings relating to children in conflict with law under this Act.

Section 6(2) provides that the powers conferred by or under this Act shall also be exercised by the High Court and the Court of Session when the proceedings come before them in appeal, revision or otherwise.

In the case of **Sangeeta R. Jain v. S. A. Dwivedi**, the petitioner and her father were owners of a power-loom business in Bhiwandi. On the complaint filed by the first respondent, the Industrial Court at Thane passed an order on 22nd March, 1992 to the following effect:-

The respondents are directed to deposit with this Court within three weeks from today, 50 per cent of the wages of the concerned employees from 1st October, 1989 to the date of this order.

The petitioner and his father Ramchandra Jain (3rd respondent) were both respondents in the above complaint. The first respondent filed a miscellaneous complaint before the 2nd Labour Court alleging, among other things, that the 3rd respondent and the petitioner had wilfully ignored the order of the Industrial Court and thereby violated **Section 48(1)** of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 (hereinafter referred to as the Act). The petitioner applied to the Labour Court to dismiss the complaint against her as she was below 18 years of age on 7th August, 1992 when the complaint was filed and cognizance was taken. The Labour Court rejected the application, whereupon this application has been preferred before the High Court. The question in this application was whether a Labour Court can try a person under the provisions of the Act if he was a minor on the date of the alleged offence under **Section 48(1)** of the Maharashtra Act.

It was held that the provisions of the Juvenile Justice Act, 1986 have been enacted to supersede the provisions of **Section 27** of the Code of Criminal Procedure and a Special Court has been created having exclusive jurisdiction so far as juvenile delinquents are concerned. All courts other than those constituted under **Section 7** of the Act have been barred from having jurisdiction so far as juveniles are concerned.

It was further held that in view of the definition of "juvenile" contained in section 2(g), it is clear that the petitioner, who was a girl, had not attained the age of 18 years on the relevant date (the date of offence under **section 81(1)** of the Maharashtra Act) and was a juvenile and a delinquent juvenile under **section 2(g)** and, therefore, the exclusive power to try her is vested in the Court specially created under section 7. The Courts enumerated in **section 7(2) (a), (b)** and **(c)** should exercise the powers conferred on the Board or the Juvenile Court even if the Board or the Juvenile Court has not been constituted in the concerned area.

In the case of **Bandela Ailaiah v. State of Andhra Pradesh** it was held that the burden of proving the age of the accused does not lie on the juvenile delinquent but the court examines his age to find out whether the person is a delinquent juvenile for the purposes of the Act or not. In this case the court instead of giving a clear opinion about the age of the juvenile delinquent, made a cursory inquiry about his age and put the burden on him by asking him to produce school certificate etc. to prove his date of birth and without any material held that he was above 16 years of age on the date of commencement of the trial. It completely deprived the juvenile delinquent of the benefit of the provisions of the Act. Therefore the provisions of the Act were blatantly violated by the trial court. Therefore the trial of the Sessions Court resulted in conviction against the juvenile under **Chapter 18** of the Code of Criminal Procedure and the juvenile had to remain in prison for a long period with other offenders. The trial was held to be flawed. Trial of a delinquent juvenile without checking his age is flawed.

Question 11. Briefly describe the objects and reasons of the Probation of Offenders Act, 1958.

Answer-Statement of Objects and Reasons- The question of releasing criminals on probation on the basis of good conduct instead of sentencing them to imprisonment had been under consideration for some time. In the year 1931, the Government of India prepared the Criminal Probation Bill and circulated it to the then local governments to seek their views on it. However, the Bill could not be presented due to their being busy with other more important work. Later in the year 1934, the Government of India informed the provincial governments that it was not possible to make a central legislation at that time and it had no objection if the provincial governments themselves prepared the legislation. Accordingly, some provinces enacted their own probation legislations.

However, in some states there is no separate probation law. In the states which have probation laws, there is no uniformity in them and they are not adequate to meet the present

requirements. In the meantime greater emphasis is being laid on reforming and rehabilitating offenders as useful and self-dependent members of society without subjecting them to the evil effects of a life of imprisonment. In view of the wide interest in the probation system in the country, the question was re-examined and it was proposed that a Central legislation on the subject be enacted which would be uniformly applicable in all the states.

It was proposed to empower the courts to release offenders on probation after condemning them in certain specific cases. It was also proposed to empower them to release on probation in all suitable cases where the accused has been found guilty of an offence not punishable with death or life imprisonment. Special provisions have been made prohibiting imprisonment of offenders below 21 years of age in the case of such offenders. During the period of probation the offenders will be under the supervision of the Probation Officer so that they can be reformed and made useful members of the society. The Bill has been prepared to achieve the above objectives.

Objective and Application- The object of the Probation of Offenders Act, 1958 is that an offender should be released on probation after due reprimand. The present Act has been enacted after the introduction of reformative principle of punishment so that he gets an opportunity to reform himself and become fit to live in the society. Its object is to rehabilitate the offender. If a criminal who has become a criminal by chance is put in prison, he comes in contact with other criminals and the possibility of his reformation and living in the society is largely lost.

In the case of **Jugal Kishore Prasad v. State of Bihar**, the Supreme Court reiterated the object of the Act and stated that it is to prevent young offenders from becoming recidivist criminals in the company of hardened criminals of mature age when sentenced to imprisonment.

The above objective has been reiterated by the Supreme Court in the case of **Arvind Mohan Sinha vs. Mulya Kumar Vishwas**, which concluded that the Probation of Offenders Act is a reformative measure and its purpose is to reform immature offenders and rehabilitate them in society. The Act recognizes the importance of environment in the commission of crime and prescribes remedies for it through which offenders can be reformed and rehabilitated.

The Probation of Offenders Act, 1958 extends to the whole of India except Jammu and Kashmir. **Section 1 (3)** provides that the Act shall come into force in a State on such date as the State Government may publish in the Official Gazette. It also provides that different dates may be provided for different States.

In the case of **P.K. Tejani v. M.R. Dage**, it was held that the rehabilitative purposes of the Probation of Offenders Act are technically so wide that any offence under the Prevention of Food Adulteration Act can also be subsumed under it. But the enforcement of the principle of probation has become negative because of the constraints of social security. Food adulteration is injurious to human health. Economic crimes are committed by white collar criminals who cannot be prevented by soft preventive procedures. The Law Commission of India has also recommended in its 47th Report that social and economic crimes be excluded from the Act by suitable amendments. In the present circumstances of India, the probation movement has not become strong enough to remove these anomalies. It is possible that a different view may emerge in more developed circumstances. Therefore, at present the Probation Act does not apply to the crimes committed under the Food Adulteration Prevention Act.

In the case of **Ishwar Das vs. State of Punjab**, it was held that the Probation of Offenders Act, 1958 was enacted after the Food Adulteration Prevention Act, 1954 and the legislature was aware of this, therefore the provisions of the Probation of Offenders Act were not adapted to the provisions of the earlier Act. **Section 18** of the Probation of Offenders Act clearly excludes crimes committed under the Prevention of Corruption Act, but there is no such exclusion in respect of the Food Adulteration Prevention Act. Therefore, the provisions of the Probation Act will apply to crimes under the Food Adulteration Prevention Act.

Similarly, in the case of **Ram Prakash vs. Himachal Pradesh**, it has been held that the benefits under the Offenders Act will also be available to a person who is found guilty of an offence under the Prevention of Food Adulteration Act, 1954.

Question 12. Mention the procedure of summary trial under the Code of Criminal Procedure.

Answer: Summary trial Section: Procedure of summary trial of crimes is described in **Sections 260 to 265** of the Code of Criminal Procedure.

Section 260: Power to try cases in summary. Under **Section 260**, the following magistrates can try such crimes:

Any Chief Judicial Magistrate,

Any Metropolitan Magistrate,

Any First Class Magistrate appointed by the High Court for this purpose.

Cases triable in summary as per **section 260**, the following offences may be briefly described-

(i) Offences punishable with death, imprisonment for life or for a term exceeding two years,

(ii) Theft under section **379, 380** or section **381** of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000,

(iii) Receiving or retaining stolen property under **section 411** of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000,

(iv) Aiding in concealing or disclosing stolen property under **section 414** of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000,

(v) Offences under **sections 454** and **456** of the Indian Penal Code,

(vi) Insult with intent to provoke breach of the public peace under **section 504** of the Indian Penal Code and offence under **section 506** of the Indian Penal Code. Criminal intimidation punishable with imprisonment for two years or with fine or with both,

(vii) Abetment of any of the above offences,

(viii) Attempt to commit any of the above offences when such attempt is an offence,

(xi) An offence for which a complaint may be made under **section 20** of the Cattle Trespass Act.

When during the summary trial it appears to the Magistrate that the case is of such a nature that it is undesirable to have a summary trial, the Magistrate shall recall any witnesses who have been examined and the case shall be heard again in the manner provided by this Code.

Section 261 Summary trial by Magistrate of the second class-According to **section 261**, a Magistrate of the second class may also try summarily offences where the offence is punishable with fine only or with imprisonment for a term exceeding six months with or without fine and the abetment and attempt of such offence shall also be tried in the same manner.

Section 262-According to **Section 262**, the following procedure is followed in summary trials-

(a) The procedure is the same as in summons cases.

(b) No sentence of imprisonment for a period exceeding three months is passed.

Section 263-According to **section 263**, the Magistrate shall enter the following particulars in a form specified by the State Government, namely:

(a) serial number of the case

(b) Date of the commission of the offence,

(c) Date of the report or complaint,

(d) Name of the complainant (if any),

(e) Name of the accused, his parents' name and his residence

(d) The offence complained of and the offence proved and, in a case falling under **clauses (iii)**, **(iii)** or **(iv)** of **sub-section (1)** of **section 260**, the value of the property in respect of which the offence is committed;

(a) plea of the accused and his examination,

(b) Finding,
(c) Sentence or other final order,

Date of conclusion of the proceedings. Section 264 Judgment in cases tried summarily.- In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record a judgment summarizing the evidence and stating the reasons for the finding.

Section 265 Language of record and judgment.- (1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorize any Magistrate empowered to try a case summarily to have the aforesaid record or judgment or both prepared by an officer appointed in this behalf by the Chief Judicial Magistrate and the record or judgment so prepared shall be signed by such Magistrate.

Question. 13. What is plea bargaining? Describe the procedure of plea bargaining. When plea bargaining cannot be done.

Answer- Plea bargaining has been added to **Chapter 21A** of the Code of Criminal Procedure by the Criminal Law (Amendment) Act, 2005. The agreement between the accused and the prosecution for a crime punishable with imprisonment for a period of less than 7 years is called plea bargaining. According to **section 265A**, plea bargaining will be applicable against an accused against whom-

(i) A report has been sent by the officer in charge of the police station under **section 173** that the accused appears to have committed an offence other than the offence for which the punishment of death or life imprisonment or imprisonment for a term exceeding 7 years is provided under the law for the time being in force or

(ii) A Magistrate has, on a complaint, taken cognizance of an offence punishable with death or life imprisonment or imprisonment for a term less than 7 years against the accused under the law for the time being in force and has issued a process under **section 204** after examining the complainant and witnesses under **section 200**.

But it does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman or a child below 14 years of age.

Application for plea bargaining- As per **section 265B**, an application for plea bargaining shall be made to the High Court where the case is pending.

The application shall contain a brief statement of the case in respect of which the application is filed including the offence to which the case relates along with an affidavit stating that the accused has filed the plea bargaining application voluntarily after understanding the nature and extent of punishment provided under the law for the offence and that he has not been convicted earlier by the Court in a case in which he was charged with the same offence.

The Court on receipt of the application shall issue notice to the Public Prosecutor, complainant (as the case may be) and the accused to appear on the date fixed for the case. When all are present on the date fixed, the Court shall examine the accused where-

(a) Other parties to the case are not present to satisfy themselves that the accused has filed the plea voluntarily and where.

(A) If the Court is satisfied that the accused has filed a voluntary application, the Public Prosecutor shall allow time to the complainant and Ajit to settle the case which may include payment of disclosure and other expenses by the accused to the victim and thereafter fix a date for full hearing of the case.

(B) If the Court is of the opinion that the accused has not filed a defence application or has been convicted by the Court earlier in the case in which he was charged with the offence, it shall proceed in accordance with this Code.

Procedure- According to **section 265 C**, the court will follow the following procedure for settlement under **section 265 (b)-**

(i) In a summary case on police report, the court will give notice to the public prosecutor, the police officer investigating the case and the victim to attend the meeting, but the court will have to ensure that the parties are voluntarily participating in the meeting. If the accused wishes, he can attend the meeting through his advocate.
(ii) In a summary case other than police report, the court will give notice to the accused and the victim to attend the meeting to settle the case, but the court will ensure that the parties are voluntarily participating in the meeting, but if the victim wishes, he can attend the meeting through his pleader.
According to **section 265 D**, if the court resolves the case by meeting, then it will prepare a report on which the presiding officer of the court and the parties participating in the meeting will sign. Disposal of the case- According to **section 265 (D),** the court will dispose of the case in the following manner.
(a) Provide compensation to the victim and hear the parties for consideration of the amount of punishment, release the accused on probation of good conduct under **section 360** or after pardon or consider the accused under the provisions of the Probation of Offenders Act, 1958 or any other law for the time being in force and hear the accused on the question of punishment,
(b) After hearing the parties, if the court is of the opinion that the provisions of **section 360** or the Probation of Offenders Act, 1958 or any other law for the time being in force are applicable to the accused, then it can release the accused on probation or give him the benefit of any law.
(c) If the court is of the opinion that the crime of the accused is punishable with the minimum punishment, then it can give the accused half of the minimum punishment.
(d) If the Court is of the opinion that the offence of the accused does not fall under **clauses (b)** and **(c)**, it may award one-fourth of the punishment provided or extended, as the case may be, to the accused for such offence.
Judgment of the Court - According to **section 265 (c),** the Court shall pronounce its judgment as aforesaid in open court and it shall be signed by the presiding officer of the Court.

According to **section 206 (g),** the judgment of the Court shall be final and no appeal from such judgment shall lie to any Court except by way of special leave petition under article 136 of the Indian Constitution and by way of writ petition under articles **226** and **227**.
Non-applicability of plea bargaining- Plea bargaining will not apply in respect of an infant or juvenile as defined in **section 2(t)** of the Juvenile Justice (Care and Protection of Children) Act, 2000. Plea bargaining will not apply in case of an offence punishable with imprisonment for a term exceeding 7 years. Plea bargaining will also not apply where the offence affects the socio-economic condition of the country or is committed against a woman or a child below 14 years of age.
Question 14. Explain in detail the provisions regarding maintenance of wife, children and parents. What will be the maximum amount of maintenance? Or explain in detail the provisions regarding maintenance of wife, children and parents.
Answer - Wife, children and parents in sections **125** to **128** of the Code of Criminal Procedure provision has been made for the maintenance of the wife. It is the natural and fundamental duty of every person to maintain his wife and children until they become capable of supporting themselves.

Similarly, it is the sacred duty of every person to support his parents if they are not able to support themselves.
Section 125 Maintenance of wife, children and parents.- (1) According to section 125 any person, if he is of sufficient means,
(a) His wife who is unable to maintain herself, or
(b) His legitimate or illegitimate minor child, whether married or not, who is unable to maintain himself or herself, or

(c) of his or her legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is unable to maintain himself or herself by reason of any physical or mental abnormality or injury, or

(d) Of his or her father or mother who is unable to maintain himself or herself,

Provided that if any person neglects or refuses to maintain any child, then, a Magistrate of the first class may, on proof of such neglect or refusal, direct such person to pay a monthly allowance for the maintenance of his wife, children or parents at such rate as the Magistrate thinks fit and to pay such allowance to such person to whom the Magistrate may from time to time direct the payment to be made:

As per the first proviso to **section 125**, a Magistrate may direct the father of a minor daughter described in **section 125(1)(b)** to pay such allowance until she attains her majority if the Magistrate is satisfied that the husband of such minor daughter, if married, does not have sufficient means to support her,

Provided further that in respect of maintenance under **section 125(1),** the Court may make an order that he pay to his wife, children and parents such sum as may be deemed fit for interim maintenance and for the expenses of such proceedings.

Provided further that the application for grant of monthly allowance of interim maintenance and costs of the proceedings shall, as far as possible, be disposed of within sixty days of the service of notice of such application on such person.

125(2) such allowance for maintenance or for interim maintenance or costs of proceedings shall be payable from the date of the order or, if such an order is made, from the date of the application for maintenance or interim maintenance and costs of proceedings.

125(3) If any person to whom an order has been made fails, without sufficient cause, to comply with such order, any such Magistrate may, for every breach of the order, issued a warrant for the recovery of the amount due in the same manner as is provided for the recovery of a fine, and may sentence such person to imprisonment for a term not exceeding one month, or, if it is earlier paid, for the amount of the unpaid amount (including maintenance or interim maintenance allowance and costs of proceedings, as the case may be), or any part thereof, for a term which may extend to one month, or, if it is earlier paid, until such time as it is paid.

Provided that no warrant for the recovery of any amount due under this section shall be issued unless an application for the recovery of such amount has been made to the court within a period of one year from the date on which it became due.

Provided further that if such person offers to maintain her on the condition that his wife lives with him and she refuses to live with the husband, such Magistrate may consider any grounds for her alleged refusal and may, notwithstanding the making of such proposal, make an order under this section if he is satisfied that there is just ground for making such order.

(If the husband has married another woman or keeps a mistress, she shall be treated as a justifiable part of his wife's refusal to live with him)

125(4) A wife shall not be entitled to receive from her husband any payment under this section (of maintenance or interim maintenance allowance and costs of proceedings, as the case may be) if she is living in a state of conjugality or if she refuses to live with her husband without sufficient cause or if they are living separately by mutual consent.

125(5) The Magistrate may cancel the order on its being proved that the wife in whose favour a decree has been made under this section is living in a state of adultery or without sufficient cause refuses to live with her husband or that they are living separately from each other.

Later in **Yumnabai v. Anantrao, 1988, KLJ 793, SC** the Supreme Court held that in order to claim maintenance under this section a wife has to be proved conclusively that she was a lawfully married wife under the law of the personal law applicable to the parties.

Similarly in **Mohammed Ahmed Khan v. Shah Bano Begum, 1985 Cr. Law J 875, SC** the Supreme Court later held that **section 125** applies to all irrespective of their religion.

Later in **Devchandra v. State of Maharashtra AIR 1974** Supreme Court 1488 it was held that where the husband marries another woman the wife can refuse to live with the husband and is entitled to maintenance.

Section 126 Procedure (1) any proceedings under **section 125** may be taken against a person in any district where he is or where he or his wife resides or where he last resided with his wife or with the mother of the illegitimate child, as the case may be. Such proceedings shall be taken in the presence of the plaintiff against whom an order for payment of maintenance is sought to be made, or when his attendance has been dispensed with, in the presence of his pleader and shall be reduced to writing by means of a joint statement of the plaintiff, but if the Magistrate is satisfied that the plaintiff is a plaintiff or his wife or his wife or the mother of the illegitimate child, or in the presence of the plaintiff. That any person against whom an order for payment of maintenance is to be made has wilfully avoided or wilfully neglected to attend the Court, the Magistrate may proceed to hear and decide the case as a judge and any order so made may, on an application made within 3 months from the date thereof for good cause to be shown, be enforced under such terms including such terms as to the payment of costs to the opposite party as the Magistrate may think just and proper.

Section 127 Change in allowance- This section gives the magistrate the power to reduce or increase the amount of maintenance due to change in the circumstances of the person receiving or paying maintenance. Such an order can be implemented from the date of the application. The amount of maintenance can be increased even in a situation where the original order has been passed on the basis of compromise.

Section 128 Maintenance is also like interim maintenance and expenses of proceedings-

Enforcement of order of maintenance or interim maintenance and costs of proceedings, as the case may be.- Under **section 128**, an order for maintenance or interim maintenance and costs of proceedings shall be paid free of cost to the person in whose favour the vote is given or to his guardian, if any, or to the person to whom the allowance for maintenance or interim maintenance and costs of proceedings is to be paid, and such order may be enforced by a Magistrate in any place where the person against whom the order was made is located, on being satisfied as to the identity of the parties and as to the non-payment of the allowance or costs due, as the case may be.

Question 15. What provision has been made in the Criminal Procedure Code regarding security to maintain peace? Explain.

Answer-The system of taking security to maintain peace has been classified into two parts-

(1) Security to keep the peace in case of conviction

(2) Security to maintain the peace in other circumstances.

(1) **Security to keep the peace on conviction.-Section 106** provides for such provision has been made for taking security for maintaining peace from a person who has been convicted in any case.

When the Court of Session or of a Magistrate of the first class convicts a person of any of the offences described in this section or of the abetment thereof and it appears to the Court that it is necessary to take security from such person for keeping the peace, it may order such person to execute a bond, with or without security, for keeping the peace for a period not exceeding three years.

An order under this section can also be passed during a summary trial if a conviction has been made for any of the offences specified in this section and such Magistrate has jurisdiction to find such conviction and pass such order.

Security to keep the peace may be taken on conviction of any of the following offences, namely:-
(i) an offence punishable under **Chapter VIII** of the Indian Penal Code, other than an offence punishable under **section 153A** or **section 153B** or **section 154**,'
(ii) Any offence which amounts to assault, use of criminal force or mischief, that is, any offence which involves assault, use of criminal force or mischief,
(iii) Any offence of criminal intimidation,
(iv) Any other offence which
(a) There has been a breach of the peace, or
(b) There is a danger of a breach of the peace, or
(c) Which was known to be likely to cause a breach of the peace.

There is judicial difference of opinion in the use of the term 'breach of peace'. In the opinion of the Allahabad and Mumbai High Courts, it extends to those crimes which are not just breach of peace or disturbance of 'public tranquility'. In its opinion, the crime of hurting a person is related to breach of peace whether it occurs in a public place or a private place.

In the case of **Emperor vs. Dharmaraj AIR 42 Allahabad 445** it was said that if any criminal trespass is committed with the intent to disturb the peace, then an order of security can be given under this section.

In another case, the Calcutta High Court said that such an order cannot be passed if there is any other intention, such as having illegal relations with the wife of the defendant etc.

Security for maintaining peace in other cases-Section 107 provides for security for maintaining peace in all other cases. The provisions of this section are as follows-
(1) Where an Executive Magistrate receives information that any person is likely to break the peace or disturb the public tranquillity or to do any wrongful act which is likely to cause a breach of the peace or to disturb the public tranquillity, he may, if in his opinion there are sufficient grounds for taking action, require such person in the manner hereinafter provided to show cause why he should be ordered to execute a bond (with or without sureties) for keeping the peace for such period, not exceeding one year, as the Magistrate may think fit to fix.
(2) Proceedings under this section may be taken before an Executive Magistrate if either the place where a breach or disturbance of the peace is apprehended is within his local jurisdiction or any person is within such jurisdiction that, beyond such jurisdiction is likely to breach or disturb the public tranquillity or does any wrongful act as aforesaid.

Sekar v. Padma Losai. Law J. 1405 Madras later held that an order cannot be made under this section against two parties belonging to the opposite group in one action as such an order would vitiate the proceedings and would be liable to be quashed.

In the case of **Mithya vs Rajasthan, 1987 Cr. Law. J 1042 Rajasthan**, it was determined that under **section 107**, the Magistrate has the power to imprison persons for a period of more than 1 year, this 1 year starts from the date when the Magistrate takes action is satisfied to do so and takes cognizance and initiates action and not on the basis of a warrant or the first appearance of the accused.

There are no provisions in **sections 107, 111** and **116** which definitely give power to the Magistrate to drop the proceedings which have been initiated, but such power may be granted to him to drop the proceedings initiated under section **107** at any stage, even after the order under **section 111** or before the inquiry under **section 116** of this Code.

Question 16. Under the Code of Criminal Procedure, a District Magistrate has what are the compulsory powers in urgent cases of public remedy.

Answer: Public nuisance has been defined in Section **268** of the Indian Penal Code. According to **Section 268**, a person is guilty of public nuisance who does any such act or is guilty of any such illegal act which causes general damage, danger or annoyance to the public or the general public who live nearby or have a claim on the nearby property or which is likely to cause damage, obstruction, danger or annoyance to those persons who have the opportunity to use any public

right. In general terms, public nuisance is an act which affects the reasonable comfort of any class of persons who come under its operation or neighbourhood. Provisions have been made in **Sections 133** to **143** of the Code of Criminal Procedure regarding public nuisance. Public nuisance has not been defined in the Code of Criminal Procedure.

Order for removal of pollution.- When the District Magistrate or Sub-divisional Magistrate or any other Executive Magistrate specially authorised in this behalf by the State Government, on receipt of a report or other information from a police officer and on taking such evidence as he thinks fit, considers-

(a) That any unlawful obstruction or pollution be removed from any public place or street or water-course which is or may be lawfully used by the public, or

(b) the carrying on of any trade or occupation or the keeping of any article or commerce which is injurious to the health or physical comfort of the community and in consequence such trade or occupation ought to be prohibited or regulated or such article or commerce ought to be removed or the keeping thereof regulated, or

(c) The making of any building or the sale of any substance which is likely to cause fire or explosion should be prohibited or discontinued, or

(d) any building, tent, structure or tree is in such a condition that it is likely that it may fall down and cause injury to persons living or working or passing by in the neighbourhood, and hence it is necessary to remove or repair such building, tent or structure or to provide support thereto or to remove or provide support thereto, or

(e) Any pond, well or excavation adjoining any such road or public place must be fenced in such a manner as to prevent danger to the public, or

(f) Any dangerous animal must be destroyed, confined or otherwise expressed,

then, such Magistrate may make a conditional order requiring the person causing such nuisance or pollution or carrying on such trade or profession or keeping such article or commerce or owning or having possession or control of such building, tent or structure, object, pond, well or excavation or owning or having possession of such animal or tree to do so within such time as may be fixed,

(i) Causes a nuisance or pollution, or

(ii) To discontinue the practice of such trade or profession or to close down or regulate it in such manner or to remove or regulate the keeping of such article or commerce in such manner as may be directed, or

(iii) Prevents or discontinues the manufacture or alters the development of such substance, or

(iv) Remove, repair or support such building or tent or structure or remove such trees, or

(v) Destroy, confine or sell such dangerous animal in the manner provided in the order, or

If he objects to doing so, he shall appear in person before him or before any Executive Magistrate subordinate to him at such time and place as may be fixed by such order and shall show cause why the order should not be made final (**Section 133**).

Thus the order made under this section is a conditional order (**Emperor v. Brij Kant Rai Chowdhary, I.L.R. 9 Calcutta 637**).

In the case of **Bhagirath Agarwal v. State of Maharashtra, (2004)** Cr. La. J. Su. Co. the Supreme Court held that to avail the benefit of section 133 it must be proved that the inconvenience to the people was great and a large number of people were suffering from it was affected and the Magistrate has to investigate and decide whether there is credible evidence to support the charge or not.

For the applicability of this section it is necessary to have immediate danger to public health, happiness and convenience (**Muralidhar Bhil Patil v. Omkar Venkat Patil, AIR 1961 Bombay 263**).

Where it is the duty of the municipality to provide the required facilities for health protection and to prevent public nuisance, the municipality cannot be free from its said responsibility due to lack of funds (**Nagar Parishad Ratlam vs. Shri Virdhichandra and others, Cri. Law Re. 1980 SC 543**).

Actions and further action - Sections 134 to **143** mention the relevant procedure and further action.

(1) Service of order.-Such order shall be served in the same manner as a summons.

(2) Order to be obeyed or cause to be shown.-The person against whom the order is passed shall, within the due date, either obey the order or appear and show cause as ordered.

(3) Consequences of default.-If such person fails to comply with the order within the prescribed period and does not show cause, then-

(i) Such order shall be made final, and

(ii) Such person is punished under **section 188** of the Indian Penal Code will go.

(4) Denial of public right.-Where such person denies the public right, the Magistrate shall inquire into the matter and stay the operation of the order pending the decision of the Civil Court with regard to such right. But if he does not find any credible evidence regarding such refusal, he shall proceed further by taking evidence etc.

(5) Finalisation of order.-Where after the hearing of the case, the said order is made final, notice to that effect shall be given to the person and he shall be required to comply with the order within the stipulated time.

If such order is still not complied with then-

(i) The Magistrate may get the work done as desired and the expenses incurred thereon shall be recovered from that person, and

(ii) Such person shall be punished under **section 188** of the Indian Penal Code.

(6) Issue of injunction.-The Magistrate may issue an injunction at any stage of the investigation if he is satisfied that it is necessary to prevent public danger or injury of a serious nature (**T. N. Sudhakaran v. E. M. George, 1973 Cri. Law. J. 542** and **Amar Krishna v. Vipra Charan, (1965) 1 Cri. Law. J. 520**).