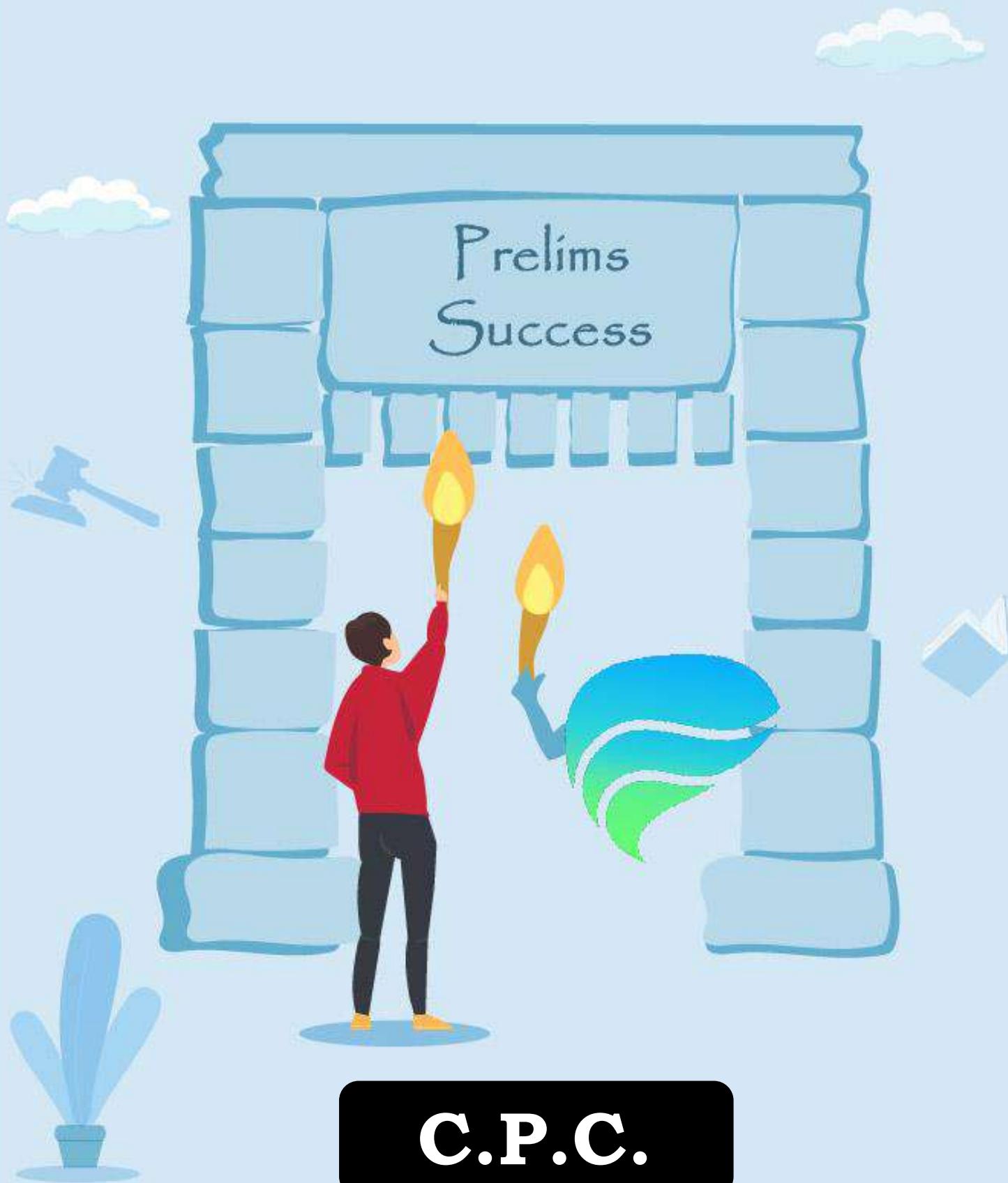


Question Bank



C.P.C.

Q.1) In which of the following cases the Supreme Court has upheld the constitutionality of the Code of Civil Procedure (Amendment) Acts of 1999 and 2002?

- a) Salem Advocate Bar Association v. Union of India
- b) Delhi High Court Bar Association v. Union of India
- c) Allahabad High Court Bar Association v. Union of India
- d) Punjab and Haryana High Court Bar Association v. Union of India

Ans: A

Explanation:

Salem Advocate Bar Association Vs Union of India (UOI)

AIR 2003 SC 189

- In an issue whether, the amendments made in the Code of Civil Procedure, 1908 by the **Amendment Act of 1999 and 2002** were constitutionally valid, the same were held **Constitutional**.

Notable amendments under the Acts of 1999 and 2002

- In matters, such as issuing of summons, filing of written statement, amendment of pleading, examination of witnesses, pronouncement of judgements, etc., a time limit is prescribed.
- A new provision for settlement of disputes outside the court.
- Lesser number of adjournments.
- A provision for recording for evidence by court Commissioner.
- New provision for filing of appeal in the court which passed the decree.
- Institution of appeal against the judgement is allowed where the decree is not drawn up.
- Scope of first appeal, second appeal, letters patent appeal and revision has been curtailed.



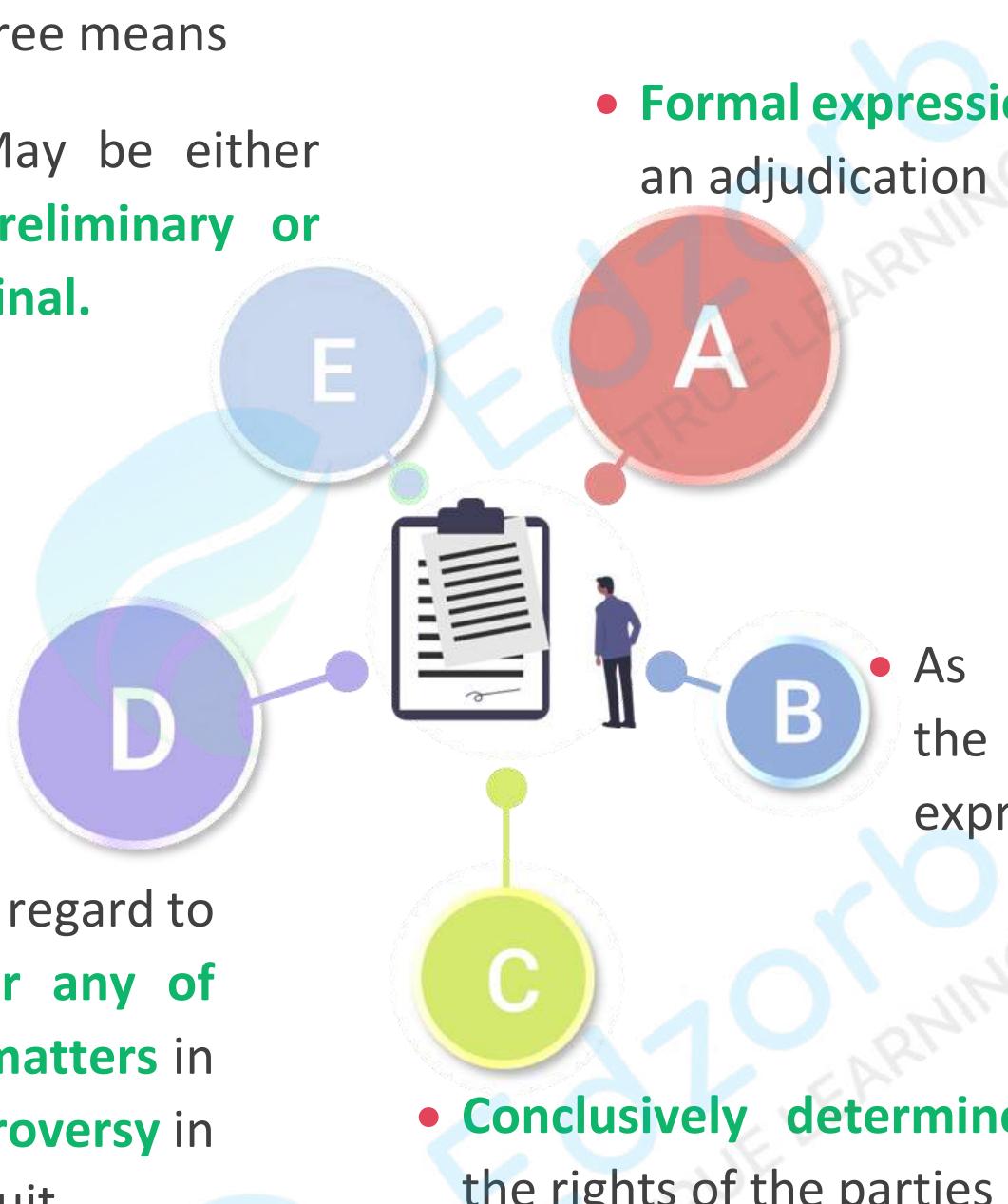
Q.2) Which of the following determinations does not come under the definition of “decree”?

- a) An adjudication which conclusively determines the rights of the parties with regard to some of the matters in issue before the court
- b) Rejection of a plaint
- c) Determination of any question under Section 144 of the Code of Civil Procedure
- d) Dismissal of a suit for default

Ans: D

Explanation:

Section 2(2)

- Decree means
 - May be either **Preliminary or Final.**
 - **Formal expression** of an adjudication
 - With regard to **all or any of the matters in controversy** in the suit,
 - It shall include
 - The rejection of plaint under **O.VII R.11** and
 - The determination of any question regarding **order of restitution** under **Section 144**
 - They are also called as **Deemed Decree.**
- 
- 

- But it shall not include –

01

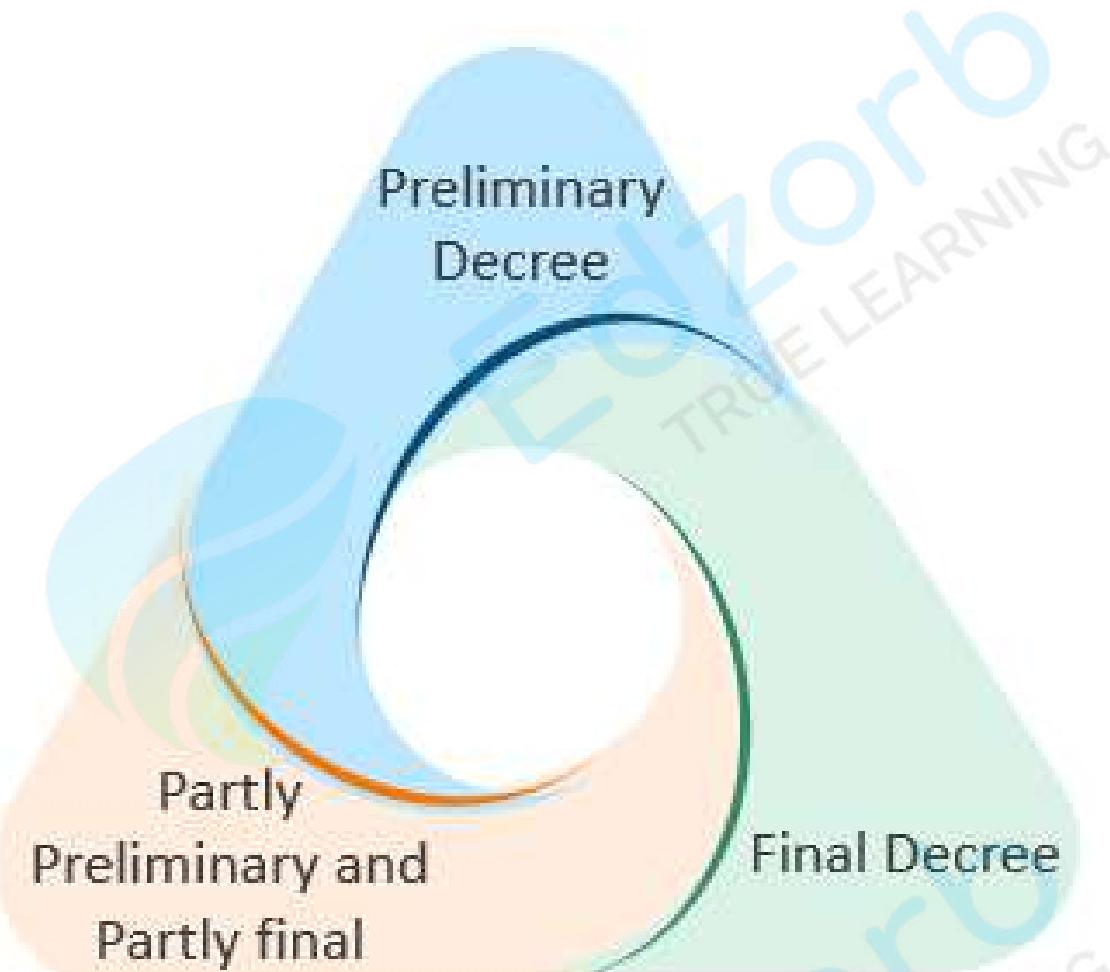
Any Adjudication from
which an appeal lies as
an appeal from an
Order

02

Any Order of dismissal
for default



Three types of Decree



- 01** An Adjudication decides the right of parties with matter in dispute
- 02** Completely disposes of the suit and finally settles all question in dispute
- 03** Court decrees property (Final) and directs an enquiry relating to mesne profit (Preliminary)

Provisions in the code for passing of the preliminary Decrees

Order and Rules	Provisions
O.20 R.12	Suits for possession and mesne profit
O.20 R.13	Administrative suits
O.20 R.14	Suits for pre-emption
O.20 R.15	Suits for dissolution of partnership
O.20 R.16	Suits for accounts between principal and agent
O.20 R.18	Suits for partition and separate possession
O.34 R.2-3	Suits for foreclosure of a mortgage

Phoolchand Vs Gopal Lai

AIR 1967 SC 1470

- There is nothing in the Code which prohibits the passing of more than one preliminary decree if circumstances justify the same and where it is necessary to do so.

Shankar Vs Chandrakant

AIR 1995 SC 1211

- A preliminary decree is one which declares the rights and
- liabilities of the parties leaving the actual result to be worked out in further proceedings.
- As a result of the further inquiries, conducted pursuant to the preliminary decree,
- The rights of the parties are fully determined and a decree is passed in accordance with such determination which is final.
- Both the decrees are in the same suit.

8. (D)

Decree does include

- Rejection of a plaint is decree.
- Determination of any question on application for restitution under **Section 144 (e).**

Decree does not include

- Any adjudication from which an appeal lies as an appeal from an order.
- Any order of dismissal for default.

Reference: Civil Procedure by C. K. Takwani; 8th Ed., 2013, Page No. 19

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Q.3) Which one of the following is not a suit of civil nature?

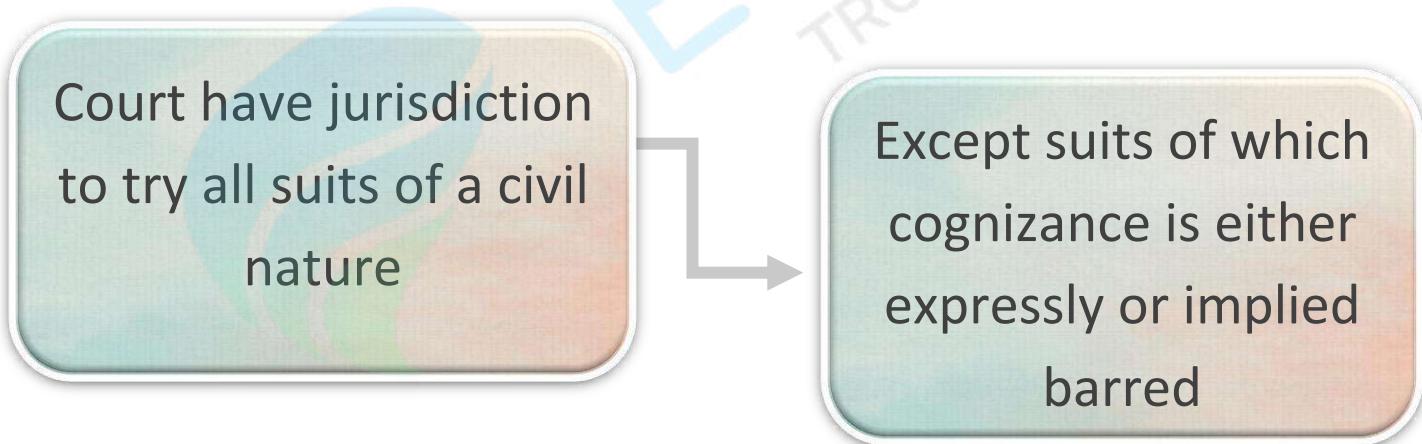
- a) Suit relating to rights of worship
- b) Suit involving purely religious rights
- c) Suit for rent
- d) Suit for rights to hereditary office

Ans: B

Explanation:

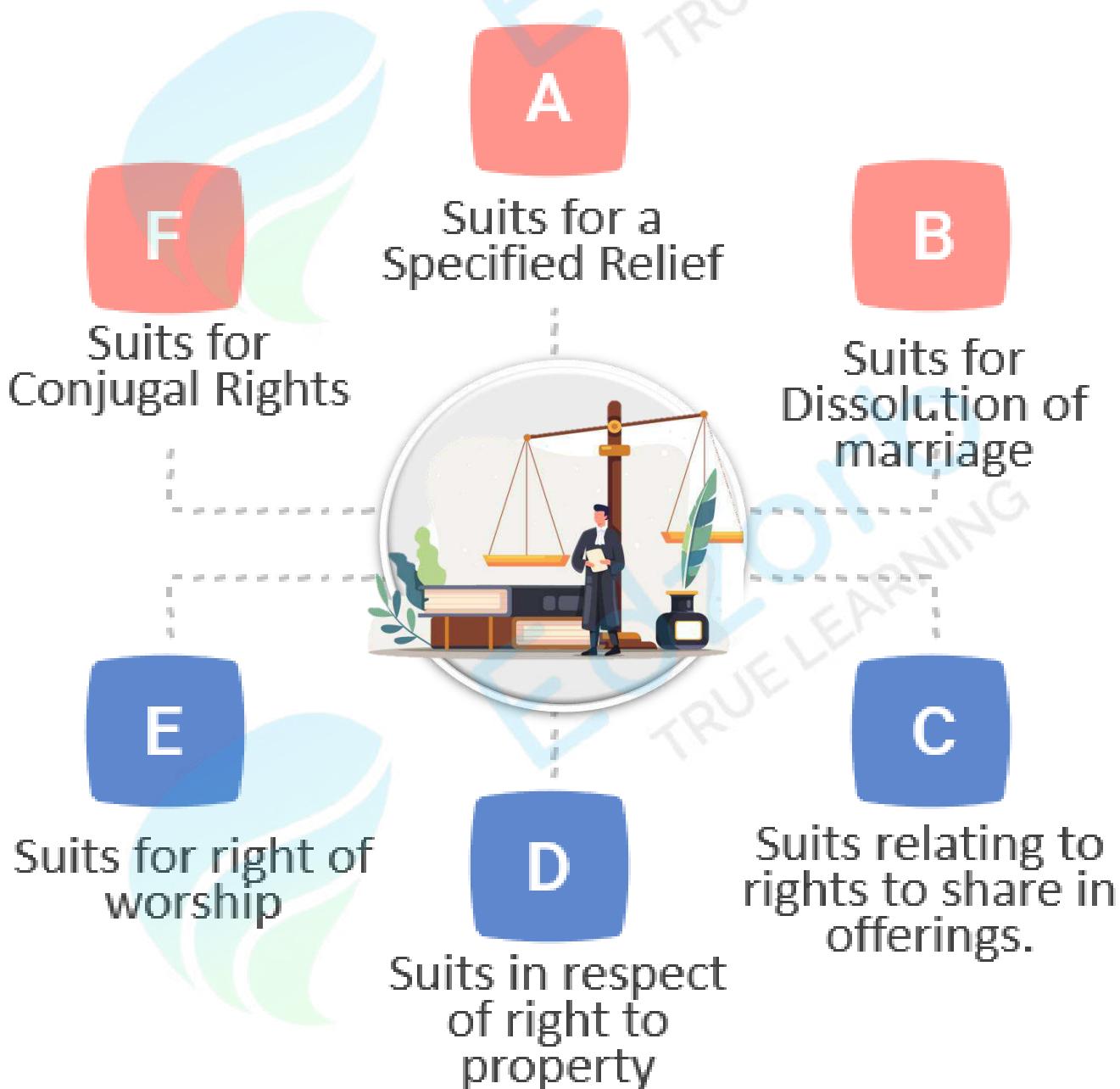
Section 9: Courts to try all civil suits unless barred

- Court shall have jurisdiction to **try all suits of civil nature**
- **Except** those **expressly barred** by the provisions of any enactment or statute, or
- **Impliedly** barred by general principles of law and public policy.

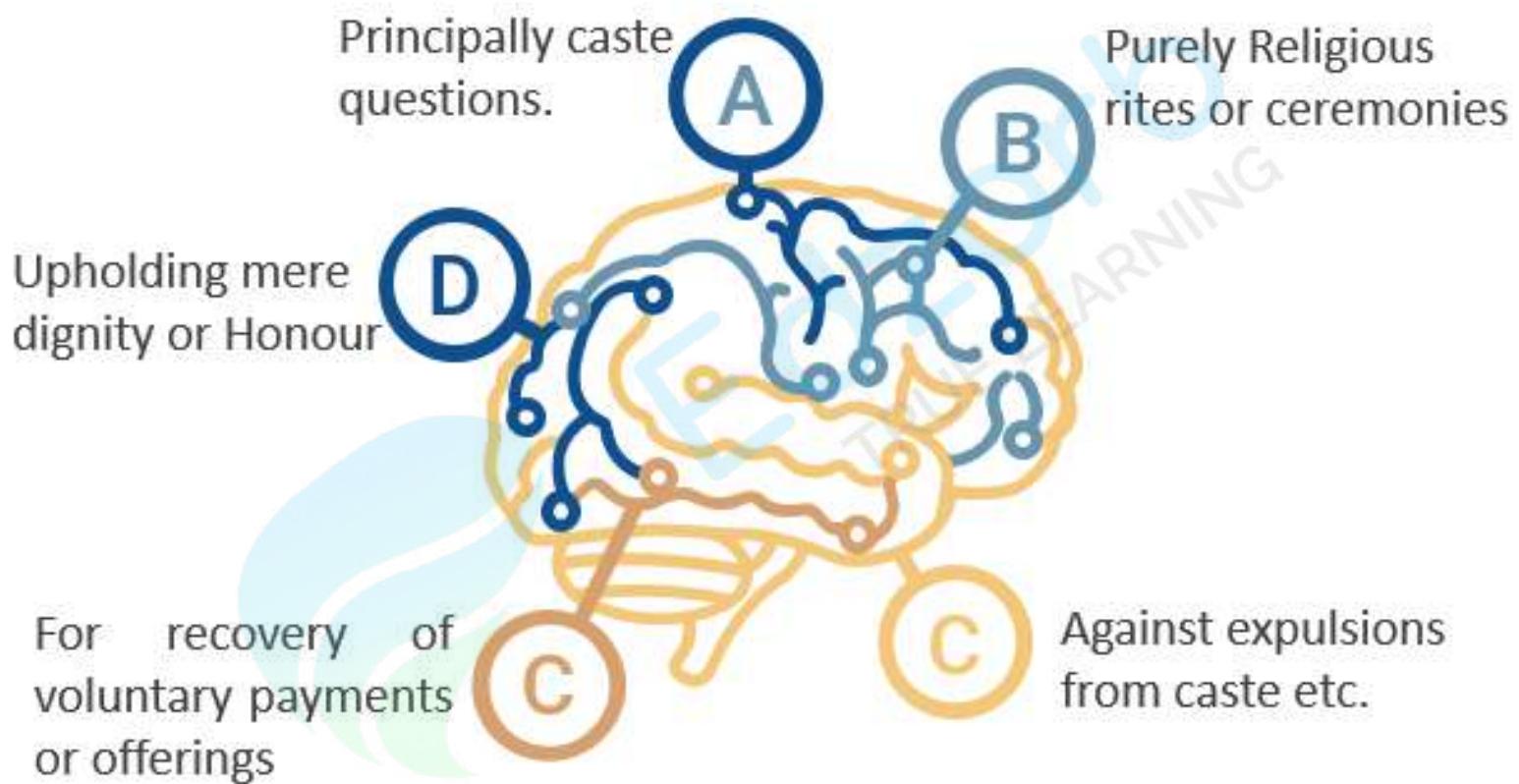


- A suit in which the **right to property or to an office** is contested is a suit of a civil nature,
- Such right may depend entirely on the decision of **questions as to religious rites or ceremonies**.

- It is immaterial whether or not **any fees are attached** to the office or,
- Whether or not such **office is attached** to a particular place.



Suits not of Civil Nature



General Principles

- From various decisions of SC, the following principles relating to jurisdiction of a civil court emerge:
- A civil court has jurisdiction to try all suits of a civil nature unless barred either expressly or impliedly
- Consent can neither confer nor take away jurisdiction of a court.

- A decree passed by a court without jurisdiction is a nullity and can be challenged at any stage of proceedings
- Every court has inherent power to decide the question of its own jurisdiction.
- Every presumption should be made in favor of jurisdiction of a civil court.

Pramila Wd/O D. Gaidhane Vs Life Insurance Corporation 2004 (3) MhLj 349

- If the principal or only question raised in the suit is, a **caste question or a question relating to a caste or for religious rites** or ceremonies, **the suit is not of a civil nature since it does not deal with the rights of the citizens**, but, with the matters which are purely social or religious.

Dhulabhai Vs State of M.P.

AIR 1969 SC 78

Principles Regarding Exclusion of Jurisdiction

- When a statute provide finality to the orders of particular tribunals, the civil court jurisdiction must be kept to be prohibited.

Even a case of express bar, in following cases, the jurisdiction is not excluded:

- For examination of terms of specific act as ultra vires from the decision of the tribunal
- When the terms of the act have to be challenged as constitutionally invalid.
- When particular act includes no method for a return of tax collected in excess of constitutional goals, a suit lies.
- Prohibition of the jurisdiction of a civil court is not ready to be inferred unless the condition above set down apply.

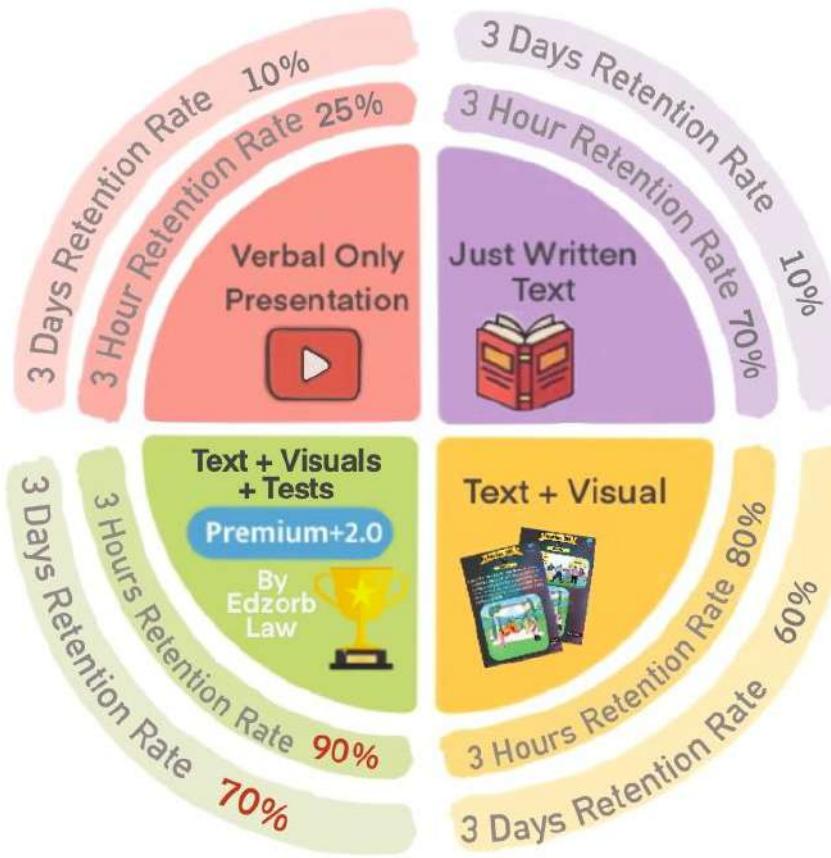


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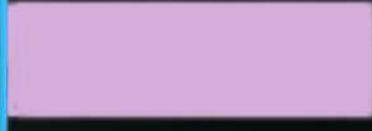


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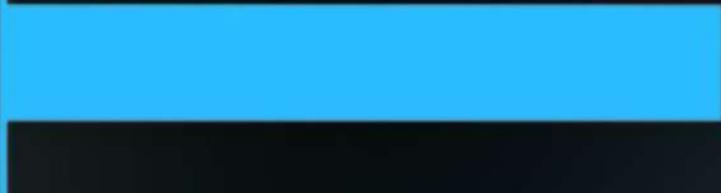


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Q.4) Under Section 80 of Civil Procedure Code: _____ days' notice in writing is required to be delivered before institution of a suit against the Government.

- a) Ninety days
- b) Sixty days
- c) Three months
- d) Two months

Ans: D

Explanation:

Section 80: Notice

- Save as otherwise provided in sub-section (2), no suit shall be instituted against the **Government (including the Government of Jammu and Kashmir)** or



- Against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the **expiration of two months** next after notice in writing has been delivered to, or left at the office of—



Did you Know?

S. 15(2) of Limitation Act should also be read wherein the time required for obtaining the consent and sanction of the Govt. is excluded.



Suit against a public officer, delivered to him, or left at his office



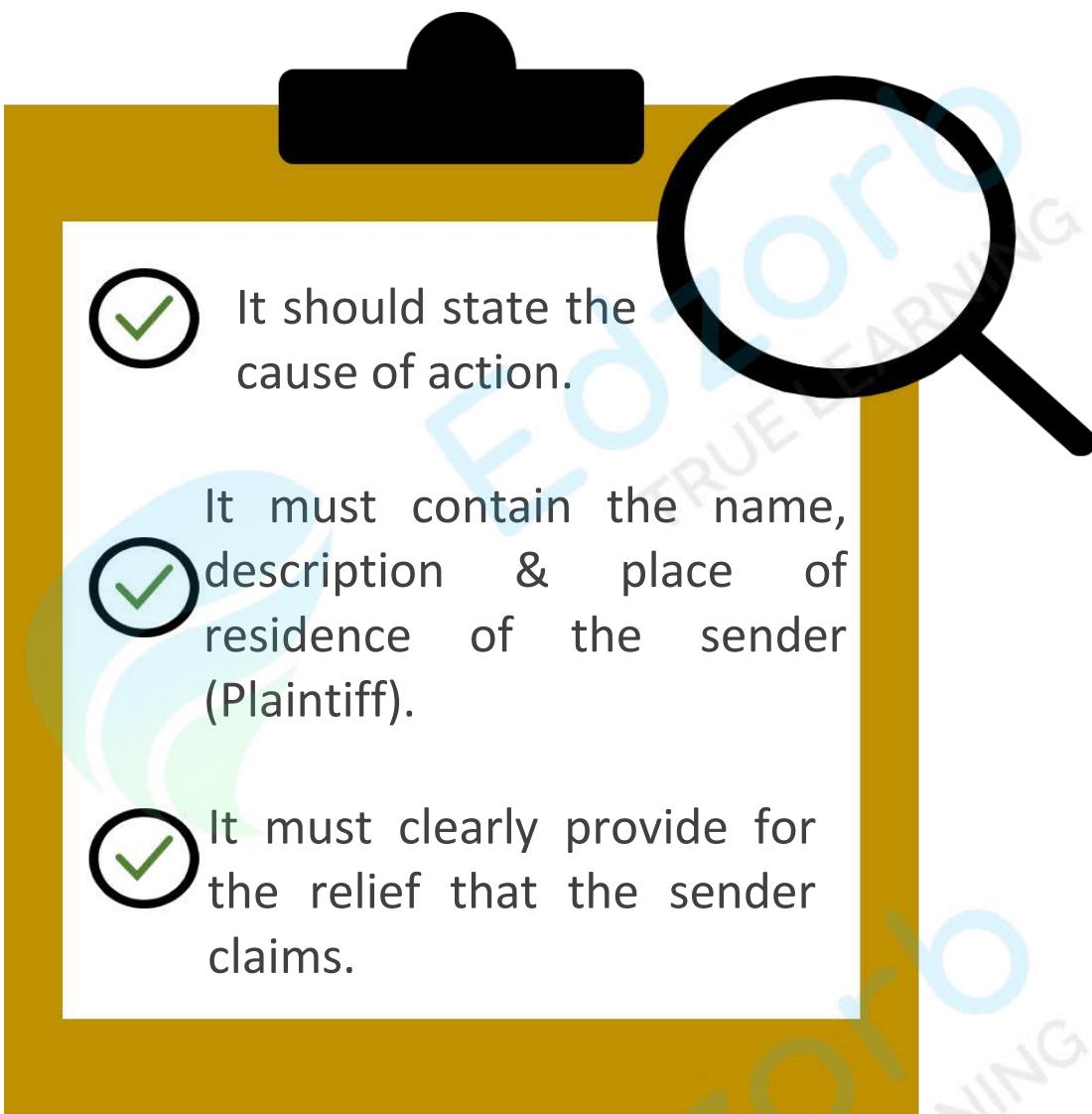
A suit against the **CG** except where it relates to a railway, a Secretary to that Govt.

A suit against the CG where it relates to railway, the **General Manager** of that railway,

A suit against any other State Govt., District Govt, a secretary to that or the Collector of the District.

A suit against the CG where it relates to railway, the **General Manager** of that railway,

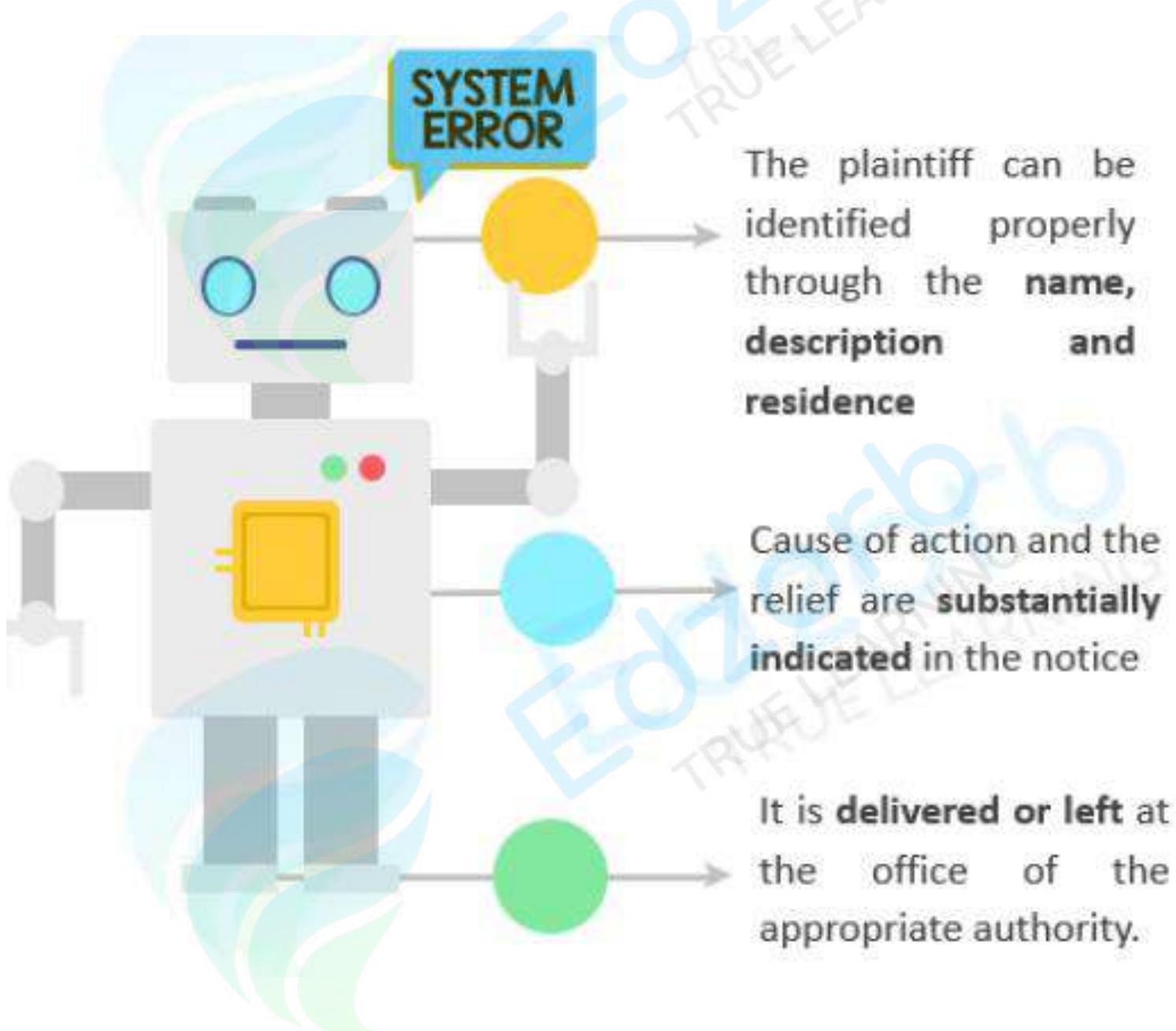
- The contents of the notice must be as follows:



Exception:

- 01 • When the plaintiff is desirous of obtaining urgent or immediate relief against such Government or public officer and,
- 02 • The leave of the Court is taken, in such case, it will be allowed to be instituted without such notice. No relief or interim or otherwise
- 03 • shall be granted without giving an opportunity of showing cause to the Government or public officer

- Sub- sec.3 prohibits dismissal of a suit merely on the ground that the notice, served under section 80(1), suffers from certain technical deficiencies i.e.,
- If in the contents of notice there is an error or defect then it will not be a material irregularity, if the following exists:



Ram Kumar & Anr. Vs. State of Rajasthan & Ors.,
AIR 2009 SC 4

Held:

- **Section 80** notice served upon the District Collector would not bar the suit merely because the notice had not been served on the District Education Officer, who was involved in earlier proceedings,
- For the reason that he was not acting in his official capacity and was involved only for the re-delivery of possession.
- Thus, no notice under Section 80 of the Civil Procedure Code is required before filing a suit if the act done by a public officer is not in discharge of his official duties

Extra Information

- **The Law Commission of India in its 14th Report** did not favour in retaining the provision of issuing notice under **S. 80** before filing a suit by the aggrieved party. It cited as a reason, Government and public officers utilized the provision as a “technical defence” and the objection has been upheld by the Court defeating just claims of the citizens.
- The matter was again considered by the **Law commission in the 27th Report** where it noted that in a democratic country like India there should ordinarily be no distinction, as is created by Section 80, between the citizen and the State
- The **Joint Committee of Parliament**, however, has, in “public interest”, favoured the retention of the issuance of notice **under S. 80**, after having considered the reasoning and recommendations of the Law Commissions



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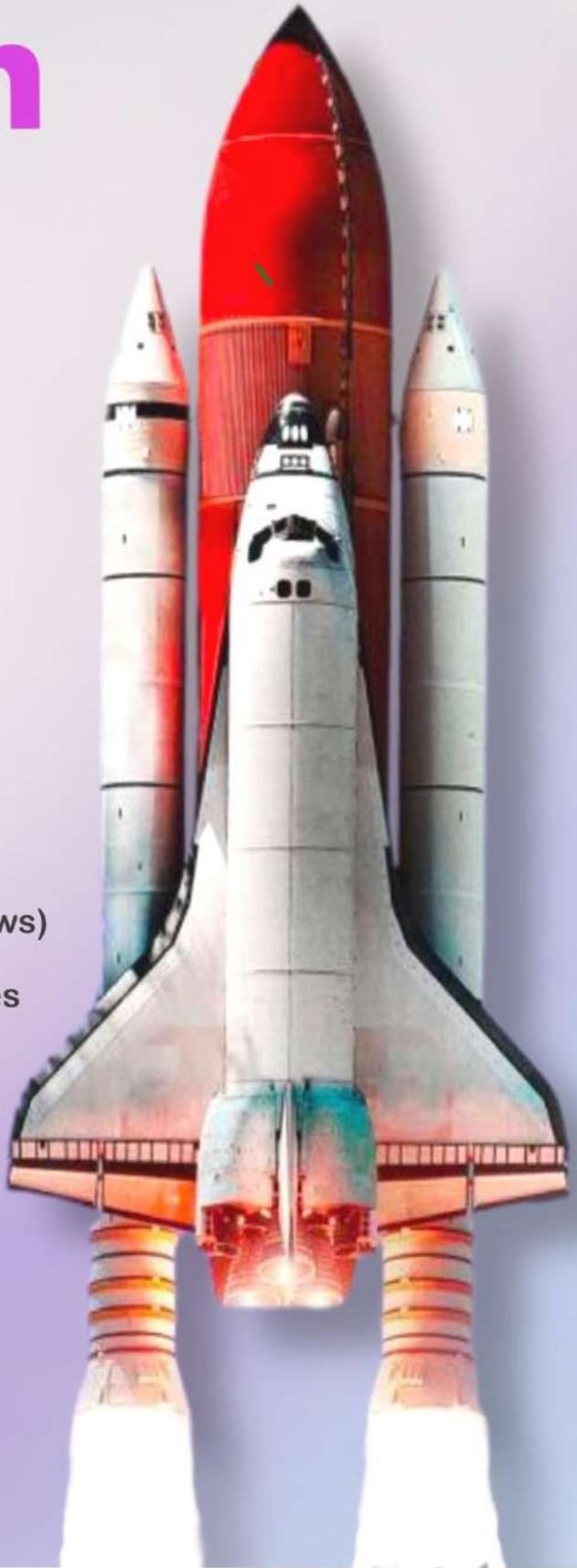
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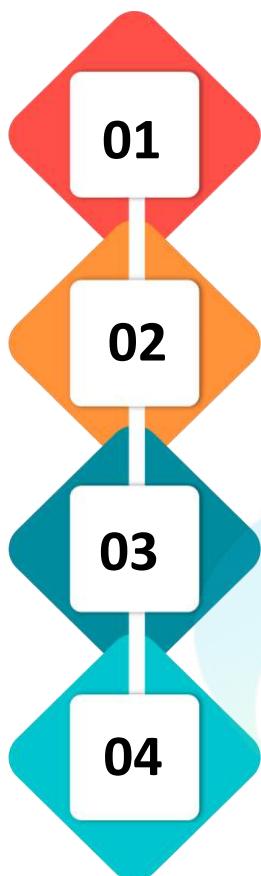
Q.5) Which of the following Explanation to Section 11 deals with the term 'Former Suit':

- a) Explanation VI
- b) Explanation I
- c) Explanation III
- d) Explanation IV

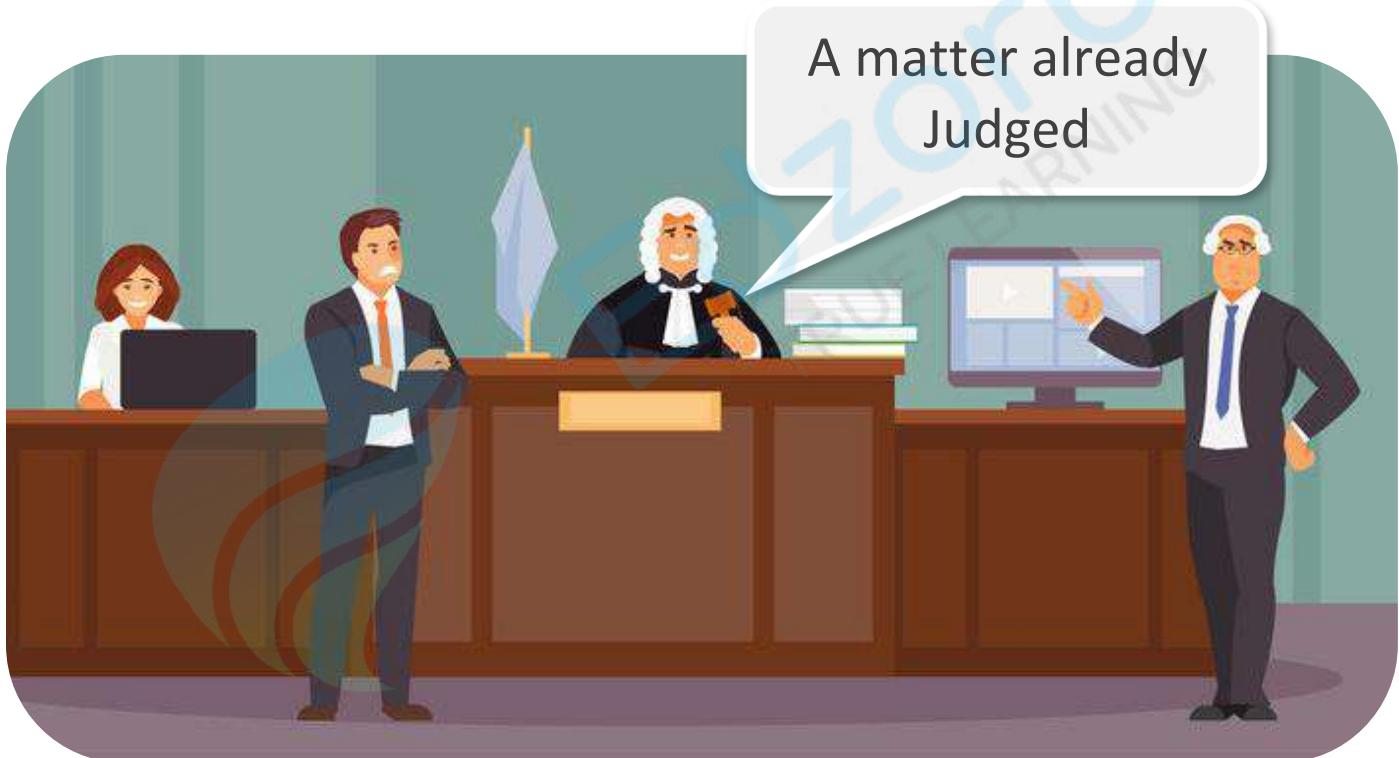
Ans: B

Explanation

Section 11: Res Judicata



- No Court shall try any suit or issue
- In which the matter **directly and substantially** in issue has been directly and substantially in issue **in a former suit** between the **same parties**, or between parties
- Under whom they or any of them claim, litigating under the same title, in a **Court competent to try** such subsequent suit or
- The suit in which such issue has been subsequently raised, and has been **heard and finally decided** by such Court.



Conditions for Application of Sec.11

Subject matter directly and substantially in issue are same

Decided court by of competent jurisdiction

Litigating parties are same

Matter finally decided between parties

Litigated under same title in former suit



Did you Know?

- Ancient reference of Res Judicata came from '**Brihaspati Samriti**' known as "**Prangnayaya**" which means Previous Judgment.



The principle of Res judicata is based on three Maxims

It is in the interest of state that there should be an end to litigation. (**Interest reipublicae ut sit finis litium**)



No man should be vexed twice over for the same cause. (**Nemo Debet bis vexari pro una et eadem causa**)

A judicial decision must be accepted as correct. (**Res judicata pro veritate accipitur**)

Former suit- A suit decided prior to suit in question whether or not it was instituted prior

The competence of court to be determined irrespective as to right to appeal.

Matter must be in former suit either denied or admitted, expressly or impliedly.

Matter might and ought to be made in defence or attack shall be matter directly or substantially in issue in former suit.

Relief claimed in plaint not expressly granted by decree shall be deemed to have been refused

Person litigate bona fide for private or public right, all person interested deemed to claim under person so litigating

Shall apply to the proceedings for the execution of a decree

Issue heard and finally decided by court of limited jurisdiction will operate as Res judicata.

Difference between Res Judicata and Res Sub Judice

Res Judicata	Res SubJudice
<ul style="list-style-type: none">• A suit which is finally decided by competent court.	<ul style="list-style-type: none">• A suit already pending in a competent court.
<ul style="list-style-type: none">• A case is heard and finally decided	<ul style="list-style-type: none">• Case is pending in a court
<ul style="list-style-type: none">• Subsequent suit is completely prohibited	<ul style="list-style-type: none">• Subsequent suit is stayed
<ul style="list-style-type: none">• Litigation discouraged	<ul style="list-style-type: none">• Prohibited of concurrent justice

Employee Welfare Association Vs UOI

AIR 1990 SC 334

- The principle of Res Judicata is not a technical rule,
- It is a rule of public policy. The doctrine is a universal doctrine laying down the finality of litigation between parties.
- It cannot be set at naught on the grounds that such a decision is violative of **Art.14** of the constitution.

Difference between Res Judicata and Estoppel

Basis	Res Judicata	Estoppel
Concept	<ul style="list-style-type: none">• A suit finally heard and decided cannot be presented further as a suit	<ul style="list-style-type: none">• A person cannot be allowed to change his position if he makes another to believe in good faith
Objective	<ul style="list-style-type: none">• Public policy and prohibition of multiplicity litigation	<ul style="list-style-type: none">• To protect the right of such person who acts in good faith
Foundation	<ul style="list-style-type: none">• It is result of judgment of court	<ul style="list-style-type: none">• Result of act of the party
Applicability	<ul style="list-style-type: none">• Applicable to both the parties	<ul style="list-style-type: none">• Only to that party who acts.

Explanation I: The expression “**former suit**” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.



The res judicata will apply on suit filed on 22.02.2019 as the suit filed on 22.02.2020 has been decided before.

Sheodan Singh Vs Daryao Kunwar

AIR 1966 SC 1332

Held:

- **Section 11** provides that no court shall try any suit or issue in which the matter has been directly and substantially in issue in a *former* suit between the same parties and has been heard and finally decided.
- It is not the date on which the suit is filed that matters but the date on which the suit is decided; so that even if a suit was filed later, it will be a former suit within the meaning of Explanation I if it has been decided earlier.

Reference: Civil Procedure Code, Section 11

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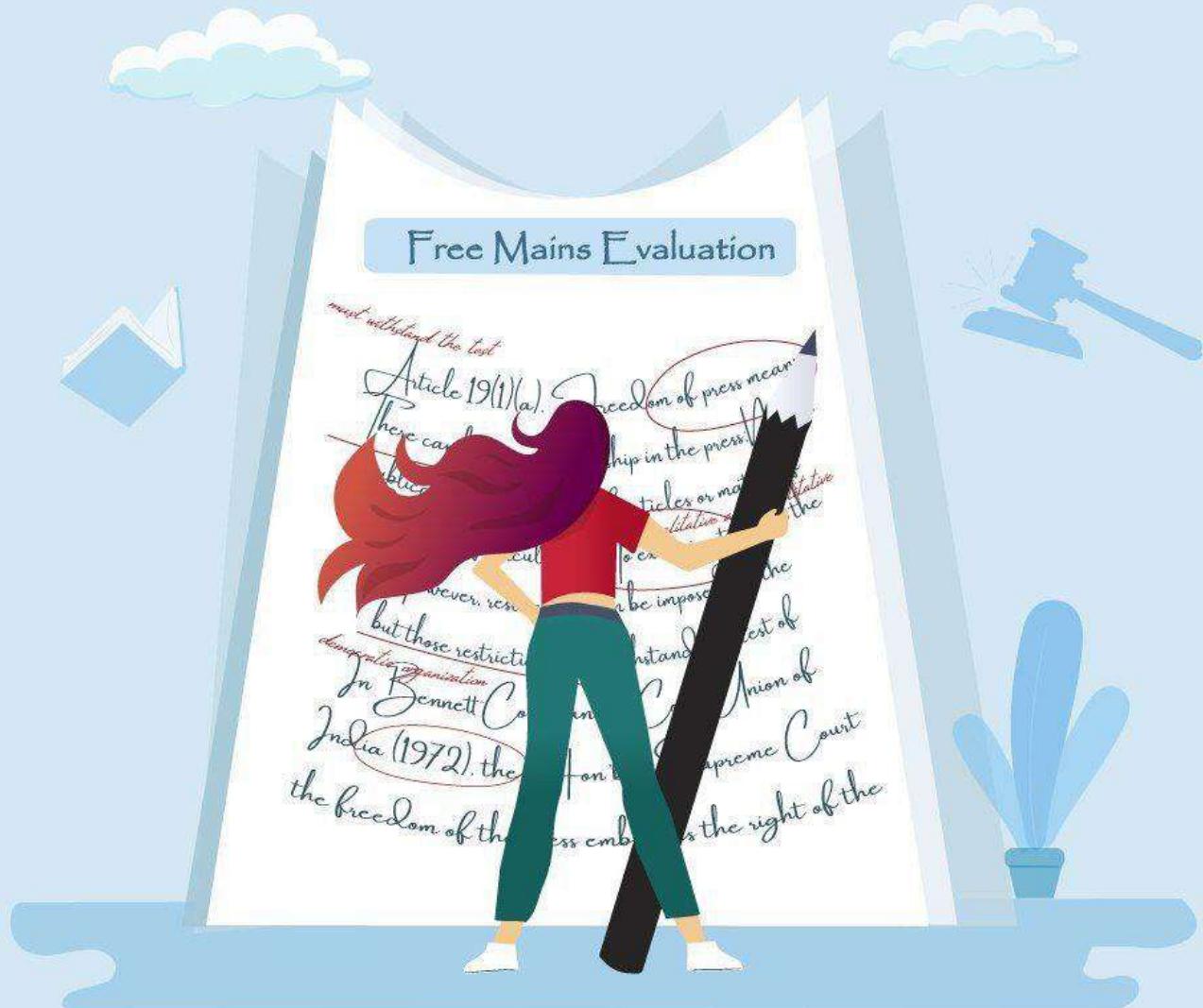
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Ques 1

~~* rule 25
Convenie
maxim
vigilantibus
non
dominibus
jura subvenient~~

Sec. 21(1) of Code of Civil Procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied:

Court of first instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2.

~~* provision
vising
Art. 169, 335,
338, 340,
341 & 342~~

Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing mainly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

* Indira
Sathyay
case
+ Balaji
VS
State of
Uttar
Pradesh
9.

Ques 3

No, a re mandamus order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statute. In case of Venkatakrna v Angathayamal it is held that

(1)

2
3



an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not?

If its decision does not entirely depends on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

$\frac{115}{3}$

(ii) Right of Pardanashin lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

Ques 5

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been

reiterated that requisite conditions should be fulfilled to apply principle of res judicata as between defendant and that are:



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- 1) There must be conflict of interest between the defendants concerned
- 2) It must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
- 3) the question between plaintiff & the defendants must have been finally decided.
- 4) the co-defendants were necessary or prospect parties in former suit. (Govindamal by LRs vs Vaidyanathan)

section 10 CPC

Res judicata

- suit ^{was} finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

Res subjudice

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

Res sub judice

- A suit which is pending in a competent court
- In res sub judice, case is pending in court
- subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent jurisdiction

No Estoppel

- In this a person cannot be allowed to change his position if he makes another to believe in good faith -
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

→ Sec 111(1)(A)
→ Pickard
J.S. Scerf

Maxims
Prae summa debet esse pro iusta causa
Eadem causa est
Seth Kinsella
Principia Lat



Ques 2 (a) Right of private defence of property extend to causing of death

Such right of private defence of property extending to cause death is dealt under Sec 103 of Indian Penal Code. It permits a person to extend its right of private defence to cause death only under certain circumstances as mentioned under the provision of the Code. Such circumstances are

1. When robbery is committed
2. When offence of housebreaking by night is committed
3. When mischief by fire is committed on any building; tent or vessel, which is used as human dwelling or as a place for the custody of property
4. If when theft, mischief or house breaking, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be consequence, if such right of private defence is not exercised.

This right commences as soon as a reasonable apprehension of danger to body arises from an attempt, or threat to commit offence, although offence may not have committed but not until there is that reasonable apprehension. The right last as long as reasonable apprehension exist
Prima Martin v. State of Kerala.

S.
104
P S. 103
Should also
be mentioned

*** Case law without principal useless**
(S. 105)

(b) Police officer's report after completing investigation

Police officers submits its report after completing investigation under sec 173 of code of Criminal procedure code. It is stated that every investigation should be completed without unnecessary delay. In case investigation relates to an offence under sec 321, 376 A, 376 B, 376 AB, 376 C, 376 D, 376 DD or 376 E of Indian Penal code it shall be completed within 2 months which shall be calculated from date of information was recorded by officer in charge of police station.

Such report shall be forwarded from officer in charge of police station to magistrate empowered to take cognizance of offence under sec 173(2) of IPC. Such report shall be in format or form as prescribed by state government.

It will contain following details

1. Nature of information
2. Name of the parties
3. Name of person acquainted with case
4. Offence which appears to have been committed
5. If so, by whom
6. Whether accused has been arrested
7. Whether released on bond or securities
8. Whether he has been forwarded in custody under sec 170
9. Medical report of a woman.

IPC or
CrPC ?



Remarks:-

- ① Answer not in Answer format rather in notes format.
- ② Don't copy things from Internet.
The answer on Internal & External aid was exact copy.
- ③ Missed out or left of Questions.
- ④ Next time copies won't be evaluated if they are not in Answer format.
- ⑤ Always mention the section no. on top
(not at last).



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