

Introduction - Indian Polity, Notes

TYPES OF GOVERNMENT:

MONARCHY

It is the system of governance in which the government and the sovereignty is embodied in a single individual who is known as the monarch. Monarchies are hereditary and the monarchies are of different forms depending on the state of development of the society.

ABSOLUTE GOVERNMENT OR AUTOCRACY

Where the monarch has absolute powers with no restraints on his power.

CONSTITUTIONAL MONARCHY

Where the monarch is the constitutional head with no formal powers such as in U.K.

DEMOCRACY

Where the power to elect the government is with the people of the country and they are free to decide the form and structure of government is known as democracy. The concept of democracy is best described by Abraham Lincoln, the ex President of USA as “government of the people, by the people, for the people”.

The main attributes of a democracy are:

- Universal Adult franchise
- Freedom to elect/ choose
- Freedom to contest elections
- Freedom to form A political party
- All eligible citizens are equal before the law. (protection of basic human rights)
- Responsible and Responsive Government

AUTOCRACY

Where the power is concentrated in the hands of only one person is known as autocracy as in monarchy.

DESPOTISM

It is a form of government in which a single individual, rules with absolute authority and power. Normally this word is used in the negative sense where the ruler abuses his power and authority to suppress the people.

OLIGARCHY

A form of government in which power is either held by a small number of individuals, as in an oligarchy.

REPUBLICAN

Where the head of the state is elected is known as republican form of government.

TABLE OF PRECEDENCE

1	President
2	Vice - President
3	Prime Minister
4	Governors of States within their respective States
5	<ul style="list-style-type: none">• Former Presidents• Deputy Prime Minister
6	<ul style="list-style-type: none">• Chief Justice of India• Speaker of Lok Sabha
7	<ul style="list-style-type: none">• Cabinet Minister of the Union
8	<ul style="list-style-type: none">• Chief Minister of States within their respective States• Dy Chairman, Planning Commission• Former Prime Ministers• Leaders of Opposition in Rajya Sabha and Lok Sabha• Holders of Bharat Ratna decoration
9	<ul style="list-style-type: none">• Ambassadors and High Commissioners of Commonwealth countries accredited to India• Chief Ministers of States outside their respective accredited States• Governors of States outside their respective accredited States
10	<ul style="list-style-type: none">• Judges of the Supreme Court• Chief Election Commissioner• Comptroller and Auditor-General
11	<ul style="list-style-type: none">• Dy. Chairman, Rajya Sabha• Dy. Chief Ministers of States• Dy. Speaker, Lok Sabha

The **constitution** of a country lays down the **basic structure of the political system** under which its people are to be governed. The constitution represents the vision and the values of its founding fathers. It is based on the faith and aspirations of the people.

The **first function of a constitution is to provide the basic rules which ensure a minimal coordination among the members of a society.**

The **second function of a constitution is to specify who has the power to make decisions in a society.**

The **third function of a constitution is to set some basic limits on what a government can impose on its citizens.**

The **fourth function of constitution is to enable the government to fulfill the people's aspirations and create the conditions for a just society.**

Each state or nation has three basic organs:

1. The Legislature

2. The Executive

3. The Judiciary

The constitution defines their powers, demarcates their responsibilities and regulates their relationship with each other and with the people.

HISTORY OF INDIAN CONSTITUTION

Before the arrival of the British in India, it was being ruled by a monarchical system. The boundaries of the state were not fixed and changed with change in the rulers of the nation. The monarch embodied the rule of law, encompassing all the three systems. He was the one who would make the law. He was the Head of the state to implement the laws that he made and He the Jurist also, the final court of appeal.

GOVERNMENT OF INDIA ACT, 1935

This bill was prepared on the basis of a report submitted by **Lord Linlithgow** in 1934. Based on this report, a bill was passed by the British Parliament and was given the Royal Assent. It provided for an all India federation of British provinces and the Princely States. the joining of Princely States was voluntary. However, none of the Princely State joined it.

- Diarchy introduced at the centre by which the departments of Foreign Affairs and Defence were reserved for the Governor General.
- The other federal subjects were to be administered by the Governor General with the advice of council of ministers chosen by him. Residuary powers were with the Governor General.
- The federal legislature was to have two chambers (bicameral) i.e. Council of States and the Federal Assembly.
- In the provinces, diarchy was replaced by provincial autonomy. The distinction between reserved and transferred subjects was abolished and full responsible government established.
- It also provided for a Federal Court with original and appellate powers to interpret the constitution.
- A Federal Bank (Reserve Bank of India) was also established.
- The Indian Council of Secretary of State was abolished.

- Principle of separate electorate was extended to include Anglo Indian, Christians and Europeans.
- Elections for the provincial legislature under this act were held in 1937.

IMPORTANCE OF THE ACT

- i) It was a step towards a written constitution for the country.
- ii) The Indians got an opportunity to run the administration of their country.

CRIPPS MISSION

Sir Stafford Cripps was sent to India to seek Indian cooperation in British war with Germany (2nd world war). It did not provide for effective power to Indians during the war. But the mission was a failure as the Indian leaders never accepted the proposals of the Mission.

CABINET MISSION

After the Second World War, the British government decided to convene a constitution drafting body for India. **Three British cabinet ministers were sent to find a solution to the question of India's independence.** This team of was called the Cabinet Mission.

The Cabinet Mission discussed the framework of the constitution and detailed the procedure for the constitution drafting body. This mission rejected the Congress demand for a loose federation and also rejected the Muslim League's demand for a separate sovereign state of Pakistan. With the independence of India on August 15, 1947, the Constituent Assembly became a fully sovereign body. The present constitution was formed by the Constituent Assembly of India setup under Cabinet Mission Plan of May, 1946.

CONSTITUENT ASSEMBLY COMPOSITION:

The Constituent Assembly consisted of **389 members**, of which 292 were elected by the elected members of the Provincial Legislative Assemblies while 93 members were nominated by the Princely States. **Almost all the stalwarts of the freedom struggle like Jawahar Lal Nehru, Vithal Bhai Patel, Maulana Abdul Kalam Azad, and Dr. Rajendra Prasad were its members, except Mahatma Gandhi and Jai Parkash Narayan were not a part of it.**

WORKING OF THE CONSTITUENT ASSEMBLY:

- The first meeting of the Constituent Assembly took place on Dec 9, 1946 with **Dr. Sachidanand Sinha as its interim President.** Dr Rajendra Prasad was elected as its President on Dec 11, 1946.
- The Constituent Assembly reassembled on August 14, 1947 as the Sovereign Constituent Assembly for the Dominion of India. Dr. B.R. Ambedkar was appointed Chairman of the Constitution Drafting Committee.
- B.N. Rao was appointed Advisor to the Assembly.
- It took 2 years 11 months and 18 days to finalize the constitution.
- The draft constitution of India was submitted to the President of the assembly on 21 February, 1948.

ENACTMENT OF THE CONSTITUTION

The Constitution was adopted on Nov 26, 1949, which is also known as the Date of Passing. The constitution thus adopted contained a Preamble, 395 articles, 18 parts and 8 schedules in all. The provisions regarding citizenship, elections and provisional parliament were implemented immediately i.e. from November 26, 1949 while the rest came into force on January 26, 1950, known and celebrated as the Republic Day of India.

OBJECTIVES RESOLUTION

The historic Objectives Resolution was moved by Pt. Jawahar Lal Nehru on December 13, 1946, which was finally adopted by the assembly on January 22, 1947 and took the form of 'Preamble' to the constitution.

NATIONAL FLAG

Adopted by the Constituent Assembly on July 22, 1947. Its design was proposed by Pingali Venkaiah of Andhra Pradesh.

NATIONAL ANTHEM AND NATIONAL SONG:

Adopted on 24 th January, 1950. Jan Gan Man (by Rabinderanath Tagore) was selected as the National Anthem while Vande Matram (by Bankim Chandra Chatterjee in his novel Anand Math) was selected as the National Song. Jan Man Gan was first sung at the Congress Session, Calcutta in 1911.

SALIENT FEATURES OF THE CONSTITUTION

1. It is the longest written constitution in the world
2. Consists of 22 Chapters, over 444 Articles and 12 Schedules.
3. It proclaims India a Sovereign, Socialist, Secular Democratic Republic
4. Fundamental Rights are guaranteed to all citizens of India
5. Directive Principles of State Policy are incorporated.
6. It established the parliamentary system of government wherein. The President is the constitutional head and The Council of Ministers or the Union Cabinet is the real executive and is responsible to the Lok Sabha.
7. It is federal in form (in normal times) but unitary in spirit (in emergencies).
8. It is neither too rigid (as some provisions are amendable by a simple majority) nor flexible (as some provisions require special majority for amendment).
9. It guarantees single citizenship to all citizens.
10. It introduced universal adult franchise, i.e. every adult above 18 years has the right to vote and the system of joint electorates.
11. It established an independent judiciary; the Supreme Court acts as a guardian of the Constitution.

CONSTITUTION REVIEW COMMISSION

The government of India in the year 2000 appointed a Commission chaired by Justice M.N. Venkatachaliah to Review the working of the Constitution to make suitable recommendations.

SOURCES OF THE CONSTITUTION. ALL FEATURES OF THE CONSTITUTION:

- The Government of India Act, 1935 formed the basis or 'blue print' of the Constitution of India with its features of federal system, office of governor etc. Besides, the Indian Constitution has borrowed from many other sources i.e.
- **Britain:** Parliamentary form of government, rule of law, law making procedure, CAG, single citizenship.
- **USA:** Preamble, Fundamental Rights, Judicial Review and independence of Judiciary, written Constitution.
- **Ireland:** Directive Principles of State policy, methods of election of the President, nominations to Rajya Sabha.
- **Canada:** A quasi-federal form of Government (a federal system with a strong central government), residual powers.
- **Former USSR:** Fundamental Duties.
- **Australia:** Concurrent list, provision regarding trade, commerce and intercourse, languages of the preamble.
- **Weimar Constitution of Germany:** Suspension of fundamental rights during the Emergency.
- **South Africa:** Constitutional amendment procedure.
- **The ideas of justice --** social, economic and political, have been taken from the Russian revolution (1917)

The Constitution Part - 1, Indian Polity, Notes

The objective resolution was moved by **Pt Jawaharlal Nehru** in the Constituent Assembly on **December 13, 1946**, which was adopted as the '**Preamble to the Constitution**' on **January 22, 1947**. The idea of a Preamble is borrowed from the American constitution. The words '**Socialist**', '**Secular**' and '**Integrity**' were added to the Preamble by the **42nd Amendment, 1976**.

TEXT OF THE PREAMBLE

We, the people of India, having solemnly resolved to constitute India into a **Sovereign Socialist Secular Democratic Republic** and to secure to all its citizens:

- **Justice**, social, economic and political;
- **Liberty**, of thought, expression, belief, faith and worship;
- **Equality**, of status and of opportunity; and to promote among them all
- **Fraternity** assuring the dignity of the individual and the unity and integrity of the Nation;
- In our constituent assembly, this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.

The Four Components of the Preamble are:

- The Preamble indicates that the **source of authority of the Constitution lies with the people of India**.
- It declares India to be a **socialist, secular, secular, democratic and a republic nation**.
- It states its **objectives to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation**.
- It mentions the date (November 26, 1949) on which the constitution was adopted.

The keywords in the Preamble are explained below:

- **Sovereign means:** The Preamble proclaims that **India is a Sovereign State**. 'Sovereign' means that India has its **own independent authority and it is not a dominion or dependent state of any other external power**.
- **Socialist means:** The word '**Socialist**' was added to the Preamble by the 42nd Constitutional Amendment in 1976. Socialism means the **achievement of socialist ends through democratic means**. India has adopted 'Democratic Socialism'.
- **Secular means:** The term secular in the Constitution of India means that **all the religions in India get equal respect, protection and support from the state**.
- **Democratic means:** The term Democratic indicates that the **Constitution has established a form of government that gets its authority from the will of the people expressed in an election**.
- **Republic means:** **No room for hereditary ruler or monarch**.

Amendability of the preamble

- The question whether the Preamble can be amended or not was resolved by the Supreme Court in the famous *Keshavananda Bharati Case* (1973). In this case, the Supreme Court held that the Preamble IS a part of the constitution and can be amended, subject to the condition that it does not violate the ‘Basic Features of The Constitution’ as propounded by it.
- The Preamble has been amended only once in 1976, by the 42nd Constitutional Amendment, which added three new words ‘**socialist, secular and integrity**’. It was held that these words are clarificatory in nature and did not make any substantial difference to the polity or the State in the sense that socialism, secularism and national integrity were already implicit in the Preamble and the rest of the Constitution as originally framed.

PARTS OF THE CONSTITUTION

- **Part (i):** Territory of India, admission, establishment or formation of new states (Article 1 to 4)
- **Part (ii):** Citizenship (Article 5 to 11)
- **Part (iii):** Fundamental Rights (Article 12 to 35)
- **Part (iv):** Directive Principles of State Policy (Article 36 to 51)
- **Part (v):** A Duties of a citizen of India. It was added by the 42nd Amendment in 1976 (Article 51 A)
- **Part (vi):** Government at the Union Level (Article 52 – 151)
- **Part (vii):** Government at the State Level (Article 152 – 237)
- **Part (viii):** Deals with states in Part B of the First Schedule. It was repealed by 7 th Amendment in 1956. (Article 238)
- **Part (ix):** Administration of Union Territories (Article 239 – 241)
- **Part (x):** Territories in Part D of the First Schedule and other territories. It was repealed by 7th Amendment in 1956. (Article 242-243)
- **Part (xi):** Scheduled and tribal area (Article 244 to 244 A)
- **Part (xii):** Relations between the Union and State (Article 245 – 263)
- **Part (xiii):** Finance, Property, contracts and suits (Article 264-300)
- **Part (xiv):** Trade, commerce and travel within the territory of India (Article 301 – 307)
- **Part (xv):** Services under the Union and States (Article 308 – 323)
- **Part (xvi):** A Added by the 42 nd Amendment in 1976 and deals with Administrative tribunals to hear disputes and other complaints (Article 323 A to 323 B)
- **Part (xvii):** Election and Election Commission (Article 324 – 329)
- **Part (xviii):** Special provisions for certain classes i.e. ST/SCs and Anglo-Indians (Article 330–342)
- **Part (xix):** Official Languages (Article 343– 351)
- **Part (xx):** Emergency provisions (Article 352- 360)
- **Part (xxi):** Miscellaneous provision regarding exemption of the President and governors from criminal proceedings (Article 361)
- **Part (xxii):** Amendment of Constitution (368)
- **Part (xxiii):** Temporary, transitional and special provisions (369-392)
- **Part (xxiv):** Short title, commencement and repeal of the Constitution (393-395)

SCHEDULES TO THE CONSTITUTION

At the time of enactment of the constitution, there were eight schedules and Schedules 11 and 12 were added by 73rd and 74th amendments. At present, there are 12 schedules to the constitution.

1. First Schedule: It contains the list of States and Union Territories in the country.

- The State
- The Union Territories

2. Second Schedule: Contains provisions of the President, Governors of States, Speaker and the Deputy Speaker of the House of the People and the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council of a State, the Judges of the Supreme Court and of the High Courts and the Comptroller and Auditor-General of India the list of states and union territories and their territories.

3. Third Schedule: Forms of Oaths or Affirmations

4. Fourth Schedule: Allocation of Seats in the Council of States

5. Fifth Schedule: Provisions as to the administration and Control of Scheduled Areas and Scheduled Tribes.

- **Part A:** General
- **Part B:** Administration and control of Scheduled Areas and Scheduled Tribes.
- **Part C:** Scheduled Areas
- **Part D:** Amendment of the Schedule

6. Sixth Schedule: Provisions as to the administration of Tribal Areas in Assam, Meghalaya, Tripura and Mizoram.

7. Seventh Schedule: This schedule gives us the legislative lists i.e.

- **List I:** Union List
- **List II:** State List
- **List III:** Concurrent List

8. Eighth Schedule: Official Languages

9. Ninth Schedule: Article 31 B (First Amendment)

10. Tenth Schedule: Provisions regarding disqualification due to defection (52nd Amendment, 1985)

11. Eleventh Schedule: Article 243G - (Powers, authority and responsibilities of Panchayats subject to the provisions of this Constitution, the Legislature of a State - 73rd Amendment, 1992)

12. Twelfth Schedule: Article 243W – (Powers, authority and responsibilities of Municipalities, etc. – 74th Amendment, 1992)

THE UNION AND ITS TERRITORY

At the time of the enactment of the constitution, India was divided into four types of States. Now, there are only States and Union Territories.

The name of the States and Union Territories and the territories covered by each of them is described in the first schedule. It also provides that no State can secede from the union nor can it suo moto vary its territory as given in the First Schedule.

Part 1 (Article 1 – 4): Article 1 of the Constitution says, “**India, that is Bharat, shall be a Union of States**”. The expression Union of States means that the Union of India is NOT a result of an agreement by the states to join the federation and it not being the result of an agreement, no state has the right to get separated from it.

SPECIAL STATUS OF JAMMU & KASHMIR

The State of Jammu and Kashmir has been given special status under **article 370**, which became operative in 1952.

The separate Constitution of the State was drafted by the Constituent Assembly of Jammu and Kashmir and became effective on **Jan 26, 1957**. The state has a much greater autonomy than any other state and the centre’s jurisdiction is more limited. The laws passed by the Parliament DO NOT extend to it automatically unless their extension is approved by the state as well.

STATES AND UNION - THE TIMELINE

In 1956, there were fourteen states and six union territories. The first state to be created on a linguistic basis was **Andhra Pradesh** in 1956.

- In 1960, Bombay was bifurcated into Gujarat and Maharashtra
- In 1962, Nagaland was created as a separate state.
- In 1966, Haryana was carved out of Punjab and Chandigarh became a Union Territory.
- State of Punjab was re-organized and divided into Punjab and Haryana on the bases of Shah Commission recommendations.
- In 1970, the Union Territory of Himachal Pradesh was elevated to a state.
- In 1971, Manipur, Tripura and Meghalaya were granted statehood.
- In 1974, Sikkim became an associate state of the Indian Union. By the 36 th Constitutional Amendment Act, 1975, Sikkim became a full fledged State of the Indian Union.
- In 1986, Mizoram and Arunachal Pradesh came into being.
- In 1987, Goa came into existence.
- In 2000, three more new states i.e. Chhattisgarh, Uttarakhand and Jharkhand were created.
- In June 2014, the new state of Telangana came into existence on, thus becoming the 29 th state of India.

ADDITION OF STATES TO INDIA

(i) Manipur added as state in October 1949

(ii) Tripura September 9, 1949

(iii) Jammu and Kashmir – 1947

(iv) Sikkim on May 16, 1975, Sikkim officially became a state of the Indian Union and

Lhendup Dorji became its Chief Minister. In 1975, its subjects voted by plebiscite to become a state of India.

- The power to carve out a new state vests with the Parliament only.
- The constitution does not provide for 'secession' of any part of the country.

CITIZENSHIP OF INDIA

Part II (Article 5-11)

A citizen is a person who enjoys full membership of the community in which he lives. Citizens are different from aliens who DO NOT enjoy CERTAIN Fundamental Rights. Prior to the constitution, there was no concept of "Indian Citizenship". All those who lived in British India were under the crown and as such British subjects governed by the British Nationality Acts and those who came from the princely States had the status for British protected persons.

Article 5 -11 merely identifies whether a person is citizen or not. If a person voluntarily gives up citizenship, his child also loses the citizenship of India.

Citizenship: Citizenship involves individual's full political membership of the state and his integration into its political system. All public offices are open to a citizen and he is entitled to join all public services. The citizen has the obligation to pay taxes and defend the country. The Right to Vote and certain fundamental rights are available to citizens only.

Single Citizenship: The Indian constitution does not provide for **Dual Citizenship**.

Acquisition of Citizenship: Our constitution provides for single citizenship despite being a federal structure, unlike the USA. All citizens are entitled to the same rights all over the country without any discrimination, subject to some special protections in case of Jammu & Kashmir, tribal areas, etc.

Citizenship can be acquired by

- By Birth
- By Descent
- By Registration
- By Naturalization
- By Incorporation of Territory
- By Renunciation

The constitution does not provide for the mode of acquisition and termination of citizenship. The Parliament can, by law, could regulate the right of citizenship.

Loss of Citizenship

- By Termination / Deprivation: The citizenship can be lost by termination, renunciation or deprivation on certain grounds.

- The law regarding citizenship is governed by the Citizenship Act, 1955. The law was amended in **1986** to tackle large scale migration from Bangladesh, Sri Lanka and some African countries.
- The Citizenship Act was amended in 2003, by which people of Indian origin, except in Pakistan and Bangladesh, will become eligible to be registered as the Overseas Citizens of India (OCI).
- The OCIs are entitled to some benefits multiple entry, multipurpose lifelong visas, living and working in India or their country of naturalization.
- They are not entitled to hold constitutional posts and employment with the government BUT they can't vote.

The Judiciary - Indian Polity, Notes

At the apex is the Supreme Court, the highest court in India. It is the final court of appeal. At the state level, there is a High Court and at the district level, there are District Courts.

Supreme Court → High Courts → District Courts → Subordinate Courts

SUPREME COURT (Art 124-147)

The judicial system was well established in India at Independence and it had a Federal Court which was dissolved with the establishment of the Supreme Court. The first High Court in India was established at Bombay in 1865. The Supreme Court stands at the apex of the judicial system in India. It is also known as third pillar of democracy. The appointment of the Supreme Court Judges and their removal are governed by Article 124. The appointment and removal of the High Court Judges are governed by Article 217. The Constitution declares Delhi as the seat of the Supreme Court but it authorizes the Chief Justice of India to select any other place/places as seat of the Supreme Court.

JURISDICTION AND POWERS

1. Original jurisdiction (Article 131)

It means that only Supreme Court can hear such cases and so has the original jurisdiction.

Examples:

- a) Disputes between centre and state/states
- b) Disputes between two or more states
- c) Disputes regarding enforcement of fundamental rights.

2. Appellate Jurisdiction (Article 132-134)

- a) Constitutional matters
- b) Civil matters
- c) Criminal matters
- d) Appeal by special leave (Article 136)

3. Advisory Jurisdiction (Article 143)

If in the opinion of the President a questions of law has arisen and is of such importance that the opinion of Supreme Court is required, he can refer the matter to the Supreme Court for its opinion. It is bound to give its opinion but the same is not binding on the President. (The matter relating to termination of water agreements act 2004 passed by the state of Punjab was referred by the President to the Supreme Court for its opinion).

4. Writ Jurisdiction (Article 32)

Every individual has right to move Supreme Court directly if his fundamental rights have been infringed. (High Courts are also empowered to issue writs).

5. Court of Record (Article 129)

The Supreme Court is court of record and the same are admissible of evidentiary value

and cannot be questioned in any court. It also enjoys the power to punish for its contempt.

6. Other powers

- a) It has powers to review its own judgments.
- b) dispute regarding election of president and vice president can be raised only before Supreme Court
- c) it is a ultimate interpreter of the constitution

TERM AND SALARY

- The Chief Justice of India and other Supreme Court judges hold office till 65 years of age.
- He can send his resignation to the President.
- After retirement, a Supreme Court Judge cannot plead or act before any authority in India.
- However, he can be appointed by the Government to any other position, as there is no bar on their appointment.
- The salary and the benefits of the judges are determined by the Parliament from time to time. The salaries allowances and pensions of the judges and the staff are charged on the consolidated fund of India and are non-votable by the Parliament.

APPOINTMENTS OF JUDGES

The judges of the Supreme Court are appointed by the President in consultation with the Chief Justice of the Supreme Court. This system of appointment is known as 'Collegium System' which consist of Chief Justice and four senior most judges of Supreme Court appointing judges to Supreme Court and different High Courts.

Recently Parliament passed a law, National Judicial Appointment Commission Act 2015 (99 th amendment of the constitution) which changed the system of appointment of judges.

The said law was challenge in a Public Interest Litigation in the Supreme Court which held the NJAC Act is violative of the basic principles of the constitution.

REMOVAL OF JUDGES

A motion on the removal of a Supreme Court/ High Court Judge can be initiated in either House of Parliament. If it is to be introduced in the Lok Sabha, it should be signed in by not less than 100 MPs while in the Rajya Sabha, the motion should be signed by not less than 50 MPs members.

The judge (or his representative) has the right to represent his case. Thereafter, the motion is voted upon. If two-thirds of those present and voting, and a majority support of the total strength of the House votes in favour of removal, it is considered passed. The process is then repeated in the other House. Thereafter, the Houses send an address to the President asking for the Judge's removal from office.

PRECEDENTS

1. No judge of the Supreme Court or the High Court has ever been removed through this process. However, in 1993, Justice V Ramaswamy of the Supreme Court was the first judge against whom impeachment proceedings were initiated. The enquiry

committee appointed to look into the charges against the judge had indicted the sitting Supreme Court judge but in Parliament, insufficient number of members present made voting impossible.

2. The only other judge to face impeachment proceedings is Justice Soumitra Sen of the Calcutta High Court, proceedings against whom were initiated in Rajya Sabha in 2011. Both of them resigned of their own and the process was never completed.

JURISDICTION OF THE SUPREME COURT

A. Original Jurisdiction

The Supreme Court settles all disputes between Centre-State, State-State, etc.

B. Writ Jurisdiction

Every individual has the right to move the Supreme Court directly by appropriate proceedings for the enforcement of his

Fundamental Rights.

C. Appellate Jurisdiction. The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court regarding any judgment, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law regarding interpretation of the Constitution.

THE HIGH COURTS

The Constitution provides a High court for each state. However, more than one state may have a common High Court. At present, there are 24 High Courts in India (High courts of Meghalaya, Tripura and Manipur were established in 2013). Some of the High Courts which have jurisdiction over more than one state are as under:

- Punjab, Haryana & Chandigarh
- Tamil Nadu, Puducherry
- Kerala, Lakshadweep
- Andhra Pradesh, Telengana
- Maharashtra, Goa, Dadra & Nagar Haveli
- West Bengal, Andaman and Nicobar
- Assam, Arunachal Pradesh, Nagaland

Courts with benches at other places

High Court	Seat	Bench
Allahabaad	Allahabaad	Lacknow
Bombay	Bombay	Nagpur, Panjim
Kolkata	Kolkata	Port Blair
Guwahati	Guwahati	Kohima, Aizwal
J & K	Srinagar, Jammu	Srinagar, Jammu

Madhya Pradesh	Jabalpur	Indore, Gwalior
Rajasthan	Jodhpur	Jaipur

If the High Court is satisfied that a matter pending in the lower court involves a question of law, it may withdraw the case and itself take up the case.

POWERS

- It is the court of record.
- It is court of original and appellate jurisdiction.
- It has the power to punish for its contempt. (Article 215)

Appointment of Judges to Supreme Court/High Courts

The earlier system was known as the ‘Collegium System’, which consisted of the Chief Justice of India and four senior most judges of the Supreme Court and the advice of the Collegium was binding on the government. This system was shrouded in secrecy and excluded the Executive from any participation in appointing judges. With the enactment of the National Judicial Appointments Commission Act, the Collegium System has been replaced by a 5-member advisory group to advise the government in these matters.

SALARIES OF SUPREME COURT JUDGES

It is decided by the Parliament under Article 125. The Chief Justice draws Rs 1 lac while the Judges Rs. 90,000 a month as salary. Their salaries are paid out of the Consolidated Fund of India.

SALARIES OF HIGH COURT JUDGES

The Chief Justice of a High Court draws a salary of Rs. 90,000 a month while a Judge of the High Court is entitled to Rs. 80000 a month. Their salaries are paid out of the Consolidated Fund of India.

The Constitution - (Part II), Indian Polity, Notes

FUNDAMENTAL RIGHTS

PART III (ARTICLE 12-35)

Part III of the constitution is also called 'magna carta' of India. The fundamental rights are limitations on the action of the State and provide security to the individuals against any arbitrary or discriminatory action of the government / state. Any law which is inconsistent with the fundamental rights is held to be ultra vires and void, meaning thereby that no law which takes away or abridges the rights conferred by this part is void. Originally, the Constitution classified the Fundamental Rights into seven categories. But the Right to Property was deleted from the list of Fundamental Rights by the 44 th Amendment, 1978. Currently, there are six categories of rights.

(1) Right to Equality-Articles 14 to 18

Article 14 - Equality before law The State shall not deny to any person equality before the law or the equal protection of the law within India.

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth Also, nothing in this article shall prevent the State from making any special provision for women and children and for advancement of any socially and educationally backward classes/ Scheduled Castes and Scheduled Tribes.

Reservations

The reservations for weaker sections like SC, ST are protected under Article 15 of the constitution. In many such cases, the Supreme Court has intervened to restrict the scope of reservations by introducing the concept of 'creamy layers'.

Article 16 - Equality of opportunity in public employment

There shall be equality of opportunity for all citizens in matters of employment or appointment to any office under the State.

Article 17 - Abolition of untouchability Untouchability is abolished and its practice in any form is forbidden. Certain exceptions to the provision of equality before law are allowed by the constitution under special circumstances.

Article 18

Ensures abolition of all titles. However, there is no bar on the government/ its institutions honouring men/women of merit or distinction (e.g. Bharat Ratna, Padma honours) with the conditions that such titles honours cannot be affixed before one's name.

(2) Article 19 - RIGHT TO FREEDOM

Right to particular freedoms-Articles 19 to 22

The Six Freedoms - The citizens of India are guaranteed the following six fundamental freedoms:

- Speech and Expression
- Assembly

- Form associations
- Movement
- Residence and Settlement
- Profession, Occupation, Trade or Business However, all these freedoms come with certain reasonable restrictions imposed by law so as to protect law and order, communal harmony and compliance with legal norms.

Article 20 - Guarantees protection regarding conviction for offences.

Article 21

Provides protection of life and personal liberty.

No person shall be deprived of his life or personal liberty EXCEPT by a procedure established by law.

1. Personal freedom is secured by the Constitution by the judicial writ of Habeas Corpus.

2. Habeas Corpus is the backbone of personal freedom.

The **86 th Constitutional Amendment Act, 2002**, has inserted a new article 21-A. It requires the State to provide free and compulsory elementary education to all children between 6-14 years in a manner the State may, by law, determine.

Article 21 A - RIGHT TO EDUCATION

- The Right to Education was added by the Constitutional (86 th Amendment) Act, 2002. Article 21A states that the state shall provide free and compulsory education to all children of the age of 6-14 years.

(The Right to Education Bill was passed by the Parliament in 2009. It describes the modalities of the importance of free and compulsory education for children between 6 and 14. India joined 134 other countries in making education a fundamental right of every child when the act came into force in 2010).

Article 22

It provides that no person who is arrested shall be retained in custody without being informed of the grounds for such arrest.

(3) Right against exploitation –Articles 23-24

These articles give protection against

- i) Exploitation through trafficking in human beings
- ii) Beggar and other forced labour
- iii) Employment of children in factories etc.
- iv) Prohibition of employment of children in factories etc.

*A child means a person who has not completed 14 years of age

(4) Right to freedom of religion- Articles 25 –28

Freedom to profess, practice and propagate a religion of one's personal choice.

Furthermore, there is no state religion in India i.e. the state in India is secular and cannot favour a particular religion over others. Besides, nobody can be compelled to pay of taxes for promoting any particular religion.

(5) Cultural and Educational Rights of Minorities- Articles 29-30

The state shall make all efforts to protect the cultural identity of all religious minority groups in India and will not impose a culture on them different from their own culture. Further, they can set up and run their own educational institutions in a manner they like.

(6) Right to Constitutional Remedies-Articles 32-35

The right to move the Supreme Court for violation of Fundamental Rights was called the heart and soul of the constitution by Dr. B. R. Ambedkar. To enforce the Fundamental Rights, the Supreme Court is empowered, under Article 32, to issue various writs.

THE WRITS

To be meaningful, the rights must be enforceable and be backed by remedies for any violations. Our constitution guarantees the right to move the highest court under Article 32 for enforcement and protection of Fundamental Rights.

There are five kinds of writs available for this purpose:

1. habeas corpus 2. mandamus
3. prohibition 4. certiorari and
5. quo warranto

1. Habeas corpus means “to produce the body“

It is an order asking a person, who has unlawfully detained another person, to produce the latter before the court. The court is requested to set him free if the reasons for detention are not adequate or are non-existent.

2. Mandamus literally means command. It is an order by a superior court commanding a person holding a public office or a public authority (including the Government) to do or not to do something, in the nature of public duty.

3. Prohibition

A writ of prohibition is issued by a superior court to an inferior court/ tribunal to prevent it from crossing its jurisdiction and to ask it to keep within the limits of its jurisdiction.

4. Certiorari

A writ of certiorari has much in common with prohibition. The only difference is -- - whereas a writ of prohibition is issued to prevent an inferior court or tribunal to go ahead with the trial of a case in which it has exceeded its jurisdiction, certiorari is issued to quash the order of an inferior court or tribunal in excess of jurisdiction.

5. Quo Warranto

The words quo warranto mean “what is your authority”? Quo warranto is issued against the holder of a public office, asking him to show under what authority he holds the office.

TYPES OF WRITS

Writ	Meanings
Habeas Corpus	You may have the body. Intended Purpose: To release a

	person detained unlawfully in prison or in private custody.
Mandamus	We Command. Intended Purpose: To secure the performance of public duties by lower court, tribunal or public authority.
Certiorari	To be certified. Intended Purpose: To quash the order already passed by an inferior court, tribunal or quasi judicial authority.
Prohibition	Intended Purpose: To prohibit an inferior court from continuing the proceedings in a particular case where it has no jurisdiction to try.
Quo Warranto	What is your authority? Intended Purpose: To restrain a person from holding a public office to which he is not entitled.

DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive Principles of State Policy are contained in Part IV of the constitution (Articles 36 to 51).

- The inspiration for the Directive Principles came from the concept of a ‘welfare state’ and this idea was borrowed from the Irish Constitution.
- The Directive Principles of State Policy are fundamental in the governance of the country as per Article 37 and it is the duty of the state to apply these principles in making laws. So these were not merely moral teachings but are to be treated as positive mandates and part and parcel of the human rights provisions of the constitution. The Directive Principles, along with the fundamental rights, contain the philosophy and the soul of the constitution.

SALIENT FEATURES

- They are constitutional instructions to the state in legislative, executive and administrative matters.
- They resemble the “Instrument of Instruction” in the Government of India Act, 1935.

- They promote social and economic democracy and summarize the concept of a “welfare state”.
- These are fundamental in the governance of the country.
- They are NOT justiciable as per Article 37. No law can be held ultra vires due to its inconsistency with the directive principles.

FUNDAMENTAL RIGHTS VS. DIRECTIVE PRINCIPLES

FUNDAMENTAL RIGHTS	DIRECTIVE PRINCIPLES
Negative as they prohibit the state from doing certain things	Positive as they require the state to do certain things.
Justiciable as they are legally enforceable by the courts in case of their violation.	Non-justiciable as they are not legally enforceable by the courts for their violation.
Aim to establish political democracy	Aim to establish an egalitarian society, social and economic democracy.
Have legal sanction.	Have moral and political sanction.
Promote the welfare of the individual. Hence, they are personal and individualistic.	Promote the welfare of the community. Hence, they are egalitarian and socialistic.
A law violative of any fundamental right is unconstitutional and invalid.	A law violative of the directive principles cannot be held unconstitutional and invalid. However, a law can be held valid on the ground that it is enacted to implement a directive.

FUNDAMENTAL DUTIES

PART IV A (ARTICLE 51 A)

- Fundamental Duties are the moral obligations of all citizens to help and promote patriotism and to uphold the unity of India.
- These duties were included in the Constitution upon the recommendations of the Swaran Singh Committee.

- Ten (10) Fundamental Duties were added by 42nd Constitutional Amendment. In 2002, one more duty was added.

FUNDAMENTAL DUTIES

Article 51A asks every citizen of India

1. To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals of the national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To promote harmony and brotherhood among all the people of India regardless of religious, linguistic and regional or sectional diversities and give up practices derogatory to women's dignity.
5. To defend the country and render national service when called upon to do so;
6. To value and preserve the rich heritage of the country's composite culture
7. To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
8. To develop scientific temper, humanism and the spirit of inquiry and reform.
9. To safeguard public property and to abjure violence.
10. To strive towards excellence in all individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement; and
11. Every parent/ guardian to provide opportunities for education to his child/ward between 6-14 years. This duty was added by the 86 th constitutional amendment act, 2002. Significantly, there is no provision in the constitution for the enforcement of Fundamental Duties or punishment for their violation. Besides, these duties do not apply to foreigners in India.

EMERGENCY PROVISIONS - PART XVIII (ARTICLES 352-360)

Briefly, the Emergency provisions envisage two kinds of emergencies, viz.

- (i) a National Emergency under article 352 due to threat of war, external aggression or armed rebellion and
- (ii) Financial Emergency under article 360. If the situation arises whereby the financial stability or credit of India or of any part thereof is threatened, the President may declare a state of financial emergency. There is no maximum period prescribed for its operation and repeated parliamentary approval is not required for its continuation. It can be revoked by the President at any time without parliamentary approval.
- iii) The third situation under article 356 arising from a failure of the constitutional machinery in a particular State, which necessitates President's rule, though included under Emergency Provisions, is not, strictly speaking, an emergency situation.

On receipt of a report from the governor of a state or otherwise if the President satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the constitution he may declared President's rule in the state under Article 356 of the constitution. The state government headed by Chief Minister is dissolved and the governor assumes all executive powers on behalf of the President. The maximum period provided for its operation is 3 years only.

President's rule was imposed for the first time in Punjab in 1951.

National Emergency

Article 352 provides that if the President, after getting a Cabinet recommendation in writing, is satisfied that a situation exists whereby the security of India or any part of it is threatened by **war, external aggression or armed rebellion**, he may issue a proclamation of emergency for India or a part thereof.

When the national emergency is declared on the grounds of war or external aggression, it is called **external emergency**. On the other hand if it is declared on the grounds of armed rebellion, it is called **internal emergency**.

The Proclamation of Emergency is required to be presented before each House of Parliament, and will cease at after one month from the date of issue unless, in the meantime, it has been approved by both the Houses. However, once approved by Parliament, the Proclamation may continue in operation for six months at a time unless revoked by him earlier by a Proclamation. The resolutions approving the Proclamation of Emergency or its continuance have to be passed by either House of Parliament by a majority of the total membership and not less than two-thirds of those present and voting. Also, if the Lok Sabha passes a resolution disapproving the proclamation or its continuance, it shall be revoked immediately.

Prior to 1975 emergency could be proclaimed by the President on the oral advice of the Prime Minister as happened in 1975. But now after 44th amendment to the constitution the approval of whole cabinet in writing is essential to be communicated to the President for imposition of emergency.

i) external emergency was imposed for the time in 1962, 1965 and 1971.

ii) internal emergency was imposed for the time in 1975.

iii) financial emergency has never been resorted to in the country so far.

PRESIDENT'S RULE

It is the duty of the Union to ensure that the Government of every State is carried on in accordance with the Constitution (article 355).

If, on the Governor's written report or otherwise, the President is satisfied that the Government of a State cannot be carried on as per the Constitution or that the constitutional machinery has failed, he may issue a proclamation taking over any of the functions and powers of the State Government including those of the Governor and other State authorities (article 356). The satisfaction of the President, of course, means the satisfaction of the Union Government and therefore, the President's rule is actually the rule of the Union Government.

The Union Government - Indian Polity, Notes

The Union Executive consists of the: President, the Vice President and the Council Of Ministers with the Prime Minister at the head to aid and advice the President. The government is in power as so long as it enjoys the majority of the members of Lok Sabha, present and voting. The government is a fusion of legislative and executive powers. The government is required to implement the laws but it also enacts the laws. Under Article 73, the executive power of the Union extends to all matters on which the Parliament may make laws. However, all powers are to be exercised in accordance with the Constitution.

THE PRESIDENT

There shall be a President (Article 52) and all executive powers are vested in him and are exercised by him either directly or through officers working under him. All executive actions of the government are taken in his name. Presidential elections are governed by the provisions in Articles 54 to 58 and 62 of the Constitution.

ELIGIBILITY

CONDITIONS

To file a nomination for the Presidential election, a person must

1. an Indian citizen
2. be qualified for election as a member of the Lok Sabha
3. have completed 35 years of age,
4. Not hold any office of profit under the Government of India, or of a State.

Exceptions to this condition are the offices of President and Vice-President, Governor of any State and Ministers of Union or State.

The President shall not be a member of either House of Parliament or of a State Assembly/ Council and if such a member is elected President, he shall be deemed to have vacated his seat in that House on the date on which he enters upon office as President.

PRESIDENT'S ELECTION (Art 54, 55)

The President is indirectly elected through an Electoral College of elected members of both the Houses of Parliament and elected members of the Legislative Assemblies of the States. (The electoral college does not include nominated members and members of legislative councils)

Members of the Legislative Councils CANNOT vote in the Presidential election. The total voting strength of the Parliament is equal to the total voting strength of all state assemblies together.

There is uniformity in the representation of different states at this election as per the population and the total number of elected members of the Legislative Assembly of each state. There is no restriction on the number of times a person can be the President of India. (Unlike in the USA, where a person cannot be the President for more than two consecutive terms).

CONDUCT OF PRESIDENTIAL ELECTIONS

The authority to conduct elections to the President is vested in the Election Commission of India.

OFFICE

TERM

His term of office is five years unless he resigns earlier or is removed by impeachment. He is eligible for re - election.

IMPEACHMENT

The president may be impeached on a charge of violating the constitution.

PROCEDURE FOR IMPEACHMENT (ARTICLE 61)

If the President is to be impeached for violation of the Constitution, the charge shall be initiated by either House of Parliament. No such charge shall be preferred unless

(a) the proposal, signed by not less than one-fourth of the total members of the House, has been moved after at least fourteen days' written notice has been given, of their intention to move the resolution, and

(b) such resolution has been passed by not less than two-third majority of the total membership of the House. If the second house also approves the resolution, the office is deemed to be vacated. Both nominated and elected members take part in the process of impeachment.

POWERS OF THE PRESIDENT

1. Executive Powers - The President appoints the following dignitaries:

1. Prime Minister
2. Governors
3. Diplomats
4. Judges to the Supreme Court and the High Courts
5. Chairman and member of the Union Public Service Commission
6. Chief Commissioners of Union Territories
7. Attorney-General of India
8. Comptroller and Auditor-General of India
9. Members of Finance Commission
10. Election Commissioners

2. Legislative Powers

The President has the power to

1. Summon
2. Prorogue
3. Address and
4. Send messages to Parliament and
5. Dissolve the Lok Sabha and

6. Promulgate ordinance at any time, except when both Houses of Parliament are in session.

3. Emergency Powers

If the President is satisfied that a grave situation exists in India or part thereof on account of reasons mentioned in Articles 352 and 360, he may issue a proclamation of emergency.

4. Financial Powers
No Money Bill or demand for grants can be introduced in Parliament, unless it has been recommended by the President.

5. Judicial Powers
He has the power to
1. pardon
2. reprieve
3. remit or
4. commute a death sentence.

6. Military Powers As the Supreme Commander of the Armed Forces, he has the authority to declare war and peace.

POCKET VETO
Though the President of India does not have the power to overrule any law passed by the Parliament, the constitution does not provide any time period for the President to give his assent to the bill. This action, giving him the power to withhold assent to a bill, is known as 'pocket veto'.

EMOLUMENTS

He is entitled to a salary of Rs. 1.5 lac a month besides an official residence, free of cost. He is also eligible for a pension after retirement.

NOTE

The President or the Governor of a state is not answerable to any court for the exercise and performance of powers and duties of his office in any court during his term.

THE VICE PRESIDENT

The Vice President is elected by both the houses (Electoral College) by a system of proportional representation by means of single transferable vote. Nominated members also participate in his election. The Supreme Court has the final and the exclusive jurisdiction to resolve any disputes regarding the election of the Vice-President.

ELIGIBILITY CONDITIONS

- Citizen of India
- Minimum 35 years of age
- Eligible for election to the Rajya Sabha
- Not hold any office of profit under union, state or local authority.

His term can be cut short if he resigns or is removed by a resolution of removal by the Rajya Sabha, passed by a majority of all the then members of the Rajya Sabha and endorsed by the Lok Sabha.

The Vice President is the second highest dignitary of India, next to the President of India. However, no formal functions are attached to the Vice President. He is the ex-officio chairman of Rajya Sabha. Since he is not a member of Rajya Sabha, he has no right to vote. The Vice President is not entitled to any salary, but receives the salary and allowances payable to the Chairman, Rajya Sabha. All bills, resolutions, motions can be taken up in the Rajya Sabha after his consent. He can discharge the functions of the

President if the post falls vacant. (For maximum 6 months).

The Vice President takes over the office of the President normally under these conditions:

- Death of the President
- Resignation of the President
- Removal of the President
- When the President, due to absence, illness or any other reason, is unable to perform his duties.

When he discharges the President's duties, the Vice President shall not perform the duties of the Chairman, Rajya Sabha and is not entitled to the salary of the Chairman. During this period, he is entitled to the salary and privileges of the President of India.

Removal

The Vice-President may be removed by a resolution of the Rajya Sabha by a majority of all its members and agreed to by the Lok Sabha. No such resolution shall be moved unless at least 14 days' notice has been given.

THE PRIME MINISTER

The real executive authority is vested with the Prime Minister. As the head of the Council of Ministers, he is the Head of the Government. He is also the leader of the party / coalition in Parliament. All ministers are appointed at his recommendation and are also removed on his advice. He also allocates work among the ministers and can change their portfolios at his will. He is the link between the council of ministers and the President. He has the duty to keep the President informed of all decisions relating to administration and legislation.

TERM

The Prime Minister is not appointed for a particular period. He is in office as long as he enjoys the support of a majority of the members of the house.

Duty to inform the President Article 78 requires the Prime Minister to keep the President informed of the affairs of the Union.

SALARY

He gets the same salary as other MPs. [In addition, he gets some other allowances]. He is the ex-officio Chairman of the Niti Aayog (which has replaced the erstwhile Planning Commission) and its Governing Council, National Integration Council and Inter-State Council.

POWERS

- The President convenes and prorogues all sessions of Parliament in consultation with him.
- Can recommend the dissolution of the Lok Sabha before expiry.
- Appoints the Council of ministers.
- Allocates portfolios. Can ask a minister to resign and can get him dismissed by the President.
- Assists the President in appointment of all high officials.

- Can recommend to the President to declare emergency on grounds of war, external aggression or armed rebellion.
- Advises the President on the President's Rule in a state or emergency due to financial instability.
- He is the Leader of the House.

Morarji Desai was the first Prime Minister to resign without completing his term while Choudhry Charan Singh resigned without facing the Parliament.

THE COUNCIL OF MINISTERS

The Council of Ministers is headed by the Prime Minister to aid and advise the President in exercising his functions. He is the leader of the party which enjoys a majority in the Lok Sabha. The Prime Minister is appointed by the President, who also appoints other ministers on his advice.

The Council is collectively responsible to the Lok Sabha. It is the Prime Minister's duty to communicate to the President all decisions of the Council and information relating to them. The Council of Ministers comprises Cabinet Ministers, Ministers of State (independent charge), Ministers of State and Deputy Ministers.

- The size of the Council of the ministers is restricted to 15% of the total strength of Lok Sabha by 91 st Amendment, 2005.
- If any minister disagrees with a cabinet decision or that of the government, he must resign.

The Union Parliament - Indian polity, Notes

The supreme legislature of India is called the Parliament, which has a prominent place in the governance of the country. (The parliamentary form of government is also known as 'westminster' model of government. It is known as Parliamentary system because the Parliament has the power to amend the Constitution). The Parliament consists of the President and two Houses of Parliament (Article 79) known as Council of States (Rajya Sabha) and House of the People (Lok Sabha). While the Lok Sabha represents the people as a whole, the Rajya Sabha represents the States.

FUNCTIONS

- To form the government
- To represent the electorate
- To make laws for the nation
- To hold the government accountable for its actions
- To monitor the expenditure out of public funds
- To act as a forum for debate on issues of public interest
- To act as a forum for the expression of grievances
- To seek information from the government
- Appointments to different offices

THE PRESIDENT'S ROLE IN PARLIAMENT

- The President is a part of the Parliament, though he does not sit in either house.
- Both the houses are however, summoned by him to meet from time to time.
- He can also prorogue the two houses and dissolve the Lok Sabha. Prorogation terminates the session while dissolution puts an end to the life of the house.
- Presidential assent is essential for a bill passed by both the houses to become law. He also has the power to promulgate ordinances having the same effect as a law passed by Parliament, when the

Parliament is not in session. In the Parliament, the President has the right to address the first session after each General Election to the Lok Sabha and the first session in the new year and inform it of the causes of its summons.

He is also empowered to send messages to either House whether regarding a Bill pending in Parliament or otherwise. The bills belonging to certain categories can be introduced with approval or only after recommendation of the President.

THE MAXIMUM

LOK PERMISSIBLE

SABHA STRENGTH

550 + 2 [530 – States 20 – Union Territories]

The maximum strength of Lok Sabha envisaged by the Constitution is 552 (up to 530 members to represent the States, up to 20 members to represent the Union Territories and not more than 2 members of the Anglo- Indian Community to be nominated by the

President, if, in his opinion, that community is not adequately represented in the House.) The total elective membership is distributed among the States in a way that the ratio between the seats for each State and its population is, as far as practicable, the same for all the States.

The present strength of the Lok Sabha is 545, in which 530 members are represented by the States and 13 members represent the Union Territories, thus making up for 543 members.

Two members are nominated by the President, thus making a total of 545.

Present strength of Lok Sabha – 545

The 91 st Amendment, 2001, extended the freeze on Lok Sabha and State Assembly seats till 2026.

The normal tenure of the Lok Sabha is five years, but it may be dissolved earlier by the President.

The qualifications to become a Lok Sabha member are

1. Citizen of India
2. At least 25 yrs of age
3. Mustn't hold any office of profit
4. Not of unsound mind/insolvent
5. Registered as voter in any Parliamentary constituency

The presiding officer of Lok Sabha is the Speaker (In his absence Deputy Speaker).

He is elected by the Lok Sabha MPs. The Speaker continues in office even after the dissolution of the Lok Sabha until a new Lok Sabha meets. Usually the Speaker, after his election, cuts off all connections with his party and acts in an impartial manner. His salary is charged to the Consolidated Fund of India. If the Speaker wants to resign, he can send his resignation to the Deputy Speaker. Besides, a majority of the total membership can also remove the Speaker after giving a 14 days' notice. During this time, he doesn't preside over the meetings. After his removal, he continues in office until his successor takes charge.

PRO TEM SPEAKER

After the elections to the Lok Sabha, the senior most member of the House is sworn in as a pro tem speaker and later, the Lok Sabha is convened and the newly elected members are sworn in. A pro tem speaker is appointed to administer the oath to the new members and to conduct the elections for Speakership.

SOME FACTS ABOUT LOK SABHA CONSTITUENCIES

- Largest constituency (area) -- - Ladakh
- Largest constituency (no. of voters) -- - Outer Delhi
- Smallest constituency (area) -- - Chandni Chowk
- Smallest constituency (no. of voters) -- - Lakshadweep

Leader of Opposition

To be recognized as the official opposition group in Parliament, the party should have at least 10% of the total strength in Lok Sabha.

THE RAJYA SABHA
The Rajya Sabha was established in 1952.
MAXIMUM STRENGTH

250 [Out of these, the President nominates 12 persons having special knowledge/experience in literature, science, art and social service].

Currently, the Parliament provides for 233 seats for the States and the Union Territories. The total membership of the Rajya Sabha is thus 245. All the states and the Union Territories of Delhi and Puducherry are represented in the Rajya Sabha.

The representatives of the States are elected by members of state legislative assemblies on the basis of proportional representation through single transferable vote. **There are NO seats reserved for Scheduled Castes and Scheduled Tribes in Rajya Sabha.**

ELIGIBILITY CONDITIONS

1. Citizen of India
 2. 30 yrs of age
 3. Be a Parliamentary elector in the state in which he is seeking election.
 4. Others as prescribed by parliament from time to time.
- A Rajya Sabha MP's normal term is 6 years and 1/3 rd of its members retire every 2 years.

The Vice President is the ex-officio chairman of the Rajya Sabha. He presides over its proceedings as long as he does not act as President during a vacancy in his office. A Deputy Chairman is also elected from its members. Any bill can originate in Rajya Sabha except the Money Bill, which can originate in Lok Sabha only.

SPECIAL POWERS OF THE RAJYA SABHA

A resolution seeking the removal of the Vice –President can originate only in the Rajya Sabha. A resolution which seeks to legislate on any state subject can only originate in Rajya Sabha (Article 249). If the Rajya Sabha passes a resolution by a majority of not less than two-third of the members present and voting that it is necessary in national interest that the Parliament should make laws regarding a matter in the State List, the Parliament can make such a law for a maximum of one year. A resolution seeking to create one or more All-India Services can be initiated only in the Rajya Sabha (Article 312).

PARLIAMENT SESSIONS

Summoned at the discretion of the President. The gap between two consecutive sessions cannot exceed 6 months. The Parliament generally convenes three sessions in a year:

1. Budget session: February - May (Longest)
2. Monsoon session: July – August
3. Winter session: November – December (shortest)

PROROGATION

Means ending the session. Pending bills/business do not lapse and they are taken up in the next session. For re-assembly, the permission of the President is required.

DISSOLUTION

The President can dissolve the Lok Sabha upon Cabinet recommendation and can call for fresh elections.

ADJOURNMENT

The Lok Sabha Speaker or the Rajya Sabha Chairman can adjourn the house. For re-assembly, the permission of the President is not required.

MONEY

BILL

Article 110 defines a money bill. The decision of the speaker is final whether a given bill is money bill or not. The money bill is presented in Parliament with the consent of the President. No joint sitting of the Parliament is held for passing the Money Bill, and the Rajya Sabha can only keep it pending for a maximum of 14 days.

THE LOKSABHA DISSOLUTION

ONLY OF LOK SABHA

- Done by the President on the Prime Minister's advice.
- The bills pending in the Rajya Sabha, passed by the Lok Sabha, also lapse unless the President calls a joint sitting of the two houses.
- The bills pending in the Rajya Sabha, but not passed by the Lok Sabha, do not lapse.

Parliament's Control over the Financial System

As per Article 265, no tax can be levied or collected except by authority of law. The executive, therefore, cannot impose any tax without the sanction of the Parliament. All the revenue and loans raised by the government are paid into the Consolidated Fund of India. Under Article 266, no money can be withdrawn from the Consolidated Fund of India without the sanction of the Parliament. The Parliament, thus, controls the revenue expenditure and appropriation of the Government of India.

FINANCE

BILL

Every year, the budget is presented in the Lok Sabha by the Finance Minister with the prior approval of the President. This is done under Article 112 and is called the Annual Financial Statement. The Union Budget passed by the Parliament is known as the Finance Bill. "Finance Bill" means the Bill introduced each year to implement the financial proposals of the government in the next financial year. To oppose the bill sometime, the opposition may move a 'cut motion' and if the cut motion is passed, the government has to resign as it proves that it no longer enjoys majority on the floor of the house.

THE AMENDMENT PROCEDURE

CONSTITUTIONAL

AMENDMENT

Under Article 368, the Parliament can amend the Constitution under its constituent powers. However, enough safeguards have been put in place to check any abuse of power. Parliament cannot amend such provisions which form the basic structure of the constitution as declared by Supreme Court in Keshvananda Bharti case, 1973. Each house must pass the bill separately. In case of a disagreement between the two houses, there is

no provision for holding a joint sitting of the two houses. There are three ways in the amendment can be carried out:

Simple

Majority

The provisions on citizenship, abolishing or creating second chambers in the states can be amended by a simple majority (Articles 5, 168 or 239A).

Second

Method

The amendment bill must be passed in each House by a majority of its total membership and by a majority of not less than two-thirds of its members present and voting.

Third

Method

However, if the bill seeks to amend a change in Article 54, 55, 73, 162 or 241 and some other Articles, the bill passed by the Parliament must also be ratified by not less than half of the states before it is presented to the President for his assent.

IMPORTANT

CONSTITUTIONAL

AMENDMENTS

The 1st Amendment, 1951: It made provision for special treatment of educationally and socially backward classes, and also added Ninth Schedule to the Constitution to protect the land reforms.

The 7th Amendment, 1956: was necessitated on account of reorganization of states on a linguistic basis and changed First and Fourth Schedules.

The 24th Amendment: Education made a part of the Concurrent List.

The 36th Amendment: Sikkim made a full-fledged state of India. Earlier, it was an associate state of India.

The 42nd Amendment 1976: provided supremacy of Parliament and gave primacy to Directive Principles over Fundamental Rights and also added 10 Fundamental Duties. New words - socialist, secular and unity and integrity of the nation, were added to the Preamble.

The 44th Amendment 1978: restored the normal duration of Lok Sabha and the power of the government to proclaim internal emergency.

The 52nd Amendment, 1985: inserted the Tenth Schedule in the Constitutions regarding provisions on disqualification for defection. This bill was introduced by the government headed by Rajiv Gandhi.

The 61st Amendment, 1989: reduced the voting age from 21 to 18 years for Lok Sabha and Assemblies.

The 73rd Amendment, 1993: provided for village panchayats, regular panchayat elections etc. Also provided reservation women in panchayats.

The 74th Amendment: provided for urban local bodies and regular elections to them.

The 77th Amendment 1995: Provision for reservation of SC/ST in promotions.

The 86th Amendment, 2002: deals with the insertion of a new Article 21A after Article 21. The new Article 21A deals with Right to Education and says that the state shall provide free and compulsory education to all children from between 6-14 years in such a manner as the state may, by law determine.

The 89th Amendment, 2003: Constitution of separate national commission for SC and ST.

The 93rd Amendment, 2005: Special provision for socially and educationally backward classes or SC or ST in educational institutions including private.

The 99th Amendment, 2014: deals with the creation of a National Judicial Appointments Commission, a 5-member advisory club to recommend the names of Judges for the Supreme Court and the High Courts. This body will replace the earlier Collegium system of judicial appointments.

The 100th Amendment - August 1, 2015: Amendment of First Schedule to Constitution. Exchange of certain enclave territories with Bangladesh and conferment of citizenship rights to residents of enclaves consequent to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh

PARLIAMENTARY COMMITTEES

THE COMMITTEE SYSTEM

- The Committee System has been created to let the members of Parliament discuss and debate the working of a certain government department.
- Most committees function under the Speaker's directions are essentially committees of the Rajya Sabha and the Lok Sabha.

The committees are classified under two heads:

1. Standing Committees
2. Ad hoc Committees

Ad hoc Committees are created for a temporary period.

THE STANDING COMMITTEES are broadly classified into four categories:

- Committees to Enquire,
- Committees to Scrutinize,
- Financial Committee, of Administrative Character
- Committees dealing with provision of facilities to members.

FINANCIAL COMMITTEES OF THE PARLIAMENT ARE:

- Estimates Committee
- Public Accounts Committee
- Committee on Public Undertaking

Apart from these there are around 24 Departmental Related Committees.

Public Accounts Committee

The committee examines Annual Audit Reports of the Comptroller and Auditor General of India (CAG), which are laid before the Parliament by the president. It examines public expenditure not only from legal point of view but also from point of economy, wisdom and propriety.

Estimates Committee

The committee examines the estimates included in the budget and suggests economies in public expenditure.

The State Government - Indian Polity, Notes

THE GOVERNOR

He is the nominal executive head of a state. Normally, each State has its own Governor, but under the 7th Amendment Act, 1956, a person can be appointed Governor of one or more States or Lt. Governor of the Union Territory.

ELIGIBILITY CONDITIONS

- Citizen of India
- 35 yrs of age or more
- Shouldn't be a member of either house of parliament or the state legislature.
- Must possess the qualification for membership of State Legislature. Mustn't hold any office of profit.

SALIENT FEATURES

- His usual term of office is 5 yrs but he holds office during the pleasure of the President
- He can be asked to continue for more time until his successor takes the charge.
- He can give his resignation or can be removed earlier by the President.

CHIEF MINISTER

He is the real executive and Head of the Government at the State level. The position of Chief Minister at the State level is parallel to that of the Prime Minister at the Centre. Chief Ministers are appointed by the respective Governors. Other Ministers are appointed by the Governor on the advice of the Chief Minister.

The Chief Ministers is the chief link between the Governor and the Council of Ministers. He keeps the Governor informed of all decisions of the Council of Ministers.

STATE LEGISLATURE IN INDIA

Can be

1. Unicameral – [One House]
2. Bicameral – [Two House]

BICAMERAL STATUS (6 States) - Bihar, J & K, Karnataka, Maharashtra, Uttar Pradesh, Andhra Pradesh.

The Legislative Council can be created or abolished on the recommendation of Legislative Assembly.

LEGISLATIVE COUNCIL [VIDHAN PARISHAD]

Also known as the Upper House. Like the Rajya Sabha, it is also a permanent house and CANNOT be dissolved.

STRENGTH

Its total strength cannot exceed 1/3rd of the strength of the Legislative Assembly, subject to a minimum of 40 members.

TENURE

Six years, with 1/3rd members retiring every two years.

QUALIFICATION

Same as for the Lok Sabha, except the age which is 30 yrs.

CHAIRMAN

The Council elects a Chairman and a Vice-chairman from amongst its members.

LEGISLATIVE ASSEMBLY [VIDHAN SABHA]

- Also known as Lower House, just like the Lok Sabha.
- Consists of directly chosen representatives.
- Has a term of 5 years but can be dissolved by the Governor earlier. Its term can be extended by one year during national emergency.
- The Council of ministers is collectively responsible to the Assembly. The Chief Minister is the leader of the house.

ELIGIBILITY CONDITIONS

Same as for the Lok Sabha or Legislative Council except the minimum age, which is 25 years in this case.

SPEAKER/DEPUTY SPEAKER

Every Legislative Assembly chooses its Speaker and Deputy Speaker.

LEGISLATIVE PROCEDURE

With reference to a Money Bill, the position is the same as prevails at the Union level: the Bill can be introduced only in the Assembly; the will of the Assembly prevails; If the State does not comply with the directives of the Centre, the latter may invoke Art. 356 and take over the administration of the State to itself.

FINANCIAL RELATIONS

The States in India are greatly dependent on the Centre. The Constitution provides inadequate sources of revenue to the States. Therefore, they have to depend on the Centre for subsidies and other financial contributions.

The Union exercises financial control through the Comptroller and Auditor General of India, who audits the accounts of the States and reports on them.

Important Constitutional Bodies - Indian Polity, Notes

1. UNION PUBLIC SERVICE COMMISSION (UPSC)

The composition of the Commission is determined by the President. The UPSC members appointed for a term of 6 yrs, or till they reach 65 yrs of age. The members can resign earlier and the President can also remove them by issuing orders only after the Supreme Court recommends after an inquiry. The UPSC members are not eligible for employment by the government after retirement.

2. COMPTROLLER AUDITOR GENERAL INDIA (CAG)

Appointment

He is appointed by the President. A person with long administrative experience and knowledge of accounts is appointed. He holds office for 6 yrs or till 65 yrs of age.

Removal

The President can remove him only on the recommendation of the both the Houses of Parliament (as in case of judge of Supreme Court). He is the guardian of the public purse. Duties He audits the accounts of the Union and the States and ensures that nothing is spent out of the Consolidated Fund of India or of the States without parliamentary sanction or the sanction of the respective State Legislatures.

3. ATTORNEY GENERAL

He occupies the highest legal office of the Union Government.

Appointment

He is appointed by the President and holds office at the pleasure of the President. Only a person qualified to be appointed a Judge of the Supreme Court can hold this post.

Duties: He advises the Government of India in legal matters. He has the right to audience in any courts in India can take part in the proceedings of the Parliament and its committees. However, he is not given the right to vote. He is assisted by Solicitor General and four Additional Solicitor Generals.

Removal

He holds office at the pleasure of the President. Normally, the incumbent Attorney General resigns whenever a new government is sworn in.

4. ELECTION COMMISSION

Objective

The Constitution provides for an independent Election Commission to ensure free and fair election to the Parliament, the state legislature and the offices of President and Vice-President.

Composition

Chief Election Commissioner +2 Election Commissioners. They enjoy equal powers.

Appointment

The Chief Election Commissioner is appointed by the President and the other Election Commissioners are appointed by the President after consultation with the Chief Election Commissioner.

The Election Commissioners are appointed for a term of 6 years or till the age of 65, whichever is earlier. They are not eligible for re-appointment. Also, they cannot hold any office of profit after retirement.

Removal

The Chief Election Commissioner can be removed from office before completion of his term by the President on the basis of an impeachment motion passed by the Parliament by a special majority for proven misbehavior or incapacity (same as that of the Judges of the Supreme Court).

The other Election Commissioners may be removed by the President on the recommendation of the Chief Election Commissioner.

Salary

The Election Commissioner draws a salary equivalent to the salary drawn by a Judge of the Supreme Court.

First Chief Election Commissioner - Sukumar Sen

The status of the Chief Election Commissioner and the Election Commissioners in terms of salaries and allowances is equivalent to that of the Supreme Court Judges.

Disqualification

If a person is convicted of any offence and is sentenced to an imprisonment of 2 years or more, it will disqualify him from contesting elections. If a person acquires the citizenship of a foreign country, he is also debarred from contesting elections. As such, there are around six grounds also called 'Statutory Disqualifications' based on which a person can be debarred from contesting elections.

Person in Jail

A person confined in jail does not have the right to vote though he has the right to contest elections.

Right to contest

A person cannot contest from more than two constituencies for a Lok Sabha / Vidhan Sabha election.

Political Party

Only an association or body of Indian citizens calling itself a political party and wanting to avail itself of the provisions of Part-IV- A of the Representation of Peoples Act, 1951, is required to get itself registered with the Election Commission. A political party is a recognised political party in a State, if and only if either the conditions specified in Clause (A) are, or the condition specified in Clause (B) is, fulfilled by that party and not otherwise, that is to say-

Conditions for National Party: The total number of valid votes polled by all the contesting candidates of such party is not less than 6% of the total valid votes polled by all the contesting candidates in a General Election.

National Party

If a political party is treated as a recognised political party in four or more States, it shall be known as a 'National Party' throughout India.

State Party

If a political party is treated as a recognised political party in less than four States, it should be known as a 'State Party'.

RECOGNISED PARTIES

The Election Commission has recognized 6 political parties as National Parties and 36 political parties as State Parties in different States at the time of General Elections 2014.

POWERS (Article 324)

The Commission enjoys the powers of superintendence, direction and control of the elections to both Houses of Parliament.

The Election Commission of India, inter-alia, is also vested with the following powers:

- A. superintendence, direction and control of the elections for the President and Vice-President of India.
- B. Conduct of elections to the Parliament (Lok Sabha and Rajya Sabha) and the Vidhan Sabhas and the Vidhan Parishads.
- C. Preparation of electoral rolls.

Elections are conducted as per the constitutional provisions, supplemented by parliamentary laws. The Representation of the People Act, 1951 deals in detail with all aspects of the conduct of elections and all post-election disputes.

5. FINANCE COMMISSION

The Finance Commission is constituted by the President every five years or at such an early time, as he considers necessary.

It consists of a Chairman and 4 other members. They are eligible for re-appointment.

The Chairman is selected from persons who have had experience in public affairs, while the members are selected from the persons who:

- Eligible to be appointed the Judge of a High Court
- Have special knowledge of finance and government accounts
- Wide experience in financial matter and administration.
- Have special knowledge of Economics.

The 14th Finance Commission had recommended the sharing of taxes between the states and the centre in the ratio of 42: 58 from an earlier 32:68 ratio recommended by the 13th Finance Commission.

The Terms of Reference and the matters to be considered by the Finance Commission are:

1. (i) the distribution between the Union and the States of the net proceeds of taxes;
- (ii) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India and
- (iii) the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State on the basis of the recommendations made by the Finance Commission of the State.

2. The Commission shall give suggestions to amend the Fiscal Responsibility Budget Management Acts currently in force. The 14th Commission report will apply for a period of five years commencing from April 1, 2015.

PANCHAYATI RAJ / LOCAL BODIES

This system has been enacted to ensure direct participation of people at the grass roots level. The Balwant Rai Mehta Committee submitted its report in 1957 in which it recommended:

- A 3-tier structure
- Zila Parishad at the District Level
- Panchayat Samiti at the Block Level and
- Gram Panchayat at the Village Level
- Genuine transfer of power and responsibility to these institutions.
- Adequate resources to them.

The 3-tier system of Panchayat Raj was first adopted by Rajasthan in 1959, followed by Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Maharashtra, Punjab, Tamil Nadu, UP and West Bengal.

OFFICIAL LANGUAGES

Article 120 lays down the official language of the Parliament. It says that the business of the Parliament shall be transacted in Hindi or English.

OFFICIAL LANGUAGE OF THE UNION

Part XVII of the constitution deals with the Official language of the Union. (Articles 343-351). Hindi in Devanagari was accepted as the Official language of the Union with international form of Indian numerals. English was allowed for 15 years and it was to cease w.e.f. January, 1965. But it was not acceptable to states like Tamil Nadu, Karnataka, Andhra Pradesh, Pondicherry and West Bengal. So English was allowed to be used simultaneously as an Official Language.

OFFICIAL LANGUAGE ACT 1963

The Parliament enacted the Official Language Act, 1963 which permitted continued use of English along with Hindi for all official purposes and in Parliament.

PROMOTION OF HINDI

Article 351 provides for spread and development of Hindi language. The ultimate goal is spread and development of Hindi and gradual switchover for official purposes and as a link language.

EIGHTH SCHEDULE

Besides Hindi, our constitution recognises other languages and the need for their development. These languages are mentioned in the 8 th Schedule. Originally, there were 14 languages in the Eighth Schedule and eight languages were added later by amendments. Currently, the total number of languages in the 8 th Schedule is 22.

The Union Budget - Indian Polity, Notes

ANNUAL FINANCIAL STATEMENT

The budget is a declaration of the government's fiscal policy and informs us how the government plans to spend the public funds and how they will be raised by the government.

WHAT IS BUDGET?

The Union Budget is a yearly document presented by the government stating how much money it earns from various sources and how it will be spent. It also outlines its strategy for raising money via taxes, and its plans for expenditure. It is a constitutional obligation under Article 112 of the Constitution, where it has been referred to as Annual Financial Statement.

- Once every financial year (April 1 to March 31).
- The actual date is fixed by the President.
- By convention, it is presented in Parliament (Lok Sabha) on the last working day of February.

The Budget is preceded by an Economic Survey which is an annual commentary on the state of the economy. It is presented in Parliament just before the Union Budget and soon after the Railway Budget.

IMPORTANT PARLIAMENTARY TERMS

Adjournment

The speaker of the Lok Sabha determines when the sitting of the House is to be adjourned to a particular day or to an hour or part of the same day. In the Rajya Sabha, the Chairman decides when the Rajya Sabha needs to be adjourned.

Breach of Privilege

If a person disregards the privileges, rights and immunities of the Members of Parliament, he is said to commit a Breach of Privilege.

Caretaker Government

The government in the interregnum, which comes into existence as soon as the Council of Ministers resigns or loses confidence, or the Prime Minister dies. It lasts until the next Council of Ministers is formed. It is a constitutional necessity.

Dissolution

The President of India can dissolve the Lok Sabha as per the procedure in the Constitution. The dissolution ends the very life of the existing House and fresh elections are essential to form a new House.

Extradition

It is the surrender by a foreign country of a person accused of a crime in upon a demand made the country, where the crime was committed.

Floor Crossing

The defection of a Member of Parliament from the party on whose ticket he was elected, to another political party.

Guillotine

Due to lack of time, a demand-for- grants are put to vote whether discussed or not in the House on the last day of the allotted time. It concludes the discussion on demands for grants.

Hung Parliament

If in a general election, no political party or a coalition is in a position to form a majority government, such a Parliament is called a Hung Parliament.

Lame Duck Session

The last session of a Parliament is held after a new Lok Sabha has been elected after the general election. The lame duck in it are those members who were part of the old House but could not get re-elected for the new House.

Question Hour

The first hour of every sitting in both the Houses (11 am to 12pm) is devoted to the questions raised by members of the house. The Question Hour is an important mechanism through which the executive's accountability is brought about.

(b) There are three types of questions.

(i) Starred Question

Require oral answers.

(ii) Unstarred Question

Only written answers are given.

(iii) Short Notice Questions

Related to matters of urgent public importance and can be asked by members with notice shorter than ten days prescribed for an ordinary question.

Snap Vote

A vote taken unexpectedly without voters being briefed or informed in advance.

Speaker Pro-tem

As soon as the new Lok Sabha is constituted, the President appoints a Speaker Pro-tem, who is usually the senior-most member (seniority in terms of number of year he/he served as a member) of the House. His functions include administering the oath to the new Lok Sabha members and presiding over the election of the new Speaker. His term ceases as soon as the Speaker is elected.

Quorum

A quorum is the minimum number of members of a deliberative assembly necessary to conduct its business. The quorum for either House is 1/10 th of the total number of members.

Rule of Law

Given by the English Jurist Dicey. It has three meanings:

- (a) absolute supremacy of law
- (b) equality before law
- (c) Constitution is the result of the ordinary law of the land.

Vote on Account

An estimate of an advance payment to enable the government departments to carry on

their work from the beginning of the financial year till the passing of the Appropriation Act.

Whip - A directive issued by a political party to ensure the support of its members voting in favour or against a particular issue in the house. A person may lose the membership of the party and the legislature if he votes against the whip or obtains from voting.

Zero Hour

Not mentioned in Rules of Procedure and is an Indian innovation. Matters of urgent national importance are raised without any prior notice. It generally starts after the Question Hour till the agenda of the day.

Major Legal Judgements - Indian Polity, Note

From Aarushi Talwar murder to Ajmal Kasab death sentence, our judiciary has been at its finest in declaring verdicts over the years.

1. Jury decision overturned by High Court (KM Nanavati v State of Maharashtra)

- 1961 Hardly an open-and- shut case, the nature of the crime garnered media attention. This case is notable for being the last case when a jury trial was held in India. KM Nanavati, a naval officer, murdered his wife's lover, Prem Ahuja. The jury ruled in favour of Nanavati and declared him & 'guilty'; which was eventually set aside by the Bombay High Court.

2. Amendment masquerades as law (IC Golaknath v State of Punjab) - 1967

Parliament is prevented from taking away individual rights. In the famous case Golaknath V State of Punjab in 1967, the Supreme Court ruled that Parliament could not curtail any of the Fundamental Rights of individuals mentioned in the Constitution. Parliament's overarching ambitions nipped in the bud (Keshavananda Bharti vs State of Kerala) 1973.

3. Elected representatives cannot be given the benefit of doubt A highly notable case which introduced the concept of basic structure of the constitution of India and declared that those points decided as basic structure could not be amended by the Parliament. The case was triggered by the 42nd Amendment Act.

4. Beginning of the fall of Indira Gandhi (Indira Gandhi v Raj Narain) - 1975 The trigger that led to the imposition of emergency. In this landmark case regarding election disputes, the primary issue was the validity of clause 4 of the 39th Amendment Act. The Supreme Court held clause 4 as unconstitutional and void on the ground that it was outright denial of the right to equality enshrined in Article 14. The Supreme Court also added the following features as “basic features” laid down in Keshavananda Bharti case – democracy, judicial review, rule of law and jurisdiction of Supreme Court under Article 32.

5. A step backward for India (ADM Jabalpur v Shivakant Shukla Case) - 1976

Widely considered a violation of Fundamental Rights.

In this landmark judgment, the Supreme Court declared that the rights of citizens to move the court for violation of Articles 14, 21 and 22 would remain suspended during emergencies. Triumph of individual liberty (Maneka Gandhi vs UOI) 1978.

6. Overlapping zones of laws rectified thanks to a writ petition - The case caused a huge uproar over the definition of Freedom of Speech. The court ruled that the procedure must be fair and the law must not violate other Fundamental Rights.

7. Parliament limited by itself (Minerva Mills v Union of India) - 1980 In this landmark judgment, the Supreme Court of India in 1980 strengthened the doctrine of the basic structure which was propounded earlier in the Keshavananda Bharti Case. Two changes which were made earlier by the 42nd Amendment Act were declared as null and void by the Supreme Court in this particular case.

8. Constitutional validity of individual rights upheld (Waman Rao v Union of India) - 1981 SC ruled that Parliament had transgressed its power of constitutional amendment.

This case was a landmark decision in the constitutional jurisprudence of India. This case has helped in determining a satisfactory method of addressing grievances pertaining to the violation of fundamental rights by creating a fine line of determination between the Acts prior to and after the Keshavananda Bharati case.

9. Maintenance lawsuit sets precedent (Mohd Ahmed Khan v Shah Bano Begum) - 1985 Shah Bano won the right to get alimony from her husband. The petitioner challenged the Muslim personal law. The Supreme Court ruled in favour of Shah Bano and granted her alimony. Most favoured it as a secular judgment but it also invoked a strong reaction from the Muslim community, which felt that the judgment was an encroachment on Muslim Sharia law and hence led to the formation of the All India Muslim Personal Law Board in 1973.

10. MC Mehta v Union of India - 1986

Mounting environment-related concerns. A PIL filed by MC Mehta in 1986 enlarged the scope and ambit of Article 21 and Article 32 to include the right to healthy and pollution-free environment.

11. Reservation in central government jobs (Indra Sawhney v UOI November)

- 1992 Attempt to correct historic injustices constitutionally. The constitutional bench of the Supreme Court held in this matter that caste could be a factor for identifying backward classes.

12. Wrangle over Supreme Court judge appointments (Supreme Court Advocates-on-Record - Association and another versus Union of India) - 1993 The National Judicial Appointments Commission Act and Constitutional amendment Act passed in 2014 aimed at replacing the collegium system of appointing Supreme Court judges. The act was struck down as unconstitutional by the Supreme Court in October 2015.

13. Power of President's Rule curtailed (SR Bommai v Union of India) - 1994

Persecution of state governments stalled. This landmark case had major implications on Center-State relations. Post this case the Supreme Court clearly detailed the limitations within which Article 356 has to function.

14. Scam-tainted politicians - 1997 The Jain Hawala case exposed bigwigs. The Hawala scandal was an Indian political scandal involving payments allegedly received by politicians through four hawala brokers, the Jain brothers. In 1991, an arrest linked to militants in Kashmir led to a raid on hawala brokers, revealing evidence of large-scale payments to national politicians. The prosecution that followed was partly prompted by a public interest litigation. Many were acquitted, partly because the hawala records (including diaries) were judged in court to be inadequate as the main evidence. The high court decreed that the CBI had not brought on record any material which could be converted into legally admissible evidence.

15. Foundation for a female workforce (Vishaka v State of Rajasthan) -

1997 Definition of sexual harassment and guidelines to deal with it laid down. In this case, Vishakha and other women groups filed a Public Interest Litigation (PIL) against

State of Rajasthan and Union of India to enforce fundamental rights for working women under Articles 14, 19 and 21 of the Constitution. This resulted in the introduction of Vishaka Guidelines. The judgment of August 1997 also provided basic definitions of sexual harassment at the workplace and provided guidelines to deal with it. Hence the importance of the case as a landmark judgment.

16. Afzal Guru's death sentence sparked protests -

2002 Awarded death sentence for role in 2001 Parliament attacks. Afzal Guru was sentenced to death on February 2013 for his role in the December 2001 attacks on the Indian Parliament. The judgment faced widespread criticism on three grounds – lack of proper defense, lack of primary evidence and judgment based on collective conscience rather than rule of law.

17. Justice deferred in Best Bakery case - 2003

Miscarriage of justice as a large number of witnesses turn hostile. The Best Bakery was burned down, killing 14 people on March 1, 2002 as part of the 2002 Gujarat violence. The Supreme court, in a rarest of rare case, ordered a re-trial outside of Gujarat in which nine out of the seventeen accused were convicted by a special court in Mumbai in 2006.

18. State of Tamil Nadu V Suhas Katti - November 2004 Short conviction time of seven months. This was notable for being the first case involving conviction under the Information Technology Act, 2000. A family friend of a divorced woman was accused of posting her number online on messenger groups which led to her being harassed by multiple lewd messages. The accused was later convicted and sentenced.

19. Rameshwar Prasad v Union of India - 2005

Dissolution of Bihar Assembly unwarranted. In this case, the petitioner challenged the constitutional validity of a notification which ordered dissolution of the legislative Assembly of the state of Bihar. The dissolution had been ordered on the ground that attempts were being made to cobble a majority by illegal means and lay claim to form the government in the state which if continued would lead to tampering with constitutional provisions. The Supreme Court held that the aforementioned notification was unconstitutional.

20. Victims of sexual assault or not? (Om Prakash v Dil Bahar) - 2006

Controversial ruling had many opponents. The Supreme Court in the above case declared that a rape accused could be convicted on the sole evidence of the victim in spite of medical evidence not proving that it was rape.

21. Priyadarshini Mattoo case - October 2006

14-year- old fight for justice gets results. In this matter the Supreme Court had commuted the death sentence awarded to prime accused Santosh Singh (son of former IPS officer), to life imprisonment for the rape and murder of the 23- year-old law student, Priyadarshini Mattoo.

22. Jessica Lal Murder Case - December 2006 Civil society makes big gains.

A model in New Delhi working as a bartender was shot dead and the prime accused Manu Sharma, son of Congress MP Vinod Sharma who was initially acquitted in February 2006 was later sentenced to life imprisonment in Dec.2006 by a fast track

hearing by the Delhi High Court. On 19 Apr 2010, the Supreme Court of India approved the sentence.

23. Sanjay Dutt plays prisoner in real life - 2007

Conviction under TADA changed to under the milder Arms Act.

Well-known actor Sanjay Dutt was sentenced to five year imprisonment by the Supreme Court for illegal weapons possession in a case linked to the 1993 serial blasts in Mumbai. The Supreme Court also cited that the circumstances and nature of offence were too serious for the 53-year- old actor to be released on probation.

24. Nithari serial murders - 2009 - Koli was served with multiple death sentences. A Special Sessions Court awarded death sentence in 2009 to Surinder Koli and Moninder Singh Pandher for the murder of a 14-year- old girl. The murders believed to have been committed through 2006 involved instances of cannibalism. Pandher was later acquitted by the Allahabad High Court and was released on bail but Koli's death sentence was upheld by both the High Court as well as the Supreme Court.

25. Aarushi Talwar murder - 2008 Verdict delivered under unusual circumstances.

A case which received heavy media attention involved the double murder of 14-year-old Aarushi Talwar and her 45-year- old domestic help in Noida. After five years a Sessions court convicted both her parents Rajesh and Nupur Talwar and sentenced them to life imprisonment.

26. Section 377 case (Naz Foundation v Govt of NCT of Delhi) - July 2009 Cause for rejoicing for homosexuals. In 2009 the Supreme Court declared Section 377 of the Indian Penal Code, 1860 as unconstitutional. The said section earlier criminalised sexual activities "against the order of nature" which included homosexual acts. This judgment however, was overturned by the Supreme in December, 2013.

27. Meagre closure for controversial Ayodhya - (Ayodhya Ram Mandir Babri Masjid Case) - September 2010

Ruled that the land was to be divided into three parts.

The high court of Allahabad had ruled that the disputed land in Ayodhya where the Babri Masjid was situated before it was demolished in 1992 shall be divided into three parts. Two-thirds of the land was to be awarded to the Hindu plaintiffs and one-third to the Sunni muslim Waqf board.

28. Child sexual assault not to be taken lightly - 2011

Punishment not enough for child abusers. The Supreme Court restored the conviction and sentence of six-year rigorous imprisonment imposed on two British nationals who were acquitted by the Bombay High Court in a paedophilia case. The Bench directed the accused to serve the remaining period of sentence. In a landmark judgment the Supreme Court observed "Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes".

29. Vodafone cleared in tax battle (Vodafone - Hutchison tax case) - January 2012

Landmark decision on taxability of offshore transactions.

The Supreme Court ruled in favour of Vodafone in the two-billion- dollar tax case citing that capital gains tax is not applicable to the telecom major. The apex court also

said that the Rs 2,500 crore which Vodafone had already paid should be returned with interest.

30. Clean chit to Prime Minister Narendra Modi - 2012

Questions remains and victims of families yet to get closure.

In April 2012 the Supreme Court appointed Special investigation Team (SIT) gave current Prime Minister Narendra Modi a clean chit in the post-Godhra Gulberg massacre case citing that it found no evidence against him. Narendra Modi went on to become the Prime Minister of India with a huge mandate.

31. Mohd Ajmal Amir Kasab v State of Maharashtra - 2012

One of the most high-profile executions in the country.

The Supreme Court observed that the acts on November 26, 2008, had shaken the collective conscience of Indian citizens and had confirmed the death sentence awarded to prime accused Ajmal Kasab by the trial court and affirmed by the Bombay High Court, for waging war against India.

32. NOTA Judgment - 2013

The right to reject candidates formalised. In 2013, the Supreme Court introduced negative voting as an option for the country's electorate. According to this judgment an individual would have the option of not voting for any candidate (None-Of- The-Above) if they don't find any of the candidates worthy.

33. Patent troubles of Pharma company Novartis (Novartis v Union of India & Others) - 2013

Case accused of dealing a death blow to innovation in medicine. Novartis' application which covered a beta crystalline form of imatinib, a medicine the company brands as 'Glivec' which is very effective against chronic myeloid leukaemia (a common form of cancer) was denied patent protection by the Intellectual Property Appellate Board. The Supreme Court in its ruling upheld the board's decision which eventually led to the medicine being made available to the general public at a much lower cost.

34. Illegalising convicted MPs and MLAs (Lily Thomas v Union Of India) - July 2013

Effected much-needed cleansing of legislative bodies.

The Supreme Court of India, in this judgment, ruled that any member of Parliament (MP), member of the legislative assembly (MLA) or member of a legislative council (MLC) who was convicted of a crime and awarded a minimum of two-year imprisonment, would lose membership of the House with immediate effect.

35. Uphaar fire tragedy (Sushil Ansal vs State Thr Cbi) - March 2014

Split judgment couldn't reach a decision on sentencing.

August 2015 Eighteen years after 59 people were killed in a fire in Delhi's Uphaar cinema, the Supreme Court held that the prime accused did not necessarily need to go back to jail as they were fairly aged. The court further held that "ends of justice would meet" if the accused paid Rs 30 crore each as fine.

36. Nirbhaya case shook the nation - March 2014

The judiciary spurred into action and laws were strengthened for sex offenders. Four out of the five accused in the horrific gang- rape case of Nirbhaya were convicted and given the death sentence. The case also resulted in the introduction of the Criminal Law

(Amendment) Act, 2013 which provides for the amendment of the definition of rape under Indian Penal Code, 1860; Code of Criminal Procedures, 1973; the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

37. Recognising the Third gender (National Legal Services Authority v Union of India) - April 2014

Third gender acknowledged as citizens with rights. In a landmark judgment the Supreme Court in April, 2014 recognised transgender persons as a third gender and ordered the government to treat them as minorities and extend reservations in jobs, education and other amenities.

38. Section 66A revised (Shreya Singhal v Union of India) - March 2015 Cracking down on 'offensive' online content not easy.

Controversial section 66A of the Information Technology Act which allowed arrests for objectionable content posted on the internet was struck down as unconstitutional by the Supreme Court in March 2015.

39. Yakub Memon sentenced to death (Yakub Abdul Razak Memon V State of Maharashtra and Anr) - July 2015 No reprieve for the accused in 1993 Mumbai serial blasts. Yakub Abdul Razak Memon was convicted and sentenced to execution by hanging in March 2015 for his involvement in the 1993 Bombay serial blasts. His conviction sparked a nationwide debate on capital punishment in India.

40. Dance bars functional again - October 2015

After a gap of two decades, dance bars open. The Supreme Court in July 2013 passed a judgment directing the state government to reopen dance bars in Maharashtra which had earlier been banned under the Maharashtra Police Act. The resultant ban by the Bombay High Court was stayed.

Legal Glossary - Indian Polity, Notes

BANKRUPTCY

A person who is unable to pay his debts can be declared bankrupt by the Court. All his assets are then taken over by the court for distribution to his creditors. Bar A collective noun indicating a body of lawyers.

BENCH

The composition of judges sitting to hear a matter in court. In the High Court, judges can sit singly, in division benches of two judges or in full benches of three or more judges. In the Supreme Court, the vacation judge or judge in chambers may sit singly; division benches comprise two or three judges; constitution benches five or more judges. The largest bench constituted in the Supreme Court has been of thirteen judges for the Kesavananda Bharati case in 1973. One or more judges in a case may give judgement, but it is the majority opinion that is the judgement of the Court. A smaller bench is bound by the judgement of a larger bench; the judgement of a bench can only be overruled by the judgement of a larger bench. See judgement.

BEQUEATH

To dispose of personal property by Will.

BONA VACANTIA

Goods that do not have an owner. Generally they go to the finder.

BRIEF

A bunch of papers, in the form of a paperbook, relating to a case. A brief is compiled by an advocate, filed in the Court and used during hearings.

CAUSE LIST

List issued by the Registry of the matters to be heard by the court on any day. The bench, courtroom number and the position of the matter are indicated. The cause list may take myriad forms: weekly list, advance list, supplementary list and the daily list.

CAVEAT

Where it is apprehended that an opposite party may file a case, a party may file a document requesting the court that no order be made in the case without hearing the caveator.

CAVEATOR - A party who files a caveat.

CIVIL - Describes the nature of all proceedings which are not criminal.

CLASS ACTION

In a class action, a member of an identifiable group of persons files a petition. These persons form a class if they have a common grievance.

COGNIZABLE OFFENCE

An offence in which arrest can be made without a warrant.

CONTEMPT OF COURT

A party wilfully disobeying an order of a court can be held in contempt of that court. Under the Contempt of Courts Act, 1971 this is defined as 'civil contempt'. Any act that lowers the authority of the Court or interferes with the course of justice is defined

as 'criminal contempt'. Each court has the power to punish anyone committing contempt of a court and in some cases the Court can issue suo motu notice of contempt. Under Article 129 of the Constitution, the Supreme Court is given the power to punish for contempt; under Article 215 of the Constitution the High Court is given similar powers.

COSTS

When giving the final decision in a case, the Court can award costs to either party. Generally the losing party in a litigation is directed to pay the successful party. If the Court does not specify the amount of costs, they are determined by the Registry, taking advocates' fees, court fees and expenses into account. A party is sometimes required to pay costs during the course of the litigation, for failing to comply with the Court's directions.

COURT FEES

These are mandatory charges payable by affixing judicial stamps on petitions, applications and various kinds of documents before they are filed in a court. It is only in legal aid matters that the petitioners are exempt from paying these fees.

DASTI NOTICE

Dasti is a persian word, which means 'by hand'. Dasti Notice means service of the notice by the Petitioner on the Respondent(s) in person, and not by the Registry through post. This requires a specific order by the court. It is a procedural device that assists the petitioner in minimizing delay

DECREE

The formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final.

DOMINUS LITIS

The actual litigant directly interested in the case and its outcome.

EPISTOLARY JURISDICTION

A term referring to change in the procedure of the courts allowing letters to be treated as writ petitions.

ESTOPPEL

A legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial.

EX GRATIA

Translates from Latin as 'out of grace'. Where a court directs that a payment be made to a party ex gratia, it may not be adjusted against any legal right or claim of that party.

EX-PARTE

In the absence of the opposite side or party.

IN LIEU

In place of.

IN LIMINE

Translated from the Latin as 'preliminary', for example, when a writ petition is dismissed in limine, it is dismissed at the admission stage.

IN PARI DELICTO

When both the parties are equally in fault.

INFRUCTUOUS - A petition or application to the court becomes infructuous when the fundamental premises upon which a petition is based no longer exist or where the relief sought has already been granted to the petitioner.

INQUISITORIAL PROCEEDINGS

Fact-finding proceedings, not necessarily involving disputing parties. The Court investigates and ascertains the facts of a matter, for instance by appointing Commissions, which are given specific terms of reference. Often faced with difficulty in getting all the information necessary to resolve the issues brought in PIL, the Court has found this procedure to be convenient.

INTERIM ORDER

Any order by a court before a final order is made.

INTERLOCUTORY APPLICATION

Petition seeking a relief even while the main petition remains in the Court. This may be in the nature of a stay, direction, permission (e.g. to amend the petition), exemption (e.g. from payment of court fees), condonation of delay, modification or clarification of an earlier order, restoration of a petition dismissed for non appearance of a party.

JUDGMENT

The final order of a court in a case which, while giving reasons, conclusively decides the rights of parties in the case, resolves the dispute and grants reliefs. See bench, order.

JUDICIAL REVIEW

A term that describes the function of the judiciary being able to examine and correct the actions of all the organs of State—the executive, the legislature and the judiciary itself. Judicial review is part of the basic structure of the Indian Constitution.

JUNIOR ADVOCATE

Any advocate who wants to practise law, enrolls with a Bar Council and generally begins work in the office of a practising advocate.

JURISDICTION

This indicates the scope and extent of a court's powers. For instance, a court only has territorial jurisdiction within the territory over which its powers extend. Jurisdiction is also used to describe the nature of the proceedings in the Court, for example: civil original jurisdiction, criminal appellate jurisdiction. A court's decision can always be challenged on the ground that while deciding a case it has exceeded its jurisdiction, i.e. powers, or that it has exercised a jurisdiction it does not possess.

JUSTICIABLE

A matter is justiciable if it lends itself to adjudication by a court. This is determined by criteria laid down in law. For example, the correctness of the foreign policy of a state may not be examined by a court because it is not justiciable.

LACHES

Neglect of a person to assert his right within reasonable time. This results in barring of a remedy which would have been otherwise available.

LEGAL AID

A system by which legal services are rendered at government cost to those in financial need and who cannot afford the cost of litigation. This is mandated by Article 39A of the Constitution. In Delhi, the Delhi High Court Legal Services Committee (DHCLSC) and the Delhi Legal Services Authority (DLSA) provide legal aid on behalf of the State.

LIABILITY

The assignment of responsibility and accountability for correcting a legal wrong or the violation of a legal right.

LITIGATION

The totality of the legal proceedings in any dispute.

LOCUS STANDI

Translated from Latin as 'place of standing', locus standi gives the right to pursue a litigation. Under this rule, only a person or group of persons affected by the issue may petition the Court. A petition may be dismissed on the preliminary ground that the petitioner lacks locus standi. However, in PIL, the locus standi of public spirited persons to petition on behalf of others has been recognized. This relaxation of the rule of standing is an important feature of PIL—for instance, journalists, lawyers, politicians, social activists, students, or any 'concerned individual' not acting for personal interest or gain, and not as a 'busy body', have been given standing.

MUTATIS MUTANDIS

The law in a particular situation is said to apply mutatis mutandis in a different situation when it is used with any changes that are necessary in the latter. This means that matters or things are generally the same, but that details such as names, offices etc. are altered when necessary.

ORDER

Any oral or written direction given by a Court or any authority which is to be obeyed.

ORDINANCE

A codified law made, as a temporary measure, by the President of India or the Governor of a State when the Parliament or legislature of a state is not in session. This power is exercised under Articles 123 and 213 of the Constitution.

PARTY

One who files a petition or against whom a petition has been filed.

PERJURY

This occurs when a person gives false evidence or false affidavit in a case.

PETITION

A written document filed in a court asserting a claim or a right and seeking relief on legal grounds.

PLEADINGS

A collective noun for all the petitions, affidavits, replies, rejoinders drafted by or on behalf of the parties to a case.

PRAYER

The relief(s) asked for in a petition or application.

PRIMA FACIE

At first sight; on the face of it.

PRO BONO PUBLICO

Translated from the Latin as 'for the public good'. In PIL, this refers to a petitioner acting bonafide in the public interest.

PUBLIC INTEREST LITIGATION-PIL

In law only an effected person can approach the court for redressal of his grievance. However, courts all over the world have come to the aid of poor and distress without directly being approached by them. In India this concept was propounded by Justice Bhagwati, when he treated ordinary letters from public minded individuals as writ petition. The concept of PIL is no where provided in the constitution but Supreme Court has been quiet generous in accepting PILs whenever a matter concerning public interest / environment was raised before it. According to Supreme Court it can under Article 32 interfere wherever and whenever in justice cause by the state action to the poor and helpless who cannot directly approach the court.

PUISNE JUDGE

A judge other than the Chief Justice.

RES JUDICATA

A legal principle which prevents a party to a case which has been finally decided from bringing an action on the same issue. For example, a case is barred by res judicata if an earlier case between the same parties has decided upon the same points. This is embodied in Section 11 of the Code of Civil Procedure, 1908.

RESPONDENT

A party against whom a petition is filed. A proforma respondent is a party against whom no relief is sought.

STAY ORDER

A party filing a petition may require some immediate relief, even before the respondents can be heard or a final decision given. An application is filed seeking an interim order either to prevent the respondents from performing an action that will affect the rights of the petitioner or to prevent an order from being carried out.

SUB JUDICE

A matter pending decision by a Court. Parties to such a matter are required not to do anything that would affect the outcome of the case.

SPECIAL LEAVE PETITION

The correctness of any order made by any court or tribunal can be questioned by filing a petition in the Supreme Court under Article 136 of the Constitution. If the Supreme Court grants permission, i.e. 'leave' the petition is registered as an appeal.

STARE DECISIS

The principle that decisions of Courts in previous cases must be followed in subsequent cases of similar nature.

STATUTE

A codified law that is enacted by the Parliament or a State Legislature. A statute may

provide for the making of Rules and Regulations by the executive to facilitate its implementation.

STAY ORDER

A party filing a petition may require some immediate relief, even before the respondents can be heard or a final decision given. An application is filed seeking an interim order either to prevent the respondents from performing an action that will affect the rights of the petitioner or to prevent an order from being carried out.

SUB JUDICE

A matter pending decision by a Court. Parties to such a matter are required not to do anything that would affect the outcome of the case.

SUI GENERIS

Translated from the Latin as 'of his/her own kind', this means that a person, place or thing is of a distinctive nature.

SUO MOTO

The Court may take action on its own when facts requiring legal intervention reach its notice. The Court is then said to be acting suo moto.

SUPREME COURT

The highest court in the country constituted under Article 124 of the Constitution. Its decisions are law under Article 141 and are binding on all lower courts. It has unlimited powers to do complete justice. It exercises original as well as appellate jurisdiction. Under Article 143 the President of India can ask the Supreme Court for an opinion on questions of law or fact. States can file suits against each other or against the Union of India under Article 131. The Supreme Court can transfer cases to itself from the High Courts or from one High Court to another under Article 139A of the Constitution. It can also transfer civil cases from one Court to another under S 25 of the Code of Civil Procedure, 1908, and likewise criminal cases under S 406 of the Code of Criminal Procedure, 1973. Apart from special leave petitions, in certain instances, appeals can be filed directly against the judgments of lower courts and tribunals. Petitions challenging the election of the President or Vice-President of India are also filed directly in the Supreme Court. The chairperson of a public service commission may be removed only after an inquiry by the Supreme Court. The Supreme Court has a sanctioned strength of 31 judges, headed by the Chief Justice of India. The seat of the Supreme Court is New Delhi and its language is English.

ULTRA VIRES

Outside the power of.

VAKALATHNAMA

An Urdu word denoting a document by which an advocate is authorized to represent a party in court.

VOID

One that law regards as never having taken place.

VOIDABLE

Capable of being set aside as void at the option of a party.

VOX POPULI

Translated from the Latin as 'the voice of the people'.

WAIVER

Giving up a claim or a right that can be lawfully exercised. However, there can be no waiver of a fundamental right.

WRIT

A writ is a direction that the Court issues, which is to be obeyed by the authority/person to whom it is issued.

WRIT PETITION

A petition seeking issuance of a writ is a writ petition. Pits in the first instance in the High Courts and the Supreme Court are writ petitions.

A writ of habeas corpus is issued to an authority or person to produce in court a person who is either missing or kept in illegal custody. Where the detention is found to be without authority of law, the Court may order compensation to the person illegally detained.

A writ of mandamus is a direction to an authority to either do or refrain from doing a particular act. For instance, a writ to the Pollution Control Board to strictly enforce the Pollution Control Acts. For a mandamus to be issued, it must be shown:

- a) That the authority was under obligation, statutory or otherwise to act in a particular manner;
- b) that the said authority failed in performing such obligation;
- c) that such failure has resulted in some specific violation of a fundamental right of either the petitioner or an indeterminate class of persons.

A writ of certiorari is a direction to an authority to produce before the Court the records on the basis of which a decision under challenge in the writ petition has been taken. By looking into those records, the Court will examine whether the authority applied its mind to the relevant materials before it took the decision. If the Court finds that no reasonable person could come to the decision in question, it will set aside (quash) that decision and give a further direction to the authority to consider the matter afresh.

For instance, the permission given by an authority to operate a distillery next to a school can be challenged by filing a petition asking for a writ of certiorari.

A writ of prohibition issues to prevent a judicial authority subordinate to the High Court from exercising jurisdiction over a matter pending before it. This could be on the ground that the authority lacks jurisdiction and further that prejudice would be caused if the authority proceeds to decide the matter. Where the authority is found to be biased and refuses to rescue, a writ of prohibition may issue. A petition seeking a writ of quo warranto questions the legal basis and authority of a person appointed to public office. For instance, the appointment of a member of a Public Service Commission not qualified to hold the post can be questioned by a writ of quo warranto and appointment nullified if found to be illegal.

A writ of declaration issues to declare an executive, legislative or quasi-judicial act to be invalid in law. For instance, a court could declare S. 81 of the Mental Health Act, 1987 that permits use of mentally ill patients for experimentation to be violative of the

fundamental rights of the mentally ill and therefore illegal and void. A petition seeking such declaratory relief must also necessarily seek certain consequential reliefs. For instance, immediate discontinuance of the illegal practice and appropriate remedial compensation.

These apart, a writ petition could seek other writs, orders and directions which the Court may fashion in response to the facts placed before it

Contract of Law – Notes

LAW OF CONTRACT

Not exhaustive (not limited) and not retrospective Contract are probably the most familiar legal concept in our society because it is so central to the essence of our political, economic and social life. The law relating to contract constitute the most important branch of commercial law.

This is governed by the **Indian Contract Act 1872**. The contract Act defines contract as an agreement enforceable by law. All agreements are not enforceable by law and therefore all agreements are not contracts.

Example: An agreement to go to see a movie may be a mere agreement not enforceable by law. Thus, **all agreements are not contracts**.

PROPOSAL/OFFER

When one person signifies to another his willingness to do, to abstain from doing anything, with a view of obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

- **Example:** A's willingness to sell his radio set to B for Rs. 500 if B accepts to purchase the same, amounts to proposal by A for the sale of the radio set.

If a statement is made without any intention to obtain the assent of the other party, it cannot be termed as proposal. Generally the offer should be made with an intention to create legal relationship. Promise in the case of social engagements is generally without an intention to create legal relationship.

OFFER & INVITATION TO OFFER (DISTINGUISHED)

1. Offer

When one person expresses his will to another person to do or not to do something, to take his approval is known as an offer. An offer must be definite, certain and complete in all respects. It must be communicated to the party to whom it is made.

Example: A tells to B, "I want to sell my motorcycle to you at Rs. 30,000, will you purchase it?"

x says to y, "I want to purchase your car for Rs. 2,00,000 will you sell it to me?"

2. Invitation to Offer

It is an act prior to an offer, in which one person induces another person to make an offer to him. The invitation to offer is made to inform the public the terms and

conditions and also in which a person is interested to enter into a contract with the other party.

Invitation to Offer → Offer → Acceptance

Examples:

1. Tenders

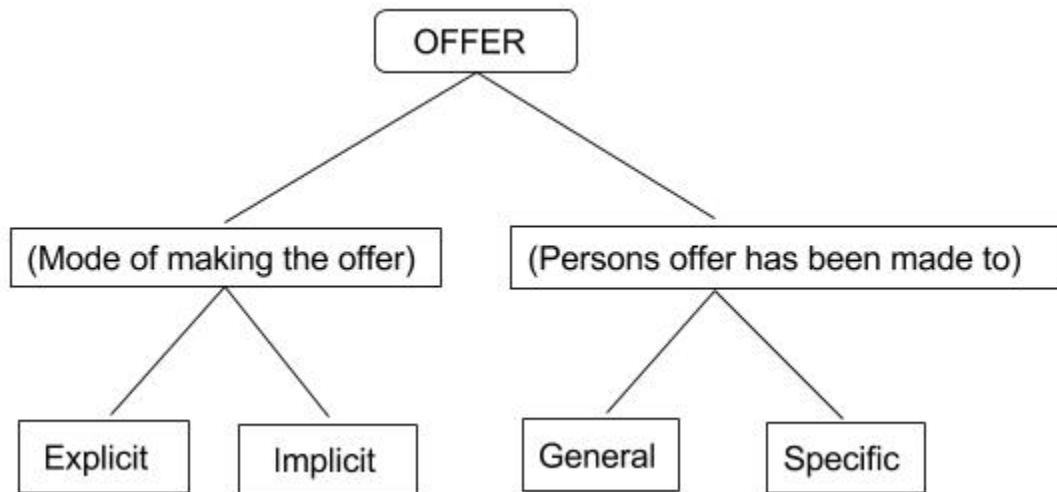
- Large corporations and bodies make advertisements inviting tenders mostly for carrying out some specialized work or supplying goods, etc. Now, how does a tender work?
- Several companies will make an offer against the advertisement. The organization, based on its need and budget, will narrow down on a particular company or companies, and will accept their tender.
- It's obvious that the companies are making an offer against an invitation, and not accepting an offer, since in the latter case, the company making the tender will then end up entering into several agreements. However, the organization just needs one or few companies to do the work!

2. Shops

- If you approach a shopkeeper, then do you think he can refuse to sell his goods? Yes, he can! Legally, at least.
- What he is doing by putting up his goods for display is that he is inviting any interested buyer to make an offer. Although, the transaction doesn't look like one where you make an offer and not the shopkeeper, the paragraph above is proof that it's you who makes the offer.

In a leading case, company A advertised a sale by action. B travelled to the advertised place of action and found that the defendant had cancelled the action sale. He brought an action against the defendant to recover the expenses of his travel. It was held that he was not entitled for the same as there was yet no contract between the parties.

TYPES OF OFFER



1.

Express and Implied Offer

- Most offers are made explicitly or in words (spoken or written). Implied offers are ones which are made through means other than that of an explicit offer.
- Usually, we look at the **conduct of the parties** to determine an implied offer. For example, when you board a public bus, it is not because the bus conductor has explicitly asked you to board the bus.
- The offer is implied in the fact that the bus plies on a particular route, and is offering to transport people for a fare. If you board the bus, then you **impliedly accept** to pay the fare.
- Even returning the dog or providing any information, in the case of a general offer, is a way of impliedly accepting the offer of reward.

Example: A person who boards a bus or who hires a taxi, undertakes to pay the fare at his destination, even though he makes no express promise to do so.

2. Specific and General Offer

When the offer is made to a specific or an ascertained person it is known as a **specific offer**, and when the same is not made to any particular person but to the public at large, it is known as **general offer**.

- A general offer is one which is made **to the public at large**. Anyone who acts upon the offer or performs what has been set out in the offer (the conditions), after seeing the offer, will be said to have accepted the offer.
- The best example of this is an **offer of reward**. So, if Paris loses her Chihuahua, and she puts up a Rs. 1,000 reward in return for any information (the consideration) leading to discovery, then anyone who sees that offer is free to act upon it.
- If they are successful in fulfilling the conditions of the reward (the offer), then they can claim the reward.
- A specific offer is one which is made to a specific person or a specific set of persons. It is the most common type of offer.

Example: when you offer a certain shopkeeper an amount of money in exchange for his goods, no other shopkeeper can accept your offer.

Cross Offer: When the offers made by two persons to each other containing similar terms of bargain cross each other in post, they are known as cross offers.

Example: A offered to sell his watch to B for Rs. 2000 through a letter sent by post. On the same date B also wrote to A making an offer to purchase A's watch for Rs. 2000. When A or B sent their letters they did not know about the offer which was being made by the other side. In these cross offers, even though both the parties intended the same bargain, there would arise no contract. A contract could arise only if either A or B after having the knowledge of the offer, had accepted the same.

Standing, Open OR Continuing Offer: An offer which is allowed to remain open for acceptance over a period of time is known as a standing, open or a continuing offer.

Example: An offer to supply 1,000 bags of wheat from 1st January to 31st December, in accordance with the orders which may be placed from time to time is a standing offer. As and when the orders are placed that amounts to acceptance of the offer to that extent. In the above stated illustration if an order for the supply of 100 bags of wheat is placed on 15th January, there is acceptance of the offer to that extent. So far as the remaining quantity is concerned, this offer can be revoked just like any other offer.

Communication of Offer: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. Hence, as offer cannot be accepted unless and until it has been brought to the knowledge of the person to whom it is made.

Example: "Mr. X makes an offer that whoever finds his lost dog, will get Rs. 10,000 from him; through a newspaper advertisement. If Mr. Y reads the advertisement and finds his lost dog, he is entitled to get the said amount. But suppose Mr. Y did not read the advertisement, he found the dog moving astray on the road and submitted it to the police. Or suppose, Mr. Y happens to be the neighbour of Mr. X and he finds the dog during his morning walk and takes it to the owner, he will not be entitled to the reward amount."

In this scenario, Mr. Y has come to know of the reward of 10,000 after the dog has been found. In both the situations Mr. Y will not be entitled to claim the amount from X because there was no communication of the offer to Mr. Y. Hence there cannot be a valid acceptance of the offer and hence no contract is formed.

PROMISE

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise. The person making the proposal is called the **Promiser** and the person accepting the proposal is called the **Promisee**.

CONSIDERATION

Consideration means to do something in return i.e. **quid Pro quo** under Indian contract Act. Consideration is defined as when at the desire of the promisor, the promisee has done or abstained from doing or does or abstains from doing or promises to do or abstain something, such an act or abstinence or promise is called **Consideration** for the promise.

An agreement must be supported by a lawful consideration on both sides.

Essentials:

1. Consideration to be given at the desire of the promisor.
2. Consideration to be given by the promisee or any other person.
3. Consideration may be past, present or future.
4. There should be some act, abstinence or promise by the promisee which constitutes consideration for the promise.

Past Consideration means that the consideration for any promise was given earlier and the promise is made thereafter.

- **Example:** I request you to find my lost dog. After you have done the same, if I promise to pay you Rs. 100 for that, it is a case of past consideration under this the act recognizes only such consideration which has been given at the desire of the promisor, rather than voluntarily.

Executed or Present Consideration: When one of the parties to the contract has performed his part of the promise, which constitutes the consideration for the promise by the other side. In other words consideration is provided simultaneously along with the making of the contract.

Executory or Future Consideration: When one person makes a promise in exchange for the promise by the other side, the performance of the obligation by each side to be made subsequent to the making of the contract, the consideration is known as Executory.

- **Example:** A agrees to supply certain goods to B and B agrees to pay for them on a future date, this is a case of executory consideration.

AGREEMENT



Every promise and every set of promises forming the consideration for each other is an agreement. An agreement arises by an

“offer or proposal” by one of the parties and the “acceptance” of such offer by the other. In other sense, in an agreement there is a promise from both sides.

Offer + Consideration → Agreement

Example: A promises to deliver his watch to B and in return B promises to pay a sum of Rs. 200 to A. There is said to be an agreement between A & B.

Void Agreements:

An agreement not enforceable by law is said to be void. These agreements include an agreement without consideration, an agreement in restraint of trade, etc.

LET'S CHECK YOUR UNDERSTANDING SO FAR

Question:

Principle 1 :- An offer is a proposal made with an intention of entering into an agreement.

Principle 2 :- Acceptance of an offer is essential for the existence of an agreement.

Facts: "Rashid has lost his wallet inside his college campus. He uploads a post on the college Facebook group with its photo, and promises a reward of Rs. 500/- for returning it or any information leading to discovery. In the meantime, Aditya, Rashid's roommate, who was attending a lecture when Rashid discovered he lost his wallet, spots the wallet outside the library. He returns the wallet to Rashid. Later in the evening, when he accesses Facebook, he sees the post with the promise of reward. He approaches Rashid to claim the reward".

(a) Aditya will get the reward since he found the wallet.

(b) Aditya will not get the reward since he performed a duty of a friend, which transcends any contractual relations.

(c) Aditya will get the reward since he performed a condition of the contract by returning the wallet.

(d) Aditya will not get the reward since he did not accept the offer, as he was unaware about the offer in the first place.

Answer: (d) For the reasons given in the option, Aditya's actions were not influenced in any way by the offer. Therefore, his actions were not driven by the agreement (which was absent, to begin with), but maybe by social duty. The Law of Contracts is not concerned with social obligations.

The offer need not have been seen first hand – even if Aditya got to know about the reward through a friend, and not the Facebook post, and then he acted upon it, he would still be accepting the offer.

All that is required is for the offer to be known to the promisee.

ESSENTIALS OF A VALID CONTRACT

1. Offer and Acceptance

There must be a 'lawful offer' and a 'lawful acceptance'. In other words there are some legal rules governing offer and acceptance.

2. Intention to Create Legal obligation

Both the parties, to a contract, must contemplate legal consequences. For example, a husband offering to take his wife out for a movie is not an agreement intended to create legal relations.

3. Lawful Consideration

Consideration is the price paid for the promise of the other. Consideration may be an act / abstinence or a promise.

It may be past, present or future.

Example: Robert promises to supply 10 quintals of wheat for a consideration of Rs.5000/-

4. Capacity of Parties:

- The parties, to an agreement, must be competent to contract. That is to say
- The parties must be major
- The parties must be mentally sound
- The parties must not be disqualified from contracting by law.

5. Free Consent

Both parties, to a contract must enter it out of their free will and consent. Consent is said to be “free”, when it is not affected by reasons such as

- Coercion
- Undue influence
- Fraud
- Misrepresentation
- Mistake

6. Lawful Object

- Object means purpose
- The Act lays down that the object for which the agreement has been entered into must not be fraudulent / illegal / immoral or opposed to public policy.

7. Writing and Registration

- It must be clearly understood that contracts need not necessarily be in writing.
- It may be oral
- It may even be implied

However, Indian Contract Act lays down that in certain special cases, for a contract to be valid, it must only be in writing. Besides, it also needs to be registered.

Example: An agreement for a sale of immovable property must be in writing and registered.

8. Certainty

To ensure that a contract is valid, the terms of it must be certain. In other words “agreements, the meaning of which is not certain or capable of being made certain are void”.

Example: Mr. Sharma agrees to sell his car to Mr. Mukesh at “best competitive price”, since the price is not clearly ascertainable in this case, the agreement is void.

9. Possibility of Performance

The Contract Act lays down that “Agreement to do an impossible act is void”.

Example: Nagabushan agrees to bring a dead body alive in return for a crore of rupees. The agreement is not enforceable.

10. Not Expressly Declared Void:

The Contract Act has ‘expressly declared’ certain agreements to be void. Following are the cases:

- Agreement in restraint of marriage
- Agreement in restraint of trade
- Agreement in absolute restraint of legal proceedings.

Thus, an agreement should not be expressly declared void by the Act.

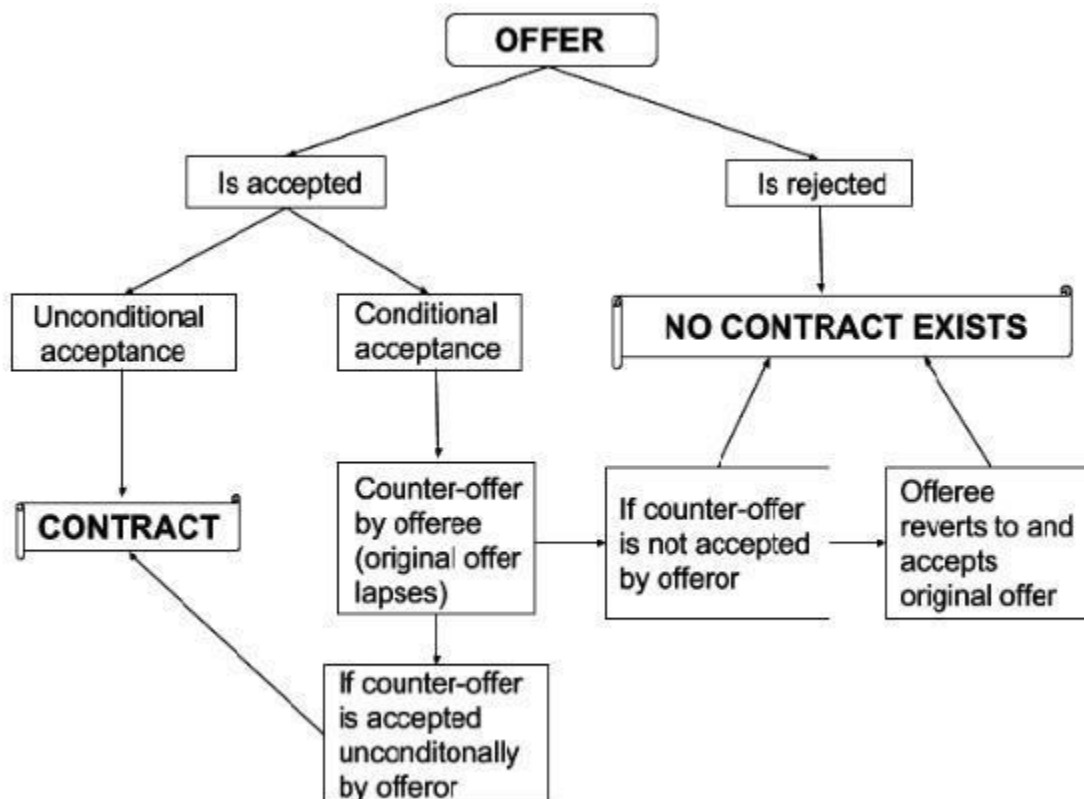
REMEMBER
<ul style="list-style-type: none">• A valid contract is enforceable by both parties• A valid contract gives rise to rights and duties.

ACCEPTANCE

When the person to whom the proposal is made signifies his assent, the proposal is said to have been accepted. A proposal when accepted becomes a promise. It is only after the acceptance of the proposal that a contract between the two parties can arise.

Effect Of Acceptance: A contract comes into effect only after the offer is accepted. Before its acceptance, neither party is bound by it.

Essentials Of A Valid Acceptance



1.

Acceptance must be communicated by the 'Offeror to the Offeree

Acceptance in essence means making one's assent known to the offeror. This means that if Arvind makes an offer to Varun, and Varun wants to accept it, he must ensure that Arvind is made aware of his assent, by one way or another.

What if a Varun assigns Rahul, a third party (another person outside the two parties of the contract), to communicate his acceptance to Arvind. What if that third party fails to do so?

Legally we'll say, Varun's communication has the effect of being made to a third party and not to the offeror. Therefore, it fails the first rule.

As such, the acceptance has not reached Arvind, so he will not be liable to fulfil his offer to Varun. Between Varun and the third party, it's a different matter.

There, the third party's liability will depend on the **intention** with which they had entered into the contract. Try to recall the portion about the legal intention behind an offer from the previous article.

Such an acceptance will not form an agreement.

Offeror makes offer → Offeree gives acceptance → Offeror receives the acceptance = Binding Agreement

LESSON

Acceptance must reach the offeror and he must also be aware it.

2. Acceptance must be absolute and unqualified

The Law of Contracts follows a ‘no strings attached’-policy vis-à-vis acceptance. An acceptance cannot have any conditions attached to it.

This is because an acceptance is one’s assent to an offer as it is.

This ‘conditional acceptance’ occurs commonly in bargaining. If X offers to pay Rs. 100 to Y for a product (legally termed as ‘goods’), Y can either:

- Accept it the Rs. 100 for the goods.
- Name a different price, let’s say, by saying, “I agree to sell it to you but only at Rs. 120.”

Now, case (i) forms an agreement straightaway.

In case (ii), the italicized part of Y’s ‘acceptance’ is his condition. Words and phrases such as “but”, “if”, “in case” are key to spot an acceptance with a condition attached.

If you rearrange it slightly to make the meaning of Y’s statement clearer: “I will sell it to you only at Rs. 120”. That’s because he is not agreeing to sell it as per X’s offer; but he agrees to sell it only at his own price.

In such a case, Y is making a **counter-offer** which X is free to accept or reject (or even yet make his own counter-offer!). This counter-offer functions just like any other offer, and not as an acceptance of X’s original offer. This will not bind X.

LESSON

Acceptance should not be 'conditional'; conditional acceptance is not binding on the offeror.

3. Acceptance must be communicated in the prescribed manner or in a reasonable/usual manner.

An offer may specifically mention that the acceptance be sent only by a telegram and no other means. If any other means is used, even though the acceptance will be communicated, it will not be a ‘valid’ acceptance for failing this third rule.

On the other hand, if an offer contains no such stipulation, then **any usual mode** of communication such as telephone, e-mail, telegram, fax, etc. may be used.

So, if a company makes an advertisement for sale of its products, a buyer should contact the agent by phone or e-mail, instead of floating a large banner in front of the office expressing his intention to buy the products.

LESSON

Only in the absence of a prescribed mode of acceptance, the usual modes of acceptance can be used.

4. Acceptance has to be communicated while the offer is subsisting

If a date is mentioned as the deadline for communicating acceptance, that also makes up the ‘terms and conditions’ of the offer. Failing that deadline not only bypasses a condition of the offer, but also, the offer lapses or expires, i.e., no longer exists.

An offer may be revoked (which will be covered in the next article) before an acceptance is communicated. This has the same effect, and the offer ceases to subsist. Also, once an offer has been rejected or a counter offer is made to the original offer, the original offer lapses. If the offeree decides to accept the original offer after that, the acceptance will be hit by this rule.

When is Acceptance Completed?

In case the parties to the contract are present at the same place, one making the offer and the other communicating the acceptance, both the parties become bound immediately. But the problem arises when the parties are at different places at the time of communication of offer and acceptance is made by post or telephone etc. The law has laid down the following rules when the communication of acceptance is made by post/telegram:

1. The communication of acceptance is complete as against the proposer, when it is put in the course of transmission to him so to be out of the power of the acceptor.
2. The communication of acceptance is complete as against the acceptor, when it comes to the knowledge of the proposer.

Example:

B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete –

- As against A, when letter is posted.
- As against B, when letter is received by A.

REVOCATION OF OFFER & ACCEPTANCE

A proposal may be revoked at any time; before the communication of acceptance is complete as against the proposer but not afterwards and in case of acceptance, it is at any time before the communication of the acceptance is complete as against the acceptor but not afterwards.

Modes of Revocation of Offer:

1. By communication of notice of revocation by proposer.
2. By lapse of time.
3. By failure of acceptor to fulfill a condition precedent.
4. By death / insanity of proposer.

WHO ARE COMPETENT TO CONTRACT?

Every person is competent to contract who is of the age of majority according to the law of land of which he is a subject and who has not been disqualified from entering into a contract is competent to contract.

Therefore, the following persons are parties incompetent to contract:

1. A minor i.e. a person below the age of **18** years.
2. A person of **unsound mind** or **insane**.
3. A person disqualified by any law to contract.

Thus, an agreement with a minor is absolutely void. **Agreement Without Consideration As Void**

Exceptions:

1. Natural love and affection.
2. Compensation for past voluntary services.
3. Promise to pay time barred debt.

In a very popular case, Mohiri Bibee in Dharmodas Ghose (ILR 1903) 30 cal 539 a minor mortgaged his house in favour of a money lender and received certain amount from him. The privy council held that the money lender is not entitled to get the money back which was advanced to a minor. This is because only a person capable of entering into a agreement can make a contract.

MINOR AND RULE OF ESTOPPEL

Further a situation may arise where a minor has declared or intentionally caused or permitted another person to believe him to be a person who has attained the age of majority upon such belief, if the money lender advances some money to the minor, can the minor be held liable to pay?

The Mohiri Bibee case clearly ruled out that the rule of estoppels does not apply against minor. It means a minor cannot be held liable to repay a loan even if he has procured it by misrepresenting him as a major person.

MINOR AND RULE OF RESTITUTION

Again a question arises as to the rule of restitution applying against a minor. Restitution means to restore or return the benefit received by a minor under an agreement. A minor is not liable to restore the benefits received under a void contract except under certain cases.

A minor who has obtained money or goods by misrepresenting him to be major, can be compelled to restore the benefit to the extent, he or his estate has benefited. If some benefit of permanent nature has been accrued to him, he has to restore it.

Example:

- A minor has to restore a car or a house purchased from a loan amount. But he cannot be forced to repay any money used by him for temporary employment e.g. on eating, drinking, movies etc.
- A minor's liability for necessities supplied to him for his living e.g. food cloth, lodging, medicine and health care etc under an agreement can be enforced against his property.

Therefore, if a minor meets an accident and a person expends money on his hospital expenses, he would be reimbursed from minor's property. A minor's parents are out of station. His neighbor lends him money to buy food and clothes for himself his claim of repayment would lie against minor's property.

WHAT IS A SOUND MIND FOR THE PURPOSES OF CONTRACTING?

A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

- A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind.
- A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

Example: A patient in a lunatic asylum, who is at intervals, of sound mind may contract during intervals.

A person, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgments as to its effect on his interests cannot contract whilst such delirium or drunkenness lasts.

CONSENT DEFINED

Two or more persons are said to be consented when they agree upon the same thing in the same sense.

FREE CONSENT

Consent is said to be free when it is not caused by coercion, undue-influence, fraud, misrepresentation and mistake.

COERCION

Coercion is the committing or threatening to commit any act forbidden by the Indian Penal code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Example: A threatens to shoot B if B does not agree to sell his property to A at a stated price. B's consent in this case has been obtained by coercion.

UNDUE INFLUENCE

Undue influence takes place where two persons stand in such a relation that one party is in a position to dominate the will of the other. When such person uses his position to obtain an unfair advantage over the other, any agreement entered into is vitiated by undue influence a person can be said to dominate the will of other or able to exercise undue influence over the other if –

1. He has real or apparent authority over the other or he stands in a fiduciary relation with him and
2. He makes a contract with a person whose mental capacity is temporarily or permanently affected due to old age, illness or mental or bodily distress.

Example: Mr A is heavily indebted to Mr. B the money lender of the village. B gets on agreement signed by A in which he sells all his land to B at a price much below,

say one-fourth of the existing market price of the land. Can A challenge the agreement on the ground of being induced by undue influence? The answer is yes. It lies upon B to prove that the contract was not induced by influence.

FRAUD

Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his to enter into the contract:

- The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.
- The active concealment of a fact by one having knowledge or belief of the fact.
- A promise made without any intention of performing it.
- Any other act failed to deceive.
- Any such act or omission as the law specially declares to be fraudulent. Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud,

Except in two cases where:

1. There is a duty to speak.
2. Silence is equivalent to speech.

Example: B says to A – if you do not deny it, I shall assume that the horse is sound”. A says nothing mere A’s silence is equivalent to speech and if the horse is found unsound, he would be guilty of fraud.

MISREPRESENTATION

Misrepresentation means misstatements or unwarranted statements which are not true though the person believes it to be true. The statement believes it to be true. Whereas, ‘fraud’ is also called a wilful misrepresentation where makes of the statement known and believes it not to be true.

VOIDABILITY

In contracts, voidable is a term typically used with respect to a contract that is valid and binding unless avoided or declared void by a party to the contract who is legitimately exercising a power to avoid the contractual obligations.

VOIDABLE CONTRACTS

An agreement which is enforceable by law at the option of one or more of the parties thereto; but not at the option of the other is a voidable contract. Thus a voidable contract is one which could be avoided by one of the parties to the contract at his option.

Example: When the consent of a party to a contract has been obtained by coercion, undue influence, fraud or misrepresentation the contract is voidable at the option of the party whose consent has been so obtained.

CONTINGENT CONTRACTS

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does not happen.

Example: A contracts to pay to B, Rs. 10000 if B's horse is burnt. This is a contingent contract.

NOVATION

Substitution of an existing contract with a new one:

1. Change in terms of contract
2. Change in parties of contract

REMEDIES FOR BREACH OF CONTRACT

1. Damages
2. Quantum meruit
3. Specific performance
4. Injunction

MISTAKE

Mistake as to matter of fact:-

1. Where both the parties to an agreement are under a mistake as to a matter of that essential to the agreement, the agreement is void.

Example: A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

2. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. In other words if any one party is under mistake as to a matter of fact, then that would be considered as a valid contract.

EFFECT OF MISTAKES AS TO LAW

A contract is not voidable because it was caused by a mistake as to any law in force in (India), but a mistake as to a law not in force in (India) has the same effect as a mistake of fact.

- **Example:** A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian law of limitation, the contract is not voidable.

What consideration and objects are lawful and what not - The consideration or object of an agreement is lawful unless

1. It is forbidden by law, or
2. Is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or
3. Involves or implies injury to the person or property of another, or
4. The court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Examples:

- A promises to pay B 1000 rupees at the end of six months, if C who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.
- A, B and C enter into an agreement for the division among them of gains acquired or to be acquired by them by fraud. The agreement is void, as its object is unlawful.

SOME IMPORTANT POINTS

1. When consent to an agreement is caused by coercion, fraud or misrepresentation the agreement voidable at the option of the party whose consent was so caused.
2. If any part of a single consideration for one or more objects or nay one or any part of any one of several considerations for a single object is unlawful, the agreement is void.
3. Agreement without consideration, void, unless is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.
4. Every agreement in restraint of the marriage any person other than a minor, is void. Every agreement by which any one is rest rained from exercising a lawful profession, trade or business of any kind is to that extent void.
5. Agreements, the meaning of which is no certain, or capable of being made certain, are void.
6. Agreements by way of wager are void and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

QUESTION 1

Principle: An agreement includes an offer and an acceptance accompanied by a consideration. Consideration must be lawful and carrying some value in the eyes of law. Void agreements are devoid of consideration.

Facts: Bina told her husband to drop her to the office in the evening as she was being late to the office every day and spoiling her impression in front of her new boss. The husband of Bina agreed to do this the next morning. However, he got late for the office and couldn't drop her resulting into her being extremely late the same morning. This lowered her reputation in front of the new boss and she was finally removed from office. Bina sued her husband for not dropping her. Decide.

(a) As a consideration, dropping to office has no value in the eyes of law.

Hence, the agreement is void.

(b) Bina may sue her husband but will not be granted any relief as Court does not award penalty in such matters.

(c) There was an offer from Bina which was accepted by her husband. The

necessary terms of an agreement have been fulfilled and an agreement has come into place.

(d) There is no consideration in the present case. Hence, due to absence of consideration, no agreement has come into play

Answer: (d)

QUESTION 2

Principle: All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Consent is said to be free when it is devoid of coercion, undue influence, fraud, misrepresentation. “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Facts: The electricity department of city of Melono sends people to various houses of a colony telling them to pay a certain amount towards compulsory replacement of existing meter by a meter that saves electricity. This is because of the growing electricity problems in the city. One of the customers, Ms. Manty, is uninterested in this and refuses to get her meter replaced. The group of persons sent to her house take this but Ms. Manty silently feels her that electricity supply to her house shall be cut off by this. Feeling threatened, she immediately agrees to get the meter changed. Is there any coercion here?

(a) No, It was being done by a government department.

(b) No, There has been no real committing or threat of commission of any act forbidden by IPC.

(c) Yes, She was threatened by the group for cut of electricity supply.

(d) Yes, The gesture of the persons of ‘taking this’ signifies threat.

Answer: (d)

PUBLIC LAWS

Nuisance:

Nuisance is of two kinds:

- (i) Public Nuisance is an offense, which affects the public at large, or some considerable portion of them. It depends on the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial nature. Acts which seriously interfere with the health, safety, comfort or, convenience of the public or, which tend to degrade public morals, have always been considered public nuisance if it is shown that they render enjoyment of life and property uncomfortable. No prescriptive right can be acquired to maintain a public nuisance.
- (ii) Private Nuisance is anything done to the annoyance or to hurt another and not amounting to trespass. It is an act affecting some particular individual or individuals as distinguished from the public at large.

A person is guilty of nuisance when he:

- (i) does any act, or is guilty of an illegal omission, and
- (ii) such act or omission:
 - (a) must cause any common injury, danger or annoyance;
 - (I) to the public, or
 - (II) to the people in general who dwell or occupy property in the vicinity, or
 - (b) must necessarily cause injury, obstruction, danger or annoyance to any person who had rights to use. Whoever causes nuisance shall be punishable with imprisonment, or fine, or both depending upon the discretion of the court.

Estoppels:

It is a legal doctrine recognized both at common law and in equity in various forms. It is meant to complement the requirement of consideration in contract law. In general, it protects a party who would suffer detriment if:

- (i) The defendant has done or said something to induce an expectation;
- (ii) The plaintiff relied (reasonably) on the expected; and
- (iii) would suffer detriment if those expectations were false.

Volenti non fit injuria:

It is a Latin expression meaning "**to a willing person, injury is not done**". It operates when the claimant either expressly or implicitly consents to the risk of loss or damage.

For example, if a regular spectator at a cricket match is injured when a batsman hits a six and in the ordinary course of play, and the ball comes out of field and hits him or her, this is a foreseeable event and regular spectators are assumed to accept that risk of injury when buying a ticket. A slightly more limited defense may arise where the defendant has been given a warning, whether expressly to the plain/claimant or by a public notice, sign or otherwise, that there is a danger of injury. The extent to which defendants can rely on notices to exclude or limit liability varies from country to country. This is an issue of policy as to whether the defendants should not only warn of

a known danger but also take active steps to fence the site and take other reasonable precautions to prevent the known danger from befalling those foreseen to be at risk.

Ex turpi causa non oritur actio

It is a Latin expression meaning " **from a dishonorable cause an action does not arise**". It is a legal doctrine which states that a plaintiff will be unable to pursue legal remedy if it arises in connection with his own illegal act. If the claimant is involved in wrong-doing at the time the alleged negligence occurred, this may extinguish or reduce the defendant's liability. Thus, if a burglar is verbally challenged by the property owner and sustains injury when jumping from a second story window to escape apprehension, there is no cause of action against the property owner even though that injury would not have been sustained & quot; but for & quot; the property owner's intervention.

Introduction - Law of Tort, Notes

The word **tort** has been derived from the Latin term '**tortum**' which means '**to twist**'. It includes that conduct which is not straight or lawful but on the other hand, twisted, crooked or unlawful. It is equivalent to the English term '**wrong**'. This branch of law consists of a various torts or wrongful acts whereby the wrongdoer violates some legal right vested in another person.

Example: Violation of a duty to injure the reputation of someone else results in the tort of defamation, violation of a duty not to interfere with the possession of land of another person result in the tort of trespass etc.



SOME IMPORTANT DEFINITIONS

Black's Law Dictionary defines a tort as – A civil wrong for which a remedy may be obtained, usually in the form of damages.

Salmond's Definition- Tort is a civil wrong for which remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or the breach of trust, or other merely equitable obligation.

Winfield's Definition- Tortious liability arises from the breach of duty primarily fixed by law. This duty is towards persons generally and it's breach is repressible by an action for an unliquidated damages.

Fraser's Definition- Tort is an infringement of a right in rem (right in general) of a private individual giving a right of compensation at the suit of the injured party.

NATURE OF TORT

- 1. Tort is a Civil wrong:** Tort belongs to the category of **civil wrong**. The basic nature of civil wrong is that in such cases the main remedy is damaged. The plaintiff is compensated by the defendant for the injury caused to him by the defendant.
- 2. Tort and breach of contract:** The liability under law of tort arises from breach of duty fixed by law; while in case of contract the duty is fixed by the parties themselves.
- 3. In tort, the duty is fixed by law and as such a person may have to pay the penalty or damages for he may not intend to cause any loss, or he may himself have not committed any wrong but is liable for the act of his servant.**

4. Tort is redressible by an action for unliquidated damages: Damages is the most important remedy for a tort. This is because after the commission of the wrong it is generally not possible to under the arm which has already been caused. Damages in the case of a tort are unliquidated. Unliquidated damages are those where the compensation has not been previously determined but the determination of the same is left to the discretion of the court.

ESSENTIALS OF A TORT

1. There must be some act or omission on the part of the defendant: In order to make a person liable for a tort, he must have done some act which he was not expected to do or must have omitted to do something which he was supposed to do. Similarly, when there is a legal duty to do some act and a person fails to perform that duty, he can be made liable for such omission.

2. The act or omission should result in **legal damage**. Legal damage or injury means infringement or violation of some legal right of the plaintiff.

3. It must give rise to a right.

Distinction between Tort and Crime:

Tort	Crime
1. Tort is an infringement of private or civil rights of an indical.	1. Crime is a breach of public rights affecting whole society.
2. The forum of redressal of a tort is a civil court.	2. In crime the proceedings are initiated in a criminal court.
3. In tort the wrongdoer has to pay damages to the injured party.	3. In crime the wrongdoer is punished by the State.
4. In case of tort, the action is initiated by the injured party or his representatives.	4. In crime, intention is of prime importance.

Distinction between Tort and Breach of Contract:

Tort	Breach of Contract
------	--------------------

1. Tort results from the breach of such duties which are not undertaken by parties themselves but which are imposed by law.	1. A breach of contract results from breach of a duty undertaken by parties themselves.
2. Duties imposed by law under law of torts are not towards any specific individual or individuals but are towards the world at large.	2. In a contract the duty is based on privity of contract and each party owes duty only to the other contracting party.
3. A tort is a violation of a right in rem (i.e. a right vested in some determinate person and available against the world at large).	3. A breach of contract is an infringement of a right in personam (i.e. a right available only against some determinate person or party).
4. Damages in case of breach of tort are generally unliquidated and are determined by the court on the facts and circumstances of each case.	4. In contract damages are fixed according to the terms and conditions of contract.
5. In an action for tort, no privity is needed or is required to be proved.	5. In a breach of contract privity between the parties must be proved.

Distinction between Tort and Breach of Trust:

In case of breach of trust by trustee, the beneficiary can claim such compensation which depends upon the loss that the trust property has suffered. Thus, damages in case of breach of trust are liquidated. On the other hand, damages in a tort are unliquidated. In case of breach of trust, there exists a relationship of trustee and beneficiary between the two, but it is not such tort. Trust is a breach of law of property, while tort is not.

Two important maxims explain this concept and liability in torts. They are:

- (i) Damnum Sine injuria
- (ii) Injuria Sine damnum

DAMNUM SINE INJURIA (Damage without injury)

Damnum means substantial harm, loss or damage in respect of money, comfort, health or the like. Injuria means infringement of a right conferred by law on the plaintiff or an unauthorized interference with the plaintiff's right.

Damnum Sine Injuria means damage which is not coupled with an unauthorized interference with the plaintiff's lawful right. The mere fact that a man suffers a loss by act of a person gives in itself no cause of action.

The leading case on the point is : A number of steamship companies combined together and drove the plaintiff company out of the tea carrying trade by offering reduced freight. The house of lords held that the plaintiff had no cause of action as the defendants had by lawful means acted to protect and extend their trade and increase their profits.

In the case of **Mayor & Bradford Corporation Vs. Pickles (1895)**, Pickles was annoyed by the refusal of Bradford Corporation to purchase his land for their water undertaking. Out of spite, he sank a shaft on his land, which had the effect of discoloring and diminishing the water of the Corporation, which percolated through his land. The House of Lords held that the action of Pickles was lawful and no matter how ill his motive might be he had a right to act on his land in any manner that so pleases him.

INJURIA SINE DAMNO (INJURY WITHOUT DAMAGE)

It means violation of a legal right without causing any harm, loss or damage to the plaintiff. In this, there is no need to prove that as a consequence of an act the plaintiff has suffered any harm the only thing which has to be proved is that the plaintiff's legal right has been violated i.e. there is injuria.

Ashby vs White(1703) is a leading case explaining the maxim, injuria sine damnum.

In this case: A was wrongfully prevented by the returning officer from exercising his vote at a parliamentary election. No loss was suffered by A because the candidate for whom he wanted to vote got elected by a huge margin. A would have recovered damages on the ground that his legal right to vote was violated by the returning officer

General Defences of Tort - Law of Tort, Notes

There are certain defences against the tortious liability which a defendant can plead to avoid his liability under tort. General defences are in favour of the defendant. Let's discuss some of the general defences :-

1. VOLENTI NON FIT INJURIA

When a person consents to the infliction of some harm upon himself he has no remedy for that in tort. In case, the plaintiff voluntarily agrees to suffer some harm, he is not allowed to complain for that and his consent serves as a good defence against him. No man can enforce a right which he has voluntarily waived or abandoned.

Example

- (i) When you invite somebody to your house, you cannot sue him for trespass.
- (ii) A player in a game of hockey has no right of action if he is hit while the game is being lawfully played.

For the maxim volenti non fit injuria to apply, two points have to be proved :-

- (i) The plaintiff knew that the risk is there
- (ii) Knowing the same, consents to suffer the harm but the consent must be free.

EXCEPTION

Rescue cases form an exception to the application of the doctrine of volenti non fit injuria. When a person voluntarily undertakes a risk out of a sense of legal or moral duty, to rescue somebody from imminent danger and sustains an injury, he can recover damages in tort from the person due to whom the situation arose.

In a leading English case A railway passenger fell down of a running railway car due to the negligence of the railway company. When the car stopped, his companion got down and walked back to search for his friend. There was darkness, the rescuer missed his footsteps and fell down from the bridge resulting in injuries to him. He brought an action against the railway company. Held, it being a case of rescue, the railway company was liable.

2. INEVITABLE ACCIDENT

Accident means an unexpected injury and if the same could not have been foreseen and avoided in spite of reasonable care on the part of the defendant, it is inevitable accident. It is, therefore, a good defence if the defendant can show that he neither intended to injure the plaintiff nor could he avoid the injury by taking reasonable care.

In a leading case – the plaintiff and the defendant, who were members of a shooting party, went for pheasant shooting. The defendant fired at a pheasant but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that the injury was an accident and the defendant was not liable.

3. ACT OF GOD

Act of god is a good defence to any action in tort. Thus, when the damage, loss or injury is caused on account of operation of natural forces or phenomena, such as heavy downpour, storms, floods, earthquakes droughts etc, the defendant can escape liability. The two essential ingredients of the defence of act of god are:-

- a) The act must result on account of working of natural forces
- b) The occurrence must be extraordinary.

4. PLAINTIFF THE WRONGDOER

Under the law of contract, one of the principles is that no court will aid a person who forward his cause of action upon an immoral or an illegal act. The maxim is “Ex turpi causa non oritur actio” which means, from an immoral cause no action arises. It means that if the basis of the action of the plaintiff is an unlawful contract, he will not in general, succeed to his action.

Example:- A bridge under the control of the defendant gives way when an overload truck, belonging to the plaintiff, passes through it. If the truck was overloaded contrary to the warning notice already given and the bridge would not have given way if the truck was properly loaded, the plaintiff action will fail. On the other hand, if the wrongful act of the defendant and not of the plaintiff is the determining cause of the accident, the defendant will be liable.

5. NECESSITY

An act causing damage if done under necessity to prevent a greater evil is not actionable even though harm was caused intentionally.

For example :- Forcible feeding of a hunger striking prisoner to save her is a good defence as the act will be considered to be reasonably necessary to save the prisoner's life. If, however, the interference is not reasonably necessary, the defendant will be liable.

For example :- The defendant who entered the plaintiff's premises in good faith to extinguish fire at which the fireman had already been working will be held liable for trespass.

6. STATUTORY AUTHORITY

The damage resulting from an act, which the legislature authorizes or directs to be done is not actionable even though it would otherwise be a tort.

For example :- In a leading case sparks from an engine of the respondent's railway company, which had been authorized to run the railway, set fire to the appellant's woods on the adjoining land. It was held that since the respondents had taken proper care to prevent the emission of sparks and they were doing nothing more than what the statute had authorized them to do. They were not liable.

VICARIOUS LIABILITY

Vicarious liability is the liability of one person for the act done by another person. It is necessary that there should be a certain kind of relationship and the wrongful act should be in a certain way connected with that relationship. The common example of such a liability are :- the maxim “Qui facit per alium facit per se” provides the general principle of vicarious liability.

- Employer and employee or master & servant
- Principal and agent
- Partners interse.

MASTER AND SERVANT

If a servant does a wrongful act in the course of his employment the master is liable for it:- A servant is a person who acts under the direct control and supervision of his master or employer. Master is not liable for any act done by a servant which is not in the course of the employer.

For example:- My car driver is my servant. If he negligently knocks down X, I will be liable for that, but if I hire a taxi for going to the railway station and the taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor.

PRINCIPAL AND AGENT

Where one person authorized another to commit a tort, the liability for that will be not only of that person who has committed it but also of that who authorized it. The authority to do the act may be expressed or implied. The principal generally does not expressly ask his agent to do wrongful acts, but when the agent acts in the ordinary course of the performance of his duties as an agent, the principal becomes liable for the same.

For example:- In a leading case the plaintiff's husband gave some amount and cheques to his friend, who was an employee in the defendant bank for being deposited in the plaintiff's account. No proper receipt for the deposits was obtained. The bank employee misappropriated the amount. It was held that the employee when he committed the fraud was not acting in the scope of the bank's employment therefore the defendant bank could not be made liable for the same.

PARTNERS

The relationship as between partners is that of principal and agent. The rules of the law of agency apply in case of their liability also. For the tort committed by any partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner.

For example:- One of the two partner's of the defendant's firm acting within the general scope of his authority as a partner, braided the plaintiff's clerk and induced him to make a breach of contract with his employer by divulging secrets relating to his employer's business. It was held that both the partners of the firm were liable for this wrongful act committed by only one of them.

Vicarious liability of State - Law of Tort, Notes

Sovereign and Non sovereign function

Union of India was driven in the exercise of sovereign function so the state is immune from liability. The state is not liable for the acts of its servants when such acts are committed without the authority of law. They should be held liable for the improper exercise or abuse of discretion.

SOVEREIGN FUNCTION (State Not Liable) - Those actions from the state for which it is not answerable before a court of law. e.g. defense of a country, raising and maintaining armed forces, making peace in retaining territory, taxation, police function including maintenance of law and order, legislative functions, etc.

EXAMPLES:

- 1) Performance of statutory duty
- 2) Maintenance of public path
- 3) Maintenance of military road
- 4) Training for defence
- 5) Commandeering goods during the war
- 6) Arrest and detention
- 7) Maintenance of national highways
- 8) Keeping stole and goods in public Malkhana
- 9) Collection of revenue

NON SOVEREIGN FUNCTION (State Liable)

- 1) An accident caused by a driver of PWD, while carrying materials for building a road bridge.
- 2) Doctor in a govt. hospital performing sterilization operation of a lady patient, left a mob inside her abdomen.
- 3) Taking ailing children to a primary health centre is not a sovereign function
- 4) Famine relief

NEGLIGENCE

Negligence is the breach of a duty caused by the omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do.

In other sense negligence is a legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty, breach of the said duty and consequential damage. In tort, it is the number of damages incurred which is determinative of the extent of liability in tort but in criminal law, it is not the number of damages but the amount and degree of the negligence that is determinative of liability.

Negligence has two meanings in the law of torts:-

1. Negligence as a mode of committing certain torts, e.g. negligently or carelessly committing a trespass, nuisance or defamation

2. In other sense, it means conduct which creates a risk of causing damage rather than a state of mind.

ESSENTIALS OF NEGLIGENCE

1. that the defendant owed a duty of care to the plaintiff
2. the defendant made a breach of that duty
3. the plaintiff suffered damage as a consequence thereof. Whether the defendant owes a duty of the plaintiff or not depends on reasonable foreseeability of the injury to the plaintiff. If at the time of the act or omission, the defendant could reasonably foresee injury to the plaintiff, he owes a duty to prevent that injury and failure to do that makes him liable. The duty of care means a legal duty rather than a mere moral, religious or social duty.

For example in a leading case:- A purchased a bottle of ginger beer from a retailer for his lady friend. Some of the contents were poured in a tumbler and she consumed the same. When the remaining contents of the bottle were poured into her tumbler, the decomposed body of a snail floated out with her ginger beer. An action against the manufacturer for damage was brought by the lady. It was held that the manufacturer owed her a duty to take care that the bottle did not contain any noxious matter and that he would be liable on the breach of the duty.

Example:- The defendants were the committee and members of a cricket club. A batsman hit a ball and the ball went over a fence seven feet high and seventeen feet above the cricket pitch & injured the plaintiff on the adjoining highway. The cricket from which the ball was hit was about 78 yards from the fence and 100 yards away from the plaintiff. The ground had been used for about 90 yrs & during the last 30 years, the ball had been hit in the highway on about six occasions but no one had been injured. It was held that the defendants were not liable because the chance of a person ever being struck even in a long period of years was very small.

Rules of strict and absolute liability

There are situations when a person may be liable for some harm even though he is not negligent in causing the same or there is no intention to cause her harm or sometimes he may even have made some positive efforts to avert the same. In other words, sometimes her law recognizes no-fault liability or rules of strict liability or her rule of absolute liability.

According to the rule, if a person brings on his land and keeps here any dangerous thing i.e. a thing which is likely to do mischief if it escapes even though he had not been negligent in keeping it here. (held in the Rylands vs Fletcher case)

TRESPASS TO LAND

Trespass to land means interference with the possession of land without lawful justification. Trespass could be committed either by a person himself entering the land of another person or doing her same through the same material object e.g. throwing of stones on another person's land, driving nails into the wall. Allowing cattle to stray on another person's land is also a trespass. If a person, who is allowed to sit in a drawing room enters the bedroom without any justification, the entry into the bedroom is a trespass. When the occupier of land acquiesces in frequent acts of trespass. The visitors

there may no longer remain trespasses. Trespass is a wrong against possession rather than ownership therefore a person in actual possession can bring an action even though, against the true owner, his possession was wrongful.

LIABILITY FOR DANGEROUS PREMISES

An occupier of premises or of other structures like cars, ships, aeroplanes or lifts covers an obligation to the persons who enter those premises or structures in respect of their personal safety and the safety of their property hereof. The occupier's obligation will be considered under the following three heads: -

- 1) Obligation towards lawful visitors
- 2) Obligation towards trespassers
- 3) Obligation towards children

1) Obligation towards lawful visitors:

Common law classified the lawful visitors into two categories - invitees and licensees and laid separate rules for obligations towards each one of them.

When the occupier of the premises and the visitors had a common interest or the occupier had an interest in the visit the visitor was known as an invitee. When occupier had no such interest the visitor was known as a licensee. In other words, a licensee is a person who enters the premises with the express or implied invitation of the occupier. The occupier is supposed to take reasonable care to prevent any damage to the invitee from any unusual danger to his premises which he knew or ought to have known.

For example:- A, who was a gas fitter, entered the B's premises for testing certain gas fittings there. While doing so he fell from an unfenced opening on the upper floor and was injured. A, being an invitee on those premises B was held liable for the injury caused to him.

In case of a licensee, she owes a duty to give due warning of any latent defect or concealed danger in her premises of which he was aware. He would have no liability for her caused by dangers not known to him.

For example:- A went to stay with her sister in a building entered by B and let out to her sister's husband. The defendants were in possession of her common staircase. Owing to the unevenness of the cement; there was a depression in one of the stairs, the plaintiff's heel was caught in the depression. She fell from there and got injured. In an action against the defendant, it was held that the plaintiff was only for a concealed danger. In this case, her injury to her plaintiff was due to the danger which was obvious and could have been observed by her, her defendants could not be made liable for her same.

2) Obligation towards trespassers.

An occupier is not supposed to make his premises quite safe for the trespassers. At the same time the occupier cannot be permitted to deliberately cause harm to him, nor can he be permitted to engage in some dangerous activity in reckless disregard of the presence of the trespassers on his premises.

For example:- If a burglar gets injured by falling from my unrepaired stairs. I would not be liable towards him. However, if I throw stones upon him or if I recklessly disregarded the presence of a beggar on my premises and shoot and injure the beggar, I

would be liable. I can take reasonable steps to guard my premises against burglars, such as by the use of spikes or broken pieces of glass on the top of the wall but the use of a trap or spring guns would be actionable.

In a leading case:- The defendant laid some live electric wire on his land without any visible warning. The plaintiff who was passing thought that land at 10 p.m. to reach the land under his own cultivation. Could not observe the wire, on there was no light in the area. He came in contact with the wire and was injured.

It was held that it is the duty of the land owner to make it known if he has to lay a live wire on a short offense and as he failed to do so, he was liable for the damaged caused thereby.

Obligation towards children

An occupier must be prepared for the children to be less careful than adults and hence he must guard the child visitors even against such dangers from which the adults don't need any protection.

For example in a leading case:- The defendants controlled a public park. A child of 7 years picked up and ate some attractive looking berries on a shrub in the park and died because the berries were poisons. The berries were obviously an allurement for the children but the defendants had not given sufficient warning intelligible to the children of the deadly character of the berries. Here, in an action by the father of the deceased child, the defendants were held liable.

NUISANCE

Nuisance means an unlawful interference with a person's use or enjoyment of land. It includes interference with comfort, health, and safety of the other. Nuisance is of two types:-

1) Public Nuisance

2) Private Nuisance

Public nuisance is interference with the right of the public in general and is punishable as an offense. e.g. obstructing a public way by digging a trench or constructing a structure on it are examples of public nuisance.

A public nuisance also becomes a private nuisance so far as the person suffering special damage is concerned. Special damage in this context means damage caused to a party in contradiction to the public at large.

For example in a leading case:- The defendant created a brick grinding machine adjoining the premises of the plaintiff, who was a medical practitioner. The brick grinding machine generated dust which polluted the atmosphere. The dust entered the consulting chamber of the plaintiff and caused physical inconvenience to him. It was held that special damages to the plaintiff had been proved and a permanent injunction was issued against the defendant restraining him from running his brick grinding machine there.

Private nuisance is a civil wrong or tort. The essentials of a tort of nuisance are-

1) unreasonable interference

2) interference with the use of enjoyment of land

or personal discomfort

3) Damage

Example:- Gur Prasad and another filed a suit against Radhey Shyam and others for a permanent injunction to restrain them from installing and running a flour mill in their premises. It was alleged that the said mill would cause a nuisance to the plaintiffs, who were occupying the first-floor portion of the same premises inasmuch as the plaintiffs would base their peace on account of rattling noise of the flour mill and hereby their health would also be adversely affected. It was held that substantial addition to the noise in a noisy locality by the running of the impugned machines, serious interference with the physical comfort of the plaintiffs and as such it amounted to nuisance.

It is some noises which don't disturb or among an ordinary person but disturb only the plaintiff in his work or sleep due to his over sensitiveness, it is no nuisance against the plaintiff.

Nuisance is generally a confirming wrong. A constant noise, smell or vibration is a nuisance.

DEFAMATION

Defamation means an attack on a person's reputation.

It tends to lower the image of a person in society.

Defamation consists of both libel and slander. Libel is a defamatory statement in a permanent form, for example, by written words, by pictures, by cinema film etc.

Slander is the publication of a defamatory statement in a transient form such as spoken words or gestures. In Indian law, defamations are both a tort as well as a crime. To constitute a tort of defamation following are the essential elements -

1) The words spoken or written must be defamatory i.e. which tends to lower a person in the estimation of right-thinking members of the society.

2) The defamatory words or statement should directly or indirectly refer to the person defamed.

3) The statement must be published by a medium. Publication means making the defamatory matter known to some person other than the plaintiff.

Therefore if a person abuses another person in private it may not be defamation but if a third person is standing by, the same words will constitute to be defamatory words.

Further, a defamatory statement may be direct statement prima facie defamatory or it may be an innuendo. Innuendo is those words which appear innocent but contain some secondary or latent or hidden meaning which is defamatory. The essence of defamation is an injury to a person's character or repudiation.

For example: In a leading case - There was a publication of a statement in a local daily in Jodhpur on 18.12.77 that Manjulata went out of her house and the earlier night at 11 p.m. on the pretext of attending night classes and ran away with a boy named Kamlesh. She belonged to a well-educated family and was herself also a student of B.A. class. She was 17 years of age. The news item was untrue and had been published with utter irresponsibility and without any justification. Such publication had resulted in her being ridiculed and affected her marriage prospects. The statement being defamatory. The defendants were held liable.

Defamation of a class of persons

When the words refer to a group of individuals or a class of persons, no member of that group or class can sue under he can prove that the words could reasonably be considered to be referring to him. Thus, if a man wrote that all lawyers were thieves, no particular lawyer could sue him under there was something to point to her particular individual.

For example in a leading case - The appellant was the member of a party, the membership of which was about two thousand, out of which twenty-four members including the plaintiff were in England, The respondents published a statement of the party as a whole. Some of the appellant friends considered the article to be referring to him. If was, however, held that since the article referred to such a big class, most of the members of which were resident abroad, it could not reasonably be considered to be referring to the appellant and the respondents were not liable.

Defenses to defamation

The defenses to an action for defamation are

- 1) Justification or truth
- 2) Fair comment
- 3) Privilege, which may be either absolute or qualified

In a civil action for defamation, the truth of the defamatory matter is a complete defense. The defense is available even through the publication is made maliciously. If the statement is substantially true but incorrect in respect of certain minor particulars, the defense will still be available.

Example:- In a leading English case - the plaintiff had been sentenced to a fine of pond 1 or 14 days imprisonment in the alternative, for traveling on a train without an appropriate ticket. The defendants published a notice stating that the plaintiff had been sentenced to a fine of pond 1 or three weeks imprisonment in the alterative. Held, the defendants were not liable, the statement being substantially accurate.

Fair comment Making a fair comment on matters of public interest is a defense to an action for

defamation. Whether a statement is a fact or a comment, defends on the language used or the context in which that is stated.

Example - A says of a book published by Z - 'Z's book is foolish, Z's book is indecent, Z must be a man of impure mind.' There are only comments based on Z's book and A will be protected if he has said that in good faith. But if A says - 'I am not surprised that Z's book is foolish and indecent, he is a weak man & libertine.' It is not a comment on Z's book but is rather a statement of fact and the and the defense of fair comment cannot be pleaded in such a case.

PRIVILEGE

There are certain occasions when the law recognizes that the right of free speech outweighs the plaintiff's right to reputation: the law treats such occasions to be privileged and a defamatory statement made on such occasions is not actionable.

Privilege is of two kinds- absolute privilege and qualified privilege.

Parliamentary proceedings, Judicial proceedings and state communications, (where a

statement made by one officer of the state to another in the course of official duty is absolutely privileged) are examples of absolute privilege whereas in case of qualified privilege, it is available either when the statement is made in discharge of a duty or protection of an interest or the publication is in the form of report of parliamentary, judicial or other public proceedings.

LANDMARK CASES

1) Ashby v. White (Injuria sine damno)

Facts. Ashby (Plaintiff) was not allowed to exercise his right to vote, by the actions of an official. He filed a suit that he has suffered an 'injury' to his right though the candidate he wanted to vote for had actually won the election.

Held. The court held that a plaintiff ought to be allowed to vote and exercise his right to vote and denial of that right means that he has been injured because the right to vote is a common law right. Thus, an obstruction of that right gives rise to a cause of action.

2) Gloucester Grammar School Case

The defendant set up a rival school next to that of the plaintiff. The students of plaintiff's school shifted to the school of the defendant as he was charging lesser fees. The plaintiff sued the defendant for starting the school in the vicinity such as causing loss to the plaintiff. It was held that no suit could lie, because the establishment of the school does not amount to infringement of the right of the plaintiff and the defendant has every right to start a similar business and as such, there is no ground for action, whatever damage it may cause.

3) Bhim Singh vs State of J & K:

An MLA of the J&K. Assembly, the plaintiff was wrongfully arrested and detained by the police, while he was proceeding to the assembly. Further, he was not produced before the magistrate within the stipulated period. This act was a violation of both his fundamental and legal right. It was held that the state was liable to pay compensation as the private right of the plaintiff was infringed upon by the state.

4) Hall vs Brooklands Auto Racing Club:

If a person undertakes a participates in function which he knows can result in an injury, then the defendant is not liable if the plaintiff actually suffers injury. The plaintiff went to see as a spectator a motorcar race. Due to a collision between two racing cars, one of it rammed into the spectator's stand and injured the plaintiff. The court held that the organizers were not liable, as the plaintiff impliedly took the risk of such injury.

5) Stanley vs Powell:

One of the members of a shooting party accidentally shot at another member, mistaking his movement for that of an animal. The court held that the injury was an accident and the defendant was not liable to pay the compensation as the plaintiff was willfully participating in the action fully aware of the dangers involved in it.

6) State Bank of India vs Shyama Devi:

The respondent, Mrs. Shyama Devi, opened a savings account with the Imperial Bank of India at its Allahabad branch. The respondents gave some cash and cheque to one Kapil Deo Shukla, who was a friend of the respondent's husband and employed in the said bank, for being deposited in her account. The said payments were made to Kapil

Deo Shukla in his capacity as the respondent's husband's friend. No receipt or voucher was obtained indicating the said deposit. The bank's servant, instead of making the deposits in the respondent's account, got the cheque encashed and misappropriated the amount. He, however, made false entries in the respondent's Passbook and the bank's ledgers outside the course of employment and the appellant bank could not be made liable for the fraud committed by its servant.

7) Beard vs London General Omnibus Co.:

The driver of a bus had gone to have his dinner, leaving the bus in the custody of the conductor who decided to turn the bus to keep it in readiness for the return journey. While doing so, he negligently knocked down a passerby. Held, the master was not liable, as the conductor acted outside the course of his employment.

(In this case, the master is not liable because his driver did not cause the mishap, but action could be brought against the conductor.)

8) Lloyd vs Grace Smith & Co.:

Ms. Lloyds approached M/s Grace Smith & Co. to seek investment-related advice. The clerk who attended upon her asked her to sell her properties and then reinvest the proceeds. Ms. Lloyd signed certain documents, which were supposed to be the sale deed. Actually, it turned out to be a gift deed in favor of the clerk. The clerk disposed of the property and misappropriated the funds. It was held that the company was liable for the fraudulent acts of the clerk.

9) Limpus vs London General Omnibus:

The owner of a bus had given express instructions to his driver not to overtake or race with other vehicles. The bus driver defying the instructions overtook another bus, and in the process caused an accident. However, the bus owner was held liable for the negligence was caused by the driver in the course of his employment.

10) The state of Rajasthan vs Vidyawati:

In this case, a government vehicle, which was driven rashly and negligently by the car driver, who was an employee of the state government, knocked down the plaintiff's husbands. In an action against the State of Rajasthan, the court held the state liable. On an appeal, the Supreme Court upheld the above sentence expressed by the Rajasthan High Court.

11) Kasturilal vs the State of UP:

One of the partners of a firm of jewelers had gone to Meerut, to sell gold and silver. While walking through the market with his goods, he was intercepted and arrested by the police on grounds of suspicion that he was in possession of stolen goods. He was kept in the police lock-up and his goods were kept in the police custody. In the meanwhile, Kasturilal was released but the goods could not be returned, as the head constable had run away with them. In a suit brought against the State of UP for damages, it was held that the state was not liable, for the loss had occurred while the government was discharging a sovereign function (police function).

12) Rylands vs Fletcher:

The owner of a mill, employed a contractor to construct a reservoir on his land to provide water to his mill. While digging, the contractor failed to notice some disused

shafts beneath the ground and as such, did not block them up. Thereafter, he filled the reservoir with water. That night, the water broke through some of the shafts and flooded the neighbor Y's mine. The court held that X was liable for the damage caused to Y, even though the damage could not be attributed to his negligence.

13) Donoghue vs Stevenson:

A man bought a bottle of ginger beer for his girlfriend manufactured by the defendant. The lady drank the contents of the bottle directly. Later, she poured the remaining contents into a glass. To her utter shock, she noticed that a dead snail popping out of the bottle. She fainted and fell ill, as she had already consumed a portion of the drink. It was held that the manufacturer was liable to the lady for 'negligence'

Legal Terms (Part- 1)- Indian Polity, Notes

Ab initio: (Latin) from the beginning.

Acceptance: Is one of three requirements for a valid contract under common law (the other two being offer and consideration). A contract does not become legally binding until one party has made an offer and the other party indicates his readiness to accept the terms of the offer. Acceptance must be unconditionally communicated to the offeror while the offer is still open. Acceptance of an offer can, in certain circumstances, be implied by conduct.

Accord and Satisfaction: A contract may be discharged if one party, who has complied with his part of the contract, accepts compensation from the other party instead of enforcing the contract. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration (usually money and of a lesser value) which makes the agreement operative.

Acquiescence: Action or inaction which legally binds someone, even unintentionally. For example, an action such as accepting goods from a supplier will be binding if it implies recognition of the terms of a contract.

Act of God: An event resulting from natural causes, without human intervention (such as floods or earthquakes). Insurance policies often exclude acts of God.

Action: Proceedings in a civil court. **Adjournment:** Postponement of a hearing by a judge on whatever terms he sees fit.

Administrative law: Law which applies to hearings before quasi-judicial or administrative tribunals. Such hearings must be conducted in accordance with the principles of natural justice, such as audi alteram partem and nemo iudex in sua causa.

Administrator: A person appointed to manage the property of another (such as the administrator of the estate of someone who has died without leaving a will).

ADR: Alternative dispute resolution (such as arbitration, mediation and conciliation).

Adverse possession: Possession of land, without legal title, for long enough – normally 12 years – to be recognized as the legal owner (“squatter’s rights”).

Affidavit: Sworn written statement signed by a deponent, who swears that its contents are true to the best of his knowledge and belief. It must be witnessed by a practising solicitor or commissioner for oaths.

Agent: Person with power to contract on behalf of others, binding them as if they were signing the contract themselves. The person represented by the agent is called the principal.

Aggravated damages: Exceptional damages awarded by a court where a defendant’s behaviour towards the plaintiff or victim has been particularly humiliating, malicious or vindictive.

Alternative dispute resolution: Method by which conflicts and disputes are resolved privately, other than through litigation, usually by mediation or arbitration. ADR involves the appointment of a third - party to preside over a hearing between the two

sides. The advantages of ADR are privacy and speed. The disadvantage is that ADR may involve compromise of legal rights.

Antedate: To date retroactively, before a document was drawn up.

Appeal: Challenge to a court decision in a higher court.

Appearance: The act of replying to a summons or turning up in court and accepting its jurisdiction to try proceedings. A barrister or solicitor may make an appearance on a client's behalf.

Appellant: Person who makes an appeal.

Arrears: Accumulated debt which has not been paid on the due date.

Assault: Touching – or threatened touching – of another person, without that person's consent.

Assign: To give or transfer responsibility to another person. The person who receives the right or property is the assignee; the assignor is the person giving.

Attachment and committal: Bringing a person before a court, with a threat of imprisonment for failure to obey a court order.

Attachment of earnings: Court order for deduction of salary at source in order to pay, for example, maintenance or a debt.

Attorney General: Legal adviser to the Government, appointed by the President on the advice of the party in power.

Audi alteram partem: (Latin: hear the other side) A principle of natural justice which requires that, where a decision may affect an individual's rights, that person has a right to be heard. It includes the right to receive notice of a hearing and to be legally represented.

Bailee: Person who accepts property through a contract of bailment, from the bailor, and who has certain duties of care while the property remains in his possession.

Bailment: Temporary transfer of goods by a bailor to a bailee (for example, for storage), after which the property is either returned to the bailor or disposed of according to the contract of bailment.

Barrister: Specialist in litigation and advocacy who receives instructions from a solicitor. Barristers may not normally deal directly with members of the public.

Beneficiary: Person who receives a gift under a will, or for whose benefit property is held by an executor or trustee.

Bill of exchange: Written, signed instrument requiring the person to whom it is addressed to pay on demand (or on a future date) a fixed amount of money either to the person identified as payee or to anyone presenting the bill of exchange. A cheque is a form of bill of exchange.

Bill of lading: Document used in foreign trade, acknowledging that a company has received goods for transportation. The Bill serves as title to the goods until they have reached their destination.

Breach of contract: Failure or refusal to fulfill a term of a contract. The injured party may bring an action for damages, for enforcement or for cancellation of the agreement.

Burden of proof: A rule of evidence that requires a party to a court action to prove something, otherwise the contrary will be assumed by the court. For example, in

criminal trials, the prosecution has the burden of proving the accused guilty beyond a reasonable doubt (because of the presumption of innocence).

Case law: Published court decisions which establish legal precedents, binding lower courts.

Caveat: (Latin: let him beware.) A formal warning. Caveat emptor (let the buyer beware) is a warning to buyers to check for themselves things which they intend to buy, so they cannot later hold the vendor responsible for the faulty condition of the item. The Sale of Goods and Supply of Services Act 1980 extends the rights to consumers in this area.

Central Criminal Court: The High Court sitting to deal with serious criminal offences, such as rape and murder.

Certiorari: Form of judicial review whereby a court is asked to set aside the decision of an administrative tribunal, judicial officer or public organisation. Certiorari may be used where the decision of the lower tribunal was made in breach of the rules of natural justice. An application for certiorari must normally be made within six months of the decision.

Chambers: Judge's personal rooms, where he may hear matters in private.

Charge: Form of security for payment of a debt.

Chattels: Movable items of property which are neither land nor permanently attached to land or a building. (Land or buildings are described as "real property".) Chattels are also known as personal property (or personalty). A freehold property is not a chattel, but a leasehold is.

Cheque: Form of bill of exchange where the order to pay is given to a bank holding the payor's funds.

Child: Person under 18.

Circuit Court: Court above the District Court and below the High Court, with power to award damages up to €38,100.

Circuit Judge: Judge of the Circuit Court, addressed as "My Lord" whether male or female.

Class action: Legal action taken by a number of different persons where the facts and the defendants are similar. Class action lawsuits may occur, for example, after a public transport accident or in the case of a faulty drug, where all the victims sue the same defendant.

Clayton's Case: This English case established a presumption that money withdrawn from an account is presumed to be debited against the money first deposited (first in, first out).

Codicil: Written amendment or addition to an existing will.

Collateral: Property committed to guarantee a loan.

Collusion: Illegal and usually secret agreement between two or more people to deceive a court or defraud another person.

Common law: Judge-made law which has developed over centuries, also referred to as "unwritten" law. Common law (as practised in Ireland, England and the USA) is often

contrasted with civil law systems (such as in France or Germany) where laws are set down in a written code.

Company: Legal entity which permits a group of shareholders to create an organization to pursue set objectives. A company may have legal rights which are usually reserved for individuals, such as the power to sue and be sued, own property, hire employees or lend and borrow money. The main advantage of a company structure is that it gives shareholders a right to participate in profits (through dividends) without any personal liability.

Consent order: Court order agreed between both sides.

Consideration: Consideration has been defined as “some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other”. Under common law, any binding contract must have some consideration, no matter how small. The courts will not normally inquire into the sufficiency of the consideration; a “peppercorn rent” would be sufficient.

Consign: To leave property in the custody of another. An item can be consigned to a transport company, for example, to move it from one place to another. The consignee is the person who receives the property and the consignor is the person who ships the property to the consignee.

Construction: Legal process of interpreting a phrase or document. If a term is unclear or ambiguous, lawyers and judges must try and interpret (or construct) its probable intention and purpose. This may be done by referring to other parts of the document, by reference to the known intentions of those who drew up the document, or, in the case of statutes, by referring to an interpretation law which gives guidelines for construction.

Constructive trust: Trust imposed by a court in certain circumstances, regardless of the intention of the parties involved (such as where a trustee has improperly profited from his position).

Contempt: Deliberate disregard of a court order.

Contract: Agreement between two or more persons which obliges each party to do (or refrain from doing) a certain thing. A valid contract requires an offer, acceptance of that offer and consideration.

Contract law: Contract law is the basis of all commercial dealings. The terms of a contract may be express or implied. Express provisions may be varied by statute. Unfair contract terms are now excluded by legislation, and, in areas such as employment and the sale of goods, the law imports a wide range of implied terms into new and existing contracts.

Contributory negligence: Negligence which is not the primary cause of a tort, but which combined with the act or omission of another person to cause the damage. In the case of a car crash, for example, an injured driver who was not wearing a seat belt may be found contributorily negligent for his injuries.

Legal Terms (Part- 2)- Indian Polity, Notes

Conversion: Legal proceeding for damages by a property owner against a defendant who found property and converted it to his own use – that is, retained it or otherwise interfered with it.

Conveyance: Written document transferring property from one person to another. Conveyances are usually drafted by solicitors.

Costs: The legal expenses of an action, such as lawyers' fees, witness expenses and other fees paid out in bringing the matter to court. The rule is generally that "costs follows the event", which means that the loser normally pays the legal costs of both sides. The judge has the final decision and may decide not to make an order on costs.

Counsel: Barrister(s).

Counterclaim: Respondent's claim against a plaintiff in the same action.

Covenant: Written document in which signatories either commit themselves to do (or not to do) something, or in which they agree on a certain set of facts. Covenants are very common in leases where a landlord will usually covenant to give the tenant "quiet enjoyment" and the tenant covenants to pay the rent, keep the premises in good repair and deliver them up at the end of the tenancy.

Creditor: Person to whom money, goods or services are owed by a debtor.

Crime: Act or omission forbidden by criminal law. The commission of a crime is punishable by a fine, imprisonment or some other form of punishment. Crimes are divided into minor offences (which may be tried in the District Court) and indictable offences, which are tried by a judge and jury in the Circuit Court or Central Criminal Court.

Cross-examination: In a trial, each side calls its own witnesses and may also question the other side's witnesses under oath. Examination-in-chief is the questioning of a party's own witnesses; cross-examination involves questioning the other side's witnesses. A party may not put leading questions (which suggest the answer, or require a simple yes or no) to his own witness, but he may ask such questions in cross-examination.

Curtilage: Land around a dwelling house, used by the occupants for their enjoyment or work. Curtilage may be enclosed by fencing and includes any outhouses such as sheds, garages or workshops.

Damages: Financial compensation ordered by a court to offset losses or suffering caused by another person's action or inaction. Damages are typically awarded in claims for breach of contract, negligence or breach of statutory duty.

De facto: (Latin: in fact) Something which exists in fact, though not necessarily approved by law (de jure). A common law spouse may be referred to as a de facto spouse, although not legally married. De minimis non curat lex: (Latin: the law does not concern itself with trifles) A common law principle whereby very minor transgressions of the law are disregarded. Under the Consumer Information Act 1978, for example, a description must be false "to a material degree" to constitute an offence.

De novo: (Latin: anew) Used to refer to a trial which begins all over again, as if any previous partial or complete hearing had not occurred. A District Court appeal is heard by the Circuit Court de novo, with the court considering afresh all the law and facts.

Debtor: Person who owes money, goods or services to a creditor. If a court judgment has been registered against the person owing the money, he is known as a judgment debtor.

Deed: Written and signed document which sets out the agreement of the signatories in relation to its contents. Under common law, a deed had to be sealed – marked with an impression in wax. A deed is delivered by handing it to the other person. Usually a deed (or some other written evidence) is required in relation to actions involving land.

Defence: Response to claim by plaintiff. **Defendant:** Person, company or organization which defends a civil action taken by a plaintiff and against whom the court is asked to order damages or corrective action to redress some unlawful or improper action alleged by the plaintiff. Also a person charged with a criminal offence.

Delegatus non potest delegare: (Latin: a delegate cannot delegate) A person to whom authority or decision-making power has been delegated by a higher source, cannot delegate that power to someone else, unless the original delegation explicitly authorised it.

Deponent: Person who swears an affidavit or deposition.

Descendant: Persons born of, or from children of, another. Grandchildren are descendants of their grandparents, as children are descendants of their natural parents. The law distinguishes between collateral descendants, such as nephews and nieces, and lineal descendants, such as sons and daughters.

Detinue: Tort involving the defendant's retention of property belonging to the plaintiff after the plaintiff has demanded its return. The plaintiff may seek damages for the period of possession, even without proving any actual loss.

Devise: Transfer or conveyance of real property by will. The person who receives such property is called the devisee.

Director of Public Prosecutions: Independent official who decides whether to prosecute in criminal cases and in whose name all criminal prosecutions are taken.

Discovery: Sworn disclosure of documents and records. Certain types of document which are "privileged" need not be discovered, but they must be identified to the other side.

Distrain: Seizure of personal property to compel a person to fulfill a legal obligation. Formerly landlords had the power to distrain against the property of a tenant for arrears of rent or other default, but such action is now forbidden in relation to premises let solely as a dwelling. A legal action for the restoration of goods that have been distrained is called replevin.

District Court: Lowest court in the Irish judicial system, with power to award damages up to €6,350 in civil cases.

District Judge: Judge of the District Court, addressed as "Judge".

Dividend: Proportionate distribution of profits made by a company in the form of a money payment to shareholders. Dividends are declared by the board of directors at the

annual general meeting. The shareholders decide the dividend at the meeting, but it must not exceed the directors' recommendation.

Domicile: A person's fixed and permanent residence; a place to which, even if he is temporarily absent, he intends to return. Legally, a person may have many residences or several nationalities, but only one domicile.

Dominant tenement: Property or land that benefits from, or has the advantage of, an easement, such as a right of way.

Donatio mortis causa: (Latin: gift due to death) Gift made by a dying person with the intent that the person receiving the gift shall keep it if the donor dies from his existing complaint. Such a gift is excluded from the estate of the deceased, as the property is automatically conveyed on the donor's death.

Donee: Beneficiary of a trust or person given a power of appointment.

Donor: Person who gives property for the benefit of another, usually through a trust. Sometimes referred to as a "settlor." Also used to describe the person who signs a power of attorney.

Duces tecum: (Latin: bring with you) Type of subpoena which requires a person to appear before a court with specified documents or other evidence.

Duress: Threats or force preventing – or forcing – a person to act other than in accordance with free will. A contract signed under duress is voidable at the option of the person forced to sign it. Duress may invalidate a marriage.

Easement: A right over a neighbor's land or waterway. An easement is a type of servitude. For every easement, there is a dominant and a servient tenement, or piece of land. Rights-of-way are the most common easements, but others include the right to tunnel under another's land, to emit smoke or fumes, to access a dock and to use a well. An easement that is not used for a long time may be lost.

Emolument: Wages, benefits or profits received as compensation for holding office or employment.

Endorsement: Writing on a document. With a bill of exchange, an endorsement is a signature on the back of the bill by which the person to whom the note is payable transfers the right of payment to the bearer or to a specific person. An endorsement may restrict payment to one person only, and prohibit any further endorsements.

Endorsement of claim: Concise summary of the facts supporting a legal claim.

Endowment: Transfer of money or property (usually as a gift) to a charitable organisation for a specific purpose, such as research or a scholarship.

Equity: The law of equity developed to temper the rigid interpretation given by medieval English judges to the common law. For hundreds of years, there were separate courts in Ireland for common law and equity (known as courts of Chancery). Where decisions conflicted, equity prevailed. In 1877, the two systems were merged. The principles of equity, based on fairness, include "equity will not suffer a wrong to be without a remedy" and "equity looks on the intent, rather than the form".

Estoppel: Rule of evidence which prevents a person from relying on facts when, by deed, word or action, he has led another person to act to his detriment on those facts.

Estoppel is a defence, not a cause of action. Anyone who wishes to rely on the defence of estoppel to defend an action must plead it.

Evidence: Testimony of witnesses at a trial, or the production of documents or other materials to prove or disprove a set of facts. Evidence may be direct or circumstantial (that is evidence from which a fact may be presumed). The best evidence available – such as original, rather than copy, documents – must generally be presented to a court.

Ex aequo et bono: (Latin: in justice and fairness) Most legal cases are decided on the strict rule of law. But, where a case is decided ex aequo et bono, the judge may make a decision based on what is just and fair in the circumstances.

Ex parte: (Latin: on the part of) Court application made without notice to the other side. One party is therefore neither present nor represented.

Ex post facto: (Latin: after the fact) Ex post facto legislation retrospectively makes acts illegal which were committed before the law was passed.

Ex turpi causa non oritur actio: (Latin: No action arises from an illegal cause) A person may not sue for damage arising out of an illegal activity. A person may not sue on an illegal contract, because it is void from the time of its creation.

Examination-in- chief: Questioning of witnesses under oath by the party who called those witnesses (also called direct examination). After the examination-in- chief, the other side's lawyer may question the witnesses in cross-examination. Thereafter, the first party may re-examine them, but only about issues raised during the cross-examination.

Executor: Person appointed by a testator to administer a will. The executor is a personal representative whose duties include burying the dead, proving the will, collecting in the estate, paying any due debts and distributing the balance according to the wishes of the deceased.

Exhibit: Document or object shown to a judge or jury as evidence in a trial. Each exhibit is given a number or letter as it is introduced, for future reference during the trial.

Express trust: Trust specifically created by a settlor, usually in a document such as a will, although it can be oral. An express trust which deals with land must be in writing.

Extradition: The arrest and handover of a person wanted for a crime committed in another country, usually under the terms of a extradition treaty. A person may not be extradited from Ireland for a political offence.

Fiduciary: Person (such as a trustee, company director or executor) who exercises rights and powers for the benefit of another person, but without being under the control of that person. A fiduciary must not allow any conflict of interest to affect his duties and would not normally be allowed to profit from his position.

Foreclosure: Forfeiture of a right of redemption on a property (generally when someone fails to pay a mortgage). Even if there has been no payment, the borrower normally retains a equitable right of redemption if he can raise the money to exercise the right. To clear the title of this potential right, a lender can apply to court for a date to be set, by which the entire amount becomes payable. If payment is not made, the

property belongs entirely to the lender, who is then free to go into possession or to sell it.

Fraud: Dishonest conduct designed to persuade another person to give something of value by lying, repeating something that is or ought to have been known by the fraudulent party to be false or suspect, or by concealing a relevant fact from the other party. Fraud allows a court to void a contract or to set aside a judgment, and can result in criminal liability. A person who defrauds creditors of a company may be held personally liable.

Freehold: Right to the full use of real property for ever (as opposed to leaseholds or tenancies, which allow possession for a limited time). Varieties of freehold include fee simple, fee tail and life estate.

Goodwill: Intangible business asset based on the good reputation of a business and resulting attraction and confidence of repeat customers and connections. Part of the sale price of a business may be for goodwill, in which case the seller may not solicit former customers for his new business.

Gross negligence: Act or omission in reckless disregard of the consequences for the safety or property of another; more than simple carelessness or neglect. Gross negligence by an employee may justify summary dismissal.

Guarantor: Person who pledges collateral for another's contract.

Hearsay: Evidence of which a witness does not have direct knowledge from his own senses but which is based on what others have said. Hearsay evidence is normally only admissible in court proceedings to show that a statement was made, not to prove the truth of the contents of the statement.

Legal Terms (Part- 3)- Indian Polity, Notes

High Court: Court above the Circuit Court with full jurisdiction to decide all matters of law and fact. High Court judges – male and female – are normally addressed as “My Lord”.

In pari delicto: (Latin: equally at fault) If two parties are equally to blame for a situation (such as both failing to comply with the terms of a contract), a court could refuse to provide a remedy to either of them because they are in pari delicto.

In personam: (Latin: against the person) All legal rights are either in personam or in rem. An in personam right attaches to a particular person.

In rem: (Latin: against the thing) In rem rights relate to property and are not based on any personal relationship.

Incorporeal: Intangible legal rights, such as copyrights or patents.

Injunction: Court order that forbids a party to do something (prohibitory injunction) or compels him to do something (mandatory injunction). It may be enforced by committal to prison for contempt.

Insolvent: Person not able to pay his debts as they become due. Insolvency is a prerequisite for bankruptcy.

Inter alia: (Latin: among other things) Used to precede a list of examples covered by a more general descriptive statement.

Interim order: Temporary court order of very limited duration, usually until the court has heard the full facts of a case.

Interlineation: Addition to a document after it has been signed. Such additions are disregarded unless they are initialized by the signatories and, if necessary, witnessed.

Interlocutory injunction: An injunction which lasts only until the end of the trial during which the order was sought, when it may be replaced by a permanent injunction.

Inter partes: Latin: between the parties.

Inter vivos: (Latin: between living persons) An inter vivos trust is set up to take effect while the settlor is still alive (as opposed to a testamentary trust, which takes effect only on the settlor's death).

Intestate: Person who dies without making a valid will.

Invitation to treat: An offer to receive an offer. Goods advertised by a shopkeeper are open to offers from customers. If goods are mistakenly marked with the wrong price, the retailer is not bound to accept that price because he has not offered the goods at that price: he has invited members of the public to make him an offer which he is entitled to accept or reject. A retailer who deliberately or consistently misprices goods, however, may be committing an offence under the Consumer Information Act.

IOU: A written confirmation of a debt, signed by the debtor, which implies an undertaking to pay the sum owed at some future date. An IOU is not a negotiable instrument and may not be passed on to a third party.

Joint and several liability: Liability of more than one person, under which each may be sued for the entire amount of damages due by all. The obligation may arise by agreement or may be imposed by law.

Joint tenancy: Ownership of property by two or more people with a right of survivorship. If one owner dies, his share passes to the surviving owners so that, eventually, the entire property is held by one person.

A valid joint tenancy requires the four unities: unity of interest (each joint tenant must have an identical interest, including equality of duration and extent), unity of title (the interests must arise from the same document), unity of possession (each joint tenant must have an equal right to occupy the entire property) and unity of time (the interests must have arisen at the same time). Married couples and trustees are frequently joint tenants. (Contrast with tenancy-in- common.)

Judicial review: Proceedings in which a court is asked to rule on a decision of an administrative body or quasi-judicial tribunal. Judicial review is not usually limited to errors in law but may be based on alleged errors on findings of fact or unfair procedures. Judicial review proceedings may not be brought in the area of private law where the disputed decision is a matter of contract or agreement between two sides.

Junior counsel: Barrister who has not “taken silk” or been called to the Inner Bar.

Jurisdiction: Power of a judge or court to act, limited by a defined territory (the jurisdiction of the District Court is restricted to offences committed in that district), by the type of case (the jurisdiction of a criminal court is limited to criminal cases) or to certain persons (a court martial only has jurisdiction over military personnel).

Kin: Relationship by blood.

King’s Inns: The body responsible for the training of all barristers in Ireland.

Knock-for- knock: An arrangement between insurance companies whereby each company pays the claim of its own insured, on the basis that neither party will pursue a claim against the other.

Landlord: Owner of a building or land who leases the land, building or part thereof, to another person, who is called the tenant or lessee.

Lease: Contract between a property owner and another person for temporary use of property, in exchange for rent.

Legal Aid: Government scheme providing advice or assistance from a solicitor or barrister free or at a reduced rate.

Liability: Any legal obligation or duty, now or in the future. A person who is liable for a debt or wrongful act is the person responsible for paying the debt or compensating for the wrongful act. If a court finds a person to be contributorily liable, he will bear part of the responsibility for the act or omission.

Licence: Permission to do something on or with someone else’s property which, if it were not for the licence, could be legally prevented or could give rise to an action in tort or trespass. A common example is allowing a person to cross the licensor’s lands, which would otherwise constitute trespass. Licences, unlike easements, may be revoked at will, unless supported by some form of payment or consideration. Licences which are not based on a contract and which are fully revocable are called simple or bare licences.

Lien: Right to hold property which has been sold, but not finally paid for. It may involve possession of the object until the debt is paid or the lien may be registered against the object (especially land). Ultimately, a lien can be enforced by a court sale of the property to which it is attached, and the debt is paid out of the proceeds of sale.

Limitation of actions: The Statute of Limitations sets down times within which proceedings must be brought. If no action is taken within the prescribed time limits, any future action is said to be statute- barred. In negligence claims, where there is no personal injury, the limit is six years. Where there is personal injury, the limit is three years (reduced to one year by the introduction of a bill in 2004). In a fatal injury case, it's three years from the date of death. In a claim involving breach of a simple contract (not under seal), the limit is six years. With personal injury arising from breach of contract, it's three years (or three years from the date of death). With a specialty contract (under seal), the period's 12 years, as it is for actions involving land. The maximum period for recovery of arrears of tax or rent is six years.

Liquidation: Sale of all the assets of a company or partnership by a liquidator and use of the proceeds to pay off creditors. Any money left over is distributed among shareholders or partners according to their interests or rights.

Locus standi: (Latin: place of standing) Person's right to take an action or be heard by a court.

Mandamus: (Latin: we command) High Court order commanding an individual, organisation, administrative tribunal or court to perform a certain action – usually to correct an earlier illegal action or failure to fulfill some statutory duty.

Mediation: Form of alternative dispute resolution involving an agreed mediator acting as a facilitator to help the parties negotiate an agreement. The mediator does not adjudicate on the issues or force a compromise; only the parties involved can resolve the dispute. The result of a successful mediation is called a settlement.

Mens rea: (Latin: guilty mind) Most crimes require proof of guilty intention before a person can be convicted. The prosecution must prove either that the accused knew his action was illegal or that he was reckless or grossly negligent. Some offences (such as drunken driving) are matters of strict liability, which means that the intention or state of mind of the person committing the offence is irrelevant.

Minor: Person under the age of 18 who is not married (or has not been married). A minor may only enter into certain contracts, such as those for necessities or an apprenticeship. An Irish resident under the age of 18 may not legally marry without the permission of the Court, even if the ceremony takes place somewhere (such as Northern Ireland) where the minimum age for marriage is under 18.

Misfeasance: Improperly doing something which a person has a legal right to do. Contrast with nonfeasance.

Misjoinder: When a person has been wrongly named as a party to a law suit, a court will usually amend the proceedings to strike out the name of the misjoined party and substitute the person who should have been joined.

Misrepresentation: False material statement which induces a party to enter into a contract; grounds for rescission of the contract.

Mitigation: Facts which, while not negating an offence or wrongful action, tend to show that the defendant may have had some excuse for acting the way he did. For example, provocation may constitute mitigating circumstances in an assault action.

Mitigation of damages: A person who sues another for damages has a duty to minimize his loss, as far as reasonable. For example, in a wrongful dismissal suit, the person who was fired should make some effort to find another job, to minimize the economic damage to himself.

Moiety: Half of anything. For example, joint tenants each hold a moiety of the property.

Mortgage: An interest given on land, in writing, to guarantee the payment of a debt or the execution of some action. It automatically becomes void when the debt is paid or the action is executed. The person lending the money and receiving the mortgage is called the mortgagee; the person who concedes a mortgage as security upon his property is called a mortgagor. The three types of mortgage are a legal mortgage (involving a transfer of the legal interest in the property), an equitable mortgage (by depositing the title deeds) and a judgment mortgage (following a court judgment).

Natural justice: The requirement for application of the tenets *audi alteram partem* (hear the other side) and *nemo iudex in causa sua* (no-one may be a judge in his own case). The principles of natural justice were derived from the Romans, who believed that some legal principles were natural or self-evident and did not need a statutory basis.

Negligence: Carelessness. A person who owes a duty of care to someone else and breaches it by lack of reasonable care may be liable in damages for negligence. The negligence may involve a positive deed or a failure to act. If no damage results, there can be no action. The standard of care required is usually that of the reasonable man, but a person who claims to have special skills (such as a surgeon) owes a higher duty of care.

Nemo iudex in sua causa: (Latin: nobody may be a judge in his own case) Principle of natural justice. A judge must be seen to be free of bias and may not have any interest – personal, pecuniary or otherwise – in a case he is deciding. Also referred to as *nemo debet esse iudex in propria causa*.

Legal Terms (Part- 4)- Indian Polity, Notes

Next of kin: Person's nearest blood relation. The expression has come to describe those persons most closely related to a dead person and therefore due to inherit his property if there is no will.

Non est factum: (Latin: not his deed) Defence in contract law which allows a person to avoid liability because he was mistaken about the nature of the contract. For example, a person who signs away the deed to a house, thinking that the document was only a guarantee for a debt, might be able to plead non est factum. Failure to read the terms of a contract will negate this defence.

Nonfeasance: Not doing something that one is bound to do by law. Compare with misfeasance.

Nudum pactum: (Latin: an empty agreement) An agreement without consideration, such as a unilateral undertaking, which may bind a person morally, but not under contract law, unless the agreement is under seal.

Nuisance: Substantial unlawful use of one's property or interference with another's property to the extent of unreasonable annoyance or inconvenience to a neighbour or to the public. Private nuisance might be caused by smells, noise, smoke, dust, fumes, vermin, obstruction or a wide range of other activities or inactivity. The remedies would include abatement (an order to cease the nuisance), damages and/or an injunction.

Obiter dicta: (Latin: sayings by the way) Observations by a judge on law or facts not specifically before the court or not necessary to decide an issue. An opinion which does not form part of the judgment for the purposes of stare decisis. Such opinions are not binding in future cases.

Offer: Definite proposal to contract which, if accepted, completes the contract and binds both the person that made the offer and the person accepting the offer to the terms of the contract. The offer may be express or implied. The person making the offer is called the offeror, and the person to whom the offer is made is the offeree.

Order: Formal written direction by a judge. Once a final order is made, it may only be amended if there has been an accidental slip in the judgment. Out-of- court settlement: Agreement between two litigants to settle a matter privately before a court has heard the matter or given its decision. Most personal injuries cases settle before reaching court.

Pari passu: (Latin: with equal step) Often used in bankruptcy proceedings where creditors are said to rank pari passu, which means the assets are distributed without preference between them.

Partition: Division of jointly-owned land or property between the respective owners.

Partnership: Two or more persons carrying on a business together. Partners are each fully liable for all the debts of the enterprise but they also share the profits exclusively. Their rights are regulated by their partnership agreement.

Patent: Exclusive privilege granted to an inventor to make, use or sell an invention for a period of years. A renewal fee must be paid every year.

Payee: Person to whom a bill of exchange is made payable. On an ordinary cheque, the name preceded by the words “pay to the order of” identifies the payee.

Payor: Person who makes a payment on a cheque or bill of exchange.

Pendente lite: (Latin: during litigation) If the validity of a will is challenged, a court may appoint an administrator pendente lite with limited powers to preserve the assets of the deceased until a hearing on the validity of the will.

Perjury: Deliberate lie under oath or in a sworn affidavit.

Perpetuity: Forever, of unlimited duration. The law leans against agreements that are to last in perpetuity because they may hinder commerce by impeding the circulation of property. The rule against perpetuities says that a limitation of any interest in land is void if it can vest outside the perpetuity period, which is a life plus 21 years. For example, if a will proposes the transfer of an estate at some uncertain future date, which is either more than 21 years after the death of the testator or more than 21 years after the life of a person identified in the will, the transfer is void.

Petition: Formal, written submission to court, seeking redress of an injustice. Petitions set out the facts, identify the law under which the court is being asked to intervene, and end with a requested course of action for the court to consider (such as payment of damages). Petitions are normally used to institute proceedings in the areas of bankruptcy, patents, professional disciplinary bodies and family law matters.

Picket: Peaceful public demonstration, on or near an employer’s premises, in furtherance of an existing or proposed trade dispute. Picketers may not threaten, insult or abuse other workers.

Plaintiff: Person who brings a case to court. (Also called the petitioner or applicant.) The person being sued is generally called the defendant or respondent.

Pleadings: Written allegations or claims delivered by one claimant to another which formally set out the facts and legal arguments supporting his position. High Court pleadings might include an originating summons, statement of claim, defence, counterclaim and reply – or a petition and answer.

Power of attorney: Document under seal which gives a person the right to make binding decisions for another, as an agent. A power of attorney may be specific to a certain kind of decision or general, in which the agent makes all major decisions for the subject of the power of attorney.

Precedent: Court judgment which is cited as an authority in a later case involving similar facts. Precedent cannot bind a higher court (for example, a Circuit Court decision cannot bind a High Court judge). A Supreme Court judgment binds all courts – although it does not bind the Supreme Court itself in future cases. The system of precedent forms the basis of the policy of stare decisis which helps litigants to predict the outcome of a case in a given situation.

Prescription: Way of acquiring property rights, such as an easement, by long and continued use or enjoyment. The required period of continued use or enjoyment, before legal rights are enforceable, is set out in the 1832 Prescription Act.

Prima facie: (Latin: at first sight) A prima facie case is one which, at first sight, seems to support the allegation or claim made. If a prima facie case is not made out in the

early stages of proceedings, the other side may apply to the court to dismiss the action without hearing the rest of the evidence.

Private law: Domestic law which regulates the relationships between individuals and in which the State is not directly concerned. Family, commercial and labour law are examples of private law because their focus is the relationships between individuals or between corporations or organisations and individuals.

Privilege: Special legal right such as a benefit, exemption, power or immunity. One example is the right of the media to publish contemporaneous reports of court proceedings without fear of an action for defamation, even if the matters published would ordinarily constitute libel.

Pro rata: (Latin: in proportion) Division proportionate to a certain rate or interest. For example, if a company with two shareholders, one with 25% and the other with 75% of the shares, declared a dividend of €1,000 to be split pro rata between the shareholders, the one with 25% of the shares would receive €250 and the other €750.

Pro tempore (pro tem): (Latin: for the time) Temporary or for the time being.

Probate law: That part of the law which regulates wills and other subjects related to the distribution of a deceased person's estate.

Prohibition: Legal restriction on the use of something or on certain conduct.

Promissory note: Unconditional, written and signed promise to pay a certain amount of money on demand or at a certain defined date in the future. Unlike a bill of exchange, a promissory note is a promise – rather than an order – to pay.

Property: Property is commonly thought of as something which belongs to a person and over which he has total control. But it is more correctly defined as a collection of legal rights over a thing. These rights are usually enforceable by the owner or the State against others. The most common classifications of property are between real or immovable property (such as land or buildings) and chattels or personal property (such as stock or a leasehold), and between public property (belonging to everybody or to the State) and private property.

Prospectus: Document or notice in which a company sets out details of a proposed share or bond issue, inviting the public to invest by purchasing the financial instruments. It must specify the nominal capital of the company, the names, addresses and descriptions of the directors, when the subscription lists open, the amount payable on application and on allotment of shares, and the rights in respect of different classes of share.

Proxy: Agent who votes on behalf of another. Any shareholder who is entitled to vote at a meeting of a company is entitled to appoint a proxy to vote in his place. The member may direct the proxy which way to vote.

Punitive damages: Special, exceptional damages ordered by a court where an act or omission was of a particularly serious, extensive or malicious nature. (Normally damages are awarded to compensate, not to punish.) Also known as exemplary damages.

Quantum: Latin: amount or extent.

Quid pro quo: (Latin: something for something) Giving something in exchange for something else. As consideration, it is an essential ingredient of a valid contract.

Quo warranto: (Latin: by what authority) Judicial review procedure questioning the authority of a person or organisation.

Quorum: (Latin: of whom) Minimum number of people necessarily present at a meeting for business to be validly conducted. Without a quorum, decisions are invalid.

Redemption: Repayment of a mortgage, so the equitable estate of the lender and the legal estate of the borrower merge in the mortgagor.

Rent: Money or other consideration paid by a tenant to a landlord in exchange for the exclusive possession and use of land, buildings or part of a building. Under normal circumstances, rent is paid at regular agreed intervals, but it may be paid in kind or by the provision of services. A peppercorn rent is a nominal sum (perhaps a penny a year) as an acknowledgement of the tenancy.

Res ipsa loquitur: (Latin: the thing speaks for itself) Situation where negligence is presumed against the defendant since the object causing injury was under his control. This is a presumption which can be rebutted by showing that the accident was inevitable and had nothing to do with the defendant's control or supervision. An example of res ipsa loquitur might be where a motorist hits a stray cow. The event itself imputes negligence by the farmer and that presumption may only be defeated if the defendant proves that the land was properly fenced.

Reserved judgment: Decision to be given at a later date.

Respondent: Person against whom a summons is issued, or a petition or appeal brought.

Riparian rights: Rights of owners of land on a river bank. Riparian rights include the right of access to, and use of, the water for domestic purposes (bathing, cleaning and navigating). The owner of the rights may take action to prevent damming, diversion or pollution of the water.

Sanction: To ratify, to approve or to punish.

Senior counsel: Barrister who has "taken silk" or been called to the Inner Bar.

Sequestration: Temporary confiscation of property by court order until the owner purges his contempt by obeying an earlier court order.

Service: Delivery of court documents by one party to the other, personally or by post.

Solicitor: General lawyer who may deal directly with the public.

Special Criminal Court: Non-jury court with three judges, set up to deal with mainly terrorist offences.

Stare decisis: (Latin: to stand by decisions) Policy whereby, once a court has made a decision on a certain set of facts, lower courts must apply that precedent in subsequent cases which embody the same facts.

Strict liability: Liability in tort without need to prove wrongful intent, negligence or fault.

Sub judice: (Latin: under trial) Matter still under consideration by a court. Any action which may interfere with the proper administration of justice while a matter is sub judice may be a contempt of court.

Subpoena: (Latin: under penalty) Court order requiring a witness to attend at a certain time and place or suffer a penalty.

Subrogation: Substitution of one person or thing for another by operation of law, without the agreement of the person from whom the rights are transferred.

Successor: Person who takes over the rights or property of another.

Sui juris: (Latin: of his own right) Person who has full legal rights and is not under any incapacity, such as being bankrupt, a minor or mentally incapable.

Summons: Written command to a person to appear in court.

Supreme Court: Final court of appeal in Ireland, headed by the Chief Justice. Most appeals are on matters of law or procedure. The Supreme Court will not normally reverse a finding of fact by a lower court, unless the decision was so perverse that no ordinary person could have come to such a finding on the facts presented.

Surety: Person who has pledged himself by deed to ensure that another person fulfils an obligation – such as appearing in court or paying back a loan.

Tenant: Person to whom a landlord grants temporary and exclusive use of land or a building, usually in exchange for rent. The contract for this type of legal arrangement is called a lease.

Tenancy in common: Tenants-in- common share property rights, but may hold different parts of a piece of land, or unequal shares. On the death of either of them, that person's share does not pass automatically to the surviving tenant but becomes part of the deceased's estate.

Tender: Unconditional offer of a party to a contract to perform his side of the bargain. For example, with a loan contract, a tender would be the debtor's offer to repay the amount owing to the creditor. If the tender is refused, the contract comes to an end.

Tenure: Right to hold or occupy land or a position for a certain amount of time.

Testator: Person who dies after making a valid will.

Testimony: Verbal presentation of evidence in court.

Tort: Non-contractual breach of duty which allows the injured person to claim compensation (or damages) from the tortfeasor. Torts include wrongs such as negligence, nuisance, defamation, false imprisonment and trespass.

Tortfeasor: Person who commits a tort.

Tracing: Equitable right of a plaintiff to reclaim specific property, through the court, where the property has passed on to others. This procedure is frequently used by a trust beneficiary to recover misappropriated trust property. Property may not be recovered from a person who has bought it for value, without notice of the circumstances.

Transferee: Person who receives property being transferred.

Transferor: Person who transfers property.

Trespass: Unlawful interference with another person or his property or rights. Trespass is a civil, not a criminal, offence and is actionable without proof of any actual damage.

Trust: Property given by a donor or settlor to a trustee, for the benefit of another person (the beneficiary or donee). A trustee manages and administers the property. A will is a form of trust but a trust can be formed during the lifetime of the settlor, in which case it is called an inter vivos or living trust.

Trustee: Person who holds property rights for the benefit of another through the legal mechanism of the trust. A trustee usually has full management and administration rights over the property, which must be exercised to the advantage of the beneficiary. All profits from the trust go to the beneficiary, although the trustee is entitled to recover administrative costs.

Ultra vires: (Latin: beyond the powers) An action which is invalid because it exceeds the authority of the person or organisation which performs it. A company cannot normally be bound by an act which is not empowered to do by its memorandum of association.

Undertaking: Enforceable promise given to court.

Undue influence: Unfair pressure which may invalidate a contract.

Unjust enrichment: Profit unjustly obtained by a wrongdoer. To obtain reimbursement, the plaintiff must show an actual benefit to the defendant, a corresponding loss to the plaintiff and the absence of a legal reason for the defendant's enrichment.

Usury: Excessive or illegal interest rate.

Verdict: Decision of a jury. In criminal cases, this is usually expressed as guilty or not guilty and may be unanimous or by a majority of 11-1 or 10-2. In a civil case, the verdict would be a finding for the plaintiff or for the defendant by at least nine of the 12 jurors.

Vicarious liability: Responsibility for the tort of another, even though the person held responsible may not have done anything wrong. This is often the case with employers who may be held vicariously liable for damage caused by their employees.

Void: Without legal effect. A document that is void is worthless. An anti-competitive agreement or contract in restraint of trade may be void. A "marriage" involving a person under the age of 18 would be void in Ireland.

Voidable: The law distinguishes between void and voidable contracts. Some contracts have such a fundamental defect that they are said to be void. Others have more minor defects and are voidable at the option of the innocent party.

Waiver: Renunciation of a right or benefit. Waivers are not always in writing. Sometimes actions can be interpreted as a waiver.

Commonly Used Terms - Criminal Law, Notes

Complaint:

Any oral or written allegation (generally made to the Magistrate) with a view to his taking action under the Code that somebody has committed offence.

Investigation:

It includes proceedings under the Code for collection of evidence and can never be judicial.

Inquiry:

It includes every inquiry made by Court and relates to all the proceedings held by the Court. It may be judicial or non-judicial and may include asking questions and studying evidences.

Trial:

It is conclusion of an inquiry or investigation. It is of judicial nature and results in either conviction or acquittal.

Summon:

A summon is a court order to an individual to appear in court at a specified time and place. A summon may be issued in both criminal and in civil cases. Every summon shall be served by a police officer, or by an officer of the court issuing it or any other public servant.

The summon shall if practical, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Every person on whom a summon is served shall sign a receipt on the back of the other duplicate.

Arrest

A person may be arrested for committing an alleged offence. The right to liberty as envisaged by the constitution is safeguarded by various procedures to be followed by the Police.

Arrest without Warrant

Any police officer may without an order from a magistrate and without a warrant, arrest any person

(i) Who has been concerned in any cognizable offence like murder, causing hurt, kidnapping etc., or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(ii) Who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking, or

(iii) Who has been proclaimed as an offender either under this Code or by order of the State Government; or Who is in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(iv) Who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

- (v) Who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (vi) Who has been concerned in, or against whom reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India; or
- (vii) Who, being a released convict, commits a breach of any rule, made under sub-section (5) of section 365; or
- (viii) For whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Hurt:-

The offence of hurt has been defined by section 319 of the Indian Penal Code. According to section 319 of IPC whoever causes bodily pain, disease or infirmity to any person is said to cause hurt. The definition of hurt contemplates causing of pain by a person to another so it is not necessary that there should be visible injury caused on the person. The causing of pain is sufficient. Causing disease and infirmity also come within the purview of this section.

The essential ingredients of the offence of simple hurt are as follows:-

- i) The offender voluntarily caused bodily pain , disease or infirmity to the victim ;
- ii) The offender did so with the intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

Definition of grievous hurt :-

The offence of grievous hurt is defined by section 320 of the Indian Penal Code . Section 320 says that the following eight kinds of hurt are designated as grievous -- -- --

- 1) Emasculation .
- 2) Permanent privation of the sight of either eye .
- 3) Permanent privation of the hearing of either ear.
- 4) Privation of any member or joint .
- 5) Destruction or permanent impairing of the powers of any member or joint .
- 6) Permanent disfiguration of the head or face .
- 7) fracture or dislocation of a bone or tooth.

Crime

An act of commission, or omission, against the law, tending to prejudice of the community, for which punishment may be inflicted as the result of judicial proceedings taken in the name of the State.

Acquittal Order

It is a judicial decision, resulting due to no complaint or withdrawal of a complaint. The person once acquitted cannot be arrested again on the basis of retrials on the same fact and for the same offence.

Discharge Order

It means no prima facie evidence against the accused to suggest further inquiry for the charge, but fresh trial due to new fact or evidence can effect re-arrest of the accused. However, the discharge order does not establish anything towards guilt of the accused.

First Information Report (FIR)

FIR is recorded at the time it is made and is one of the mode in hands of the aggrieved person to put criminal law in motion. All information relating to the offence, is logged in the register by the officer and be read over to the informant and signed by the informant.

FIR may not contain all details pertaining to the case but is the first information of an incidence or operation in the point of time which reaches the competent authority to investigate the case. A complaint may become a First Information Report but a First Information Report cannot become complaint. It has a considerable value in trials.

Offence

It means any action or inaction made punishable by the law during its validity and includes any act in respect of which a complaint may be made. Cognizable offence is an offence for which the arrest can be made without warrant.

As per First Schedule the minimum punishment for cognizable office is imprisonment for 3 years or more. For non-cognizable offence police officer cannot take cognizance without permission or order from the magistrate.

Compoundable Offence

These are private offences and law allows compromise, and it may result in acquittal of the accused.

Non compoundable Offence

These are public offences, do not allow compromise and are tried according to the law.

Charge

It is a clear and precise notice describing the nature of the accusation, allegation of facts constituting the offence, for which the accused is called upon to meet in the course of trial.

Bail and Cancellation of Bail

It is procurement of release from prison of a person who is charged of an offence, awaiting trial or an appeal, by the. deposit of a security to ensure his submission at the required time to legal authority. The monitory value of the security known as bail or bail bond, is set by the court having jurisdiction over the prisoner.

The Criminal Procedure Code does not define bail but the offence is defined in it as either bailable or non-bailable office. Bailable offence is an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence.

Cancellation of bail can be ordered even before. the person in question actually was released on bail. But bail once granted is not cancelled without sufficient reason.

Anticipatory Bail

Anticipatory bail is a direction to release a person on bail, issued even before the person is arrested. When any person apprehends that there is a move to get him arrested on false charges, or due to enmity with someone, or he fears that a false case is likely to be built up against him, he has the right to move the court of Session or the High Court for grant of bail in the event of his arrest, and the court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.

Conditions That May Be Imposed By The Court

The High Court or the Court of Session may include such conditions in the light of the facts of the particular case, as it may think fit, including:

- (a) a condition that the person shall make himself available for interrogation by the police officer as and when required;
- (b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- (c) a condition that the person shall not leave India without the previous permission of the court.

Important notes on anticipatory bail

If such person is thereafter arrested, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail and the magistrate taking cognizance of such offence decides that warrant should be issued against that person, he shall issue a bailable warrant in conformity with the direction of the court granting anticipatory bail.

The applicant must show by disclosing special facts and events that he has reason to believe, that he may be arrested for a non-bailable offence so that the court may take care to specify the offence or offences in respect of which alone the order will be effective and it is not a blanket order covering all other offences.

An accused is free on bail as long as the same is not cancelled. The High Court or Court of Session may direct that any person who has been released on bail be arrested and commit him to custody on an application moved by the complainant or the prosecution.

Adultery

A person commits adultery, if he:

- (i) has sexual intercourse with a woman who is and whom he knows or has reason to believe to be the wife of another man.
- (ii) without the consent or connivance of the husband, and
- (iii) it does not amount to rape.

The inconsistencies of the man are punishable, but not the inconsistencies of the wife. The wife is not punishable as an abettor. It is not committed by a married man who has sexual intercourse with an unmarried woman, or with a widow, or even with a married woman whose husband consents to it.

Whoever commits adultery shall be punished with an imprisonment which may extend to five years, or with fine, or with both. The wife as an abettor shall not be punishable.

Culpable Homicide - Sec. 299

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be there by caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Murder - Sec. 300

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause

death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club - wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here, A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

(First) —That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

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

(Thirdly) —That the provocation is not given by anything done in the lawful exercise of the right of private defence. Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustrations

(a) A, under the influence of passion excited by a provocation given by Z, intentionally kills. Y, Z's child. This is murder, in as much as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, in as much as the provocation was given by a

thing done by a public servant in the exercise of his powers.

(d) A appears as witness before Z, a Magistrate, Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e) A attempts to pull Z's nose, Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, in as much as the provocation was given by a thing done in the exercise of the right of private defence.

(f) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration :

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent. Illustration A, by instigation, voluntarily causes, Z, a person under eighteen years of age to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

Obscenity

The obscene actor song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with mental condition has often to be inferred from proved facts. The essential elements are:

- (i) Does any obscene act in any public place,
 - (ii) Sings, recites or utters any obscene song ballads or words, in or near public place.
- Whoever causes annoyance to others shall be punished with an imprisonment, which may extend to three months, or with fine, or both.

Dowry Death

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any other relative of the husband, then such death shall be called "dowry death". Whoever commits dowry death shall be punished with imprisonment which shall not be less than seven years but which may extend to life imprisonment.

Forgery

Forgery may be termed as the fraudulent making or alteration of a writing to the prejudice of another man's right. A person commits forgery if he makes any false document or any part of it, with an intent to:

- (i) cause damage or injury to the public or any person,
- (ii) support any claim or title,
- (iii) cause any person to part with property
- (iv) cause any person to enter into express or implied contract,
- (v) commit any fraud or that the fraud may be committed.

Criminal Misappropriation

Section 403 of the Indian Penal Code defines the offence of Criminal Misappropriation of property. According to this section whoever, dishonestly misappropriates or converts to his own use any movable property commits this offence .

The offence of criminal misappropriation of property is committed where the initial possession is innocent but the retention thereof becomes wrongful and fraudulent by a subsequent conversion for his own use.

The essential elements of the offence are as follows:-

- a) The property belongs to a person other than the offender ;
- b) The offender appropriated the said property or converted it to his own use ;
- c) He did so dishonestly or with the intention to cause wrongful gain to him or to cause wrongful loss to the other person : and
- d) Dishonestly misappropriated property must be movable.

Definition of Criminal breach of trust :-

Section 405 of the Indian Penal Code defines the offence of Criminal breach of trust .

According to this section whoever, being in any manner entrusted with property , or with any dominion over property, dishonestly misappropriates or converts to his own

use that property , or dishonestly uses or dispossess of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged , or of any legal contract, express or implied , which he has made touching the discharge of such trust , or willfully suffers any other person so to do , commits criminal breach of trust. The essential elements of the offence of Criminal breach of trust are as follows :-

- a) There must have Criminal intention or mens rea to constitute the offence ;
- b) There must be an entrustment with the property or domain over it ;
- c) That the offender dishonestly
 - i) misappropriated it , or
 - ii) converted it to his own use , or
 - iii) used it , or
 - iv) disposed it of ;
- d) That the offender or some other person at his instance did so in violation of direction of law or legal contract.

Criminal Misappropriation of property vs. Criminal Breach Of Trust :-

The differences between the offence of Criminal misappropriation of property and Criminal breach of trust are as follows :-

- a) In the offence of Criminal breach of trust, there is a contractual relationship between the parties. Whereas, in the offence of criminal misappropriation of property no contractual relationship exists in between the parties.
- b) In Criminal breach of trust conversion takes place with respect to the property held by a person in a fiduciary capacity. But in criminal misappropriation of property the person does not hold the property in a fiduciary relationship rather it comes to the possession of offender in any manner; and
- c) In criminal breach of trust, the property is lawfully entrusted to the offender. And the offender holds the property subject to some obligations , duties or trust but he dishonestly misappropriates it.

On the other hand, in criminal misappropriation of property, possession of the property is acquired by the offender not lawfully but casually or otherwise and the offender misappropriates the property afterwards.

Cheating

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation— A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations:

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.
- (e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.
- (f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.
- (g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.
- (h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.
- (i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

DIFFERENCES BETWEEN CULPABLE HOMICIDE AND MURDER

SECTION 299 (Culpable homicide)	SECTION 300 (Murder)
A person commits culpable homicide if the act by which the death is caused is done -	Subject to certain exception culpable homicide is murder if the act by which death is caused is done
Intention	
a) with the intention of causing death; or	1. with the intention of causing death; or

b) with the intention of causing such bodily injury as is likely to cause death; or	2. with the intention of causing such bodily injury to a person whom the offender knows to be likely to cause the death of that person to whom the harm is caused; or
	3. with the intention of causing bodily injury to a person and the bodily injury intended to be sufficient in the ordinary course of nature to cause death; or
Knowledge	
c)	3. with the knowledge that the act is so imminently dangerous that it must in all probability cause death, or such bodily injury as likely to cause death, and that there is any risk of causing death or such injury as mentioned above.

DIFFERENCES BETWEEN KIDNAPPING AND ABDUCTION

Kidnapping	Abduction
1. Kidnapping is committed only in respect of minor or a person of unsound mind.	1. Abduction is committed in respect of persons of sound mind.
2. In kidnapping, the person kidnapped is removed from lawful guardianship.	2. Abduction has reference exclusively to the person abducted.
3. In kidnapping, the minor is simply taken away. The means used may be innocent.	3. In abduction, force, compulsion, or deceitful means are employed.
4. In kidnapping, consent of the person taken or enticed is immaterial.	4. In abduction, consent of the person moved or taken and voluntarily given condones the offence.
5. In kidnapping, the intent of the offender is wholly irrelevant.	5. In abduction, the intent of the offender is important.
6. Kidnapping is not a continuing offence. The offence is completed as soon as the minor is removed from the custody of his or her guardian.	6. Abduction is a continuing offence. A person is abducted both when he is first taken from an lawful custody and also when he is removed from one place to another.

7. Kidnapping is a substantive offence punishable under Section 363, IPC.	7. Abduction is an auxiliary act, not punishable unless accompanied with some criminal intention (Section 364-366)
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DIFFERENCES BETWEEN ACQUITTAL AND DISCHARGE:

Acquittal	Discharge
1. The acquittal is a judicial decision. It means innocence of accused after complete inquiry.	1. It means that there is no justifiable evidence against the accused and any further inquiry in the matter would serve no purpose. It neither establishes guilt nor innocence of the accused.
2. A person once acquitted cannot be re-arrested.	2. The person once discharge can be called for further inquiry and if the evidence demands can be arrested also.
3. The person once acquitted cannot be tried for the same offence again on the same facts.	3. The discharge does not bar the institution of fresh proceedings, if new evidences is available.

DIFFERENCES BETWEEN COMPOUNDABLE OFFENCE AND NON-COMPOUNDABLE OFFENCE:

Compoundable offence	Non-compoundable offence
1. A compoundable offence is punishable with imprisonment for two years or less as mentioned in Section 320 Cr.P.C.	1. Offences other than those mentioned in Section 320 Cr.P.C. are non- compoundable.
2. In these offences compromise can be made between the parties.	2. No compromise is allowed in these offences.
3. These are private in nature and damages may be recoverable in civil law.	3. These offences are public in nature.

DIFFERENCE BETWEEN BAILABLE OFFENCES AND NON-BAILABLE OFFENCES

Bailable Offence	Non-Bailable Offence
1. These offences are less serious in nature.	2. These offences are grave and more serious in nature.
2. Bail is a matter of right and it can be granted in the police station.	2. It is the discretion of the court to give bail.

DIFFERENCES BETWEEN COGNIZABLE OFFENCES AND NON-COGNIZABLE OFFENCES

Cognizable Offences	Non-Cognizable Offences
1. It means an offence for which the police authorities have the power to arrest without warrant.	1. The police has no authority to arrest without warrant.
2. Cognizable offenses are those offenses which are serious in nature. Example- Murder, Rape, Dowry Death, Kidnapping, Theft, Criminal Breach of Trust, Unnatural Offenses.	2. Non-Cognizable offenses are those which are not much serious in nature. Example- Assault, Cheating, Forgery, Defamation.
3. Section 154 of CrPc provides, that under a Cognizable offense or case, The Police Officer has to receive the First Information Report (FIR) relating to the cognizable offense, which can be without the Magistrate's permission and enter it in the General Diary and immediatly start the investigation.	3. Section 155 of CrPc provides that in a non-cognizable offense or case, the police officer cannot receive or record the FIR unless he obtains prior permission from the Magistrate.
4. If a Cognizable offense has been committed, a Police Officer can investigate without the Magistrate's permission.	4. Under a Non-Cognizable offense/case, in order to start the investigation, it is important for the police officer to obtain the permission from the Magistrate

Criminal Law - Introduction, Notes

Introduction

WHAT IS CRIME

It is very difficult to describe crime. The killing of a person is a crime. Why, because the person committing the act has no power to do so (take the life), as he can neither give life nor make the dead person alive again. But, putting a person who may have committed a grave act to death by the order of the court is not a crime; for in that case the life has been taken in accordance with law or in other words we can say that the society approves it.

In this concept, law is blind and does not go behind the reason out why the person who has been put to death, committed the act for which he has been punished.

Bhagat Singh was put to death by the British because he challenged them and was criminal from their point of view and as such in eyes of law as they saw it. But for us he was not a criminal but a freedom fighter, who laid down his life for the motherland.

Thus what is and is not a crime depends upon the percept of the ruler and it is the ruler who decides what should be described as 'crime' so that the day to day affairs of the society are conducted in a smooth fashion and thus there is no problem of law and order. Concept of crime and punishment has passed through different stages in the context of Indian society.

CHANGING CONCEPT OF CRIME

The concept of law has changed overtime. But one of the important interpretation of law is, 'these are made by the rulers to secure their rule'.

ANCIENT HINDU LAW

In Ramayana, it is mentioned that king Dashrath was cursed by the blind parents of 'Shrawan', who was killed by mistake. The parents of Shrawan cursed him that he will meet the same fate and thus ordained a punishment for him. The punishment was not only met to Dashrath but to his son Lord Rama as well, though he was nowhere connected with the act; and the act for which king Dashrath was cursed; in terms of the modern law is not a crime. Thus the concept of 'intention' which is an essential part of crime today can be said to missing in those times.

CODIFICATION OF LAW BY MANU

The establishment of kingdoms and development of civilisation demanded that the people should live in peace. They should be provided protection from attacks. Thus any attack to remove the king was a threat to the orderly form of society and must be met with a firm hand.

Even within the kingdoms, the people should not act in a way which may cause disaffection in the society. Thus to provide protection to the ruler and information to the people, it was necessary that the laws be codified and the person credited with it is Manu, who is said to have provided complete code of acts which could be classified as crime for which punishments could be given by the king or his officers. He recognised theft, robbery, assault, adultery, gambling etc as crime.

But his law also described different punishments for persons belonging to different castes and strata of society. Still there was no difference between private and public wrongs. However, he recognised the element of 'intention' and thus right of private defence can be said to have established by that time. The codification brought about the system of court system and also different branches like civil law and the criminal law. It is observed that excellent court system existed even during Mauryan rule.

MUSLIM LAW

After, the Muslim kings established their control in India, the Muslim Criminal Law came to occupy the prime position; which itself was based on Koran which was the first source of Muslim Law. In Muslim law, the laws were categorised as crime against God, against State and against Private Individuals. There was no distinction between 'public and private law'. There was no difference between tort and crime or between 'homicide and murder'.

BRITISH SYSTEM OF LAW

When the British annexed parts of the country they found different types of law being enforced in different parts of the country. They felt the need of single codified system of law, which took its own time and it was ultimately in 1860 that the Indian Penal Code was passed and implemented from 1862.

Indian Penal Code - Criminal Law, Notes

The First Law Commission was appointed in India in 1835. The commission had four members. Lord T.B. Macaulay was the Chairman of the First Law Commission. It was directed to prepare a draft of penal code for India which it submitted to the Government in 1837. This draft was enacted into law in 1860 by the Legislative Council. It received the assent of the Governor General on 6th October, 1860 and came into force on 1st January, 1862 in British India. By this enactment Muslim Criminal law was completely abolished and a uniform penal law for India was introduced. However, the princely states continued to follow their own legal system until 1940. The state of Jammu & Kashmir has its own Ranbir Penal Code which in itself is based on IPC. After partition, India inherited the legal system implemented by the British.

Elements of Crime

The fundamental principle of penal liability is contained in the maxim "actus non facit reum nisi mens sit rea". The maxim means an act does not amount to a crime unless it is done with a guilty intention. In other words the act alone does not amount to guilt, it must be accompanied by a guilty mind. The intent and the act must both concur to constitute the crime. Thus there are two essential conditions of criminal liability. They are:-

(1) Actus reus;

(2) Mens rea

(1) Actus reus (Result of human conduct)

Actus reus is the first essential element or ingredient of a crime. An act is any event which is subject to the control of human will. An act is a conscious movement. It is the conduct which results from the operation of will. "Actus reus" refers to the result of human conduct which the law seeks to prevent. If any human conduct (actus) is not prohibited by law, the act or conduct will not be termed as a crime. A person who commits such an act is not liable for a crime. Any movement of the body which is not a consequence of the determination of the will is not an act. Thus involuntary actions will not become criminal act. If a person who suffers from sleep disorder and he sets fire to a house during his sleepwalk, he will not be liable under criminal law.

Actus reus may be either Positive or Negative.

Example 1 : X shoots Y and kills him. It is a positive actus reus.

It is an example of 'positive' actus reus.

Example 2: The mother of a child does not feed him and causes the death of the child by starvation. Here, actus reus is negative or omission to act.

It is an example of 'negative' kind of actus reus.

In order to be liable for crime the act or omission should be one prohibited by law.

More illustrations of Negative kind of 'actus reus'.

(i) A, who is having sufficient means, failed to help a starving man. The man dies due to starvation. Is A criminally liable for death of the starving man ?

No. A is under no obligation to feed the starving man and his omission is not prohibited by law. A has not committed any crime.

(ii) N, who knows swimming, failed to save the life of a drowning child in a swimming pool and the child died as a result of the omission.

The omission is not prohibited by law and A is not liable for crime. However, if A was so appointed to save the drowning persons, then the omission to act would have been a crime.

(iii) A is a Jail warden. He failed to supply food to the prisoners in the jail and several prisoners died due to starvation. The jail warden is liable for murder as he was under duty to provide food to the prisoners and thus violated a prohibited omission.

2. Mens rea (Guilty Mind)

A prohibited act will become a crime only when it is accompanied by a guilty state of mind. The mind must know that the act it is asking the body to commit is prohibited by law and thus will be at fault; before any crime can be committed. An act or omission alone is not sufficient to constitute a crime. Thus we may say,

Crime = Prohibited act + Guilty mind.

In England and India the general rule relating to criminal liability is based on the maxim *actus non facit reum nisi mens sit rea* that an act is not a crime unless it is done with guilty mind.

Therefore, if the mental element of any conduct alleged to be a crime is proved to have been absent in any given case, the crime so defined is not committed, or nothing amounts to a crime which does not satisfy that definition.

Exceptions to 'mens rea':

There are certain enactments which define offences without mentioning the necessity of mens rea.

1. Bigamy
2. Public Nuisance
3. Revenue Acts
4. Criminal cases on summary trial

In those statutes offences are defined in absolute terms. The Foreign Exchange Regulation Act, 1947, the Prevention of Food Adulteration Act, 1954, the Narcotic Drugs and Psychotropic Substances Act, 1985 etc., are examples of such enactments.

When an offence is defined in absolute terms i.e. without mentioning the necessity of mens rea, the question that would normally arise is:

Whether the courts can read in between lines the necessary mens rea?

In former times it was thought that the legislature was not competent to over-ride the established rules of common law. According to this view, even if the necessity of mens rea is not expressly mentioned in a particular statute, the judges should read in between lines to find out the necessary mens rea. In other words the necessity of mens rea should be taken as granted. Thus even if the offence is defined without mentioning the necessity of mens rea, the courts used to acquit the accused in the absence of guilty mind.

Kinds of Punishments

- 1) Death sentence (Capital Punishment)
- 2) Imprisonment for life
- 3) Imprisonment - simple and rigorous
- 4) Forfeiture of property
- 5) Fine

Commutation of Sentence of imprisonment for life - It empowers the appropriate govt to commute the sentence of a Life imprisonment after he already in jail since 14 years.

GENERAL EXCEPTIONS

There are certain general defences under the criminal law which accused can plead before the court to prove his innocence. The general exceptions are contained in sections 75-106 and these have the effect of converting an offence into a non-offence. In law, the burden of proving that one has committed an offence is always on the person who has made the charge or the accuser and not on the accused; but in this case if the accused pleads non-guilty taking advantage of these exceptions, then the burden of proof will lie on him.

Example

A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. Here the onus is on A to prove that the act done by him was by the order of his superior and thus he is innocent.

The General Exceptions mainly are:

- i) Mistake of Fact ... Ss – 76, 79
- ii) Judicial acts Ss- 77,78
- iii) Accident ... S-80
- iv) Absence of criminal intent ... Ss-81- 86, 92-94
- v) Consent Ss 87- 91
- vi) Trifling acts S – 95
- vii) Private Defence Ss-96 – 106

These can be called either

1. Excusable
2. Justifiable

1) Act done by a person bound or by mistake of fact believing himself bound by law.

Here a person is excused who has done what by law is an offence, under a misconception of facts, leading him to believe in good faith that he was commanded by law to do it.

Example- A an officer of a court of Justice, being ordered by that Court to arrest Y and, and, after due enquiring, believing Z to be Y, arrests Z. A has committed no offence.

Principle: Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be bound by law to do it.

Example: A police-officer came to Bombay from village with a warrant to arrest a person. After reasonable inquiries and on well- founded suspicion he arrested A, a shopkeeper under the warrant, believing in good faith that he was the person to be

arrested. A, filed a complaint-against the police officer for wrongful confinement. The police officer is not guilty because he was acting under belief that the person he arrested was the one against whom the warrant was issued.

2) Act of Judge when acting Judicially- Under this section a Judge is exempted not only in those cases in which he proceeds irregularly in the exercise of a power which the law gives him, but also in cases where he, in good faith, exceeds his jurisdiction and has no lawful powers.

Principle- Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him.

3) Act done pursuant to the judgment or order of court

Principle: Nothing which is done in pursuance of or which is warranted by the judgment or order of, a court of justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the court had such jurisdiction

4) Act done by a person justified or by mistake of fact believing himself justified by law.

Principle: Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of Law in good faith believes himself to be justified by Law in doing it.

Example: A sees Z commit What appears to A to be a murder, A, in the exercise of the best of his judgement exerted in good faith, of the power which the Law gives to all persons of apprehending murderers

FACTUAL SITUATION – 1

A, a constable of the National volunteer corps in obedience to the orders of a superior officer fired a gun and shot a woman inside the tent in which gambling was going on and no violent mob had gathered there.

Here the constable will be guilty of the offence of murder. The order of the superior was unlawful and obedience to an unlawful order does not excuse the person who commits an offence in obedience of such an order.

FACTUAL SITUATION – 2

P a police officer after reasonable inquiry arrested 'B' who was not involved in any offence.

Here, P is entitled to claim the defence of justifiable mistake because he had arrested B after making reasonable inquiry P did not act negligently but arrested B in good faith thinking himself to be justified in doing so.

MISTAKE OF LAW:

A mistake of Law happens when a party having full knowledge of the facts comes to an erroneous conclusion as to their legal effect. Mistake in point of Law in criminal cases is no defence. The maxim *ignorantia juris non excusat* (ignorance of law excuses no one) in its application to criminal offences, admits of no exception, not even in the case of a foreigner who cannot reasonably be supposed in fact to know the law of the land. It is indeed a legal fiction to suppose that everyone knows the law of the land. It is also

supported by the maxim 'Ignorantia scire tenetur not excusat' (i.e. ignorance of those things which one is bound to know does not excuse).

Mistake of fact and Mistake of Law.

Ignorantia facti excusat, ignorantia legis neminem excusat is a well known maxim of criminal law. It means ignorance of fact is an excuse; ignorance of law is no excuse. A mistake of fact consists in unconsciousness, ignorance or forgetfulness of a fact, past or present and which is material to the transaction. Defence of mistake of fact cannot be pleaded where an act is clearly a wrong in itself, and a person, under a mistaken impression as to the facts which render it criminal, commits that act, he will be guilty of a criminal offence. Thus burglar cannot escape punishment by saying that he entered a wrong house by mistake as he wanted to commit theft in some other house, nor can a murderer be heard to say that the deceased was not his intended victim. In either case mistake of fact is not excuse.

5) Accident in doing a lawful Act.

Under this the doer of an innocent or lawful act in an innocent or lawful manner and without any criminal intention or knowledge from any unforeseen evil result that may from accident or misfortune.

Example:

A is at work with a hatchet, the head flies off and kills a man who is standing by, Here if there was no want of proper caution on the part of A, his act is excusable and not an offence.

Principle: Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution

Factual situation: A big party consisting of some hundred men went out for sheeting pigs. A boar rushed towards P, one of the member who fired at the boar, but he missed boar and the struck the leg of a member of the party. Here P is not guilty because the death was caused by accident and was not the result of rash or negligent shooting.

6) Act likely to cause harm but done without

criminal intent and to prevent other harm. An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided. Thus, there must be a situation in which the accused is confronted with a grave danger and he has no choice but to commit the lesser harm, may be even to an innocent person in order to avoid the greater

harm. Here the choice is between the two evils and the accused rightly chooses the lesser one.

Example:

A, in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Principle: Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Factual Situation: A bargeman threw the goods of 'P' out of a barge in order to lighten the barge in a storm and for the safety of the passengers.

Here not only the bargeman but any passenger would be justified in taking any such action for the safety of the passengers and it would be immaterial that the bargeman had overloaded the barge.

7) Act of a person of unsound Mind

Under this a person is exonerated from liability for doing an act on the ground of unsoundness of mind if he, at the time of doing the act, is either incapable of knowing.

1) the nature of the act, or

2) that he is doing what is either wrong or contrary to law

There are four kinds of persons who may be said to be non compos mentis (not of sound mind):

1) an idiot

2) one made non compos by illness

3) a lunatic or a mad man

4) one who is drunk (intoxication against one's will)

Example: 'A' killed his three infant grand daughters with a handle of a grinding stone and he did not try to conceal the body of victims, nor he attempted to evade law by destroying the evidence of crime and he made no preparation for killing the three kids. It shows that he was of unsound mind at the time of commission of crime.

Principle: Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Factual Situation:

Ram Lal killed his 8 years old boy and concealed his dead body so that no one can search the body. After destroying the evidence of crime he ran away from the place of incident. The doctors report showed that he was a case of epilepsy with retarded mental faculty so as to put him in the category of severe sub-normality

Here Ram Lal would be guilty of murder because his running away from the place of incident after destroying all the evidence of crime clearly shows that he was conscious of the fact which was enough to defeat the plea of insanity.

8) Act of a person incapable of judgement by reason of intoxication caused against his will. Under this a person will be exonerated from liability for doing an act which in a state of intoxication if he at the time of doing it, by reason of intoxication, was

1) incapable of knowing the nature of the act,

or

2) that he was doing what was either wrong or contrary to law Provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Principle: Nothing is an offence if the person who at the time of doing it, is by reason of intoxication, incapable of knowing the nature of the act or that what he is doing is either wrong or contrary to law, provided the thing which intoxicated him was administered to him without his knowledge or against his will.

Factual Situation: Mohan Das got drunk of his own volition and on his way back home he assaulted a policeman. He is prosecuted for intimidating a public servant. Here, Mohan Das would be liable for punishment for interfering with the discharge of duties by a public servant. He has been intoxicated voluntarily. He can't take the defence of intoxication to avoid liability.

RIGHT OF PRIVATE DEFENCE OF ACCUSED:

Sections 96 to 106 of IPC deals with Right of Private defence. A person has all right to protect his body and property as well as the body and property of other person from any attack or aggression which endangers his own life or property or that of other person. The most important thing about this right of self defence is that it must be exercised very reasonably and cautiously. It means no more harm should be caused to the aggressor as is necessary to protect one's own or other's body and property. So, if you shoot a thief who has parted with the stolen goods and who is on a run to save himself, you may be charged for murder and your plea of self defence may not work. This is because, you have exceeded the right of private defence. Following points should be kept in mind while solving a question on legal reasoning based upon the concept of this exception-

- 1) Right of private defence is a general exception because one may not be punished even for killing another person, if it is done in valid exercise of the right of self defence.
- 2) This right is available against an act which reasonably cause apprehension of death or grievous hurt or rape or kidnapping or wrongful confinement of any person.
- 3) In case of property, this right is available against theft, robbery, mischief by fire, house- breaking etc., of any person.
- 4) No right of private defence if there is sufficient time to take recourse of public authorities e.g. police.
- 5) Aggressor or one who attacks has no right of private defence. There is no right of private defence in retaliation or revenge.
- 6) Right of private defence extends to causing death of the aggressor only in the case when there is a reasonable apprehension of death, grievous hurt, rape, kidnapping or abduction and wrongful confinement of the body or person.
- 7) One may also cause death of the aggressor where a reasonable apprehension of death or grievous hurt arises from an act of or attempt of robbery, house breaking by night, mischief by fire, theft or house trespass.
- 8) The harm or injury inflicted by the person on the aggressor must not exceed the danger or threat posed by his act. One can't kill a pickpocket for stealing his purse unless there is an apprehension of death or grievous hurt from a weapon in his hand.

Thus, Right of private defence is absolutely necessary. While the Government is responsible for protecting its citizen, yet it cannot effectuate safety and security unless

this right is granted to its citizens. The vigilance of the Magistrate can never make up for vigilance of each individual on his own behalf.

LEGAL PRINCIPLE: For purpose of exercising right of private defence physical or mental capacity of attacker is no bar.

Factual Situation: Robin in his madness attempts to kill Shabana. Shabana in order to save himself hits Robin with iron rod.

- a) Shabana has right of private defence though Robin is mad
- b) Both Robin and Shabana are guilty of no offence
- c) Shabana has no right of private defence since Robin is mad
- d) Shabana guilty of inflicting grievous injury on Robin

The correct answer is (a).

LEGAL PRINCIPLES:

(I) Any person may use reasonable force in order to protect his property or person.

(II) However, the force employed must be proportionate to the apprehended danger.

Factual Situation: Ravi was walking on a lonely road. Maniyan came with a knife and said to Ravi, "Your life or your purse". Ravi pulled out his revolver. On seeing it, Maniyan ran. Ravi shot Maniyan on his legs.

Answers:

- a) Ravi will not be punished as there was danger to his property.
- b) Ravi will not be punished as the force he used was proportionate to the apprehended injury.
- c) Ravi will be punished as the force employed was disproportionate to the apprehended injury.
- d) As Maniyan ran to escape there was no longer a threat to Ravi's property. So Ravi will be punished.

The correct answer shall be (d). You can appreciate (c) to be a close option but, once Mr. Maniyan ran to escape there is not at all any apprehended danger. So, when there is no threat to a property or body, no right of private defence available.

LEGAL PRINCIPLE: One has right to defend his life and property against criminal harm provided it is not possible to approach public authorities and more harm than is necessary has not been caused to avert the danger.

Factual Situation: The farm of X on outskirts of the Delhi was attacked by a gang of armed robbers. X without informing the police, at first warned the robbers by firing in the air. As they were fleeing from the farm, he fired and killed one of them. At the trial-

I. X can avail the right of private defence as he was defending his life and property.

II. X cannot avail the right as he failed to inform the police.

III. X cannot avail the right as he caused more harm than was necessary to ward off the danger.

IV. X can avail of the right as at first he only fired in the air.

- a) I and IV b) II only
- c) II and III d) IV only

Answer to this question is of course (c). This is because X has failed to take recourse to the public authorities i.e., police. Further, he kills a robber while he was fleeing away. It means there was no apprehension of death or grievous hurt to him.

Example 9

W on returning home late after work was accosted by an armed vagabond who tried to rob her purse and valuables at knife point. W raised an alarm but was unsuccessful in obtaining help. In the ensuing struggle W snatched the knife from the brigand and killed him. At the trial W –

- I. Can claim the right of private defence as she was defending her life and property.
- II. Can claim private defence as she tried to obtain help but could not approach public authorities.
- III. Cannot claim private defence as to defend a few valuables a person cannot be killed.
- IV. Cannot claim private defence as it was her own fault that she was coming home late at night.

- a) I and II b) III
- c) III and IV d) II.

In this case, W can claim the right of private defence.

Hence, the answer will be (a).

Types of crimes - Criminal Law, Notes

CRIMINAL ATTEMPT

An attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. Attempt to commit an offence can be said to begin when the preparations are complete and the culprit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence.

To constitute an attempt the following elements are necessary:

- i) Mens rea to commit the offence
- ii) An act which constitutes the actus reus of a criminal attempt.
- iii) Failure in accomplishment (i.e. the act must fall short of completion of the intended crime)

Illustrations:

- 1) A makes an attempt to steal some jewels by breaking open a box and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft and therefore is guilty of attempt to theft.
- 2) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty for attempt to commit theft.
- 3) A intending to murder Z, buys a gun and loads it. A is not yet guilty of an attempt to commit murder. A fires the gun at Z, he is guilty of an attempt to commit murder.
- 4) A, intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping. A is not yet guilty of an attempt to commit murder. A places the food on Z's table or deliver it to Z's servant to place it on Z's table. A is guilty of an attempt to commit murder.

Principle: Whoever attempts to commit an offence punishable by the Indian Penal code with imprisonment for life or imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall be punished.

Factual Situation: A, applied to the Patna University for permission to appear at the M.A. Examination in English as a private candidate representing that he was teaching in a certain school. In support of his application he attached certain experience certificates purporting to be from the Head Master of the school and the Inspector of schools. The permission was granted. Later on it was found that he was neither a graduate nor a teacher and therefore, the permission was withdrawn.

Here A was held guilty of attempt to cheat the stage of preparation was complete when the accused prepared the application for submission to the university and the moment it was dispatched the offence of attempt was complete.

Preparation to commit an offence

The preparation to commit an offence is not an offence. After making the preparation any act done towards committing the offence with intention to commit it, is an attempt

to commit the offence which is by itself an offence.

For example: A jeweler with the object of fraudulently obtaining insurance moneys hid his stock of jewellery, tied himself up beneath a chair and cried for help. The police passing along the road hearing the noise entered the house and found the jeweler in helpless position. The police was told that the jeweler has been robbed after tying him in this helpless position. The safe was found open and jewellery missing. Subsequent investigation revealed that the jeweler had made these false pretensions not to obtain money from the insurance company. The jeweler himself confessed it. Here the jeweler cannot be convicted of an attempt to obtain money by false pretences, as his acts had been merely acts of preparation for the crime and not a step towards it.

MISCHIEF

Mischief as an offence constitutes:

- a) Intention or knowledge of likelihood to cause wrongful loss or damage to the public or to any person.
- b) Causing the destruction of some property or any change in it or in its situation and
- c) Such change must destroy or diminish its value or utility or affect it injuriously.

Principle: Whoever, with intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously commit mischief.

Factual Situation: A, stopped supply of water to his neighbour flat through operation of wrench value key and thereby, turning the main pipe outside the storage reservoir due to which neighbour was debarred from the supply of water in his flat.

Here the Act done by A was contrary to the natural use of and serviceableness of the property which diminishes its value and utility and hence such act amounts to mischief. It is not necessary that the property destroyed should belong to the person injuriously affected. It is sufficient if he suffers loss of interest due to destruction of such property.

For example: A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. Here A has committed mischief.

⇒ A men may commit mischief on his own property. A person who destroys property which at the time belongs to himself, with the intention of causing or knowing that it is likely to cause wrongful loss or damage to anybody else is guilty of this offence.

For Example: A, having joint property with Z in a horse, shoots the horse intending thereby to cause wrongful loss to Z. A has committed mischief.

CRIMINAL TRESPASS

Any person who enters upon the property of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, commits an offence of “criminal trespass”.

Essentials

- 1) Entry into or upon property in the possession of another
- 2) If such entry is lawful, then unlawfully remaining upon such property.
- 3) Such entry or unlawful remaining must be with intent-

- a) To commit an offence or
- b) To intimidate, insult or annoy any person in possession of the property.

For example:

1) A had shot a deer near B's land, he followed it into B's land for the purpose of killing it, although he was warned off the land beforehand by B. Here A was not guilty because the requisite intention was absent.

Example 2

A enters a house with intention of committing theft. But moved by the poverty of the house-holder he drops a rupee note and left the place. In this case A will be liable for criminal trespass.

Principle: Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property. Unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence.

Factual Situation: A, a student wrote love letters to an innocent girl, who is a perfect stranger to him and the student entered the girl's house to deliver the letters. Such act of the student was likely to bring annoyance to the girl.

Here, when the student enters the girl's house to deliver such a letter and to annoy her his act constitutes the offence of criminal trespass.

THEFT:

In order to constitute theft 5 factors are essential. They are-

- a) Dishonest intention to take property
- b) The property must be movable
- c) The property should be taken out of the possession of another person
- d) The property should be taken without the consent of that person
- e) There must be some moving of the property in order to accomplish the taking of it.

NOTE:

- a) Taking without any dishonest intention is not theft
- b) The intention to take dishonestly must exist at the time of the moving of the property.
- c) A person can be convicted of stealing his own property if he takes it dishonestly from another.
- d) Things attached to the land may become movable property by severance from the earth.

Illustration

- a) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession without Z's consent. Here as soon as A has severed the tree in order to such taking, he has committed theft.
- b) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession and if A dishonestly removes it, A commits theft.
- c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock

begins to move, A has committed theft of the treasure.

(d) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e) Z, going on a journey, entrusts his plate to A, the keeper of the warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(f) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g) A finds a ring lying on the highroad, not in the possession of any person. A by taking it, commits no theft, though he may commit criminal misappropriation of property.

Principle: Whoever intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.

Factual Situation:

'A' had taken a bicycle on hire-purchase from a bicycle dealer named 'B' on condition that if the instalments are not paid regularly, 'B' will be entitled to take back the bicycle. There was default in payment of the instalments. One day as 'C' the servant of 'A' was going on the same bicycle, 'B' forcibly took possession of it.

Here B will be liable for theft because B had taken the bicycle out of the possession of C, dishonestly

EXTORTION:

For an offence under this section the extortioner must put another person under fear of injury and thereby dishonestly induce that person to deliver property.

The essential ingredients are:

- 1) Intentionally putting a person in fear of injury to himself or to another.
- 2) Dishonestly inducing the person so put in fear to deliver to any person any property or valuable security.

Illustrations:

1) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

2) A threatens to publish defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

Note:

- 1) The offence of extortion is not complete until delivery of property by the person put in fear.
- 2) The thing delivered under this section may be any property or valuable security or anything signed or sealed which may be converted into a valuable security. Even incomplete deeds may be the subject of extortion.

Principle: Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security commits. “extortion”.

Factual Situation: P was a prosecutor and while returning home met a woman on the way to whom he spoke, where upon he was accosted by a policeman on duty who threatened to prosecute him for having spoken to a prostitute on the street for which P made himself liable to pay a fine of 1 pound. The constable, however, proposed to drop the matter if he was paid a hush money of 5 sh. Which P paid him.

Here the constable was made liable for extortion.

Extortion vs. Theft

i) In extortion, the goods are moved out of possession of the owner but his consent is obtained wrongfully; while in theft the offender obtains the possession of goods without the consent of the owner.

ii) Theft is committed only of movable property while both movable as well as immovable property are subject of extortion.

iii) In extortion the property is obtained by putting a person in fear of injury to that person or to any other to part with his property, while in theft there is no element of fear.

iv) In extortion the property is delivered by the victim to the offender. As he is put under threat or fear.

Robbery

It is an aggravated form of theft or extortion or both.

When the theft is robbery: In the process of committing theft, if an offender causes or attempts to cause to any person death or hurt or wrongful restraint, or fear thereof.

Robbery would be committed only if the accused is capable of actually evoking fear in the victim on account of his being in physical proximity to the person so threatened with instant death, hurt or wrongful restraint.

Example: A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

When the extortion is robbery:

If the offender makes the victim give up or deliver the goods to the offender under fear of death, instant hurt or wrongful constraint.

Example:

i) A meets Z on a highway, shows pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has exerted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

ii) A obtains property from Z by saying - “your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees”. This is extortion, and not robbery, unless Z is put in fear of instant death of his child.

Dacoity

The offence of dacoity is defined in section 391 of the Indian Penal code. In order to commit dacoity the minimum number of persons required is five. The next requirement is that those five persons must act conjointly i.e with prior planning and a common intention. Thus, a robbery which is committed or attempted to be committed conjointly by five or more persons amounts to dacoity.

Cheating:

A person is said to cheat when he by deceiving another person fraudulently or dishonestly induces the person so deceived, to deliver any property to him, or to consent that he shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property. The essence of an offence of cheating is that damage or harm caused by deception must be proved in relation to the person deceived. A person is deceived when he was induced to believe that as true which was untrue.

For Example:

- 1) A, by falsely pretending to be in the civil service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- 2) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- 3) A, intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed and thereby dishonestly induces Z to pay money. A cheats.

Principle: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property, to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to cheat.

Factual Situation:

A called at the houses of a number of persons and contracted with them to make paintings from photographs. He obtained payments in advance but did not work in any case and it appeared that he never had any intention of doing any work. Here F is guilty of cheating as he has deceived them all by inducing to make advance payment.

WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

Wrongful Restraint: The Wrongful restraint is partial restraint of the personal liberty of a man. Every man's person is sacred and free and law penalizes those who abridge personal liberty of another. The essential ingredients of wrongful restraint are:

- a) Voluntary obstruction of a person.

b) The obstruction must be such as to prevent that person from proceeding in any direction in which he has a right to proceed.

For Example:

a) A builds a wall across a path along which Z has a right to pass. A is guilty for wrongful restraint.

b) A threatens to set a sewage dog at Z. If Z goes along a path along which Z has a right to go. Here A commits the offence of wrongful restraint

EXCEPTION:

The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence of wrongful restraint.

For Example: A prevents the passage of animals by putting certain obstruction in a road over which B had a right of passage for men and cattle leaving a portion of the way for men to pass.

Principle: Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction said wrongfully to restrain that person.

Factual Situation: The driver of a bus purposely stopped the bus across the road in such a manner as to prevent another bus which was coming from behind, from proceeding further.

Here the bus driver is guilty of wrongful restraint.

Wrongful Confinement:

Wrongful Confinement is a kind of wrongful restraint in which a person is kept within the limits out of which he wishes to go and has a right to go. There must be a total restraint of the personal liberty of a person and not merely a partial restraint to constitute confinement.

Essential ingredients are:

1) Wrongful restraint of a person

2) Such restraint must prevent that person from proceeding beyond certain circumscribing limits

Illustrations:

a) A causes Z to go within a walled space and locks Z in, Z is thus prevented from proceeding in any direction beyond circumscribing line of wall. A wrongfully confines Z.

b) A places men with firearms at the outlets of a building and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

Principle: Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said “wrongfully to confine” that person.

Factual Situation: A was on his journey by car from Allahabad to Kanpur B met him in the way and requested for a lift upto Fatehpur an intermediate town. A agreed to his request but on reaching Fatehpur did not drop B there in spite of his repeated requests. B is carried over to Kanpur. Here A is guilty for wrongfully confining B.

Sedition:

The offence of sedition is doing of certain acts which would bring the government established by law in India into hatred or contempt or create disaffection against it. If a person uses either spoken or written words calculated to create in the minds of the person to whom they are addressed a disposition not to obey the lawful authority of the government, or to subvert or resist the authority, if and when the occasion should arise and if he does so with the intention of creating such disposition among his hearers or readers, they will be guilty for sedition.

The essential ingredients of sedition are:

- 1) Bringing or attempting to bring into hatred or contempt or exciting or attempting to excite disaffection towards the government of India.
- 2) Such act or attempt may be done
 - (i) by words, either spoken or written or
 - (ii) signs, or
 - (iii) by visible representation

Principle 1: Whoever by words either spoken or written or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite, disaffection towards the Government established by law in India shall be punished with imprisonment for life.

Principle 2: Comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence of sedition

Principle 3: Comments expressing disapprobation (approval) of the administrative or other action of the Government without exciting or attempting to excite hatred, Contempt or disaffection, do not constitute an offence under this section

Legal GK - Indian Polity, Notes

BYTES

LEGAL GK & CURRENT AFFAIRS:

1. Interpretation of the constitution falls under Appellate jurisdiction.
2. Laws made by executive for administrative convenience are called Bye-Laws
3. Apart from J & K, Nagaland has a special protection notwithstanding anything contained in constitution in certain matters
4. Speaker can ask a member of a house to stop speaking & let another member speak – **Yielding the floor.**
5. **Duration of Zero hour in Lok Sabha** – Not specified/Not fixed.
6. State which has the highest number of seats reserved ST in Lok Sabha – **Madhya Pradesh.**
7. Five Year plan Concept borrowed from **USSR.**
8. The act that provided for the first time for separate representation of Muslim community – Indian council act (Morley Minto Reforms) 1909.
9. CJ of Andhra Pradesh High court– Chancellor of **NALSAR University of law located in Hyderabad.**
10. Legal advisor to the Govt. of state– Advocate General
11. **D.K. Basu V. State of W.B** –Safeguards for arrested persons
12. Seema V. Ashwani Kumar–Compulsory regd. Of marriages in India
13. **Minerva Mills V. UOI** – Stuck principles over Fundamental rights.
14. **BCI** – Statutory body of laying down the standards of professional conduct & etiquette for advocates in India.
15. **MCI** – Statutory body of laying down the standards of professional conduct & etiquette for Doctors in India.
16. Max. time for filing of a complaint before consumer disputes redressal forum from the date when Cause of action arises – 2 Years.
17. First English legal charter relating to Fundamental rights of the citizens – Magna Carta
18. **Oldest High court in India** – High court of Calcutta
19. **1st Woman Supreme court Judge** – J. Fatima Beevi.
20. **1st Woman High court judge** – J. Leela Seth.
21. Aruna Shaunbaug V. UOI Passive euthanasia under exceptional circumstances allowed
22. Total High courts in India – 24 (3 New High courts added – Manipur, Meghalaya, Tripura)
23. Andaman & Nicobar islands come under the jurisdiction of Calcutta High court.
24. Lakshadweep islands come under the jurisdiction of Kerala High court.
25. Finance Secretary – Not a constitutional post.

26. **CEC, CAG, Vice president of India** – Constitutional posts
27. **CJI** – removed by Impeachment proceedings (2/3 rd majority)
28. Constitutional bench – 5 Judges
29. Full bench – All judges in a court or Specified No. of judges fixed by Chief justice
30. Division bench – 2 Judges
31. Right to vote – Legal/Constitutional Right
32. Right to Property – Legal/Statutory right
33. **1 st Law Minister of India** – Dr. B.R. Ambedkar
34. **1 st committee on Backward classes** – Kelkar commission.
35. Babri Masjid demolition case – Liberhan commission.
36. Reservation of seats for Backward classes – Mandal commission.
37. Center-states relations – Sarkaria commission (First) M.M. Punchhi Commission (Second)
38. Advocates act – 1961.
39. 1st Indian state to be formed on Linguistic basis – Andhra Pradesh
40. First General elections took place – 1951
41. Setting a Supreme court was in Calcutta is a part of Regulating act, 1773
42. **NJAC** has been set up – 99th Amendment act (Collegium system restored)
43. Exchange of territories b/w India and Bangladesh – 100th amendment (w.e.f. May 2015)
44. Anti Defection law is provided under – 10th Schedule.
45. Constituent assembly which framed the constitution for independent India was set up in 1946.
46. Original members in Constituent assembly – 389 Members.
47. Defamation – Both Tort & Crime
48. First hour of every sitting of Parliament is known as Question Hour.
49. **1st Speaker of Lok Sabha** – G.V. Mavlankar
50. **1st India Governor General of Free India** – C. Rajgopalachari
51. **1st Governor General of India** – Lord Mountbatten
52. **1st Amendment came in 1951**
53. Primary education was added to 93rd Amendment.
54. Child marriage Restraint Act, 2006 is applicable to all, irrespective of religions
55. Manager of Wakf is known as – Mutawalli.
56. A witness who is unable to speak gives his evidence by writing in open court – Oral evidence.
57. **1st Chairman of NHRC** – J. Ranganath Mishra.
58. Ossification test is done to determine age.
59. Sedition is the crime of arousing hatred or contempt against GOI 60. An act done under the threat or fear is done under Duress.
61. In law, a man is presumed to be dead if he is not heard of as alive for 7 Years.

62. Chairman of First law Commission of India – M.C. Setalvad (1955).
63. Present chairman of 21st Law commission of India – J. Balbir Singh Chauhan (2015-18) – Recommendation for reducing the age of marriage for Groom from 21 to 18 Years.
64. Present chairman of UPSC – David R. Syiemlieh (w.e.f 2nd Jan 2017).
65. Duration of Law commission – 3 Years.
66. **Lex Loci** – Law of Place.
67. In the year 2002, the competition act was enacted replacing **MRTTP Act 1969**.
68. The disobedience of any judgment, order of a court amounts to Contempt of court.
69. Lok adalat camps were started at Junagarh District in Gujarat in 1982 and **First Lok Adalat was held at Chennai in 1986**.
70. The maximum amount of compensation when a person is groundlessly arrested – 1000/-.
71. Father of Jurisprudence – John Locke.
72. **Vishaka V. State of Raj.** – Supreme court issued guidelines on Sexual harassment of women at workplaces.
73. Goa comes under the jurisdiction of **Mumbai High Court**.
74. In an election, electioneering has to be stopped 48 Hrs. before starting the polling.
75. Power to decide an election petition vests with High Courts.
76. The examination of a witness by the adverse party is called Cross Examination.
77. 1st Attorney general of India – M.C. Setalvad
78. **Present Attorney general of India** – Mukul Rohtagi
79. **1st Solicitor general of India** – C.K. Daphtary
80. Present Solicitor general of India – Ranjit Kumar
81. After independence, the Supreme court of India came into existence in the year of 1950.
82. **J. P.N.** Bhagwati-Responsible for introduction of PIL in India.
83. A post dated cheque bears Future date.
84. SLP can be filed before the Supreme Court
85. Oldest code of law in India is Manusmriti.
86. **Vinod Rai** – Chairman of Banks Board Bureau (BBB).
87. **7th Pay** Commission Chairman – J. A.K. Mathur.
88. 1st CIC – Wajahat Habibullah.
89. **Present CIC** (Chief Information Commissioner) – R.K. Mathur.
90. Pakistan Parliament became the World's first parliament to run fully on Solar Power.
91. **J. Fazal Ali** – First Supreme court judge who started chamber practice after retirement.
92. **J. D.K. Jain** - Wrote the lead judgment in 2G scam case 2012.

93. The constitutional **(117th amendment) bill 2012 deals with Reservation in promotions.**
94. E-Court project was launched on 9th July 2007 by President of India at Vigyan Bhawan, New Delhi.
95. **Estonia Country** – Recently introduced a law which allows to cast vote through mobile phones.
96. Calcutta High Court – Established first green bench in the country. Dishonour of a cheque – Compoundable offence.
98. Simultaneous civil & criminal proceedings are maintainable but result of one proceeding is not binding on another.
99. Cognizable offence – **Arrest without warrant.**
100. Supreme court or High court – authority to designate an advocate as Senior Advocate.
101. **First chairman of BCI** – M.C. Setalvad.
102. Present Chairman of BCI – Manan Kumar Mishra (Since Nov. 2014)
103. **Members of CVC** are appointed for the term of 4 Yrs or 65 Yrs. of age whichever is earlier.
104. **Present CVC** – Pardeep Kumar (IAS)
105. An Indian citizen with a wife & 2 Children marries a British girl in UK – He can be tried in India for bigamy on his return to India.
106. No fault liability – Absolute liability even without any negligence or fault
107. **NHRC** – Statutory body
108. Copyright subsists for 60 Yrs.
109. **First model E-Court** of country was launched at Ahmedabad by Gujarat High Court (Providing tamper proof authentic audio-video recording of proceedings with multi point video conferencing facilities linking the courtroom, central jail, the police commissioner office and the forensic science laboratory)
110. Inquest – Inquiry into the apparent cause of death.
111. Concept of PIL was originated in **USA.**
112. Legal Services day – **9th Nov.**
113. ICJ was established in **1946.**
114. ICJ judges are elected for 9 Yrs.
115. Registration of immovable property is required if value of property is more than 100/-
116. An offence punishable with imprisonment for a term exceeding 2 Yrs. is a Warrant Case
117. FIR can be quashed only by **High Court**
118. A foreigner committing an offence in India will be amenable to the Indian Law
119. Demand draft, cheque, pay orders & Bankers cheque are valid for 3 Months (w.e.f 01/04/2012)
120. In India UCC is applicable in the state of Goa (Single code governs all Goans,

irrespective of religion, ethnicity or linguistic affiliation)

121. The duration of CAG of India – **6 Yrs or 65 Yrs. of age whichever is earlier**

122. Present Director of CBI – Rakesh Asthana (Interim)

123. Present Governor of RBI – **Dr. Urjit R. Patel (Incumbent).**

124. Present CJI – **Hon'ble J. Jagdish Singh Khar (Present CJI Since Jan 2017).**

125. Chairperson of National Judicial academy – Hon'ble J. Jagdish Singh Khar
(Present CJI Since Jan 2017)

126. First woman CM of state – **Mrs. Sucheta Kriplani (U.P.)**

127. First woman Governor of state – **Mrs. Sarojini Naidu (U.P)**

128. First woman to climb Mount Everest – **Bachhendri Pal**

129. 1st woman advocate – Cornelia Sorabjee

130. 1st British Governor General – Warren Hastings

131. 1st Viceroy of India – **Lord Canning**

132. 1st judge to face impeachment proceedings in Lok Sabha – J. V. Ramaswamy

133. Guardian of public purse – **CAG**

134. **B.N. Rau** – Constitutional advisor to constituent assembly.

135. Zonal Councils (Advisory or statutory bodies) – **Five**

136. 1st amendment – Added 9th Schedule to give legislation (Land reforms)

137. 42nd amendment 1976 – **Mini Constitution**

138. 1st Commercial courts was set up in Delhi (Mar. 25, 2016)

139. First two states established Panchayati Raj – **Rajasthan & Andhra Pradesh in 1956.**

140. Five Yr. Plan in India is finally approved by NDC (National Development Council).

141. Supreme court was set up by Regulating Act 1773.

142. 1st Indian state to go for internet voting – **Gujarat (Apr. 2011).**

143. Longest serving PM – **Pt. Jawaharlal Nehru.**

144. Fiduciary relationship is based on Trust (Eg. Doctor-Patient)

145. CBI was established in 1963

146. Ernest Barker – **Preamble is the keystone to the constitution**

147. Gram Panchayat is the lowest stage of Local govt.

148. Japan Parliament is known as Diet

149. Chairman of **PAC of Parliament is appointed by President.**

150. A person who is not a MP can be appointed as a minister by the president for a maximum period of 6 Months.

151. Judges and magistrates of civil courts are appointed by Governor.

152. In case the office of President of India falls vacant the same must be filled within 6 Months.

153. Senior most member of Lok Sabha – **Presides over the Lok Sabha if neither the speaker nor the deputy speaker is available.**

154. Distribution of powers b/w union and state have been borrowed from Canada.

155. Longest serving CM in India – **Pawan Chamling (Sikkim – 5th consecutive term).**
156. Public holidays are declared under Negotiable instruments act, 1881.
157. Indian Constitution as quasi- federal said by – **K.C. Wheare.**
158. Ashok Mehta committee – **Panchayati Raj Institutions**
159. Balwant rai Mehta committee – **3 Tier system**
160. Leaving the opposition party to join ruling party or vice versa – **Crossing the floor**
161. A bill referred to joint sitting of parliament is to be passed by Simple majority.
162. The members of State public service commission can be removed by the President on report by the Supreme Court.
163. The members of Rajya Sabha are elected by Elected members of the Legislative assembly.
164. PM is the chairman of National water resource council.
165. **J. LN Reddy** committee was made to look into the anomalies that may arise into the implementation of OROP.
166. New chief of IAF – Air Marshal Birender Singh Dhanoa.
167. New chief of Army staff – **Lt. Gen. Bipin Rawat.**
168. Current chief of Naval staff – **Admiral Sunil Lamba.**
169. New chief of RAW – **Anil Dhasmana**
170. New Director General of IB – **Rajiv Jain**
171. Miss World 2016 – **Stephaine Del Valle of Puerto Rico**
172. New Chief Minister of Tamil Nadu – **O. Paneerselvam (After death of Jayalalitha)**
173. 101 st constitutional amendment 2016 – **GST (Introduced Art. 264A, 269A, 279A)**

LIST OF COMMITTEES AND COMMISSIONS IN INDIA

♦ Committees in India

1. Butler Committee – Relation between Indian states & paramount power.
2. Hartog Committee – Growth of British India education-its effects
3. Muddiman Committee – Working of Diarchy as in Montague Chelmsford reforms
4. Malhotra Committee – Insurance Reforms
5. Janaki Ram Committee – Security Scam
6. Ajay Vikram Singh Committee – Faster promotions in Army
7. Rajinder Sachar Committee 1 – Companies and MRPT Act
8. Rajindar Sachar Committee 2 – Report on the social, economic and educational status of the Muslims of India.
9. Jyoti Basu Committee – Report on Octroi abolition.
10. Balwant Rai Mehta Committee – Recommendations on decentralization system
11. Sawant Committee – Enquiry on corruption, charges against ministers & Anna Hazare

12. Chelliah Committee – Eradicating black money
13. Wanchoo Committee – Tax enquiry
14. Bhanu Pratap Singh Committee – Agriculture
15. Agarwal Committee – Nepotism in granting petrol pump, LPG connections
16. Rangarajan Committee – Reforms in private sector
17. Naresh Chandra Committee – Corporate governance
18. Chakravarti Committee – Banking sector reforms
19. Rekhi Committee – Structure of indirect taxation
20. G.V.Ramakrishna Committee – Disinvestment in PSU shares
21. Kelkar Committee 1 – First committee on backward castes
22. P.C.Hotha Committee – Restructuring of civil services
23. Justice B.N.Kirpal Committee – 1st chairman National Forest Commission
24. Godbole Committee – Enron Power Project
25. J.C.Kumarappa Committee – Congress agrarian Reforms Committee
26. Swaminathan Committee – Population policy
27. Rangaraju Committee – Statistics
28. Wardha Committee – Inquiry on murder of Graham Staines
29. Vohra Committee – Criminalization of politics
30. Kelkar Committee 2 – Direct-Indirect Taxes
31. Alagh Committee – Civil Service Examinations
32. Abid Hussain Committee – Recommendations on Small scale industries
33. Narasimham Committee – Banking sector reforms
34. Chelliah Committee – Tax reforms
35. Mashelkar Committee – National Auto Fuel Policy
36. Boothalingam Committee – Recommendations on integrated wages, income and price policy.
37. Omkar Goswami Committee Industrial sickness
38. Yashpal Committee – Review of School Education system
39. Ram Nandan Prasad Committee – Constitution of creamy layers among Backward Castes.
40. Kelkar Committee 3 – Enquiry on Kargil defense deals.
41. Saharya Committee – Tehelka tapes
42. J. Narasimha committee – OROP (One rank one pension)

◆ List of Commissions

1. U.C.Benerjee Commission – Enquiry into Godhra carnage (Railways)
2. Nanavati-Shah – commission Posy Godhra riots
3. Palekar Tribunal – Journalist pays reforms
4. Hunter Commission – Jallianwalabagh massacre
5. Nanavati Commission – 1984 Sikh riots
6. Mukherjee Commission – Death/Disappearance of Subhash Chandra Bose
7. Librehan Commission – Babri Masjid demolition case

8. Sarkaria Commission – Centre-State relations
9. Sri Krishna Commission – 1992 Bombay riots
10. Thakkar Commission – Indira Gandhi assassination case
11. Phukhan Commission – Tehelka tapes
12. Malimath Commission – Criminal Justice
13. Upendra Commission – Inquiry on rape and murder Thangjam Manorama Devi
14. G.C.Garg Commission – Train accident near Khanna, Punjab
15. Mandal Commission – Reservation of seats for Backward castes
16. Kothari Commission – Educational reforms

Legal Maxims - Indian Polity, Notes

Ab initio	From the beginning
Actus reus	A guilty deed or act
Ad hoc	For this purpose
Addendum	A thing to be added
Affidavit	A sworn written statement usable as evidence in court
Alibi	At another place, elsewhere
Amicus curiae	A friend of the Court
Ante	before
Audi alteram partem	Hear the other side
Bona fide	Sincere, in good faith, i. e. well- intentioned, fairly
Caveat emptor	Let the buyer beware. (He buys at his own risk)
Caveat	Let him/her beware
Consensus ad idem	Agreement as to the same things
Corpus	Body
Corrigenda	A list of things to be corrected. (in a book)
Curriculum vitae	The course of one's life.

Damnum sine injuria	Damage without legal injury
De facto	In fact, Something that is automatically accepted
De jure	Rightful, by right
De minimis lex non curat	The law does not notice trifling matters
De novo	Starting afresh, Anew
Delegate non potest delegare	A delegated authority cannot be again delegated
Ex gratia	Out of kindness, voluntary
Ex nudo pacto actio non oritur	No action arises on a contract without a consideration.
Ex parte	Proceeding brought by one person in the absence of another

Ex post facto	By reason of a subsequent act
Ex turpi causa non oritur actio	No action arises on an immoral contract.
Factum	An act or deed
Habeas corpus	You must have the body, i.e. You must justify an imprisonment
Idem	The same person or thing
Ignorantia facti excusat,	Ignorance of fact excuses, ignorance of law does not excuse.

ignorantia juris non excusat	
In camera	In private
In limine	At the outset, on the threshold
In personam	Against the person
In situ	In its place
Injuria non excusat injuriam	A wrong does not excuse a wrong.
Inter alia	Amongst other things
Interim	Temporary, in the meanwhile
Ipsa facto	By that very fact
Jus	A right that is recognised in law.
Jus naturale	Natural justice.
Lex fori	The law of the forum (country)
Lex loci	The law of the place
Lex scripta	The written law
Locus standi	Place of standing
Mala fide	In bad faith
Mandamus	We command
Modus operandi (m.o.)	Way of operating
Mutatis mutandis	The necessary changes having been made

Necessitas non habet legem	Necessity has no law
Nemo debet bis	No one can be twice punished

puniri pro uno delicto	for the same offence
Non compus mentis	Not of sound mind and understanding
Obiter dictum	Something said in passing
Onus probandi	The burden of proof
Per capita	Per head
Per se	By or in itself
Prima facie	On the face of it, At first sight
Pro bono (pro bono publico)	For the good of the public
Pro rata	In proportion
Qua	In so far as
Quantum meruit	As much as he/she deserved
Quasi	As if
Qui facit per alium, facit per se	He who acts through another acts himself
Qui non improbat, approbat	He who does not disapprove, approves
Quid pro quo	Consideration. Something for something.

Quorum	Of whom
Ratio decidendi	The reason for the decision
Referendum	Something to be referred
Res judicata	Thing already judged upon
Salus populi est suprema lex	The safety of the people is the supreme law.
Sine die	Without a day (indefinitely)
Sine qua non	Something/someone indispensable
Stare decisis	To stand by decisions (precedents).
Status quo	The current state of being
Sub judice	Before a court
Sub poena	Under penalty of law
Sui generis	Of his/her/its kind, Unique
Suppressio veri	The suppression of the truth
Supra	Above or on an earlier page
Uberrimae fidei	Of the utmost good faith
Ubi jus ibi remedium	Where there is a right there is a remedy
Ultra vires	Beyond the powers or legal authority
Verbatim	Word by word, exactly
Veto	I forbid

Vox populi	Popular opinion
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