Karnataka Civil Judge (Mains) 2025: Law Paper I — Solution

Model answers to Law Paper I (CPC and pleadings, BNSS/CrPC, BSA/Evidence, Constitution). Time: 3 hours · Full marks: 100. Where the paper offers a choice ("any one", "any two"), every option is answered here.

Part I: Code of Civil Procedure, 1908 and Principles of Pleadings

1. (a) Write a note on production of additional evidence before the Appellate Court. **(5)**

The appellate court decides on the record made in the trial court. Order XLI rule 27 is a narrow exception: a party has no right to produce more evidence in appeal, and the court allows it only on the grounds listed in the rule.

- **Rule 27(1)(a):** the trial court refused to admit evidence which ought to have been admitted.
- **Rule 27(1)(aa):** the party shows that, in spite of due diligence, the evidence was not within his knowledge or could not be produced when the decree was passed.
- **Rule 27(1)(b):** the appellate court itself requires a document to be produced or a witness examined to enable it to pronounce judgment, or for any other substantial cause.
- The court must record its reasons for admitting the evidence (rule 27(2)). Rules 28 and 29: the appellate court may take the evidence itself or direct the trial court to take it and send it back, and the other side must get a fair chance to rebut it.
- Additional evidence cannot be allowed to fill gaps or patch up weak points; it is not a second chance for a party who was careless at trial. Under clause (b) the court looks at the existing record and admits the evidence only if it finds a real lacuna or defect that needs filling to do justice.
- The application is best considered at the hearing of the appeal, when the court can see whether the evidence is truly needed.

> **Kessowji Issur v GIP Railway** and **Parsotim v Lal Mohan:** the rule does not let an unsuccessful litigant remedy omissions. **Y P Sudhanva Reddy v Karnataka Milk Federation:** documents may be admitted if the court needs them to decide the case and a satisfactory reason is given for not filing them earlier.

Conclusion: additional evidence is admitted only for a reason within rule 27, with reasons recorded and fair opportunity to the opponent.

1. (b) Write a note on the inherent powers of the Court. **(5)**

Section 151 saves the inherent power of the court to make such orders as are necessary for the ends of justice or to prevent abuse of its process. It does not create a new power; it recognises that a court must have the power to do what justice needs where the Code is silent.

- **Sections 148-153:** section 148 (enlarging time), 149 (making up deficient court fee), 151 (saving of inherent powers), 152 (correcting clerical or arithmetical errors in judgments, decrees or orders), 153 (amendment of proceedings).
- **Source of the power:** a court is created to do justice, so it holds, as a corollary, the powers needed to do right and undo wrong in the course of its work. The Code cannot foresee every situation.
- **Examples:** an injunction where rules 1 and 2 of Order XXXIX do not apply; recalling an order passed by mistake; staying proceedings; directing two suits between the same parties to be tried together; restitution not covered by section 144.

Limits:

- It cannot be used where the Code provides a specific remedy, and it cannot do what the Code expressly prohibits (for example, altering a signed judgment otherwise than under section 152).
- It cannot override the substantive rights of parties.
- It must be used with caution and only for the ends of justice, never to defeat a party's right or to avoid the procedure the Code prescribes.

> **Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal:** section 151 gives power to grant an injunction where the matter is not covered by Order XXXIX rules 1 and 2. **Padam Sen v State of UP:** inherent power cannot override the substantive rights of the parties.

Conclusion: the inherent power fills the gaps in procedure; it is a safety valve, not a licence to ignore the Code.

2. (a) Explain disclosure, discovery and inspection of documents under the Code. **(10)**

These are the tools by which each side learns the other's case before trial, so that trial is on facts and not on surprise. Order XI covers discovery by interrogatories and of documents, and inspection; Order VII rule 14, Order VIII rule 1A and Order XIII control what documents are filed and when.

1. Disclosure (what a party must reveal)

- The plaintiff must produce, with the plaint, the documents on which he relies (Order VII rule 14). The defendant must do the same with the written statement (Order VIII rule 1A). A document not so produced may be received later only with the leave of the court.

2. Discovery (compelling the other side to reveal)

- **Interrogatories** (rules 1-11): with leave of the court, a party may deliver written questions on matters in issue, to be answered by affidavit within ten days. Scandalous, irrelevant or "fishing" questions may be struck out (rules 6, 7).
- **Discovery of documents** (rules 12-14): a party may apply for an order directing the other to disclose, on affidavit, the documents in his possession or power relating to any matter in question (rule 12). The affidavit lists the documents, those he objects to produce and those he no longer has (rule 13). The court may order production at any time during the suit (rule 14). Privileged documents are protected.

3. Inspection

- A party may inspect documents referred to in the pleadings or affidavits of the other side, and documents disclosed on affidavit; on application, the court orders inspection (rules 15-18).

Consequences of default (rule 21): a plaintiff who fails to comply with an order for discovery or inspection may have the suit dismissed for want of prosecution, and a defendant may have his defence struck out. A party who fails to disclose a document cannot later use it without leave of the court.

Conclusion: disclosure is the duty; discovery and inspection are the court-supervised means of enforcing it, with striking out of defence or dismissal of the suit as sanction.

2. (b) Define 'Res Judicata'. State the requisites for applicability of the doctrine. **(10)**

Res judicata (section 11) bars a court from trying a suit or an issue which has been directly and substantially in issue in a former suit between the same parties, or parties under whom they claim, litigating under the same title, in a court competent to try it, and which has been heard and finally decided. It rests on two maxims: no one should be vexed twice for the same cause, and it is in the public interest that litigation should end.

Requisites:

- **Same matter:** the matter directly and substantially in issue in the later suit was directly and substantially in issue in the former suit, either actually or constructively.
- **Same parties:** the former suit was between the same parties, or between parties under whom they or any of them claim.
- **Same title:** they litigated under the same title in both suits.
- **Competent court:** the former court was competent to try the later suit (or the issue) as well.
- **Heard and finally decided:** the matter was heard and finally decided on merits; a dismissal on a technical ground such as want of jurisdiction, non-joinder or default does not operate as res judicata.

Explanations: a matter that might and ought to have been made a ground of attack or defence is deemed to be directly and substantially in issue (Explanation IV, constructive res judicata); a relief claimed and not granted is deemed refused (Explanation V); a representative suit binds those interested (Explanation VI).

> **Lal Chand v Radha Kishan:** the doctrine rests on justice, equity and good conscience. **Sheodan Singh v Daryao Kunwar:** a former suit dismissed as premature, or on technical grounds, does not bar the later suit, and where two suits are decided together, an appeal in one affects the other. **Bhanu Kumar Jain v Archana Kumar:** constructive res judicata is part of the doctrine.

Conclusion: the doctrine applies only if all conditions are met, and a competent court has finally decided the same issue between the same parties.

2. (c) Explain the properties which are not liable for attachment and sale in execution of a decree. (10)

Section 60(1) makes liable to attachment and sale all saleable property belonging to the judgment-debtor, or over which he has a disposing power. The proviso to section 60(1) exempts certain property, so that the debtor and his family are not left without the means to live and work.

Exempt property (proviso to s 60(1)):

- necessary wearing apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and personal ornaments which, by religious usage, cannot be parted with by a woman (clause a);
- tools of artisans; and, for an agriculturist, implements of husbandry and such cattle and seed-grain as are necessary for his livelihood (b);
- a house and buildings, with their sites and appurtenant land, belonging to an agriculturist, labourer or domestic servant and occupied by him (c);
- books of account (d); a mere right to sue for damages (e); any right of personal service (f);
- stipends and gratuities of pensioners of the Government or a local authority, and political pensions (g);
- wages of labourers and domestic servants (h);
- salary: the first Rs 1,000 and two-thirds of the remainder (one-third where the decree is for maintenance), with a time limit on repeated attachment (i);
- pay and allowances of members of the armed forces (j); provident fund deposits to the extent protected by the Provident Funds Acts (k, ka); money payable under a life insurance policy on the debtor's life (kb); the interest of a lessee of a residential building governed by rent control law (kc);
- an expectancy of succession or merely contingent interest (m); a right to future maintenance (n); allowances declared exempt by any other law (o); and movable property of a land-revenue defaulter that is exempt from revenue sale (p).

Points to remember:

- An agreement to waive an exemption is void (section 60(1A)); the house exemption does not apply to a decree for rent of that house (section 60(2)).
- "Agriculturist" means one who cultivates personally and lives mainly on agricultural income; "wages" include bonus (Explanations IV-VI).

Conclusion: everything of value the debtor owns can be attached, except what section 60 protects for subsistence and livelihood.

3. (a) Draft an application by the paternal uncle of a 10-year-old boy to sell the property inherited by the boy from his deceased parents. Court? Parties? **(5)**

The uncle is not a natural guardian (only the father, and after him the mother, are: Hindu Minority and Guardianship Act, s 6). He must therefore ask the court to appoint him guardian of the minor's property (Guardians and Wards Act ss 7, 8(a)), and, as a guardian appointed by the court, he cannot sell without the previous permission of the court, which is granted only for necessity or evident advantage (ss 29, 31). Both prayers can be combined in one petition.

Court: the District Court having jurisdiction where the minor ordinarily resides, or where the property is situated (section 9(2)).

Parties: the uncle as petitioner; the minor (shown as a minor); the minor's other near relatives and the person with custody, who get notice (ss 11, 31(4)).

Draft:

> IN THE COURT OF THE DISTRICT JUDGE AT .....
> G & W C No. .... of 20..
> IN THE MATTER of the minor B, aged 10 years, son of late X and late Y, residing at .....
> Between: A (paternal uncle), aged .... years, residing at .... Petitioner.
> Petition under sections 7, 8, 10, 29 and 31 of the Guardians and Wards Act, 1890:
> 1. The minor, a Hindu aged 10, lives with the petitioner at ..... His parents are dead (dates). The petitioner is his father's brother and maintains him.
> 2. The minor inherited the schedule property (nature, situation, value: s 10). He has no natural guardian.
> 3. The property yields no income; his education and upkeep need Rs .... a year. A purchaser offers Rs ...., above market value: the sale is necessary and of evident advantage to the minor.
> PRAYER: (a) appoint the petitioner guardian of the person and property of the minor; (b) permit him to sell the schedule property for not less than Rs ...., on such terms as the Court directs; (c) such other relief.
> Verification. Schedule. Date and place. Signature.

Conclusion: first guardianship, then permission to sell on proof of necessity or advantage, and a sale made without that permission is voidable (s 30).

3. (b) Short note on amendment of the written statement. **(5)**

A written statement may be amended under Order VI rule 17: the court may at any stage allow either party to alter or amend pleadings on such terms as are just, and must allow all amendments necessary to decide the real question in controversy, but after the trial has commenced, an amendment is allowed only if the party shows that in spite of due diligence he could not have raised the matter earlier (proviso).

- **Principle:** the object is to decide the real dispute, so amendment is allowed liberally, particularly for defendants; but not if it changes the nature of the case, causes injustice that cannot be compensated in costs, or takes away a right that has accrued to the other side (for example, a plea of limitation that has already barred the claim).
- **Written statement is treated more liberally than a plaint.** A defendant may add a new ground of defence, or take an alternative or inconsistent plea. An amendment cannot withdraw a clear admission that has already given the plaintiff a right, but the defendant may clarify or explain the admission.
- **Order VIII rule 9:** apart from amendment, a party may present an additional written statement, or a subsequent pleading, only with the leave of the court.
- **Set-off and counter-claim** may also be introduced by amendment, subject to the same test.
- **Procedure:** a written application, with the proposed amendment; the court hears the other side; allows it on payment of costs if necessary; the amendment is made within the time fixed, failing which it cannot be made later (Order VI rule 18); the plaintiff may reply with an amended plaint or additional pleading.

> **Usha Balasaheb Swami v Kiran Appaso Swami:** addition of a new ground of defence or taking inconsistent pleas in a written statement is not objectionable, and amendment to clarify an admission can be allowed. **Baldev Singh v Manohar Singh:** the proviso: after commencement of trial, due diligence must be shown.

Conclusion: amendments are granted to ensure fair trial, provided no injustice results to the opponent.

Part II: Bharatiya Nagarik Suraksha Sanhita, 2023 (Code of Criminal Procedure, 1973)

4. (a) Explain inquiry, trial or judgment in absentia of a proclaimed offender under BNSS. **(5)**

Section 356 BNSS (new; no CrPC counterpart) allows the court to proceed with the trial and pronounce judgment in the absence of a proclaimed offender who has absconded to evade trial and cannot be arrested immediately. His absence is deemed a waiver of the right to be present.

- **Pre-conditions (s 356(1), (2)):** the person has been declared a proclaimed offender (section 84); he has absconded to evade trial with no immediate prospect of arrest; the court records reasons in writing; and the trial does not begin until 90 days have passed from the framing of charge.
- **Procedure the court must ensure:** two consecutive warrants of arrest at an interval of at least 30 days; a newspaper publication (national or local daily, place of last known residence) calling him to appear within 30 days or face trial in his absence; information to a relative or friend, if any; and a notice on his house and in the police station of his last known district.
- **Defence counsel:** if he has no advocate, one is provided at State expense (sub-s 3).
- **Evidence:** depositions already recorded may be used against him; if he appears during the trial, the court may allow him to examine evidence taken in his absence (sub-s 4). Recording by audio-video means is preferred (sub-s 5).
- **Voluntary absence** after the trial has begun does not stop the trial or the judgment, even if he appears at the end (sub-s 6).
- **Appeal:** none, unless he presents himself before the appellate court; no appeal against conviction after three years from the judgment (sub-s 7).
- The State may extend the section to other absconders mentioned in section 84(1) (sub-s 8).

Related: section 355 allows the court to dispense with the personal attendance of an accused who is represented by an advocate, or who persistently disturbs the proceedings, for reasons recorded.

Conclusion: an absconder can no longer defeat a trial by staying away, but the Sanhita surrounds the in absentia trial with notice and defence safeguards.

4. (b) Distinguish between common object and common intention. **(5)**

Common intention (section 3(5) BNS; IPC s 34) is a shared pre-arranged plan of a few persons to do a criminal act; common object (sections 189-190 BNS; IPC ss 141, 149) is the shared purpose of the members of an unlawful assembly of five or more.

Point	Common intention	Common object
Provision	BNS s 3(5) [IPC s 34]	BNS s 190 with s 189 [IPC s 149 with s 141]
Number of persons	Two or more suffice	At least five (an unlawful assembly)
Nature	A rule of evidence about joint liability; creates no separate offence	Creates specific liability of every member of the assembly
Meeting of minds	Pre-arranged plan; may form on the spot, but there must be a prior meeting of minds	No prior meeting of minds needed; object may be formed on the spot, and the object must be one of those listed in the definition
Participation	Active participation by some overt act in furtherance is needed (a person who only shares the intention but takes no part is outside it, though a bystander may take part by standing guard)	Mere membership of the assembly with knowledge of the common object is enough; no overt act is needed
Liability	Each is liable for the act done by any as if done by him alone	Each member is liable for the offence committed in prosecution of the common object, or which members knew was likely to be committed

Barendra Kumar Ghosh v King Emperor: those who "only stand and wait" may also serve by being present in furtherance of the common intention. **Mahbub Shah v Emperor:** common intention requires a pre-arranged plan and participation. **Pandurang v State of Hyderabad:** distinct intention must be shown for each accused; common intention is a rule of joint liability, not a substantive offence.

Conclusion: common intention needs a plan and participation by a few; common object needs a five-member unlawful assembly, and attaches to members merely by membership.

5. Answer the following questions. **(1×5)**

(a) Under section 2(1)(e) BNSS, "bond" means a personal bond or an undertaking for release without surety.

(b) Section 369 BNSS deals with the release of a person of unsound mind (or with intellectual disability) pending investigation or trial. Where he is found incapable of entering defence, the court orders release on bail if no in-patient treatment is needed and a friend or relative undertakes regular out-patient treatment and to prevent harm; otherwise he is kept where psychiatric treatment can be given, and the court reports to the State Government.

(c) Section 43(3) BNSS: the police officer may, keeping in view the nature and gravity of the offence, use handcuffs while making the arrest or producing the person before the court, for a habitual or repeat offender, or one who escaped from custody, or who has committed organised crime, a terrorist act, drug-related crime, illegal possession of arms, murder, rape, acid attack, counterfeiting of coins and notes, human trafficking, sexual offence against children, or an offence against the State.

(d) Community service is explained in the Explanation to section 23 BNSS (sentences Magistrates may pass): the work which the court may order a convict to perform as a form of punishment that benefits the community, for which he is not entitled to any remuneration. A Magistrate of the first or second class may pass it in place of imprisonment or fine.

(e) Section 513 BNSS: for the purposes of Chapter XXXVIII, "period of limitation" means the period specified in section 514 for taking cognizance of an offence.

6. (a) What are the essential ingredients of criminal conspiracy? How can its existence and objective be established during trial? (10)

Under section 61(1) BNS [IPC s 120A], when two or more persons agree to do, or cause to be done, an illegal act, or a legal act by illegal means, the agreement is a criminal conspiracy. The gist is the agreement itself. Punishment is in section 61(2) [IPC s 120B].

Ingredients:

- **Two or more persons** (one person cannot conspire alone).
- **An agreement** between them: a meeting of minds, not a mere intention, knowledge or suspicion.
- **Object:** an illegal act, or a legal act by illegal means.
- **Overt act:** not needed for conspiracy to commit an offence; the agreement alone is punishable.

Punishment (s 61(2)): conspiracy to commit an offence punishable with death, life imprisonment or rigorous imprisonment of two years or more is punished as if the accused had abetted that offence; any other conspiracy, with imprisonment up to six months, or fine, or both.

Proof at trial:

- Direct evidence of the agreement is rarely available; it is usually proved from the conduct of the accused before, during and after the act.
- Section 8 BSA [Evidence Act s 10]: once reasonable ground exists to believe that two or more persons conspired, anything said, done or written by any one of them in reference to the common design is a relevant fact against each of them, both to prove the conspiracy and to show that any such person was a party to it. This is why the prosecution first leads prima facie evidence of the agreement.
- The evidence must show the objective and each accused's link to it; suspicion or mere presence is not enough.

> **Kehar Singh v State (Delhi Administration):** agreement may be inferred from circumstances. **State of Maharashtra v Som Nath Thapa:** prima facie evidence of conspiracy is needed first. **Ram Narayan Popli v CBI:** the agreement is the gist.

Conclusion: the court must find an agreement, its object, and the accused's part in it; the acts of one are evidence against all only after prima facie proof of the agreement.

6. (b) By quoting relevant provisions of BNSS, differentiate suspension, remission and commutation of sentence. **(10)**

These are the executive powers to reduce the effect of a sentence. Section 473 BNSS [CrPC s 432] deals with suspension and remission, section 474 [s 433] with commutation, and section 475 [s 433A] limits both in life-sentence cases. Above these stand the constitutional powers of the President and Governor (Articles 72 and 161).

Point	Suspension	Remission	Commutation
Meaning	Execution of the sentence is stopped for a time; the sentence remains	Whole or part of the punishment is wiped out; the nature of the sentence stays the same	One form of punishment is replaced by a lighter form
Section	473(1)	473(1)	474
Consent	On conditions the person accepts	On conditions the person accepts	Without the person's consent
Example	Execution suspended for six months; resumes after	Ten-year term reduced to seven	Death to life; life to not less than seven years; seven years or more to not less than three; under seven to fine; rigorous to simple imprisonment
Effect on the conviction	Conviction stays	Conviction stays	Conviction stays

- The appropriate Government is the State Government, or the Central Government where the law relates to a Union matter (s 473(7)). It may ask the presiding Judge for his opinion with reasons and the record (s 473(2)).
- If a condition is not fulfilled, the Government may cancel the suspension or remission, and the person may be re-arrested without warrant to serve the balance (s 473(3)).
- Section 475: a person sentenced to imprisonment for life for an offence for which death is one of the punishments (or whose death sentence was commuted to life) cannot be released unless he has served at least 14 years.

> **Maru Ram v Union of India:** the power under these provisions is distinct from, and subject to, the constitutional power under Articles 72 and 161, and the 14-year floor applies. **Sangeet v State of Haryana:** remission is a matter of the Government's discretion and cannot be claimed as a right.

Conclusion: suspension postpones, remission shortens, commutation changes the kind of sentence; the first two need conditions accepted, commutation does not.

7. Procedure when investigation cannot be completed in 24 hours (section 187 BNSS) and how it differs from CrPC. (10)

A person arrested without a warrant must be produced before a Magistrate within 24 hours (section 58 BNSS). Where the investigation cannot be finished in that time and there are grounds to believe the accusation is well-founded, section 187 [CrPC s 167] provides the way to keep him in custody under judicial control.

Procedure:

- The officer in charge of the police station, or the investigating officer not below sub-inspector rank, sends the nearest Magistrate a copy of the case diary entries and forwards the accused (s 187(1)).
- The Magistrate, with or without jurisdiction to try the case, may authorise detention for up to 15 days in all, at any time during the first 40 days (offences with a 60-day limit) or first 60 days (offences with a 90-day limit), taking into account whether the accused is already on bail (s 187(2)). If he has no jurisdiction and considers further detention unnecessary, he forwards the accused to a competent Magistrate.
- Beyond 15 days, the Magistrate may authorise further detention if adequate grounds exist, up to 90 days where the offence is punishable with death, life or 10 years or more, and 60 days in other cases. After that, the accused must be released on bail if he is ready to furnish it (s 187(3)); this is the right to default bail.
- An Executive Magistrate may authorise up to seven days where no Judicial Magistrate is available (sub-s 6).

Differences from CrPC section 167:

Point	CrPC s 167	BNSS s 187
Police custody	Within the 15 days only	15 days in whole or in parts, but during the initial 40 or 60 days of the 60/90-day period; so police custody can be taken in parts later
Production	Physically (in person) was required	Judicial custody extension permitted through audio-video means after the first production

> **Chaganti Satyanarayana v State of AP:** the 90/60 days are counted from the date of the first remand.

Conclusion: section 187 keeps remand under judicial control, with an outer limit of 60/90 days after which default bail is a right.

Part III: Bharatiya Sakshya Adhiniyam, 2023 (Indian Evidence Act, 1872)

8. (a) Reliability of DNA evidence. On what grounds can it be challenged? (5)

DNA evidence is the opinion of a scientific expert under section 39 BSA [Evidence Act s 45] and is relevant as expert evidence on identity and parentage. It is a strong corroborative tool because a DNA profile is unique to a person (except identical twins), but it is only opinion evidence: the court weighs it with the rest of the case, and it does not by itself replace proof of the crime.

Reliability:

- Good science: a match of a sufficient number of loci gives a very high probability of identity; an exclusion is conclusive.
- It is objective, and not dependent on human memory.
- Courts accept it for identity of the offender, of a body, and in cases of sexual offence, and for paternity, though courts are slow to order a DNA test for paternity where it would stigmatise a child and the question can be decided otherwise.

Grounds of challenge:

- **Collection and chain of custody:** sample taken, sealed and sent without proper record; gaps in custody; delay in despatch.
- **Contamination or degradation** of the sample, or mixing with other samples at the scene or in the laboratory.
- **Laboratory procedure:** unqualified analyst, unaccredited laboratory, wrong technique, no proper controls, or error in reading the profile.
- **Interpretation:** the number of loci matched is too small; the statistical probability is misstated; the report does not give reasons.
- **Proof:** expert not examined, or the report only filed; no opportunity to the accused to cross-examine; sample taken without legal authority.
- **Relevance:** the DNA match shows only that a person was present or had contact, not that he committed the offence.

> **Kamti Devi v Poshi Ram:** courts are reluctant to order DNA tests to verify paternity. **Dharam Deo Yadav v State of UP:** scientific and forensic experts play an important role, but their opinion is weighed with other evidence.

Conclusion: reliable when properly collected, preserved and proved by an expert; open to attack for defects in each of these steps.

8. (b) Evidentiary value of a retracted confession. **(5)**

A retracted confession is a confession (judicial, recorded by a Magistrate, or extra-judicial) which the accused later withdraws, usually saying it was extorted or false. It is not inadmissible for that reason, but it is a weak kind of evidence, and the court looks for corroboration before acting on it.

- **Admissibility:** section 22 BSA [Evidence Act s 24] excludes a confession caused by inducement, threat or promise; section 23 BSA [ss 25, 26] bars a confession to a police officer, or while in police custody, except what leads to discovery of a fact (proviso to s 23). A retracted confession that was made voluntarily to a Magistrate is admissible.
- **Voluntary and true:** the court examines the reasons for making the confession and for retracting it, and decides whether the retraction affects its voluntary character. A retraction that looks like an afterthought, made late, for instance only when examined under section 313 CrPC [s 351 BNSS], may confirm that the confession was voluntary.
- **Corroboration:** it is a rule of prudence, not of law, that a retracted confession should be corroborated in material particulars. A general corroboration of the important incidents is enough; each detail need not be corroborated independently. If the court is satisfied that it is voluntary and true, it may be the sole basis of conviction.
- **Against co-accused:** section 24 BSA [s 30] lets the court take a proved confession into consideration against others jointly tried, but it is not substantive evidence against them and cannot be the foundation of their conviction; with retraction its value is weaker still.

> **Puram v State of Punjab:** unless corroborated in material particulars, it is not prudent to convict on a retracted confession alone. **Bharat v State of UP:** weigh the reasons for confessing and for retracting. **State of UP v Boota Singh:** substantial corroboration supports conviction. **Aloke Nath Dutta v State of West Bengal:** a retracted confession is a weak piece of evidence and needs independent, cogent corroboration.

Conclusion: admissible, but conviction ordinarily needs corroboration unless the court is fully satisfied of its voluntariness and truth.

8. (c) Dying declaration: how is it to be appreciated? **(5)**

A dying declaration is a statement by a person, as to the cause or circumstances of his death, made before he dies. Section 26(a) BSA [Evidence Act s 32(1)] makes it relevant in any proceeding in which the cause of his death comes into question, whether or not he expected death when he made it. It rests on necessity, and on the belief that a person facing death would not lie.

How it is appreciated:

- It may be the sole basis of conviction without corroboration if the court is satisfied that it is true and voluntary; corroboration is a matter of prudence, and it is needed where the statement is suspicious.
- The court first asks whether the declarant was fit to make it: a medical certificate of a fit mental state, or the evidence of the doctor and Magistrate, is relied on.
- It must not be the result of tutoring, prompting or imagination. The identity of persons named must be certain.
- A statement recorded by a Magistrate in the declarant's own words, preferably as question and answer, deserves greater weight than an oral one, but an oral declaration free of infirmity can also support conviction.
- Where there are several dying declarations, they are compared; if they are consistent, they carry weight; if inconsistent, the court examines which is more credible. Omissions, minor contradictions or a statement that is incomplete because the declarant was dying do not by themselves discredit it.
- Only the part that relates to the cause or circumstances of the death is admissible.

> **Pakala Narayana Swamy v Emperor:** admissible whether or not death was expected; weight depends on the circumstances. **Bhagwan Das v State of Rajasthan:** each case is decided on its own facts. **Ram Bihari Yadav v State of Bihar:** weighed like other evidence, with caution. **Moti Singh v State of UP:** only the statement about the cause of death is relevant.

Conclusion: a dying declaration that is truthful, voluntary and made while fit is enough to convict; doubts about it call for corroboration.

8. (d) Appreciation of evidence of an expert witness. **(5)**

Under section 39 BSA [Evidence Act s 45], when the court has to form an opinion on a point of foreign law, science, art or any other field, or on identity of handwriting or finger impressions, the opinion of a person specially skilled in that field is relevant. The expert gives his opinion; the court decides.

- **Qualification:** the court first satisfies itself that the witness is skilled in the field, by study or experience.
- **Opinion is not binding.** It is advisory; the judge must not abdicate his own function. The court uses it with the other evidence and is free to accept or reject it, giving reasons.
- **Reasons and basis:** an opinion without reasons has little value. The expert must state the data and methods, and should show how the conclusion follows; the opposite side may test them in cross-examination. The grounds on which the opinion is based are relevant under the Adhiniyam.
- **Weight:** varies with the quality of the expert, the soundness of the material, and whether it is consistent with the other evidence. The opinion of a medical or scientific expert generally prevails over contrary lay evidence, but if the ocular evidence is reliable and the medical opinion is only a probability, ocular evidence is preferred.
- **Handwriting:** comparison of handwriting is permitted, but the court should not rely on the expert alone and, as a matter of prudence, seeks corroboration (section 72 BSA permits the court itself to compare).
- **Failure to examine the expert** or to confront him with the other side's material reduces the weight of his report.

> **Murari Lal v State of MP:** opinion of a handwriting expert is to be weighed like other evidence, with the court taking care in its use. **Dharam Deo Yadav v State of UP:** forensic experts assist, but the court weighs their opinion with the rest of the evidence.

Conclusion: expert evidence is a guide, to be accepted when the expert is qualified, gives reasons, and is supported by the record.

9. (a) Explain the phrase res ipsa loquitur and its relevance in actions for negligence, with case law. (10)

Res ipsa loquitur means "the thing speaks for itself". It is a rule of evidence: where the accident itself, with no more, points to negligence by the defendant, the court may presume negligence, and the burden shifts to the defendant to show how it could have happened without his fault.

Conditions:

- The thing causing damage was under the management or control of the defendant or his servants.
- The accident is of a kind that does not ordinarily happen if proper care is taken.
- There is no explanation by the plaintiff, and the cause is within the defendant's knowledge, which he alone could explain (section 109 BSA [Evidence Act s 106]).

Nature and effect:

- It is not a rule of law and does not reverse the burden of proof in the strict sense; it is a rule of evidence in favour of the plaintiff, allowing an inference. The plaintiff need only prove the accident, and the defendant may avoid liability by disproving negligence.
- It is inapplicable when the cause is known and no inference of negligence arises, or when the facts point equally to other causes.
- It is used sparingly in criminal cases, where the burden stays on the prosecution (*Syad Akbar v State of Karnataka*).

Cases:

- **Municipal Corporation of Delhi v Subhagwanti:** a clock tower, 80 years old and exclusively under the Corporation's control, collapsed and killed several people; the fall itself told a story of negligence, and as the Corporation did not prove absence of negligence, it was liable.
- **Shyam Sunder v State of Rajasthan:** a Government truck's engine caught fire after a short run; the Supreme Court applied the maxim (the owners had control and no explanation of the fire), and held the State liable.
- **Jasbir Kaur v State of Punjab:** a newborn went missing from a Government hospital bed and was found injured; negligence was presumed against the hospital.

Conclusion: res ipsa loquitur helps a plaintiff who cannot know how the accident happened; it shifts to the defendant the practical task of explaining it.

9. (b) Admissibility of electronic records. What is the certificate required under section 63(4) BSA? (10)

Under section 62 BSA, the contents of electronic records may be proved only in accordance with section 63 [Evidence Act s 65B]. Section 63(1) makes any information in an electronic record, printed on paper or stored, recorded or copied in optical or magnetic media or in a computer or communication device, a document, admissible as evidence of its contents without further proof of the original, if the conditions in section 63 are met.

Conditions (s 63(2)): the computer or communication device was regularly used to store or process information for lawful activities during the relevant period; the information was regularly fed into it in the ordinary course; throughout the period it was operating properly, or any failure did not affect the record or its accuracy; and the information reproduces or derives from what was fed in the ordinary course.

Certificate (s 63(4)): in any proceeding where a statement is to be given in evidence by virtue of this section, a certificate must be submitted along with the electronic record, each time it is submitted for admission. It must:

- identify the electronic record containing the statement and describe how it was produced;
- give particulars of the device, and deal with the conditions in section 63(2);
- be signed by a person in charge of the device or the relevant activities, and by an expert. The Adhiniyam gives a Schedule form (Part A by the person in charge; Part B by the expert), which may state matters to the best of knowledge and belief.

> **Anvar P V v P K Basheer:** an electronic record as secondary evidence is inadmissible without the certificate. **Shafhi Mohammad v State of HP:** the certificate may be relaxed where the party has no control over the device. **Arjun Panditrao Khotkar v Kailash Kushanrao Gorantyal:** the certificate is a condition precedent to admissibility; Shafhi Mohammad was overruled; the court may direct its production at a later stage.

Conclusion: an electronic record is admissible on proof of the section 63(2) conditions through the section 63(4) certificate, with the original device or its owner's evidence as alternative.

Part IV: The Constitution of India

10. (a) Separation of powers under the Indian Constitution. (5)

The doctrine says that legislative, executive and judicial power should be in different hands, so that each checks the others. The Constitution does not adopt it as rigidly as the American Constitution, but its scheme is based on it.

- The Constitution vests the legislative power in Parliament (Art 79) and State Legislatures (Art 168), the executive power in the President (Art 53) and Governor (Art 154), and the judicial power in the Supreme Court, High Courts and subordinate courts (Arts 124, 214, 233-237).
- Separation is partial in practice: ministers are members of the legislature and accountable to it (Arts 74, 75, 163, 164); the executive makes delegated legislation; the President issues ordinances (Art 123); the courts review law and executive action (Arts 13, 32, 226, 136); Parliament may remove judges (Art 124(4)) and each House has power to punish for contempt of its privileges (Art 105).
- Independence of the judiciary is protected: appointment, security of tenure and salary of judges, ban on practice after retirement (Art 124(7)), separation of the judiciary from the executive in the public services (Art 50, a directive principle).
- No organ may exercise the essential functions of another. Legislature cannot sit as a court to decide a specific dispute; nor may it declare a judgment void without altering its basis; the executive may not make law except by delegation within guidelines.

> **Ram Jawaya Kapur v State of Punjab:** the Constitution does not recognise a rigid separation, but the functions of the organs are sufficiently differentiated, and no organ may take over the essential functions of another. **Kesavananda Bharati:** separation of powers is part of the basic structure.

Conclusion: India follows a functional separation with checks and balances, and the basic structure protects it.

10. (b) Importance of the Preamble in interpreting the Constitution. **(5)**

The Preamble declares the source of authority ("We, the people"), the nature of the State (sovereign, socialist, secular, democratic republic) and the objects: justice, liberty, equality and fraternity, assuring the dignity of the individual and the unity and integrity of the Nation. It is the key to the mind of the makers.

- **Not a source of power, not enforceable by itself;** it neither enlarges nor limits the specific provisions. Where the words of an Article are clear, the Preamble cannot override them.
- **Aid to interpretation:** where the language is ambiguous, the Preamble helps in choosing the meaning that fits the objects of the Constitution. Fundamental Rights and Directive Principles are read in its light.
- **Part of the Constitution:** it can be amended under Article 368 so long as its basic features are not destroyed (the Forty-second Amendment added "socialist", "secular" and "integrity").
- Its values, such as the democratic form of government, secularism, and the rule of law, have been recognised as basic features.

> **Berubari Union:** the Preamble is the key to the minds of the framers but not a part of the Constitution, and cannot be a source of power. **Kesavananda Bharati:** overruled that view; the Preamble is part of the Constitution and shows its basic features.

Conclusion: the Preamble guides interpretation when the text is unclear and states the basic values that no amendment may destroy.

10. (c) Constitutional provisions regarding Services under the Union and the States. **(5)**

Part XIV (Articles 308-323) governs services and Public Service Commissions.

- **Art 309:** Parliament and State Legislatures may regulate recruitment and conditions of service; until they do, the President or Governor may make rules.
- **Art 310:** persons in civil service of the Union or a State hold office during the pleasure of the President or Governor, subject to the Constitution (doctrine of pleasure).
- **Art 311:** safeguard: no dismissal or removal by an authority subordinate to the appointing authority; and no dismissal, removal or reduction in rank except after an inquiry, in which he is informed of the charges and given a reasonable opportunity to be heard. The second proviso excepts three cases: conviction on a criminal charge; where it is not reasonably practicable to hold an inquiry (reasons recorded in writing); and where the President or Governor is satisfied that holding it is not expedient in the security of the State.
- **Art 312:** All-India Services (IAS, IPS), created by Parliament on a Rajya Sabha resolution passed by two-thirds of members present and voting. **Art 233-237:** district judges and the judicial service.
- **Arts 315-323:** Union and State Public Service Commissions: composition, appointment and removal of members (Art 317), and functions, including advice on recruitment and disciplinary matters (Art 320), and annual reports.
- **Art 16:** equality of opportunity in public employment applies to recruitment and service matters.

> **Union of India v Tulsiram Patel:** the Supreme Court explained the second proviso to Art 311(2), and held that the pleasure doctrine is subject to Art 311, with the proviso as exception where an inquiry is not reasonably practicable.

Conclusion: the Constitution gives the Government control over services through Articles 309-310, protects civil servants through Article 311, and ensures merit-based recruitment through the Public Service Commissions.

10. (d) Equality of opportunity in matters of public employment. (5)

Article 16(1) guarantees equality of opportunity for all citizens in matters of employment or appointment to any office under the State. Article 16(2) bars discrimination on grounds only of religion, race, caste, sex, descent, place of birth or residence (or any of them).

- **Exceptions:** Art 16(3) allows Parliament to prescribe residence as a requirement in a State or Union Territory; Art 16(4) allows reservation for backward classes not adequately represented in State services; Art 16(4A) allows reservation in promotion for SCs and STs; Art 16(4B) carry forward of unfilled vacancies; Art 16(5) allows rules requiring office-holders of religious institutions to belong to the denomination; Art 16(6) provides up to 10 per cent reservation for economically weaker sections (the 103rd Amendment).
- **Article 16 is a facet of Article 14** and covers all stages: recruitment, promotion, pay, retirement and termination.
- **Reasonable classification** is allowed (qualifications, age, tests), but arbitrary exclusion is not.
- Reservation in promotion needs quantifiable data on inadequate representation and proof that efficiency is not affected (Art 335).
- The overall reservation should not exceed 50 per cent as a general rule, except in extraordinary cases.

> **Indra Sawhney v Union of India:** upheld reservation for backward classes under Art 16(4), excluded the creamy layer, and fixed the 50 per cent ceiling; promotions excluded. **M Nagaraj v Union of India:** upheld Art 16(4A) and (4B) provided the State shows backwardness, inadequacy of representation and overall efficiency.

Conclusion: Article 16 gives every citizen a fair chance at public jobs, with reservation as a permitted exception subject to limits.

11. (a) Fundamental Rights and Directive Principles of State Policy: essential distinctions. **(10)**

Fundamental Rights (Part III, Arts 12-35) are enforceable rights against the State; Directive Principles (Part IV, Arts 36-51) are guidelines for the State in making laws and policy, which are fundamental in the governance of the country but are not enforceable by any court (Art 37).

Point	Fundamental Rights	Directive Principles
Nature	Justiciable; remedy under Arts 32 and 226	Non-justiciable (Art 37); duty of the State to apply them in making laws
Character	Negative: limits on State power	Positive: require the State to act, for a welfare State and socio-economic justice
Beneficiary	Individuals	Society as a whole
Effect on law	A law that violates them is void (Art 13)	A law cannot be struck down merely for not giving effect to them
Suspension	Art 19 suspended during emergency; Arts 20 and 21 not (Art 359)	No such provision
Source	American Bill of Rights	Irish Constitution
Ideal	Political democracy	Economic and social democracy

Relationship: they are complementary. Article 31C (as upheld) protects laws made to implement Articles 39(b) and (c) from challenge under Arts 14 and 19. Courts adopt harmonious construction: Directive Principles may be used to interpret and give content to Fundamental Rights, and to justify reasonable restrictions on them.

> **State of Madras v Champakam Dorairajan:** in a conflict, Fundamental Rights prevailed over Directive Principles. **Kesavananda Bharati:** both are essential features, complementing each other. **Minerva Mills v Union of India:** the Constitution is founded on the balance between Parts III and IV; giving absolute primacy to either destroys that balance.

Conclusion: rights are enforced by courts; directives are enforced by the electorate and legislature; together they make the Constitution's promise of justice.

11. (b) Scope of Preventive Detention Laws in India with reference to precedents. **(10)**

Preventive detention is the detention of a person without trial to prevent him from doing something prejudicial, not to punish him for what he did. The Constitution permits it as an exception, in Article 22(3)-(7), and Parliament and State Legislatures may legislate on it under Entry 9, List I and Entry 3, List III.

Constitutional safeguards (Art 22(4)-(7)):

- Detention beyond three months needs the opinion of an Advisory Board of persons qualified to be High Court judges, unless Parliament provides otherwise by law (sub-art 4, 7).
- The detaining authority must communicate the grounds of detention as soon as may be, and give the earliest opportunity to make a representation against the order (sub-art 5).

Judicial control:

- The court does not weigh the sufficiency of the authority's satisfaction, but checks that it was formed on relevant material, that the grounds are not vague, irrelevant or stale, and that the procedure and the representation were handled properly.
- Unexplained delay in considering the representation or executing the order vitiates the detention.
- Detention must be to prevent acts prejudicial to security of the State, public order, or maintenance of supplies and services, and must be distinguished from an ordinary law-and-order problem for which the criminal law is enough.

> **A K Roy v Union of India:** upheld the National Security Act, 1980, while stating that the safeguards of Art 22 must be strictly followed; denied the right to legal representation before the Advisory Board in general. **Maneka Gandhi v Union of India:** any law depriving a person of personal liberty must satisfy Articles 14, 19 and 21, so a preventive detention law must be fair, just and reasonable. **Rekha v State of Tamil Nadu:** preventive detention is not a substitute for ordinary criminal procedure where a person can be tried and bail question addressed in that proceeding. **Ameena Begum v State of Telangana:** law and order must be distinguished from public order.

Conclusion: preventive detention is a constitutional but exceptional power, so the courts require strict compliance with the safeguards of Article 22 and oversight of the grounds and procedure.