Law Paper - II (Procedure and Evidence)

1.(a) Plaintiff 'A' is the owner of a house. In one of its portions defendant 'B' resides. The defendant has not paid rent for last ten months. On this very ground the plaintiff wants to get his house vacated and also to recover the arrears of rent. On the above facts, draft a plaint on behalf of 'A' for eviction and recovery of arrears of rent. [15 Marks]

Before the Court of the Civil Judge, [City/District Name]

Suit No.: _____ of 20XX
'A' [Plaintiff's full name],
[Plaintiff's full address]
Vs.
'B' [Defendant's full name],
[Defendant's full address]
Plaint: For Eviction and Recovery of Arrears of Rent

Respectfully Sheweth:

- **Description of Parties:** The plaintiff is the absolute owner of the property situated at [insert property address], hereinafter referred to as 'the suit property'. The defendant is a tenant residing in a portion of the suit property under a tenancy agreement dated [insert date].
- Cause of Action: The cause of action arose on [insert date when the cause of action arose, i.e., when the defendant stopped paying rent], continues to accrue, and this suit is filed within the limitation period prescribed by law.
- **Facts of the Case:** The plaintiff is the owner of the house mentioned above. The defendant has been a tenant in the said house, occupying the [describe the portion, e.g., "ground floor comprising of two bedrooms and a kitchen"]. The monthly rent agreed upon was [insert rent amount] per month.
- **Default in Payment of Rent:** The defendant has failed to pay the monthly rent for the last ten months, totaling an amount of [calculate the total amount of arrears]. Despite several reminders and notices, the last of which was sent on [insert date of the last notice], the defendant has willfully defaulted on the payment without any lawful excuse.
- **Relief Sought:** The plaintiff seeks eviction of the defendant from the suit property on the grounds of non-payment of rent and recovery of the arrears of rent amounting to [insert total amount].
- **Jurisdiction:** The suit property is located within the jurisdiction of this honourable court.
- Value of the Suit: The value of the suit for the purpose of jurisdiction and court fees is assessed at [insert amount which is the total arrears plus any punitive damages if applicable].

Prayer

Wherefore, the plaintiff prays that this Honourable Court may be pleased to:
(a) Pass a decree for eviction of the defendant from the suit property on the ground of non-payment of rent.
(b) Order the defendant to pay the arrears of rent amounting to [insert total amount], along with interest at the rate of [insert interest rate]% per annum from the due date of each instalment till the date of payment.
(c) Grant costs of the suit.
(d) Pass such other and further orders as this Honourable Court may deem fit and proper in the interests of justice.

Verification

I, [Plaintiff's full name], do hereby declare that what is stated above is true to my knowledge, no part of it is false, and nothing material has been concealed therefrom.

Date: [insert date]
Place: [insert place]
[Plaintiff's Signature]
Advocate
[Advocate's name and details]

List of Documents

- Proof of ownership of the plaintiff.
- Copy of the rent agreement.
- Copies of the notices sent to the defendant for payment of arrears.
- Any other document supporting the plaintiff's claim.

1.(b) Draft a written statement on behalf of 'B' is reply to the above plaint of 'A'. [15 Marks]

BEFORE THE HONOURABLE COURT OF [Insert Court Name]

Civil Suit No.: [Insert Case Number]
[Insert Full Name of 'A'],
Plaintiff
v.
[Insert Full Name of 'B'],
Defendant

WRITTEN STATEMENT ON BEHALF OF THE DEFENDANT
MOST RESPECTFULLY SHOWETH:

That the defendant, [Insert Full Name of 'B'], is filing this written statement in response to the plaint filed by the plaintiff, [Insert Full Name of 'A'], received by the defendant on [Insert Date of Receipt of Plaint], concerning [briefly mention what the plaint is about, e.g., "dispute over property rights"].

That the defendant denies each and every allegation made in the plaint as if set forth seriatim and specifically denied.

In response to paragraph [X] of the plaint, the defendant states that [respond to specific allegations, for example, "the claims of the plaintiff regarding the ownership of the property in question are factually incorrect and legally baseless"].

The defendant wishes to bring to the attention of this Honourable Court that [mention any facts or evidence that support your case, e.g., "the defendant has been in lawful possession of the property since DATE, with all due compliance with statutory and common law rights"].

Regarding the plaintiff's claim for relief as mentioned in paragraph [Y] of the plaint, the defendant submits that [provide counterarguments, e.g., "the plaintiff is not entitled to any relief as claimed in the plaint because..."].

It is submitted that [mention any legal point or precedent supporting your defence, e.g., "as per the ruling in CASE NAME, the plaintiff's claim lacks legal standing due to..."].
The defendant prays for the dismissal of the plaint with costs due to [give reasons, e.g., "lack of merit, absence of cause of action, barred by law, etc."].



PRAYER
WHEREFORE, the defendant prays that this Honourable Court may be pleased to:
(a) Dismiss the plaint with costs.
(b) Declare that the defendant is [insert the legal right or status you're claiming].
(c) Grant any other relief(s) that the court deems just and proper in the circumstances.

PLACE: [Insert Place]
DATE: [Insert Date]
[SIGNATURE OF DEFENDANT OR DEFENDANT'S LEGAL REPRESENTATIVE]

VERIFICATION
I, [Insert Full Name of 'B'], the defendant above named, do hereby verify that the contents of paragraphs [specify which ones] are true and correct to my knowledge, no part of it is false, and nothing material has been concealed therein.
Verified at [Place] on this [Date] day of [Month], [Year].
[SIGNATURE OF DEFENDANT OR DEFENDANT'S LEGAL REPRESENTATIVE]

1.(c) Frame issues on the aforesaid pleadings in question 1 (a) and (b). [10 Marks]

OR

1. Write a judgement convicting the accused under Section 300-B of Indian Penal Code after framing appropriate charge for the offence. [40 Marks]

In the Court of the Sessions Judge

State vs. Accused
Sessions Case No.: XXX of 20XX

Judgment
Hon'ble Justice [Name of the Judge]
The accused [Name of the Accused] is charged with the offence of murder contrary to Section 300 of the Indian Penal Code, 1860. The charge framed against the accused on [Date of Charge Framing] is as follows:

Charge:
You, [Name of the Accused], are hereby charged that on [Date of the Incident], at [Exact Location], you did commit murder by causing the death of [Name of the Victim], and thereby committed an offence punishable under Section 300 of the Indian Penal Code, 1860 and within my cognizance. You are accused of having intended to cause the death of [Name of the Victim], or caused such bodily injury as is likely to cause death, or knowingly did an act with the knowledge that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to

cause death, and without any excuse for incurring the risk of causing death or such injury as aforesaid. And I hereby direct that you be tried by this Court on the said charge.

[Date of Charge Framing]
[Signature of the Judge]
Prosecution Case:

The prosecution has laid down evidence in the form of witness testimonies, forensic reports, and material exhibits that establish the presence of the accused at the crime scene, the motive for the crime, and the weapon used belonging to the accused. The forensic evidence corroborates the witness accounts placing the accused at the locus of the crime at the pertinent times.

Defence:
The accused pleaded not guilty and brought forth an alibi, which was not substantiated by credible evidence. The defence also argued the absence of motive and pointed to deficiencies in the investigation. However, the defence has failed to create reasonable doubt in the mind of this Court regarding the accused's guilt.

Findings:
After careful consideration of the evidence presented and the arguments made by both the prosecution and defence, this Court finds the following:

- The presence of the accused at the crime scene is established beyond reasonable doubt.
- The weapon used in the commission of the murder belongs to the accused, and forensic evidence links the accused to the use of the weapon.
- The motive for the murder, as established by the prosecution through witness testimony, provides a sufficient ground for the accused's actions.
- The defence has failed to provide a credible alibi or any substantive evidence that could exonerate the accused.

Conclusion:
Therefore, based on the evidence and the law, this Court finds the accused, [Name of the Accused], guilty of the charge of murder under Section 300 of the Indian Penal Code, 1860.

Sentence:
The accused, [Name of the Accused], is hereby sentenced to [Appropriate Sentence as per the law].
It is so ordered.
[Signature of the Judge]
[Date of Judgement]

SECTION -A

2. Answer the following with reasons while mentioning the related decided cases:
(a) 'A' Claiming to be a landlord sues the tenant 'B' for recovery of rent. 'B' takes the plea that 'A' is not the landlord. 'A' fail to prove his title and the suit is dismissed. 'A' then sues 'B' and one 'C for a declaration of his title to the property. Decide. [15 Marks]

Introduction
In a situation where 'A' sues for rent claiming to be the landlord and the suit is dismissed because 'A' cannot prove his title, 'A's subsequent suit for a declaration of title involves different legal considerations. The essential question in the second suit is whether 'A' is the legal owner of the property.

Legal Principles

- **Burden of Proof:** In a suit for declaration of title, the plaintiff ('A' in this case) bears the burden of proving his title to the property in question.
- **Res Judicata:** The principle of res judicata, under Section 11 of the Code of Civil Procedure, 1908, may apply if 'A' is litigating the same issue that was necessary to be decided in the previous suit and was decided against him. However, if the first suit was dismissed solely on the grounds of failure to prove his status as a landlord and not on the title itself, then res judicata may not apply.

Analysis

Given that 'A's initial suit was dismissed due to failure to prove his title, 'A' must now establish his title with adequate proof, which could include documents of ownership such as a deed, evidence of possession, and other relevant materials that substantiate his claim as the property owner.

Decided Cases

The Indian legal system has witnessed numerous cases where the principle that a person cannot be a landlord without having a valid title has been upheld. Notably, in the case of Smt. Rajbir Kaur and Anr v. S. Chokesiri & Co. (AIR 1989 SC 1988), the Supreme Court of India observed that a person cannot claim rent unless he proves his title to the property.

Decision

In deciding 'A's subsequent suit against 'B' and 'C' for a declaration of his title, the court will primarily focus on the evidence 'A' presents to establish his ownership. The court will evaluate:

- **Ownership Documents:** Whether 'A' has produced authentic and valid documentation proving the transfer or ownership of title to him.
- **Chain of Title:** The historical succession of ownership to see if there is a clear chain leading to 'A'.
- **Possession:** Whether 'A' has been in possession of the property and the nature of such possession.
- **Witness Testimony:** Credible witnesses who can attest to 'A's ownership.
- **Government Records:** Land registry records which might confirm 'A's title.
- **Previous Dismissal Reasons:** The reasons for the dismissal of the earlier rent recovery suit. If the dismissal did not adjudicate on title per se, 'A' might have a fresh ground to prove his title.

'A' can only succeed in his suit for a declaration of title if he can provide conclusive proof of his ownership of the property. The previous dismissal for recovery of rent due to failure to establish his title as a landlord does not automatically bar 'A' from seeking a declaration of title. However, the burden of proof is significantly higher, and 'A' must present clear, cogent, and persuasive evidence to establish his claim to the property in order to succeed in the second suit.

2.(b) 'A' obtained a decree ex-parte against *B' and in execution of the decree brought the properties of 'B' to sale and himself became the purchaser. On appeal by 'B', the appellant court set aside the decree and remanded the suit for re-hearing. Then *B' applied for restitution. While that application was pending, 'A' then contended that as the suit had been decreed, no restitution can be granted. Is 'B' entitled to restitution? [15 Marks]

Yes, 'B' is entitled to restitution in this case.

The principle of restitution is enshrined within **Section 144** of the Code of Civil Procedure, 1908 (CPC) in India, which states that when a decree is reversed or varied, the court of first instance shall place the parties in the position which they would have occupied but for such decree. It is

designed to ensure that no party gains an unfair advantage or suffers an unjust loss because of the decree passed by the court, which was later set aside or altered on appeal.

In the scenario presented:

- 'A' obtained an ex-parte decree against 'B'.
- In execution of the decree, 'A' purchased 'B's properties.
- On appeal by 'B', the appellate court set aside the ex-parte decree and remanded the case for re-hearing.
- 'B' applied for restitution to restore the status quo ante, which is a legal right under Section 144 of the CPC.

'A's contention that no restitution can be granted because the suit had been decreed is not tenable because:

- The decree which formed the basis for the sale and 'A's purchase has been set aside. Thus, the execution and any actions pursuant to it (such as the sale and purchase of 'B's properties) are nullified.
- Restitution is not dependent on the final outcome of the suit but on the reversal or variation of the decree which led to the execution proceedings.
- The doctrine of restitution is based on the fundamental principle of equity that demands the removal of gains or benefits unjustly received by a party due to a court decree which was later overturned.

The appellate court's action of setting aside the decree and remanding the suit for a rehearing essentially annuls the decree's legal effect, thereby reviving 'B's right to seek restitution for the enforcement actions taken under the now-nullified decree. 'B' should be placed in the same position as if the ex-parte decree had not been passed, which means restitution of the properties sold in the execution proceeding.

Illustratively, in the Indian Supreme Court judgement "South Eastern Coalfields Ltd. vs. Project Director, A.P.", the Court held that the objective of Section 144 CPC is to undo the wrong done to a party by the act of the court; thus, once the basis of the decree disappears with its reversal, any advantage gained by the opposing party under the interim or final decree which has been reversed must be restored back.
Therefore, based on the principle of justice, equity, and fair play, 'B' is indeed entitled to restitution, which should include, among other things, the return of the property or its value if 'A' became the purchaser of 'B's property in execution of the decree which was later set aside.

2.(c) 'A' advances loan of 60,000 to 'B'. To bring the suit within the jurisdiction of court, 'A' sues *B' for ? 50,000 only instead of ? 60,000 and obtains a decree. Later on 'A' files a second suit for the balance of ? 10,000 in the same court. 'B' raises an objection. Decide. [10 Marks]

Introduction
This hypothetical scenario presents a legal issue regarding the doctrine of res judicata and claim splitting. 'A' has seemingly split his claim into two parts to suit the jurisdictional limits of a particular court, first suing for part of the debt and then attempting to sue for the remainder.

Legal Principles
Doctrine of Res Judicata
The doctrine of res judicata, encapsulated in **Section 11** of the Code of Civil Procedure, 1908 (CPC), provides that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

Prohibition Against Splitting Claims
The CPC prohibits splitting claims and mandates that the claimant must sue for all the reliefs they are entitled to in respect of the same cause of action in a single lawsuit. Failing to do so may result in the claimant being barred from suing on the same cause of action again.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
Subject Wise Mains PYQ Solution	Essay for Judiciary
Subject Wise Notes	Legal Doctrines
Landmark Judgements	GS Notes
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Analysis of 'A's Position

Suit for Partial Debt
'A' has sued 'B' for ₹50,000 of a ₹60,000 debt to fit within the jurisdictional limits of a particular court. This strategic decision by 'A' can be interpreted as an intentional splitting of the claim.

Filing of Second Suit
'A' filing a second suit for the remaining ₹10,000 can be objected to by 'B' on the grounds that 'A' had the opportunity to include this claim in the original suit but chose not to.

Legal Implication
The second suit filed by 'A' for the remaining ₹10,000 may be barred by the doctrine of res judicata, as it arises from the same cause of action as the first suit. 'A' should have claimed the entire amount in the first instance. The court's decree in the first suit is final in respect of the claim against 'B', which includes the entire debt, not just the part that was claimed.

Decision
Given the doctrine of res judicata and the prohibition against claim splitting, 'A' cannot subsequently sue 'B' for the remaining ₹10,000 in the same court. The objection raised by 'B' is valid, and the court should uphold it, barring 'A' from seeking the remaining debt amount in a separate suit.

The claim for the balance amount of ₹10,000 by 'A' in a second suit is not maintainable as per the principles of res judicata and the prohibition against splitting claims under the CPC. The decree obtained in the first suit would be considered final in respect to the entire debt amount, and 'A' would be precluded from re-litigating the same cause of action or any part of it that could have been presented at that time. Therefore, the second suit filed by 'A' should be dismissed on the ground of res judicata.

3. (a) What do you understand by civil nature of a suit ? Explain. [10 Marks]

Introduction

In the context of legal proceedings, suits are typically classified as either civil or criminal. A suit of civil nature generally refers to a legal dispute between individuals, corporations, governments, or other entities, where the plaintiff seeks redress or enforcement of rights under civil law. The relief sought can include monetary compensation, specific performance, injunctions, declarations, and other forms of equitable relief.

Characteristics of Civil Suits
Civil suits are characterised by the following attributes:

- **Rights and Obligations:** They involve matters concerning the rights and obligations of individuals or entities toward each other.
- **Compensatory in Nature:** The primary relief sought is usually compensation for damages incurred or specific remedies to enforce a right or contract.
- **Preponderance of Evidence:** The standard of proof is typically on the 'preponderance of evidence,' which means that the plaintiff's case must be more probable than not.
- **Private Parties:** While the state can be a party, civil suits are predominantly disputes between private parties.
- **No Punishment:** Unlike criminal cases, civil suits do not involve incarceration or punitive damages intended to punish the wrongdoing party (with the exception of certain punitive damages in some jurisdictions).

Determinants of Civil Nature
Whether a suit is of civil nature depends on several factors:

- **Subject Matter:** The subject of the dispute typically involves property, contracts, torts, family law, and similar private rights.
- **Relief Sought:** The relief sought is a key determinant; if the plaintiff is asking for something that can be categorised under civil remedies, the suit is of a civil nature.
- **Legal Provisions:** The statute or legal provision under which the suit is filed can define its nature. For instance, suits filed under civil statutes like the Specific Relief Act or the Transfer of Property Act are of civil nature.

Civil Suits vs. Criminal Proceedings
It's essential to distinguish civil suits from criminal proceedings, which involve the state prosecuting an individual or entity for acts classified as offences against the state or society. The outcome of criminal proceedings can result in penalties such as imprisonment, fines, probation, or community service.

Judicial Interpretations
Courts often interpret whether a suit is civil or not based on its intrinsic nature and the substantive legal rights at issue. For instance, the Supreme Court of India in Ram Sarup Gupta v. Bishun Narain Inter College & Ors (1987) elaborated on the civil nature of suits, emphasising the importance of the rights and obligations in dispute and the remedy sought.

A suit of civil nature is fundamentally about the adjudication of private rights and the provision of remedies for the enforcement of those rights. It is the civil court's role to resolve such disputes by applying civil law principles and ensuring justice is served by granting appropriate relief to the aggrieved party. Understanding the civil nature of a suit is crucial as it determines the court's jurisdiction, the applicable laws, the procedures to be followed, and the remedies available.

3.(b) Answer with reasons whether the following suits are of civil nature or not.
(i) A suit for wrongful explosion from a social club.
(ii) Suit to declare an election invalid.
(iii)Collection of contribution for holding festival.
(iv)Right of a Pardanasheen lady to observe.
[10 Marks]

(i) A Suit for Wrongful Expulsion from a Social Club

Civil Nature: Yes
Reason: A suit for wrongful expulsion from a social club typically involves the enforcement of contractual rights or membership rights that arise from the club's constitution or the rules governing its members. The relief sought can include reinstatement of membership or compensation for the wrongful expulsion, both of which are civil remedies.

(ii) Suit to Declare an Election Invalid

Civil Nature: Yes
Reason: Such a suit usually pertains to the enforcement of statutory rights and obligations. It challenges the process or outcome of an election within organisations, bodies, or government structures. While it may have a regulatory or administrative law aspect, the underlying nature of the right in question – the right to a fair and properly conducted election – is civil.
However, if it pertains to a parliamentary or legislative assembly election, the jurisdiction to try the case may be specifically provided for by election laws or might fall under the purview of election tribunals or the High Court.

(iii) Collection of Contribution for Holding Festival

Civil Nature: Yes
Reason: A suit for the collection of contributions for holding a festival is typically a matter of enforcing obligations that members of a community or society may have agreed upon, either expressly or impliedly, for the conduct of communal activities. If there is an agreement or an established custom obligating members to contribute to festival expenses, failure to contribute could lead to a civil suit.

(iv) Right of a Pardanasheen Lady to Observe Purdah

Civil Nature: Not typically
Reason: The right of a woman, particularly one who observes pardah (a practice involving seclusion or covering, observed by some Muslim women), to continue such practice is generally a matter of personal law and religious practice. A suit related to this issue would likely fall under the domain of personal laws and not be considered civil in the conventional sense of involving civil rights or remedies under civil law.

However, if the practice of purdah is being forcibly interfered with, resulting in a violation of one's personal rights, there might be grounds for a civil suit to prevent such interference. But these grounds would be based on personal rights to privacy or bodily autonomy, not on a "right to observe purdah" as such.

These classification of suits as civil or not depends largely on the nature of the rights involved. A civil right is generally one recognized by law that can be enforced or protected by a civil action. The scenarios outlined above generally describe civil rights (i.e., contractual rights, statutory rights, rights to contributions based on an agreement, and potential rights to personal freedom or autonomy), and thus the suits would typically be of a civil nature, seeking civil remedies such as enforcement, protection, declaration, or injunctions. The exception, or special consideration, is the one involving personal religious practices, which is not typically the subject of civil litigation unless it intersects with enforceable personal rights.

3.(c) Distinguish among appeal, revision and review and explain the following: [20 Marks]
(i) Can the court review suo moto or on its own motion its own decision ?

In the Indian legal system, the terms "appeal," "revision," and "review" have distinct meanings and are associated with different procedural laws and processes:

Appeal
An appeal is a process by which a higher court is requested to examine the decision of a lower court. The appellate court has the power to affirm, reverse, modify, or remand the decision. Appeals are a matter of right in certain cases and can involve re-hearing on facts, law, or both.

- **Grounds**: Appeals can be made on various grounds, including errors of law, errors of fact, or procedural irregularities.
- **Procedure**: Governed by the Code of Civil Procedure, 1908 **(Sections 96 to 112)** and specific statutes that may provide for appeals.

Revision
A revision entails a higher court's examination of a lower court's decision to determine the legality or propriety of the order without the extensive procedural formalities of an appeal. It is not a matter of right but is invoked at the discretion of the revisional court.

- **Grounds**: Revision is usually confined to questions of jurisdiction and significant errors of law that might have resulted in gross injustice.
- **Procedure**: Governed by Section 115 of the Code of Civil Procedure, 1908, and is usually limited to the record of the lower court.

Review
A review is a statutory process wherein the same court that issued a decision re-examines the case. The purpose of a review is to correct a manifest error or injustice that occurred in the original judgement.

- **Grounds**: Limited to cases of discovery of new and important evidence, errors apparent on the face of the record, or any other sufficient reason.
- **Procedure**: Governed by **Order 47** of the Code of Civil Procedure, 1908, reviews are not a matter of right and are permissible only if the conditions specified therein are satisfied.

Can the Court Review Suo Moto Its Own Decision?

Suo Moto Review
Under the Code of Civil Procedure, the power of the court to review its own decision suo moto (on its own motion) is generally not recognized. The initiation of the review process requires an application by a party to the proceedings as specified under Order 47, Rule 1 of the CPC. The court usually cannot act in the absence of such an application. However, this position is subject to the provisions of any specific statute or rules that may expressly confer such a power on the court.

- **Conditions for Review:** A court may review its judgement or order if there is a discovery of new and important matter or evidence, a mistake or error apparent on the face of the record, or for any other sufficient reason.
- **Application for Review:** Typically, a review can only be initiated upon an application made by a party interested within a certain time from the date of the decree or order. An application for review must be supported by materials that justify a review.

Exceptions and Judicial Interpretations
While the general rule under the CPC does not allow for suo moto reviews, the Supreme Court of India, under **Article 137** of the Constitution, has the power to review its own judgments or orders as provided by the rules made under Article 145 of the Constitution. In exceptional cases, the Supreme Court may exercise its inherent powers to review its decisions to prevent gross miscarriage of justice, even without a formal motion for review.

In principle, courts are not empowered to review their decisions suo moto under the general law. Such a power is exceptional and is typically vested in the highest court of the land under its constitutional authority. The doctrine of finality of judgments, which is fundamental to the administration of justice, underpins the circumspection with which the power of review is exercised, thereby ensuring that litigation comes to an end once a decision has been rendered.

3. (ii) Can a superior court direct an inferior court to review its previous decision ?

Appeal
An appeal is a legal procedure wherein a higher court is asked to examine the decision of a lower court to determine if there have been any legal errors that could change the outcome of the case. The appellate court has the authority to uphold, modify, or reverse the lower court's decision, or remand the case back to the lower court for further proceedings.

Characteristics of Appeal:
- **Statutory Right**: The right to appeal is not inherent and must be expressly provided by statute.
- **Factual and Legal Scrutiny:** An appellate court can review both facts and law.
- **Two Levels:** Appeals can typically be made to an immediate higher court and subsequently to the Supreme Court.

Revision
A revision entails a higher court's examination of a lower court's decision, but unlike an appeal, it is usually limited to assessing the procedural and legal correctness of the lower court's proceedings and not a re-hearing of the facts of the case.

Characteristics of Revision:
- **Limited Scrutiny:** Revisional powers are exercised to satisfy the higher court that the case decision was according to the law.
- **No Right to Parties:** Parties do not have the right to seek revision; it is at the discretion of the higher court to decide whether or not to exercise its revisional jurisdiction.
- **Suo Moto or On Petition:** A revision can be initiated by the court on its own motion or on a petition filed by a concerned party.

Review
A review is a procedural recourse available within the same court that issued the decision. It is meant to rectify an apparent error or oversight in the judgement.

Characteristics of Review:

- **Inherent Power:** The power to review its own judgement is inherent to a court, though subject to the provisions of the law governing such review.
- **Limited Circumstances:** Reviews are permitted only under specific circumstances, such as discovery of new evidence or an error apparent on the face of the record.
- **No Re-hearing:** A review does not entail a re-hearing of the case but rather a reconsideration of the decision.

Superior Court's Power to Direct Review

Now, regarding whether a superior court can direct an inferior court to review its decision:
Under normal circumstances, a superior court does not direct an inferior court to review its judgement. Reviewing a decision is typically an intrinsic jurisdiction and not exercised upon the direction of a higher court. A superior court can, however, set aside or alter a lower court's decision through appellate or revisional jurisdiction, when such jurisdiction is invoked as per the procedural laws.

In certain jurisdictions, a superior court might direct a lower court to 'reconsider' a matter in specific instances, which is distinct from a formal review. This is generally done when the case is remanded or sent back for additional proceedings, not for a review of the judgement itself. Such an order is usually passed in the context of an appeal or revision, where the appellate or revisional court finds that there has been a substantial error or omission in the proceedings of the lower court.

While appeal, revision, and review are distinct legal processes, the commonality among them is the desire to ensure the correctness, legality, and fairness of judicial decisions. The power to direct a lower court to review its decision does not typically reside with a higher court, as a review is a self-contained power of the court that delivered the judgment. However, superior courts have various other mechanisms to correct or alter the decisions of inferior courts within the structure of the legal system.

4. (a) Explain with illustration the rules relating to joinder of plaintiffs and defendants in a civil suit. [20 Marks]

The rules relating to the joinder of parties in civil suits are fundamental to the structure and determination of legal proceedings. These rules are intended to ensure that all persons who may be affected by the court's decision are given the opportunity to be heard. The Code of Civil Procedure, 1908 (CPC) in India lays down specific provisions for the joinder of plaintiffs and defendants.

Joinder of Plaintiffs

Order 1, Rule 1 CPC - Who May be Joined as Plaintiffs

- All persons may be joined in one suit as plaintiffs where:
  - They have a right to relief arising from the same act or transaction or series of acts or transactions; and
  - If separate suits were brought by such persons, any common question of law or fact would arise.

Illustration: If 'A', 'B', and 'C' have a joint right to a piece of land due to a common transaction, they can be joined as plaintiffs in a suit against 'D', who is allegedly trespassing on the land.

Joinder of Defendants

Order 1, Rule 3 CPC - Who May be Joined as Defendants

- All persons may be joined in one suit as defendants where:
  - Any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions exists against them jointly, severally, or in the alternative; and
  - If separate suits were to be brought against such persons, any common question of law or fact would arise.

Illustration: If 'A' has a claim for damages that resulted from a collision caused by 'B' and 'C' acting negligently, 'A' can join 'B' and 'C' as defendants in the same suit, even if the extent of the liability between 'B' and 'C' may be different.
Rules of Non-Joinder and Misjoinder

Order 1, Rule 9 CPC - Misjoinder and Non-Joinder

- No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Illustration: If 'A' sues 'B' and 'C' over a contract, and it turns out that 'C' was not involved in the contract, the misjoinder of 'C' as a defendant will not lead to the dismissal of the suit. The court can continue to hear the case against 'B'.

Mandatory and Permissive Joinder
The joinder of parties can be mandatory or permissive. Mandatory joinder is when a certain party must be joined in order for the court to adjudicate the case fully and effectively. Permissive joinder is when it is not necessary to join all parties, but it is allowed if it will facilitate the administration of justice.



Illustration for Mandatory Joinder: In a partition suit where 'A', 'B', 'C', and 'D' are co-owners of a property, all co-owners must be made parties to the suit for a decree of partition.

Illustration for Permissive Joinder: If 'A' and 'B' enter into a similar contract with 'C' and 'D' separately and a dispute arises out of the contracts, 'A' may choose to sue 'C' and 'D' together to settle the common question of law or fact, even though they are separate transactions.

Objectives of Joinder Provisions

- **Avoid Multiplicity of Proceedings:** To avoid multiple suits on the same matter, which could lead to conflicting judgments.
- **Convenience: T**o provide a convenient means of settling related claims in one litigation.
- **Complete Justice:** To ensure that all sides of a question are considered and complete justice is done.

The rules on joinder of parties in civil suits are designed to promote efficiency and justice in the legal process. They allow for the comprehensive adjudication of rights and liabilities in a single proceeding, thereby conserving judicial resources, avoiding conflicting decisions, and ensuring that related parties and issues are dealt with in a holistic manner.

4.(b) 'A' publishes a series of books under the title 'Rohelkhand and Bundelkhand' so as to Induce the belief that the books are publications of the Rohelkhand and Bundelkhand Universities or either of them. The two Universities join as plaintiffs in one suit to restrain 'A' from using the title. Discuss with reasons whether both the Universities can jointly sue or not? [10 Marks]

Legal Framework Governing Joint Suits
The Code of Civil Procedure, 1908 (CPC), provides the framework for the filing of suits in civil courts in India. **Order I, Rule 1 of the CPC** states that all persons may be joined in one suit as plaintiffs where:

- They have any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions; and
- If separate suits were brought by such persons, any common question of law or fact would arise.

Application to the Given Scenario
In the scenario described, 'A' is publishing books under a title that potentially leads to confusion with the names of two universities, suggesting an association with them. Here are the considerations for whether both universities can jointly sue:

Common Cause of Action

- Both universities claim that 'A' is using their names in a manner that suggests association or endorsement, which could constitute a common cause of action if it affects their respective reputations or causes confusion among their stakeholders.

Common Question of Law or Fact

- The lawsuit would likely involve common legal questions about trademark infringement or passing off, and false representation, among others.
- The fact in question is whether 'A's use of the title 'Rohelkhand and Bundelkhand' is likely to cause confusion about the source or sponsorship of the books.

Possibility of Separate Suits

- While the universities could file separate suits, the core issue and legal questions would remain materially the same, thereby duplicating judicial proceedings and possibly leading to inconsistent verdicts.

Analysis of Joint Suit Feasibility
Proprietary Interest

- Each university has a proprietary interest in its name and reputation. 'A's action impacts both entities, although they are distinct legal entities.

Preventing Multiplicity of Litigation

- Allowing a joint suit would avoid multiplicity of legal proceedings. The principle of avoiding multiplicity of suits is well recognized in civil procedure as it promotes judicial economy and consistency in decisions.

Consistency in Decisions

- A joint suit would ensure consistency in the court's findings and the relief granted, which is particularly important in cases involving reputation and potential confusion in the public domain.

Decision
Based on the principles laid out in the CPC**,** both universities can join as plaintiffs in one suit against 'A'. The suit involves a common cause of action arising out of the same transaction, which is the use of a potentially misleading title by 'A'. There would be common questions of law and fact if separate suits were filed, which satisfies the criteria under Order I, Rule 1 of the CPC. Therefore, a joint suit would be maintainable, and the court is likely to allow it to prevent multiplicity of proceedings and to ensure uniformity and consistency in the adjudication of the dispute.

4.(c) 'A' and 'B' were assaulted by C at an interview in C' 's house. 'A' and 'B' jointly sue C for damages for assault. Was the suit rejected for misjoinder of plaintiffs? Give answer with reason. [10 Marks]

Introduction
The question relates to the concept of joinder of parties in a legal action. The Code of Civil Procedure, 1908, governs the joinder of parties in civil suits in India. According to **Order I, Rule 1**, all persons may be joined in one lawsuit as plaintiffs where:

- Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally, or in the alternative; and
- If such persons brought separate suits, any common question of law or fact would arise.

Assault on 'A' and 'B' by 'C'
In the presented case, 'A' and 'B' were both allegedly assaulted by 'C' during the same incident, at the same location, and presumably around the same time. Based on these facts:
Reasons the Suit Would Not Be Rejected for Misjoinder of Plaintiffs

- **Common Cause of Action: '**A' and 'B' have a common cause of action since the assault on both occurred simultaneously and in the course of the same transaction.
- **Same Transaction:** The assault is the same transaction that gives rise to the claim for both 'A' and 'B', making them proper parties to jointly sue 'C'.
- **Common Questions of Law and Fact:** A joint suit would involve common questions of law and fact likely concerning the circumstances of the assault, the liability of 'C', and the quantum of damages.
- **Efficiency**: It is more efficient for the judicial system to handle one lawsuit instead of two separate ones, which would duplicate efforts and possibly lead to inconsistent judgments.
- **Precedents**: The courts in India and other common law countries recognize the principle of joinder of parties in similar situations to avoid multiplicity of legal proceedings.

Given these considerations, 'A' and 'B' are properly joined as co-plaintiffs in the same suit against 'C' for damages for assault. The suit would not be rejected for misjoinder of plaintiffs, as their claims arise from the same act and involve common questions of law and fact. This is in line with the objective of the rules on the joinder of parties, which is to streamline the adjudication process, avoid multiple lawsuits, and prevent conflicting decisions on similar issues. Therefore, both 'A' and 'B' can legitimately bring their claims in a single action against 'C'.

5.(a) The Candidates made a 'Gherao' of the Controller of Examination of Public Service Commission. Is this act of the Candidates justifiable ? What offence, if any, was committed by the candidates? Elaborate your answer with the provisions of Indian Penal Code and decided cases. [15 Marks]

The act of 'Gherao', which refers to a form of protest where a group of people encircles or blockades an individual or a place to demonstrate, can be a complex issue with legal ramifications, depending on the circumstances under which it is conducted.

Justifiability of 'Gherao':
In Indian law, **peaceful protest**, including peaceful 'Gherao', is a fundamental right guaranteed under **Article 19(1)(b)** of the Constitution of India, which ensures the citizens' right "to assemble peaceably and without arms". However, this right is not absolute and is subject to reasonable restrictions in the interests of the sovereignty and integrity of India, the security of the state, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offence **(Article 19(3))**.

If the 'Gherao' of the Controller of Examination of the Public Service Commission was peaceful and did not involve any criminal activity such as intimidation, force, assault, or any form of illegal coercion, it might be justifiable as an exercise of the right to protest.

Offence Committed by the Candidates:
However, if the 'Gherao' was not peaceful and involved elements of force or criminal intimidation, it may constitute an offence under the Indian Penal Code, 1860 (IPC). Here are some relevant provisions:

Unlawful Assembly (Section 141 IPC)
If the 'Gherao' was conducted by an assembly of five or more persons with the common object of overawing by criminal force or show of criminal force, it may be termed an 'unlawful assembly'.

Wrongful Restraint (Section 339 IPC)
If the 'Gherao' resulted in preventing the Controller of Examinations from proceeding in any direction, the candidates could be liable for 'wrongful restraint'.

Criminal Force (Section 350 IPC) and Assault (Section 351 IPC)
If the 'Gherao' involved any act of force or an assault to deter the Controller of Examinations from discharging his duties, these sections may be invoked.

Criminal Intimidation (Section 503 IPC)
If the candidates threatened the Controller of Examination with injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested, they may be charged with 'criminal intimidation'.

Decided Cases:
In cases like **'Ramlila Maidan Incident v. Home Secretary, Union of India & Ors.'**, the Supreme Court of India has observed that the fundamental right to assemble and peacefully protest is subject to holding in an area designated for such purposes and not at the cost of others' rights. The protest must be conducted without causing disturbance to the law and order situation.
In 'Amarjit Singh Grewal v. State of Punjab & Ors.', it was held that 'Gherao' of government officials at their office premises, homes, or elsewhere would amount to criminal intimidation under the IPC.

The act of 'Gherao' by the candidates is justifiable only if it was carried out in a peaceful manner, without intimidation, coercion, or any unlawful means. However, if any form of criminal force, wrongful restraint, or intimidation was involved, the candidates could be held liable for various offences under the IPC. The right to protest must be balanced with respect for the rights of others and should not disrupt public order or the lawful discharge of duties by public officials.

5.(b) Meenakshi obtained possession of Sheela, a minor girl and employed her for purposes of prostitution. Meenakshi subsequently obtained Manju in adoption, another minor girl from her parents. Meenakshi and the parents of Manju were charged together under Section 372 and 373 Indian Penal Code, 1860. The charges related to both the girls. Can the two charges be tried together? [15 Marks]

Legal Provisions Regarding Joinder of Charges
The Code of Criminal Procedure, 1973 (CrPC), lays down the procedure for criminal trials in India, and specifically the joinder of charges is dealt with under Sections 218 to 223. These sections outline the circumstances under which multiple charges can be tried together.

Analysis of the Charges and Joinder Possibility
Section 218 CrPC - Separate Charges for Distinct Offences
As per Section 218, every distinct offence must be tried in a separate charge and every such charge must be tried separately except in the cases mentioned in the subsequent sections.

Sections 219, 220, and 221 CrPC - Joinder of Charges
- Section 219 allows for three offences of the same kind within a year to be charged together.
- Section 220 deals with situations where it is doubtful what offence has been committed or when an act constitutes more than one offence or when multiple acts constitute the same offence.
- Section 221 allows for a person to be charged with multiple offences if it is uncertain which offence has been committed.

Section 223 CrPC - What Persons May be Charged Jointly
This section specifies that persons accused of different offences committed in the course of the same transaction can be charged and tried together.

Application to Meenakshi and Manju's Parents' Case
In the case of Meenakshi and the parents of Manju:
- **Section 372 IPC:** Deals with the selling of a person for purposes of prostitution, which Meenakshi seems to have committed regarding Sheela.
- **Section 373 IPC:** Relates to the buying of a person for purposes of prostitution, which Meenakshi seems to have committed concerning Manju, with the alleged complicity of Manju's parents.

Connection Between Charges
The charges against Meenakshi and Manju's parents stem from acts that are part of a series of acts so connected together as to form the same transaction, i.e., engaging in trafficking and prostitution of minor girls.

Commonality of Transaction
- The nature of the alleged crimes suggests a common scheme or transaction involving trafficking and prostitution.

- The offences concerning Sheela and Manju can be construed as part of a single scheme of illegal conduct perpetrated by Meenakshi.

Conclusion on Joinder of Charges
Given the common scheme of exploitation, the charges against Meenakshi and Manju's parents, related to both Sheela and Manju, can be tried together under Section 223 of the CrPC. This section provides the legal basis for a joint trial when multiple persons are accused of different offences committed in the course of the same transaction.

The court, in ensuring a fair trial, would consider the connection between the different charges and the benefits of a joint trial, such as avoiding conflicting verdicts and saving judicial resources, against any potential prejudice that such a trial might cause to the accused.

Disclaimer
It should be noted that the actual decision on whether to try the charges together would be at the discretion of the trial court after considering all relevant facts and circumstances, including legal submissions by the defense and the prosecution.

5.(c) More than two years ago 'A' was sentenced to death but the sentence has not been executed so far. 'A' moves the court that his death sentence be commuted to imprisonment for life as these was undue delay In the execution of death sentence. Decide with leading cases. [10 Marks]

Introduction
The issue of delay in the execution of a death sentence has been a significant concern in various jurisdictions, including India. It raises questions about the right to life, cruel and unusual punishment, and the rights of those on death row.

Legal Principles and Judicial Pronouncements
The Indian judiciary has deliberated on the impact of delays in the execution of death sentences in several landmark cases. The Supreme Court of India has recognized that prolonged delays in the execution of a death sentence can amount to cruel and unusual punishment and can be a ground for commutation.

Leading Cases
- ***Sher Singh & Ors v. The State of Punjab (1983):*** The Supreme Court held that prolonged delay in the execution of a sentence of death has a dehumanizing effect and can be a ground for commutation to life imprisonment.
- ***Triveniben v. State of Gujarat (1989):*** The Court observed that if there is a delay in the execution of a death sentence, which is excessive and cannot be explained on the basis of the procedure to be followed under the law, it would be a ground for commutation.
- ***Shatrughan Chauhan & Anr. v. Union of India & Ors (2014):*** The Supreme Court laid down guidelines and held that undue, inordinate, and unreasonable delay in the execution of a death sentence entitles the condemned prisoner to approach the court seeking commutation of the death sentence to life imprisonment.

Decision
In the scenario presented where 'A' has been on death row for over two years without the execution of the sentence, 'A' may have a legitimate ground to seek commutation of the death sentence to life imprisonment. The court would consider several factors, such as:
- **Length of Delay:** The exact duration of the delay and its reasonableness in light of the procedural requirements.
- **Reason for Delay:** Whether the delay is due to an extended legal process, including the time taken for mercy petitions, or if it's unexplained and inordinate.

- **Psychological Impact:** The mental and emotional trauma suffered by 'A' due to the prolonged anticipation of death.
- **Administrative Efficiency**: Any administrative inefficiencies that contributed to the delay.
- Precedent: The principles laid down in previous judgments and the contemporary legal view on the death penalty.

Based on the precedent and the rights involved, the court would likely rule in favor of commuting 'A's death sentence to life imprisonment due to the undue delay, provided 'A' can demonstrate that the delay was excessive and unjustified, causing severe distress and hardship.

The undue delay in the execution of a death sentence has been recognized as a violation of fundamental rights under Article 21 of the Constitution of India, which guarantees the right to life and personal liberty. If 'A' can establish that the delay was unreasonable and unjustified, there is a strong likelihood that the court would commute the death sentence to life imprisonment, in line with the legal principles and humanitarian grounds established in Indian jurisprudence.

6.(a) Under what circumstances can a Magistrate ask sureties for good behaviour ? [10 Marks]

In India, under the Code of Criminal Procedure, 1973 (CrPC), a Magistrate has the power to require a person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour. This preventive measure, commonly referred to as a "peace bond," is intended to prevent crimes that the Magistrate believes may be committed.

Important Links for Judiciary Free Resources (Click on Each to Open Respective Pages)	
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Circumstances Under Which a Magistrate May Demand Sureties for Good Behaviour:

Section 109 CrPC: Security for Good Behaviour from Suspected Persons
A Magistrate may require an individual to show cause why they should not be ordered to execute a bond for good behaviour if:

- The person is found to be taking precautions to conceal their presence within the local jurisdiction, and the Magistrate has reason to believe that the person is doing so with the intention of committing a crime.
- The individual has no ostensible means of subsistence, or they cannot provide a satisfactory account of themselves; and there is a reason to believe that the person is engaging in crime or has a history of such behaviour.

Section 110 CrPC: Security for Good Behaviour from Habitual Offenders
A Magistrate may also require sureties for good behaviour from a habitual offender if the person:

- Has been habitually committing or attempting to commit or abetting the commission of offences involving a breach of the peace.

- Has been habitually committing or attempting to commit or abetting the commission of offences involving an assault or using criminal force or violence against others.
- Is so desperate and dangerous as to render their being at large without security hazardous to the community.

Section 111 CrPC: Order to be Made
When a Magistrate has received information that a person within their jurisdiction is likely to commit a breach of peace or disturb the public tranquillity, or do any wrongful act that may probably occasion a breach of peace or disturb the public tranquillity, they can require such person to show cause why they should not be ordered to execute a bond for a period not exceeding one year.

Procedure for Demand of Sureties
- **Preliminary Order**: The Magistrate makes a preliminary order in writing setting forth the material substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties required.
- **Show Cause:** The person against whom the order is made is required to appear and show cause why the order should not be made.
- **Adjudication**: After considering the evidence in the case, if the Magistrate is satisfied that it is necessary for keeping the peace or for maintaining good behaviour, the Magistrate may make an order accordingly.

Legal Safeguards and Rights
- **Right to be Heard:** The person has the right to be heard, and the Magistrate must consider any evidence the individual wishes to present.
- **Appeal**: Decisions made under Sections 109 and 110 of the CrPC are subject to appeal to the Sessions Court.

The provisions of the CrPC allow Magistrates to take preventive measures to ensure public peace and safety. The demand for sureties for good behavior is a means to prevent not only possible harm to society but also to potentially steer the individual in question away from committing offences. This provision ensures a balance between individual liberties and societal interests, upholding the preventive aspect of criminal jurisprudence.

6.(b) Narrate in brief the procedure for Session Trial. [15 Marks]

Introduction to Session Trial
A session trial refers to the trial of criminal cases that are triable by the Court of Session, which is a court presided over by a Sessions Judge or an Additional Sessions Judge. These are generally serious offences including those punishable with imprisonment for a term exceeding seven years, life imprisonment, or death.

Procedure for Session Trial
The procedure for the trial of sessions cases is outlined primarily in the Code of Criminal Procedure, 1973 (CrPC), and involves several stages:

Commencement of Proceedings
- **Committal to Sessions Court:** Cases triable by the Court of Session are first taken to the Magistrate, who commits the case to the Sessions Court if it appears to the Magistrate that the offence is triable exclusively by the Court of Session **(Section 209 CrPC).**

Pre-Trial Proceedings

- **Charges:** Upon committal, the Sessions Court frames the charges detailing the offence the accused is suspected to have committed. The charges must be read and explained to the accused, and the accused shall then be asked whether they plead guilty or claim a trial **(Section 228 CrPC).**

Trial

- **Plea of Guilty:** If the accused pleads guilty, the judge may convict on that plea alone but is not bound to do so and may instead proceed to trial.
- **Prosecution Evidence**: If the accused pleads not guilty or refuses to plead or claims trial, the prosecution is required to produce evidence to prove the guilt of the accused. Witnesses are examined by the prosecution, cross-examined by the defence, and may be re-examined by the prosecution (Sections 231-234 CrPC).
- **Statement of Accused:** Under Section 313 CrPC, at any stage after the close of the prosecution evidence, the court may question the accused for the purpose of enabling the accused to explain any circumstances appearing in the evidence against them.
- **Defence Evidence:** If the accused wishes to present any evidence in defence, the opportunity is given after the prosecution evidence is closed (Section 233 CrPC).
- **Final Argument:** After the completion of evidence from both sides, the prosecution and the defence are invited to present their final arguments.

Judgment

- **Acquittal or Conviction:** After hearing the arguments and considering all the evidence presented, the judge will give a judgement in the case, either acquitting or convicting the accused **(Section 235 CrPC).**

Post-Trial

- **Sentence:** If the accused is convicted, a separate hearing will be held to determine the appropriate sentence **(Section 235(2)** CrPC).
- **Appeal**: The judgement can be appealed to a higher court if either party is aggrieved by the verdict of the Sessions Court.

Observations and Judicial Practice

- **Right to Fair Trial:** Throughout the trial, the court is guided by the principle of fairness and due process, ensuring the rights of the accused are protected.
- **Legal Assistance:** The accused has the right to legal representation, and if the accused cannot afford a lawyer, one must be provided by the state.
- **Speedy Trial:** The court is also mandated to conduct the trial as expeditiously as possible, with reasonable adjournments as necessary.

The procedure for a session trial is designed to ensure a thorough and fair adjudication of serious criminal cases. It involves a series of steps that ensure that the accused is informed of the charges, the prosecution and defence are given opportunities to present their cases, and the judge makes an informed decision based on the evidence and the law. The entire process reflects the balance between the need to bring offenders to justice and the imperative to uphold the rights of the accused.

6.(c) What is plea bargaining ? Briefly describe its procedure, whether these provisions apply in respect of all types of offences and all types of victims? [15 Marks]

Introduction

Plea bargaining refers to a legal process in which the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It often involves the accused

agreeing to plead guilty to a lesser charge or to one of multiple charges in exchange for a lighter sentence or for other charges to be dropped.

Nature of Plea Bargaining
Plea bargaining can take various forms, including charge bargaining (reducing the number or severity of charges), sentence bargaining (agreeing to a lesser sentence), and fact bargaining (agreeing on certain facts to prevent other facts from being introduced into evidence).

Procedure of Plea Bargaining in India
The concept of plea bargaining was introduced in the Indian legal system with the **Criminal Law (Amendment) Act, 2005**, which amended the Code of Criminal Procedure (CrPC), 1973. The procedure is provided under **Sections 265A to 265L** of the CrPC.

- **Application for Plea Bargaining:** The accused must file an application for plea bargaining in the court where the trial is pending. This application should be accompanied by an affidavit stating that the accused is voluntarily seeking plea bargaining, is not doing so under duress, and fully understands the nature and extent of the plea bargaining process.
- **Examination of the Accused:** The court examines the accused in camera (in a private chamber) to ensure the application was made voluntarily.
- **Mutual Disposition:** Upon ascertaining voluntariness, the court allows the prosecution and the accused to work out a satisfactory disposition, which may include compensation and rehabilitation of the victim.
- **Report Preparation:** If a satisfactory disposition is worked out, a report is prepared and signed by all parties and the presiding officer.
- **Sentence Determination:** The court hears the parties on the quantum of the sentence, which generally will be lesser than the maximum punishment for the offence charged, and passes an order.

Scope and Applicability
The provisions of plea bargaining in India apply only to those offences for which:
- Punishment is up to a period of 7 years;
- Offences do not affect the socio-economic condition of the country;
- Offences are not committed against a woman or a child below the age of 14.

Plea bargaining is not allowed for serious crimes and those that involve a public interest component, such as offences that inflict a grave socio-economic impact, involve violence, or are committed against vulnerable sections of society.

Limitations and Exclusions
Certain offences are excluded from the purview of plea bargaining, including:
- Serious offences punishable with death, life imprisonment, or imprisonment of more than 7 years.
- Economic offences and offences against the State or public order.
- Offences committed against women and children under 14 years: Crimes such as rape, offences causing bodily harm, or offences under special statutes like the Protection of Children from Sexual Offences Act (POCSO).

Plea bargaining in India is a process that aims to provide a speedy trial and reduce the burden on courts. It allows for a compromise between the accused and the victim, subject to legal constraints and the supervising role of the court. While it is a step towards efficiency in the criminal justice system, it is also hedged with checks and balances to ensure that justice for victims and societal interests are not compromised.

7. Write short note on any two of the followings:
(a) Describe briefly the major changes introduced in the Code of Criminal Procedure by the Criminal Law (Amendment) Act, 2018.

Introduction to the Criminal Law (Amendment) Act, 2018
The Criminal Law (Amendment) Act, 2018 was enacted to amend the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), the Indian Evidence Act, and the Protection of Children from Sexual Offences Act (POCSO). This amendment was specifically aimed at introducing stringent provisions pertaining to sexual crimes, particularly rape. It came into the limelight post several high-profile cases which shook the conscience of the nation, prompting the need for harsher penalties and changes in procedural laws to ensure the swift administration of justice in cases of sexual offences.

Major Changes in the Code of Criminal Procedure

Swift Investigation and Trial
The 2018 amendment introduced a timeline for the completion of the investigation and trials in rape cases. It mandated that an investigation in rape cases must be completed within two months (Section 173), and the trial must be completed within two months from the date of filing of the charge sheet (Section 309). Additionally, any appeal against a sentence passed by the Court must be disposed of within six months.

No Anticipatory Bail for Offences against Minors
The amendment has taken away the provision of anticipatory bail in cases where the sexual offence is committed against minors under sixteen years of age (Section 438). This was introduced to prevent the accused from evading the law and to ensure that the accused is available for the trial.

Stringent Punishments for Rape
The Act has enhanced the punishment for rape under Section 376 of the IPC. The minimum punishment has been increased from seven years to ten years, which may extend to life imprisonment. Additionally, for the rape of girls under sixteen and twelve years, the minimum punishment has been increased to twenty years, and the maximum punishment can be a death sentence or life imprisonment.

Introduction of New Offences
The amendment also inserted new offences. For instance, Section 376AB was introduced for the punishment of rape of a woman under twelve years of age, with a minimum punishment of twenty years, which may extend to life imprisonment or death. Similarly, Section 376DA and 376DB were introduced to deal with gang rape on a woman under sixteen and twelve years of age, respectively.

Forensic Evidence
The amendment emphasises the use of forensic evidence to be part of the investigation. This is crucial as forensic evidence is pivotal in proving the commission of sexual offences beyond a reasonable doubt.

In camera Trial and Victim Anonymity
The amendment reinforces the mandate of in-camera proceedings to protect the victims' privacy (Section 327). It also prevents the media from publishing any information that could reveal the identity of the victim.

The Criminal Law (Amendment) Act, 2018, brought significant changes to the Code of Criminal Procedure by introducing measures aimed at ensuring the quick and effective dispensation of justice in cases involving sexual offences. It responded to the public outcry for more stringent laws to combat the rising instances of such crimes. By increasing the severity of punishments and introducing measures to expedite the investigative and judicial processes, the amendment aims to serve as a deterrent and as a means to deliver justice swiftly to the victims. These changes reflect a shift towards prioritising the rights and dignity of victims, particularly minors, in the criminal justice system of India.

7. (b) Now would a Magistrate deal with a situation when he finds that a dispute concerning a piece of land between the two parties is likely to cause a breach of peace ?

Introduction to Section 145 of the CrPC
When a Magistrate is confronted with a situation where a dispute regarding land or water is likely to cause a breach of the peace, the procedure to be followed is laid down in Section 145 of the Code of Criminal Procedure, 1973 (CrPC). This section empowers the Magistrate to address disputes which possess the imminent potential to erupt into violent conflict and are not merely of a civil nature but have substantial public order implications.

Jurisdiction and Applicability
Under Section 145, the Magistrate's preventive jurisdiction is invoked when there is credible information about a dispute likely to induce a breach of peace. The section does not resolve the merits of the claim regarding the right to possess the property but focuses on preventing a breach of peace by making an interim order regarding possession.

Procedure Under Section 145
Initial Action by Magistrate
Upon learning of such a dispute, the Magistrate must make an order in writing, stating the grounds of his concern, and require the parties concerned to attend his court and put in written statements of their respective claims.

Attachment of Subject Property
If the Magistrate considers it necessary, he may order attachment of the property under dispute until a competent court determines the rights of the parties or until the Magistrate himself comes to a decision regarding possession.

Serving of Notice
Notices are then served upon the parties, which is often done through conspicuous posting at the disputed site and by issuing individual notices to the parties, to ensure that all interested parties are informed.

Inquiry into Actual Possession
The Magistrate conducts an inquiry into the question of actual possession. This inquiry is limited to the examination of possession at the point of initial proceedings and is not an adjudication on the legal title.

Parties to Submit Documents
Both parties are called upon to submit any evidence they may have in support of their claimed possession, such as documents or affidavits.

Determination of Possession

After considering the evidence, the Magistrate will pass an order declaring which of the parties was in possession of the disputed property at the date of the order, without reference to the merits of the claims of any of the parties to a right to possess the property.

Case Laws Interpreting Section 145 CrPC
The judiciary has time and again interpreted Section 145 to clarify its scope and applicability.

Ramlal Bhargava vs. State of Rajasthan (AIR 1962 SC 424)
In this landmark case, the Supreme Court delineated the scope of Section 145, stating that the Magistrate's duty is to maintain peace rather than to adjudicate disputes regarding the title which must be left to the civil courts.

Ram Sumer Puri Maharaj vs. State of U.P. (1985 SCC (Cri) 127)
Here, the Court emphasised that Section 145 applies to cases of emergency where the urgency of the situation does not allow the leisurely adjudication of the rights of the parties involved.

The role of the Magistrate under Section 145 CrPC is essentially that of a peacekeeper rather than a judge of disputes. The procedure is designed to act quickly and effectively to preempt breaches of peace arising from disputes over property possession. The Magistrate's order under this section is subject to a final determination by a competent civil court, which is where the parties can pursue the resolution of their rights and interests in the property in dispute.

7. (c) A public servant was charged under Section 409 IPC. Facts constituting the charge also made out an offence under Section 420 IPC but he was not charged for this offence. Can he be convicted for this offence? Support your answer with decided cases?
[20*2=40 Marks]

Legal Framework of Section 409 and Section 420 IPC
Before delving into the legal intricacies of convicting a public servant under Section 420 of the Indian Penal Code (IPC) when charged under Section 409, it is crucial to understand the statutes. Section 409 IPC pertains to Criminal Breach of Trust by a public servant, or by banker, merchant or agent, and carries a higher penalty due to the position of trust and authority a public servant holds. On the other hand, Section 420 IPC deals with Cheating and Dishonestly Inducing Delivery of Property, which encompasses a broader spectrum of fraudulent activities, including those that can be committed by a public servant.

Judicial Interpretation of Conviction Under Uncharged Offences
The principle question in this context is whether a public servant charged under Section 409 IPC can be convicted for an offence under Section 420 IPC without the latter being explicitly mentioned in the charge.

The Indian judiciary has grappled with such legal questions in various landmark cases. The legal possibility of such a conviction without a charge is covered under Section 222 of the Code of Criminal Procedure, 1973 (CrPC), which allows for conviction for an offence with which the accused is not charged if the facts presented in the case are such that if proved, they would also make out another offence.

Landmark Case Laws

Legal Doctrine:

Misra Rangaswami vs. State of Madhya Pradesh (AIR 1950 SC 124):

- **Doctrine Applied:** Conviction of an uncharged offence permissible.

- **Facts & Decision:** In this case, the accused was charged under Section 409 IPC but not under Section 420 IPC. However, the Supreme Court held that if the facts established an offence under Section 420 IPC, the accused could be convicted for the same, notwithstanding the absence of explicit charges under this section.

Willie (William) Slaney vs. State of Madhya Pradesh (AIR 1956 SC 116):

- **Doctrine Applied**: Principle of alterative charge and conviction.
- **Facts & Decision:** This ruling reiterated that if the basic facts constituting the offence charged are the same as those constituting the offence of which the accused is found guilty, the absence of a charge for the latter offence will not be fatal.

Joginder Singh vs. State of Punjab (AIR 1979 SC 339):

- **Doctrine Applied:** Conviction on the basis of facts constituting different offences.
- **Facts & Decision:** The court reaffirmed that an accused can be convicted for an offence which is made out from the facts, even if he has not been charged for it, provided it is closely connected with the offence charged.

Applicability of Doctrine to the Present Scenario:
Given the judicial precedents, it is clear that a public servant can indeed be convicted of Section 420 IPC, even if they were not explicitly charged with it, provided the facts established in the charge under Section 409 IPC also constitute the essentials of cheating as required under Section 420 IPC.

Conviction under Section 420 IPC when Charged under Section 409 IPC
Based on the established legal doctrine and judicial interpretations, there is a definitive pathway for the conviction of a public servant under Section 420 IPC even if the charge was only for Section 409 IPC. The courts have maintained that the crux lies in the fact whether the set of facts which constitute the charge under Section 409 also delineate the offence under Section 420 IPC. The key requirement is that the factual matrix should be such that the ingredients of the offence under Section 420 are fulfilled.

The cases highlighted provide a judicial precedent and showcase the judiciary's approach to dealing with charges and convictions for multiple offences based on a singular set of facts. The courts uphold the principle that the precise legal classification of charges is secondary to the factual essence of the offence.

In practical application, the decision to convict under an uncharged offence would involve a careful and detailed examination of the facts of the case, ensuring that the rights of the accused are not infringed upon by any means and that the principles of natural justice are upheld throughout the legal proceedings.

SECTION - C

8. (a) Define 'Evidence'. Discuss the relationship of the Law of Evidence with substantive and procedural law. [10 Marks]

Definition of 'Evidence': Section 3
In legal terms, 'Evidence' refers to the means through which alleged matters of fact, the truth of which is submitted to scrutiny, are established or disproven in a court of law. The term encompasses a broad range of material that may be presented in a legal proceeding to prove or disprove the existence of an alleged fact. Evidence includes but is not limited to:

- Testimony of witnesses
- Documents
- Material objects
- Statements
- Forensic reports
- Audio-visual materials

The Indian Evidence Act, 1872, which governs the admissibility and relevance of evidence in Indian courts, defines evidence as including all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence. All documents including electronic records produced for the inspection of the court are referred to as documentary evidence.



Relationship of the Law of Evidence with Substantive and Procedural Law
The law of evidence stands at an intersection between substantive and procedural law, facilitating the application of the former and governing the mechanics of the latter.

Substantive Law
Substantive law defines the rights and duties of people and collective bodies. It includes all laws that set out the rights and responsibilities of individuals and collective entities. Substantive laws determine the kinds of facts that need to be proved for a party to prevail in litigation. For instance, substantive criminal law will define the elements that constitute a crime, such as the 'mens rea' (guilty mind) and 'actus reus' (guilty act) in a murder case.

The law of evidence aids in proving or disproving the constituent elements outlined in substantive law. It delineates what can be presented in court to establish the facts required by substantive law. For example, in a murder case, substantive law requires the prosecution to prove that the accused caused the death of the victim with a guilty intent. The evidence law would determine what testimony, documents, or forensic results could be presented to show this intent and causation.

Procedural Law
Procedural law comprises the set of rules that govern the proceedings by which courts apply substantive law to cases. It deals with the methods and means by which substantive law is made and administered. Here, evidence law acts as a guide to ensure that the process of fact-finding is fair, reliable, and effectively administers justice.

Evidence law provides the rules for how facts are to be proved in court. It sets out the procedure for admitting testimony, introducing documents, and the examination and cross-examination of witnesses. It also includes rules concerning the burden of proof, the standard of proof, and the presumption of facts.

In summary, while substantive law states what facts must be proved, evidence law is concerned with how those facts must be proved. Evidence law cannot operate in isolation; it requires the context of substantive law to be meaningful. Conversely, substantive law without evidence law would be toothless, as there would be no mechanism to prove the necessary elements of a legal

claim or defence. The three bodies of law—substantive, procedural, and evidence—thus work in concert, forming the foundation for the functioning of the legal system.

Thus, the law of evidence plays a pivotal role in both the substantive and procedural aspects of legal proceedings. It serves as the bridge between the established legal norms that dictate which facts need to be proven (substantive law) and the legal mechanisms that control how a trial is conducted (procedural law). The nuanced interplay among these branches of law underscores the complexity and dynamic nature of the legal system. Understanding the law of evidence is crucial for legal practitioners as it directly influences the efficacy of justice delivery and upholds the principles of fair trial and due process.

8.(b) What is the difference between burden and onus? What are presumptions in the case of burden of proof as to ownership and proof of good faith? [10 Marks]

In legal terminology, 'burden of proof' and 'onus of proof' are fundamental concepts that pertain to the obligation of parties to prove their assertions in a legal dispute. While they are often used interchangeably, they have distinct legal meanings and applications within the context of trials.
Table Illustrating the Difference between Burden and Onus

Aspect	Burden of Proof	Onus of Proof
Definition	A party's duty to prove a disputed assertion or charge.	The responsibility to prove a particular point at a particular time during a case.
Nature	Static – remains on one party throughout the case.	Dynamic – shifts from one party to another during the trial.
Legal Implication	Determines who must prove a fact.	Determines who must present evidence next.
Determination	Decided based on substantive law.	Dictated by the burden of proof and can change based on the evidence produced.
Failure to Discharge	Results in the loss of the case on that issue.	Leads to the shift of onus to the other party or may result in judgment if it is the final onus.

Burden of Proof as to Ownership
When it comes to the burden of proof as to ownership, the legal presumption often is that the person who is in possession is presumed to be the owner. It is then upon the challenger to prove otherwise.

Legal Presumptions Relating to Ownership

- **Presumption of Continuity**: Once it is shown that a person was in possession of something at a certain time, it is presumed to continue in the absence of proof to the contrary.

- **Presumption of Ownership**: When possession can be explained only by ownership, the presumption is that the possessor is the owner.

Presumptions in the Case of Burden of Proof as to Good Faith
Good faith, referred to as 'bona fides', is a concept that refers to honest intent in transactions. The presumption here is usually in favour of good faith.

Presumptions Relating to Good Faith
- **Presumption of Innocence:** In civil matters, courts generally assume transactions are made in good faith.
- **Rebuttable Presumption:** This presumption can be rebutted if evidence to the contrary is strong enough to demonstrate the transaction was not made in good faith.

Case Laws on Burden and Onus
The principles of burden and onus have been extensively discussed in case law, providing a nuanced understanding of their application.

Addanki Narayanappa & Anr vs. Bhaskara Krishnappa & Ors (1966 AIR 1300)
In this case, the Supreme Court discussed the burden of proving the existence of a partnership and the contributions made by the partners, underlining that the burden lies on the person who asserts the affirmative of the issue at hand.

R.B. Ramalingam vs. R.B. Bhavaneshwari (2009 1 SCC 374)
Here, the Apex Court held that the burden of proving that a will was executed without undue influence rests upon the person who takes a benefit under the said will.

The distinction between 'burden of proof' and 'onus of proof' is significant and impacts the strategy and direction of a trial. Burden of proof pertains to the overall responsibility to establish a claim or defence, while onus of proof is the tactical duty to introduce evidence at a particular stage in proceedings. In the context of ownership and good faith, presumptions play a critical role, often tipping the scales in favour of one party until sufficiently countered by evidence. Understanding the interplay between these concepts is crucial for legal practitioners in presenting their case effectively.

8.(c) Discuss the law relationship to digital signatures as provided in Indian Evidence Act. [10 Marks]

Introduction to Digital Signatures in Indian Law
The advent of digital technology has fundamentally altered the way we communicate and transact. Recognizing the importance of adapting legal frameworks to this digital reality, Indian law has addressed the concept of digital signatures to ensure that electronic records are authenticated and secure. The Indian Evidence Act, 1872, as well as the Information Technology Act, 2000, create the legal context within which digital signatures operate.

Legal Recognition of Digital Signatures

Information Technology Act, 2000
The Information Technology Act, 2000 (IT Act) is the primary law in India that deals with electronic commerce and cyber activities. This Act provides the legal recognition of digital signatures and has specific provisions concerning their use. According to Section 2(1)(ta) of the IT Act, a digital

signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

The Indian Evidence Act, 1872
The Indian Evidence Act, 1872 (Evidence Act), has been amended to include provisions related to electronic records and digital signatures, thereby incorporating them within the scope of 'evidence'. Section 3 of the Evidence Act defines evidence to include electronic records authenticated by digital signatures.

Authentication of Electronic Records
Under Section 85B of the Evidence Act, Courts shall presume the authenticity of electronic records signed with a digital signature. The Act implies that when a digital signature is used, there is a presumption of genuineness unless the contrary is proved. This means that documents with a digital signature are assumed to be unaltered and secure from the time of signing unless evidence is presented to dispute this claim.

Admissibility of Digital Signatures

Section 65B of the Evidence Act
This section deals with the admissibility of electronic records. It mandates that for electronic records to be admissible, certain criteria need to be met. If an electronic record is duly signed with a digital signature, it satisfies the conditions for admissibility as it ensures the integrity of the record from the point of its creation.

Provisions for Secure Digital Signatures
The IT Act specifies conditions under which a digital signature is considered secure. Section 15 of the IT Act lays down that a digital signature will be deemed secure if, at the time of affixing the signature, it was:

- Unique to the subscriber
- Under the exclusive control of the subscriber
- Capable of identifying the subscriber
- Linked to the electronic record in such a manner that if the record was changed, the digital signature would be invalidated

Evidentiary Value of Digital Signatures
Digital signatures are given considerable evidentiary value under the IT Act and the Evidence Act. Section 85A of the Evidence Act establishes that the Court shall presume that any information transmitted with a secure digital signature is a valid electronic agreement.

The legal framework in India, comprising primarily the Information Technology Act and the Indian Evidence Act, provides a comprehensive approach to digital signatures. These laws ensure that digital signatures are afforded the same legal status and evidentiary value as physical signatures traditionally have been. By doing so, the Indian legal system acknowledges and adapts to the evolving landscape of digital communication and commerce, thereby providing a secure and reliable means of conducting transactions electronically. This legal recognition and the detailed framework underscore the commitment to maintaining authenticity, integrity, and non-repudiation of electronic documents and records, which are the hallmark of digital transactions today.

8.(d) ‘A’ a woman whose throat had been cut by some sharp edged weapon indicated by gesture before her death that 'B' was the person who has cut her throat. Is this statement of 'A' made by gestures admissible as evidence against 'B'? [10 Marks]

Introduction to Dying Declaration
In the realm of evidence law, a statement made by a person at the brink of their death concerning the cause and circumstances leading to their death is termed a 'dying declaration'. This type of evidence is admissible under certain legal frameworks due to the principle that a person who is facing imminent death is unlikely to lie (‘nemo moriturus praesumitur mentire’).

Legal Framework for Dying Declarations
In Indian law, the admissibility of a dying declaration is codified under **Section 32(1)** of the Indian Evidence Act, 1872. This provision recognizes the validity of statements made by a person who believes death to be imminent, concerning the cause or circumstances of the alleged lethal assault upon them.

Gesture as Dying Declaration
When the dying declaration is not verbal but made through gestures, it is pertinent to consider whether such non-verbal communication holds the same evidentiary value as a spoken or written statement.

Admissibility of Gestural Dying Declaration
Case Law: Queen-Empress v. Abdullah (1885 ILR 7 All 385)
In this case, the court recognized that signs and gestures made by a person unable to speak, in response to questions, could be admitted as evidence. It was observed that if the gestures were distinctly made in answer to questions concerning the identity of the assailant, they could indeed constitute a dying declaration.

Evaluation by the Court
For a gesture to be admissible as a dying declaration, the court must be satisfied that:

- **Imminence of Death:** The declarant was under a settled hopeless expectation of death.
- **Pertinence to Crime:** The gestures were directly related to the circumstances and cause of the crime.
- **Cognition and Comprehension:** The declarant was cognizant and capable of understanding the nature of their actions when making the gestures.
- **Reliability**: The gestures were interpreted by someone who accurately comprehended the declarant's communication.
- **Voluntariness**: The declarations were made voluntarily and without coercion.
- **Corroboration**: While not mandatory, courts may look for corroboration of the gestural dying declaration with other evidence.

Evidentiary Challenges
While gestural dying declarations are admissible, they present unique evidentiary challenges. The interpretation of gestures is more subjective and can lead to questions about the accuracy of the communication. Therefore, the courts must exercise caution and consider:

- Clarity of Communication: Were the gestures clear and unambiguous?
- Interpretation: Was the interpretation of the gestures reliable and conducted by a person who understood the declarant well?
- Absence of Leading Questions: Were the gestures made in response to leading questions that could have influenced the nature of the response?

Decision
If 'A's gestures indicating that 'B' had attacked her were clear, unequivocal, and in response to questions regarding her attacker, these gestures can be admitted as a dying declaration. The court would then evaluate this piece of evidence in the totality of other evidence available. It is imperative that the authenticity and reliability of the interpretation of such gestures are established beyond reasonable doubt. The credibility and admissibility of these gestures as evidence against

'B' would depend on the careful scrutiny of the circumstances in which the gestures were made and their interpretation by the witnesses present.

9.(a) When a witness is cross-examined, what other questions can be asked in addition to the questions relating to the incident? [15 Marks]

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Subject Wise Notes	Legal Doctrines
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Weekly Current Affair	Subject Wise Prelims PYQ Solut
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Conceptual Framework

Cross-examination is a critical stage in any trial, where the credibility, observation, and memory of a witness are tested. While the primary focus of cross-examination is often the incident in question, the scope is not confined strictly to the facts of the incident as narrated by the witness during examination-in-chief. The Evidence Act, 1872, under Section 138, provides for the scope of cross-examination, which can be wide-ranging and encompass various aspects beyond the incident itself.

Extending Beyond the Incident

1. Credibility of the Witness:

- **Impeachment of Credit:** Questions aimed at impeaching the credit of the witness according to the provisions of the Act under Sections 155 to 157, which involve questions related to character, previous inconsistent statements, or bias.

2. Motive, Preparation, and Previous Statements:

- **Motive and Interest**: Exploring the witness's motive, interest, or bias in the outcome of the case.
- **Prior Inconsistent Statements:** Inquiry into any prior statements that may be inconsistent with the current testimony.
- **Preparation**: Investigating the extent to which the witness has been prepared or coached.

3. Capacity to Observe and Recall:

- **Perception:** Questions relating to the witness's ability to perceive the events in question.
- **Recollection**: Probing the accuracy of the witness's recollection and memory of events.

4. Character and Reputation:

- **Character Evidence**: Inquiry into the character of the witness, if relevant to the case.
- **Reputation**: Questions about the reputation for truthfulness in the community.

5. Qualifications:

- **Expertise:** If the witness is an expert, their qualifications and the basis of their opinion can be questioned.
- **Competence**: The general competence of the witness to provide testimony.

6. Contradiction and Impeachment:

- **Contradiction by Other Evidence:** The introduction of evidence that contradicts the witness's testimony.
- **Impeachment by Criminal Record:** If applicable, reference to past criminal records to impeach the witness's credibility.

7. Corroboration:

- **Absence of Corroboration:** Highlighting the lack of corroboration for the witness's testimony.
- **Discrepancies in Statements:** Pointing out discrepancies in the witness's statements to weaken the testimony.

Legal Provisions and Restrictions

While cross-examination provides a broad field for questioning, it is not without legal limitations. The Evidence Act, Section 146, imposes restrictions on asking indecent and scandalous questions, except when they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Case Law Illustrations

- ***R v. Browne (1895-9 ALL ER 150)***: This case sets out the principle that cross-examination should be confined to the relevant issues of the case, but can also extend to matters that test the credibility and reliability of the witness.
- ***Zahira Habibulla H. Sheikh and Anr vs State Of Gujarat and Ors (2004 4 SCC 158):*** This case is a poignant example of the significance of cross-examination, where the Supreme Court of India emphasised the importance of cross-examination in discerning the truth.

In conclusion, cross-examination is an art that balances between thoroughness and legal propriety, aiming not only to address the facts of the incident but also to provide a comprehensive evaluation of the witness's testimony. The examiner is at liberty to venture into various areas that can establish the improbability of the incident as narrated, the unreliability of the witness, or the possibility of tainted testimony, all within the bounds of the law. Thus, cross-examination is a potent tool in the adversarial system, designed to serve the ends of justice by allowing the truth to emerge through rigorous testing of the evidence presented.

9.(b) How would the court decide that a particular question is proper or improper ? [15 Marks]

Introduction to the Admissibility of Questions in Court

The admissibility and propriety of questions during court proceedings are governed by a complex set of rules and principles outlined in procedural and evidence law. Courts decide whether a particular question is proper or improper by considering various factors, including relevance, materiality, the Rules of Evidence, and legal precedents.

Criteria for Deciding the Propriety of Questions

Relevance

One of the primary considerations for a court in determining the propriety of a question is its relevance. A question must relate directly to the issues being decided in the case. The Indian Evidence Act, 1872, specifically sections 5 to 55, details the aspects of relevancy of facts.

Materiality

A question is considered material if it seeks to establish facts that are significant to the outcome of the case. Materiality is distinct from relevance in that it deals with the question's significance in the context of the legal issues at hand.

Rules of Evidence
Courts refer to the established rules of evidence, which include provisions regarding examination of witnesses, to determine the appropriateness of questions posed. For instance, leading questions, which suggest the answer, may be improper during the examination-in-chief but may be allowed during cross-examination.

Prejudicial Nature
A question may be deemed improper if it is prejudicial or likely to introduce bias or affect the fairness of the trial. Questions that might inflame, mislead, or distract the jury or decision-maker from the main issues are generally disallowed.

Harassment or Embarrassment
Questions that are intended to harass, embarrass, or unduly pressure a witness may be ruled out of order. The dignity of the witness stand is to be maintained, and any question that compromises this may be considered improper.

Speculative or Hypothetical
Courts often disfavour questions that are overly speculative or hypothetical, especially if they do not have a basis in the evidence already presented and are not directly related to the case.

Legal Prohibitions
Certain questions may be prohibited by law. For example, questions that seek privileged communication, such as that between an attorney and client, are typically impermissible unless the privilege is waived.

Judicial Discretion
Judges have considerable discretion in determining the propriety of questions. They assess whether the question advances the interests of justice and aids in the discovery of truth. Judges often have to balance the probative value of the evidence against potential prejudicial effects.

Process of Decision
When an objection is raised regarding the propriety of a question, the judge may ask for arguments from both sides. The judge will consider the objection in light of the laws and principles governing the proceedings and will either sustain the objection (ruling the question improper) or overrule it (allowing the question to be answered).

Determining the propriety of a question in court involves an evaluation of its relevance, materiality, conformity with the rules of evidence, and its potential for prejudice or harassment. The judge's role is crucial in this assessment, ensuring that the questioning contributes to the fair and efficient administration of justice. Each question's evaluation is case-specific, with the overarching goal of ascertaining the truth while upholding the integrity of the judicial process. Judges, therefore, must apply a rigorous legal analysis and draw upon their experience and wisdom in guiding the proceedings appropriately.

9.(c) A woman prosecutes a man for picking her pocket, can this question that she had given birth to an illegitimate child ten years before he asked ? Answer with reasons. [10 Marks]

Introduction to Impeachment of Witness Credibility
In legal proceedings, impeaching a witness refers to the process of questioning the credibility and reliability of that witness's testimony. The objective of impeachment is to diminish the trustworthiness of the witness's statements in the eyes of the judge or jury. However, there are rules that restrict the scope and nature of evidence that can be introduced to impeach a witness to ensure fairness and relevancy to the issues at hand.

Legal Provisions Governing Impeachment
Under the Indian Evidence Act, 1872, particularly Sections 146 and 148, the credibility of a witness may be impeached by the cross-examining party through various means, but these methods are not unlimited. The cross-examination must deal with relevant facts, and character attacks unrelated to the case are generally not permissible.

Relevancy and Propriety of the Question
Asking a woman in a trial about the birth of an illegitimate child a decade prior would typically fall under character evidence, which is only relevant in certain contexts. For the case of pocket picking, the past conduct of the woman concerning the birth of a child does not have a direct bearing on her credibility as to the facts of the theft. The Indian Evidence Act provides guidance on when such evidence may be deemed relevant:

Section 155: This section allows for the credibility of a witness to be impeached by the adverse party or, with the court's permission, by the party who calls the witness, in certain circumstances which may include previous convictions or bad character when it is relevant to the case.

Section 14 and 15: These sections relate to the admissibility of evidence concerning the facts that show the existence of any state of mind or body or bodily feeling, which can be relevant when the state of mind or body or bodily feeling is in issue or relevant. However, the fact that the woman had given birth to an illegitimate child ten years ago does not pertain to any relevant state of mind in a theft case.

Application of the Law to the Given Situation
In the described scenario, the woman is a witness to an alleged pocket picking. Her credibility as a witness relates to her ability to perceive, remember, and recount the events surrounding the alleged crime. The question regarding her having an illegitimate child does not relate to these abilities and is therefore not relevant to her credibility in the context of this case.

Case Law Illustration: The Indian judiciary has consistently held that evidence that is scandalous and offensive yet irrelevant to the issues of the case must not be permitted. The cross-examination should not be allowed to degenerate into a weapon of harassment or persecution.

Decision
In light of the above discussion, it is clear that the question concerning the birth of an illegitimate child is not only irrelevant to the case of pocket picking but is also prejudicial and potentially scandalous. It serves no purpose in establishing the veracity of the woman's testimony regarding the specific incident of alleged theft and is therefore not admissible for the purpose of impeachment. Such a line of questioning would likely be prohibited by the court as it infringes upon the witness's right to dignity and has no bearing on the factual matter being adjudicated.

10.(a) 'Silence may sometimes amount to an admission'. Explain. [10 Marks]

The Notion of Silence in Legal Jurisprudence
Silence, in legal terms, isn't typically considered an overt act of communication. However, under certain circumstances, silence or failure to respond to an allegation can, indeed, be taken as an

admission, especially within the ambit of the Indian Evidence Act, 1872. This interpretation of silence hinges on the context and the expectations of a reasonable response under those circumstances.

Legislative Anchor: Indian Evidence Act, 1872
Under Section 17 of the Indian Evidence Act, an "Admission" is defined as a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact. Although the Act does not explicitly categorise silence as an admission, the concept has been expounded through judicial interpretation.

Judicial Exegesis on Silence as Admission

1. Situational Context of Silence:

- **Implied Admission:** In certain scenarios, silence or non-denial by a person against whom a claim is made may be construed as an admission, especially if the context reasonably expects a denial or refutation.

2. Legal Presumptions:

- **Presumption Under Law:** The Evidence Act under Section 114 allows the court to draw a presumption that silence may amount to an admission where the circumstances warrant such an inference.

3. Relevance of Conduct:

- **Section 8 of the Evidence Act: T**his section deals with the conduct of any party, or of any agent to the party, to any suit or proceeding. The conduct can be considered relevant if such conduct influences or is influenced by any fact in issue or relevant fact. Silence, as a form of conduct, can be relevant under this section in certain circumstances.

Illustrative Case Law

- **Nishi Kant Jha vs State Of Bihar (AIR 1969 SC 422):** In this case, the silence of the accused in response to the questions posed by the prosecution was deemed to be an implied admission of guilt under certain circumstances.
- **State Of Punjab vs Gurmit Singh (1996 AIR 1393):** The Supreme Court observed that mere silence by itself may not be taken as proof of guilt, but the context in which the silence is maintained can sometimes be revealing.

Evaluating the Nature of Silence
The inference of admission from silence depends on a variety of factors:

- **Nature of Allegations:** The more serious the allegation, the more likely it is that a reasonable person would respond if innocent.
- **Relationship between Parties:** The closer the relationship, the more likely it is that silence could be interpreted as an admission.
- **Prior Expectations:** If there's an expectation based on prior conduct or legal duty to speak or respond, silence can be more readily seen as admission.
- **Circumstantial Evidence**: Surrounding circumstances play a crucial role in interpreting silence. For instance, silence in the face of accusations made in the presence of others may carry different implications than when made privately.

The Doctrine of Estoppel
Silence can also relate to the doctrine of estoppel, particularly when a person, by their declaration, act, or omission, has induced another to believe in a certain state of things and act upon such belief. The person may be estopped from denying the truth of the statement if the other party has relied upon it.

The treatment of silence as an admission is nuanced and must be assessed on a case-by-case basis, taking into account all pertinent circumstances. It is not a hard and fast rule but rather a permissible inference, which the judiciary may or may not choose to adopt, depending on the context. The law is mindful that silence can be multifaceted, influenced by cultural, psychological, and situational factors. Therefore, while silence can be indicative, it is not definitive and must be corroborated by other evidence to substantiate any implied admission.

10.(b) The question is, whether 'A' robbed *B'. The fact is that after 'B' was robbed . 'C' said in 'A's presence "the police are coming to look for the man who robbed 'B'" and then immediately afterwards 'A' ran away. Decide the relevancy by giving reasons. [10 Marks]

Introduction to the Relevancy of Facts
The question of relevancy is central to the adjudication of facts in legal proceedings. Under the Indian Evidence Act, 1872, the concept of relevancy is encapsulated in Section 6 and the surrounding sections, which deal with facts that form part of the same transaction and are admissible as 'Res Gestae'.

Section 6 of the Indian Evidence Act, 1872: 'Res Gestae'
Section 6 states, "Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places." Therefore, the statement made by 'C' and the subsequent action of 'A' could be considered relevant if they are seen as part of the same transaction relating to the event of 'B' being robbed.

Analysis of the Relevant Facts
In the given scenario, two key events need to be examined to determine relevancy:

- **C's Statement**: 'C' stated, "the police are coming to look for the man who robbed 'B'", which is a direct reference to the crime under question.
- **A's Reaction:** Immediately after 'C's statement, 'A' ran away.

Reasons for Relevancy

Proximity to the Event
'A's reaction happened immediately after 'C's statement, indicating a temporal and situational proximity to the mention of the robbery. This proximity can make the reaction relevant as part of the transaction.

Consciousness of Guilt
The fact that 'A' ran away immediately after 'C' mentioned the police were coming for the robber could be argued to show 'A's consciousness of guilt. Running away in this context could be construed as an implied admission of guilt, or at least an awareness of a guilty act.

Conduct as Evidence
Under Section 8 of the Indian Evidence Act, the conduct of a person against whom an offense is alleged can be relevant if such conduct influences or is influenced by a fact in issue or relevant fact. 'A's decision to run away in response to 'C's statement could be considered relevant conduct.

Opportunity for Explanation
The presence of 'A' when 'C' made the statement provided 'A' with an opportunity to speak or act. 'A's choice to flee rather than deny the accusation or behave indifferently can be deemed relevant as it is indicative of 'A's state of mind regarding the accusation.

Decision on Relevancy

Based on the principles laid down in the Indian Evidence Act, 'A's reaction to 'C's statement is relevant to the inquiry of whether 'A' robbed 'B'. While 'A's act of running away is not direct evidence of the robbery, it is circumstantially connected to the crime and could be seen as indicative of 'A's consciousness of guilt. As such, it is a relevant fact that can be admitted into evidence. However, it must be noted that this piece of evidence, like all circumstantial evidence, must be considered in the context of the entire body of evidence presented. The fact that 'A' ran away does not, on its own, conclusively prove that 'A' committed the robbery, but it may contribute to a mosaic of evidence that points to 'A's guilt or innocence. The weight and effect of this evidence would be for the court to determine in the context of all other facts presented during the trial.

10.(c) Discuss what are the facts which must be taken notice of and what are the facts which need not be proved as per Indian Evidence Act, 1872. [20 Marks]

Introduction to Judicial Notice and Facts Not Requiring Proof
Under the Indian Evidence Act, 1872, the concept of 'judicial notice' allows courts to recognize certain facts as so notorious or well-established that they do not require formal proof. This concept is enshrined in Sections 56 and 57 of the Act. These sections delineate the types of facts that a court is mandated or permitted to take judicial notice of, thus exempting such facts from the usual requirement of proof through evidence.

Facts Requiring No Proof (Judicial Notice)
Section 57 of the Indian Evidence Act, 1872 specifies the facts that courts must take judicial notice of, which include, but are not limited to, the following:

- **Laws in Force:** The court must take notice of all laws in force in the territory of India, including regulations and enactments.
- **Articles of War for the Armed Forces:** The court shall regard the Articles of War for India's armed forces as a matter that needs no proof.
- **Course of Proceedings of Parliament:** Facts concerning the course of proceedings of Parliament and the legislatures established under any laws, such as the rules of business, are generally known and recognized without evidence.
- **Seal of State:** The court shall recognize the seals of all the courts of India without the need for formal proof.
- **Accession and Rules of Sovereigns**: Recognition of who is the sovereign ruler, the commencement, continuance, and termination of their reign, and their relationships between sovereigns and states.
- **Official Gazette Publications:** Matters published in the Official Gazette of India, such as notifications, rules, by-laws, and regulations, are to be noticed judicially.
- **Laws of Nature:** The existence and principles of laws of nature, which are so well-known that they are expected to be known by everyone.
- **Geographical Divisions:** The territorial divisions of the world, including international boundaries and principal political divisions.
- **Commencement of the Act:** The court shall take notice of the date of commencement of the Indian Evidence Act.
- **Notable Days and Events:** Dates and events such as national holidays, and religious observances widely recognized across India.
- **Customs and Usages:** Commonly known customs and usages should be judicially noticed, though local customs may require specific proof.
- **Judgments**: The court shall take judicial notice of its own records and the records of courts subordinate to it in accordance with the provisions of the law.

Facts That Need Not Be Proved
Apart from judicial notice, certain facts are considered so well-known that they do not need to be proved. These include:

- **Facts Admitted by Parties**: Under Section 58, any fact admitted by a party to the proceedings or their agent need not be proved. Admission can be by pleadings, affidavits, or in the course of hearings.
- Facts of Common Knowledge: Facts that are so universally known that they cannot reasonably be the subject of dispute.
- **Facts Recognized by La**w: Facts that are recognized by the law of the land as conclusive evidence of certain matters, such as official documents and records of the courts.

Hence, the Indian Evidence Act establishes a clear framework for recognizing certain categories of facts that are not in need of proof, thus facilitating the administration of justice by saving time and resources. The court's ability to take judicial notice ensures that judicial proceedings are not encumbered by the need to prove what is already plainly known or universally acknowledged. For the smooth conduct of trials, it is essential for the judiciary to exercise the power to take judicial notice judiciously and in accordance with established legal principles.

