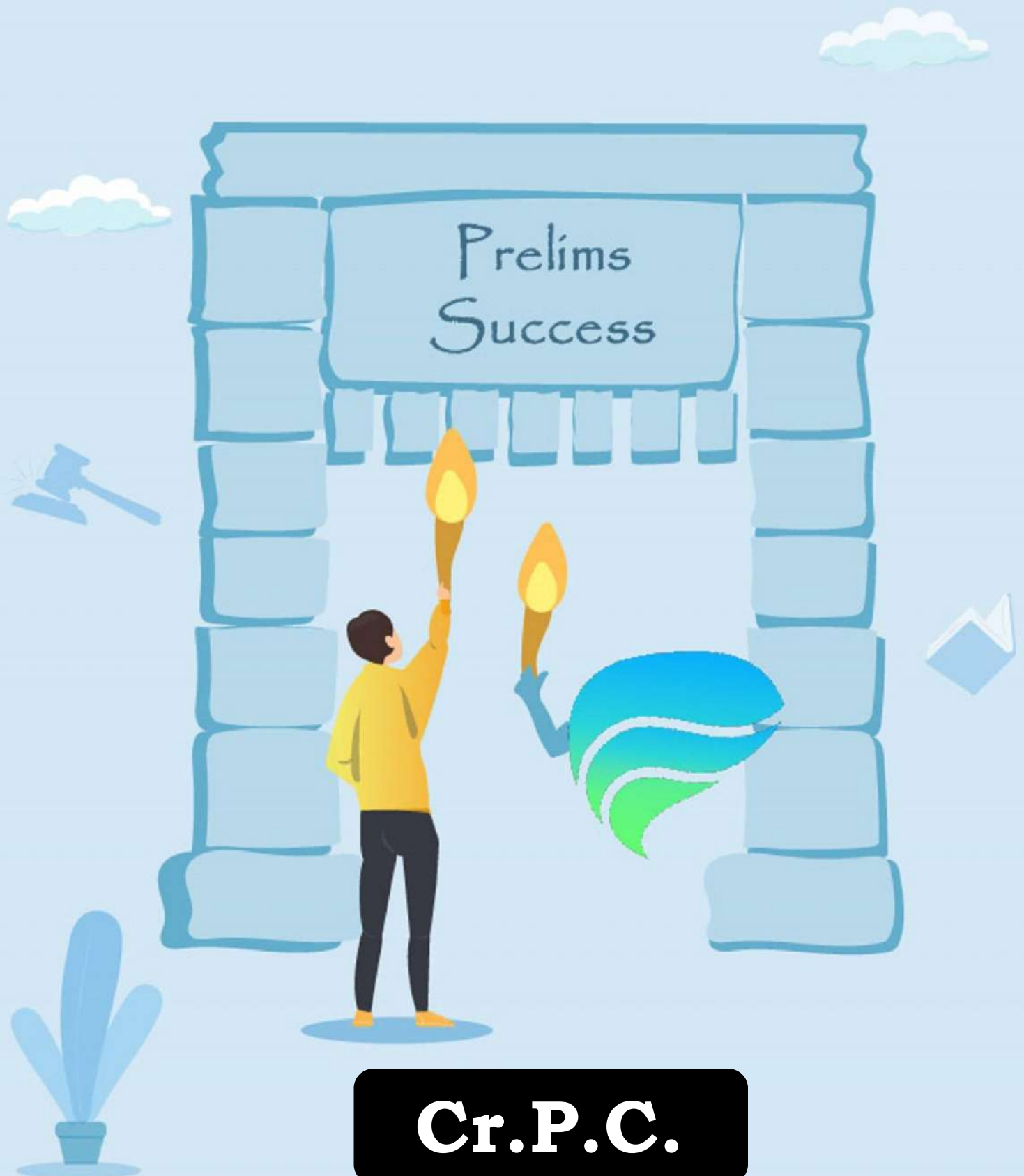


# Question Bank



**Cr.P.C.**

**Q.1.** For the maintenance under **Section 125 of Cr.P.C.**, the definition of 'wife' includes-

- (a) A divorced wife who is not remarried.
- (b) A wife living separately with the consent of the husband.
- (c) A divorced wife who is remarried.
- (d) Wife living in adultery.

**Ans: A**

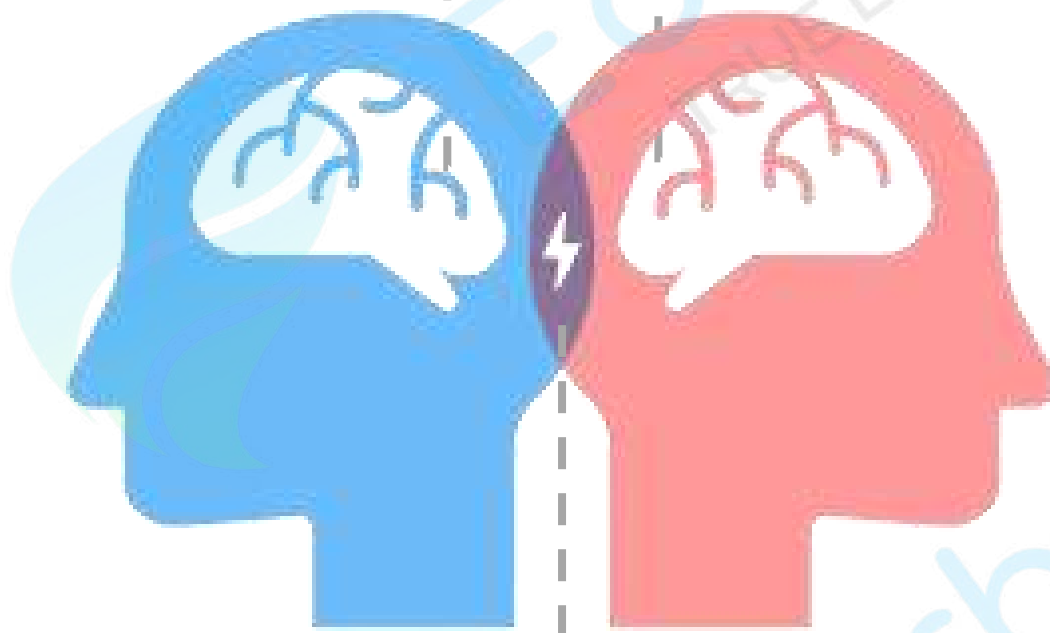
**“Wife” [Section 125(1) Explanation (b)]**

- A “wife” under **Section 125** includes-



- A woman who has **been divorced** by her husband.
- A woman who has **obtained a divorce** from her husband.

- It does not include those women who have since been remarried, as they shall now be maintained by their new husbands.
- A woman under **Section 125** may be classified into three groups-
  - Women who have **been divorced**.
  - Women who have **obtained a divorce**.



- Women who have since been **remarried**.

### **Mariyumma Vs Mohammed Ibrahim**

**AIR 1978 Ker 231**

- The effect of **Section 125 Explanation (b)** is evident to read the term “**wife**” as meaning not only the wife as generally understood but also a **woman who has been divorced but who has not remarried**.

## Savitaben Somabhai Bhatia Vs State of Gujarat 2005 (2) R.C.R. (Criminal) 190

- Only a woman who is a legally wedded wife is entitled to get maintenance under **Section 125 of the Cr.P.C.**
- The scope of maintenance cannot be enlarged to women who are treated as wives but are not legally married.

### DID YOU KNOW?

Women in **live-in relationships** can claim maintenance from their partners, called "**Palimony**".



We aren't  
even married!



But we've  
lived  
together  
for years!

## Lalita Toppo Vs State of Jharkhand 2018 SCC OnLine 2301

- A **woman in a live-in relationship** can seek maintenance under the **Protection of Women from Domestic Violence Act, 2005**, even if it is assumed that she is not entitled to the same under **Section 125**.

TH

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### SC: live-in partner can seek maintenance

November 01, 2018 12:29 am | Updated 12:29 am IST - NEW DELHI

LEGAL CORRESPONDENT



COMMENTS



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A live-in partner can seek maintenance under the Domestic Violence Act, the Supreme Court has said in a recent order.

The 2005 Act provides an “efficacious remedy” for maintenance even if the victim is not a legally wedded wife, a Bench of Chief Justice Ranjan Gogoi, Justices U.U. Lalit and K.M. Joseph

**Reference:** The Code of Criminal Procedure, 1973, Section 125.

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The Harvard Gazette: <https://news.harvard.edu/gazette/story/2017/05/visual-images-often-intrude-on-verbal-thinking-study-says>



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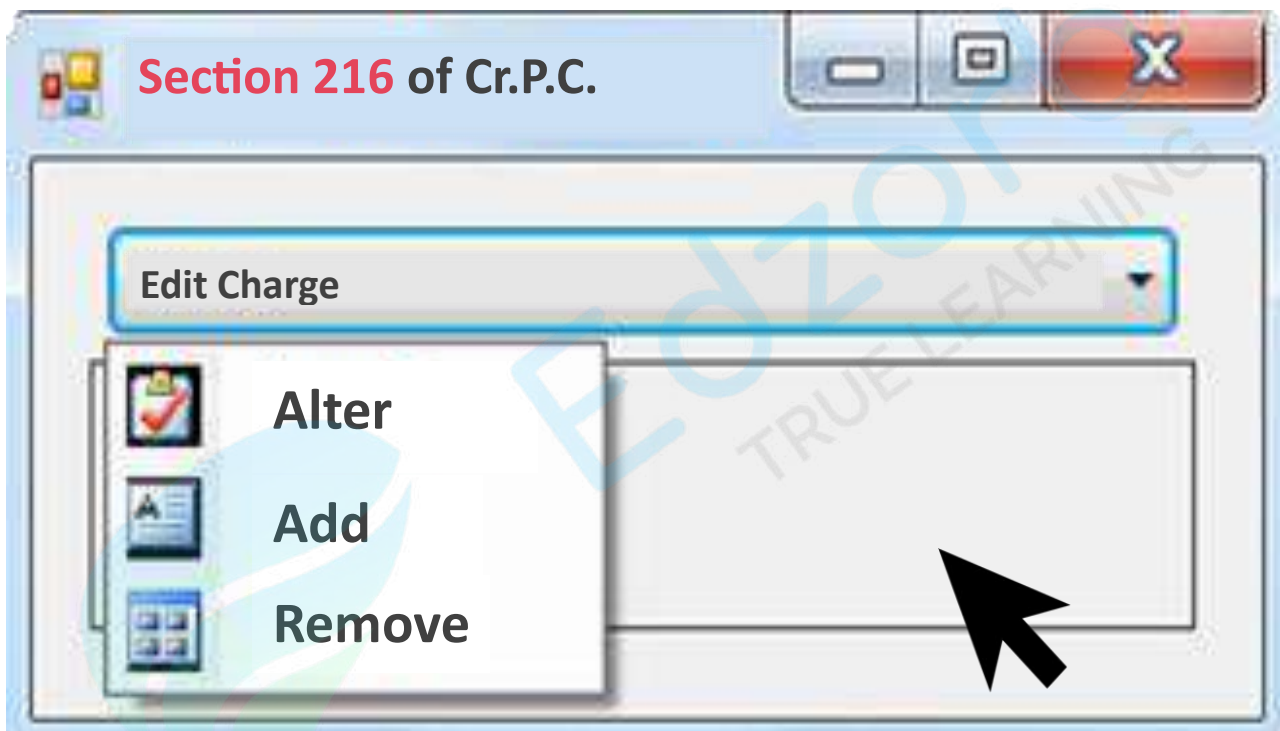
**Q.2.** Under the Code of Criminal Procedure, charges may be added or altered under

- a) Section 211
- b) Section 212
- c) Section 215
- d) Section 216

**Ans: D**

**The Court may alter the charge [Section 216]**

- A Court may alter or add to any charge at any time before judgment is pronounced.
- The powers of Courts are only to the extent that the accused must not face prejudice.



## Kantilal Chandulal Mehta Vs State of Maharashtra AIR 1970 SC 359

- The **Cr.P.C.** provides power to the Courts to **alter or amend** a charge provided that the accused must not face a charge for a new offence.
- Accused **must not be prejudiced** either by:
  - keeping him in the dark about that charge, or
  - not giving him a full opportunity to defend.
- Every alteration must be **read out and clearly explained** to the accused.



- **Rule 5 of Order XIV of CPC** provides for the Court to amend and strike out issues at any time before it passes a decree.

- The Court may amend or add issues as it may think fit necessary to determine the matters **already in controversy**.



- The Court may strike out any issue which appear to be **wrongly framed or introduced**.

**Did you Know?**

**Section 216** of Cr.P.C. applies to all Courts.



## Chetto Kalwar Vs Emperor 71 Ind Cas 214

- Striking of any charge shall be done **before concluding the trial**.
- Accused should be given an opportunity of making such defence as he thinks fit.
- If not, the trial is **vitiated**.

### Food for Thought!

When should an application for alteration of charge be made?

**Hint: Vibhuti Narayan Choubey Vs State of U.P., 2003 CrLJ 196 (All)**



**Reference:** R. V. Kelkar's Criminal Procedure; 5<sup>th</sup> Ed., 2013, Page No. 379

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**Q.3.** The distinction between a police investigation ordered under Section 156(3) and the one directed under Section 202 of the Code has been clearly brought out by the Supreme Court in:

- (a) Devarapalli Lakshminarayana Reddy v. N. Narayana Reddy
- (b) Kewal Krishnan v. Suraj Bhan
- (c) Both (a) and (b)
- (d) None of the above

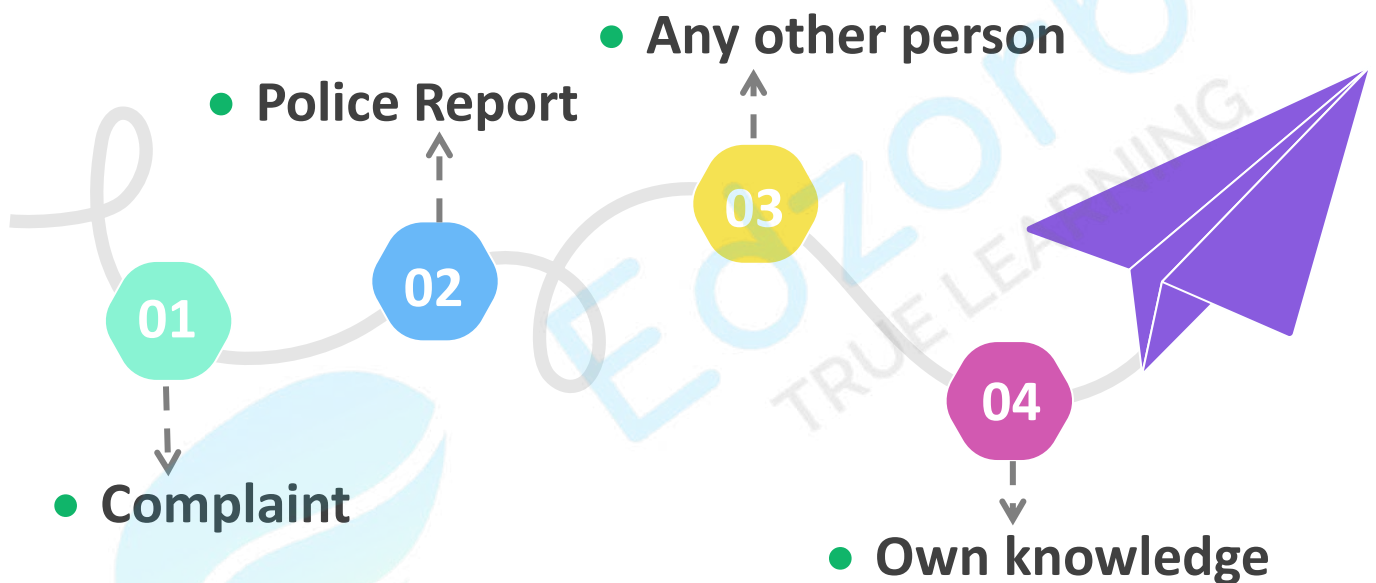
**Ans: A**

### **Magistrate taking cognizance [Sec. 156(3) r/w Sec. 190 ]**

- Under **Section 156(3)**, a Magistrate's power to direct the police to investigate cognizable cases.
- **Section 190 of Cr.P.C.** is related to when a Magistrate of First class or that of a Second class who is empowered on this behalf takes cognizance of any offence.



- The Magistrate could have received the information of the offence through-



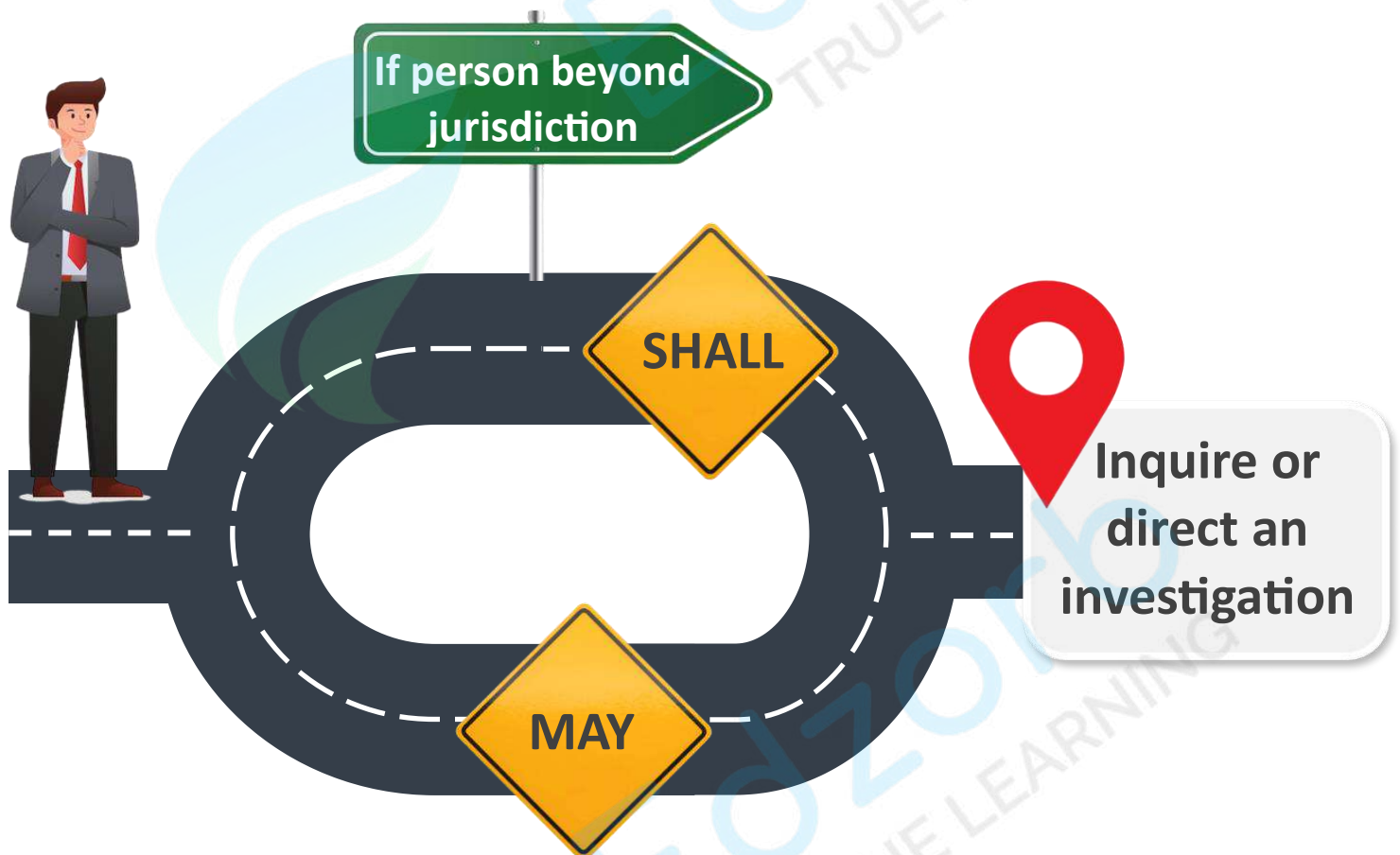
### Union of India Vs Prakash P. Hinduja and Anr. (2003) 6 SCC 195

- A Magistrate cannot interfere with the investigation by the Police. However, in our opinion, **the ratio of this decision would only apply when a proper investigation is being done by the Police.**
- If the Magistrate on an application under **Section 156(3) of Cr.P.C.** is satisfied that proper investigation has **not been done, or is not being done**, he can direct the officer-in-charge of the police station to make a proper investigation.
- He can further **monitor** the same though he should not himself investigate.



## Postponement of issue of process [Section 202]

- A Magistrate under **Section 202** **postpones** the issue of the process after receiving a complaint of an offence cognizable by him so as to **ascertain whether there are sufficient grounds** for proceeding with the case or not.
- The Procedure for the Magistrate under this section is as illustrated as follows-



### Food for Thought!

If the offence is exclusively triable by the Sessions Court, can a Magistrate direct an investigation?

Hint: **Section 202 of Cr.P.C.**



## Devarapalli L. Reddy Vs V. Narayana 1976 AIR 1672 break points

- Investigation under **Section 156(3)** is the same as that of an investigation done by a Police Officer upon a complaint received by him under **Section 202**.
- Under **Section 156(3)**, a Magistrate does not add any extra duties to be carried upon by the police and the investigation **either ends up in a final report with all the details for a triable case or otherwise**.
- Investigation under **Section 202** requires the police to investigate the matter **after taking cognizance** of the case only to know **whether there are sufficient grounds to proceed with the case**.
- If the Police Officer gives a report in the **affirmative**, the Magistrate **can call upon witnesses of the complainant and proceed with the case himself** without resorting to a detailed investigation to be carried out by the police.

**Reference:** The R.V. Kelkar's Criminal Procedure; 5th Ed., 2013, Page No. 132, 258; Code of Criminal Procedure, 1973

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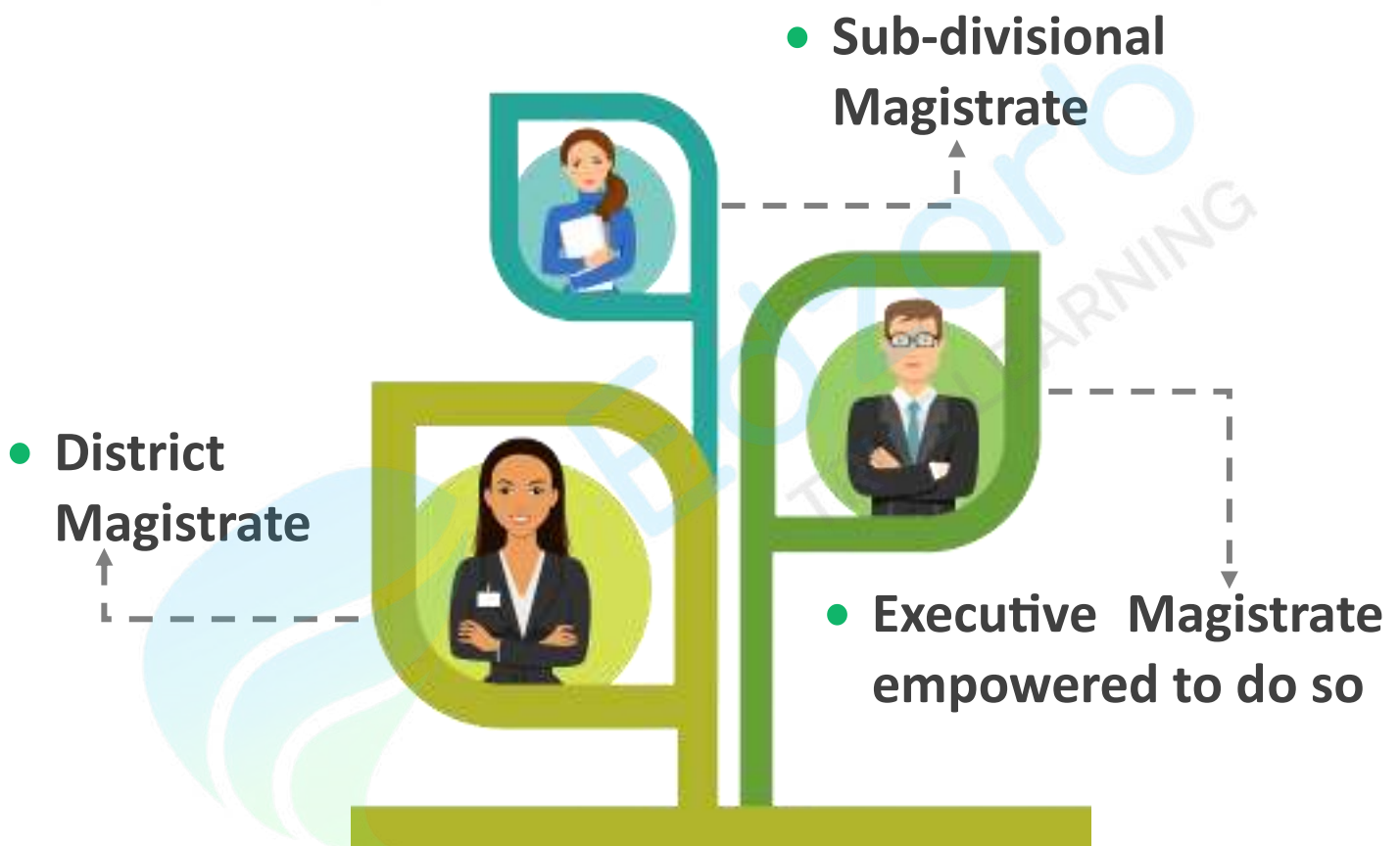
**Q.4.** Under which section of Cr.P.C., a conditional order for removal of nuisance may be issued?

- (a) Section 110
- (b) Section 130
- (c) Section 133
- (d) Section 134

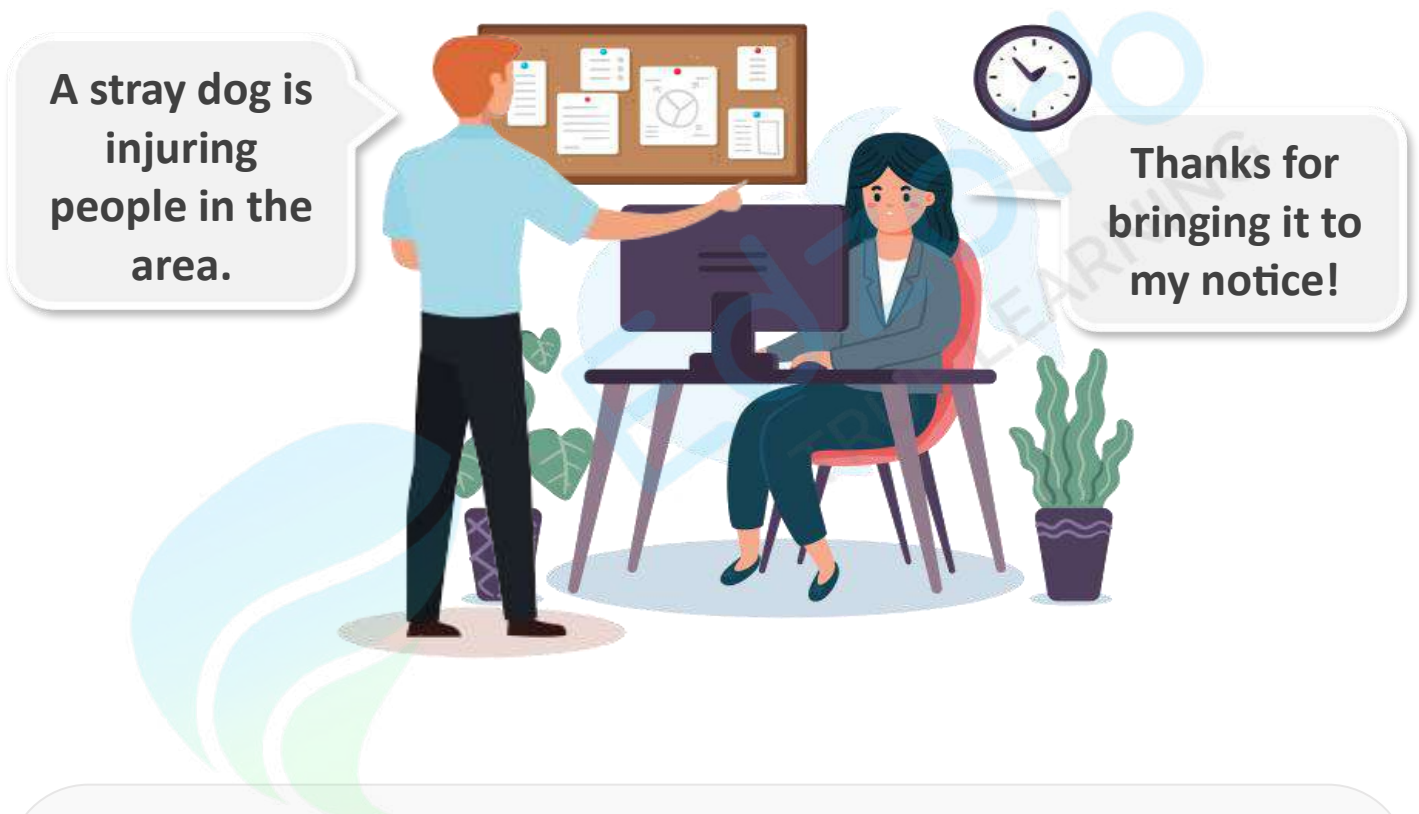
**Ans: C**

### Conditional order for removal of nuisance [**Section 133**]

- Under **Section 133**, the authorised Magistrates may pass an order for the removal of nuisance in the public interest-



- The Magistrate may act either on a **Police Report** or on **receipt of any other information**.



### **Vasant Manga Nikumba Vs Baburao Bhikanna Naidu (1996) 1 SCC (Cri) 27**

- No action can be taken under **Section 133** where the obstruction or nuisance has been in existence for a **long period**.
- The only remedy open to the aggrieved is to move to a civil court.
- **Section 133** is attracted only to cases of **emergency and immediate danger to the health or physical comfort** of the community.

**Reference:** The R.V. Kelkar's Criminal Procedure; 5th Ed., 2013, Page No. 782.

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**Q.5.** Any dispute relating to the possession of immovable property under the Code of Criminal Procedure, 1973, is decided by the

- (a) Judicial Magistrate
- (b) High Court Judge
- (c) Session Judge
- (d) Executive Magistrate

**Ans: D**

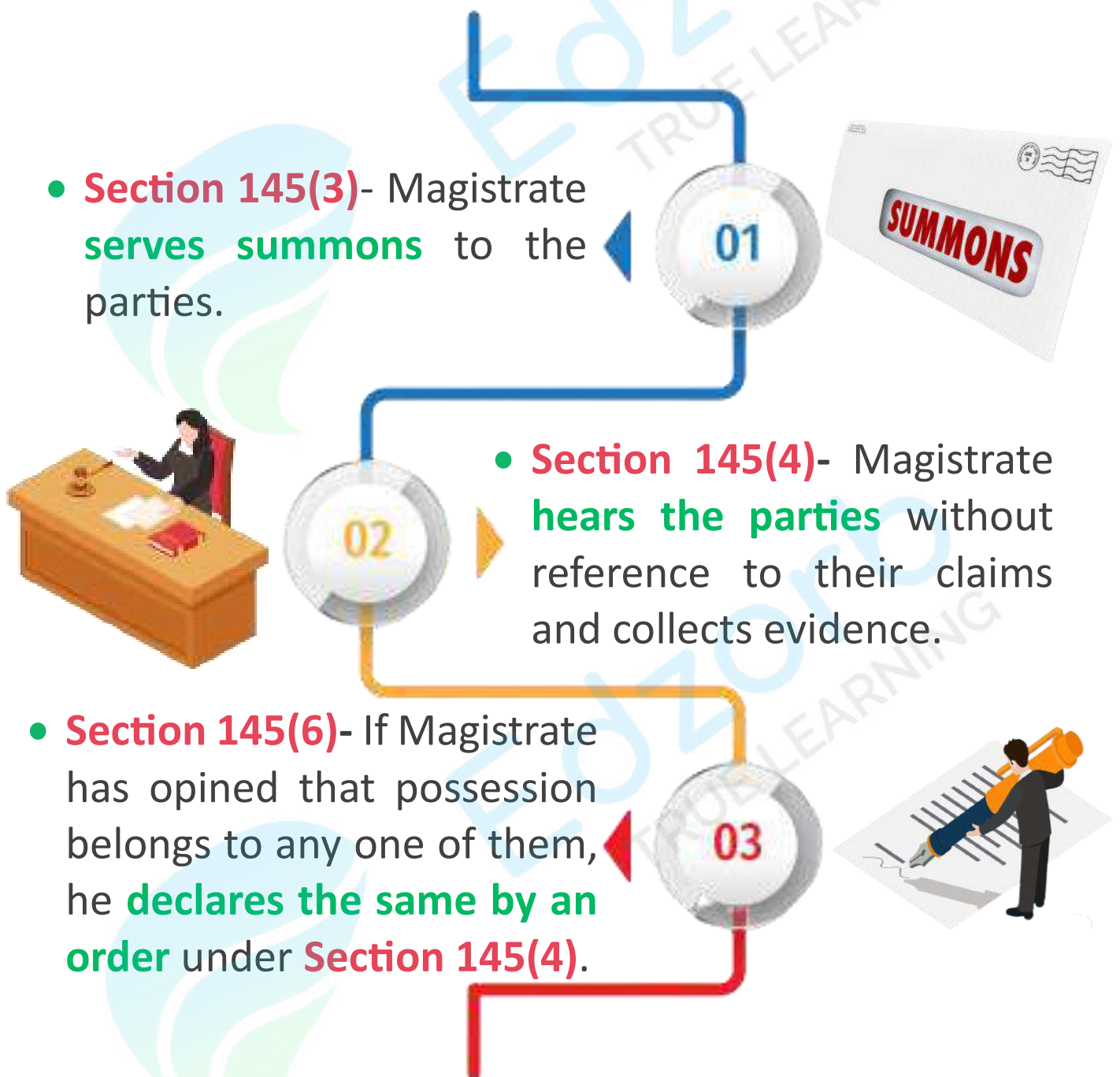
### Disputes concerning immovable property [**Section 145**]

- **Section 145** is concerned to when **disputes related to immovable properties** are likely to cause a breach of peace.
- An **Executive Magistrate** takes actions according to the procedure under this section.



- The Magistrate is to **summon and gather evidence** only.

- Under **Section 145(6)**, the Magistrate has the power to decide the actual possessor of the immovable property concerned with the dispute.
- The Magistrate follows the following procedure in doing so-





**Agni Kumar Das Vs Mantazaddin**  
**AIR 1928 Cal 610**

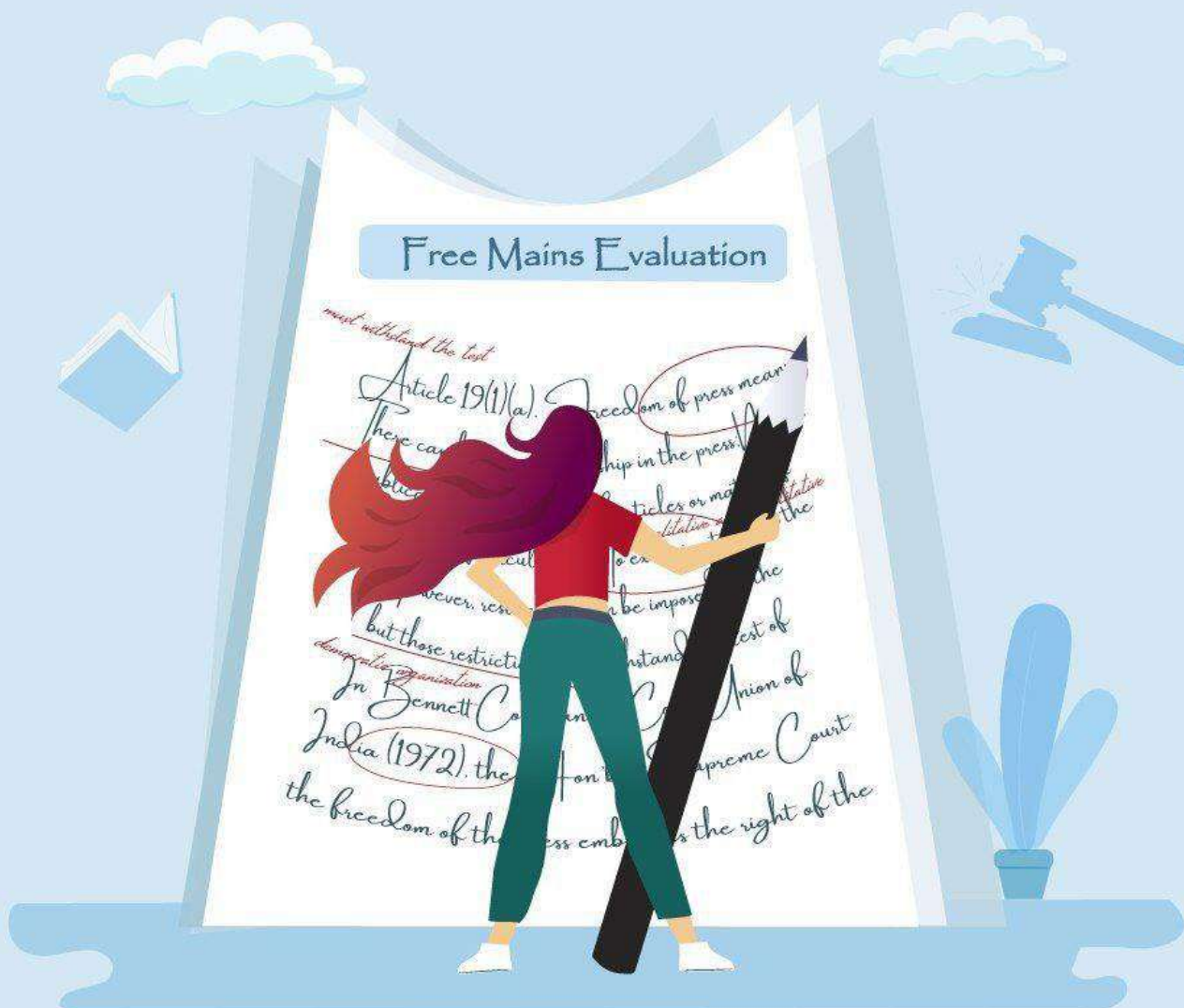
- The words “**dispute concerning land, etc.**” have to be understood as a dispute relating to **actual possession**.
- For effective determination, a decree by which a suit for declaration of right and recovery or confirmation of possession **has to be dismissed**.
- **Doing so puts an end to plaintiff’s rights and claims for possession for ever and beyond all controversy.**
- Possession must be **actual** or **khas** possession and not merely symbolical possession because it is an actual possession and not a right to possession that **Section 145** is concerned with.

**Reference:** The R.V. Kelkar’s Criminal Procedure; 5th Ed., 2013, Page No. 790

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Ques 1

\* Rule of  
Convenience  
\* maxim  
vigilantibus  
non  
dormientibus  
jura subvertunt

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  
rising  
Art. 16, 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 majorly 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 Sawhney case  
\* Balaji vs State of Mysore  
9

Ques 3

No, a remand 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 Venkatarama & Angathayammal it is held that

(1)



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 depend 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

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

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

11/5  
3

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

Start with Sec 9 of CPC along with explanation  
Meaning of Civil Suit  
Kehar Singh vs Custodian General  
Shankar Narayan Potti vs K. Sreedhar

Provision? Maxim?





- 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 proper party in former suit. (Joindammal by LR is Vaidgarathan)

### \* Section 10 CPC

#### Res judicata

- suit <sup>which</sup> is 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 judicata

- 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 subjudice

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

#### Res 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 11 CPC

Maxims &  
Nemo debet  
bis vexari  
Pro Una et  
Eadem  
Causa

Marohar Lal  
V/s  
Seth Hiralal

→ Sec 115 IEA  
→ Pickard  
V/s  
Spears





Ques 24 (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 trespass, 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 lasts as long as reasonable apprehension exist

Amma Martin v State of Kerala.



S. 104  
P. S. 103  
should also  
be mentioned

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



# Remarks:-



- ① Answer not in Answer format rather on notes format.
- ② Don't copy things from Internet.  
The Answer on Internal & External aid was exact copy.
- ③ Missed out on lot 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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