Madhya Pradesh Civil Judge (Mains) 2022: Constitution, Civil Law & Procedure — Solution

Main Written Examination · 30–31 March 2024 · 100 marks

1. Comment on constitutional validity of abrogating Article 370 of Constitution of India from the state of Jammu and Kashmir ? **[8]**

The Supreme Court upheld the August 2019 declaration that brought Jammu and Kashmir under the whole Constitution of India. Its reasoning distinguishes the President's power to bring Article 370 to an end from the method used to change the wording of its proviso.

Article 370(1)(d) allowed the President to apply other constitutional provisions to the State with exceptions and modifications. Article 370(3) separately authorised a public notification bringing the Article to an end or continuing it with changes. Its proviso referred to a recommendation of the State's Constituent Assembly. The Assembly had dissolved many years before 2019. The challengers argued that the absence of its recommendation put the special arrangement beyond unilateral alteration.

In *In Re: Article 370 of the Constitution*, the Court read the provision in its historical setting and its place among the temporary provisions of Part XXI. The majority treated the arrangement as a means of constitutional integration. Dissolution of the Assembly exhausted its recommendatory role but did not extinguish the President's substantive power under clause (3).

The two orders consequently had different legal effects. C.O. 272 validly applied the Constitution in its entirety. Its attempt to read "Constituent Assembly" as "Legislative Assembly" through the interpretation clause in Article 367 was invalid. An interpretation provision could not be used to amend an express constitutional procedure indirectly. C.O. 273 nevertheless rested independently on the surviving power under clause (3). The defect in the substitution therefore did not invalidate the declaration. The Court reached that conclusion without treating every exercise of power during President's Rule as immune from review.

---

2. "Right to information is a sub-set of right to freedom of speech and expression as guaranteed under Constitution of India". Critically examine the correctness of the above statement in the light of relevant case laws. **[4]**

Yes. Freedom to speak and express an opinion under Article 19(1)(a) includes the citizen's ability to receive the information needed to form that opinion. The right has particular force when citizens assess the conduct of public officers or choose their representatives.

In *State of Uttar Pradesh v. Raj Narain*, the Supreme Court recognised the public interest in knowing how public functions are discharged. In *Union of India v. Association for Democratic Reforms*, a voter's freedom to make an informed electoral choice supported disclosure of material information about candidates. The reasoning extends beyond allowing a citizen to publish a view already formed.

The claim must still be assessed against competing protected interests, including privacy and legitimate confidentiality. Restrictions on the freedom must satisfy constitutional standards. The Right to Information Act supplies a procedure, defined exemptions and remedies. It gives practical effect to a constitutional principle whose existence predates the statute.

---

3. Explain how and when the Right to Education became a fundamental right ? **[4]**

Education first appeared in Article 45 as a directive to the State to provide free and compulsory education for children up to fourteen. Directive principles guide government but are not independently enforceable as fundamental rights.

The courts then read education into the protection of life and dignity under Article 21. *Unni Krishnan v. State of Andhra Pradesh* recognised a child's enforceable claim to education up to fourteen, while education beyond that stage depended on the State's economic capacity and development.

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A. It expressly requires the State to provide free and compulsory education to every child aged six to fourteen in the manner determined by law. The provision and the implementing Right of Children to Free and Compulsory Education Act, 2009 came into force on 1 April 2010. The revised Article 45 addresses early childhood care and education below six, and Article 51A(k) imposes a related duty on parents and guardians.

4. Differentiate between exercise of Appellate jurisdiction and Revisional jurisdiction ? **[8]**

An appeal is a statutory remedy for examining the correctness of an appealable decision. Revision under section 115 CPC is the High Court's narrower power to keep subordinate courts within their legal jurisdiction.

Point	Appeal	Revision
Trigger	The aggrieved party invokes a right conferred by statute. Section 96 ordinarily provides a first appeal from an original decree. Orders are appealable where the Code so provides.	A subordinate court has decided a case from which no appeal lies. The High Court may call for the record.
Grounds	A first appeal ordinarily permits reconsideration of facts and law. A second appeal under section 100 requires a substantial question of law.	The court exercised a jurisdiction it lacked, failed to exercise one vested in it, or acted illegally or with material irregularity in exercising it.
Relief	The appellate court may affirm, reverse, vary or, where permitted, remand. It has the powers listed in section 107.	The High Court corrects the jurisdictional defect. It does not conduct a fresh trial of disputed facts merely because another inference was possible.

The proviso to section 115 also restricts interference with interlocutory orders. Consider whether a decision in favour of the revision applicant would have finally disposed of the suit or other proceeding. Filing a revision does not by itself stay the case. For example, an erroneous assessment of the weight of a receipt may support a first appeal. A refusal to hear a dispute solely because the court wrongly believes it lacks jurisdiction raises a different question that may justify revision if the statutory conditions are met.

5. What is "Representative Suit" ? Who can file "Representative Suit" ? What are the essential conditions and purpose of "Representative Suit" ? Explain with relevant legal provisions. [4]

Order I rule 8 CPC permits one or more people to sue or be sued on behalf of numerous people who have the same interest in the suit. The court may permit this arrangement or direct that one or more represent the rest. Identical causes of action are unnecessary. The common interest must make the representatives capable of fairly presenting the group's case.

The court directs notice to all interested persons at the plaintiff's expense, personally or by public advertisement if personal service is impracticable. A represented person may apply to join. The representative cannot abandon the claim, withdraw the suit or compromise it without the protective notice prescribed by the rule. An ineffective representative can be replaced.

A decree binds the persons represented. A group of residents affected by the same obstruction may thus obtain one adjudication while each receives an opportunity to intervene before their rights are determined.

---

6. How decree for restitution of conjugal rights can be enforced by Court of Law ? [4]

Order XXI rule 32 CPC allows attachment of the property of a spouse who had an opportunity to obey a decree for restitution of conjugal rights and wilfully failed to do so. Physical compulsion to cohabit and detention in civil prison are outside this mode of enforcement.

The decree-holder must establish the decree, the opportunity to comply and wilful default. If attachment has remained in force for six months, the debtor still disobeys and the decree-holder applies, the court may sell the property, award compensation from the proceeds and return the balance. Attachment ceases in the circumstances laid down in the rule, including compliance with the decree and payment of the execution costs.

Rule 33 supplies another method for a decree against a husband. The court may direct periodical payments to the wife upon failure to obey within a fixed time, require security and later vary or suspend the payments. Arrears can be recovered as a money decree.

---

7. Discuss the essential elements of gift and decide the status of following :–
(i) A makes gift of a property to B, C and D. C and D accept while B refuses.
(ii) A gift comprising both existing and future property. **[8]**

A gift under section 122 of the Transfer of Property Act is a voluntary transfer of existing movable or immovable property without consideration. There must be an identifiable donor, property and donee. Acceptance by the donee or on the donee's behalf must occur in the donor's lifetime while the donor remains capable of giving. If the donee dies before acceptance, the gift fails.

Section 123 distinguishes the method of transfer from acceptance. An immovable gift ordinarily requires a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. Movables may be transferred by the prescribed registered instrument or by delivery. Delivery of possession alone does not meet the statutory form for a gift of immovable property.

(i) Three donees. Section 125 deals expressly with several donees. B's refusal makes the transfer void only as to the interest that B would have taken. C and D may retain their own accepted interests, assuming the other formal requirements were met. Their acceptance cannot be treated as acceptance on B's behalf in the face of B's refusal, or as automatically enlarging their shares.

(ii) Present and future property. Section 124 makes the gift void only in respect of the future property. The existing property can pass on valid acceptance and compliance with section 123. The donor's subsequent acquisition of the future asset does not itself complete the earlier purported gift. In each illustration the statute preserves the effective part and identifies precisely which interest fails.

---

8. How the law relating to restriction on transfer of *spes successionis* under Section 6(a) of Transfer of Property Act, 1882 has been interpreted by the judiciary? What is judicial approach regarding applicability of Section 43 of Transfer of Property Act, 1882 on transfer contrary to Section 6(a) of the Transfer of Property Act, 1882 ? **[4]**

Section 6(a) excludes a bare chance of succession from transferable property. A prospective heir may never inherit. A purported sale expressed merely as a sale of whatever the heir might inherit therefore gives the buyer no title, even if the expectation later materialises.

Section 43 addresses a different transaction. A person fraudulently or erroneously represents present authority to transfer identified immovable property and purports to transfer it for consideration. If that person later acquires an interest while the contract subsists, the transferee may elect to have the transfer operate on it. An innocent subsequent purchaser for value without notice of that option is protected.

In *Jumma Masjid v. Kodimaniandra Deviah*, the Supreme Court applied the distinction to an expectant heir who purported to convey present ownership. A buyer who knew of the want of title cannot claim to have acted on the contrary representation. The question is what was represented and bought at the time of transfer.

---

9. A property is given to Amit for life and after his death to Vikram. Vikram transfer this interest to Chanda. Vikram dies during the life time of Amit. Chanda claims the property. Solve the problem with the help of relevant legal provisions. **[4]**

Chanda succeeds to possession when Amit's life interest ends. Section 19 of the Transfer of Property Act treats an interest as vested where the transferee is ascertained and enjoyment is postponed until an event that must happen, unless a contrary intention appears.

Amit's death is certain although its date is unknown. The instrument gives the property after that death to Vikram. No words require Vikram to survive Amit. The intervening life estate therefore postpones Vikram's possession without postponing the vesting of his interest. Section 19 expressly provides that a vested interest survives the transferee's death before possession.

Vikram could transfer his present vested interest to Chanda during Amit's life. Chanda takes exactly what Vikram held, subject to Amit's right to enjoy the property for life. Vikram's subsequent death cannot undo his completed transfer. A gift expressly conditional on Vikram surviving Amit would present a different question under section 21.

---

10. Up to what extent equitable doctrine of restitution is applicable, if a minor obtains some property or money by fraudulently misrepresenting his age? How the case of *Leslie, Limited v. Sheill* has been interpreted by the Full Bench of Lahore and Allahabad High Courts in its landmark decision ? **[8]**

A minor's false assertion of majority does not supply contractual capacity under section 11 of the Indian Contract Act. The court must distinguish return of a benefit still enjoyed from a decree enforcing the minor's promise to pay.

In *Leslie Ltd. v. Sheill*, recovery of the sum lent as a personal debt could not be obtained by describing the claim as fraud or restitution. Identifiable property fraudulently obtained and still held could be restored. An obligation to repay money already spent would effectively enforce the void loan.

The Lahore Full Bench in *Khan Gul v. Lakha Singh* took a wider view of equitable restoration where a minor had induced the transaction by fraud. Return of the consideration could prevent the minor retaining both the property and its price. The minor's position as defendant did not by itself exclude relief. The Allahabad Full Bench in *Ajudhia Prasad v. Chandan Lal* followed the narrower distinction. A personal decree for a loan whose proceeds no longer remained could not be justified merely by the misrepresentation. It also distinguished a minor seeking the court's aid to recover property from one simply resisting enforcement.

Today section 33 of the Specific Relief Act must be applied. On cancellation the court may order appropriate restoration. Under section 33(2)(b), a defendant who successfully relies on incapacity may be ordered to restore the benefit received to the extent that the minor or the minor's estate has benefited. The court should identify that benefit and its extent before fixing relief. The contract price and promised interest are not automatically recoverable.

---

11. What are the various ways, in which a contract may be discharged ? [4]

A contract may end through performance, agreement, supervening impossibility, breach or operation of law. The route matters because discharge of future performance may coexist with a claim for compensation.

Under sections 37–38, actual performance fulfils the promise. A proper offer of performance which the promisee refuses protects the promisor against responsibility for the resulting non-performance. Under section 62 the parties may substitute a new contract, rescind the original or alter it. Under section 63 the promisee may remit performance, extend time or accept another satisfaction.

Under section 56 a contract becomes void when subsequent performance becomes impossible or unlawful within the section. Mere inconvenience or a bad bargain does not suffice. Under section 39 a refusal or self-disablement from performing the promise in its entirety permits the other party to end the contract unless that party has assented to its continuance. A strictly personal obligation may terminate on death. Expiry of limitation ordinarily bars the remedy and should be distinguished from fulfilment of the promise.

12. Enumerate four circumstances where a third party can demand performance of a contract ? [4]

Ordinarily the right to enforce a promise belongs to a party to the contract. Section 2(d) permits consideration to move from someone other than the promisee, but payment by an outsider does not by itself give that outsider a right of action. Four recognised situations illustrate when a third person may enforce performance.

Trust. Where contractual rights are held in trust for an identified beneficiary, the beneficiary can enforce the beneficial interest through the trust.

Family settlement. A person for whom an enforceable provision for maintenance or marriage expenses has been made under a family arrangement can claim that benefit.

Assignment. A valid assignee of an assignable contractual benefit can claim the assigned performance subject to existing defences. An obligation requiring personal skill is different.

Agency. Where an authorised agent contracts for a principal, the principal can ordinarily enforce the contract under section 226 even though the agent made it.

In each example the claimant must establish the trust, settlement, assignment or authority giving the claimant the right relied upon.

13. Discuss about the Rights of purchaser or lessee against a person having no title or imperfect title. [8]

Section 13 of the Specific Relief Act protects a purchaser or lessee who contracted for property that the vendor or lessor did not own outright. It offers specific remedies according to how the defect may be cured and who seeks enforcement.

Later acquisition. If the transferor subsequently acquires an interest, the claimant can require performance out of that interest. The court identifies what was acquired and how far it permits the original bargain to be fulfilled.

Concurrence or conveyance. A title sometimes requires another person's consent or deed. If that person is legally bound to concur or convey at the transferor's request, the claimant may require the transferor to procure it. Mere hope that an independent owner might agree gives no such right.

Mortgage. A person may have contracted to sell property as unencumbered while holding only a right to redeem. If the mortgage amount does not exceed the purchase money, the buyer may compel redemption, a valid discharge and, if needed, a conveyance from the mortgagee.

Seller's unsuccessful suit. If the vendor or lessor sues for specific performance and loses because of defective title, the defendant is entitled to the deposit with interest and the costs of the suit. A lien secures those sums against whatever interest the claimant holds in the property.

The provisions apply, as far as relevant, to a sale or hire of movables. Section 13 thus allows the innocent party either to obtain the title the transferor can lawfully supply or, in the specified failed suit, to recover the secured sums.

---

14. List out the persons in whose favour specific performance of a contract cannot be enforced under the Specific Relief Act, 1963. Describe the contracts, which cannot be specifically enforced ? [4]

Section 16 of the Specific Relief Act bars a claimant who has obtained substituted performance, has become incapable of performing an essential obligation, violates an essential term, acts fraudulently, or wilfully defeats the relationship the contract was to establish. A claimant must also prove performance or continuous readiness and willingness to perform essential obligations, apart from those prevented or waived by the defendant. Actual tender or deposit of money is unnecessary unless the court directs it.

Section 17 separately bars a vendor or lessor who contracted knowing of the want of title, or who believed the title sound but cannot give a title free from reasonable doubt at completion.

Section 14 identifies four contracts beyond specific enforcement. They are contracts for which substituted performance has been obtained under section 20, those involving continuous duties beyond judicial supervision, those whose material terms depend on personal qualifications the court cannot enforce, and contracts determinable by their nature. Thus both the claimant's conduct and the kind of obligation must be examined.

---

15. Write note on following -
(i) What are the limits within which a court may permit rectification ?
(ii) Distinguish between rectification and Rescission. **[4]**

(i) Rectification. Under section 26 of the Specific Relief Act the court can correct a written instrument which, through fraud or mutual mistake, fails to state the parties' real intention. The statutory exclusion for articles of association applies. A party or representative may sue, or claim rectification in a suit in which rights under the instrument arise. The relief must be expressly sought, although amendment may be allowed. The court requires clear proof of the shared intention and the discrepancy. It may protect a good-faith purchaser for value and cannot write a new bargain. On a proper claim it may enforce the corrected contract.

(ii) Rescission. Rectification preserves the transaction and corrects its expression. Rescission under section 27 sets the contract aside on an established ground, such as voidability at the claimant's option. Ratification, substantial inability to restore the parties, protected third-party rights or inseverability may prevent rescission. The court may require the party obtaining rescission to restore benefits under section 30.

---

16. Describe the essential requirements for applicability of Section 14 of the Limitation Act, 1963. Whether the exercise of 'due diligence' and 'good faith' under Section 14 have the same connotation as 'sufficient cause' under Section 5 of the Limitation Act, 1963 ? Explain with help of relevant provisions and case law. **[4]**

Section 14 of the Limitation Act excludes time spent pursuing a prior civil proceeding with due diligence and in good faith in a court unable to entertain it owing to want of jurisdiction or a cause of like nature. For suits the earlier proceeding must concern the same matter in issue against the defendant. For applications it must concern the same relief against the same party. The first and last days of the earlier proceeding count in the exclusion.

Good faith requires due care and attention. Diligence concerns the manner in which the litigant prosecuted the earlier proceeding. A dismissal on the merits ordinarily fails the requirement of inability to entertain. *Consolidated Engg. Enterprises v. Principal Secretary, Irrigation Deptt* illustrates application of these conditions to proceedings taken before the wrong court.

Section 5 instead permits admission of a delayed appeal or eligible application upon sufficient cause. It does not extend time for suits or applications under Order XXI CPC. Section 14 recalculates the period as of right when its conditions are met. Section 5 requires an explanation for delay and an exercise of judicial discretion.

---

17. What are the provisions relating to legal disability under the Limitation Act, 1963 ? **[4]**

Sections 6–9 of the Limitation Act protect a person under disability when the right first accrues. Section 6 applies to a minor, a person of unsound mind or a person within the other mental-disability category named in the statute. It covers institution of a suit or an application for execution of a decree. Successive or concurrent disabilities postpone the starting point until both cease. A child in the womb counts as a minor.

If the disability lasts until death, the legal representative receives the statutory opportunity to proceed. Section 7 governs joint claimants. Time runs for all if a valid discharge can be given without the disabled claimant's concurrence. Otherwise time waits until someone can give a discharge or the disability ends.

Section 8 excludes suits to enforce pre-emption and limits the extension to three years after cessation or death. It does not shorten a longer period already available in the ordinary course. Under section 9, once time has begun to run, subsequent disability ordinarily does not stop it.

18. Write Short-notes / संक्षिप्त टिप्पणी लिखिए :–
(A) Doctrine of cy-pres.
(B) While defining an indigent person, explain in brief the procedure governing the institution of suit by such person.
(C) Precepts. **[4+4+4]**

(A) Cy-près. The expression means application as near as possible to the original charitable intention. Section 92(3) CPC permits the civil court to alter the original purposes of an express or constructive public charitable or religious trust in specified circumstances. A purpose may have been fulfilled, become impossible to carry out, use only part of the property, or have been adequately provided for elsewhere. A geographical area or beneficiary class may have ceased to form a practical unit. The court considers the spirit of the original gift. A surplus intended for medical treatment in a hospital that has permanently closed might appropriately support comparable treatment for the same community. The inquiry concerns faithful redirection of trust property.

(B) Indigent plaintiff. Under Order XXXIII CPC a person is indigent if lacking sufficient means to pay the prescribed plaint fee, excluding exempt property and the subject of the suit. Where no fee is prescribed the rule uses its statutory property threshold. The signed, verified application contains the particulars of a plaint and a schedule of property with estimated values. It is normally presented personally, subject to the exemption rule. The court may examine the applicant, inquire into means, and reject the application for the grounds in rule 5. If it proceeds, notice goes to the opposite party and the Government Pleader before evidence and decision. When granted, the application is numbered and registered as the plaint and the suit proceeds subject to the rules governing eventual court fees.

(C) Precepts. Section 46 CPC enables the court which passed a decree, on the decree-holder's application, to ask another competent court to attach specified property of the judgment-debtor. The receiving court attaches using the procedure applicable to execution. The object is prompt preservation of the asset before formal transfer and sale, for instance where property lies in another district and disposal is imminent. Attachment lasts no longer than two months unless the issuing court extends it, or the decree is meanwhile transferred to the attaching court and the decree-holder applies there for sale. A precept by itself does not authorise sale or transfer the entire execution proceeding.