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Basic Information about Indian Constitution

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PART-1

Meaning of the Constitution Law and Constitutionalism, Historical Background of the Constituent Assembly.

Questions-Answers**Long Answer Type and Medium Answer Type Questions****Que 1.1. What is a constitution ?****Answer**

1. A constitution is primarily a set of rules and principles specifying how a country should be governed, how power is distributed and controlled, and what rights citizens possess.
2. A constitution is a set of fundamental legal-political rules that :
 - i. Are binding on everyone in the state, including ordinary lawmaking institutions;
 - ii. Concern the structure and operation of the institutions of government, political principles and the rights of citizens;
 - iii. Are based on wide spread public legitimacy;
 - iv. Are harder to change than ordinary laws (e.g. a two-thirds majority vote or a referendum is needed);
 - v. As a minimum, meet the internationally recognized criteria for a democratic system in terms of representation and human rights.

Que 1.2. What are the functions of a constitution ?**Answer**

1. Constitutions can declare and define the boundaries of the political community
2. Constitutions can declare and define the nature and authority of the political community.
3. Constitutions can express the identity and values of a national community.
4. Constitutions can declare and define the rights and duties of citizens.

5. Constitutions can establish and regulate the political institutions of the community- defining the various institutions of government; prescribing their composition, powers and functions; and regulating the relations between them.
6. Constitutions can divide or share power between different layers of government or sub-state communities.

Que 1.3. Describe constitution at the intersection of legal, social and political life ?**Answer**

1. **Constitutions as legal instruments :** It makes the operation of power procedurally predictable, upholds the rule of law, and places limits on the arbitrariness of power. It is the supreme law of the land, and it provides the standards that ordinary statutes have to comply with.
2. **Constitutions as social declarations :** Constitutions often attempt, to varying degrees, to reflect and shape society-for example, by expressing the (existing or intended) common identity and aspirations of the people, or by proclaiming shared values and ideals. These provisions are generally found in preambles and opening declarations, but can also be found in oaths and mottos or on flags and other symbols that are defined by the Constitution.
3. **Constitutions as political instruments :** The constitution prescribes a country's decision making institutions: constitutions 'identify the supreme power', 'distribute power in a way that leads to effective decision making' and 'provide a framework for continuing political struggle'. The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, independent bodies, etc.) are constituted, what powers they have and how they relate to one another.

Que 1.4. What does a constitution typically contain ?**Answer**

Divisions : Most constitutions are divided and sub-divided into parts that may variously be known as titles, chapters, articles, sections, paragraphs or clauses.

Arrangement : Constitutions vary in the arrangement of their provisions, although it is now usual for principles and rights provisions to be placed in a separate section.

The layout of a typical constitution might resemble the following:

1. **Preamble :** A statement of the overarching motives and goals of the constitution-making exercise, sometimes referring to important historical events, national identity or values.
2. **Preliminaries :** A declaration of sovereignty or of basic principles of government; the name and territory of the state; citizenship and franchise; state ideology, values or objectives.
3. **Fundamental rights :** A list of rights, including their applicability, enforcement, limitations, suspension or restriction during a state of emergency.
4. Social and economic rights or policy directives.
5. **Parliament or legislature :** Its structure, composition, terms of office, privileges, procedures, etc.
6. **Head of state :** The method of selection, powers, terms of office.
7. **Government (in a parliamentary or semi-presidential system) :** Government formation rules, responsibility, powers.
8. **Judiciary :** Court system, judicial appointments, judicial independence, public prosecutors.
9. **Sub-national government :** Federal or devolved powers, local government.
10. Provisions for referendums.
11. Institutions of the so-called integrity branch (electoral commission, ombudsman, audit institution, etc.).
12. **Security sector :** Commander-in-chief, any restrictions on military power.
13. Other miscellaneous provisions: special provisions for particular groups, language laws, particular institution, etc.
14. Amendment procedures, implementation timetable and transitional provisions.

Que 1.5. Define constitutionalism. Write elements of constitutionalism.

Answer

1. The idea of Constitutionalism suggests ways and means to work out a governmental form, which exercises power and ensures, at the same time, individual freedom and liberty.
2. Constitutional government, therefore, should necessarily be democratic government.

Elements of Constitutionalism :

1. Written Constitution
2. Independent Judiciary
3. Judicial Review
4. Rule of Law
5. Separation of Powers
6. Free and Fair Elections
7. Responsible Government
8. Fundamental Rights
9. Federalism
10. Decentralisation of powers.

Que 1.6. What is constituent assembly of India ?

Answer

1. The Constituent Assembly of India was a sovereign body, which was formed to draft a Constitution for India.
2. An idea for a Constituent Assembly was proposed in 1934 by M. N. Roy. It became an official demand of the Indian National Congress in 1935 and was accepted by the British in August 1940.
3. It held its first sitting on 9 December 1946 and reassembled as Constituent Assembly for divided India on 14 August 1947.
4. Its members were chosen by indirect election by the members of the Provincial Legislative Assemblies that had been established under the Government of India Act, 1935.
5. The Constituent Assembly was composed roughly along the lines suggested by the plan proposed by the committee of the British cabinet, known as the Cabinet Mission.

Que 1.7. Explain the formation of the constituent assembly.

Answer

1. The Constituent Assembly was formed on the recommendation of the Cabinet Mission which visited India in 1946.
2. The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the Princely States.

3. Out of 296 seats allotted to the British India, 292 members were to be drawn from the 11 governors' provinces and 4 from the 4 chief commissioners' provinces.
4. Each province and princely state were to be allotted seats in proportion to their respective population. Roughly, 1 seat was to be allotted for every million population.
5. Seats allocated to each British province were to be decided among the three principal communities - Muslims, Sikhs and general, in proportion to their population.
6. The representatives of each community were to be elected by members of that community in the provincial legislative assembly.
7. The representatives of princely states were to be nominated by the heads of the princely states.
8. After formation of Pakistan the Muslim League members withdrew from the Constituent Assembly for India.
9. Consequently, the total strength of the Assembly came down to 299 as against 389.
10. The Constituent Assembly met for the first time in New Delhi on 9th December, 1946.
11. Dr. Rajendra Prasad became the permanent chairman of the constituent assembly.
12. On 13th December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution which resolved to proclaim India as an Independent Sovereign Republic and to draw up for her future governance, a Constitution.
13. The Constituent Assembly took two years, eleven months and eighteen days to complete its historic task of drafting the Constitution for Independent India.
14. The Constituent Assembly held 11 sessions covering a total of 165 days.
15. The honourable members appended their signatures to the constitution on 24th January, 1950. The Constitution of India came into force on 26th January, 1950.
16. On that day, the Constituent Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

Que 1.8 What are the functions of constituent assembly ?

Answer

Functions of the constituent assembly :

1. Framing the Constitution.
2. Enacting laws and involved in the decision making process.
3. It adopted the National flag on July 22, 1947.
4. It accepted and approved India's membership of the British Commonwealth in May 1949.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.
6. It adopted the National anthem on January 24, 1950.
7. It adopted the National song on January 24, 1950.

Que 1.9 On what grounds the constituent assembly was criticized ?

Answer

The grounds on which the Constituent Assembly was criticized were as follows :

1. **Not a Popular body :** Critics argued that the members of the Constituent Assembly were not directly elected by the people of India.
2. **Not a Sovereign body :** The critics stated that the Constituent Assembly was not a sovereign body as it was not created by the people of India. It was created by the proposals of the British rulers by executive action before India's independence and its composition was determined by them.
3. **Time consuming :** The critics maintained that the time taken to prepare the Constitution was too much in comparison to other nations.
4. **Dominated by Congress :** The critics continued to argue that the Congress in the Constituent Assembly was quite dominating and imposed its thinking on the people of the country through the Constitution drafted by it.
5. **Dominated by one community :** According to some critics, the Constituent Assembly lacked religious heterogeneity and was dominated by the Hindus.
6. **Dominated by Lawyers :** Critics also argued that the Constitution became bulky and cumbersome due to dominance of lawyers in the Constituent Assembly. They have made the language of the Constitution difficult for a layman to understand.

Que 1.10. Explain in brief objective resolution.

Answer

1. The Objective Resolution was moved on December 13, 1946 by Pandit Jawaharlal Nehru, which provided the philosophy and guiding principles for framing the Constitution.
2. It later took the form of Preamble of the Constitution of India.
3. This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

Que 1.11. Write a short note on Drafting Committee.

Answer

1. Among all the committees of the Constituent Assembly, the most significant was the Drafting Committee set up on August 29, 1947.
2. It was this committee that was entrusted with the task of preparing a draft of the new Constitution. It consisted of seven members. They were:
 - i. Dr. B.R. Ambedkar (Chairman)
 - ii. N. Gopalswami Ayyangar
 - iii. Alladi Krishnaswami Ayyar
 - iv. K.M. Munshi
 - v. Mohammed Sadullah
 - vi. B.L. Mittar (replaced by N. Madhav Rao)
 - vii. D.P. Khaitan (who died in 1948 and was replaced by T.T. Krishnamachari)
3. The Drafting Committee, after taking into consideration the proposals of the various committees, prepared the first draft of the Constitution of India, which was published in February 1948.
4. The people of India were given 8 months to discuss the draft and propose amendments.
5. In the light of the public comments, criticisms and suggestions, the Drafting Committee prepared a second draft, which was published in October 1948.

PART-2

Government of India Act of 1935 and Indian Independence Act of 1947, Enforcement of the Constitution, Indian Constitution and Its Salient Features.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 1.12. Elaborate Government of India Act of 1935.

Answer

1. The Government of India Act was passed by the British Parliament in August 1935. It was the longest act enacted by the British Parliament at that time.
2. So, it was divided into two separate acts namely, the Government of India Act 1935 and the Government of Burma Act 1935.
3. The Government of India Act 1935 derived material from four key sources viz. Report of the Simon Commission, discussions at the Third Round Table Conference, the White Paper of 1933 and the reports of the Joint select committees.
4. This act ended the system of dyarchy introduced by Government of India Act, 1919.
5. It provided for establishment of a Federation of India to be made up of provinces of British India and some or all of the Princely states. However, the federation never came into being as the required number of princely states did not join it.

Que 1.13. Explain salient features of Government of India Act of 1935.

Answer

Salient Features of the Government of India Act 1935 were as follows :

1. Abolition of provincial dyarchy and introduction of dyarchy at centre.
2. Abolition of Indian Council and introduction of an advisory body in its place.

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3. Provision for an All India Federation with British India territories and princely states.
4. Elaborate safeguards and protective instruments for minorities.
5. Supremacy of British Parliament.
6. Increase in size of legislatures, extension of franchise, division of subjects into three lists and retention of communal electorate.
7. Separation of Burma from India.

Que 1.14. | Describe Indian Independence Act of 1947.

Answer

1. The Indian Independence Act, enacted and adopted by the British Parliament, receives royal assent on 18 July 1947.
2. The Indian Independence Act creates two new independent Dominions: India (Hindu) and Pakistan (Muslim).
3. The provinces which were formerly administered directly by the British are attached to one or other of these two states, depending on whether the majority of the population is Hindu or Muslim.
4. The princely states are free to decide whether they belong to Pakistan or India.
5. India obtained its independence on 15 August 1947.

Que 1.15. | Explain salient features of Indian Independence Act of 1947.

Answer

Salient features :

1. It provided for two dominion states : India and Pakistan.
2. The authority of the British Crown over the princely states ceased and they were free to join either India or Pakistan or remain independent.
3. The constituent assemblies of both the states were free to make constitutions of their respective countries.
4. British Government would not continue any control on any dominion.
5. The Governor General was invested with adequate powers until March 1948 to issue orders for effective implementation of the provisions of the Indian Independence Act, 1947.
6. Those civil servants who had been appointed before the August 15, 1947, will continue in service with same privileges.

Constitution of India, Law & Engineering

1-11 P (NCC-Sem-5 & 6)

Que 1.16. | Describe in detail about Enforcement of the Constitution.

Answer

1. The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.
2. The date of 26th January was chosen to commemorate the historical day as on this day in 1930 that Purna Swaraj day was celebrated and the tricolour flag of Indian independence was unfurled following the resolution of the Lahore Session (December 1929) of the Indian National Congress.
3. Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions came into force on November 26, 1949 itself.
4. The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the 'date of its commencement' and celebrated as the Republic Day.
5. With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, with all enactments amending or supplementing the latter Act, were repealed. The Abolition of Privy Council Jurisdiction Act (1949) was however continued.

Que 1.17. | What are the salient features of the Constitution ?

Answer

The salient features are :

1. A Written Constitution.
2. Lengthy Document.
3. Drawn from Different Sources.
4. A Federal Polity with a Unitary Bias.
5. Single Citizenship.
6. More Flexible than Rigid.
7. Democratic Republic.
8. Balance between Judicial Supremacy and Parliamentary Sovereignty.
9. Universal Adult Franchise.
10. Secular State.

11. Provision of Fundamental Rights.
12. Directive Principles for a Welfare State.
13. Incorporation of Fundamental Duties.
14. Emergency Provisions.
15. Protection of Minorities.
16. Provision for Autonomous Organisations.

PART-3

The Preamble of the Constitution, Fundamental Rights, Fundamental Duties, Directive Principles of State Policy, Parliamentary System, Federal System, Centre-State Relations.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 1.18. What is a Preamble ?

Answer

1. A preamble is an introductory statement in a document that explains the document's philosophy and objectives.
2. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation.
3. The preamble basically gives idea of the following :
 - a. Source of the Constitution
 - b. Nature of Nation's State
 - c. Statement of its objectives
 - d. Date of its adoption

Que 1.19. Explain the preamble to the Indian constitution.

Answer

1. The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947.

2. Although not enforceable in court, the Preamble states the objectives of the Constitution, and acts as an aid during the interpretation of Articles when language is found ambiguous.

Components of Preamble :

1. It is indicated by the Preamble that the source of authority of the Constitution lies with the people of India.
2. Preamble declares India to be a sovereign, socialist, secular and democratic republic.
3. The objectives stated by the Preamble are to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.
4. The date is mentioned in the preamble when it was adopted i.e. November 26, 1949.

Key words in the Preamble :

1. **We, the people of India :** It indicates the ultimate sovereignty of the people of India. Sovereignty means the independent authority of the State, not being subject to the control of any other State or external power.
2. **Sovereign :** The term means that India has its own independent authority and it is not a dominion of any other external power. In the country, the legislature has the power to make laws which are subject to certain limitations.
3. **Socialist :** The term means the achievement of socialist ends through democratic means. It holds faith in a mixed economy where both private and public sectors co-exist side by side. It was added in the Preamble by 42nd Amendment, 1976.
4. **Secular :** The term means that all the religions in India get equal respect, protection and support from the state. It was incorporated in the Preamble by 42nd Constitutional Amendment, 1976.
5. **Democratic :** The term implies that the Constitution of India has an established form of Constitution which gets its authority from the will of the people expressed in an election.
6. **Republic :** The term indicates that the head of the state is elected by the people. In India, the President of India is the elected head of the state.

Que 1.20. What are the Fundamental Rights ? List the fundamental rights of Indian Constitution.

Answer

1. Fundamental rights are the basic human rights enshrined in the Constitution of India which are guaranteed to all citizens.
2. They are applied without discrimination on the basis of race, religion, gender, etc.
3. Also, fundamental rights are enforceable by the courts, subject to certain conditions.
4. These rights are called fundamental rights because of two reasons:
 - i. They are enshrined in the Constitution which guarantees them.
 - ii. They are enforceable by courts. In case of a violation, a person can approach a court of law.

Fundamental Rights of Indian Constitution :

There are six fundamental rights of Indian Constitution which are mentioned below :

- i. Right to Equality
- ii. Right to Freedom
- iii. Right against Exploitation
- iv. Right to Freedom of Religion
- v. Cultural and Educational Rights
- vi. Right to Constitutional Remedies

Que 1.21. Briefly describe the six fundamental rights of Indian Constitution.

Answer**A. Right to Equality :**

1. The constitutional articles related to right to equality are mentioned in Articles 14 - 18.
2. It guarantees equal rights for everyone, irrespective of religion, gender, caste, race or place of birth.
3. It ensures equal employment opportunities in the government and insures against discrimination by the State in matters of employment on the basis of caste, religion, etc.
4. It also includes the abolition of titles as well as untouchability.

B. Right to Freedom :

1. The constitutional articles related to right to freedom are mentioned in Articles 19 - 22.
2. Freedom is the most important ideals of any democratic society. The Indian Constitution guarantees freedom to citizens.
3. The freedom right includes many rights such as :
 - i. Freedom of speech
 - ii. Freedom of expression
 - iii. Freedom of assembly without arms
 - iv. Freedom of association
 - v. Freedom to practice any profession
 - vi. Freedom to reside in any part of the country
4. Some of these rights are subject to certain conditions of state security, public morality, etc.
5. The State also has the right to impose reasonable restrictions on them.

C. Right against exploitation :

1. The constitutional articles related to right against exploitation are mentioned in Articles 23 - 24.
2. This right implies the prohibition of traffic in human beings, begar, and other forms of forced labour.
3. It also implies the prohibition of children in factories, etc.
4. The Constitution prohibits the employment of children less than 14 years in hazardous conditions.

D. Right to Freedom of Religion :

1. The constitutional articles related to right to freedom of religion are mentioned in Articles 25 - 28.
2. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.
3. This indicates the secular nature of Indian polity. There is equal respect given to all religions.
4. There is freedom of conscience, profession, practice and propagation of religion. The State has no official religion.

E. Cultural and Educational Rights :

1. The constitutional articles related to cultural and educational rights are mentioned in Articles 29 - 30.
2. These rights protect the rights of religious, cultural and linguistic minorities, by facilitating them to preserve their heritage and culture.

3. Educational rights are for ensuring education for everyone without any discrimination.
- F. Right to Constitutional Remedies :**
1. The constitutional articles related to right to constitutional remedies are mentioned in Articles 32.
 2. The Constitution guarantees remedies if citizens' fundamental rights are violated.
 3. The government cannot infringe upon or curb anyone's rights.
 4. When these rights are violated, the aggrieved party can approach the courts.

Que 1.22. What are the features of Fundamental Rights ?

Answer

Features of Fundamental Rights :

1. **Fundamental rights are different from ordinary legal rights :** If a legal right is violated, the aggrieved person cannot directly approach the Supreme Court bypassing the lower courts. He or she should first approach the lower courts.
2. **Fundamental rights are not absolute rights :** Fundamental rights are subject to the conditions of state security, public morality and decency and friendly relations with foreign countries.
3. **They are justiciable (enforceable by courts) :** People can approach the Supreme Court directly in case of violation of fundamental rights.
4. Fundamental rights can be amended by the Parliament by a constitutional amendment but only if the amendment does not alter the basic structure of the Constitution.
5. Fundamental rights can be suspended during a national emergency.
6. The application of fundamental rights can be restricted in an area which has been placed under martial law or military rule.

Que 1.23. What are the fundamental rights that are available to Indian citizens? Also give importance of fundamental rights.

Answer

Following are the fundamental rights that are available only to Indian citizens :

1. Prohibition of discrimination on grounds of race, religion, caste, gender or place of birth.

2. Equality of opportunity in matters of public employment.
3. Protection of Freedom of :
 - i. Speech and expression
 - ii. Association
 - iii. Assembly
 - iv. Movement
 - v. Residence
 - vi. Profession
4. Protection of the culture, language and script of minorities.
5. Right of minorities to establish and administer educational institutions.

Importance of Fundamental Rights :

1. Fundamental rights are very important because they form the backbone of the country. They are essential for safeguarding the people's interests.
2. According to Article 13, all laws, ordinances, orders, regulations, notifications, etc; that are violative of fundamental rights shall be void.
3. The Supreme Court and the High Courts can declare any law unconstitutional on the grounds that it is violative of the fundamental rights.

Que 1.24. Write a short note on fundamental duties in India.

Answer

- i. The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee.
- ii. The Committee suggested that steps needed to be taken to ensure that the individual did not overlook his duties while in exercise of his Fundamental Rights.
- iii. The Fundamental duties are essentially taken from the Indian tradition, mythology, religions and practices.
- iv. Essentially these were the duties that are the codification of tasks integral to the Indian way of life.
- v. The list of 11 Fundamental Duties to be obeyed by every Indian citizen is given below :

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 which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. To develop the 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 spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
11. Provide opportunities for education to his child or ward between the age of six and fourteen years.

Que 1.25 Why are Fundamental Duties important ?

Answer

Fundamental Duties are an inalienable part of fundamental rights. The importance of these is given below :

1. They remind Indian Citizens of their duty towards their society, fellow citizens and the nation.
2. They warn citizens against anti-national and anti-social activities.
3. They inspire citizens & promote a sense of discipline and commitment among them.
4. They help the courts in examining and determining the constitutional validity of a law.
5. They are enforceable by law.

Que 1.26 What are the Directive Principles of State Policy ?

Answer

1. In 1945 the Sapru Committee suggested two categories of individual rights.
2. One being justiciable (Fundamental Rights) and the other being non-justiciable (Directive Principles of State Policy) rights.
3. Directive Principles of State Policy are ideals which are meant to be kept in mind by the state when it formulates policies and enacts laws.
4. Following are various definitions to Directive Principles of State :
 - i. Directive Principles of State Policy's are ideals which are not legally enforceable by the courts for their violation.
 - ii. They seek to establish economic and social democracy in the country.
 - iii. They are an 'instrument of instructions' which are enumerated in the Government of India Act, 1935.

Que 1.27 Explain Directive Principles of State Policy on the basis of Socialistic Principles.

Answer

1. They are the principles that aim at providing social and economic justice and set the path towards the welfare state.
2. Under following articles, they direct the state to :
3. Article 38 : Promote the welfare of the people by securing a social order through justice and to minimise inequalities in income, status, facilities and opportunities.
4. Article 39 :
 - i. Secure right to adequate means of livelihood for all citizens.
 - ii. Secure equitable distribution of material resources of the community for the common good.
 - iii. Prevention of concentration of wealth and means of production.
 - iv. Secure equal pay for equal work for men and women.
 - v. Preservation of the health and strength of workers and children against forcible abuse.
 - vi. Secure opportunities for the healthy development of children.
5. Article 39A : Promote equal justice and free legal aid to the poor.
6. Article 41 : In cases of unemployment, old age, sickness and disablement, secure citizens :

- i. Right to work.
 - ii. Right to education.
 - iii. Right to public assistance.
7. **Article 42** : Make provision for just and humane conditions of work and maternity relief.
8. **Article 43** : Secure a living wage, a decent standard of living and social and cultural opportunities for all workers.
9. **Article 43A** : Take steps to secure the participation of workers in the management of industries.
10. **Article 47** : Raise the level of nutrition and the standard of living of people and to improve public health.

Que 1.28. Explain Directive Principles of State Policy on the basis of Gandhian Principles.

Answer

1. These principles are based on Gandhian ideology.
2. They are used to represent the programme of reconstruction enunciated by Mahatma Gandhiji during the independence movement.
3. Under following articles, they direct the state to :
 - i. **Article 40** : Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.
 - ii. **Article 43** : Promote cottage industries on an individual or co-operation basis in rural areas.
 - iii. **Article 43B** : Promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
 - iv. **Article 46** : Promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.
 - v. **Article 47** : Prohibit the consumption of intoxicating drinks and drugs which are injurious to health.
 - vi. **Article 48** : Prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds.

Que 1.29. Explain Directive Principles of State Policy on the basis of Liberal-Intellectual Principles.

Answer

1. These principles reflect the ideology of liberalism.
2. Under following articles, they direct the state to :
 - 3. **Article 44** : Secure for all citizens a uniform civil code throughout the country.
 - 4. **Article 45** : Provide early childhood care and education for all children until they complete the age of six years.
 - 5. **Article 48** : Organise agriculture and animal husbandry on modern and scientific lines.
 - 6. **Article 49** : Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
 - 7. **Article 50** : Separate the judiciary from the executive in the public services of the State.
 - 8. **Article 51** :
 - i. Promote international peace and security and maintain just and honourable relations between nations.
 - ii. Foster respect for international law and treaty obligations.
 - iii. Encourage settlement of international disputes by arbitration.

Que 1.30. Mention the new Directive Principles of State Policy's added by the 42nd Amendment Act, 1976.

Answer

Following 4 new Directive Principles are added in 42nd Amendment Act, 1976 :

1. **Article 39** : To secure opportunities for the healthy development of children.
2. **Article 39A** : To promote equal justice and to provide free legal aid to the poor.
3. **Article 43A** : To take steps to secure the participation of workers in the management of industries.
4. **Article 48A** : To protect and improve the environment and to safeguard forests and wildlife.

Que 1.31. Describe parliamentary system of government in India and enlist its features.

Answer

- India has a parliamentary system of Government. India chose a parliamentary form of government primarily because the constitution-makers were greatly influenced by the system in England.
- Another reason the founding fathers saw was that the parliamentary model would only work to accommodate the varied and diverse groups within our population.
- Also, the strict separation of powers in the presidential system would cause conflicts between the two branches, the executive and the legislature, which our newly-independent country could ill-afford.
- In parliamentary system, the parliament is generally supreme and the executive is responsible to the legislature.
- It is also known as the Cabinet form of government, and also 'Responsible Government'.

Features of the parliamentary system :

- Close relationship between the legislature and the executive :** The Prime Minister along with the Council of Ministers form the executive and the Parliament is the legislature. The Prime Minister and the ministers are elected from the members of parliament, implying that the executive emerges out of the legislature.
- Executive responsible to the legislature :** The executive is responsible to the legislature. There is a collective responsibility, that is, each minister's responsibility is the responsibility of the whole Council.
- Dual executive :** There are two executives - the real executive and the titular executive. The nominal executive is the head of state (president or monarch) while the real executive is the Prime Minister, who is the head of government.
- Secrecy of procedure :** A prerequisite of this form of government is that cabinet proceedings are secret, and not meant to be divulged to the public.
- Leadership of the Prime Minister :** The leader of this form of government is the Prime Minister.
- Bicameral Legislature :** Most parliamentary democracies follow bicameral legislature.
- No fixed tenure :** The term of the government depends on its majority support in the lower house. If the government does not win a vote of no confidence, the council of ministers has to resign.

Ques 13: What are the merits and demerits of parliamentary system ?

Answer**Merits of Parliamentary System :**

- Better coordination between the executive and the legislature :** Since the executive is a part of the legislature, and generally the majority of the legislature supports the government, it is easier to pass laws and implement them.
- Prevents authoritarianism :** Since the executive is responsible to the legislature, and can be voted out in a motion of no confidence, there is no authoritarianism.
- Responsible government :** The members of the legislature can ask questions and discuss matters of public interest and put pressure on the government. The parliament can check the activities of the executive.
- Representing diverse groups :** In this system, the parliament offers representation to diverse groups of the country.
- Flexibility :** There is flexibility in the system as the Prime Minister can be changed easily if needed.

Demerits of Parliamentary System :

- No separation of powers :** Since there is no genuine separation of powers, the legislature cannot always hold the executive responsible. Also, because of anti-defection rules, legislators cannot exercise their free will and vote as per their understanding and opinions.
- Unqualified legislators :** The system creates legislators whose intention is to enter the executive only. They are largely unqualified to legislate.
- Instability :** Since the governments sustain only as long as they can prove a majority in the house, there is instability if there is no single-largest party after the elections. Coalition governments are generally quite unstable and short-lived. Because of this, the executive has to focus on how to stay in power rather than worry about the state of affairs/welfare of the people.
- Ministers :** The executive should belong to the ruling party. This rules out the hiring of industry experts for the job.
- Failure to take a prompt decision :** Because there is no fixed tenure enjoyed by the Council of Ministers, it often hesitates from taking bold and long-term policy decisions.
- Party politics :** Party politics is more evident in the parliamentary system where partisan interests drive politicians more than national interests.
- Control by the bureaucracy :** Civil servants advise the ministers on various matters and are also not responsible to the legislature.

Que 1.33. What do you mean by federal system ?

Answer

1. There are generally two types of states in the world.
2. The state that has only one government for the entire country is known as a unitary state.
3. The state which has governments at two levels: one at the central level and the other at the state level is known as a federal state.
4. Besides having two sets of government, a federal system must have three other features :
 - i. A written constitution,
 - ii. Division of powers between the central government and the state governments, and
 - iii. Supremacy of the judiciary to interpret the constitution.
5. India has a federal system having all these features.

Que 1.34. Describe federalism in India and enlist its various features.

Answer

1. Although India is a federal system but it has more tilt towards a unitary system of government.
2. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system.
3. Elements of federalism were introduced into modern India by the Government of India Act of 1919, which separated powers between the centre and the provincial legislatures.

Federal Features of India :

1. Governments at two levels - centre and states.
2. **Division of powers between the centre and states :** There are 3 lists given in the Seventh Schedule of the Constitution which gives the subjects each level has jurisdiction in :

- i. Union List
- ii. State List
- iii. Concurrent List

3. Supremacy of the constitution : The basic structure of the constitution is indestructible as laid out by the judiciary. The constitution is the supreme law in India.

4. Independent judiciary : The constitution provides for an independent and integrated judiciary. The lower and district courts are at the bottom levels, the high courts are at the state levels and at the topmost position is the Supreme Court of India. All courts are subordinate to the Supreme Court.

Que 1.35. Comment on Centre-State Relations.

Answer

1. India is a union of states. The constitution of India has divided the legislative, executive and financial powers between the centre and the states, which gives the constitution a federal character whereas judiciary is integrated in a hierarchical structure.

2. The centre-state relations are divided into three parts, which are mentioned below :

A. Legislative Relations :

1. Articles 245 to 255 describe Legislative relations between centre and states. These include :
 - i. Territorial jurisdiction of laws made by the Parliament and by the Legislatures of States.
 - ii. Distribution of legislative subjects.
 - iii. Power of parliament to legislate with respect to a matter in the State List.
 - iv. Centre's control state legislation.

2. Article 245 empowers the centre to give directions to the states in certain cases in regards to the exercise of their executive powers.

3. Article 249 empowers the parliament to legislate with respect to a matter in the State List in the national interest.

4. Under Article 250, the parliament becomes empowered to make laws on the matters related to state list when national emergency (under Article 352) is in operation.

5. Under Article 252, the parliament is empowered to legislate for two or more States by their consent.

B. Administrative Relations :

1. Article 256 to 263 deals with the administrative relations between the centre and the states.

2. Article 256 states that the executive power of every State shall be so exercised as to ensure compliance with the laws made by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

Cooperation between the Centre and the States :

The constitution lays down various provisions to secure cooperation and coordination between the centre and the states. These include :

- i. Article 261 states that "Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State".
- ii. According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.
- iii. Article 263 empowers the President to establish an inter-State Council to inquire into and advise upon disputes between states, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- iv. As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the inter-state freedom of trade and commerce.

Centre-State Relations during Emergency :

- i. During a national emergency (under Article 352), the state government become subordinate to the central government. All the executive functions of the state come under the control of the union government.
- ii. During a state emergency (under Article 356), the president can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or authority in the State other than the Legislature of the State.
- iii. During the operation of financial emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

C. Financial Relations :

1. Article 268 - 293 of Part XII deals with the financial relations between the centre and the states.

Allocation of taxing powers : The Constitution has provided the union government and the state governments with the independent

sources of revenue. It allocates the powers to centre and the states in the following way :

- i. The parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- ii. The state legislature has exclusive power to levy taxes on the subjects mentioned in the State List.
- iii. Both the parliament and the state legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.
- iv. The parliament has exclusive power to levy taxes on the matters related to the residuary subjects.

Tax revenue distribution :

1. Article 268 states that duties are levied by the Union but are collected and appropriated by the States.
2. Service tax levied by Union and collected and appropriated by the Union and the States (Article 268A).
3. Taxes levied and collected by the Union but assigned to the States (Article 269).
4. Taxes levied and collected by the Union but distributed between the Union and the States (Article 270).
5. Surcharge on certain duties and taxes for purposes of the Union (Article 271).
6. Under Article 275, the parliament is authorized to provide grants-in-aid to any state as parliament may determine to be in need of assistance, and different sums may be fixed for different States.
7. Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.
8. Under Article 352, during the operation of national emergency, the distribution of revenues between the centre and the states can be altered by the president.
9. Under Article 360, during the financial emergency, the executive authority of the Union shall give directions to any State to observe such canons of financial propriety as may be specified in the directions and to give the directions as the President may deem necessary and adequate for the purpose.

PART-4

Amendment of the Constitutional Powers and Procedure, the Historical Perspectives of the Constitutional Amendments in India, Emergency Provisions : National Emergency, President Rule, Financial Emergency, Local Self Government - Constitutional Scheme in India.

Questions-Answers**Long Answer Type and Medium Answer Type Questions**

Que 1.36. What is Article 368 ? Describe the procedure of amendments of the constitution of Indian under Article 368.

Answer

1. Article 368 in Part XX of the Constitution deals with the powers of Parliament to amend the Constitution and its procedure.
2. The Constitution of India provides for its amendment in order to adjust itself to the changing conditions and needs.
3. The procedure for the amendment of the Constitution as laid down under Article 368 is as follows :
 - i. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
 - ii. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
 - iii. The bill must be passed in each House by a special majority, that is, a majority of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
 - iv. 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 for the purpose of deliberation and passage of the bill.
 - v. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority.

- vi. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the President for assent.
- vii. The President must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill to the Parliament for reconsideration.
- viii. After the President's assent, the bill becomes an Act and the Constitution stands amended in accordance with the terms of the Act.

Que 1.37. What are the types of amendments by which Indian Constitution can be amended ?

Answer

There are three ways in which the Constitution can be amended :

- A. **Amendment by simple majority of the Parliament :** These provisions include :
 1. Admission or establishment of new states.
 2. Formation of new states and alteration of areas, boundaries or names of existing states.
 3. Abolition or creation of legislative councils in states.
 4. Second Schedule-emoluments, Allowances, privileges and so on of the president, the governors, the Speakers, judges, etc.
 5. Quorum in Parliament.
 6. Salaries and allowances of the members of Parliament.
 7. Rules of procedure in Parliament.
 8. Privileges of the Parliament, its members and its committees.
- B. **Amendment by special majority of the Parliament :**
 1. The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 %) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
 2. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
 3. The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principle of State Policy and (iii) All other provisions which are not covered by the first and third categories.

- C. Amendment by special majority of the parliament and consent of half of States :** The following provisions can be amended in this way :
1. Election of the President and its manner.
 2. Extent of the executive power of the Union and the states.
 3. Supreme Court and high courts.
 4. Distribution of legislative powers between the Union and the states.

Que 1.38. Why is amendment procedure of the Constitution often criticised ?

Answer

Critics have criticised the amendment procedure of the Constitution on the following grounds :

1. There is no provision for a special body like Constitutional Convention or Constitutional Assembly for amending the Constitution.
2. The power to initiate an amendment to the Constitution lies with the Parliament. The state legislatures cannot initiate any bill or proposal for amending the Constitution except in one case, that is, passing a resolution requesting the Parliament for the creation or abolition of legislative councils in the states.
3. The major part of the Constitution can be amended by the Parliament alone either by a special majority or by a simple majority. Only in a few cases, the consent of the state legislatures is required.
4. The Constitution does not prescribe the time frame within which the state legislatures should ratify or reject an amendment submitted to them.
5. There is no provision for holding a joint sitting of both the Houses of Parliament if there is a deadlock over the passage of a constitutional amendment bill.
6. The process of amendment is similar to that of a legislative process. Except for the special majority, the constitutional amendment bills are to be passed by the Parliament in the same way as ordinary bills.

Que 1.39. Describe historical perspectives of the Constitutional amendments in India.

Answer

1. **First Amendment Act, 1951 :** The state was empowered to make special provisions for the advancement of socially and backward classes.

2. **Second Amendment Act, 1952 :** The scale of representation in the Lok Sabha was readjusted stating that 1 member can represent even more than 7.5 lakh people.
3. **Seventh Amendment Act, 1956 :**
 - i. The provision of having a common High Court for two or more states was introduced.
 - ii. Abolition of Class A, B, C and D states - 14 States and 6 Union Territories were formed.
 - iii. Introduction of Union Territories.
4. **Ninth Amendment Act, 1960 :** Adjustments to Indian Territory as a result of an agreement with Pakistan (Indo-Pak Agreement 1958).
5. **Tenth Amendment Act, 1961 :** Dadra, Nagar and Haveli incorporated in the Union of India as a Union Territory.
6. **12th Amendment Act, 1962 :** Goa, Daman and Diu incorporated in the Indian Union as a Union Territory.
7. **13th Amendment Act, 1962 :** Nagaland was formed with special status under Article 371A.
8. **14th Amendment Act, 1962 :**
 - i. Pondicherry incorporated into the Indian Union.
 - ii. Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu were provided the legislature and council of ministers.
9. **19th Amendment Act, 1966 :** System of Election Tribunals was abolished and High Courts were given the power to hear the election petitions.
10. **21st Amendment Act, 1967 :** Sindhi language was language into 8th Schedule of Indian Constitution.
11. **24th Amendment Act, 1971 :** The President's assent to Constitutional Amendment Bill was made compulsory.
12. **25th Amendment Act, 1971 :** Fundamental Right to Property was curtailed.
13. **26th Amendment Act, 1971 :** Privy Purse and privileges of former rulers of princely states were abolished.
14. **31st Amendment Act, 1972 :** Lok Sabha seats were increased from 525 to 545.
15. **35th Amendment Act, 1974 :** The status of Sikkim as protectorate state was terminated and Sikkim was given the status of 'Associate State' of India.
16. **36th Amendment Act, 1975 :** Sikkim was made a full-fledged state of India.

17. **40th Amendment Act, 1976 :** Parliament was empowered to specify from time to time the limits of the territorial waters, the continental shelf, the exclusive economic zone (EEZ) and the maritime zones of India.
18. **42nd Amendment Act, 1976 :** Since the 42nd Amendment act is the most comprehensive amendment of the Indian Constitution, called the 'Mini-Constitution'.
19. **44th Amendment Act, 1978 :** It is also one of the important amendments in the Indian Constitution, enacted by the Janata Government.

Que 1.40. Describe the emergency provisions in Indian Constitution.

Answer

1. The Indian Constitution gives President the authority to declare three types of emergencies : National Emergency, State Emergency and Financial Emergency.
 2. Emergency provisions in India are borrowed from Weimar Constitution of Germany.
 3. Constitution of India envisages emergency of following three types :
- A. National Emergency (Article 352) :**
1. Under article 352, if the president is satisfied that there exists a grave situation, wherein the security of the country is threatened on the grounds of wars, external aggression or armed rebellion, he can proclaim emergency to that effect.
 2. Emergency can be declared over the complete territory of India or any part thereof.
 3. President can declare emergency only on the written advice of the cabinet.
 4. A special majority is required to approve an emergency resolution. Once approved, emergency shall operate for a maximum period of not more than six months.
 5. Lok Sabha has the power to disapprove the operation of national emergency at any time, if not less than 1/10th members of Lok Sabha in writing to the speaker, if house is in session, or to the president, then speaker or president as the case may be, shall convene a special session of Lok Sabha within 14 days and if such a resolution is passed, president shall revoke national emergency.

B. Emergency in State (President's Rule) (Article 356) :

1. According to Article 356, President's Rule can be imposed on any state of India on the grounds of the failure of the constitutional machinery. This is of two types :
 - i. If the President receives a report from the state's Governor or otherwise is convinced or satisfied that the state's situation is such that the state government cannot carry on the governance according to the provisions of the Constitution.
 - ii. Article 365 : As per this Article, President's Rule can be imposed if any state fails to comply with all directions given by the Union on matters it is empowered to.
2. In other words, President's Rule is when the state government is suspended and the central government directly administers the state through the office of the governor (centrally appointed).
3. It is also called 'State Emergency' or 'Constitutional Emergency'.

Effects of President Rule (State Emergency) :

- i. **On Executive :** State government is dismissed and the executive power of the state is exercised by the centre.
- ii. **On Legislature :** State legislature does not function to legislate; state legislative assembly is either suspended or dissolved.
- iii. **On Financial relation :** There is no impact on the distribution of financial resources between centre and the state.

C. Financial Emergency (Article 360) :

1. If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, can declare the Financial Emergency on the aid and advise of the Council of Ministers.
2. Article 360 gives authority to the President of India to declare a financial emergency.
3. The Supreme Court can review the declaration of Financial Emergency.
4. This emergency is never imposed in India.

Que 1.41. What is Local self-government ?

Answer

1. Local self-government implies the transference of the power to rule to the lowest rungs of the political order.
2. It is a form of democratic decentralization where the participation of even the grass root level of the society is ensured in the process of administration.

3. The village panchayat, as a system of administration, began in the British days, as their offer to satisfy the demands for local autonomy.
4. They opened up the governance of the lowest levels to the citizens.
5. The Government of India Act of 1935 also authorizes the provinces to enact legislations.

Que 1.42. How did the concept of local self-government evolve in India ?

Answer

1. Even though such minor forms of local governance was evident in India, the framers of the constitutions, included Article 40 among the Directive Principles, to organize village panchayats and endow them with powers and authority to enable them to function as units of self-government.
2. The conceptualisation of the system of local self-government in India took place through the formation and effort of four important committees from the year 1957 to 1986.
3. **Balwant Rai Mehta Committee (1957)** : The important recommendations of this committee are :
 - i. Establishment of a three-tier Panchayati Raj system - gram panchayat at village level (direct election), panchayat Samiti at the block level and Zila Parishad at the district level (indirect election).
 - ii. District Collector to be the chairman of Zila Parishad.
 - iii. Transfer of resources and power to these bodies to be ensured.
4. **Ashok Mehta Committee (1977-1978)** : The important recommendations of this committee are :
 - i. Three-tier system to be replaced by a two-tier system.
 - ii. Political parties should participate at all levels in the elections.
 - iii. Compulsory powers of taxation to be given to these institutions.
 - iv. Zila Parishad to be made responsible for planning at the state level.
 - v. A minister for Panchayati Raj to be appointed by the state council of ministers.
 - vi. Constitutional recognition to be given to Panchayati Raj institutions.
5. **GVK Rao Committee (1985)** : The important recommendations of this committee are :
 - i. Zila Parishad to be given prime importance and all developmental programs at that level to be handed to it.

- ii. Post of DDC (District Development Commissioner) to be created acting as the chief executive officer of the Zila Parishad.
 - iii. Regular elections to be held.
6. **LM Singhvi Committee (1986)** : The important recommendations of this committee are :
 - i. Constitutional recognition for PRI institutions.
 - ii. Nyaya Panchayats to be established for clusters of villages.

Que 1.43. What are Panchayats and Municipalities ?

Answer

1. Panchayat and Municipality are the generic terms for the governing body at the local level. Both exist as three tier systems - at the lower, intermediate and upper levels.
2. The 73rd Constitutional Amendment act provides for a Gram Sabha as the foundation of the Panchayati Raj system. It is essentially a village assembly consisting of all the registered voters in the area of the panchayat.
3. The state has the power to determine what kind of powers it can exercise, and what functions it has to perform at the village level.
4. The 74th Constitutional Amendment act provides for three types of Municipalities :
 - i. Nagar Panchayat for a transitional area between a rural and urban area.
 - ii. Municipal Council for a small urban area.
 - iii. Municipal Corporation for a large urban area.
5. Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.
6. The chairperson of the Panchayat or Municipality at the intermediate and district level are elected from among the representatives at the immediately lower level by indirect election.



2

UNIT

Union Executive and State Executive

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Union Executive & State Executive

PART- 1

Powers of Indian Parliament, Functions of Rajya Sabha, Functions of Lok Sabha, Powers and Functions of the President, Comparison of Powers of Indian President with the United States.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 2.1. What are the powers of Indian Parliament ?

Answer

- i. All the legislative powers of the Indian federal Government are vested in the Parliament.
- ii. The laws framed by the Indian Parliament are enforced in the whole of the country.
- iii. Its powers can be classified in to following heads :
 1. **Legislative powers :** All the subjects in our constitution are divided among state, union and concurrent lists. In concurrent list Parliamentary law is over riding than state legislative law.
 2. **Executive powers :** According to parliamentary form of government executive is responsible to the parliament for its acts and policies. Hence parliament exercises control by various measures like committees, question hour, zero hour etc.
 3. **Financial powers :** It includes enactment of budget, scrutinizing the performance of government with respect of financial spending through financial committees (post budgetary control).
 4. **Constituent powers :** To amend the constitution, to pass any laws required, etc.
 5. **Judicial powers :** It includes :
 - i. Impeachment of President for violation of constitution.
 - ii. Removal of judges of Supreme Court and High court.
 - iii. Removal of Vice-President.
 - iv. Punish members for breach of privileges like sitting in the house when the member knows he is not an eligible member, serving as member before taking oath etc.

- 6. Electoral powers :** It has its participation in the election of President and Vice-President. The members of Lok Sabha elect speaker and deputy speaker from among its members. Similarly members of Rajya Sabha elect deputy chairman.
- 7. Other powers :** It includes :
- To discuss various issues of national and international importance.
 - Imposing emergency.
 - Increase or decrease area, change names, alter the boundary of the states.
 - Create or abolish state legislature, etc.

Que 2.2. Write a short note on Rajya Sabha (Council of States).

Answer

- The Rajya Sabha (Council of States) is the Upper House of our Parliament.
- It consists of not more than 250 Members, out of which, 238 Members represent the States and Union Territories and 12 Members are nominated by the President from amongst the persons having special knowledge and practical experience in respect of such matters as literature, science, art and social service.
- At present, the actual strength of Rajya Sabha is 245.
- A permanent body, Rajya Sabha is not subject to dissolution. However, one-third of its Members retire biennially.
- A Member who is elected for a full term retains his membership for six years. He is eligible for re-election.
- A Member elected/nominated to a casual vacancy serves for the remainder term only.
- Members of Rajya Sabha are elected by the elected members of the State Legislative Assemblies in accordance with the system of proportional representation by means of the single transferable vote.

Que 2.3. What are the powers and functions of the Rajya Sabha?

Answer

- Legislative Powers :**
 - In the sphere of ordinary law-making the Rajya Sabha enjoys equal powers with the Lok Sabha.

- b. An ordinary bill can be introduced in the Rajya Sabha and it cannot become a law unless passed by it.
- 2. Financial Powers :**
- In the financial sphere, the Rajya Sabha is a weak House.
 - A money bill cannot be introduced in the Rajya Sabha. It can be initiated only in the Lok Sabha.
 - If the Rajya Sabha proposes some amendments and the bill is returned to the Lok Sabha, it depends upon the Lok Sabha to accept or reject the proposed amendments.
- 3. Executive Powers :**
- The Union Council of Ministers is collectively responsible before the Lok Sabha and not the Rajya Sabha.
 - Lok Sabha alone can cause the fall of the Council of Ministers by passing a vote of no-confidence.
- 4. Amendment Powers :**
- Rajya Sabha and Lok Sabha can together amend the constitution by passing an amendment bill with 2/3 majority in each House.
- 5. Electoral Powers :**
- The Rajya Sabha has some electoral powers also.
 - The elected members of the Rajya Sabha along with the elected members of the Lok Sabha and all the State Legislative Assemblies together elect the President of India.
 - The members of the Rajya Sabha and Lok Sabha together elect the Vice-President of India.
 - Members of the Rajya Sabha also elect a Deputy Chairman from amongst themselves.
- 6. Judicial Powers :**
- The Rajya Sabha acting along with the Lok Sabha can impeach the President on charges of violation of the Constitution.
 - The Rajya Sabha can also pass a special address for causing the removal of a judge of the Supreme Court or of any High Court.
 - The charges against the Vice-President can be leveled only in the Rajya Sabha.
 - The Rajya Sabha can pass a resolution for the removal of some high officers like the Attorney General of India, Comptroller and Auditor General and Chief Election Commissioner.
- 7. Miscellaneous Powers :** The Rajya Sabha and Lok Sabha jointly perform the following functions :

- a. Approval of the ordinances issued by the President,
- b. Ratification of an emergency proclamation,
- c. Making any change in the jurisdiction of the Supreme Court and the High Courts, and
- d. Making any change in the qualifications for the membership of the Lok Sabha and the Rajya Sabha.
- 8. Two Special Powers of Rajya Sabha :** The Rajya Sabha enjoys two exclusive powers :
- The Power to declare a subject of State List as a subject of National Importance.
 - Power in respect of Creation or Abolition of an All India Service.

Que 2.4. Write a short note on Lok Sabha (House of the People).

Answer

- Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage.
- The maximum strength of the House envisaged by the Constitution is 552.
- This is made up by election of upto 530 members to represent the States, upto 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the Hon'ble President.
- The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is the same for all States.
- The Lok Sabha, unless sooner dissolved, continues to operate for five years from the date appointed for its first meeting.

Que 2.5. What are the powers and functions of the Lok Sabha ?

Answer

Powers and function of Lok Sabha :

1. Legislative Power :

- The Lok Sabha together with the Rajya Sabha has the power to frame laws on subjects in the union list, concurrent list, and the residuary subjects.

- b. Ordinary bill can be introduced in either of two houses of the Parliament, yet almost 95% of the bills are introduced in the Lok Sabha.
- c. Because of its large membership the Lok Sabha has a dominant position in the house.

2. Executive Power :

- Under article 75(3) of constitution, council of the minister has been made responsible to the Lok Sabha.
- The council of minister remains in office till it enjoys the confidence of the Lok Sabha, if it loses the confidence of Lok Sabha the Council of Ministers shall have to resign.

3. Financial Power :

- The Lok Sabha has a superior position in the financial matter as a money bill can only be introduced in the Lok Sabha.
- A money bill can only be delayed by the Rajya Sabha for a maximum of 14 days.
- In case of any dispute as to whether a particular bill is money bill or not the decision of the speaker of the Lok Sabha is final.

4. Judicial Power : The Lok Sabha possesses the following judicial power :

- The charges of impeachment against President, Judges of Supreme Court and the High court can be framed in either of two houses by a two-thirds majority of the members present voting.
- Though the impeachment charges against the Vice President of India are framed by Rajya Sabha, it is essential that regulation is passed by the Lok Sabha also.
- In case of the violation of the discipline in the Lok Sabha, the members are free to take action against the defaulting members.

5. Amendment Power :

- A Constitutional Amendment Bill can be introduced in either House of the Parliament.
- It is deemed to have been passed only when it is passed by both the houses of the parliament in accordance with the provision of Article 368 of the constitution.
- The Lok Sabha and Rajya Sabha can together amend all articles of the Constitution with the exception of those which requires special approval by one half of the state legislature.

6. Approval Over the Declaration of Emergency :

- The constitution empowers the Indian President to declare three types of emergencies :

- i. National emergency
 - ii. Constitutional emergency
 - iii. Financial emergency
- b. But each such a declaration of emergency has to be got approved by both of the houses of parliament.
- c. In case the Lok Sabha dissolved at the time of the declaration of emergency it, has to be approved by the Rajya Sabha.
- 7. Miscellaneous Power :**
- a. It gives approval to the ordinance issued by the president.
 - b. It changes the boundary of state, to establish new states and change the name of states.
 - c. It makes changes in the jurisdiction of the Supreme Court and High Court according to the provision of the constitution.
 - d. Revising the salary and allowances of the member of the Parliament.
 - e. To discuss the report of UPSC Auditor General of India and Finance Commission etc.

Que 2.6. What is the difference between Lok Sabha and Rajya Sabha ?

Answer

S.No.	Lok Sabha	Rajya Sabha
1.	Lok Sabha is also known as House of the People.	Rajya Sabha is also known as Council of States.
2.	The tenure of Lok Sabha continues for 5 years, except dissolved earlier.	Rajya Sabha is a Permanent body.
3.	The Speaker heads the Lok Sabha.	Vice President of India heads the Rajya Sabha.
4.	25 years is the minimum age to become a member of Lok Sabha.	30 years is the minimum age to become a member of Rajya Sabha.
5.	Strength of Lok Sabha is 552 members.	Strength of Rajya Sabha is 250 members.

Que 2.7. What are the powers and functions of the President of India ?

Answer

A. Executive Powers of President :

- 1. **Head of the Union Administration :** All executive orders are issued in the name of the President.

2. Appointments of officials of the State :

- a. The President makes appointments to the key posts to run the government's administration.
- b. He appoints the Prime Minister and the Council of Ministers, the Chief Justice and the Judges of Supreme Court and the High Courts, the Governors of the States, Attorney General of India, Comptroller and Auditor General, Chairman and members of the UPSC, Chairman and members of the Planning Commission.

B. Legislative Powers of President :

- 1. The President addresses the Sessions of the Parliament.
- 2. The President has the power to address either House of Parliament at any time.
- 3. He can send messages to either House of the Parliament. He summons and prorogues the Houses.
- 4. He can dissolve the Lok Sabha and order fresh elections.
- 5. No Bill can become a law without the assent and the signature of the President.
- 6. Under Article 123, the President can promulgate an Ordinance.

C. Diplomatic Powers of President :

- 1. India is represented on International forum by the President of India.
- 2. He sends and receives ambassadors.
- 3. All international treaties and agreements are concluded on behalf of the President subject to ratification by the parliament.

D. Financial Powers of President :

- 1. To introduce the money bill, his prior recommendation is a must.
- 2. He causes Union Budget to be laid before the Parliament.
- 3. To make a demand for grants, his recommendation is a pre-requisite.
- 4. Contingency Fund of India is under his control.
- 5. He constitutes the Finance Commission every five years.

E. Military Powers of President :

- 1. Article 53 vests the supreme command of the Armed Forces of India in the President.

2. President of India can declare war or conclude peace, under the regulation by the parliament.
- F. Judicial Powers of President :**
- Appointment of Chief Justice and Supreme Court/High Court Judges are on him.
 - He takes advice from the Supreme Court however, the advice is not binding on him.
 - He has pardoning power. He can pardon or remit or suspend a sentence of punishment given by the court martial or a sentence of death passed by a court.
- G. Emergency Powers of President :**
- It is a situation in which the Head of the State (President) assumes extraordinary powers.
 - The President of India can proclaim a state of emergency in the following cases :
 - National or general emergency,
 - Breakdown of Constitutional machinery,
 - Financial emergency.

Que 2.8. Compare the powers of Indian President with the United States President.

Answer

S.No.	Indian President	United States President
1.	The Indian President is elected by the elected members of the Parliament.	The American President is elected by the people of America.
2.	The Indian Constitution has set up Parliamentary system in which all executive powers are to be exercised by a Council of Ministers, which is responsible to Parliament.	The American Constitution has vested all executive powers in the President.
3.	The Indian President appoints his ministers on the advice of his Prime Minister and they are responsible not to him but to Parliament.	The American President chooses his own Ministers. They are his nominees and are responsible to him alone.

4.	The Indian president holds the office for 5 years and is eligible for re-election any number of times.	The American President holds the office for 4 years and he can seek re-election only once.
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PART-2

Powers and Functions of the Prime Minister, Judiciary - The Independence of the Supreme Court, Appointment of Judges, Judicial Review, Public Interest Litigation, Judicial Activism, LokPal, Lok Ayukta, The Lokpal and Lok Ayuktas Act 2013.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 2.9. Who is Prime Minister of India ? Describe the powers and functions of the prime minister of India.

Answer

- The Prime Minister of India is the head of the government and country.
- He is appointed by the President of India after the political party wins a general election and nominates a candidate for the post.
- The leader of that political party is hence appointed as the Prime Minister of India.

Powers of Prime Minister : Prime Minister of India performs his functions by taking responsibilities listed below :

- The leader of Country :** The Prime Minister of India is the Chief Head of the Government of India.
- Portfolio allocation :** The Prime Minister has the authority to assign respective portfolios to the Ministers.
- Chairman of the Cabinet :** The Prime Minister is the chairman of the cabinet and conducts the meetings of the Cabinet. He can impose his decision if there is a crucial opinion difference and conflict among the members.
- Official Representative of the country :** Prime minister represents the country for high-level international meetings and he is the ambassador of the country.

5. **The link between the President and the Cabinet :** The Prime Minister acts as the link between the President and cabinet. He communicates all decisions of the Cabinet to the President which is related to the administration of the affairs of the Union and proposals for legislation.
6. **Head :** The Prime Minister is the head of many organisation and programs like Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
7. **Chief Advisor :** He also plays the role of chief advisor to the President.

Que 2.10. | Describe the main functions of Prime Minister related to the Council of Ministers.

Answer

The main functions of Prime Minister related to the Council of Ministers are as follows :

1. The Prime Minister recommends the names of members of his team to appoint as a Minister. The President can only make those people as ministers whose names are recommended by the Prime Minister.
2. Prime Minister determines which department will be given to which minister and he can also change the allotted department of any Minister.
3. He also presides over the meeting of the Council of Ministers and can change the decisions according to his wishes.
4. He can ask any minister to resign or advise the president to dismiss him in case of differences of opinion.
5. He also controls and directs the activities of all Ministers.
6. He can bring about the collapse of the Council of Ministers by resigning from office.

Que 2.11. | What do you mean by judiciary ?

Answer

1. The judiciary is that branch of the government that interprets the law, settles disputes and administers justice to all citizens.
2. The Indian Judiciary administers a common law system of legal jurisdiction, in which customs, precedents and legislation, all codify the law of the land.

3. The Indian judiciary is considered the watchdog of democracy, and also the guardian of the Constitution.
4. For Indian democracy to function effectively, it is imperative to have an impartial and independent judiciary.

Que 2.12. | What are the functions of judiciary in India ?

Answer

Following are the functions of judiciary in India :

1. The judiciary in India provides justice to the people.
2. The judiciary in India interprets and applies the laws.
3. The judiciary in India plays a role in making laws.
4. The judiciary in India protects rights of the citizens.
5. The judiciary in India is the guardian of the Constitution of India.
6. The judiciary in India also plays a federal role.
7. The judiciary in India is responsible for efficient management of the judicial administration.
8. The judiciary in India has advisory functions.
9. The judiciary in India conducts judicial inquiries.

Que 2.13. | Write a short note on independence of Supreme Court.

Answer

1. The Supreme Court is a Federal court, the highest court of appeal, the guarantor of the fundamental rights of the citizens and guardian of the Constitution.
2. Therefore, its independence becomes very essential for the effective discharge of the duties assigned to it.
3. It should be free from the encroachments, pressures and interferences of the executive (council of ministers) and the Legislature (Parliament).
4. It should be allowed to do justice without fear or favour.
5. The Constitution has made the following provisions to safeguard and ensure the independent and impartial functioning of the Supreme Court :
 - i. Mode of appointment.
 - ii. Security of tenure.
 - iii. Fixed service conditions.

- iv. Expenses charged on the consolidated fund.
- v. Conduct of judges cannot be discussed.
- vi. Ban on practice after retirement.
- vii. Power to punish for its contempt.
- viii. Freedom to appoint its staff.
- ix. Its jurisdiction cannot be curtailed.
- x. Separation from Executive.

Que 2.14. Explain appointment judges in Indian judiciary.

Answer

1. Judges are the main aspects of the judiciary.
2. Judges are respected in our country and people have lots of faith and hopes on them, thus it is necessary to make sure that the appointment of judges is proper and not biased.
3. Various provisions of our Indian Constitution deals with the appointment of Judges which has to be followed in every aspect of appointment.

Appointment of Judges in the District Courts :

A. Qualifications :

1. Article 233 of the Indian Constitution deals with the appointment of District Judges.
2. Following are the qualifications for a person to be appointed as a District Judge :
 - a. The person has to be in practice as an advocate or pleader for seven years or more.
 - b. The person should not be in working in any other services of the Union or the State.
 - c. The person has to be recommended by the High Court for employment.

B. Procedure for appointment :

1. According to Article 233, the appointment can be done only after consulting the Governor of the State and also the Judges of the High Court that is exercising jurisdiction in the State.
2. Article 235 of the Indian Constitution provides powers to the High Courts to have control over the persons in the judicial service in the district court and other subordinate courts.

Appointment of Judges in the High Courts :

A. Qualifications :

1. The qualifications regarding the appointment of a person as a judge in the High Courts are provided in Article 217.
2. **According to the Article :**
 - a. The person appointed must be a citizen of India.
 - b. The person appointed should have held a judicial office in the territory of India for at least ten years.
 - c. The person appointed should have been an advocate in the High Court for at least ten years.

B. Procedure for appointment :

According to Article 217 of the Indian Constitution :

1. The judges of the High Courts can be appointed only by the warrant of the President and his seal.
2. The appointment can be done only after consulting the Chief Justice of India and the Governor of the State.
3. The appointment of Judges other than the Chief Justice can be done after consulting the Chief Justice of the High Court.

Appointment of Judges in the Supreme Court :

A. Qualification :

1. The qualifications regarding the appointment of a person as a judge in the Supreme Court are provided in Article 124.
2. The person who satisfies all these necessary qualifications is only recommended. They are :
 - a. The recommended person must be a citizen of India.
 - b. They should not be above 65 years of age.
 - c. They must have been a judge of one or more High courts continuously for five years.
 - d. They must have been an advocate in the high court for at least ten years.
 - e. The recommended person must be a distinguished jurist in the opinion of the President.

B. Procedure for appointment :

1. Article 124 of the Indian Constitution deals with the appointment of Chief Justice and Judges of the Supreme Court.
2. The collegium system is still followed for the appointment of the Judges.

3. Article 124 of the Constitution says only seven judges can be appointed in the Supreme Court and the appointment can be increased when the Parliament deems it to be necessary.
4. The President has the power to appoint Judges after consulting the Chief Justice of India, the other Judges of the Supreme Court and also in certain cases other judges of the High Court.

Que 2.15. What do you mean by Judicial Review? Describe Judicial Review In India.

Answer

1. Judicial Review can be understood as a form of court proceeding, usually in the Administrative Court where the lawfulness of a decision or action is reviewed by the judge.
2. Where there is no effective means of challenge, judicial review is available.
3. The concern behind Judicial Review is that whether the law has been correctly applied with and right procedures have been followed.

Judicial Review in India :

1. Judicial review plays an important role as a protector when the executive, judiciary and legislature harm the Constitutional values and deny the rights.
2. The judicial assessment is considered as an indispensable feature in the country.
3. In India, there is parliamentary form of democracy where every section of people is involved in decision making and policy making process.
4. It is true that the primary duty of the court is to apply rule of law and is the groundwork of social equality.
5. By exercising new powers of Parliament, rule of law which is to be applied by the court cannot be modified.
6. All those here, who are doing public duty, are accountable. They have to work within the democratic provisions of the Constitution of India.
7. The concept of separation of power and rule of law is judicial review.
8. The influence of judicial assessment has been under Articles 226 and 227 in case of High Court and Articles 32 and 136 of the Constitution of India for the review.

Que 2.16. Write a short note on Public Interest Litigation (PIL).

Answer

1. Public Interest Litigation (PIL) means litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards etc.
2. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.
3. Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large.
4. Public interest litigation is the power given to the public by courts through judicial activism.
5. However, the person filing the petition must prove that the petition is being filed for a public interest and not just as a frivolous litigation.
6. Some of the matters which are entertained under PIL are :
 - a. Bonded Labour matters.
 - b. Neglected Children.
 - c. Non-payment of minimum wages to workers and exploitation of casual workers.
 - d. Atrocities on women.
 - e. Environmental pollution and disturbance of ecological balance.

Que 2.17. Explain the significance of PIL.

Answer

1. The aim of PIL is to give to the common people access to the courts to obtain legal redress.
2. PIL is an important instrument of social change and for maintaining the Rule of law and accelerating the balance between law and justice.
3. The original purpose of PILs has been to make justice accessible to the poor and the marginalised.
4. It is an important tool to make human rights reach those who have been denied rights.
5. It democratises the access of justice to all. Any citizen or organisation who is capable can file petitions on behalf of those who cannot or do not have the means to do so.
6. It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.

7. It is an important tool for implementing the concept of judicial review.

Que 2.18. Who can file a PIL and against whom ?

Answer

1. Any citizen can file a public case by filing a petition :
 - a. In the SC under Article 32.
 - b. In the High Courts under Article 226.
2. However, the court must be satisfied that the Writ petition fulfils some basic needs for PIL as the letter is addressed by the aggrieved person, public spirited individual and a social action group for the enforcement of legal or Constitutional rights to any person who are not able to approach the court for redress.
3. A Public Interest Litigation can be filed against a State/Central Govt., Municipal Authorities, and not any private party.

Que 2.19. Explain the procedure to file PIL in India.

Answer

Steps to be taken for filing a Writ Petition/PIL :

1. Approach a public interest lawyer or organization to file the case.
2. Collect necessary documents such as title deeds, proof of residence, identity proof, notice, resettlement policy if any, and photographs of the eviction.
3. List names and addresses of all aggrieved parties approaching the court.
4. List names and addresses of government agencies from which relief is sought.
5. List facts giving rise to violations of Fundamental Rights.
6. List dates indicating the duration of stay at the site, when the eviction took place, when and if an eviction notice was provided, and other important details related to the eviction.
7. Clearly mention the 'prayers' or the relief being sought from the court.

Que 2.20. What do you mean by judicial activism ? Also mention various methods of judicial activism which are followed in India.

Answer

1. Active role of the judiciary in upholding the rights of citizens and preserving the constitutional and legal system of the country is known as judicial activism.
2. Public Interest Litigation (PIL) made judicial activism possible in India.
3. Judicial activism is seen as a success in liberalizing access to justice and giving relief to disadvantaged groups.
4. The active role of the Indian judiciary particularly that of the Supreme Court has been appreciated both within and outside India.

Judicial Activism Methods : There are various methods of judicial activism which are followed in India. They are :

1. Judicial review.
2. Public Interest Litigation (PIL).
3. Constitutional interpretation.
4. Access of international statute for ensuring constitutional rights.
5. Supervisory power of the higher courts on the lower courts.

Que 2.21. What is the significance of Judicial Activism ?

Answer

1. It is an effective tool for upholding citizen's rights and implementing constitutional principles when the executive and legislature fails to do so.
2. Citizens have the judiciary as the last hope for protecting their rights when all other doors are closed.
3. There are provisions in the constitution itself for the judiciary to adopt a proactive role.
4. According to experts, the shift from locus standi to public interest litigation made the judicial process more participatory and democratic.
5. Judicial activism counters the opinion that the judiciary is a mere spectator.

Que 2.22. What is Lokpal ? Describe the structure of Lokpal.

Answer

1. Lokpal is an anti-corruption body or ombudsman, responsible for looking into corruption complaints at the national level.

It is a statutory body without any constitutional status.

Structure of Lokpal :

1. Lokpal is a multi-member body that consists of one chairperson and a maximum of 8 members.
2. Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
3. Out of the maximum eight members, half will be judicial members and minimum 50% of the members will be from SC/ST/OBC/Minorities and women.
4. The judicial member of the Lokpal is either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
5. The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
6. The members are appointed by the president on the recommendation of a Selection Committee.
7. The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.

Que 2.23. What are Lokpal jurisdiction and powers ?

Answer

Jurisdiction of Lokpal :

1. Jurisdiction of Lokpal includes Prime Minister, Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.
2. Its jurisdiction also includes any person who is or has been in charge (director/manager/secretary) of any body/society set up by central act or any other body financed/controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
3. The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents

Powers of Lokpal :

1. It has the powers to superintendence over, and to give direction to CBI.
2. The Inquiry Wing of the Lokpal has been vested with the powers of a civil court.
3. Lokpal has powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
4. Lokpal has the power to recommend transfer or suspension of public servant connected with allegation of corruption.
5. Lokpal has the power to give directions to prevent the destruction of records during the preliminary inquiry.

Que 2.24. What are the limitations of Lokpal ?

Answer

Limitations of Lokpal :

1. Lokpal is not free from political influence as the appointing committee itself consists of members from political parties.
2. The appointment of Lokpal can be manipulated in a way as there is no criterion to decide who is an 'eminent jurist' or 'a person of integrity'.
3. The 2013 act did not provide concrete immunity to the whistle blowers. The provision for initiation of inquiry against the complainant if the accused is found innocent will only discourage people from complaining.
4. The judiciary has been excluded from the ambit of the Lokpal.
5. The Lokpal is not given any constitutional backing and there is no adequate provision for appeal against the Lokpal.

Que 2.25. What is Lok Ayukta ? Describe the role of Lok Ayukta.

Answer

1. The Lok Ayukta (also Lokayukta) is an anti-corruption ombudsman organization in the Indian states.
2. Once appointed, Lokayukta cannot be dismissed nor transferred by the government, and can only be removed by passing an impeachment motion by the state assembly.
3. The Lokayukta, along with the Income Tax Department and the Anti Corruption Bureau, mainly helps people publicise corruption among the Politicians and Government Officials.

Role of Lok Ayukta :

1. Lokayukta investigates cases of corruption, where substantiated, recommend action.
2. Lokayukta is a great check on corruption.
3. Lokayukta brings about transparency in the system.
4. Lokayukta makes administrative machinery citizen friendly.
5. Lokayukta functions largely depend upon jurisdiction vested in him and facilities provided for taking cognizance of citizens grievances.

Que 2.26. Explain Lokpal and Lok Ayuktas Act, 2013. Give the salient features of the Lokpal and Lok Ayuktas Act, 2013.

Answer

The Lokpal and Lok Ayuktas Act, 2013, commonly known as The Lokpal Act, is an anti-corruption Act of Indian Parliament in India which seeks to provide for the establishment of the institution of Lokpal to inquire into allegations of corruption against certain important public functionaries including the Prime Minister, cabinet ministers, members of parliament, Group A officials of the Central Government and for matters connecting them.

Salient features of the Lokpal and Lok Ayuktas Act, 2013 :

1. Lokpal at the Centre and Lokayukta at the level of the states.
2. A mandate for setting up of the institution of Lokayukta through enactment of a law by the State Legislature within a period of 365 days from the date of commencement of the Act.
3. Lokpal will consist of a chairperson and a maximum of eight members, of which 50 per cent shall be judicial members.
4. 50 per cent of members of Lokpal shall be from SC/ST/OBCs, minorities and women.
5. The selection of chairperson and members of Lokpal shall be through a Selection Committee consisting of the Prime Minister, the Speaker, Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India (CJI) or a sitting Supreme Court judge nominated by CJI, eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the Selection Committee.
6. The Prime Minister has been brought under the purview of the Lokpal.
7. Lokpal's jurisdiction will cover all categories of public servants.
8. All entities receiving donations from foreign source in the context of the Foreign Contribution Regulation Act (FCRA) in excess of Rs. 10 lakh per year are brought under the jurisdiction of Lokpal.

9. Provides adequate protection for honest and upright public servants.
10. Lokpal will have power of superintendence and direction over any investigative agency including CBI for cases referred to them by Lokpal.
11. A high powered committee chaired by the Prime Minister will recommend selection of the Director, CBI.
12. Directorate of Prosecution headed by a Director of Prosecution under the overall control of Director, CBI.
13. The Director of Prosecution, CBI will be appointed by the Central Government on the recommendation of the CVC for a period of not less than two years.
14. Transfer of officers of CBI investigating cases referred by Lokpal can be affected with the approval of Lokpal.
15. The Bill also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
16. The Bill lays down clear time lines for preliminary enquiry and investigation and trial and towards this end, the Bill provides for setting up of special courts.

PART-3

State Executives - Powers and Functions of the Governor, Powers and Functions of the Chief Minister, Functions of State Cabinet, Functions of State Legislature, Functions of High Court and Subordinate Courts.

Questions-Answers**Long Answer Type and Medium Answer Type Questions**

Que 2.27. Write a short note on State Executive.

Answer

1. The State Executive consists of the Chief Minister, the Council of Ministers and the Governor.
2. It has the same Parliamentary pattern as followed by the Union Government with the upper hand being given to the Union in certain matters.
3. This has been done to maintain the unitary spirit of the structure of the country.

4. The Governor plays the twofold role of being the constitutional head at the state level as well as being a link between the state government and the centre.
5. He/She acts on the advice of the Council of Ministers and all executive actions are taken in his name.

Que 2.28. What are the powers and functions of the Governor ?

Answer

Powers and functions of the Governor are given below under four heads :

- A. **Executive Powers of the Governor :** The following comes under his executive powers :
1. Every executive action that the state government takes is to be taken in his name.
 2. How an order that has been taken up his name is to be authenticated, the rules for the same can be specified by the Governor.
 3. He may/may not make rules to simplify the transaction of the business of the state government.
 4. Chief Ministers and other ministers of the states are appointed by him.
 5. He appoints the advocate general of states and determines their remuneration.
 6. He seeks information from the state government.
 7. A constitutional emergency in the state is recommended to the President by him.
 8. The governor enjoys extensive executive powers as an agent of the President during the President's rule in the state.
- B. **Legislative Powers of the Governor :** The following are the legislative powers of the governor :
1. It's in his power to prorogue the state legislature and dissolve the state legislative assemblies.
 2. He addresses the state legislature at the first session of every year.
 3. If any bill is pending in the state legislature, Governor may/may not send a bill to the state legislature concerning the same.
 4. If the speaker of the legislative assembly is absent and the same is Deputy Speaker, then Governor appoints a person to preside over the session.
 5. He can consult Election Commission for the disqualification of members

6. With respect to the bill introduced in the state legislature, his assent, withhold his assent, return the bill, reserve the bill for the President's consideration.
- C. **Financial Powers of the Governor :** The following are the financial powers and functions of the Governor :
1. He looks over the state budget being laid in the state legislature.
 2. His recommendation is a prerequisite for the introduction of money bill in the state legislature.
 3. He recommends for the demand for grants which otherwise cannot be given.
 4. Contingency Fund of State is under him and he makes advances out that to meet unforeseen expenditure.
 5. State Finance Commission is constituted every five years by him.
- D. **Judicial Powers of the Governor :** The following are the judicial powers and functions of the Governor :
1. He has the following pardoning powers against punishment :
 - i. Pardon
 - ii. Reprieve
 - iii. Respite
 - iv. Remit
 - v. Commute
 2. President consults the Governor while appointing judges of High Court.
 3. In consultation with the state high Court, Governor makes appointments, postings, and promotions of the district judges.
 4. In consultation with the state high court and state public service commission, he also appoints persons to the judicial services.

Que 2.29. What are the powers and functions of the Chief Minister ?

Answer

The powers and functions of Chief Minister can be classified under following heads :

- A. **In relation to the Council of Ministers :** The Chief Minister is the head of state council of ministers. He performs the following functions :
1. He recommends to the governor on who to appoint as ministers.
 2. He designates or reshuffles the portfolios of the ministers.

3. He can ask a minister to resign.
 4. Meeting of the council of ministers is headed by him.
 5. All activities of the ministers are guided and controlled by the Chief Minister.
 6. If he resigns, the entire council of ministers collapses.
- B. In relation to the Governor :** In relation to the governor, the Chief Minister performs the following functions :
1. All the activities, decisions that are taken up by the council of ministers are communicated to the governor by the chief minister.
 2. To report to the governor, information about the administrative affairs if and when asked by the governor.
 3. If any minister has decided on any issue, the same has to be reported to the Governor by the Chief Minister when the same has not been considered by the council.
 4. He gives his advice to the governor for the appointment of the following persons :
 - i. Advocate-General
 - ii. Chairman of state public service commission
 - iii. The state election commission, etc.
- C. In relation to the State Legislature :** Chief Minister is the leader of the house and holding this position, he performs the following functions :
1. Before a governor prorogues and summons the sessions of the state legislature, the Chief Minister's advice is a must.
 2. Legislative Assembly can be dissolved at any time on his recommendation to the governor.
 3. All government policies are announced by him on the floor of the house.
- D. Other than above mentioned functions, he also performs the following functions :**
1. He chairs the State Planning Board.
 2. He is a vice-chairperson of the concerned zonal council by rotation, holding that office for a period of one year at a time.
 3. He is a member of Inter-State Council and National Development Council which are headed by the Prime Minister.

Ques 2.30. Write a short note on State Legislature.

Answer

1. Chapter III of Part VI of the Indian Constitution deals with the State Legislature.
2. Though a uniform pattern of Government is prescribed for the States, it is not so in the matter of the composition of the Legislature.
3. While the Legislature of every State shall consist of the Governor and of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, namely the legislative assembly.
4. The constitution provides for the abolition of the second chamber in a state where it exists as well as for the creation of such a chamber in a state where there is none at present.

Legislative Assembly :

1. The Legislative Assembly is the popularly elected chamber and is the real Centre of power in a State.
2. The maximum strength of an assembly must not exceed 500 or its minimum strength fall below 60.
3. But some of the States have been allowed to have smaller Legislative Assemblies, e.g. Sikkim, Arunachal Pradesh, Goa, etc.

Legislative Council :

1. The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members.
2. The system of the composition of the Council as provided for in the Constitution is not final.
3. The final power is given to the Parliament of the Union.

Ques 2.31. What are the powers and functions of State Legislature?

Answer

The functions of the state's Legislative Council are only advisory in nature. In practical terms, the Legislature of a State implies its Legislative Assembly which possesses the following major powers and functions :

1. It can create laws on any subject in the State List; it can also create laws on the Concurrent List provided the law does not contradict or conflict any law already made by the Parliament.

2. The Assembly asserts control over the Council of Ministers.
3. The assembly controls the State's finances.
4. The Assembly has constituent powers.
5. It elects its Speaker as well as Deputy Speaker. It can also remove them by a no-confidence vote.
6. It participates in the election of India's President.
7. It also considers reports presented by agencies such as the Auditor-General, State Public Service Commission, and others.

Que 2.32. What are the powers and functions of the High Court?

Answer

The functions of the High Court are described below:

A. Original Jurisdiction :

1. The High Courts of Calcutta, Bombay and Madras have original jurisdiction in criminal and civil cases arising within these cities.
2. An exclusive right enjoyed by these High Courts is that they are entitled to hear civil cases which involve property worth over Rs.20000.
3. They are empowered to issue writs in order to enforce fundamental rights.
4. All High Courts have original jurisdiction in cases that are related to will, divorce, contempt of court and admiralty.
5. Election petitions can be heard by the High Courts.

B. Appellate Jurisdiction :

1. In civil cases: an appeal can be made to the High Court against a district court's decision.
2. In criminal cases: it extends to cases decided by Sessions and Additional Sessions Judges.
3. The jurisdiction of the High Court extends to all cases under the State or federal laws.
4. In constitutional cases: if the High Court certifies that a case involves a substantial question of law.

The powers of the High Court are described below:

A. As a Court of Record :

1. High Courts are also Courts of Record (like the Supreme Court).

2. The records of the judgments of the High Courts can be used by subordinate courts for deciding cases.
 3. All High Courts have the power to punish all cases of contempt by any person or institution.
- B. Administrative Powers :**
1. It superintends and controls all the subordinate courts.
 2. It can ask for details of proceedings from subordinate courts.
 3. It issues rules regarding the working of the subordinate courts.
 4. It can transfer any case from one court to another and can also transfer the case to itself and decide the same.

5. It can enquire into the records or other connected documents of any subordinate court.
6. It can appoint its administration staff and determine their salaries and allowances, and conditions of service.

C. Power of Judicial Review :

1. High Courts have the power of judicial review.
2. They have the power to declare any law or ordinance unconstitutional if it is found to be against the Indian Constitution.

D. Power of Certification :

1. A High Court alone can certify the cases fit for appeal before the Supreme Court.

Que 2.33. Write a short note on Subordinate Courts.

Answer

1. In the judicial organisation of every state, the High Court is the apex body.
2. Below the High Court, there are other courts which constitute the subordinate judiciary.
3. The provisions related to subordinate courts are provided in the 6th part of the Indian Constitution. Articles 233-237 deal with the subordinate courts.
4. These Subordinate Courts are of two types, namely, Civil and Criminal.
5. The disputes relating to property, succession, ownership and other such rights come under the jurisdiction of Civil Courts, which dispose of these cases in accordance with the Civil Procedure Code.

- 6. The Criminal cases related to murder, robbery, arson, cheating, assault and rape etc. These cases are disposed of by the Criminal Courts in accordance with the Criminal Procedure Code and Indian Penal Code.
- Both the Civil and Criminal Courts are graded into three each. The gradation of these courts is related to the nature of the dispute, the amount of property in case of Civil Courts and the nature of crime in case of Criminal Courts.

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Basic Information about Legal System

CONTENTS

- Part-1 :** Sources of Law and the Court 3-2P to 3-8P
Structure : Enacted Law - Acts of Parliament are of Primary Legislation, Common Law or Case Law, Principles Taken from Decisions of Judges Constitute Binding Legal Rules
- Part-2 :** The Court System in India and 3-8P to 3-12P
Foreign Courtiers (District Court, District Consumer Forum, Tribunals, High Courts, Supreme Court)
- Part-3 :** Arbitration, Contract Law, 3-12P to 3-18P
Tort, Law at Workplace

PART - 1

Sources of Law and the Court Structure : Enacted Law - Acts of Parliament are of Primary Legislation, Common Law or Case Law, Principles Taken from Decisions of Judges constitute Binding Legal Rules.

Questions-Answers**Long Answer Type and Medium Answer Type Questions****Que 3.1.** Explain the term 'Law'.**Answer**

1. The term law is very diverse in nature. In today's world, it is essential to have an effective legal system for the orderly function of social life and the existence of mankind.
2. It is essential for everyone to be aware of the law of the land to avoid any unethical behavior.
3. The term 'Law' has been derived from the Teutonic phrase 'Lag' meaning 'specific'.
4. In layman's language law means, "The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties".

Que 3.2. What are the major functions of Law ?**Answer**

Some of the major functions of law are listed below :

1. To deliver justice.
2. To provide equality and uniformity.
3. To maintain impartiality.
4. To maintain law and order.
5. To maintain social control.

6. To resolve conflicts.
7. To bring orderly change through law and social reform.

Que 3.3. What do you understand by the term Sources of law ? Briefly describe it.**Answer**

1. Sources of law are the origins of laws, the binding rules that enable any state to govern its territory.
 2. The term "source of law" may sometimes refer to the sovereign or to the seat of power from which the law derives its validity.
 3. The sources of law are classified into the following categories :
- A. **Custom :**
1. Custom can simply be explained as an established mode of social behavior within a community.
 2. All customs cannot be accepted as sources of law. The courts have laid down some essential tests for customs to be recognized as valid sources of law.

These tests are :

- i. **Antiquity :** In order to be legally valid customs should have been in existence for a long time.
- ii. **Continuous :** A custom to be valid should have been in continuous practice.
- iii. **Exercised as a matter of right :** Custom must be enjoyed openly and with the knowledge of the community.
- iv. **Reasonableness :** A custom must conform to the norms of justice and public utility.
- v. **Morality :** A custom which is immoral or opposed to public policy cannot be a valid custom.

B. Judicial precedent :

1. Judicial precedent refers to previously decided judgments of the superior courts, such as the High Courts and the Supreme Court, which judges are bound to follow.
2. **System of judicial precedent** is based on the hierarchy of courts.

3. This binding character of the previously decided cases is important, considering the hierarchy of the courts established by the legal systems of a particular country.
4. In the case of India, this hierarchy has been established by the Constitution of India.

C. Legislation :

1. The term 'legislation' is derived from the Latin word legis which means 'law' and latum which means "to make".
2. Legislation is backed by the authority of the sovereign, and it is directly enacted and recognised by the State.
3. The legislation is considered as a primary source of law in India. Legislation has a wide ambit and it is used to regulate, authorize, to enable, to provide funds, to prescribe, to sanction, grant, declare or to restrict.
4. The legislature is framed by the parliament in the form of new acts, new laws, repeal and amendment of old laws.
5. Legislation is further divided into two parts :
 - i. **Supreme Legislation :** It is the parent law that originates from the sovereign strength of the nation. It cannot be repealed, annulled or modified by other legislative authority.
 - ii. **Subordinate Legislation :** The subordinate legislations are dependent on the supreme legislation for their validity and existence.

Que 3.4. Explain the court structure in India.

Answer

1. Courts in India are divided into three categories : the Supreme Court, High Courts, and District Courts.
2. The decisions given by the Supreme Court are binding on all the courts throughout the territory of India.
3. While the decision given by the High Courts are binding on the subordinate courts within the jurisdiction of that particular High Court.
4. Following flow chart explains the court structure in India :

Hierarchy of Criminal Justice System

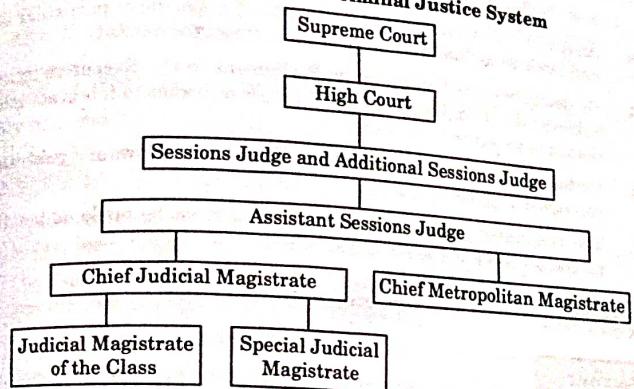


Fig. 3.4.1.

Hierarchy of Civil Judicial System

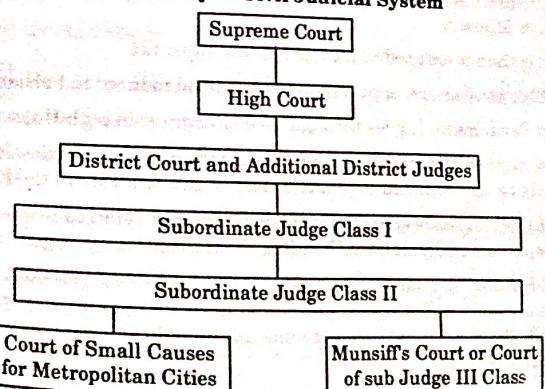


Fig. 3.4.2.

Que 3.5. What do you understand by the term Acts of parliament ?

Answer

1. Acts of parliament, sometimes referred to as primary legislation, are texts of law passed by the legislative body of a jurisdiction (often a parliament or council).

2. Parliament, through an Act of Parliament, can allow someone else or some body to make enactment.
3. An Act of Parliament makes the system of a specific or particular law and tends to contain an outline of the purpose for the Act.
4. By delegating the legislation by Parliament to the Executive or any subordinate, it empowers different people or bodies to integrate more details to an Act of Parliament.
5. Parliament along these lines licenses others to make laws and guidelines through delegated legislation.
6. The enactment made by authorized person must be made as per the reason set down in the Act of Parliament.

Que 3.6. How is a law enacted in Parliament ?**Answer**

The process of law enactment in Parliament is as follows :

1. The ministry drafts a text of the proposed law, which is called a 'Bill', after calling comments from other ministries, and even from the public. The draft is revised to incorporate such inputs and is then vetted by the Law Ministry.
2. It is then presented to the Cabinet for approval.
3. After the Cabinet approves the Bill, it is introduced in Parliament.
4. In Parliament, it goes through three Readings in both Houses.
5. During the First Reading the Bill is introduced. The introduction of a Bill may be opposed and the matter may be put to a vote in the House.
6. After a Bill has been introduced, the Bill may be referred to the concerned Departmentally Related Standing Committee for examination.
7. The Standing Committee considers the broad objectives and the specific clauses of the Bill referred to it and may invite public comments on a Bill. It then submits its recommendations in the form of a report to Parliament.
8. In the Second Reading (Consideration), the Bill is scrutinized thoroughly. Each clause of the Bill is discussed and may be accepted, amended or rejected. The government, or any MP, may introduce amendments to the Bill. However, the government is not bound to accept the Committee's recommendations.
9. During the Third Reading (Passing), the House votes on the redrafted Bill.
10. If the Bill is passed in one House, it is then sent to the other House, where it goes through the second and third readings.

11. After both Houses of Parliament pass a Bill, it is presented to the President for assent. He/She has the right to seek information and clarification about the Bill, and may return it to Parliament for reconsideration.
12. After the President gives assent, the Bill is notified as an Act.

Que 3.7. What do you mean by the term common law ? Does it apply in India ?**Answer**

1. The Common Law is a body of law derived from judicial decisions known as case laws, rather than from statutes.
2. The Common Law derived its authority from the universal consent and practice of the people from time immemorial.
3. This system of jurisprudence initially originated in England.
4. Common Law is unintelligible until expressed in a judgment.
5. It includes those rules of law which derive their authority from the statement of principles found in the decisions of courts.
6. This system of law includes tradition, custom and usage, fundamental principles and modes of reasoning.
7. Yes, the common law is applicable in India.

Que 3.8. How the principles taken from decisions of judges constitute binding legal rules ?**Answer**

1. Judicial precedent or decisions is a process which is followed by the judges to take the decision.
2. In Judicial precedent, the decision is taken by following the similar cases happened in the past.
3. So judicial decision is based on the principle of stare decisis i.e. "stand by the decision already made".
4. The reason why a precedent is recognized is that the verdict of the judiciary is assumed to be correct.
5. The use of precedents helps the litigant gain confidence in the judicial system.
6. The administration of the judicial decision becomes just and fair.

General Principle of Doctrine of Judicial Precedent : There are two rules that apply to the doctrine of judicial precedents :

3-8 P (NCC-Sem-5 & 6)

Basic Information about Legal System

1. The first rule says that a court which is lower in a hierarchy is completely bound by the decisions of courts which are above it.
2. The second rule states that higher courts are bound by their own decision in general in matters of related to precedence.

PART-2

The Court System in India and Foreign Courtiers (District Court, District Consumer Forum, Tribunals, High Courts, Supreme Court).

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 3.9. What is the general court structure and hierarchy in India ?

Answer

1. The Indian judicial system is a single integrated system.
2. The Constitution of India divides the Indian judiciary into superior judiciary (the Supreme Court and the High Courts) and the subordinate judiciary (the lower courts under the control of the High Courts).
3. The Supreme Court of India is the apex court of the country. It is presided by the Chief Justice of India.
4. There are twenty-four High Courts in the country.
5. Each state has one High Court, although some High Courts have jurisdiction over multiple states and Union Territories. For example, the Guwahati High Court exercises jurisdiction over the states of Assam, Nagaland, Mizoram and Arunachal Pradesh.
6. For administrative convenience, states are further sub-divided into districts, each of which has its own District Court.
7. Barring a few states, the original jurisdiction for both civil and criminal cases vests with the District Court.
8. The judicial system also consists of tribunals and commissions which are established under, and to deal with, specific statutes.

Constitution of India, Law & Engineering

Court hierarchy in India :

3-9 P (NCC-Sem-5 & 6)

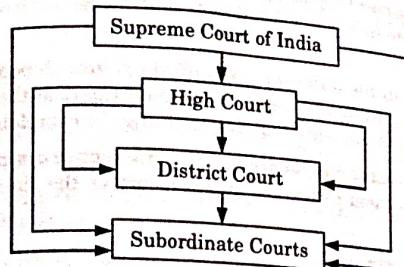


Fig. 3.9.1.

Que 3.10. Write a short note on district courts in India.

Answer

1. The district courts of India are the local district courts of the State governments for every district or for one or more districts together.
2. These Courts administer justice in India at a district level.
3. The highest court in each district is that of the District and Sessions Judge.
4. District and Sessions Judge is the principal court of original civil jurisdiction besides the High Court of the State.
5. The district court is also a court of Sessions when it exercises its jurisdiction on criminal matters under the Code of Criminal procedure.
6. The district court is presided over by one District Judge appointed by the state Governor with the advice of state chief justice.
7. In addition to the district judge there may be a number of Additional District Judges and Assistant District Judges depending on the workload.
8. The Additional District Judge and the court presided over have equivalent jurisdiction as the District Judge and his district court.

Que 3.11. Write a short note on district consumer forum in India.

Answer

1. To provide simple, speedy and inexpensive redressal of consumer disputes, the CPA envisages a 3-tier quasi-judicial machinery at the National, State and District levels.

2. District Consumer Dispute Redressal Forum, known as District Forum, deals with complaints involving costs and compensation less than Rs. Twenty Lakh.
3. Consumers can file different types of complaints depending on their specific grievance by visiting the Consumer Court at the district level along with the documents required for filing the complaint.
4. Following is a list of documents that the prospective complainants need to carry with them to the Consumer Court at the time of filing the complaint :

A. Consumer Case (CC) :

- i. Fee for making complainant,
- ii. Complaint with affidavit,
- iii. Supporting documents in favour of the complaint e.g., receipt, voucher etc.
- iv. Limitations, if any (2 years from cause of action)
- v. Index

B. Miscellaneous Application (MA) :

- i. Miscellaneous application with affidavit
- ii. Supporting documents in favour of miscellaneous application
- iii. Index

C. Criminal Petition (CP) :

- i. Index

D. Interlocutory Application (IA) :

- i. Complaint with affidavit
- ii. Supporting documents in favour of the complaint e.g., receipt, voucher etc.
- iii. Limitations, if any (2 years from cause of action)
- iv. Fee for making complaint
- v. Index

E. Execution Application (EA) :

- i. Execution application with affidavit
- ii. Certified copy of impugned order(s)
- iii. Limitations, if any
- iv. Index

Que 3.12. What do you understand by the term Tribunals ? What is the need of Tribunal ?

Answer

1. Tribunal is a quasi-judicial institution that is set up to deal with problems such as resolving administrative or tax-related disputes.
2. A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes.
3. Tribunals were not part of the original constitution; it was incorporated in the Indian Constitution by 42nd Amendment Act, 1976.
4. It performs a number of functions like :
 - i. Adjudicating disputes,
 - ii. Determining rights between contesting parties,
 - iii. Making an administrative decision,
 - iv. Reviewing an existing administrative decision and so forth.

Need of Tribunal :

1. To overcome the situation that arose due to the pendency of cases in various Courts.
2. The tribunals perform an important and specialised role in justice mechanism.
3. They take a load off the already overburdened courts.
4. They hear disputes related to the environment, armed forces, tax and administrative issues.

Que 3.13. Write a short note on High Courts in India.

Answer

1. The highest judicial court in a state is the High Court.
2. It is termed as the second-highest in the country after Supreme Court of India.
3. Currently, India has 25 High Courts established in different states of the country.
4. The jurisdictions of a High Court are :
 - i. Original Jurisdiction
 - ii. Power of Superintendence
 - iii. Court of Record

- iv. Appellate Jurisdiction
 5. The work of most high courts primarily consists of appeals from lower courts and writ petitions in terms of Articles 226 and 227 of the constitution.

Que 3.14. Write a short note on Supreme Court of India.

Answer

1. The Supreme Court of India is the country's highest judicial court. It is the final court of appeal in the country.
2. The Chief Justice of India is the head and chief judge of the Supreme Court and the court consists of a maximum of 34 judges.
3. It takes up appeals against the verdicts of the High Courts, other courts and tribunals.
4. It settles disputes between various government authorities, between state governments, and between the centre and any state government.
5. It also hears matters which the President refers to it, in its advisory role.
6. The law that Supreme Court declares is binding on all the courts in India and on the Union as well as the state governments.
7. The jurisdiction of the SC is of three types :
 - i. Original
 - ii. Appellate
 - iii. Advisory
8. Supreme Court upholds the rule of law and also guarantees and protects citizens' rights and liberties as given in the Constitution. Therefore, the Supreme Court is also known as the Guardian of the Constitution.

PART-3

Arbitration, Contract Law, Tort, Law at Workplace.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 3.15. What do you understand by the term Arbitration? Also mention types of Arbitration.

Answer

1. Arbitration is a private arrangement of taking disputes to a less adversarial, less formal and more flexible forum and abiding by judgment, instead of carrying it to normal court.
2. Arbitration can be chosen by the parties either by way of an agreement or through the reference of the Court.
3. The parties in arbitration select a qualified expert known as an arbitrator.
4. The process of dispute resolution through arbitration is confidential.
5. The decision rendered by an arbitrator is known as an arbitral award.
6. The arbitral award is binding on the disputing parties.
7. Once an arbitral award is rendered, it is recognised and enforced akin to a court pronounced judgment.

Types of Arbitration :

1. **Domestic Arbitration :** An arbitration with Indian parties, where the place of arbitration is in India and rules applicable are Indian.
2. **Foreign Arbitration :** An arbitration where proceedings are conducted outside India and the award needs to be enforced in India.
3. **Ad-hoc Arbitration :** An arbitration which is governed by parties themselves.
4. **Institutional Arbitration :** An arbitration where parties select a particular institution. This institution in turn selects an arbitrator and lay out the rules applicable to arbitration.
5. **Statutory Arbitration :** An arbitration which is mandatorily imposed on the parties by operation of a particular law or statute, applicable to them.
6. **International Commercial Arbitration :** An arbitration in which at-least one of the disputing parties is a resident of a country other than India.

Que 3.16. Describe rights and duties of arbitrators.

Answer

1. An arbitrator must accept his appointment in writing. Such acceptance may be made by signing the arbitration agreement.

2. An arbitrator must conduct the arbitration with due expeditiousness and undertake measures on time in order to avoid any delay of the proceedings.
3. Unless agreed otherwise, the parties may discharge by their consent an arbitrator that fails to perform his duties, or does not perform them in a timely manner.
4. An arbitrator has the right to reimbursement of expenses and a fee for the work completed, unless he has waived these rights in writing.
5. If an arbitrator has determined the amount of his own expenses and fees, his decision does not bind the parties unless they accept it.

Que 3.17. Describe Arbitration and Conciliation Act of 1996.

Answer

1. The Arbitration and Conciliation Act of 1996 is the relevant legislation that governs the process of arbitration in India.
2. The statute provides for an elaborate codified recognition of the concept of arbitration.
3. The Indian Arbitration and Conciliation Act of 1996 is modelled on the United Nations Commission on International Trade Law (UNCITRAL).
4. The Arbitration and Conciliation Act, 1996 has ushered a new era of dispute resolution for domestic and commercial legal issues.
5. The Arbitration and Conciliation Act, 1996 was introduced in order to attract the 'international mercantile community'.

Que 3.18. What do you understand by the term contract law? Also mention the essential elements of a contract.

Answer

1. The Indian Contract Act is the law governing contracts in India.
2. According to the Indian Contract Act, 1872, an agreement that is enforceable by law is a contract.
3. An agreement is a promise. All agreements are not contracts.
4. Agreements must meet certain criteria - like consideration, parties must be competent, free consent between parties, lawful object in order to qualify as a contract.
5. It is important that the persons to a contract should also have the intention and mindset to enter into contract.

Essential elements of a contract :
Offer/Proposal and Acceptance :

1. i. When one person signifies to another his willingness to do or not to do certain things, it is called an Offer.
ii. The person making the proposal or offer is called the offeror and the person to whom the offer is made is called the offeree.
iii. The offer given must be with an intention to create a legal relationship.

2 Consideration :

- i. Consideration means 'something in return' for the offer.
- ii. Consideration can be in the nature of an act or forbearance.
- iii. The general rule is that, an agreement without consideration is void and not enforceable by law because in such cases, one party is getting something from the other without giving anything to the other.
- iv. There should always be a mutual consideration. In other words, each party must give and also take.

3 Capacity to Contract :

- i. Any person who is a major, i.e., above 18 years of age, is competent to enter into a contract and minors are not competent to enter into a contract.
- ii. A person should also have a sound mind and should not be disqualified by any law in force.

4 Consent :

- i. When two persons agree on the same thing in the same sense, it is termed as consent.
- ii. Consent should be free and not caused by coercion, undue influence, misrepresentation, fraud or mistake.
- iii. If consent is obtained by the influence of any one of the above said it becomes voidable.

5 Unlawful Agreements :

- i. If the object of the agreement is to perform an unlawful act, then the contract is unenforceable.
- ii. The object of the agreement should not be illegal, immoral or opposed to public policy.

Contingent Contract :

- i. Contingent contract is a contract to do something or not to do something on the happening or non-happening of an event, which is collateral to the contract.

- ii. Contingent contracts cannot be enforced until the uncertain future event happens.
 - iii. If the uncertain future event becomes impossible, contingent contracts become void.
- 7. Discharge of Contract :**
- i. Discharge means termination of the contractual relations of the parties to the contract.
 - ii. Discharge of a contract may be done by the following ways :
 - a. Discharge by Performance;
 - b. Discharge by Agreement or Consent;
 - c. Discharge by Impossibility of Performance;
 - d. Discharge by Lapse of time;
 - e. Discharge by Operation of law;
 - f. Discharge by Breach of contract.

8. Damages :

- i. Monetary compensation given to the affected party for the loss or injury caused to him due to the breach is called damages.
- ii. The objective of awarding damages by the court is to put the injured party in the same position as he would have been if the contract had not been breached.

Que 3.19. What do you understand by the term Tort ?**Answer**

1. 'Tort' means a 'wrong' and it originates from Latin word 'tortum', which means 'twisted' or 'crooked'.
2. In law, tort is defined as a civil wrong or a wrongful act, of one, either intentional or accidental, that results in the injury or harm to another who in turn has recourse to civil remedies for damages or a court order or injunction.
3. There are three kinds of wrongs in tort law - intentional tort, negligence and strict liability.
4. **Intentional Tort :**
 - i. An intentional tort requires the claimant to show that defendant caused the injury on purpose.
 - ii. Furthermore, the claimant must show that he or she suffered a particular consequence or injury, and that the defendant's actions caused the consequence or injury.

5. Negligence :

- i. The basic understanding of negligence is that wrong-doer or the defendant has been careless in a way that harms the interest of the victim or the claimant.

6. Strict Liability :

- i. Strict liability torts do not care about the intention or carelessness of the defendant when the defendant caused the injury.
- ii. The claimant does not have to establish any sort of or level of blame attributable to the defendant based on the intention or the degree of carelessness.

Que 3.20. What are the various laws relating to workplace in India ?**Answer**

Indian laws relating to workplace :

1. Factories Act, 1948 :

- i. The Factories Act, 1948 lays down provisions for the health, safety, welfare and service conditions of workmen working in factories.
- ii. It contains provisions for working hours of adults, employment of young persons, leaves, overtime, etc.
- iii. It applies to all factories employing more than 10 people and working with the aid of power, or employing 20 people and working without the aid of power.
- iv. It covers all workers employed in the factory premises directly or through an agency.
- v. Some provisions of the Act may vary according to the nature of work of the establishment.

2. Industrial Employment (Standing Orders) Act, 1946 :

- i. The Industrial Employment (Standing Orders) Act, 1946 (the IESO Act) is applicable to every industrial establishment wherein 100 or more workmen are employed or were employed on any day of the preceding twelve months.
- ii. The IESO Act aims to bring uniform terms and conditions of service in various industrial establishments.

3. Shops and Commercial Establishments Act :

- i. The Shops and Commercial Establishments Act(s) of the respective States generally contain provisions relating to registration of an

- establishment, working hours, overtime, leave, privilege leave, notice pay, working conditions for women employees, etc.
- ii. The provisions of the Shops and Commercial Establishments Act apply to both white collar and blue-collar employees.
- 4. Contract Labour (Regulation & Abolition) Act, 1970 :**
- The main objectives of the Contract Labour (Regulations & Abolition) Act, 1970 (the Contract Labour Act) are :
- i. To prohibit the employment of contract labour.
 - ii. To regulate the working conditions of the contract labour, wherever such employment is not prohibited.
 - iii. The Contract Labour Act is not applicable to establishments in which work only of an intermittent or casual nature is performed.
 - iv. The Contract Labour Act prohibits the employment of contract labour on jobs that are perennial in nature. For such jobs, permanent employees need to be employed.
- 5. The Employee's Compensation Act, 1923 :**
- i. The Employee's Compensation Act, 1923 (the EC Act) aims to provide financial protection to workmen and their dependents in case of any accidental injury arising out of or in course of employment and causing either death or disablement of the worker by means of compensation.
 - ii. This Act applies to factories, mines, docks, construction establishments, plantations, oilfields and other establishments.
- 6. Weekly Holiday Act, 1942 :**
- i. The Weekly Holiday Act, 1942 provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres.
 - ii. The Act provides that every shop shall remain entirely closed on one day of the week.
- 7. The Mines Act, 1952 :**
- i. The Mines Act, 1952 aims to secure safety and health and welfare of workers working in the mines.
 - ii. The Mines Act provides that persons working in the mine should not be less than 16 years of age.



Intellectual Property Laws and Regulation to Information

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PART- 1

Intellectual Property Laws : Introduction, Legal Aspects of Patents, Filing of Patent Applications, Rights from Patents, Infringement of Patents, Copyright and its Ownership, Infringement of Copyright, Civil Remedies for Infringement.

Questions-Answers**Long Answer Type and Medium Answer Type Questions**

Que 4.1. What is Intellectual Property and Intellectual Property Rights ?

Answer**Intellectual Property :**

1. Intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property.
2. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a company and its products, etc.

Intellectual Property Rights :

1. Intellectual property rights (IPR) can be defined as the rights given to people over the creation of their minds.
2. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time.
3. Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, symbols, names, images, and designs used in commerce.

Que 4.2. How the Intellectual Property (IP) is categorised ?

Answer

IP is divided into two categories for ease of understanding :

1. **Industrial property :** It includes inventions (patents), trademarks, industrial designs, and geographic indications of source.

Copyright :

- a. It includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.
- b. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

Que 4.3. What is patent ? Explain the object behind granting patent.

Answer

1. A patent is granted as an exclusive right by the government to a true and first inventor or their assignee for a limited period of time in exchange for the public disclosure of an invention.
2. A patentee enjoys exclusive right to prevent the third party from unauthorized act of using the patented product or process during the term of the patent.
3. A patented invention becomes free for public use after expiry of the term of the patent or when the patent ceases to have effect, by non-payment of any renewal fee.

Object behind granting patent :

1. Patent provides incentives to individuals by offering them recognition for their creativity and material reward for their marketable inventions.
2. These incentives encourage innovation that assures that the quality of human life is continuously enhanced.

Que 4.4. What are the salient features of the Patents (Amendment) Act, 2002 ?

Answer

Salient features of the Patents (Amendment) Act, 2002 are :

1. Further codification of non patentable inventions.
2. 20 years term of patent for all technology.
3. Provision for reversal of burden of proof in case of process patents.
4. Provisions of compulsory licences to meet public health concerns.
5. Deletion of provision of licence of right.

6. Introduction of system of deferred examination.
7. Mandatory publication of applications after 18 months from the date of filing.
8. Provision for process patent for micro organisms.
9. Establishment of Appellate Board.
10. Provision for parallel imports.
11. Provision for exemption from infringement proceedings for use of a patented invention for obtaining regulatory approval for a product based on that patented invention.
12. Provision to protect biodiversity and traditional knowledge.

Que 4.5. What is the procedure for obtaining patent ?

Answer

Procedure for obtaining patent :

A. Application for patent :

1. Every application for a patent shall be for one invention only.
2. It shall be made in the prescribed form and filed in the patent office.
3. Where the application is made by virtue of assignment of right to apply, proof of such right shall be filed.
4. The application shall state that the applicant is in possession of the invention and give the name of the owner claiming to be the true and first inventor and where the person so claiming is not the applicant; the application shall contain a declaration that the applicant believes the person so named to be the true and first owner.

B. Who can apply for patent :

1. Any person claiming to be the true and first inventor of the invention.
2. His assignees.
3. The legal representatives of any deceased person who immediately before his death was entitled to make such an application.

C. Whom to apply :

1. There are four patent offices in India, which are located in Mumbai, Calcutta, Delhi and Chennai.
2. A right holder can file their patent application in any one of these patent offices, depending on the territorial jurisdiction.

3. The patent law in India allows the applicant to file a patent application if they have a place of residence or business or a domicile in India.
4. The applicant must be an Indian national or a national of a conventional country.

D. Provisional and complete specification :

1. Every such application is to be accompanied by a provisional or complete specification.
2. Where the application is accompanied by a provisional specification, a complete specification should be filed within twelve months from the date of filling the application. If this is not done, the application shall be deemed to be abandoned.
3. Every complete specification should :
 - i. Fully describe the invention and the method by which it is to be carried out.
 - ii. Disclose the best method of performing the invention known to the applicant.
 - iii. End with a claim or claims defining the scope of the invention for which protection is claimed.

E. Publication of application :

1. The application shall not be open to the public for such period as may be prescribed.
2. The applicant may request the controller to publish his application at any time before the expiry of prescribed period.
3. Every application shall on expiry of the period prescribed, be published except in :
 - i. Where secrecy direction is imposed under sec 35.
 - ii. Has been abandoned under sec 9.
 - iii. Has been withdrawn 3 months prior to the period specified.

F. Examination of application :

1. Within a period of forty eight months from the date of the filling of the application, the applicant or any other interested person may request the registrar to examine the application. If no such request is made then the application will be deemed to have been withdrawn and thereafter cannot be revived.
2. When a request has been made, the controller refers the application to the examiner who makes an inquiry to see :

- 4-6 P (NCC-Sem-5 & 6)**
- Intellectual Property Laws**
- i. Whether it complies with the requirements of the act and rules.
 - ii. Whether there is any lawful ground of objection of the grant of the patent.
 - iii. Whether the invention has already been published or claimed by some other person.
3. The examiner makes a search in the patent office for specifications of prior applications and patents to see whether the same invention has already been published or claimed or is the subject matter of existing or expired patents.
4. A report is accordingly made to the controller within 14 months from the date of reference.
5. The Patent Office after examination of the application will communicate to the applicant the objection, if any to the grant of a patent. An opportunity of being heard is given.
- G. Grant of patent :**
1. If the applicant satisfactorily removes the objections, the controller will accept the complete specification and advertise it in the official gazette.
 2. The patent shall be granted as soon as possible with the seal of the patent office and the date on which the patent is granted shall be entered in the register.
 3. The term of Patent is 20 years from the date of application.

Que 4.6. What is patent infringement ? Give its type.

Answer

1. Selling, offering to sell, using, or manufacturing a patented product without the owner's permission can constitute infringement and expose the unauthorized seller/user/manufacturer to liability, even if the infringement was unintentional.

Types of infringements : There are two types of infringements:

1. **Direct infringement :** It occurs when a product is substantially close to any patented product or in a case where the marketing or commercial use of the invention is carried out without the permission of the owner of the invention.
2. **Indirect infringement :** It occurs when some amount of deceit or accidental infringement happens without any intention of infringement.

Que 4.7. What are infringing and non-infringing activities ?

Answer

A Infringing activities :

1. The Patents Act, 1970, does not exactly list down activities which would be considered infringing.
2. Having said that, Section 48 of the Act confers exclusive rights to the patentee to prevent third parties from making, using, offering for sale, selling or importing the patented invention for the purpose of using, selling and offering for sale in India without the consent of the patentee.
3. Therefore, one can presume that any act of a third party which violates the rights conferred upon the patentee, shall be considered an act of infringement.

B Non-infringing activities :

1. The Patents Act 1970, in Sections 47, 49 and 107A defines certain activities related to the patented invention which are not considered as infringing activities.
2. They can be called the statutory exemptions to infringement.
3. The statutory exemptions to infringement are :
 - i. Government use.
 - ii. Exemptions for research and development.
 - iii. Supply of medicinal drug to medical institutions by Government.
 - iv. Patented invention used on foreign vessels.
 - v. Polar exemptions and parallel imports.

Que 4.8. What do you understand by the term copyright? Who is the owner of a copyrighted work ?

Answer

1. Copyright is a type of intellectual property that gives its owner the exclusive right to make copies of a creative work, usually for a limited time.
2. The Copyright Act, 1957 supported by the Copyright Rules, 1958 is the governing law for copyright protection in India. Substantial amendments were carried out to the Copyright Act, in early 2012.

Owner of copyrighted work :

1. As a general rule, the author of a work is the first owner of copyright in a work.
 2. For an original literary, musical, and artistic work, it is the person who created such work. In case of a photograph, it is the photographer. For computer-generated works, the author is the person who causes the work to be created.
 3. However, where two or more parties create a work together, copyright ownership becomes a more difficult issue.
 4. In addition, copyright ownership is more difficult to determine when the creator of a work is being paid by a third-party to create the work.
- Some of the eligible owners of copyrighted work are as follows :

1. Employee and contractor work :

- a. If a person in the course of his or her employment under a contract of service or apprenticeship creates any work, his or her employer becomes the first owner of the copyright in the work.
- b. In case of contract work the first owner of the copyright is the independent contractor. To own the copyright, the hiring party would have to obtain an assignment in writing from the independent contractor.

2. Joint and collective ownership :

- a. Work of joint authorship is established only when the work is produced by the collaboration of two or more authors.

3. Transfer of rights :

- a. Copyright and neighbouring rights can generally be transferred by assignment, by testamentary disposition or by inheritance.

4. Licensing :

- a. The owner of a copyright may either license the entire copyright or the licence may be confined to one or more interest in the copyright.
- b. The copyright may be licensed to more than one person non-exclusively.

Que 4.9. What is copyright infringement? What amounts to copyright infringement?

Answer

1. Copyright is a negative right that lets the owner enjoy exclusive right over his/her Work without any hindrance from others.

2. If the Work is used/ exploited by any person other than the owner in the Work.
3. Copyright infringement can be primary or secondary.
4. In case of primary infringement, the infringer copies the original work without the owner's authorization, whereas secondary infringement covers unauthorized dealings such as selling of infringing copies of the Work, etc.
5. According to the Copyrights Act, 1957, copyright in a Work shall be deemed to be infringed when :
 - i. Unauthorized use of the exclusive rights of the owner of Copyrights under the Act by any other person;
 - ii. Permitting a place for the communication of the Work to the public for a profit;
 - iii. Make or let for sale or hire copyrighted Work without authorization of the owner;
 - iv. Distribution or exhibition of infringing copies for trade and personal gains;
 - v. Importing of infringing copies into India.

Que 4.10. What are the remedies for copyright infringement?

Answer**A. Civil Remedies :**

1. The Copyrights Act, 1957 states that in case of infringement, the owner of Copyright shall be entitled to all such remedies by way of injunction, damages, and accounts.
2. Depending upon the facts and circumstances of each case following orders are commonly passed by the Indian Courts in case of infringement of Copyrights :
 - a. **Interlocutory injunction**, i.e., a temporary injunction against infringement of copyrights till final disposal of the suit.
 - b. **Anton Pillar order**, i.e., an order permitting the copyright owner along with a Local Commissioner appointed by the Court to search the premises and seize the infringing goods.
 - c. **John Doe order**, i.e., cease and desist orders passed by the Court against unknown infringers. In such cases, the identity of the infringer is unknown to the Plaintiff and is referred to as "John Doe" till the identity becomes known.

B. Criminal Remedies :

- Section 63 of the Act states that criminal proceedings can be initiated against the infringer by the owner of copyright and the punishment towards the same shall be imprisonment of at least 6 months which may be extended to 3 years with a fine of INR 50,000, which may extend to INR 2 lakhs.
- In case of criminal action, any police officer, not below the rank of Sub-Inspector, is permitted to seize the infringing copies without a warrant and produce them before a Magistrate.

PART-2

Regulation to Information : Introduction, Right to Information Act, 2005, Information Technology Act, 2000, Electronic Governance, Secure Electronic Records and Digital Signatures, Digital Signature Certificates, Cyber Regulations Appellate Tribunal, Offences, Limitations of the Information Technology Act.

Questions-Answers**Long Answer Type and Medium Answer Type Questions**

Que 4.11. Explain Right to Information (RTI) Act, 2005. What type of information can be requested through RTI ?

Answer

- Right to Information Act 2005 mandates timely response to citizen requests for government information.
- The act is one of the most important acts which empower ordinary citizens to question the government and its working.
- This has been widely used by citizens and media to uncover corruption, progress in government work, expenses related information, etc.
- All constitutional authorities, agencies, owned and controlled, also those organisations which are substantially financed by the government comes under the purview of the act.
- The act also mandates public authorities of union government or state government, to provide timely response to the citizen's request for information.

- The act also imposes penalties if the authorities delay in responding to the citizen in the stipulated time.

Types of information requested through RTI :

- The citizens can seek any information from the government authorities that the government can disclose to the parliament.
- Some information that can affect the sovereignty and the integrity of India is exempted from the purview of RTI.
- Information relating to internal security, relations with foreign countries, intellectual property rights, cabinet discussions are exempted from RTI.

Que 4.12. What are the objectives of the Right to Information Act, 2005 ?

Answer**Objectives of the Right to Information Act, 2005 :**

- Empower citizens to question the government.
- The act promotes transparency and accountability in the working of the government.
- The act also helps in containing corruption in the government and work for the people in a better way.
- The act envisages building better-informed citizens who would keep necessary vigil about the functioning of the government machinery.

Que 4.13. Describe Information Technology Act, 2000.

Answer

- i. The Information Technology Act, 2000 provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce"; which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies.
- ii. Some highlights of the Act are listed below :
 - Use of Digital Signature to authenticate an electronic record.
 - Details about Electronic Governance.

3. Scheme for regulation of Certifying Authorities.
4. Penalties and adjudication for various offences.
5. Establishment of the Cyber Regulations Appellate Tribunal.
6. Various offences and the said offences investigated only by a Police Officer not below the rank of the Deputy Superintendent of Police.
7. Constitution of the Cyber Regulations Advisory Committee.

Que 4.14. What is Electronic Governance (E-Governance) ? What are the objectives of E-Governance ?

Answer

1. E-Governance is the integration of Information and Communication Technology (ICT) in all the processes, with the aim of enhancing government ability to address the needs of the general public.
2. The basic purpose of e-governance is to simplify processes for all, i.e. government, citizens, businesses, etc. at national, state and local levels.
3. It makes the whole administrative process convenient, efficient, transparent, fully accountable and responsible.
4. E-Governance is a current necessity in a country like India, both in Government and corporate sector.
5. Some successful implementation of E-Governance to the governmental function include projects like : e-Mitra project (Rajasthan), e-Seva project (Andhra Pradesh), CET (Common Entrance Test).

Objectives of E-Governance :

1. Better service delivery to citizens.
2. Ushering in transparency and accountability.
3. Empowering people through information.
4. Improve efficiency within Government i.e., between centre-state or inter-states.
5. Improve interface with business and industry.

Que 4.15. What are the advantages and disadvantages of E-Governance ?

Answer

Advantages of E-Governance :

1. **Speed :** Technology makes communication swifter. Internet, smartphones have enables instant transmission of high volumes of data.
2. **Saving Costs :** A lot the Government expenditure goes towards the cost of buying stationery for official purposes. Letters and written records consume a lot of stationery. However, replacing them with smartphones and the internet can saves lots of money in expenses every year.
3. **Transparency :** The use of e-governance helps make all functions of the business transparent. All Governmental information can be uploaded onto the internet. The citizen's access specifically access whichever information they want, whenever they want it.
4. **Accountability :** Transparency directly links to accountability. Once the functions of the government are available, we can hold them accountable for their actions.

Disadvantages of E-Governance :

1. **High Setup Cost and Technical Difficulties :** The setup cost is very high and the machines have to be regularly maintained. Often, computers and internet can also break down and put a dent in governmental work and services.
2. **Illiteracy :** A large number of people in India are illiterate and do not know how to operate computers and smartphones. E-governance is very difficult for them to access and understand.
3. **Cybercrime/Leakage of Personal Information :** There is always the risk of private data of citizens stored in government servers being stolen. Cybercrime is a serious issue; a breach of data can make the public lose confidence in the Government's ability to govern the people.

Que 4.16. What are Secure Electronic Records and Digital Signatures ?

Answer

1. Secure Electronic Record :

Section 14 lays down that, 'where any security procedure has been applied to an electronic record at a specific point of time, then such

record shall be deemed to be a secure electronic record from such point of time to the time of verification'.

2. Secure Electronic Signature (Digital Signature) :

Section 15 lays down that an electronic signature shall be deemed to be a secure electronic signature if:

- The signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- The signature creation data was stored and affixed in such exclusive manner as may be prescribed

[Note : In case of digital signature, the "signature creation data" means the private key of the subscriber.]

Que 4.17. What is a Digital Signature Certificate ? What are different types of Digital Signature Certificates ?

Answer

- Digital Signature Certificates (DSC) are the digital equivalent (electronic format) of physical or paper certificates.
- A digital certificate can be presented electronically to prove one's identity, to access information or services on the Internet or to sign certain documents digitally.

The different types of Digital Signature Certificates are :

A. Class 2 Digital Signature Certificate :

- The main function of this certificate is to authenticate the details of the signer.
- It re-affirms the already mentioned data of the user.
- It is used in various form-filling, online registration, email attestation, income tax filing and etc.

B. Class 3 Digital Signature Certificate :

- This is the safest of all certificates. It is used in matters of high security and safety.
- It is mainly used in online trading and e-commerce, where a huge amount of money or highly confidential information is involved.

Que 4.18. Write a short note on Cyber Regulations Appellate Tribunal.

Answer

1. Cyber Appellate Tribunal has been established under the Information Technology Act under the aegis of Controller of Certifying Authorities (C.C.A.)

2. It has the statutory authority to examine the correctness, legality or propriety of the decision or order passed.

3. Qualifications for appointment as Presiding Officer of the Cyber Appellate Tribunal :

A person is considered qualified for the appointment as the Presiding Officer of a Tribunal if :

- He has the qualification of the Judge of a High Court.
- He is or was the member of the Indian Legal Service and holds or has held a post in Grade I of that service for at least three years.

4. The Term of Office :

The Term of Office of the Presiding Officer of a Cyber Appellate Tribunal is five years from the date of entering the office or until he attains the age of 65 years, whichever is earlier.

5. Resignation and removal :

i. The Presiding Officer can resign from his office after submitting a notice in writing to the Central Government, provided :

- He holds office until the expiry of three months from the date the Central Government receives such notice, OR
- He holds office till the appointment of a successor, OR
- Until the expiry of his office; whichever is earlier.

ii. In case of proven misbehaviour or incapacity, the Central Government can pass an order to remove the Presiding Officer of the Cyber Appellate Tribunal.

6. Powers of Cyber Appellate Tribunal :

i. The Cyber Appellate Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

ii. The Cyber Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

iii. The Cyber Appellate Tribunal shall have powers of:

- Summoning and enforcing the attendance of any person and examining him on oath;

- b. Requiring the discovery and production of documents or other electronic records;
- c. Receiving evidence on affidavits;
- d. Issuing commissions for the examination of witnesses or documents;
- e. Reviewing its decisions;
- f. Dismissing an application for default or deciding it ex parte;
- g. Any other matter, which may be prescribed.

Que 4.19. What are the limitations/shortcomings of the Information Technology Act, 2000 ?

Answer

Limitations/shortcomings of the Information Technology Act, 2000 :

1. The Information Technology Act has been successful in setting down the framework of regulations in Cyber Space and addresses a few pressing concerns of misuse of technology.
2. However there are few serious gaps in the Act that have not been discussed.
3. Many experts argues that the Act is toothless legislation which has not been completely effective in issuing penalties or sanctions against perpetrators who choose to misuse the reach of cyberspace.
4. Following are certain areas of cyber laws which need attention :

A. Spamming :

1. A spam is an unsolicited bulk e-mail. Initially, it was viewed as a mere nuisance but now it is posing major economic problems.
2. The Information Technology Act does not discuss the issue of spamming at all.
3. The USA and the European Union have enacted anti-spam legislation.

B. Phishing :

1. Phishing is the criminally fraudulent process of acquiring sensitive information such as usernames, passwords, and credit card details, by pretending as a trustworthy entity in electronic communication.
2. There is no law against phishing in the Information Technology Act through the Indian Penal Code talks about cheating, it is not sufficient to check the activity of phishing.

C. Data Protection in Internet Banking :

1. Data protection laws primarily aim to safeguard the interest of the individual whose data is handled and processed by others.
2. India has no law on data protection.
3. The Information Technology Act talks about unauthorized access but it does not talk about maintaining the integrity of customer transactions.

D. Privacy Protection :

1. Privacy and data protection are important issues that need to be addressed today as information technology assumes greater importance in personal, professional and commercial spheres.
2. The absence of a specific privacy law in India has resulted in a loss of substantial foreign investment and other business opportunities.

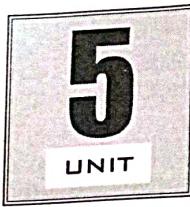
E. Identity Theft :

1. Identity theft worldwide is a growing problem. IT act 2000 fails to address this issue.

F. Cyber War :

1. The issue of Cyber War has also not been discussed in the Act.





Business Organizations and E-Governance

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Business Organizations & E-Governance

PART-1

*Sole Traders, Partnerships : Companies : The Company's Act :
Introduction, Formation of a Company, Memorandum of
Association, Articles of Association, Prospectus, Shares, Directors,
General Meetings and Proceedings, Auditor, Winding up.*

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 5.1. What do you mean by sole trader ? What are legal aspect and liability of sole trader ? Also mention the advantages and disadvantages.

Answer

1. A sole trader - also known as a sole proprietorship - is a simple business arrangement, in which one individual runs and owns the entire business.
2. In sole proprietorship there is no legal distinction between the owner and the business entity.
3. A sole proprietorship is not necessarily registered or incorporated.
4. It is the most ideal form of business organisation and the ideal choice to run a small or medium scale business.
5. Many sole proprietors do business under their own names because creating a separate business or trade name is not necessary.

Legal aspect and Liability :

1. The important aspect of the sole proprietorship is that there exists a lack of legal formalities. There is no separate law to govern it.
2. The owner is the only risk bearer in a sole proprietorship.
3. Also, he is the one who enjoys all the profits with any other stakeholders.
4. In legal terms, the business and the owner are one and the same. There is no separate legal identity.
5. The liability of a sole proprietor is unlimited.
6. This means that a sole proprietor is subject to potential losses based on the company's obligations.

Advantages of sole trader/proprietorship :

- i. **Easy Establishment :**
It is easy to establish. The identity of the proprietor is used as the legal identity of the business as well.

- ii. The PAN and Aadhar cards of the promoter can be used to obtain the identity of the business.

2. Easy Operation :

- i. Since there is only one single person who is operating the entire business, it is easy to operate business without any hassles and external interference.
- ii. Proprietor becomes the sole decision-maker and does not need to consider any other opinions.

3. Profits :

- i. Being a sole proprietor, an individual becomes the sole beneficiary of all the profits.

4. Taxation and Compliances :

- i. The Taxation and compliance requirements of proprietorship firms are very minimal.

5. Confidentiality :

- i. The proprietor is the sole owner of the business undertaking.
- ii. This means that there is no leakage of any information to the third party in any way.

- iii. The privacy of business is clearly maintained.

Disadvantages of sole trader/proprietorship :

1. Unlimited Liability :

- i. This means that at the occurrence of any loss the proprietor has to meet all the liabilities.
- ii. The personal assets of proprietor may get used for discharging any liabilities and debts.

2. Obtaining Funds :

- i. It is easy for a registered company to raise loan whereas it is extremely difficult for the sole proprietor to raise the same.
- ii. This is due to the risk factor which is associated with the proprietor.

3. Higher Taxes :

- i. A proprietor can also be subject to the incidence of payment of higher taxes.
- ii. Proprietorship firms are taxed as if the individual is being taxed.

4. No Business Write-Offs :

- i. There are no business write-offs which exist in a proprietorship.

Ques 5.2. What do you understand by the term partnership? What are the features of partnership? Also mention the types of partners.

Answer

1. A partnership is an arrangement between two or more people to oversee business operations and share its profits and liabilities.
2. The partners in a partnership may be individuals, businesses, interest-based organizations, schools, governments or combinations.
3. The law relating to partnership firm in India is prescribed in the Indian Partnership Act of 1932.
4. This Act lays down the rights and duties of the partners between themselves and other legal relations between partners and third persons, which are incidental to the formation of a partnership.

Features of Partnership :

1. Formation/Partnership Agreement :

- i. According to the act, a firm must be formed via a legal agreement between all the partners. So a contract must be entered into to form a partnership firm.
- ii. Its business activity must be lawful, and the motive should be one of profit.

2. Unlimited Liability :

- i. All partners have unlimited liability in the business.
- ii. The partners are all individually and jointly liable for the firm and the payment of all debts.
- iii. This means that even personal assets of a partner can be liquidated to meet the debts of the firm.

3. Continuity :

- i. A partnership cannot carry out in perpetuity.
- ii. The death or retirement or bankruptcy or insolvency or insanity of a partner will dissolve the firm.
- iii. Also, the partnership of a father cannot be inherited by his son. If all the other partners agree, he can be added on as a new partner.

4. Number of Members :

- i. There should be a minimum of two members.
- ii. The maximum number may vary according to a few conditions.

5. Mutual Agency :

- i. In this type of organisation, the business must be carried out by all the partners together.
- ii. Or it can be carried out by any of the partners (one or several) acting on behalf of all of them.
- iii. This means every partner is an agent as well as the principal of the partnership.

Types of Partners :**1. Active Partner :**

- i. He takes active participation in the business of the firm.
- ii. He contributes to the capital, has a share in the profit and also participates in the daily activities of the firm.
- iii. His liability in the firm will be unlimited.

2. Dormant Partner :

- i. Also known as a sleeping partner, he will not participate in the daily functioning of the business.
- ii. But he will contribute to the capital. In return, he will have a share in the profits.
- iii. His liability in the firm will be unlimited.

3. Secret Partner :

- i. He will not represent the firm to outside agents or parties.
- ii. His participation with respect to capital, profits, management and liability is same as all the other partners.

4. Nominal Partner :

- i. This partner is only a partner in name.
- ii. He allows the firm to use the name of his firm, and the attached goodwill.
- iii. He does not contribute to the capital and hence has no share in the profits.
- iv. His liability in the firm will be unlimited.

5. Partner by Estoppel :

- i. One who is not an actual partner but presents himself to be the partner of the firm.
- ii. His liability in the firm will be unlimited.

Que 5.3. Mention the advantages and disadvantages of partnership.

Answer

Advantages of Partnership Firm : The following are the major advantages of a partnership firm :

1. Easy to Start :

- i. Partnership firms are one of the easiest to start.
- ii. The only requirement for starting a partnership firm is a partnership deed. Hence, a partnership can be started on the same day.
- iii. An LLP registration takes about 5 to 10 working days.

Decision Making :

- i. Decision making in a partnership firm could be faster as there is no concept of the passing of resolutions.
- ii. The partners in most cases can undertake any transaction on behalf of the partnership firm without the consent of other partners.

Raising of Funds :

- iii. When compared to a proprietorship firm, a partnership firm can easily raise funds.
- iv. Banks also easily sanction credit facilities to partnership firm instead of a proprietorship firm.

Sense of Ownership :

- v. People in a partnership firm are united for a common cause.
- vi. Ownership creates a higher sense of accountability, which paves the way for a diligent workforce.

Disadvantages of Partnership Firm : The disadvantages of a partnership firm are as follows :

1. Unlimited Liability :

- i. Every partner is liable personally for the losses of a partnership firm.
- ii. The liability created by a partner will also make each of the other partners personally liable.
- iii. To limit the liability of partners, the LLP structure was created by the Government.

2. Number of Members :

- i. The maximum number of members a partnership firm can have is restricted to 20.

3. Lack of a Central Figure :

- i. Combined ownership takes away the possibility of leadership and lack of leadership leads to directionless operations..

4. Trust of the General Public :

- i. A partnership firm is easy to start and also operates without much of a structure or regulations. Hence, it often leads to distrust amongst the general public.

5. Abrupt Dissolution :

- i. A partnership firm would be dissolved due to the death or insolvency of a partner.
- ii. Such an abrupt dissolution will hamper a business.

What is Companies Act, 2013 ? What are the salient features of Companies Act, 2013 ?

Answer

1. The Companies Act 2013 is an Act of the Parliament of India on Indian company law.
2. The act regulates the incorporation, responsibilities, directors and dissolution of a company in India.
3. The Companies Act, 2013 offers a number of provisions for governing all the listed as well as unlisted organizations in India.
4. The Act provides more power to the shareholders and emphasizes more on Corporate Governance.

Salient features of Companies Act, 2013 : Some of the Salient features of the Companies Act, 2013 are as under :

1. Democracy of Shareholders.
2. Supremacy of Shareholders.
3. Strengthening Women Contributions through Board Room.
4. Corporate Social Responsibility.
5. National Company Law Tribunal.
6. Cross Border Mergers.
7. Prohibition on forward dealings and insider trading.
8. Increase in number of Shareholders.
9. Limit on Maximum Partners.
10. One Person Company.
11. Entrenchment in Articles of Association.
12. Electronic Mode.
13. Independent Directors.
14. Serving Notice of Board Meeting.
15. Duties of Director defined.
16. Liability on Directors and Officers.
17. Rotation of Auditors.
18. Auditors performing Non-Audit Services.
19. Financial Year.
20. Rehabilitation and Liquidation Process.
21. Restriction on Composition.
22. Fast Track Mergers.

Ques 5.5. Explain the formation of a company under Companies Act, 2013 ? Also describe the steps to be taken to incorporate a new company.

Answer**Company Formation under the Companies Act, 2013 :**

1. Under this act, a company may be formed for any lawful purpose by seven or more members to incorporate a public company and two or more members for a private company or by a single person as One Person Company.

2. The company must subscribe their names into a memorandum and must comply with all the registration requirements under the Companies Act, 2013.

Steps to be taken to get a new company incorporated :

1. Select at least one suitable name (maximum of six names), indicative of the main objects of the company.
2. Ensure that the name does not resemble the name of any other already registered company by availing the services of checking name availability on the portal.
3. Apply to the concerned RoC to ascertain the availability of name. If proposed name is not available, the user has to apply for a fresh name on the same application.
4. After the name approval the applicant can apply for registration of the new company.
5. Arrange for the drafting of the memorandum and articles of association by the solicitors, vetting of the same by RoC and printing of the same.
6. Arrange for stamping of the memorandum and articles with the appropriate stamp duty.
7. Login to the portal and fill the following forms and attach the mandatory documents listed in the eForm :
 - i. Declaration of compliance (Form-1).
 - ii. Notice of situation of registered office of the company (Form-18).
 - iii. Particulars of the Director's, Manager or Secretary (Form-32).
8. Submit the eForms after attaching the digital signature; pay the requisite filing and registration fees and send the physical copy of Memorandum and Article of Association to the RoC.
9. After processing of the Form is complete and Corporate Identity is generated obtain Certificate of Incorporation from RoC.

Ques 5.6. Explain the Memorandum of Association of a company.

Answer

1. The Memorandum of Association (MOA) of a company defines the constitution and the scope of powers of the company. In other words, the MOA is the foundation on which the company is built.
2. It identifies the scope of company's operations and determines the boundaries it cannot cross.
3. It is a public document according to Section 399 of the Companies Act, 2013.
4. It contains details about the powers and rights of the company.

Content of the MOA : The following information is mandatory in an MOA :

1. Name Clause :

- i. For a public limited company, the name of the company must have the word 'Limited' as the last word.
- ii. For the private limited company, the name of the company must have the words 'Private Limited' as the last words.

2. Registered Office Clause :

- i. It must specify the State in which the registered office of the company will be situated.

3. Object Clause :

- i. It must specify the objects for which the company is being incorporated.
- ii. If a company changes its activities which are not reflected in its name, then it can change its name within six months of changing its activities.

4. Liability Clause :

- i. It should specify the liability of the members of the company, whether limited or unlimited.
- ii. For a company limited by shares - it should specify if the liability of its members is limited to any unpaid amount on the shares that they hold.
- iii. For a company limited by guarantee - it should specify the amount undertaken by each member to contribute to:

 - a. The assets of the company when it winds-up.
 - b. The costs, charges, and expenses of winding up and the adjustment of the rights of the contributors among themselves.

5. Capital Clause :

- i. This is valid only for companies having share capital.
- ii. These companies must specify the amount of Authorized capital divided into shares of fixed amounts.
- iii. Further, it must state the names of each member and the number of shares against their names.

6. Association Clause :

- i. The MOA must clearly specify the desire of the subscriber to form a company.

7. For One-Person-Company :

- i. The MOA must specify the name of the person who becomes a member of the company in the event of the death of the subscriber.

Ques 5.7. What are the Articles of Association (AoA) of a company?

Answer

1. The Articles of Association (AoA) is a document that defines the purpose of a company and specifies the regulations for its operations.
2. The document outlines how tasks should be accomplished within an organization, including the preparation and management of financial records, and the process of director appointments.

Components of the Articles of Association : It includes the following:

1. Company Name :

- i. A company must adopt an official name as a legal entity. It must be present in the articles of association.
- ii. Usually, the following suffixes "Pvt. Ltd." or "Ltd." are used to show that an entity is a company.

2. Purpose of the Company :

- i. Companies are incorporated for a specific purpose. Primarily, it is a for-profit reason to pursue a certain goal by delivering value to society.
- ii. The purpose of the organization must be clearly stated in the articles of association.

3. Share Capital :

- i. The articles of association will state the number and type of shares comprising a company's capital.

4. Organization of the Company :

- i. The document includes legal information about the company, including the registration address, the number of directors and employees, and the identity of the founders and original shareholders.

5. Shareholder Meetings :

- i. The first general shareholder meeting provisions are listed in the shareholder meetings section.
- ii. Notices, resolutions, and votes are detailed as well in the section, governing subsequent annual shareholder meetings.

Differentiate between Memorandum and Articles of Association.

Answer

S.No.	Memorandum	Articles
1.	Contains fundamental conditions upon which the company is incorporated.	Contain the provisions for internal regulations of the company.
2.	Meant for the benefit and clarity of the public and the creditors, and the shareholders.	Regulate the relationship between the company and its members, as well amongst the members themselves.
3.	Lays down the area beyond which the company's conduct cannot go.	Articles establish the regulations for working within that area.
4.	Memorandum lays down the parameters for the articles to function.	Articles prescribe details within those parameters.
5.	Can only be altered under specific circumstances and only as per the provisions of the Companies Act, 2013. Permission of the Central Government is also required in certain cases.	Articles can be altered a lot more easily, by passing a special resolution.
6.	Memorandum cannot include provisions contrary to the Companies Act. Memorandum is only subsidiary to the Companies Act.	Articles cannot include provisions contrary to the memorandum. Articles are subsidiary to both the Companies Act and the Memorandum.
7.	Acts done beyond the memorandum are ultra vires and cannot be ratified even by the shareholders.	Acts done beyond the Articles can be ratified by the shareholders as long as the act is not beyond the memorandum.

Ques 5.3. What do you understand by the term prospectus? Mention the contents of prospectus. What are the types of prospectus?

Answer

- Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.
- In simple words, any document inviting offers from the public, for the subscription of shares or debentures is known as prospectus.
- A prospectus must be in writing. An oral invitation to subscribe is not a prospectus.
- A document is not a prospectus unless it is an invitation to the public.
- For any document to consider as a prospectus, it should satisfy following conditions :
 - The document should invite the subscription to public share or debentures, or it should invite deposits.
 - Such an invitation should be made to the public.
 - The invitation should be made by the company or on the behalf of company.
 - The invitation should relate to shares, debentures or such other instruments.

Contents of Prospectus : Every prospectus issued by or on behalf of the company shall be dated and signed and shall :

- Include following Information :
 - Names and addresses of registered office of the company, CS, CFO, auditors, bankers, trustees underwriters as may be prescribed;
 - Dates of the opening and closing of the issue and declaration of issue of allotment letters and refunds within prescribed time;
 - A statement by the Board of Directors about separate bank account to manage all monies received out of issue;
 - Consent of all persons whose addresses are so mentioned;
 - Authority to issue;
 - Capital structure of the company;
 - Object of offer;
 - Object of present business of the company;
 - Minimum subscription;
 - Details of Directors;
 - Disclosures.
- Include following Reports :
 - Reports by the auditors about its financial performance;

- ii. Reports about profit and losses for each of the five financial years immediately preceding the financial year of the issue of the prospectus;
- iii. Reports about the business or transactions.
- 3. Make a declaration about the compliance of the provisions of the Companies Act and a statement to that effect.
- 4. State such other matter and reports as may be prescribed.

Types of prospectus : There are four types of prospectus, which are as under :

1. Abridged Prospectus :

- i. The abridged prospectus is a summary of a prospectus filed before the registrar.
- ii. It contains all the features of a prospectus.
- iii. An abridged prospectus contains all the useful and materialistic information so that the investor can take a rational decision.
- iv. It also reduces the cost of public issue of the capital as it is a short form of a prospectus.

2. Deemed Prospectus :

- i. When any company allots or agrees to allot securities for sale to the public the document will be considered as a deemed prospectus through which the offer is made to the public for sale.
- ii. The document is deemed to be a prospectus of a company for all purposes and all the provision of content and liabilities of a prospectus will be applied upon it.

3. Shelf Prospectus :

- i. Shelf prospectus can be defined as a prospectus that has been issued by any public financial institution, company or bank for one or more issues of securities or class of securities as mentioned in the prospectus.
- ii. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus.

4. Red herring prospectus :

- i. Red herring prospectus is the prospectus which lacks the complete particulars about the quantum of the price of the securities.
- ii. Thus red herring prospectus is an incomplete prospectus.
- iii. A company may issue a red herring prospectus prior to the issue of prospectus.
- iv. This type of prospectus needs to be filed with the registrar at least three days prior to the opening of the subscription list or the offer.

v. The obligations carried by a red herring prospectus are same as a prospectus.

Ques 5.10. What do you understand by the term shares ? What are the types of share ?

Answer

1. A share in the share capital of the company, including stock, is the definition of the term 'Share'. This is in accordance with Section 2(84) of the Companies Act, 2013.
2. In other words, a share is a measure of the interest in the company's assets held by a shareholder.
3. Shares of any member in a company are movable properties. Also, they are transferable in the manner prescribed in the Articles of the company.
4. Section 45 of the Act mandates the numbering of every share. This number is distinctive. However, if a person is a holder of the beneficial interest in the share, then this rule does not apply.

Types of share : According to the Companies Act, 2013, the share capital of a company is of two types :

1. Preferential Share Capital :

- i. The preferential share capital is that part of the issued share capital of the company carrying a preferential right for :
- a. **Dividend Payment :** A fixed amount or amount calculated at a fixed rate. This might/might not be subject to income tax.
- b. **Repayment :** In case of a winding up or repayment of the amount of paid-up share capital, there is a preferential right to the payment of any fixed premium or premium on any fixed scale.

2. Equity Share Capital :

- i. All share capital which is not preferential share capital is equity share capital.
- ii. **Equity shares are of two types :**
 - a. With voting rights.
 - b. With differential rights to voting, dividends, etc., in accordance with the rules.

Ques 5.11. Describe Director/Board of Directors in business Organization. Also list different type of directors.

Answer

1. A director is a person appointed to perform the duties and functions of director of a company in accordance with the provisions of the Companies Act, 2013.
2. The executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors.
3. The Board of Directors oversees how the management serves and protects the long term interests of all the stakeholders of the Company.
4. The board is entrusted with the responsibility to act in the best interests of the company.
5. The actions and deeds of directors individually functioning cannot bind the company, unless a particular director has been specifically authorised by a Board resolution to discharge certain responsibilities on behalf of the company.
6. The Companies Act, 2013 does not contain an exhaustive definition of the term "director". Section 2 (34) of the Act prescribed that "director" means a director appointed to the Board of a company.
7. Section 149(1) of the Companies Act, 2013 requires that every company shall have a minimum number of 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company.
8. A company can appoint maximum 15 directors. A company may appoint more than 15 directors after passing a special resolution in general meeting.

Types of Directors :

1. Residential director
2. Independent director
3. Small Shareholders Directors
4. Women Director
5. Additional Directors
6. Alternate Directors
7. Shadow Director
8. Nominee Directors

Ques 5.12 Explain in detail about the annual general meeting.

Answer

1. An Annual general meeting refers to the meeting which is held annually by the companies.
2. It is important for every type of company whether it is a private company or a public company, limited by shares or guarantees to conduct an annual general meeting once in a year.
3. There shouldn't be a gap of more than 15 months between two annual general meetings.
4. An exception is given when a company is incorporated, in such a case the company may not conduct an annual general meeting in the year at all.
5. After incorporation, the company needs to conduct an annual general meeting within 18 months.
6. According to Section 166 of the Companies Act, the first meeting after incorporation of the company must be held within 18 months.

Ques 5.13. Write a short note on minutes of proceedings of general meeting.

Answer

1. Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned.
2. The minutes of each meeting shall contain a fair and correct summary of the proceedings thereof.
3. All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
4. The minutes kept in accordance with the provisions shall be evidence of the proceedings recorded therein.
5. No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company.
6. If a person is found guilty of tampering with the minutes of the proceedings of meeting he shall be punishable.

Ques 5.14 Describe the role of auditor under Companies Act, 2013.
Explain different types of auditor.

Answer

1. An auditor is an independent professional person qualified to perform an audit.
2. In accounting, an auditor is someone who is responsible for evaluating the validity and reliability of a company or organization's financial statements.
3. The purpose of the auditors in the company is to protect the interests of the shareholders.
4. The auditor is obligated by law to examine the accounts maintained by the directors and inform them of the true financial position of the company.
5. Auditor gives his independent opinion to the owners or shareholders of the company to protect and keep the company in a safe financial condition.
6. Every company shall appoint an auditor who can either be an individual or a firm.

Types of auditor : There are two types of auditors :

A. External auditors :

1. External auditors are independent accounting/auditing firms that are hired by companies subject to an audit.
2. External auditors express their own opinions on whether the financial statements of the company in question are free of material misstatements.
3. For publicly-traded companies, external auditors could also be required to provide an opinion on the effectiveness of internal controls over financial reporting.

B. Internal auditors :

1. Internal auditors are those who are employed by the company that they audit.
2. They primarily provide audits related to the effectiveness of the company's internal controls over financial reporting.
3. Internal auditors are not independent of the company they perform audit procedures for.

Que 5.15. What is winding up (liquidation) process under the Companies Act, 2013 ? Explain the steps involved in it.

Answer

1. Winding up of a company is defined as the condition when the life of the company is brought to an end.
 2. The properties of the company are administered for the profit of its members and its creditors.
- Steps of winding up :** The following steps are followed in the case of a company winding up :
1. An administrator (liquidator) is appointed in the context of liquefaction or winding up of a company.
 2. The liquidator takes control over the company, assembles its assets, pays debts of the company and finally distributes any surplus amongst the members according to their rights and liabilities.
 3. The company has no assets or liabilities at the end of liquefaction or winding up.
 4. The dissolution of a company takes place when the assets and liabilities of a company are completely wound up.
 5. On the context of winding up, the name of the company is struck off from the list of companies and its identity as a separate legal person is lost.
 6. If the debts taken by the company is worth more than the assets it owns and no agreements have been made with the creditors, then the company is considered insolvent and is subjected to compulsory liquidation or compulsory winding up.

PART-2

E-Governance and Role of Engineers in E-Governance, Need For Reformed Engineering Serving at the Union and State Level, Role of I.T. Professionals in Judiciary, Problem of Alienation and Secessionism in Few States Creating Hurdles in Industrial Development.

Questions-Answers

Long Answer Type and Medium Answer Type Questions

Que 5.16. What do you mean by e-governance? What are the types of e-governance?

Answer

1. The electronic governance or e-governance implies, government functioning with the application of ICT (Information and Communications Technology).
2. Hence e-Governance is basically a move towards SMART governance implying: simple, moral, accountable, responsive and transparent governance.

Types of e-governance : There are 4 types of e-governance :

1. G2C (Government to Citizens) :

- i. This enables citizens to benefit from the efficient delivery of a large range of public services.
- ii. Expands the accessibility and availability of government services and also improves the quality of services.
- iii. The primary aim is to make government, citizen-friendly.

2. G2B (Government to Business) :

- i. Enables the business community to interact with the government by using e-Governance tools.
- ii. The objective is to cut red-tapism which will save time and reduce operational costs. This will also create a more transparent business environment when dealing with the government.

3. G2E (Government to Employee) :

- i. This kind of interaction is between the government and its employees.
- ii. ICT tools help in making these interactions fast and efficient and thus increases the satisfaction levels of employees.

4. G2G (Government to Government) :

- i. Enables seamless interaction between various government entities.
- ii. This kind of interaction can be between various department and agencies within government or between two governments like the union and state governments or between state governments.
- iii. The primary aim is to increase efficiency, performance and output.

Que 5.17. What are the advantages of e-governance?

Answer

Advantages of e-governance :

1. Improves delivery and efficiency of government services.
2. Improved government interactions with business and industry.
3. Citizen empowerment through access to information.
4. More efficient government management.
5. Less corruption in the administration.
6. Increased transparency in administration.
7. Greater convenience to citizens and businesses.
8. Cost reductions and revenue growth.
9. Increased legitimacy of government.
10. Reduces paperwork and red-tapism in the administrative process which results in better planning and coordination between different levels of government.
11. Improved relations between the public authorities and civil society.

Que 5.18. What is the role of engineers in E-Governance?

Answer

1. To make governance better an engineer must conduce to E-governance through computers and knowledge of cyber laws.
2. The engineers have to understand the E-governance requirement and develop reports.
3. An engineer must know the limits of state action and regulations by acquainting himself with the laws that are applied by the bureaucrats.
4. Since an engineer works at different places and sights, he must have the basic knowledge of centre - state relations with reference to policy of financing the key E-governance projects.
5. The knowledge of Constitution is necessary for him in order to ensure that the rules and regulations under which public and private sector works, do not violate the provisions of the Constitution.

Que 5.19. Explain the need for reform engineering/re-engineering at the Union and State level.

Answer

1. The need for improving administrative machinery of government in India is universally admitted.
2. The incredible rate of technological progress and the rapid advances in industrialisation, have imposed extraordinary strains on the traditional machinery of government in India.
3. There has been a rising concern to raise governmental processes effectiveness to a level capable of meeting current and prospective demands.
4. To make government administration more transparent and accountable while addressing the society's needs and expectations through efficient public services e-Governance was introduced in India.
5. For realizing the benefits of e-Governance the re-engineering of governmental processes is a necessary condition.
6. The emphasis is on process redesign to facilitate and ensure best practices in the realm of e-Governance.
7. Process redesign involves the analysis and redesign of workflows and processes between governmental departments to achieve improvements in performance.
8. Deployment of IT solutions will not necessarily deliver the best results unless the processes are reconfigured to the most appropriate processes. Otherwise, there is the threat of replacement of manual processes by machine-based processes.
9. Process re-engineering ensures that the processes are redesigned to make them the most effective and deliver the maximum value to the government, its employees and to the common citizen.

Que 5.20. Explain the use of technology in judicial process and role of I.T. professionals in Judiciary.

Answer

1. The rapid accumulation & slow disposal rate of pending cases has increased burden on our judicial system tremendously.
2. Courts had to maintain all the records in physical manner and the old work methods based on manual systems being continued even now.
3. The enormous problems being faced by the judiciary due to arrears, backlog, and delays can be partly resolved by the introduction of ICT (Information and Communications Technology).

4. Most of the bottlenecks can be partly overcome if a sound judicial management information system is introduced in India.
5. Case Management, File Management, and Docket Management will be vastly improved by resorting to the use of computers.

Role of I.T. professionals in Judiciary :

1. Installing and maintaining software for Video Conferencing, Word Processing, Storage Management etc.
2. Designing and testing computer hardware in various courts.
3. Writing and testing software for Database Management System like Courts database, Judges database, Case database, Litigants database etc.
4. Designing, setting up and testing software for Encryption, Recognition of Digital Signature, Voice Recognition and Recording, Imaging and Scanning etc.
5. Managing operating systems of computers installed in various courts.
6. Designing and testing Document Management for storage of judicial documents.
7. Creating programming to support a range of products, from Bar Code to Internet, Website and Email tools.

Que 5.21. What do you understand by the term alienation ?

Answer

1. Alienation is a theoretical concept developed by Karl Marx that describes the isolating, dehumanizing, and disenchanted effects of working within a capitalist system of production.
2. An Industrial development system can be seen as a useful vehicle for measuring the degree of alienation among different segments in the economy.
3. The greater the alienation, the greater can be the deterrent to growth.

Que 5.22. What do you understand by the term secession ?

Answer

1. Secession is the withdrawal of a group from a larger entity, especially a political entity, but also from any organization, union or military alliance.
2. It is, therefore, a process, which commences once a group proclaims the act of secession (e.g., declaration of independence).

3. The goal is the creation of a new state or entity independent from the group or territory it seceded from.
4. A secession attempt might be violent or peaceful.

Que 5.23. Explain the effect of secession on industrial development.

Answer

Effect of secession on industrial development :

1. Conflict and instability arising due to secession is a major hindrance to the industrial development and progress.
2. Industrial development plays a crucial role in tempering secessionist movements.
3. Industrial growth is severely stifled due to secession. As a result, there is less industry for job creation leading to a swelling population of unemployed individuals.
4. Hence the markets do not achieve maximum efficiency in the production.
5. Due to this resources are used inefficiently and without long-term vision.
6. This result in steeper cost of providing public goods.
7. The lack of domestic industry forces the particular state to depend upon central government financing.
8. Secession is economically very costly.

