90% STRIKE RATE IN
LAW OPTIONAL CSE MAINS 2021

LAW OPTIONAL

by

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MODEL ANSWERS FOR
LAW CSE MAINS 2021
(Paper I & II)

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LAW OPTIONAL PAPER – I (CSE 2021)

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SECTION – "A"

Q1. Answer the following questions in about 150 words each: (10x5=50)

a) "The Fundamental Rights may be said to constitutionalise social values of existing society." Explain and illustrate. (10) – LAWRP 2021 – Lecture 1.

b) "Public Interest Litigation in India is judge-led and even to some extent judge-induced." Explain with the help of relevant case law. (10)

TEST 7 Q.3. a) Judicial Activism is the philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions. Though it plays an important role in promoting justice, care must be taken that it does not give way to judicial overreach. Critically analyse. (20)

Answer Framework:

Blackstone law dictionary defines judicial activism as 'philosophy of judicial decision-making whereby judges allow their personal views about public policy,

among other factors, to guide their decisions'. Essentially judicial activism is interpretation of existing laws to make provisions for non-existent provisions based upon the demand of the situation as perceived by the judge.

Our Constitution provides for a parliamentary government with separation of powers although in a relative sense. According to this, policy making is done by legislature, implementation is taken care by executive and judiciary is responsible for reviewing and also acts as guardian of constitution. Judicial activism means judiciary is taking active part wherever legislature is failing or the executive has been unable to comprehensively implement the policies and laws.

Judicial activism plays an important role in filing the gap in law and policy. SC has by judicial activism evolved many procedures which have helped millions of litigants and poor people in the country to get their rights enforced.

Some examples of positive use of judicial activism:

1. In the case of Keshavananda Bharati, judicial activism was given due consideration and Supreme Court held that a constitutional amendment duly passed by the legislature was invalid if it damages or destroys the basic structure of constitution, for the first time.
2. Beginning of PILs and dilution of rule of *locus standi* has helped large number of people.
3. Guidelines on Sexual harassment at work place in Vishakha Case which was later enacted as a legislation.

Advantages of Judicial Activism

1. Judicial Activism is a delicate exercise involving creativity. It brings out required innovation in the form of a solution.
2. Judicial Activism provides judges to use their personal wisdom in cases where the law failed to provide a balance.
3. Many a time public power harms the people, so it becomes necessary for the judiciary to check misuse of public power.
4. It provides speedy solutions where the legislature gets stuck in the issue of majority.

Disadvantages of Judicial Activism

1. Judges can overrule an existing law which violates principle of separation of powers as provided by the constitution.
2. The judicial opinions of the judges become standards for ruling other cases.
3. Judgment may be influenced by personal or selfish motives which can further harm the public at large.
4. Repeated interference of courts can erode the faith of the people in the quality, integrity and efficiency of governmental institutions.
5. Courts limits the functioning of government, when it exceeds its power and hinders the exercise of powers by government agencies.

However, when judicial activism takes place without application of mind and respect for the constitutional scheme of division of powers between the different organs of state it is known as judicial overreach.

Some Examples of Judicial Overreach:

1. SC issued notice to Governor of Arunachal Pradesh. However, the notice was later recalled due to Protection granted to Governor under Article 361 of the constitution.
2. The SC also directed the Union government to set up a National Disaster Mitigation Fund within three months, even though India already has a National Disaster Response Fund and the State Disaster Response Fund.
3. SC ordered government to set up a bad loans panel. The question which arose was does the SC even have the authority to decide how the banks shall collect their dues or even with respect to write-offs.
4. Judgment on ordering time limits to burst firecrackers on Diwali, which is a function of the legislature; and the judgment on linking rivers, for which there is no parliamentary legislation.

The only solution to judicial overreach is the self-restraint that shall be exercised by the judges of SC. Many SC judges themselves have quite often argued in favour of judicial restraint rather than judicial overreach otherwise it shall have serious

implications on separation of powers which is part of basic structure of our Constitution.

But on a whole, the SC is resorting to judicial overreach rather than judicial restraint in increasing number of cases, which is problematic for the proper functioning of democratic institutions in the country as all the institutions have pre-defined role to play and should not interfere into each other's domain. Therefore, SC should impose fetters on its own unbridled powers to ensure that the three organs of State perform their functions without encroaching upon the right of other organs.

c) **"Right to Education is the base for the Fundamental Rights and Human Rights." Discuss the efforts made by the Government with regard to Right to Education of the children (10)** – LAWRP 2021 – Lecture 1.

d) **Explain the relationship between the President and the Council of K Ministers. Is the President bound to accept the advice of the Council of par Ministers ? Discuss. (10)**

TEST 1 Q.4. (c) - Is the President of India a mere constitutional head? Is he bound to accept the advice of the council of ministers? Discuss the position of President of India in light of constitutional provisions.(15)

Answer Approach:

•Introduction: Describe the position of President of India as provided by the Constitution in not more than two lines. (30-40 words)

•Main Body: You are required to explain the Constitutional position of President vis-à-vis the Council of Ministers.

•Conclusion: Write the present position and conclude with a statement which highlights the essence of the entire answer.

Answer Framework:

Introduction:

The President is the head of the State (Art 52) and is the symbol of unity and integrity of the nation.

Main Body:

Firstly enumerate the three articles relevant to explain the Constitutional position of the President → A.53, A.74 and A. 75(3).

No provision in the Constitution makes the President answerable to the Legislature. Thus, it would have been meaningless to make the CoM answerable for the policy and administration of the Union to the House of the People, unless they are recognised to possess the authority to finally decide the affairs of government. Therefore, the real directing force is the Cabinet and not the President.

Cite the case of Ram Jawaya Kapur v. St. of Punjab →write the 3-4 points relating to the above paragraph.

You can also cite UN Rao v. Indira Gandhi →it is obligatory on the President to have a CoM.

Thereafter discuss about the President being bound by the advice of the CoM enjoying the confidence of the LS which if he chooses to ignore, he can be impeached for violating the Constitution. Discuss the position prior to and after the 42nd CAA, and also after the 44th CAA.

Cite the case of SP Gupta v. President of India (Judges Transfer Case) → advice can't be questioned in Court but the materials on the basis of which such advice was given can be scrutinised by the courts.

Discuss about the right of the President to be consulted and right to warn and encourage the CoM – through advice and criticism President can influence the decisions of Cabinet – such influence is purely of an advisory character.

Conclusion:

The primary duty of the President is to preserve, protect and defend the Constitution and the law of India as made part of his oath and his unique constitutional position helps him to carry out this duty of his effectively.

e) Delegation of 'Legislative Powers' has neither been permitted nor prohibited under the Indian Constitution. Discuss the constitutionality of delegated legislation with the help of decided cases. (10)

TEST 5 Q.4. (a) - Comment on the constitutional validity of Delegated Legislation as established by the courts of law through landmark cases. (20)

Answer Approach:

- **Introduction**: Introduce with the necessary evil nature of delegated legislation.
- **Main Body:** Explain the constitutional validity of delegated legislation with the helpof landmark case laws. Write broader framework in sum as given by apex court.
- **Conclusion:** Conclude on the purpose and necessity of delegated legislation.

Answer Framework:

Introduction:

As observed by J. Mukherjea if the function of legislation is delegated or entrusted to any organ of the government other than the legislature, such delegation being by the legislature itself, the resulting legislation made by the non-legislative organ is called delegated legislation.

Main Body:

Considering the undemocratic nature of delegated legislation along with its necessity for modern administration, Supreme Court, observed that the practice of empowering the executive to make subordinate legislation "has evolved out of practical necessities and the pragmatic needs of a modern state." (Ajoy Kumar Banerjee v. Union of India, 1984)

Following landmark judgments shows Supreme Court observations on the constitutional validity of Delegated Legislation -

1. In Edward Mills Ltd. v. State of Ajmer (1955), the Minimum Wages Act, 1948 act contains a list of industries to which the act has been made applicable by Parliament and the “appropriate authority” has been authorised to add any industry to which it would also apply. The Supreme Court upheld the validity of this provision, observing that the legislative policy was clear on the face of the Act, namely, to fix minimum wages to avoid exploitation of labour.
2. In Hamdard Dawakhana v. Union of India (1960), the Act gave power to the Central Government to expand this list, for which advertisements are prohibited, by adding any other disease in the list. Held, legation was held by the court to be invalid, as no principles standards or criteria were laid down in the Act for such

additions. Such a power was held to be uncontrolled and unguided, and therefore, not valid.

3. In Hansraj V. Bar Council of Maharashtra (1996), the Supreme Court held that the rule disqualifying person engaged in any other occupation to enroll as an advocate is valid, as the rule effectuated the object, purpose and scheme of the Act.
4. In State of Rajasthan v. Basant Nahata (2005), the State Government was authorised to refuse to register documents which were "opposed to public policy'. Accordingly, a notification issued declaring the registration of several classes of documents as being opposed to public policy. The Supreme Court quashed the notification, observing that deciding on public policy is a function which is essentially legislative and such a function cannot be delegated to the executive.

On analysing several decisions handed down by the Supreme Court, it can be seen that the following principles have been well-established in India with regard to delegated legislation.

1) the essential legislative function that is laying down the legislative policy, cannot be delegated to the executive or even to another legislature.
2) it can delegate ancillary and subordinate powers necessary for carrying out such legislative-policy to the executive.
3) Whether or not a legislature has performed its essential legislative function depends on the facts and circumstances of each case.
4) Safeguards against the abuse or misuse do not make delegation which is excessive or unwarranted, valid.
5) Delegated legislation will be declared ultra vires if it goes-beyond the legislative policy and standards of the parent Act.

Conclusion:

Despite its being accepted as necessity, delegated legislations were provided with strict control measures in form of Parliamentary Control & judicial review.

Q2.

a) **"Pluralism is the keystone of Indian culture and religious tolerance is the bedrock of Indian Secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection of God-realisation. Thus, all persons are equally entitled to freedom of religion which is not absolute." Critically examine the above statement with the help of constitutional provisions and relevant case laws. (20)**

TEST 1 Q.4.(b) - Write a note on the concept of secularism as enshrined in our Constitution. (15)

Answer Approach:

In such open-ended questions, it is very important to organise your content into a structure.

- Introduction: Write how the concept of secularism has been incorporated in our Constitution in 1-2 sentences.
- Main Body: Explain how Indian secularism is different from Western secularism. Analyze the link between freedom of religion and secularism. Enumerate some of the chief characteristics/dimensions of Indian secularism. Include 1-2 relevant case laws.
- Conclusion: Write the essence of the concept of Indian secularism in 1-2 lines.

Answer Framework:

Introduction:

The Preamble to the Constitution of India provides for a 'secular' polity and the provisions of Articles 25 to 28 provide for freedom of conscience and religion which help in reinforcing the secularism in India.

Main Body:

Briefly describe how Indian Secularism is different from Western Secularism – 2-3 points.

Western secularism

- State should be separated from religion and human life should be liberated from excessive religious control.

For Indian secularism

- Elaborate on these points
  - Freedom of religion is an essential tenet of Indian social order
  - However, it was made a matter internal to an individual
  - A. 25
  - Freedom to religion is not related to God rather it is related to a belief or faith
  - Secularism is a way of life in India
  - how it helps to turn a multi-religious society into an egalitarian society
  - Indian Secularism can be said to be very wide having both negative and positive dimensions.

Then discuss various dimensions of Indian Secularism in the following manner:

- Indian Secularism is not just freedom of religion, rather it is:
- Religious tolerance + mutual respect of religion
- Responsibility of the State to:
  - steps to ensure equal protection to all citizens irrespective of religion.
  - positive action
  - to promote religious tolerance, social well-being, democratic values, etc.
  - can control secular activities associated with religious matters – eg. Amarnath, Haj, etc.
- Fraternity is the ultimate goal of the Indian Constitution. Religious freedom + tainted with colour of equality □promotes fraternity.
- Secularism in India is not anti-God or anti-religion – it gives complete religious freedom to all.
- Secularism therefore, is essential for successful working of a democratic form of govt., in India.

Cite Aruna Roy v. UOI (NCERT case).

Discuss important principles laid down about Indian secularism in this case.

- Essence of secularism is fraternity and mutual tolerance.
- Religious pluralism is at the base of secularism in India.
- Religion in India-major source of value generation.

- Secularism in India has to be read in light of FR, DPSPs, and FDs.

Conclusion:

Cite SR Bommai v. UOI → Secularism is a part of basic structure of our Constitution. Thus, it highlights the great importance that the concept of secularism holds in India.

b) Discuss the procedure for the appointment of judges of the Supreme Court and High Courts and transfer of judges of the High Courts in the light of the decisions of the Supreme Court of India. Also refer to the constitutional provisions. (15)

TEST 3 Q.3.(a) - Discuss provisions related to appointment of judges of High Court and Supreme Court in India and judicial development in this regard. (20)

Answer Approach:

Introduction: Discuss the provisions related to appointment of judges as provided in Constitution.

Main Body: Discuss the first, second and third judges case together with NJAC.

Conclusion: Conclude with the present status of appointment process.

Answer Framework:

Introduction:

Although A. 124 vests the legal power of appointment in the executive but the executive is required to 'consult' legal experts, i.e., SC judges and HC judges in appointing judges of HCs.

Main Body:

Supremacy of Executive: SC interpreted the word 'consultation' to not mean as 'concurrence' in the case of SP Gupta v. UOI (1st Judges case) → therefore, Executive was not bound by the advice given by the judges.

Judicial Supremacy: in SC Advocate on Record Association v. UOI (Judges Transfer Case II), the SC overruled the previous case and held that the opinion of the Chief Justice of India must be given the greatest weight in the selection of the Judges of the SC and HCs and transfer of HC judges. SC → the process of appointment of judges is an integrated, participatory, consultative exercise for selecting the best and most suitable persons available. CJI was required to consult 2 senior most judges of SC before sending his recommendations to the government. The criterion for appointment of CJI shall be seniority.

Sole Opinion of CJI without consultation process: Not binding on Government: SC in Re Presidential Reference (Judges Transfer Case III):

- ➔ Recommendations made by the CJI without following the consultation process will not be binding on the government.
- ➔ CJI must consult collegium of 4 senior most judges of SC – if two judges give adverse opinion the CJI should not send the recommendation to the President.
- ➔ Regarding transfer of HC judges, CJI has to consult 2 senior most judges of the SC and the Chief Justices of the two HCs(one from which he was transferred and other receiving him).

NJAC: The 99th CAA, 2014 inserted A.124A (NJAC) and amended A. 124(2) to provide that every judge of the SC shall be appointed by the President on the recommendation of the National Judicial Appointments Commission. After this amendment no consultation was to be required by the President with the judges of the SC and HC. It even omitted the need for consultation with the CJI in case of appointment of a judge other than CJI. Also the NJAC Act, 2014 was passed to regulate the functioning of the NJAC.

However, the SC in SC Advocate on Record Association v. UOI (2015), struck down the 99th CAA and the NJAC Act on the following grounds:

i) *Fit to hold the office* – S. 5(1) of NJAC Act – for appointment of CJI – 'fit' was an uncertain and ambiguous term and could be tailor-made to choose a candidate below in the seniority list

ii) *Seniority* – S. 5(2) of the NJAC Act – for appointment of HC judges – criteria of seniority would breach the convention of regional representation in the SC – would violate federal character of distribution of powers – also by laying down specific criteria it violates independence of judiciary and separation of powers.

iii) *Veto power to any two members of the NJAC*- S. 6(6) of the NJAC Act – would adversely impact the primacy of the judiciary in the matter of selection and appointment of judges to the higher judiciary – violates independence of judiciary and separation of powers - also, no qualifications laid down for eligibility to be nominated as 'eminent persons' – vague and undefined.

The Court directed the Centre to finalise a draft memorandum of procedure on judges appointments to HC and SCs in consultation with the CJI – factors to be taken into consideration → eligibility criteria, transparency in the appointment process, Secretariats in High Courts, mechanism to deal with complaints against judges, etc.

Conclusion:

As a result of the 2015 decision, the position as it stood prior to the 99th CAA shall continue to be the legal position. Thus, the earlier collegium system which was criticised for opacity, was revived.

c) Discuss the purpose, function and use of Articles 256 and 257 of the Constitution of India. Should these provisions be restructured? What are the consequences of State's defiance of the directives issued under these Articles by the Union? (15)– LAWRP 2021 – Lecture 5

Q3.

a) "Free and fair election is the 'basic structure of our Constitution and it is the 'heartbeat' of democracy." But widespread corruption and increasing criminalisation in the election process have made our democracy weak.

Discuss the various efforts undertaken by the Election Commission to ensure free and fair election. (20)

TEST 11 Q.4. (a) - The 2018 Constitution Bench Judgment said that rapid criminalization of politics cannot be arrested by merely disqualifying tainted legislators but should begin by "cleansing" political parties. Explain how cleansing political parties would better serve the purpose?

Answer Approach:

***Introduction*:** Briefly explain the meaning of criminalization of politics and what would mean by 'cleansing of politics'. (50-60 words)

***Main Body*:** Discuss the ways through which criminalization of politics can be further tackled through various means. (180-200 words)

***Conclusion*:** Conclude by highlighting the present position on electoral reforms and developments in criminalization of politics related laws. (60-70 words)

Tip for students: For these current development based questions, students need to focus on current judicial interventions and the changes in the Representation of People's Act, if any.

Answer Framework:

Introduction

The criminalization of politics refers to the rising participation of criminals and people facing criminal charges in politics. Cleansing of political parties means politics should be cleansed of persons with established criminal background. This leads to a very undesirable and embarrassing situation of lawbreakers becoming lawmakers.

Ways to cleanse political parties

i. **Promoting the culture of intra party democracy**

Centralization, family rule, charismatic leadership is characteristics of every political party in India. Party Machinery role is envisioned to win elections. This needs to be changed sooner than later.

ii. Forcing political parties to effectively publish the criminal antecedent background

In the February 2020 order, the apex court had directed parties not only to upload details of pending criminal cases against their candidates but also give reasons why they picked the tainted ones instead of those with a clean record. Such directions can achieve the desired purpose only if there is strict implementation by the political parties.

iii. Speeding up the trial of politicians

Under current law, only people who have been convicted at least on two counts be debarred from becoming candidates. It is in the public interest to expedite cases in which those in public life face serious charges.

iv. More powers to the election commission

The election commission should be given more powers to prevent the criminalization of politics.

Case laws

Union of India v Association for Democratic Reforms (2002)

Election Commission was directed to secure affidavits by candidates recording all particulars relating to past or pending criminal charges or cases against them.

K. Prabhakaran v P. Jayarajan (2005)

It was observed that the purpose of enacting disqualification under Section 8(3) of RPA is to prevent criminalization of politics.

Rambabu Singh Thakur v Sunil Arora (2020)

The Bench re-iterated the Court's 2018 directions and directed the Election Commission to report to the Supreme Court any non-compliance by political parties.

Conclusion

The Law Commission in its 244th Report recorded that disqualification upon conviction had proved ineffective in preventing the criminalization of politics. Disqualification at the stage of framing of charges, accompanied by punishment for filing of false affidavits could be an effective means to curb such

criminalization. However, the five-judge Bench in *Public Interest Foundation v Union of India (2018)* recognized that it cannot introduce new rules regarding the disqualification of electoral candidates. The Bench asked Parliament to make a law that prevents candidates accused of serious crimes from entering politics.

b) "Article 356 of the Constitution contains provisions relating to the justification of imposition of President's Rule' in the State." Explain the consequences of proclamation of Emergency in a State. (15)

TEST 3 Q.3.(c) - Article 356 which was supposed to be dead letters has become the most misused provision of the Constitution. Elaborate with reference to recent examples and case laws. (15)

Answer Approach:

Introduction: Discuss about the President's Rule/ State Emergency with the help of relevant provisions. (Art. 355, 365 and 356)

Main Body: Write the situations when Art. 356 can be imposed. Discuss how it has often been misused and use case laws to outline the contours of Art. 356 in detail.

Conclusion: Conclude by writing how case laws and 44th CAA has curbed the frequent misuse of Art. 356.

Answer Framework:

Introduction:

Article 356 provides the emergency powers to the Centre to declare President Rule in any state to ensure that the administration of the state is carried out as per the constitutional provision. This provision needs to be read in the context of Articles 355 and 365 of the Constitution.

Main Body:

Art. 356 can be imposed either when the State fails to comply with the constitutional directions given by Union or when President is satisfied either on his own accord or on report of the Governor that the administration of the State cannot be carried out

as per the constitutional provisions. The Presidential proclamation needs to be approved by both Houses within two months of such proclamation.

Dr. Ambedkar had observed that Art. 356 would remain a dead letter and would be used only as a last resort. However, despite its utility, Art. 356 has often remained under a cloud of criticism. The language of the Art. 356 is quite wide and loose has made the matters worse.

Art. 356 has been described as 'an indiscriminate and politically motivated invasion of the Union to supersede the State government'. Art. 356 violates the federal nature of the polity and has often been misused by the Union for political gains. Art. 356 is also criticised as being undemocratic, because the people of the State have no say in the matter. The Article has been used and misused over 100 times in the last 70 years.

In State of Rajasthan vs UOI, it was held that the satisfaction of the President can't be questioned except on ground of malafide or based on extraneous and irrelevant reasons. Art. 356 can be used by Centre for securing compliance with the democratic norms by the States. In Rameshwar Prasad vs. UOI it was held that Art. 356 cannot be used on the ground of maladministration or corruption on part of the State government enjoying the majority support of the assembly.

In S.R.Bommai vs UOI it was held that:-

1. President's rule is subject to judicial review.
2. President's satisfaction must be based on relevant material and can be struck down if the material sought to be relied is irrelevant, extraneous, malafide or perverse.
3. Burden lies on the Centre to prove the relevance of the material relied upon.
4. Court cannot go into the correctness or adequacy of material relied upon, but can see if the material is relevant to the action taken.
5. State Legislative Assembly (SLA) can be dissolved only after the approval of Parliament.

6. Question of state government losing the confidence of the SLA should be decided on the floor of the house and until then the ministry should not be unseated.
7. Article 356 is an exceptional power and should be used only occasionally to meet the requirement of special situations.

Circumstances when the use of Art. 356 has been held to be proper:

- When there is a hung assembly
- When the majority party declines to form government and there is no other coalition.
- When the ministry resigns and there is no one commanding majority.
- When the State Government fails to discharge the constitutional obligations.
- When the constitutional direction of the Union is disregarded by the State.

Circumstances when the use of Art. 356 has been held to be improper:

- When Governor without probing the possibility of alternative ministry dissolves the assembly
- When Governor makes his own assessment without allowing ministry to prove majority on the floor of the assembly.
- State government not given prior warning to rectify its behaviour
- Maladministration or allegations of corruption.

Recently, in Union of India vs. Harish Chandra Singh Rawat & Anr. (2016), Presidential Proclamation in Arunachal Pradesh and Uttarakhand was quashed by the SC as the proclamation was made without the floor test in the assembly. It was held that the "principle of responsible government" needs to be maintained as far as possible and there should be "comity" between the constitutional functionaries "to further the constitutional vision of democracy in the larger interests of the- nation".

Further, dislodging a democratically elected government through a Presidential proclamation must happen in extremely rare circumstances, and that the Governor, in such instances, must "keep clear of any political horse-trading, and even

unsavoury political manipulations, irrespective of the degree of their ethical repulsiveness".

Conclusion:

In view of the long history of misuse of Art. 356, the safeguards provided by 44th CAA as well as those developed by various case laws, it can be safely said that the possibility of misuse of Art. 356 has been curtailed to quite an extent and thus now, it can be concluded that the vision of Dr. Ambedkar can be finally realised.

c) Explain the various principles of natural justice with the help of relevant decided cases. (15)

TEST 5 Q.3.(c) - A fundamental principle of natural justice is audi alteram partem, i.e., no man should be condemned unheard, or both the sides must be heard before passing any order. Elucidate. (15)

TEST 5 Q.2.(a) -Illustrate the doctrine of 'Nemo debetesse judex in propria causa' (No man can be a judge in his own cause) as an effective rule of natural justice. (20)

TEST 9 Q.1.(c) - Audi Alteram Partem is an important fundamental principle of natural justice. Comment briefly. (10)

Answer approach [TEST 5 Q.3.(c)]::

- **Introduction**: Introduce with the basic concept of Audi alteram partem.
- **Main Body:** Explain the concept in detail. Address both notice and hearing. Explanation part should cover the rationale or conceptual basis of this principle. Give case laws and significant observations in respect of the principle.
- **Conclusion**: conclude with " ...Magna Carta ..." observation.

Answer framework:

Introduction:

Audi alterem partem means that both sides must be heard before passing any order. It signifies that no man can be condemned without a hearing. It is a fundamental

principle of natural justice that before an order is passed against a person, he should be given an opportunity to be heard in the matter.

Main Body:

Practically speaking, this maxim covers two things:

- Giving notice to the affected person; and
- Giving him a hearing.

Notice -

i) If any action is proposed to be taken against a person, a notice need to be given to him about the proposed action, so that he may 'show cause', that is, give an explanation or clarification regarding the allegations made against him.

ii) The object of giving such a notice is to inform the person about the charges against him and to afford an opportunity to him to present his side of the case.

Hearing-

i) Before any adverse action is taken the person concerned should be given opportunity to be heard in the matter. It provides a person opportunity to explain why no adverse action should be taken against him.

ii) Fairness of trial and ensuring justice be made necessarily depends upon the relevant considerations of both the parties in respect of subject matter.

iii) Ex parte order, except in exceptional situation, without hearing other party goes to the root of matter and thus is liable to be set aside.

iv) The principle of right to be heard is based on the principle of equity, justice and good conscience. Thus, in respect of cases, where, right to life or property is affected, person must be given a fair opportunity to present his case.

v) In landmark judgment of Cooper Vs Wandsworth Board of works (1863) it was observed that, every statutory provision is subject to a qualification that, no man can be deprived of his property without giving him opportunity to be heard in the matter.

vi) In Maneka Gandhi Vs Union of India, Supreme Court set aside act of confiscation of passport without hearing. Held that, it is implied in the nature of functions discharged by the authority that affected party must be heard.

Pre decision hearing is rule, however, this rule is however flexible and cannot be stretched to unreasonable length. Sometimes action needs to be taken immediately and exigency of situation in public interest demands action to be taken without giving notice or hearing. In such cases, post decisional hearing can be given as a remedial hearing. (Swadeshi Cotton Mills Vs Union of India 1981)

Conclusion:

In Ridge Vs Baldwin (1964) it was observed that, principle of "right to be heard" is Magna Carta of natural justice. Thus, the principle of Audi alteram partem is now an inherent part of almost all statutes, to ensure fair trial.

Answer Approach [TEST 5 Q.2.(a)]:

- **Introduction:** Introduce with basic concept of Nemo debet esse judex in propria causa.
- **Main Body:** Explain the concept of 'Nemo debet esse judex in propria causa' and its significance in upholding principle of natural justice. Write relevant case laws.
- **Conclusion:** Conclude on court's observation or on utility of principle in ensuring "justice".

Answer framework:

Introduction:

"Nemo debet esse judex in propria causa : No man can be a judge in his own cause". This is First and foremost important fundamental principle of Natural justice. This basic maxim of natural justice hits out at bias, interest or prejudice in any proceedings.

Main Body:

It is based on three well known principles, namely,

- No man can be a judge and the prosecutor at the same time.
- It is not enough that justice is done; it is also necessary that it must be seen to be done.

- Judges, like Caesar's wife, should always be above suspicion.

The principal requirement of this rule is that the person who judges — whether he is a judge or an administrative authority — should be impartial and free from any kind of bias. He cannot adjudicate a cause in which he himself has any kind of interest. It is only if he is neutral that he can decide the matter objectively.

As observed in an English case, "The object is not merely that scale be held evenly; it is also necessary that they may not appear to be inclined." (R. v. Bath Compensation Authority, 1925)

If a judge or adjudicating authority is biased either in favour of one party or against the other, he cannot be expected to do justice in the matter. Such a person is disqualified from adjudicating and any decision taken by him is liable to be set aside. This basic rule applies to all judicial authorities as well as to all administrative authorities who are required to act judicially or quasi-judicially.

Thus, A person who sits on a Selection Committee to recruit candidates for jobs or admission to a course should not be interested in any of the candidates.

Whenever there is a pecuniary interest, it disqualifies the person from adjudicating — however small such interest may be.

However, as far as personal bias and official bias are concerned, the courts have evolved a test to ascertain whether, in that particular case, there was a real likelihood of the judge being biased. In case of official bias, except for a mere general interest, to vitiate the proceeding there must be some direct connection between the judge and the subject matter of litigation before him.

The expression 'real likelihood of bias' refers to at least a possibility of bias. The answer to the question whether there was a real likelihood of bias in a given case depends not on what was actually done, but on what might appear to be done.
As observed by Bhagwati C. J. in Ashok Kumar Yadav v. State of Haryana (1967), - "...judge so likely to be biased should be incapacitated from sitting. The question is

not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias."

What is objectionable in such a case is not that the decision is actually tainted with bias, but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

In Institute of Chartered Accountants of India Vs. L. K. Raffia, the President and vice president of an institute chaired disciplinary committee to decide on Removal of his name of the list of Chanter accountants on ground of misconduct. The person was employee of the same institute. Supreme Court set aside the removal on ground that employee was justified in suspecting that a partisan consideration had been given to him.

Conclusion

The courts have also taken the view that there must be reasonable evidence to satisfy that there was indeed a real likelihood of bias. "Vague and unsubstantiated suspicions of whimsical, capricious and unreasonable people cannot be the standard to regulate normal human conduct (International Airports Authority v. K. D. Bali).

Q4.

a) "The provisions of the Directive Principles of State Policy are not enforceable by any court, but they are fundamental in the governance of the country." Critically examine the role of the Government to fulfil the desired objectives enshrined in Part IV of the Constitution. (20)

TEST 1 – Q.1.(e) - Elucidate on the significance of the various strategies adopted for the implementation of the DPSPs enshrined in Part IV of our Constitution. (10)

Answer Approach:

The question demands comments on 'significance of the strategies' adopted to implement DPSPs. So focus on the strategies more and mention provisions only as ancillary facts.

- Introduction

- Write a brief introduction describing the meaning, nature and importanceof DPSPs in 2 lines.

- Main body
  - Write on the strategies adopted to implement DPSPs.
  - Article 38
  - Land ceiling laws, progressive taxation etc.
  - Article 39A, 42, 43, 47, etc.
  - passing legislation.
- Conclusion
  - Write on lines of - as resources are being generated with growing economy, government is proactively adopting strategies to implement DPSPs such as free health insurance, food security, etc.

Answer Framework:

Introduction:

DPSPs are positive obligations imposed on the State to secure political, economic and social justice. They are non-justiciable and are of the nature of moral rights but are nonetheless fundamental for governance.

Main Body:

Mention the types of DPSPs which have been either recognized as a right by legislation or have been promoted under various schemes of the Government. Try to give examples of each type.

- Food Security Act for Article 39
- PM Kaushal Yojana for skill development for Article 43
- Affirmative actions under for Article 47
- 73rd for Article 40
- 97th CAA – Cooperative Societies – Art. 43B
- Right to Education Act – Article 45
- Environment Protection Act, Air and Water Pollution Act, etc. for Article 48A.
- Labour Codes – Article 43A

After some of these examples, try to write a few words on how that strategy led to comprehensive outcomes, etc.

Conclusion:

In the last 69 years, government has adopted various strategies to implement DPSPs depending upon the availability of resources and other factors. In the words of Ambedkar and Nehru, DPSPs lay down the ideal of economic democracy and economic justice and are dynamic in nature. They must change with time and circumstances and the strategies adopted to implement them must also evolve with time.

b) Examine the role of State Legal Services Authority in promoting legal literacy and right of women and children in the State. (15)

TEST 9 – Q.1.(b) - Explain what do you understand by the expression 'access to justice' in the light of the object of Legal Service Authority? (10)

Answer approach.

- **Introduction:** Introduce with the concept of access to justice and its importance in brief. (15 to 25 words)
- **Main Body:** Discuss the various aspects of access to justice. Discuss how NLSA tries to address the issue of access to justice through its significant features. (140 to 150 words)
- **Conclusion:** Conclude with non-adjudicatory aspects of access to justice. (15 to 25 words)

Answer Framework:

Introduction

Access to justice is the first step in ensuring constitutional vision of social, economic and political justice.

Access to justice includes access to all means to get desirable resolution to the disputes. It includes access to formal legal procedure and courts.

Main Body

However the expression of access to justice from constitutional point of view includes judicial and non-judicial dispute resolution. It includes preventive and

curative justice equally along with the mechanism to ease the utilization of utilizing the institutional mechanism.

Courts are the last resort of people. All remaining barriers to understanding justice and rights- physical, financial, knowledge-based have to be removed to ensure access to justice in a meaningful way.

National Legal Service Authority Act 1987 tries to encompass a comprehensive mechanism for ensuring access to justice for prosecution of new cases, pending matters and matters in the pre litigation stage.

It addresses access to preventive and curative justice along with creating legal awareness.

NLSA provides free legal aid to vulnerable sections of society at all levels of courts.

It has provided a mechanism for exploring Alternative dispute mechanisms for disputes and ensures dispute resolution in an amicable way.

The Lok Adalat platform has shown effective intervention in concluding compoundable matters.

Conclusion

Considering the pendency of cases, developing infrastructure, leveraging technology, easing procedure by timely reviewing and greater engagement with people on legal knowledge and pursuing Alternate Dispute Mechanism are necessary to meet the deeper and wider demand of access to justice.

c) What is meant by the Doctrine of Separation of Powers? Is strict adherence of the doctrine possible under a parliamentary form of government ? Discuss with the help of relevant case laws. (15)

TEST 5 – Q.4.(c) - Doctrine of Separation of Powers is not applied in its strictest sense in India. Discuss with the help of provisions of Constitution of India. (15)

Answer approach:

- **Introduction:** Introduce with the concept of separation of power.
- **Main Body:** Explain the framework of separation of power provided by the constitution. Write relevant provisions and important case laws.

- **Conclusion:** Conclude on interdependence nature of relation and need of flexibility.

Answer framework:

Introduction:

The doctrine of separation of powers have been incorporated in the Constitution, as executive powers vest in the President, legislative powers are vested in the Lok Sabha, the Rajya Sabha and various state legislatures, whereas the Supreme Court, High Courts and other subordinate discharge judicial functions.

Main Body:

In I.C. Golaknath Vs State of Punjab (1967), where the Supreme Court was pleased to observe as under-

"The Constitution demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them."

However, it cannot be that the doctrine of separation of powers has been accepted in a strict sense by the founding fathers of the Indian Constitution. This becomes clear from the following provisions contained in the Constitution:

- The President of India enjoys wide legislative powers. He can issue Ordinances when Parliament is not in session.
- The President also exercises judicial functions when he decides disputes relating to disqualifications of Members of Parliament or grants pardon.
- The Ministers are a part of the legislature and are responsible to it.
- The Indian Parliament also discharges judicial functions in respect of impeachment proceedings and on the question of breach of its privileges.
- So also, the High Courts have supervisory powers over all subordinate courts and tribunals. It frames rules regulating their own procedure for the conduct and disposal of cases, a function which is legislative and not judicial in nature.

Thus, although the Constitution of India is broad-based on the doctrine of separation of powers, it is adopted not in rigid but flexible framework. Perhaps the strictest and the most beneficial manifestation of this theory in India is that the

judiciary is totally independent, that is, free from any interference from the executive or the legislature.

Conclusion:

The correct view observed by Justice Mukherjea when he observed in Ram Jawaya Vs State of Punjab (1955) as follows:

"The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity, but the functions of the different parts or branches of the government have been sufficiently differentiated and consequently, it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the state, of functions that essentially belong to another."

TEST 9 – Q.3.(c) Institutional comity among the organs of state is the essence of the Principle of separation power. Elaborate. (15)

Answer approach

- **Introduction:** Introduce with the concept of Separation of power. (30 to 40 words)
- **Main Body:** Discuss Indian constitutional model of Separation of power is different and how there is in built mechanism of interdependence. Explain with the help of issues which can be called as conflicting but which are found to triggers wherein institutional comity is expected for constitutional governance. (240 to 260 words)
- **Conclusion:** Conclude with the separation of power principle linkage with broader values of the Constitution. (30 to 40 words)

Answer Framework

Introduction

Constitution of India provider principle of Separation of Power among organs of state to ensure that institutions should have functional autonomy in their sphere.

Main Body

In Ram Jawaya Kapoor Vs State of Punjab, Supreme Court observed that the principle of separation of powers in its strict sense does not exist in India. However the constitution demarcated the jurisdiction of each organ of government and each

organ have you perform their role considering certain encroachments by other organs.

1. Judicial review by higher courts of executive and legislative actions.

2. Legislature's exclusive domain to enact law to hold all constitutional functionaries accountable to Constitutional mandate.

3. Judicial interpretation of fundamental rights, directive principles.

4. Infrastructure, human resource management, and sustained finance are ensured by the legislature with executive authority.

This governance interdependence shows the flexible nature of the Principle of separation of power in India.

There are few instances like

1. Accountability of Speaker of Parliament.

2. Appointment and transfer of Judges of Higher Judiciary.

3. Applicability of RTI to judiciary.

4. Framework of Constitutionalism for exercise of discretion by Governor and president

These along with other incidents show no strict separation of power nor there is frictional engagement between organs of state as way out.

The distinction may be necessary between essential and incidental powers of an organ of Government. Government is not a machine, but a living thing. Its life is dependent upon the cooperation of its organs, which are interdependent.

An organ may exercise some of the incidental powers of another organ. However, no organ is Supreme in democracy. Each organ is limited to the exercise of the powers confided to it under the law of its creation.

These instances have shown the Indian constitutional system has maintained institutional comity as a fundamental norm to pursue constitutional governance.

Floor test principle to resolve issue of government formation, judicial restraint on economic policy, judicial opinion on question of Law, J. Nariman's solution of formation of Tribunal to deal with matters of legislature's questionable actions or

inactions in context of Article 122 and 212 etc are example of constitutional Governance oriented approach of Indian model of separation of power.

Conclusion

Thus it is the institutional comity and upholding principle of constitutionalism that forms the essence of the principle of separation of power.

Section-"B"

5. Answer the following questions in about 150 words each : 10x5-50

a) Discuss the various efforts made towards the codification of International Law during the 20th century. (10)– LAWRP – Lecture 2

b) Explain different theories on the relationship between International law and Municipal law. (10)

TEST 1 – Q.7.(a) - International and Municipal laws are two faces of the same coin. Discuss with reference to legal theories on relation between the two systems of laws. (20)

Answer Approach:

Introduction

- Briefly state the application of laws under the international law system and the municipal law system.

Main Body

- Explain how there exists a conflict with respect to application of laws in municipal and international systems. Thereafter, discuss the various theories which are applied by municipal and international systems
- Monism, Dualism and HarmonisationTheory.

Conclusion

- Conclude briefly by encapsulating the essence of the answer.

Answer Framework:

Introduction:

International Law is applied in the relations of the States and to other subjects of International Law, Municipal Law is applied within a State to the individuals and corporate entities.

***Main Body**:*

When there exists a conflict between the two systems, a court if faced with the difficulty of arriving at a decision. Therefore the question of the relation between International Law and municipal law is of immense practical importance as the municipal courts will be asked to give effect to the rules of International Law and International tribunal will have to determine the effect of rule of municipal law in the international sphere. To resolve the conflict various theories have emerged.

Monism Theory:

According to Monism, International Law and State Law are both part of one universal legal system serving the needs of the human community as all laws are made for men and men only and all laws originate from a single basic norm (Grundnorm), which is fountainhead of all laws. This theory is supported by Kelson, Westlake and Lauterpacht.

Dualism Theory:

According to Dualism, International Law and municipal law are two entirely different legal systems as

i. their sources are different as municipal law is will of the State whereas International Law is common will of the States
ii. International Law regulates relations between States and Municipal law relations between individuals and between individuals and State
iii. International Law has weaker sanctions, and municipal law has stronger sanctions. This theory is supported by Oppenheim, Triepel and Anzilotti.

Dualism is criticized for not including individuals and other non-state entities under International Law and on the ground that not all rules of International Law are created by will of the States, certain fundamental principles of International Law are binding on States even against their will.

The real controversy is with respect to the question that in case of conflict which law will prevail. Dualists consider that municipal law will prevail whereas monists consider that International Law shall prevail. However, in practice, municipal courts endeavour to interpret statutes in such a way as not to conflict with the provisions of International Law. This is known as Harmonization Theory which is comparatively modern and appears to be better.

Conclusion:

Thus it can be seen that monists attach primacy to international law and consider it as the superior legal system, whereas dualists do the same for municipal law. However, the entire controversy is unreal. Both are supreme in their respective spheres. Harmonisation theory is the better approach and is practically applied worldwide.

c) Explain the principle of 'Double Criminality and the 'Rule of Speciality under the international law of extradition. (10)

TEST 7 – Q.6.(b) - What is extradition? Explain the essential basis for extradition together with Indian State practice. (15)

Answer Framework:

Starke defines extradition as the process whereby under treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a criminal offence committed against the laws of the requesting state, such requesting being competent to try the alleged offender. Extradition is based upon the principle of 'aut punere aut dedere' which means that either the State should punish the offender or surrender the offender. It is a universal principle that no offender shall be left unpunished.

Criminals may take refuge in a state which has no jurisdiction to try him, or in a state which is unable or unwilling to try him because all the evidences and witnesses are abroad. To meet this problem, International law has evolved the practice of extradition; individuals are extradited by one state to another state in order that they may be tried in the latter state for offences against its laws. Extradition also

includes the surrender of convicted criminals who have escaped before completing their punishment.

Essentials of extradition:

a. Principal of reciprocity i.e. treaty or other understanding.
b. The offence alleged should be criminal offence.
c. Double criminality i.e. the offence sought to be tried for is criminal offence in both the countries.
d. Rule of Speciality i.e. the person extradited must be tried only for the offence for which he was extradited.
e. Requesting state should have capacity to try the accused for the alleged offence.

Indian law of Extradition

Indian Extradition Act, 1963 regulates extradition in India. On an application for extradition, a magistrate conducts an inquiry based upon the evidence given and if a prima facie case is made out Government of India informs the requesting State to make arrangements for extradition. However, political offenders and extradition for time barred offences is not allowed by India.

Relevant case laws:

Mubarak Ali Ahmed v. State of Bombay → Location of the person at the time of crime in India is not important, rather the commission of crime is to be in India.

Parliament Attack case → The person was located in Pakistan at the time of crime for abetment/conspiracy of a crime in India. SC held that location of the person is irrelevant.

Daya Singh Lahoria v. UOI → Punishment can be given only for the offence for which extradition has been made.

d) Define 'Double Nationality and 'Statelessness'. Evaluate the efforts taken to eliminate or reduce them. (10) – LAWRP – Lecture 6

TEST 1 – Q.6.(c)- Define Nationality. What are the modes of acquisition and loss of nationality? What is the Indian position on the same? (15)

Answer Approach:

- Introduction → Define nationality. You can use the words of eminent jurists or refer to case laws for the same.
- Main Body → Enumerate the modes of acquisition of nationality and the ways of loss of nationality.
- Conclusion → Conclude with the Indian Position on nationality.

Answer Framework:

Introduction:

Nationality is the link through which an individual can enjoy the benefit of International Law. Fenwick defines nationality as the bond which unites a person to a given State which constitutes his membership in the particular State, which gives him a claim to the protection of that State and which subjects him to the obligation created by the laws of the State. In Re Lynch Case nationality was defined as 'a continuing legal relationship between the sovereign State on one hand and the citizens on the other.'

Main Body:

Modes of Acquisition of Nationality:

1.By Birth:- A person acquires nationality of the State where he is born. He also acquires the nationality of his parents at the time of his birth.

2.By Naturalisation:- When a person living in a foreign State for a long time acquires the citizenship of that State then it is said to be acquired by naturalisation. In Nottebohm's Case ICJ held that there is no obligation of the State to grant nationality if the person has no relationship with the State of naturalization.

3.By Resumption:- Sometimes a person may lose his nationality because of certain reasons. Subsequently, he may resume his nationality after fulfilling certain conditions.

4.By Subjugation:- When a State is defeated or conquered , all the citizens acquire nationality of the conquering State.

5. Cession:- When a State has been ceded in another State, all the people of the territory acquire nationality of the State in which their territory has been merged.

Loss of Nationality:

1. By Release:- when a person submits an application for release of nationality and the application is accepted, the person concerned is released from the nationality of the State concerned.

2. By Deprivation:- In certain States law provides that if a national of that State without seeking prior permission of the government obtains employment in another State, he will be deprived of his nationality.

3. Long Residence Abroad:- In certain States law provides that if a national of that State resides for a long period abroad, his nationality ends.

4. By Renunciation:- A person can also renounce his nationality. Generally this happens when the person has acquired nationality of two or more States.

5. By Substitution:- A person may get nationality of a State in place of the nationality of another State. This is called nationality by substitution whereby he loses the nationality of one State and acquires the nationality of another State.

Conclusion:

Indian practice with respect to Nationality

India allows acquisition of nationality by birth, descent, registration and naturalisation. In case of loss of nationality, India allows renunciation, termination, deprivation. However, deprivation has specific clauses which includes continuous residence abroad for over 7 years, unlawfully trading or communicating with enemy alien, showing disloyalty to the Constitution of India as ground for renunciation.

e) What is 'Intervention and on what grounds do the States justify intervention ? Explain. (10)- LAWRP – Lecture 6

Q6.

a) Distinguish whether 'Recognition of States' is an act of policy or of law. Also distinguish between Constitutive and Declaratory theories on the recognition of States. (20)

TEST 7 – Q.6.(a)- Is recognition declaratory or constitutive? Does it matter anyway? (20)

Answer Framework:

Recognition is acknowledgement of political entity of another state by an existing state by overt or covert act. According to Montevideo Convention 1933, state should possess four qualifications (a) permanent population (b) definite territory (c) government (d) sovereignty or capacity to enter into relations with other state. There are two theories with regard to recognition, declaratory and constitutive.

According to Constitutive theory (CT), an entity doesn't become state by possessing the essential attributes of statehood. Political community acquires international personality through recognition. Other states constitute the personality of a state by granting recognition. CT supports positive law i.e. consent theory of IL. According to Lauterpacht recognition is a legal act and new states have legal right to be recognized and established states have legal duty to recognize the new state. Hegel, Anzilloti, Oppenheim etc. are supporter of CT. According to Oppenheim new state becomes international person through recognition only and exclusively.

However, CT is criticised as it cannot be accepted that an established state controls the fate of a new state. New states do have some rights and obligations under IL even without recognition. Further, there is no legal duty on existing states to recognize new state under IL. According to CT, new states (NS) would exist for recognizing states (RS) and not for other states, this is an absurd situation.

According to Declaratory theory (DT) statehood or authority of NS exists as such prior to and independently of recognition. Recognition is merely a formal acknowledgement, declaratory of an existing fact. There is no legal duty to recognize NS and it depends on sweet will of RS. Hall, Brierly, Fisher and Wadlock are supporters of DT. The theory is supported by the fact that NS do have some rights and obligations under IL even without recognition. Further, recognition has retrospective effect and the courts consider the date from which the condition of statehood was fulfilled by the NS.

DT is criticized on the ground that recognition does change the status of NS in many ways in relation to RS. Lauterpacht says that recognition is constitutive in some sphere and declaratory in others. Kelson observes that NS has natural statehood from the date of existence whereas it gets juridical statehood from the date of recognition.

However, the distinction is more academic than or any real effect as irrespective of whether recognition is declaratory or constitutive, the effect of recognition is same. Once the recognition is done following effects follow:

1. NS becomes entitled to sue in the courts of RS.
2. NS is entitled to sovereign immunity for itself and its properties situated inside RS.
3. NS is entitled to succession and possession of property situated in territory of RS.
4. RS can give effect to past legislative and executive acts of NS.

Therefore, whether recognition is constitutive or declaratory, it has the same effect. Recognition is considered as neither contractual nor political concession. It is declaration of the existence of certain facts.

TEST 9 – Q.8.(a) - "A State is, and becomes, an international person through recognition only and exclusively." Discuss. Is there any duty under international law to recognise a State? (20)

Answer Framework:

The recognition of a state is the act by which one state acknowledges that another state possesses the essential elements of sovereign statehood, such as permanent population, definite territory, government, and capacity to enter into relations with other States.

It is widely accepted that there are two traditional doctrines of recognition, the constitutive theory and the declaratory theory.

The constitutive theory, supported by Hegel, Anzilloti, Oppenheim,etc. holds that "a state is and becomes an international person through recognition only and exclusively." This means that states are essentially non-existent and do not possess any legal rights until recognized by other states. This theory espouses that the act of recognition consists of new States having the legal right to be recognized and established States having the legal duty to recognize them.

The traditional constitutive theory is criticized on a number of grounds such as:

i) If this theory were to be accepted, it would mean that a State exists for some States(those who have granted recognition) and does not exist for others(which have not granted recognition).

ii) There is no legal duty on the part of the existing States to recognize any community that has in fact acquired the characteristics of Statehood.

iii) A State exists prior to its recognition.

iv) A State does have some rights and obligations under international law, even without recognition.

In general, state practice seems to demonstrate a preference for the declaratory theory. According to the declaratory theory, which is supported by Hall, Wagner, Fisher, etc. provides that the Statehood or authority of a new government exists as such prior to and independently of recognition. Recognition is merely an affirmation or declaration of "what is already both a political fact and a legal reality."

There is no legal duty to recognize states even after it has attained statehood. Thus, according to this theory, recognition depends upon the discretion or sweet will of the recognizing states.

In conclusion, it can be said that recognition is both declaratory as well as a constitutive act. Oppenheim said that recognition is declaratory of an existing fact but constitutive in its nature atleast so far as it concerns relations with the recognizing states. Further, there is no settled view whether recognition is the only means through which a State becomes part of the international community.

b) What do you understand by 'State Succession'? Discuss various theories of State succession and explain the rights and obligations arising out of State succession. (15)

TEST 1 –Q.5.(b) - Describe the various types of State Succession. (10)

Answer Approach:

Introduction

- Give some definitions of State Succession by eminent jurists or conventions.

Main Body

- Explain in detail the types of State Succession, i.e. Universal and Partial Succession.

Conclusion

- Conclude by discussing about the controversy related to state succession and efforts made to have some certainty with respect to state succession.

Answer Framework:

Introduction:

Oppenheim describes State Succession as

> *"a succession of international person occurs when one international person takes place of another international person, in consequence of certain changes in the latter's condition."*

Article 2 of Vienna Convention on State Succession (VCSS) defines state succession as

> *"the replacement of one state by another in the responsibility of international relations of territory."*

Main Body:

Types of State Succession:

a) *Universal Succession:*

Universal succession occurs in following two situations:-

i. when one state is completely absorbed in another state either through subjugation or voluntary merger, or

ii. when a state breaks into several parts and each part becomes separate international person or are annexed by surrounding international person.

b) *Partial Succession:*

Partial succession occurs in following three conditions:-

i. When a part of the territory of a State breaks off from the State. e.g. Pakistan & Bangladesh.

ii. When one international person acquires a part of the territory of another through cession. e.g. Crimea

iii. When one fully sovereign State loses its independence, by entering into a federal State or coming into suzerainty or under protectorate or when a non-sovereign state becomes a full sovereign.

Conclusion:

It has been observed by various eminent jurists such as Starke and Oppenheim that whether or not certain rights and duties pass on to the new State, depends on the nature of the rights and duties themselves. No single uniform rule can be laid down in general terms regarding succession or absence of succession. Despite this controversy, the above mentioned common rules have been laid down in order to have some certainty at least.

c) Explain the main features of Law of the Sea. What is the difference between the jurisdiction over 'Territorial Sea' and 'Exclusive Economic Zone'? (15)

TEST 1 – Q.7.(b) - The concept of Exclusive Economic Zone originated due to the efforts of developing countries to address historical imbalances. Explain with the help of provisions and case laws, how far these objectives have been met. (15)

Answer Approach:

- This question requires both a descriptive approach and an analytical approach. Keep this in mind while writing the content and try to incorporate both approaches.
- Introduction → Explain how the concept of EEZ originated to address historical imbalances.
- Main Body → Explain the concept of EEZ. Cite some relevant case laws. Elaborate on the provisions related to rights and duties of States.
- Conclusion → Conclude with the Indian position on EEZ.

Answer Framework:

Introduction:

The concept of Exclusive Economic Zone(EEZ) or Patrimonial Sea was for the first time advocated by Kenya in 1971 to address historical imbalances. Thereafter, this concept was supported by many other third world countries ultimately resulting in recognition of the concept in UNCLOS III, 1982.

Main Body:

EEZ aims to secure for the coastal States the resources of sea, seabed, subsoil, etc.

- Article 55 of UNCLOS defines EEZ as an area beyond and adjacent to territorial sea, subject to the specific legal regime established in Part V of UNCLOS 1982.
- Article 57 of UNCLOS provides that EEZ shall not extend beyond 200 nautical miles from the coast baseline from which the breadth of territorial sea is measured.

In the case of Libya v. Malta, ICJ held that the institutions of continental shelf and exclusive economic zone are linked together in modern law and thus through this case the concept of EEZ has been recognised as a part of modern law.

In the case of Tunisia v. Malta, ICJ declared that the institution of EEZ is shown by the practices of States to have become a part of customary international law. The EEZ although not territorial, it nevertheless, importantly modifies the regime of the High Seas over which it extends.

To achieve the objective of addressing historical imbalances, various rights and duties of not just coastal states but also other states including landlocked states have been incorporated in various provisions of the UNCLOS.

Rights and Duties of Coastal States in EEZ

Article 56 of UNCLOS recognizes two types of rights of coastal State over EEZ.

Firstly, **sovereign rights** for the purpose of exploring and exploiting, conserving and managing the natural resources of the sea bed, subsoil and the super adjacent waters, and with regard to other activities for the economic exploitation / exploration of the EEZ, such as production of energy from water, currents, etc.

Secondly, **jurisdiction** is vested with the coastal state with regard to (i) the establishment and use of artificial islands, installations, and structures (ii) marine scientific research and (iii) the protection and preservation of marine environment.

Rights and Duties of Other States in EEZ:

The freedom of the high seas that are available to all the State shall not be substantially effected by EEZ. Thus, states can enjoy freedom of navigation and over flight, laying of submarine cables/ pipelines, etc. other states can conduct marine scientific research for peaceful purposes only with consent of the coastal State.

Rights of Landlocked States

UNCLOS recognizes right of landlocked States to participate, on an equitable basis, in the exploitation of the living resources of EEZs of coastal States in the same region or sub-region, subject to some qualifications.

Conclusion:

India also adopts 200 nautical miles of EEZ which may be altered by notification in the official gazette after the approval by both Houses of Parliament. Further, India can regulate fishing by foreign vessels in maritime zones of India.

TEST 1 – Q.8.(b) - Legal and conventional development on Continental Shelf has progressed well in the direction of certainty of the concept. Discuss.(15)

Answer Approach:

- Introduction→ Define Continental Shelf and explain how earlier there was conflict and confusion with respect to delimitation of continental shelf based on the 1958 Geneva Convention on Continental Shelf.

- Main Body → Elaborate on the various ways by which delimitation of Continental Shelf can be done → delimitation by agreement; equidistance rule; and equitable principle. Show the development of the rules through case laws.
- Conclusion → Conclude by writing the present position under the UNCLOS and India's position on continental shelf.

Answer Framework:

Introduction:

Article 76 of UNCLOS defines Continental Shelf as the submerged belt of the sea contiguous to a continental landmass and it includes the seabed and subsoil of submarine areas. However, the Geneva Convention of 1958 defined CS on the basis of adjacency, depth and exploitability.

Further, it provided that for delimitation of CS, in case the courses are opposite to each other, medium line will be the boundary and in other cases, boundary of equidistance from the nearest point will be measured unless agreed otherwise. Therefore, the ambiguous and inadequate manner in which Geneva Convention of 1958 defined CS created a lot of confusion and conflicting claims.

Main Body:

In North Sea Continental Shelf case, ICJ observed that the notion of proximity or 'natural prolongation' of land territory of a State is the common factor relied by all States for delimitation of CS. Finally in Article 76 of the UNCLOS (UN convention on the Law of the Sea) provided two perspective for delimiting CS.

I. Where the continental margin is less than 200 Nautical Miles broad, the CS will extend upto 200 NM.
II. If the continental margin is more than 200 NM broad, the CS will extend up to the Continental Margin.

The continental margin lies at the outermost end of the continental rise, and in some cases it may go upto a great distance. Therefore, UNCLOS provides a limitation that either CS shall not exceed 350 nm from the baseline or shall not exceed 100 nm from the 2500 metre isobaths.

Article 83 of the UNCLOS says that delimitation of CS will be done on the basis of agreement based on International Law in order to reach an equitable solution. It doesn't mention equidistance principle as 1958 Geneva Convention however parties are free to use it.

The North Sea Continental Shelf case held that equidistance principle has not become settled rule of customary international law. It can be applied only if there was an agreement between the states. Otherwise, each state to have just and equitable share according to length of coastline.

In Libya vs. Malta, ICJ refuted the contention that respective economic position of the parties concerned could be taken into account for delimitation of CS. However, it acknowledged that the security and defence interests of the State might be given cognizance.

Conclusion

CS has immense economic strategic significance and thus delimitation of CS of a State assumes great significance. UNCLOS along with provisions for dispute resolution accords priority to mutual agreement, and does a fine balancing of rights and duties of state with respect to continental shelf. However, though UNCLOS sets a goal for equitable solution, it is silent as to the method to be followed to achieve it. Thus, UNCLOS can be amended to remove vagueness and provide certainty by clearly laying down methods and procedures to achieve it.

Q7.

a) Discuss the powers of the Security Council for the maintenance of world peace and security. Has the Veto Power' proved a hindrance in discharge of its duties by the Security Council ? Explain. (20)

TEST 9 – Q.5.(e) - The UN organization's role in maintenance of international peace and security is far from being satisfactory. Examine. (10)

Answer approach:

Introduction:

- Introduce with UN Charter entrustment of responsibility on UNO. (15 to 25 words)

Main Body:

- Discuss how far UNO's role can be called as success and from which incidents and issues it can be said that it is far from being satisfactory. (140 to 150words)

Conclusion:

- Conclude with challenge in front of UNO on a broader issue. (15 to 25 words)

Note - Try to write diverse, concrete points with the use of examples.

Answer Framework

Introduction

The UN charter entrusted responsibility of maintaining international peace and security to the UN with its principal organs taking lead with member countries.

Main Body

So far UN succeeded in:

1. preventing third world war.
2. Consistent on peacekeeping mission and peace building focus has been in conflict ridden areas.
3. Engaged with member states on conflict resolution like Columbia, Pacifying Saudi-Qatar blockade for time being.

However, the contemporary phenomenon of Geopolitical and Geo-economic shifts and accompanying rise in conflicts like

a) China US trade war turning into cold war
b) North Korea nuclear program
c) African and Middle East crisis specifically Yemen war and Saudi security alliance.
d) Chinese economic cum political expansion policy

Along with others, have posed serious threats to international peace and security.

At the same time, there is change in the concept of maintaining international peace and security with

1) Rise in threat of ecological disasters and that cyberspace becoming new war field
2) COVID 19 like pandemic potentially leads to an increase in social unrest and violence.
3) Vulnerability to Terrorism, bioterrorism.
4) Proliferation of consequences of development deficit and political opportunism.

The spiraling effect of these critical issues made UNO work far from being satisfactory.

The situation is made more vulnerable by

1. Lack of consensus on managing conflict situations among big economies like US, Russia, China, etc.
2. Pending Institutional reforms like ICC, UNSC and inclusiveness of global economic order on ground.

Conclusion

All these issues have created daunting challenge in front of UN organisation to ensure peaceful and sustainable global order.

b) Discuss the United Nations Declaration on the establishment of a New International Economic Order along with the Charter of Economic Rights and Duties of States. (15) LAWRP – Lecture 6

c) "Humanity is in peril in the present world due to terrorism." Suggest the ways to protect it in the context of human rights. (15)

TEST 5 – Q.5.(d) - Write a note on the promotion and protection of human rights while countering international terrorism. (10)

Answer Approach:

- Introduction: Discuss the premises of focus of question
- Main Body: Explain the complexities of counter terror measures and linked human rights issues. Give example to support your analysis.
- Write legal & institutional framework in place for balancing Counter-Terror and protection of HRs.

- Conclusion: Conclude by highlighting the necessity of the focus of the question.

Answer framework:

Introduction:

Just as terrorism impacts on human rights and the functioning of society, in the same manner, measures adopted by States to counter terrorism can also affect human rights. Effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives which must be pursued together as part of States' duty to protect individuals within their jurisdiction.

Main Body:

1) There has been proliferation of security and counter-terrorism legislation and policy throughout the world since the adoption of Security Council resolution 1373 (2001), much of which has an impact on the enjoyment of human rights.

2) Most countries, when meeting their obligations to counter terrorism by rushing through legislative and practical measures, have created negative consequences for civil liberties and fundamental human rights.

3) Ensuring both the promotion and protection of human rights and effective counter terrorism measures nonetheless raises serious practical challenges for States.

For instance, the dilemma faced by States in protecting intelligence sources, which may require limiting the disclosure of evidence at hearings related to terrorism, while at the same time respecting the right to a fair trial.

4) Human rights law allows for limitations on certain rights. In a very limited set of exceptional circumstances, it also allows derogations from certain human rights provisions.

5) The restrictions are specifically conceived to provide States with the necessary flexibility to deal with exceptional circumstances. For instance, human rights law already permits the use of lethal force when doing so is strictly necessary to save human life.

6) The rhetoric of shoot-to-kill serves only to displace clear legal standards with a vaguely defined license to kill. This creates confusion among the law enforcement officers, endangering innocent persons, and rationalizing mistakes, while avoiding the genuinely difficult challenges that are posed by the relevant threat.

7) International Covenant on Civil and Political Rights article 4 provided requirements which a State party must fulfill to derogate legitimately from certain obligations under the Covenant

International legal & Institutional framework :

i) The universal treaties on counter-terrorism expressly require compliance with various aspects of human rights law.

International Convention for the Suppression of the Financing of Terrorism, for example, in article 15 (expressly permitting States to refuse extradition or legal assistance on ground like, State intends to prosecute or punish a person on prohibited grounds of discrimination); article 17 (requiring the "fair treatment" of any person taken into custody).

ii) In the fourth pillar of the Global Strategy's Plan of Action, Member States reaffirmed the fundamental framework for the "protection of human rights and fundamental freedoms while countering terrorism".

iii) The UN Security Council's relevant resolutions on terrorism and counter-terrorism, including resolutions 1456 (2003), 1624 (2005), 2396 (2017), etc. emphasize that all of Member States' counter-terrorism measures must comply with their obligations under international law, in particular, international human rights law, international humanitarian law, and international refugee law.

iv) The Office of the United Nations High Commissioner for Human Rights provides assistance and advice such as in development of human rights-compliant anti-terrorism legislation and policy.

v) Special Rapporteur under the new Human Rights Council, works to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms.

Conclusion:

These challenges are not insurmountable. States can effectively meet their obligations under international law by using the flexibilities built into the international human rights law framework. While at the same time provided a number of conditions are fulfilled complying with their obligations under international human rights law.

Note: Detailed content is given to enable students to get a broad idea from 15/20 marker question view also. Institutional framework can be discussed here with the help of diagrammatic presentation. However the concept part must accompany an example to show the exact scenario discussed in answer.

Q8.

a) Is it a legal duty of States under international law to settle their disputes by peaceful means? Can failure of peaceful means entitle States to use force to settle their disputes? Discuss. (20)

TEST 3 – Q.5.(e) - Write a short note on "Peaceful settlement of international disputes". (10)

Answer Approach:

Introduction: You can start by mentioning about the relevant provisions of peaceful settlement of disputes in the UN Charter.

Main Body: Discuss the various types of modes of peaceful settlement. Do not go into too much detail on any one particular type of mode but concisely explain some points under each mode.

Conclusion: Conclude by mentioning how these peaceful modes can be put to use under the auspices of UNGA and UNSC.

Answer Framework:

Introduction:

→A. 2(3) obligates members to settles their disputes by peaceful means.

→Article 33 of Chapter VI of the UN Charter (UNC) elaborates on the various peaceful means of settlement of disputes.

Main Body:

Various types of peaceful means of settlement of disputes (PSD) are:-

1) **Negotiations** - such intercourse between parties for:
   - Effecting an understanding between them or
   - For settling a dispute.

   Full-fledged sovereign states alone can be regular parties to negotiations.
2) **Good offices** - a third party assists in bringing about an amicable solution to the dispute without participating in the negotiations.
3) **Mediation** - a third party assists in bringing about an amicable solution of the dispute and participates and plays an active role in the negotiations. Third party may be a State, an International Organization or even an individual.
4) **Conciliation** - dispute is amicably settled with the aid of other state or impartial bodies of enquiry or advisory committees - The committees make a report with proposals to parties for settlement. – This report is not binding.
   Hague Convention 1907 provided for PSD by conciliation commissions.
5) **Enquiry -** facts are investigated and a way for a negotiated adjustment is prepared. Hague conference of 1899 established International Commission of Enquiry.
6) **Arbitration** - it is of a quasi-judicial nature – reference of a dispute to an individual or group of individuals to whom parties state their respective cases – whose decision they are bound to obey – unless they can show that the arbitrator exceeded the authority. Hague conference of 1899 codified the law as to arbitration. Hague conference of 1907 established a permanent court of arbitration. (e.g. Indo-Bangladesh arbitration on maritime dispute 2014)
7) **Judicial Settlement**: it was earlier done by PCIJ under League of Nations and now by ICJ under the UN system.

Conclusion:

Under the auspices of UN, both GA and UNSC can recommend measures for peaceful settlement or direct parties to use the above mentioned means of settlement of disputes (1) – (7).

TEST 3 – Q.6.(b) -Discuss the situations when use of force is permitted under the United Nations Charter? (15)

Answer Approach:

Introduction: Write about the Articles of UNC prohibiting use of force and situations when use of force is permitted.

Main Body: Enumerate the grounds on which use of force was allowed under customary IL. Discuss the Reisman-Schacter debate as well as interventions in cases of large scale HR violations.

Conclusion: Conclude with present status as to grounds for the use of force under UNC.

Answer Framework:

Introduction:

Article 2(3) of UN Charter obligates members to settle their disputes by peaceful means. Article 2(4) prohibits members from threatening or using force against any state. However, Art. 51 explicitly provides for inherent right of individual or collective self- defence in case of an armed attack against a member till the time Security Council takes necessary measures.

Main Body:

Therefore, it seems that for use of force, there were total three grounds under customary IL:

i) Right of individual or collective self-defence under Art. 51.
ii) On grounds of territorial disputes, e.g. Kargil War.

iii) In a dispute between two states if there is a chance of territory of one being captured by another or has already been captured, then under the doctrine of sovereignty affected State has full right to use force.

Further the words of Art. 2(4):- "…..or any manner inconsistent with the purpose of UN" are wide to bring in its purview any act of use of force except the above mentioned three.

Large scale human right violation:

Developed nations argued that A. 2(4) uses the words 'territorial integrity', not the words 'territorial sovereignty'. Thus, other states can intervene in domestic territory of the State in case of large scale HR violations by a particular State.

Conditions for intervention on grounds of HR violations:

1. Comprehensively prove large scale HR violations
2. Existence of imminent danger to their own nationals being eliminated in that other state.
3. No other method is available to solve the problems.
4. Intervention should be only to remove the danger and intervening state shall leave the country to the people of that country for self-determination as soon as possible. Eg. India's intervention in East Pakistan in 1971 and subsequent timely withdrawal of Indian forces from Bangladesh to let the people of that country to exercise their own right of self-determination.

In case of brutal suppression of a domestic movement by a State again right to self-determination is violated which is one of the purposes of UN Charter. Therefore, other States can intervene in this case as well. Eg.- intervention by NATO forces in Libya.

However, in Reisman - Schacter debate, it was argued that though self-determination is an important principle, sovereignty being the most important principle, it cannot be violated and cannot be made an excuse by powerful States to intervene in weaker states.

Principles enshrined under Art. 2 of UN Charter have to be read along with the purposes provided under Article 1 and the Preamble of the UN Charter. Art. 2(1) talks of state sovereignty and when read with Art. 1(1) is seen as principle aimed at attaining international peace and security.

Conclusion:

State is primary unit of IL and sovereignty is treated as most important principle of IL. If sovereignty of a State is violated, international peace and security would automatically be violated. Therefore, in the UN era, use of force is allowed only and only for two purposes – i) Self-defence under Art. 51 and ii) Collective use of force authorised by UNSC under Chapter VII.

b) Is the threat or the use of Nuclear Weapons in any circumstances permitted under International law ? Answer the question in the light of the advisory opinion given by the International Court of Justice (ICJ). (15)

TEST 7 – Q.7.(c) - Comment on the legality of the use of nuclear weapon under International Law with the help of case laws. (15)

Answer Framework:

Nuclear weapons (NW) are characterized by certain unique traits which sets them apart from other types of weapons. They have massive destructive capacity, capacity to cause untold human suffering and have ability to cause damage to generations to come. The most vicious characteristic is that is a blind weapon and it cannot differentiate between combatants and non-combatants. Thus, the question of legality of nuclear weapon is one of the utmost importance.

The basic issue regarding the use of nuclear weapons is that even though use of force has been allowed under Article 42 read with Art. 39 & 51 of UNC, there is no limitation regarding the extent of such use of force and regarding the nature of weapon that can be used, except to the extent of proportionality. The UNC neither prohibits nor permits the use of any specific weapon, including nuclear weapons. Thus, in IL, there is no treaty prohibiting the use of NW.

Therefore, law regarding prohibition has to be found inn customary IL or in the general principles of law accepted by civilized nations. One such set of principles can be seen in the various conventions on environment, health and genocide convention. E.g. UDHR 1948, Geneva Convention 1949 and its protocols of 1977. One prohibition which is certainly there is that first use of NW is prohibited because use of force itself is prohibited under UNC.

In Shimoda Case (1955) court while deciding the legality of use of NW held that under the rule of warfare there is no express prohibition, rather only an implied prohibition exist as can be inferred from the prohibition of use of force on civilian population. Thereafter, in Australia vs France and New Zealand vs France, the validity of NW was challenged on ground of environmental damage but the case ended without any decision as France gave an undertaking to not carry out further tests.

In Advisory Opinion on legality of use of NW, ICJ (1994) opined the following:

i. There is no treaty or customary law authorizing use of nuclear weapon.
ii. There is no conventional or customary law preventing the threat or use of NW.
iii. Threat or use of force by NW is a violation of Article 2 (4) of UNC and since it does not fall within the protection of Article 51 of UNC, it is unlawful.
iv. Threat or use of nuclear weapons should comply with rules of IL with respect to armed conflict.
v. Use of nuclear weapons would be generally contrary to rules of IL, esp. humanitarian laws. However, it is not possible for the court to conclusively say that the use of nuclear weapons is legally prohibited.
vi. There is a need to bring about an agreement for nuclear disarmament and prohibition of use of nuclear weapons.

The Court in this case did not examine the general principles of law, as A. 38 of ICJ Statute applied only to contentious jurisdiction and not advisory opinion.

Recently, in 2017, the Treaty on the Prohibition of Nuclear Weapons (TPNW) was passed. It is the first legally binding international agreement to comprehensively prohibit nuclear weapons, with the goal of leading towards their total elimination. However none of the nuclear weapon states have signed it.

c) Discuss the role of United Nations in protection and improvement of human environment. (15)

TEST 9 – Q.7.(c) - Comment on the international efforts towards protection and improvement of the human environment. (15)

Answer Approach:

Introduction:

- Introduce with the background of Global efforts towards improving human environment. (15-25 words)

Main Body:

- Write the Rationale behind the growing centrality of Human environment. Discuss the initiatives towards protection and improvement of the human environment. (150-160words)

Conclusion:

- Conclude with SDG rationale. (15-25 words)

Answer Framework:

Introduction:

The Stockholm conference of 1972 initiated the discussion about development and environment as a matter of policy and since then the Global community has seen the human environment as necessary part of public policy.

Main Body:

The very idea of Sustainable development created resource management as a policy issue. And for that protection and improvement of Human environment became a central issue for development.

International efforts for protection and improvement of Human environment

1. International conventions

   Earth summit declarations since 1992 reiterated the ecological footprints and need of balancing development and environment.

   Convention on Desertification, Deforestation initiated rethinking on resource use and path of development.

2. Adaptation and mitigation mechanism-

   Modifying the path of development and at the same time mitigation of risk by cutting down the sources of environmental degradation has been accepted as a policy tool.

   Compensatory Afforestation, REDD and REDD+, focus on renewable energy generation etc.

3. International organizations like UNFCC, UNEP, International Institute for Environment and Development (IIED) etc are engaged with Govt and other International Organizations on issues of Low carbon society, Environmental Governance etc.

4. Technology development-

   Emphasize on development of low emission technology, affordable energy, eco friendly material development etc.

5. Global cooperation - Kyoto protocol, Paris agreement, marine ecology protection measures, International solar alliance etc have effected better collective action and feedback mechanisms.

6. Research and development - IPCC, UNEP etc provided a rich research base for a reason based approach towards sustainable development measures.

7. Awareness generation through advisories, conferences, research papers, engaging with public figures, community based programs etc to make these efforts as a movement.

Progress

Ozone depletion reversal, Kigali amendment agreement to Montreal protocol, development of environmental policy wing in member states and special work on that, participation of private sector to cope with low carbon and low emission economy etc. are significant. Paris agreement and Sustainable Development Goals are most remarkable successes of efforts so far.

Conclusion:

Nevertheless the climate change threat requires more efficient and effective effort at local to global level.

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Section-"A"

Q1. Answer the following in about 150 words each.(10x5=50)

(a) What amounts to 'Legal Insanity' that would entitle an accused for exemption from Criminal Liability?

TEST 4 Q.2. a) "Mere medical insanity is not a valid defence under the IPC but legal insanity is." Discuss in detail with the help of landmark case laws. (20)

Answer Approach:

Try to use the words medical insanity and legal insanity as many times as possible in the answer.

Introduction: Write the jurisprudential aspect as to why insanity is a complete defence.

Main Body: Explain the essentials of the defence of insanity together with landmark case laws.

Conclusion: Conclude by encapsulating the essentials of the defence of insanity together with situations when the benefit of the defence would not be given to the accused.

Answer Framework:

Introduction:

An act done by an insane person is treated to be no offence based on the maxim '*actus non facit reum nisi mens sit rea'* meaning thereby an act is not punishable unless accompanied by guilty mind. It is also based on maxim '*furiosus nulla voluntas est'* i.e. a mad man has no will thus he cannot have mens rea.

Main Body:

Defence of insanity is provided under Section 84 of Indian Penal Code which can be pleaded on behalf of the accused on fulfilling the following requisite conditions:

i. Person was of an unsound mind at the time of doing the act.
ii. Person was incapable of knowing the nature of the act.
iii. That act was wrong or contrary to law.

The law on insanity as defence in India has been adopted from England's law on the subject resulting from the guidelines given by House of Lords in M'Naughten case. They are as follows:

a) Every man is presumed to be sane and to have sufficient degree of understanding and reason so as to know the nature of his act until the contrary is proved.
b) To establish defence of insanity it has to be clearly proved that the accused suffered with mental disease and thus couldn't have known the nature and quality of his act or that what he was doing was wrong or illegal.
c) If accused is conscious at the time of doing the act, that he should not do it, he would be held liable for his act.
d) Accused must have medical history of being unsound.

The policy of the law is to control not only the sane, but so far as is possible, also the insane. It is not, therefore, every mentally diseased person (medical insanity) who is *ipso facto,* exempted from criminal responsibility. Such exemption is allowed only where the insane person is incapable of knowing the nature of the act, or that what he is doing is either wrong or contrary to law (legal insanity).

Lakshman v. Dagdu→ Section 84 lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test (test of legal insanity), as distinguished from medical test that the criminality of an act is to be determined.

Scope of S. 84 was examined in Someswar Bora v. State of Assam→ In order to get the protection of this section, the accused has to establish what is known as *legal insanity.* In other words, it must be clearly proved that, at the time of committing the act, the accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act, or that he did not know that he was doing what was wrong.

State of Madhya Pradesh v. Ahmed Ulla→The crucial point of time at which unsoundness of mind should be established is ***when the crime is actually committed***. It is not sufficient only to prove that the accused suffered from an

epileptic type of insanity before or after the commission of the crime. Even though such epileptic type of insanity would qualify as medical insanity, to be able to qualify as legal insanity the ingredients of S.84 need to be fulfilled.

Sanna Eranna v. State of Karnataka→Where acts of violence are committed by a person for no apparent motive, killing his own kith and kin towards who he had all along been affectionate, and where the person also has a previous history of lunacy, the benefit of doubt goes in his favour, and he becomes entitled to the protection given by S. 84. Here, there would be a clear cut case of medical insanity coupled with legal insanity.

Conclusion:

Thus, situations which even though considered as medical unsoundness by modern sciences but falling short of legal unsoundness as given above, would not get the defence of insanity, unless person didn't know what he was doing was wrong or against law.

TEST 10 Q.1.a) Under what conditions can defence of insanity be pleaded on behalf of the accused? (10)

(b) Discuss 'Grave and Sudden Provocation as a defence to charge of murder under IPC, 1860?

TEST 4 Q.3.b) Discuss the doctrine of "grave and sudden provocation" with the help of relevant provisions and case laws. (15)

Answer Approach:

Introduction: Write briefly about culpable homicide and murder.

Main Body: Explain in detail the contours of the exception and the situations when the exception would not apply with the help of case law.

Conclusion: Conclude by briefly mentioning the essentials for taking the defence together with explaining that it is not a complete defence.

Answer Framework:

Introduction:

Culpable homicide is the unlawful killing of a person without malice.When culpable homicide is done with intention or knowledge to kill the deceased then such culpable homicide amounts to murder under Sec. 300 of IPC. However, Exception 1 of Section 300 provides that when culpable homicide is caused due to loss of power of self-control due to 'grave and sudden provocation', such culpable homicide would not amount to murder.

Main Body:

What amounts to grave and sudden provocation is a question of fact and depends on the fact and circumstances of each case. However, it could be said that any act which would cause any reasonable man to lose control of himself and of his mind for a temporary period of time could be said to be grave and sudden provocation.

Essentials in order for a culpable homicide to fall under exception 1 of Sec. 300:-

1. Grave and sudden provocation caused to the accused
2. Provocation is not sought or the accused has not voluntarily provoked
3. Provocation is not caused by anything done in obedience of law or lawful exercise of powers by civil servant or lawful exercise of right of private defence.

The underlying principle of this exception is that anger is a passion to which good and bad men are both subject, and mere human frailty and infirmity ought not to be punished equally with ferocity or other evil feelings.

Principles followed in case of grave and sudden provocation:-

1. The act must be done whilst the person doing it is deprived of the power of self-control by grave and sudden provocation i.e. must be done under immediate impulse.

   In Bahadurs Case→ deceased had an affair with accused's wife and for long time sang provocative songs in front of the accused. On one occasion accused lost control and shot dead the deceased. Defence was given.
2. The provocation must be both grave and sudden. If it is one and not the other, this exception will not apply.
3. The provocation must be such that it will upset not only one with hasty and hot tempered mind but also a person of ordinary sense and calmness.
4. It must be shown that such feeling of excitement had an adequate cause.
5. However great the provocation, if there is time enough for passion to subside, the homicide will be murder.
6. Provocation is no mitigation if the accused himself courts provocation. E.g. A called B coward and other names in presence of others and dared B to

strike A. B then struck him and A took out a revolver and shot B dead. The defence was not given to B.

In landmark case of K M Nanavati vs. State of Maharashtra, SC laid down following principles to be applicable in cases of grave and sudden provocation:

1. The test of grave and sudden provocation is that whether a reasonable man belonging to same class of society as that of accused, placed in the situation would be so provoked as to lose self-control.
2. In India, words and gestures under certain circumstances cause grave and sudden provocation.
3. Mental background created by the previous act of the victim may be taken into consideration in ascertaining subsequent provocation.
4. The fatal blow must be clearly traced to the influence of passion arising from that provocation and not after passion had subsided.
5. In this case accused was not given the defence as he had murdered the accused after substantial time had elapsed when the provocation was given to him.

Conclusion:

Therefore doctrine of grave and sudden provocation allows defence to the accused in case he has committed homicide under genuine 'grave and sudden provocation' caused to him without his own invitation, and without premeditation. Further, it is to be noted that it is not a general defence and the accused is not totally excused from the charges. He would just not be held guilty of murder, however he can be convicted of culpable homicide.

(c) Explain the concept of Plea-bargaining under the Cr.P.C. 1973. In what cases plea-bargaining is not available?

TEST 6 Q.3.c) - Discuss the important features of plea bargaining and how it benefits all stakeholders. (15)

Answer Approach:

- Introduction: Give brief idea plea bargaining.
- Main Body: Explain the important features of plea bargaining. Give the benefits of plea bargaining to all stakeholders.

- Conclusion: Conclude by linking plea bargaining with efficiency of criminal justice system.

Answer Framework :

Introduction

Plea bargaining is an agreement in a criminal case in which a prosecutor and an accused arrange to settle the case against the accused. The accused agrees to plead guilty or not to contest the case in exchange for some concessions such as a reduced or lessor category of charge, or a reduced sentence.

Main body:

Important features of plea bargaining-

i) All parties have to reach a mutually satisfactory disposition together.

ii) Plea bargaining process can be initiated only by the accused; it is a voluntary preference.

iii) The court has to ensure that the entire process takes place voluntarily. Voluntary nature of the application must be ascertained by the judge in an in-camera hearing at which the other side should not be present. The court retains some discretion to release a defendant on probation as per law.

iv) There are no negotiations on the sentence of the defendant. Once a disposition is reached, the court hears the parties for finalizing the sentence. The court awards half of the sentence or one-fourth of the maximum possible sentence for that offence depending upon the provisions of law.

v) It is not available for all types of crimes. Serious offences punishable with death or life sentences, crimes affecting socio-economic conditions and crimes against women and children are excluded.

B. Benefits to all Stakeholders -

i) Ensure speedy trial.

ii) End uncertainty over the outcome of criminal cases.

iii) Save litigation costs and relieve the parties of anxiety.

iv) Impact on conviction rates.

v) Help offenders make a fresh start in life.

For instance, members of the Tablighi Jamaat belonging to different countries have obtained release from court cases in recent days by means of plea bargaining.

Conclusion:

The Criminal Justice System has to be more efficient, reliable and predictable with higher rates of convictions, to allow an accused to make an informed choice for plea bargaining.

TEST 10 Q.1.b)- Plea Bargaining is believed to be a necessary evil. Examine. (10)

(d) Discuss the ambit & scope of 'consumer' as defined under the Consumer Protection Act, 2019. -LAWRP 2021 LECTURE - 11

TEST 8 Q.4. b) -Chart the development of the Consumer Protection Act from its inception in 1986 to its present form in 2019. (15)

Answer Framework:

Consumers play a key role in maintaining the economy of India. Consumer Protection Act was enacted in the year 1986 to look after the various rights and duties of the consumers during the time of purchasing a product and even after that. The Act plays an important role in the fields where there arises an incidence of exchange of goods or services between two persons where money acts as a medium.

Salient features of Consumer Protection Act:

1. Act is applicable on all the products and services bought for a consideration and excludes purchase of goods for resale or commercial purposes.
2. This Act provides safety to consumers regarding defective products, dissatisfactory services and unfair trade practices. So under the purview of this Act there is a provision to ban all those activities which can cause a risk for consumer.
3. Three- tier Grievances Redressal Machinery have been established so that the consumers can get their rights enforced easily.
4. To favour consumer protection and to encourage consumer's awareness act provides for establishment of Consumer Protection Councils.

The following important features were added through the years in order to provide consumers enhanced protection:

Consumer Protection Act 2019 replaced the 1986 Act:

- Specifically provides for goods and services purchased through online medium.
- Consumer Disputes Redressal Commissions (CDRCs) will be set up at the district, state, and national levels. A consumer can file a complaint with CDRCs in relation to: (i) unfair or restrictive trade practices; (ii) defective goods or services; (iii) overcharging or deceptive charging; and (iv) the offering of goods or services for sale which may be hazardous to life and safety.
- Complaints against an unfair contract can be filed with only the State and National CDRC.
- Appeals from a District CDRC will be heard by the State CDRC. Appeals from the State CDRC will be heard by the National CDRC. Final appeal will lie before the Supreme Court.
- The District CDRC will entertain complaints where value of goods and services does not exceed Rs. one crore. The State CDRC will entertain complaints when the value is more than Rs. one crore but does not exceed Rs. 10 crore. Complaints with value of goods and services over Rs. 10 crore will be entertained by the National CDRC.
- Central Government will set up Central Consumer Protection Authority (CCPA) to promote, protect and enforce the rights of consumers. CCPA will inquire into violations of consumer rights, passing orders to recall goods or withdraw services etc.
- It will regulate matters related to violation of consumer rights, unfair trade practices, and misleading advertisements.
- The CCPA may impose a penalty on a manufacturer or an endorser of up to Rs 10 lakh for a false or misleading advertisement together with prohibiting endorsement of particular product or service.

S. No	1986 Act	2019 Act
1.	No separate regulator	CCPA to be formed
2.	6 consumer rights were protected: 1. Right to Safety 2. Right to be Informed 3. Right to Choose 4. Right to be Heard 5. Right to Seek redressal 6. Right to Consumer Education	5 new rights in addition to existing 6 rights has been recognized. • Right to file a complaint from anywhere. • Right to seek compensation under product liability. • Right to protect consumers as a class. • Right to seek a hearing using video conferencing. • Right to know why a complaint was rejected.
3.	Compliant could be filed in a consumer court basis the site of the defendant/seller's office	Compliant can be filed in a consumer court where the complainant either resides or works
4.	No specific provision of product liability existed earlier.	Consumer can now seek compensation for harm caused by a defective product or a deficient service.
5.	Jurisdiction District: up to INR 2 million State: INR 2 million to INR	Jurisdiction District: up to INR 10 million State: INR 10 million to INR 100

	10 million National: above INR 10 million	million National: above INR 100 million
6.	No legal provisions for mediation existed earlier	Courts can now refer settlement through mediation.

CPA 2019 has made several changes to the erstwhile CPA 1986 and has widened the reach of consumer protection regime in India. They further empower consumers by leveraging responsibilities not only on their counterparts, i.e., the sellers, manufacturers, service providers, but also the endorsers of such products. It also attempts to address the issues that were not comprehensively touched upon by CPA 1986, such interests of consumers as a class, etc.

(e) What constitutes 'Malicious Prosecution'? How it is different from 'False Imprisonment'?

TEST 6 Q.2b) - "In tort of malicious prosecution, the plaintiff must prove among other things, that the defendant was the person who was actively instrumental in putting the law in force." Discuss. (15)

Answer Approach:

- Introduction: Give brief idea tort of malicious prosecution.
- Main Body: A. Give essentials of malicious prosecution.
  B. Explain the concept of "actively instrumental in putting law in force".
- Conclusion: Conclude on focus part of statement.

Answer Framework :

Introduction:

Tort of malicious prosecution is defined as a judicial proceeding instituted by one person against another from wrongful or improper motive & without probable cause to sustain it. Instituting the prosecution in such cases for the purpose, which is wrong, is against the public policy.

Main body:

1) Essential elements of tort of malicious prosecution, as observed by apex court in West Bengal State electricity board vs Dilip Kumar Ray (2007) are

i) That no probable cause existed for instituting the prosecution or suit against the defendant.

ii) Defendant acted maliciously & not with mere intention of carrying law in effect.

iii) That such prosecution terminated in favour of the defendant therein.

iv) The defendant therein suffered damages as a result of such prosecution.

2) Thus, amongst other elements, prosecution by defendant that is defendant was actively instrumental in putting the law in force is essential element for the tort of malicious prosecution.

3) Prosecution here means institution of criminal proceedings against the person in court of law i.e. when a criminal charge is made before a judicial officer on tribunal.

4) Though, a prosecutor in criminal proceedings is a state, for the purpose of tort of malicious prosecution, a prosecutor is a person who instigates the proceedings. For instance, if a person gives information to the authorities, which naturally leads to the prosecution based on that information, then informant is prosecutor.

5) Even after giving wrong information to police, it would be insufficient to call a person as a prosecutor, unless he was actively taking part in prosecution and was primarily & directly responsible for the prosecution.

6) Person must have to do something more than lodging a complaint with the police. He must have to be actively instrumental in proceedings & must have made his best efforts to see the plaintiff is convicted for the offence.

7) Merely setting the law in motion is not sufficient, but the conduct of a person before and after making a charge must have to be taken into consideration.

8) In T. C. Bhatta Vs A k. Bhatta defendant had filed a complaint against the plaintiff. He moved the session judge in revision. He got himself impleaded in revision before the High Court. Defendant knew that charge was false & was acting without reasonable cause. Held, defendant was a real prosecutor & held liable for malicious prosecution.

Conclusion:

Thus the essentiality of showing the defendant as the person who was actively instrumental in putting the law in force is key for successful remedy in tort of malicious prosecution.

TEST 10 Q.3.c) Critically examine the requirement of knowledge in tort of false imprisonment. (15)

False imprisonment is a ***total restraint of the liberty of a person***, for however short a time, **without lawful excuse/justification.**

Two things are necessary to constitute this wrong:

1. The total restraint of the liberty of the person.
   The detention of the person may be either
   (a) actual, that is, physical, as for instance, laying hands upon a person; or
   (b) constructive, that is, by mere show of authority, as for instance, by an officer telling a person that he is wanted and making him accompany him.
2. The detention must be unlawful - The period for which the detention continues is immaterial. But it must *not* be lawful.
   - Under criminal law, both "*wrongful restraint" sec.339 IPC* as well as "total restraint", i.e. *"wrongful confinement" sec. 340 IPC* are actionable.
   - However, in tort, the restraint must be total and the plaintiff must prove that there is complete deprivation of his liberty.

Essential ingredients:

1. **Total restraint on the liberty of a person**

Restraint must be total and not partial:

In order to succeed, the plaintiff need *not* prove an actual imprisonment in the sense of imprisonment in a jail. He must prove, however, that there is a total restraint on his liberty or complete deprivation of his liberty. Thus, no action lies where the plaintiff is unlawfully prevented from going in a particular direction.

The deprivation of the plaintiff's liberty must be complete, that is to say, the restraint must be such as to limit the freedom of motion in all directions. It is no imprisonment if a person is prevented in going in one or more of several directions in which he has

a right to go, so long as it is open to him to go, as far as he pleases, in some other direction.

Means of escape:

Where reasonable means of escape was available to the plaintiff under detention taking into account the circumstances and the individual concern, the charge of false imprisonment cannot be sustained.

Maharani of Nabba v. Province of Madras- In this case, a Sub-Inspector, misunderstanding a message sent to him, prevented the *Maharani of Nabba* from boarding a train, and also posted two policemen to prevent her car from being taken out of the railway compound. In a suit filed on these facts, it was *held* that there was no false imprisonment, because she was *not* restrained or confined; only the liberty to go in the conveyance in which she wished to go was affected.

Show of authority to which one submits:

It is *not necessary* to prove that there is an actual physical restraint. There is an imprisonment where a man threatens or declares his intention of arresting another with a show of authority to which the other submits.

Eg: Thus, if a Professor locks up his students in the class-room after the usual lecture hours, it would amount to the tort of false imprisonment.

Knowledge of the plaintiff v. Knowledge of defendant:

Merring v. Graham Whilte Aviation Co. Ltd. – *It was held that* a man may be imprisoned without even knowing it. *Lord Atkin,* in his judgement, observed: "A person can be imprisoned while he is asleep, while he is a state of drunkenness, while he is unconscious and while he is a lunatic."

Thus, **knowledge of the plaintiff is not important rather knowledge of the defendant is important.**

2. The detention must be unlawful

Secondly, the detention must be unlawful. Thus, if the detention is made in pursuance of powers vested in the defendant by law, no action lies. The *period* for which the detention continues is *immaterial.* But, for an action to lie, the detention must be by the defendant or by his orders.

Garikpati Ramayya v. Araza Bikshan - It was held that in the case of false imprisonment, it is *not necessary* for the plaintiff to prove malice or negligence on the

part of the defendant. It is sufficient if he proves that the false imprisonment was carried out by the defendant and if the defendant *cannot* establish sufficient justification, he would be liable.

Unlawful detention: In order to sustain an action for false imprisonment, it must be established that the detention was unlawful. A complaint to the police without any justification resulting in the arrest and subsequent discharge of the plaintiff would render the defendant liable for false imprisonment. Similarly, an arrest ordered by a police officer in excess of his powers would sustain an action for false imprisonment against him.

Q2.

(a) Has Attempt' been defined anywhere in the IPC, 1860 ? What are the various tests for determining, whether an act amounts to preparation or attempt to commit an offence ? Explain with the help of relevant case laws.

TEST 4 Q.1.a) There is a thin line between preparation and attempt to commit an offence, but nevertheless there exists a clear distinction. Examine. (10)

Answer Approach:

Introduction: Write about the stages of commission of an offence.

Main Body: Define preparation and attempt and explain their essential aspects. Try to differentiate between both with the help of case laws.

Conclusion: Conclude by re-establishing the statement of the question.

Answer Framework:

Introduction:

When a person commits a crime voluntarily or after premeditation, the doing of it involves four stages. Firstly culprit (1) intends to commit the offence, then makes (2) preparation for committing it, and thereafter (3) attempts to commit the offence. If the attempt succeeds, he has (4) committed the offence.

Main Body:

Preparation is the second stage in the commission of a crime. Preparation means to arrange means or measures necessary for the commission of the intended criminal act. An act done towards the commission of an offence, which does not lead inevitably

to the commission of the offence unless followed by other acts is merely an act of preparation.

Intention followed by preparation is not enough to constitute the crime. Preparation has not been made punishable as in most cases it is impossible to prove that the preparations were made for commission of the offence. E.g. if a person buys and keeps a loaded pistol with him and does nothing more, he has committed no offence. Further, it is not necessary that everyone who made preparation will actually commit the crime.

The law allows **opportunity to repent** and does not punish the person unless he has passed beyond the stage of preparation. In Noorbibi vs. State, accused was moving towards Pakistani border without proper permission to step into Pakistan but was arrested before reaching the border. It was held that there could be no presumption that whosoever moved towards the border would necessarily cross over.

Attempt is called as preliminary crime, something which is at execution stage. The word 'attempt' means direct movements towards the commission of crime. When the culprit takes deliberate overt steps to commit the offence, it is attempt, and this overt act need not be penultimate act.

In Malkiat Singh v. State of Punjab, accused was arrested 32 kms before Delhi border while trying to export paddy without license →held not guilty →any time before reaching border they could have changed mind → **test for attempt**→ whether the overt acts already done are such that if the offender changes his mind and does not process further in its progress, the acts already done would be completely harmless.

For clarity

S. No.	Preparation	Attempt
1.	Doesn't constitute a crime – usually not punishable	Is a crime – is always punishable.
2.	Is to arrange or devise means or measures	Is direct movement towards commission of the offence
3.	Accused has the opportunity to repent	Accused has lost the opportunity to repent

4.	Lesser degree of determination than attempt	Higher degree of determination than preparation
5.	Does not directly lead to the commission of offence	Leads to commission of offence if successful.

Conclusion:

Whether a particular act amounts to preparation or attempt depends on the facts of that case. However, the thin line between preparation and attempt to commit an offence exists with a clear distinction which is whether or not the act which has already been done would be totally innocent if stopped instantly.

(b) Differentiate between the following:

(i) "Kidnapping' and 'Abduction' LAWRP Lecture - 7

(ii) "Riot' and 'Affray'

TEST 4 Q.1.d) Discuss all the elements essential for completion for the offence of 'riot'. (10)

Answer Approach:

Introduction: Define rioting and mention the pre requisites for the commission of the offence of riot.

Main Body: Write about the essentials of rioting along with the principles decided in case laws.

Conclusion: Conclude by mentioning the importance of this offence in a country like India along with briefly mentioning the essentials of the offence.

➔ **Note that such questions are freak questions and you cannot prepare for such questions with a lot of content, but nevertheless try to write as much as possible to reach the word limit and give the semblance of well written answer.**

Answer Framework:

Introduction:

Section 146 of IPC defines rioting as use of force or violence by an unlawful assembly or its member in prosecution of the common object of such assembly. Therefore, in order to commit the offence of rioting, existence of an unlawful assembly as defined by Sec. 141 of IPC is a prerequisite.

Main Body:

The essentials of rioting are:-

1. Accused person being five or more in number formed an unlawful assembly
2. They were animated by common unlawful object
3. Force or violence was used by such assembly or its members
4. That such force was used in prosecution of their common unlawful object.

Actual force or violence must be used. Mere show of force is not sufficient. It is not necessary for all members to use force. Penal consequences will apply equally to all, if any of them uses force or violence. If the common object of the unlawful assembly is not illegal then use of force would not amount to rioting. Use of force in sudden quarrel would also not amount to rioting.

The intention of doing the act doesn't change the character of the offence. In Raghunath Rai vs. Emperor, several Hindus forcibly removed two cows from the possession of a Muslim man in order to protect the cows from slaughter. → held guilty of rioting.

On acquittal of some of the accused if the number of accused falls below five, the remaining accused cannot be convicted of rioting. R. v. Bondal→ if some of the accused are held to be falsely implicated and therefore acquitted, the conviction of the other accused(less than five in total) for rioting is unjustified.

Conclusion:

Rioting has serious consequences especially in a country like India. In light of rising incidents of mob lynching in India, the provisions of rioting gain all the more importance.

(iii)'Criminal Breach of Trust' and 'Dishonest Misappropriation of property'.

TEST8Q.1.e) Distinguish between Criminal Breach of Trust and Criminal Misappropriation of Property. (10)

Answer Framework:

Criminal Misappropriation of Property (CMP) is dishonest misappropriation or conversion of movable property for person's own use. The initial retention of the property is innocent but subsequent change of intention makes the possession wrongful and fraudulent. Criminal breach of trust (CBT) is the dishonest

misappropriation or conversion of a property by the accused of the property entrusted to him.

Emperor vs. Raza Hussain→ accused change his ticket with the ticket of another person, who showed him the ticket for checking the validity of the same. It was held that accused had committed CMP. In Vishwanath Case→ it was held that return of the misappropriated property cannot absolve the accused of the offence of CBT.

Differences between CMP & CBT:-

	CMP	CBT
Mode of conversion	Applies to conversion of property coming into possession in any manner.	Applies to conversion of property held by a person in fiduciary capacity.
Relationship	None	Contractual/Fiduciary relationship
Mode of acquiring property	Property comes into possession of offender casually or otherwise and he afterwards misappropriates it.	Offender is lawfully entrusted with the property, but he dishonestly misappropriates it or wilfully suffers any other person to do so, instead of discharging the trust attached to it.

TEST 6 Q.4.(b) The requirement of 'entrustment of property' is the most important essential which differentiates an offence of criminal breach of trust from the offence of criminal misappropriation of property. Discuss. (15)

(b) What are the various kinds of damages that a plaintiff can avail as a remedy under the law of Torts ? Under what circumstances can "prospective damages" be awarded ? LAWRP LECTURE – 3

Q3.(a) From 'Mathura' to 'Nirbhaya and beyond, discuss the development of Rape laws in India (20)

TEST – 6 Q4(a). Write a note on the key changes brought by The Criminal Law Amendment Act of 2013 to the Indian Penal Code, 1860. (20)

Answer Approach:

- Introduction: Introduce with background of amendment.
- Main Body: Discuss the changes brought about by the amendment of 2013 in IPC.
- Conclusion: Conclude on the objective of amendment of 2013 to criminal law.

Answer Framework :

Introduction:

Post Nirbhaya incident compelled Government of India "to do everything in their power to take up radical reforms and the like, to make women's lives safer and secure". In furtherance of the same, Criminal Law Amendment Act of 2013 was enacted based on the recommendation of J. Verma Committee.

Main body:

Changes in IPC by Criminal Law (Amendment) Act, 2013 –

A) New offences-

1) Acid Attacks- Sec 326 A- Punishment of imprisonment for 10 years or life imprisonment and a reasonable fine amount to meet medical expenses.
2) Sexual Harassment- Sec 354 A- made gender neutral offence.
3) Assault or Criminal force with intent to disrobe- Sec 354 B- supplemented the provision of outraging the modesty of women. Punishment provided is imprisonment for 3 to 7 years.
4) Voyeurism- Sec 354 C- watching or capturing a woman doing her private acts made a specific offence. Enhanced punishment is provided for repeat offenders.
5) Stalking- Sec 354 D- Except in specific limited instances, stalking a woman made a specific offence.

6) Public servant disobeying direction under the law- Sec 166 A- expanded scope to include act related to sections 354, 354A, 376, 376 (A),(B),(C),(D),(E) etc. Enhanced punishment of imprisonment for 6 months to 2 years and fine.
7) Provided punishment for non-treatment of victims as imprisonment for 1 year or fine.

B) Substituted new sections-

1) Trafficking of person- Sec 370- term prostitution has been removed from explanation clause.
2) Exploitation of trafficked person - Sec 370 A - made punishable with imprisonment for 5 to7 years and fine.
3) Rape- Sec 375- Expanded the scope of offence of rape by including oral sex and insertion of object or any other body part as part of penetration as rape. Maximum punishment enhanced to life imprisonment.
4) Rape resulting in death or vegetative state- Sec 376 A- made specific offence- Punishment20 years to life imprisonment (rigorous imprisonment) or death.
5) Enhanced punishment for sexual intercourse by person in authority or in fiduciary relation-Sec 376 C.
6) Gang rape- Sec 376 D- rape by more than one person with common intention- Punishment for 20 years to life imprisonment (rigorous imprisonment) and fine payable to the victim, that is reasonable to meet medical expenses.
7) Punishment for repeat offenders of offences under Sec 376, 376 A and 376 D- Sec 376 E- Life imprisonment (rigorous imprisonment) or death.

C) Amended existing provisions of IPC-

1) Added seventh condition to Sec 100 related to administering or attempt to throw or administer acid.
2) Added sections 376, 376 A, 376 B, 376 C, 376 D and 376 E in Sec 228 A related to prohibition on disclosure of names of victims.
3) Rape by armed personnel made specific offence. Punishment with rigorous imprisonment not less than seven years, extend to imprisonment for life.
4) Sec 509 amended to enhance maximum punishment from "1 year to 3 years".

Conclusion:

The Criminal Law Amendment Act of 2013 expanded the scope and made punishment more deterrent in heinous offences like rape, sexual assault along with procedural modifications to enhance efficiency in dealing with such offences.

(b) Explain the liability of Joint Tortfeasors' for a wrongful Act. How is it different from the liability of 'Independent Tortfeasors'?

TEST-2 Q.4.b) The liability of joint tort-feasors is 'joint and several.' In light of this statement discuss who are joint tort-feasors and their liability with the help of case laws. (15)

Answer Approach:

- *Introduction:* Define who are called JTF. Discuss the essentials of becoming JTF.
- *Main Body:* Write related case laws and discuss the principles evolved in them. Elaborate upon the liability of the JTFs and rule of contribution.
- *Conclusion:* You can conclude by encapsulating the essence of all the major points.

Answer framework:

Introduction:

When same damage is caused to one person by several wrongdoers, they may be either joint tort feasors or several tort feasors. Two or more persons are said to be Joint Tort Feasors (JTF) when the wrongful act which has resulted into tort, was done by them in furtherance of a common design. JTFs are in law responsible for the same tort.

Main Body:

In order to make two or more persons liable for the same act, it is to be proved that such persons concurred in the act of causing damage, and such act should not be coincidence of separate acts which by their conjoint effect caused the damage.

- In Brooke vs. Bool, A & B entered Z's premises in search for gas leakage and each of them applied naked light to gas pipe. The explosion occurred when A showed the light and Z's premises were destroyed. Here, both A & B were held liable as JTF.

Any person who joins together in some form of common action becomes responsible for tort which is committed in the cause of action, irrespective of what part each may play, so long as there is consulted action.

Liability of JTF is joint and several and each of the JTF is liable for the whole damage. Any party aggrieved by JTF may sue both of them jointly or separately. A decree obtained against them jointly maybe executed against anyone of the JTFs.

- In Arnal vs. Patterson, two dogs of different owners attacked a flock of sheep and injured many sheep. It was held that both the owners are responsible for the whole of damage caused to the sheep.

Release of one JTF releases all other JTF from their liability as the cause of action is one and it is divisible. However, mere covenant not to sue with one of the JTF is different from release of JTF. Covenant not to sue discharges that particular wrongdoer with whom the covenant has been entered with, the joint action against all other JTFs still remains.

- In Ram Kumar vs. Ali Hussain, plaintiff sued 12 defendants and was awarded Rs. 325. He settled with one of the defendants for his share of 25 rupees, it was held that it doesn't discharge all other defendants.

Conclusion:

In view of the decided case laws, it can be seen that liability of JTFs is joint and several and it continues even after covenant not to sue is signed with one of the JTFs. However, discharge of one JTF discharges all other JTFs.

(c) In an action for 'Negligence'. what does the plaintiff need to establish in order to affix civil liability of defendant? What does it take for the maxim 'res ipsa loquitor' to apply?

TEST 2 -Q.1.b) "The maxim *Res Ipsa Loquitor* is not a rule of law but a rule of evidence." Explain and illustrate. (10)

Answer Approach:

- *Introduction:* Start the answer by discussing what the maxim means.
- *Main Body:* Discuss how it is a rule of evidence and not a rule of law as it raises a presumption of negligence. Take help of Halsbury's Laws of England's definition. Enumerate the three essentials for this maxim shall apply and explain with help of 1-2 case laws. Also enumerate the two situations when it won't apply.
- *Conclusion:* Conclude by explaining the statement of the question again.

Answer framework:

Introduction:

The Latin maxim "*Res Ipsa Loquitor*" translates into 'the things speaks for itself'. It allows the claimant to succeed in action for negligence even when there is no evidence as to what caused the accident by shifting onus to disprove the allegation on the defendant.

Main Body:

In case of negligence, general rule is that onus of burden of proof lies on the person alleging it. Direct evidence of negligence is not always necessarily available and circumstantial evidence is also admitted to prove negligence. However, in certain cases plaintiff need not prove anything and negligence is inferred from the facts itself. When the facts explain only one thing that it could not ordinarily occur unless the defendant had been negligent, the law raises a presumption of negligence on part of the defendant and it is sufficient for plaintiff to prove accident and nothing more.

Requirement for maxim to be applicable:-

1) Event causing injury was under direct management and control of the defendant.
2) The accident could not ordinarily occur unless defendant has been negligent.
3) No evidence of actual cause of accident.

- In Byrne vs. Boadle, when a barrel of flour fell upon plaintiff from second floor, negligence was presumed on part of defendant.
- In MCD vs. Subhagwanti, clock tower under the exclusive clock tower in main chowk collapsed, it was held that the incident could not have happened without negligence of the MCD.

The maxim does not apply in following two cases:-

1) When all the facts relevant to loss or injury is known.
2) When an object or operation is under control of two or more person not legally responsible for the act of each other.

Conclusion:

The maxim of "*Res ipsa locquitor*" does not create any new tort, but it is only a rule of

evidence which helps in deciding whether the defendant was negligent or not and helps the plaintiff by transferring the onus on the defendant to disprove the allegation of negligence.

Q4.(a) Discuss the evolution and development of rule relating to 'No-fault liability in India with help of decided cases.

TEST 2 - 4(a) -The rule of strict liability is not so strict so as not to allow any defence. Discuss the rule of strict liability in light of the above statement. (20)

Answer Approach:

- Try to understand the specific demand of the question. It requires us to discuss the rule of SL in light of the statement mentioned. Thus, the exceptions/defences to strict liability need to be discussed in greater detail and the rest of the content needs to be mentioned concisely.
- *Introduction:* Start your answer by discussing about what SL means and how it is a no-fault liability.
- *Main Body:* Explain the essentials required in brief. Thereafter, discuss the exceptions to this rule of SL. Try to support each exception with a case law or relevant illustration.
- *Conclusion:* Conclude by stating the statement of the question again and linking it to absolute liability – which does not entertain any exceptions.

Answer framework:

Introduction:

Liability under tort is based on fault, but apart from these there are situations when a person may be liable for some harm even though he not negligent in causing the same or there is no intention to cause the harm or sometimes he may even have made some positive efforts to avert the same. In such situations, law recognises a 'no-fault liability' and strict liability is an example of this.

Main Body:

The rule of SL finds its genesis in the case of Rylands v. Fletcher wherein J. Blackburn propounded the essentials to attract strict liability.

i. Some dangerous thing must have been brought by a person on his land.

ii. There must be an escape of such a thing.

iii. It must have caused damage to the plaintiff.

iv. There must be non-natural use of land.

These essentials can be illustrated by the facts of the case of Crowhurst v. American Burial Board, wherein the defendant had grown a poisonous tree(dangerous thing) on his land(non-natural use of land), the branches of which projected into the plaintiff's land (escape). The plaintiff's horse was poisoned by eating this tree's leaves (damage to the plaintiff). Thus, the defendant was liable under this rule.

However the rule of strict liability is not of an absolute nature and certain exceptions are allowed to be pleaded by the defendant against the applicability of this rule. These are as follows:

a. Damage caused by escape of the dangerous thing was due to plaintiff's own fault or negligence.

- Ponting v. Noakes – P's horse trespassed into D's land – ate leaves of a poisonous tree – D not liable.

b. Act of God or vis major.

- Nichols v. Marsland – due to extraordinary rain, strong embankments of an artificial lake gave away and destroyed P's bridges – D not liable.

c. Volenti non fit injuria, i.e., where the plaintiff had consented to the accumulation of the dangerous thing on the defendant's land for the purpose of common benefit.

- Cartier v. Taylor – P lived on ground floor – D lived on upper floor – water tank on upper floor leaked without negligence of D – water stored for benefit of both P & D – D not liable.

d. Harm had been caused due to the wrongful or malicious act of third party over whom the defendant had no control.

- Richards v. Lothian – stranger blocked waste pipes of wash basin and opened the tap – water damaged P's goods – D not liable.

e. The act had been done under the statute of an authority.

- Green v. Chelsea Waterworks Co. – D's statutory duty to maintain continuous supply of water – main pipe burst – P's premises got flooded – no negligence of D – D not liable.

Conclusion:

If the above mentioned defences are not available to a defendant in a case, then such a liability is called absolute liability. In other words, a no-fault liability which is so strict as to not allow any defence is absolute liability but one which allows defences is called strict liability.

(b) What are the defences available to an accused in a civil suit for 'defamation'? Explain.

TEST – 10 Q.4(c). The law related to defamation is not absolute. Discuss the defences available to the defendant in a suit for defamation. (15)

Answer approach:

- **Introduction:** introduce with basic of defamation as a concept in brief
- **Main Body:** write about essential elements and then discuss defences available against the defamatory statement.
- **Conclusion:** Conclude with the freedom under 19 and Right to reputation.

Answer framework:

Introduction:

As per Salmond, Defamation can be defined as 'the wrong of defamation lies in the publication of a false and defamatory statement about another person without lawful justification'.

Main Body:

Defamation can be libel or slander.

Essential elements of Defamation

1. Publication of Defamatory statement
2. Statement must be referred to the plaintiff.

The Defamatory statement referring to the plaintiff can be direct or indirect. If it is indirect, it is innuendo and has the same consequences in the eyes of law as if it is direct.

Defences available in tort of defamation

In civil law, the defences against Defamation are

1.Truth

The publication based on verifiable facts can end liability for defamation. It nullifies the charge of malice. It shows that the plaintiff is not entitled to recover damages.

Illustration- A publishes an unverified statement about B, who is a professor in a University, being involved in some corruption activities with the University funds. This causes harm to his reputation, thereby leading to removal from the post of professor at the University. Here mere belief without verified work cannot raise defence of Truth.

2.Fair comment

Fair and bona fide comment on a matter of public interest is not Defamation. For the defence of fair comment.

i. A matter of public interest
ii. the public in general have a legitimate interest, directly or indirectly, e.g. matters connectedwith national and local government, public services and institutions
iii. matters which are public performance.

In Subramaniam Swamy v. Union of India, it was observed that, mere belief of there being truth without there being reasonable grounds for such plea is not synonymous with fair comment.

3.Privileges

The general principle underlying the defence of privilege is the common convenience and welfare of society or the general interest of society. Privileges can be absolute or qualified

i. **Absolute privilege-**
A statement is said to have absolute privilege when no action lies about anything said in any Court or Tribunal recognized by law and legislature.

ii. **Qualified privilege -**The statement is said to have a qualified privilege when no action lies against it, even though it is false and defamatory, unless the plaintiff proves malice. It is qualified because only on certain occasions such publications are privileged. e.g. publication of true judgment of court of law,

Thus here it is only occasion is privileged and thus the same statement in normal circumstances creates a right in plaintiff for action for damages.

Conclusion:

The defences in tort of defamation, are based on the fundamental freedoms under Article 19, while legal remedy against defamatory statement is based on right to reputation and dignified life of individual.

(c) Recently there have been changes in Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Enumerate. LAWRP Lecture - 11

Section-"B"

Q5. Answer the following in about 150 words each. (10x5=50)

(a) Minor's contract is 'void ab initio'. Comment.

TEST – 2 Q.7.c) Minor has been given a special position under Indian Contract Act. Discuss with the help of landmark judgments. (15)

Answer Approach:

- *Introduction:* Start with Sec. 11 according to which only major are competent to contract. Define what is major in India.
- *Main Body:* Start with explaining the effect of minor's agreement. Write the different protections available to minor along with the situations when minor is liable.
- *Conclusion:* Conclude with reiterating the fact that ICA gives special position to minor for their protection and not for

Answer framework:

Introduction:

Section 11 of the ICA provides that only major can enter into a contract. According to the Indian Majority Act, 1875, anyone below 18 years of age is a minor and cannot enter into a contract. Contract entered by minors is void ab initio which means that the contract would have no effect on the position of minor of at all. However, the ICA provides special position to the minor to ensure their protection from major who enter the contract with them.

Main Body:

In Mohiri Bibi vs. Dharmodas Ghosh, it was held that contract entered by minor is void ab initio and no recovery can be done from the minor. No estoppel would be enforceable against the minor if the fact of minority was known by the other party to the contract as estoppel cant overrule statutory provision.

A minor cannot ratify his contracts after becoming a major as the act sought to be ratified was done at the time when the requirements of a contract was not fulfilled. The above was held in Suraj Narain vs. Sukhu Ahir.

However, under the doctrine of equitable restoration, the minor is liable to restore the exact same thing which he has taken from the other party of contract if that thing is traceable or in his possession. But the minor is not responsible to return the money as it is not traceable.

In Leslie vs. Sheill money lenders action was held to be not enforceable as that will amount to enforcement of the contract itself.

A minor is bound by contracts relating to immovable property entered by guardian for his benefit. The minor cannot claim such property later in repudiation of the contract entered by his guardian. Further, the guardian can sue on behalf of the minor to recover loan or promissory note given by minor.

Conclusion:

In light of the above provisions and judicial pronouncement it can be seen the ICA gives special position to minor to ensure his protection. This special position cannot be abused by minor to unjustly enrich himself and therefore, his estate is liable for necessaries provided to minor. No personal liability will arise for necessities provided as well.

(b) Discuss the constitutionality of Right to Information Act, 2019 in the light of recent judgment by the Supreme Court of India. LAWRP – LECTURE 12

TEST – 8 Q. 8.b) Critically examine the provisions of the Right to Information (Amendment) Act, 2019? (15)

Answer Framework:

Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019

Provision	RTI Act, 2005	RTI (Amendment) Bill, 2019
Term	The Chief Information Commissioner (CIC) and Information Commissioners	The Bill removes this provision and states that the **central government**

	(ICs) (at the central and state level) will hold office for a term of five years.	**will notify the term of office** for the CIC and the ICs.
Quantum of Salary	The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs **will be determined by the central government**.
Deductions in Salary	The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension. Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.	The Bill removes these provisions.

The amendments were criticised on the following grounds:

i. That it curtailed the independence of the RTI Act.

ii. It impacted the sovereignty of states as it curtails their powers to decide on the degree of independence for Information Commissioners in their own jurisdiction. There would be an anomalous situation where states would have the power to appoint commissioners, but the Centre will decide their tenure, salary and status.

iii. That the government can threaten or lure the chief information commissioner and information commissioners with arbitrary removal or extension and curtailment or increase in salary depending upon their suitability for the ruling dispensation.

The amendments were defended on the grounds that:

i. that CIC is a statutory body and Election Commission is a constitutional body. Thus, the mandate of Election Commission of India and Central and State Information Commissions being different, they needed to be determined accordingly.

ii. that in the original bill, the salaries of the CIC and ICs were equivalent to secretaries and additional secretaries respectively. But the Parliamentary committee had recommended increasing the same to the level of the chief election commissioner and other election commissioners for the CIC and the ICs respectively.

Analysis:

The Supreme Court in catena of landmark cases, has held that RTI, like the right to vote, has emanated from right of expression under Article 19(1)(a). Both CEC and CIC enforce these two aspects of that fundamental right. The 2005 RTI Act says information is a 'constitutional right', while the 2019 bill contradicts it. If the Election Commission that enforces a right under Article 324 (1), is a constitutional institution, how can the Information Commission that enforces a fundamental right under Article 19(1)(a), not be a constitutional body? The mandate of both is similar — to fulfil constitutional rights obligations. If RTI was introduced earlier in India, like some other countries, then, like the CEC, it would have found mention in the Constitution itself.

Both CIC and CEC are, therefore, equal and, like the judiciary, should be separate from the legislative and executive, according to the well-established theory of separation of powers propounded by Montesquieu, and incorporated in Indian Constitution.

The preamble of the RTI Act of 2005 lays out its broad objectives — transparency and accountability. The Information Commissioners adjudicate appeals in a manner that these objectives are fulfilled, without any fear and favour. The commissioners, hence, need to be kept insulated from political vagaries and adorned with appropriate status. It may be mentioned here that detailed deliberations were held with all stakeholders including the judiciary, legislature and the executive before giving the present status to the commissioners, in the RTI Act 2004.

Conclusion

The RTI Act is a sunshine legislation. Astute handling of RTI queries directly impact governance, especially the public delivery system and expose corruption. More and more poor people seek recourse to justice through RTI. The need of the hour is to strengthen the RTI regime by posting bold, upright and competent Commissioners who uphold the dignity and power of the institution. Reducing their status, salary and tenure would be a retrograde step amounting to creation of an RTI ministry under the government. The RTI Act needs to be implemented not just in letter but in spirit also and any amendment that dampens its spirt should be looked into by the Supreme Court to check its constitutionality.

(c) In legal phraseology "every person who acts for another is not an agent". Comment.

TEST - 4 Q.5 c) Enumerate the circumstances when an agent is personally liable? (10)

Answer Framework:

The general rule regarding the liability in the case of an agency is that:

- Only the principal can enforce and can be held liable on a contract entered into by the agent.
- The agent is not personally liable on a contract entered into by him on behalf of the principal to the third person. Nor he can enforce the contract entered into on behalf of the principal.

However, there are certain exceptions to this general rule, where the agent can be held personally liable such as:

(a) When agent acts on behalf of foreign principal.

(b) Where it is expressly provided in the contract that the agent shall be personally liable.

(c) Where agent does not disclose the name (identity) of his principal i.e. when the agent acts for an undisclosed principal.

(d) Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.

(e) When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.

(t) When the agent exceeds his authority or commits a breach of warranty of authority.

(g) When he acts as a pretended agent (i.e, where he falsely represents that he has the authority to act on behalf of the principal, and the alleged principal does not ratify his acts).

(h) When he receives or pays money by mistake or fraud.

(i) Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.

(j) Where the usage of trade or custom makes an agent personally liable

(d) India's 40 years old 'Air Act', 1981, languishes in the present circumstances of Air pollution emergency in Delhi – National Capital Region. Comment on the effectiveness of law in the light of judicial and administrative mechanism. LAWRP Lecture - 12

(e) With the globalisation of trade, brand names, trade names and trademarks have attained an immense value and therefore it requires an effective trade mark law'. Discuss. LAWRP Lecture - 12

Q6.

(a) What are the various modes in which a contract may be discharged ? Explain in the light of decided cases. LAWRP Lecture - 4

(b) Dwell on the legality and constitutionality of Section 66A, Information Technology Act, 2000.LAWRP Lecture - 12

(c) Write short notes on the following:

(i) Caveat Emptor LAWRP Lecture - 8

(ii) Uberrima fides LAWRP Lecture - 7

(iii) Nemo dat quod non habet

TEST – 4 Q.6.a) Explain the maxim "nemo dat quad non habet". What are the exceptions to this maxim? (20)

Answer Framework:

Transfer of title by person not the owner.

The maxim *Nemo Dat Quad Non Habet* stands for "no one can pass a better title than he himself has". The general rule is that only the owner of goods can sell the goods. This rule means that a seller of goods cannot give a better title to the buyer than he himself possesses. Thus, even a bonafide buyer who buys stolen goods from a thief or from a transferee does not acquire the title of the same.

The conflict between the title of buyer and seller has to be balanced by the theory of social engineering. As per the legal view, sale without authority is not a good sale as it is not in the interest of the society. As per the mercantile law, the principle is to save the mercantile transaction, that is, if the person has bought in good faith and without notice, he should not suffer.

The maxim tries to balance the conflict between the social and individual interest.

Some provisions of the law provide that if goods are bought by innocent buyer and consideration has been paid then mercantile transaction has to be saved. Thus in a way it is a theory of social engineering.

However, there are certain exceptions to the rule of *Nemo Dat Quad Non Habet,* where a person can pass a better title than he himself has.

<u>Exceptions:</u>

i. Estoppel (S.27) - Where the owner of the goods by his own conduct is precluded from denying the seller's authority to sell.

   Illustration:

Where a person sold his mother's goods in her absence, she making no objection she was not subsequently permitted to deny her son's authority to sell and the sale was binding on her.

ii. Sale by mercantile agent (Proviso to S.27):

If a bonafide buyer acts in good faith and he has no notice of the fact that mercantile Agent has no authority to see, he gets a good title

Case: Folkes v King: Owner entrusted his car to an agent for sale at a stated price and not below. Agent sold the car and appropriated the proceeds. Buyer got a good title.

iii. Sale by one of the Joint Owners: (S. 28):

If one of the joint owners has possession of goods with the permission of other coowners and such joint owner sells the goods, then the bonafide buyer gets a good title even if it was not noticed by the buyer that the seller has no authority to sell.

iv. Sale by a person in possession under a voidable contract (S. 29):

When a person is in possession of goods vide a voidable contract and he sells those goods then the buyer gets a good title if he buys them in good faith and without the knowledge that the seller got the possession of goods vide voidable contract.

Phillips v. Brooks ‡person posed himself as a respected man and bought a valuable thing by a worthless cheque and sold it to another person. The buyer got a good title.

v. Sale by seller in possession (re-sale)(S.30(1)):

Where the seller, having already sold the goods, still continued to be in possession of the goods or the documents of title to the goods and if he sells further, then the buyer gets a good title provided bonafide and without notice.

vi. Sale by buyer in possession (S.30(2)):

If the buyer already bought the goods and has possession, sells the goods further, the subsequently buyer gets a good title, inspite of any lien or other right of original seller in respect of goods provided bonafide and without notice.

vii. Sale by unpaid seller(S.54):

Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.

viii. Sale by finder of goods:

The finder may sell it when the thing is in danger of perishing and when the cost of finding amounts to 2/3rd of its value.

Q7.

(a) Section 8 of the Arbitration and Conciliation Act, 1996 denotes a provision which limits judicial intervention in the process of arbitration ? Elucidate the statement with support of case law development on the point. LAWRP Lecture – 8

TEST – 8 Q.5.d) Discuss the salient features of Arbitration and Conciliation (Amendment) Act, 2019. (10)

TEST – 4 Q.7.a) Discuss in detail the salient features of Arbitration and Conciliation (Amendment) Act, 2015. (20)

(b) No customer in a thousand ever read the conditions. If he had stopped to do so, he would have missed the boat'. Critically examine the contractuality of a standard form of contract in view of the above statement.

TEST 2 Q.5.e) "Standard Form of Contracts exist in complete disregard to the established principles of freedom of contract and equality of bargaining power of the parties." Elucidate. (10)

Answer Approach:

- *Introduction:*Start with explaining what standard form of contract is.
- *Main Body:*Discuss the rationale behind prevalence of these types of contract. Highlight that it is inequitable and prone to misuse. Thereafter discuss the rule established by the courts to protect the weaker party.
- *Conclusion:* Conclude on a futuristic note.

Answer framework:

Introduction:

Define standard form of contracts and illustrate with the help of examples.

Main Body:

- Rationale → enormous increase in volume and complexities of trade and business – large number of customer, clients – saves time, avoid repetition – practical convenience – no negotiation regarding terms and conditions – free consent with full understanding of terms and conditions.
- However, they are prone to misuse – unequal bargaining position – party with greater bargaining position tries to exclude or limit his liability. Therefore the court has establish certain rules to protect the interest of the weaker party.
- Rules for protection of weaker parties:

  (1) Contractual document; (2) no misrepresentation; (3) reasonable notice of contractual terms – for conditions see back; (4) notice contemporaneous with contract. (5) reasonable terms and not opposed to public policy; (6) strict interpretation of exemption clause; (7) no fundamental breach of contract; (8) exclusion of contractual liability cannot exclude any other kind of liability (tortious) (9) third party (10) statutory protection.

Conclusion: With ever increasing internet usage and online transactions, the need to enforce the above rules was have becomes highly imperative.

(c)Discuss the symbiotic relationship between Media Trial and Fair Trial with reference to judicial approach.

TEST10Q.8.b) Trial by media has assumed significant proportions in India. Critically examine its effect on the administration of justice by courts in India. (15)

Answer Framework:

Trial is essentially a process to be carried out by the courts.

In ***R.K. Anand v. Delhi High Court,*** Supreme court observed that trial by media is a phrase to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt or innocence before or after the verdict in a court of law.

The trial by media is definitely an undue interference in the process of justice delivery.

In ***State of Maharashtra v. Rajendra Jawanmal Gandhi***, the Apex Court observed as follows:

"A trial by press, electronic media or public agitation is very antithesis of the rule of law. It can well lead to miscarriage of justice".

Effects of Media Trial on the process of administering justice:

1. Prejudices a fair trial:

The concept of a fair trial is a constitutional imperative recognised in Articles 14, 19, 21, 22 and 39-A as well as by the CrPC. Media is so much into our day to day life that even judges can't stay away from it. And as a result there is also an additional pressure on the judges which include trials of high publicity. Is no secret that we all have biases.

The magnitude of the coverage and the filter through which the media reports on litigation can create a "clear bias in such cases." The difficulty comes from understanding how those biases may ultimately affect the viewing of evidence and the deliberations in a case. Judges are also Human Beings they too care about the reputation and promotion and remunerations.

2. Prejudices the mind of public:

Unrestricted exercise of freedom of expression by media agencies through media trial creates balloon of perception about the sub justice matters and affects the public opinion. In criminal cases, it may subvert the essence of acquittal of accused. For instance it may cause the acquitted person and his/her family to face mental trauma through public criticism and discrimination . Whereas in civil cases it may affect by enabling political vested interests and cronyism to take precedence over the judicially determined standards.

Even in political issues it has effected political change, change in Governments till the matters decided by courts. In the time of paid news vulnerability to fall prey to media trial increases further. The parallel investigation and articulated content creates suspicions in the minds of the public about the efficiency of the official investigation machinery.

3. Goes against the principle of 'Presumption of Innocence':

As per the Indian Criminal Justice system the guilt is to be proved beyond reasonable doubt and the law is governed by senses and not by emotions. The media conducts parallel investigations and points its finger at persons who may indeed be innocent. The media while portraying our emotions forgets that it puts immense pressure on the judge presiding over the case.

4. Compromises the Right to Justice of the victim:

The Right to Justice of a victim can often be compromised, especially in Rape and Sexual Assault cases, in which often, the past life of victim may find its way into newspapers. It influences post decisional events and threatens right to have dignified life.

5. Compromises Security of the nation:

The media coverage of the Mumbai terror attacks displayed the same lack of restraint, where the minutest details of a person's last communication with his/her family were repeatedly printed in the media.

6. Against the principle of Natural Justice:

Last but not the least media trial even has started creating pressure on the lawyers to not take up cases of accused, thus forcing these accused to go to trial without any defense. The very essence of access to justice is denied through public opinion and in effect resolutions get passed against taking up the case of accused even before their guilt is proved. This is against the principle of Natural Justice.

7. It obstructs reformative justice principle.

Development of biased Public opinion, threatening prospects to live with peace and dignity fails the reformative prospects of accused. The discrimination faced by a person in public and unwarranted mental agony has psychological breakdown effect thus hampers the purpose of criminal justice system. Thus making them vulnerable to commit unlawful activities.

8.Violates the Right to Life:

Every person has a right to privacy, guaranteed under Right to Life and Liberty in Article 21 of the Constitution. Issues of life of accused or victim get opened on media platform in the name of investigation, character assassination and showcasing of person as threat to

public. And all this happens before adjudication of case. It violates right to privacy, right to have dignified life, right to reputation and peaceful existence is denied. The same issues are faded by victims and witnesses in different form and in addition make them vulnerable to further victimization.

The legal framework to protect privacy of undertrial person gets violated by media trial

i. **Safeguarding Identity of Children:**

The **Juvenile Justice (Care and Protection of Children) Act** lays down that themedia should not disclose the names, addresses or schools of juveniles in conflict withthe law or that of a child in need of care and protection, which would lead to theiridentification. The exception, to identification of a juvenile or child in need of care andprotection, is when it is in the interest of the child. The media is prohibited from disclosingthe identity of the child in such situations.

ii. **Safeguarding Identity of Rape Victims:**

Section 228A of the Indian Penal Code makes disclosure of the identity of a rapevictim punishable. In the **Aarushi Talwar murder case** and the rape of aninternational student studying at the Tata Institute of Social Sciences (TISS) the mediafrenzy compromised the privacy of the TISS victim and besmirched the character of thedead person.

iii. **Safeguarding Identity of witnesses:**

The PCI warns journalists not to give excessive publicity to victims, witnesses, suspects and accused as that amounts to invasion of privacy. Similarly, the identification of witnesses may endanger the lives of witnesses and force them to turn hostile. The right of the suspect or the accused to privacy is recognised by the PCI to guard against the trial by media.

Q8.

(a) Discuss the concept and classification of 'Quasi contracts' under Indian Contract Act, 1872.

TEST 2 Q.8. (b) - Enumerate and explain briefly those relations in the Indian Contract Act which resemble those created by contract. (15)

Answer Approach:

- *Introduction:* briefly define what is meant by quasi contract using the terms natural justice and equity.
- *Main Body:* Explain that it is an exception to the normal rule that the rights and liabilities are fixed by parties themselves. Discuss the provisions of Sec. 68-72 in detail with help of relevant illustrations.
- *Conclusion:* conclude on the lines of equity and restitution.

Answer framework:

Introduction:

A quasi contract can be defined as a situation wherein the law imposes certain obligations on a person on grounds of natural justice, similar to one which arises out of a contract, although the person has not got into any kind of contract.

Main Body:

It rests on the common law principle of equity, justice and good conscience that no person shall be allowed to unjustly enrich himself at the expense of the other.

Moess vs. Macferlan – defendant was obliged by principle of NJ and equity to refund the money to the plaintiff if the same had been obtained either through mistake, coercion or by taking any undue advantage. It is in the nature of compensatory damages.

The word quasi contract has not been used anywhere in the ICA. Sec. 68 – 72 are the relevant provisions.

1. Section 68 – claim for necessaries supplied

- ➔ To person incapable of entering into contract such as minor, lunatic etc.
- ➔ Or their dependents
- ➔ Use illustration (a) & (b) of Sec. 68.

2. Sec. 69 – reimbursement – for payment due on behalf of another

- ➔ By an interested person
- ➔ Involuntary
- ➔ Made to a third person
- ➔ Which the other party was legally bound to pay
- ➔ Use illustrations of Sec. 69 – lease, zamindar

3. Sec. 70 – enjoying benefit of non-gratuitous act

- ➔ Done lawfully
- ➔ Not gratuitous
- ➔ Enjoyment of benefit
- ➔ Use illustrations (a) & (b) of Sec. 70.

4. Sec. 71 – responsibility of finder of goods

- ➔ Deemed to be bailey
- ➔ Take as much care as an ordinary prudent man
- ➔ Try to find owner if expense of finding is not greater than 2/3 of the value of goods found, use if goods are perishable.

5. Sec. 72 – if paid or delivered by mistake or under coercion

- ➔ Use illustrations (a) & (b) of Sec. 72

Conclusion:

Thus, the principle against unjust enrichment safeguards the rights of the person who although are not under contractual obligation to perform the act, perform it with due diligence. It thus provides for theoretical foundation for the law governing restitution.

(b) Limited Liability Partnership is an alternative corporate form that gives the benefit of limited liability of a company and flexibility of a partnership". In the light of the above discuss the chief characteristics of Limited Liability Partnership Act, 2003. LAWRP Lecture - 8

(c) How does any factor vitiating free consent, affect a contract? Explain. LAWRP Lecture –4

Multiple questions on the topic Factors vitiating consent had been a part of our Test Series. How did each of the factors vitiating free consent, affect the contract, was covered in detail in each of their model answers.