



UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

SYLLABUS

2. Universal Declaration of Human Rights, 1948.

Q1. Discuss the salient features of Universal Declaration of Human Rights. [2024, 2023, 2013]

OR

Q2. Explain the utility, scope and ambit of Universal Declaration of Human Rights. [2022]

OR

Q3. Critically explain the utility of the Universal Declaration of Human Rights, 1948 with reference to Indian scenario. [2017]

Answer: -

FEATURES OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

1. Preamble

- The **Preamble** explains the historical and social reasons that made drafting the UDHR necessary.

2. Basic Concepts

- **Articles 1–2** establish the key principles of **dignity, liberty, and equality** for all human beings.

3. Other Rights

- **Articles 3–5** outline individual rights, such as the **right to life** and the prohibition of **slavery and torture**.

4. Legality and Remedy

- **Articles 6–11** emphasize the importance of the **rule of law** and provide specific remedies for protecting human rights when they are violated.

5. Social Rights

- **Articles 12–17** detail individual rights in relation to the community, including:
 - **Freedom of movement and residence** within each state.
 - **Right to property.**



- **Right to a nationality.**

6. Constitutional Rights

- **Articles 18–21** guarantee **constitutional liberties** and freedoms, such as:
 - **Freedom of thought, opinion, expression, religion, and conscience.**
 - **Peaceful association.**
 - **Right to share and receive information through any media.**

7. Economic, Social, and Cultural Rights

- **Articles 22–27** protect rights like:
 - **Healthcare.**
 - **Adequate standard of living.**
 - **Special care for mothers and children.**

8. Means of Exercising Rights

- **Articles 28–30** explain:
 - How these rights can be exercised.
 - Where individual rights may have limitations.
 - The **duties of individuals** toward society.
 - The prohibition of using rights against the purposes of the **United Nations**.

SCOPE AND AMBIT OF UDHR

The UDHR applies universally and comprehensively, covering a broad range of rights and freedoms.

1. Universality

- Applies to **all human beings** regardless of nationality, race, sex, language, religion, or political opinion.

2. Comprehensiveness

- Includes **civil, political, economic, social, and cultural rights**.

3. Inalienability

- Rights cannot be taken away, except in specific situations according to **due process**.

4. Interdependence

- Rights are **interconnected**, meaning that the realization of one right often depends on others.



5. Individual and Collective Rights

- Protects both **individual rights** and the rights of **groups and communities**.

6. Civil and Political Rights

- Covers fundamental rights like:
 - **Right to life, liberty, and security.**
 - **Freedom of speech, assembly, and association.**

7. Economic, Social, and Cultural Rights

- Includes rights to:
 - **Education.**
 - **Healthcare.**
 - **Work and fair conditions.**
 - **Adequate standard of living.**

8. Protection from Discrimination

- Prohibits discrimination based on race, color, sex, language, religion, nationality, or other status.

9. Protection from Abuse of Power

- Limits government power to prevent **arbitrary arrest, detention, and torture**.

10. Right to Participation

- Ensures the right to **participate in government, public life, and cultural activities**.

11. Right to Asylum

- Recognizes the right to **seek asylum** from persecution.

12. Right to Education

- Highlights the importance of **education** for human development.

13. Right to Work and Social Security

- Protects the right to **work, fair conditions, and social security**.

14. Right to Health and Well-being

- Guarantees the right to **healthcare** and a **decent standard of living**.

15. Right to Cultural Life

- Ensures participation in cultural life, enjoyment of the arts, and access to scientific progress.



Who Does the UDHR Apply To?

1. All States and Governments

- The UDHR applies to all governments and authorities worldwide.

2. All Individuals and Groups

- Protects the rights of all people, including **vulnerable populations**.

3. All Situations and Contexts

- Applicable during **peace, war, and emergencies**.

4. All Aspects of Life

- Covers rights from **birth to death**.

UTILITY OF UDHR

The Universal Declaration of Human Rights (UDHR) is a **landmark document** that laid the foundation for universal human rights. Its importance can be assessed through its wide-ranging impact and utility:

1. Milestone in Human Rights History

- The **first global document** recognizing all humans as **free and equal**, regardless of sex, color, creed, or religion.
- It represents a **universal consensus** on the inherent dignity and rights of individuals.

2. Influence on National Laws and Policies

- The UDHR has shaped human rights legislation in numerous countries, influencing their **legal and policy frameworks**.
- For instance, **India's Constitution** was significantly influenced by the UDHR, with **Part III (Fundamental Rights)** and **Part IV (Directive Principles of State Policy)** closely resembling its provisions.

3. Foundation for International Human Rights Law

- The UDHR has inspired over **70 human rights treaties** and **more than 80 international agreements** like declarations, conventions, and constitutional provisions.
- Example: The **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** with **182 parties** was built on UDHR principles.
- It is a cornerstone of **modern international human rights law**, forming the basis for treaties applied globally and regionally.

4. Symbolic and Inspirational Role

- The UDHR symbolizes a global commitment to **human rights and dignity**.



- It serves as a **guide and inspiration** for individuals, organizations, and governments to protect human rights.

5. Advocacy, Awareness, and Education

- The UDHR provides a framework for **activists and advocates** to hold governments accountable.
- It acts as a tool for **raising awareness** about human rights, fostering a culture of respect and protection.

6. Fostering International Cooperation

- The UDHR promotes **global cooperation** on human rights issues.
- It encourages **collaboration and collective action**, especially in addressing violations and ensuring accountability.

7. Protection of Marginalized Groups

- The UDHR emphasizes the protection of **vulnerable populations**, including women, children, and minorities.
- This focus has been instrumental in addressing systemic inequalities and ensuring equality.

8. Promoting Peace and Preventing Conflict

- By emphasizing **human rights and dignity**, the UDHR plays a role in **conflict prevention** and promoting **peaceful resolutions**.

9. Linking Human Rights with Development

- The UDHR recognizes the link between **human rights and sustainable development**, promoting **poverty reduction** and economic progress.

10. India and the UDHR

- **India's role as a signatory** highlights its commitment to global human rights.
- The Indian Constitution reflects UDHR principles, ensuring a **strong foundation for human dignity and equality** in the country.

Q4. Examine the binding effect of the Declaration on domestic system of laws. [2024, 2023, 2013]

Answer: - The **Universal Declaration of Human Rights (UDHR)** is not a **treaty**, meaning it does not create direct **legal obligations** for countries. However, its **binding effect** has been widely debated, and its influence is profound in various ways, making it a key instrument in the international human rights framework.

1. UDHR as an Expression of Shared International Values

- The UDHR is a **declaration**, not a treaty, and reflects the **fundamental values** shared by the **international community**. While it does not create legal obligations directly, it lays down the principles that most countries uphold in terms of human rights.



- It was adopted to elaborate on the **fundamental freedoms** and **human rights** referenced in the **United Nations Charter**, which is legally binding on all member states.

2. UDHR's Influence on Customary International Law

- Some argue that, through **consistent invocation** by countries over the years, the UDHR has become **binding** as part of **customary international law**.
- Customary international law refers to practices and principles that are considered binding, even without a written treaty. Due to the widespread acceptance and use of the UDHR over more than six decades, it is argued that the **Declaration's principles** have become **customary law** in many instances.

3. Legal Status and National Interpretation

- While some countries have incorporated the UDHR into their **domestic laws**, others view it as a **statement of ideals**, with no **binding provisions**.
- The status of the UDHR as a **legally enforceable document** thus varies across the world, with its influence being stronger in some regions and less so in others.

4. UDHR as a Source of Diplomatic and Moral Pressure

- Although the UDHR is not a treaty, **international lawyers** argue that it **shapes customary international law** and **provides diplomatic and moral pressure** on governments to **adhere to its principles**.
- Its application can lead to international pressure on governments that violate its articles, encouraging them to change policies or take corrective actions.

5. The UDHR and Jus Cogens

- Some scholars contend that the **UDHR** represents **jus cogens** norms in international law. Jus cogens refers to **fundamental principles** of international law that **cannot be violated** by any state.
- The **1968 United Nations International Conference on Human Rights** affirmed that the UDHR **constitutes an obligation** for all members of the international community to uphold the rights and principles enshrined in it.

6. UDHR as a Foundation for Binding Human Rights Covenants

- The UDHR served as the **foundation** for two **binding** United Nations human rights covenants:
 1. **International Covenant on Civil and Political Rights (ICCPR)**
 2. **International Covenant on Economic, Social and Cultural Rights (ICESCR)**
- These covenants elaborate on the principles found in the UDHR and are legally binding for the countries that have ratified them.

7. UDHR's Influence on Subsequent Binding Treaties



- The principles of the UDHR are reflected in various other **binding international treaties** such as:
 - **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**
 - **Convention on the Elimination of Discrimination Against Women (CEDAW)**
 - **Convention on the Rights of the Child (CRC)**
 - **Convention Against Torture (CAT)**
- These treaties directly build upon the rights outlined in the UDHR, further embedding its principles in global legal frameworks.

8. Ongoing Influence and Citation

- The UDHR continues to be widely **cited** by governments, academics, human rights advocates, and **constitutional courts**.
- It is often invoked in **legal arguments** and **human rights advocacy**, influencing both domestic and international **human rights practices**.

Conclusion:

While the **Universal Declaration of Human Rights** is not a treaty and does not impose **direct legal obligations**, its **profound influence** has shaped **customary international law**, acted as a foundation for legally binding treaties, and provided a framework for international **human rights** enforcement. Its principles have become so widely accepted that many legal scholars consider them to be **jus cogens** norms, binding all states. Additionally, **countries continue to cite** the UDHR in their **national laws** and **international diplomacy**, demonstrating its **enduring importance** in the global human rights system.

Q5. Discuss various rights as enumerated in the Universal Declaration of Human Rights, 1948. [2021, 2017]

Answer: - The various rights as stated in the Universal Declaration of Human Rights, 1948 are as follows: -

Rights Related to Equality and Non-Discrimination

- **Article 1 (Free and Equal):** Every human being is born free and equal in dignity and rights. We should treat each other with respect, regardless of differences, and act with a sense of brotherhood.
- **Article 2 (Freedom from Discrimination):** Everyone is entitled to all the rights and freedoms in this Declaration, no matter their race, sex, religion, language, social status, or any other personal characteristic. This article ensures that there will be no discrimination based on nationality, political views, or other factors.
- **Article 7 (Equality Before the Law):** All individuals are equal before the law. This means that the law should apply to everyone in the same way, with no favoritism or discrimination. This also ensures protection from discrimination and calls for equal protection under the law.

Rights Related to Life, Liberty, and Security



- **Article 3 (Right to Life):** Everyone has the right to life, liberty, and personal security. This guarantees that every person has the right to live in freedom and safety, without fear of unlawful harm or being deprived of life.
- **Article 9 (Freedom from Arbitrary Detention):** No one can be arrested or detained without a valid reason. A person cannot be imprisoned without legal justification, nor can they be exiled from their country unjustly.

Rights Related to Protection from Harm

- **Article 4 (Freedom from Slavery):** No one has the right to enslave another person or treat them as a slave. Slavery is prohibited in all forms, and no one should be held in bondage.
- **Article 5 (Freedom from Torture):** No one can be subjected to torture or cruel, inhuman, or degrading treatment or punishment. This article ensures that people are protected from torture, degrading treatment, and inhumane punishment.

Rights Related to Legal Protection and Justice

- **Article 6 (Recognition Before the Law):** Everyone has the right to be recognized as a person in the eyes of the law, no matter where they are. This ensures that everyone, regardless of their status or location, is treated as a full legal person with rights.
- **Article 8 (Access to Justice):** If someone's rights are violated, they have the right to seek justice through courts and other competent authorities. This guarantees that individuals can access the judicial system to remedy any violations of their rights.
- **Article 10 (Right to a Fair Trial):** Everyone is entitled to a fair and public hearing by an independent and impartial tribunal (court). This ensures that legal cases are handled with fairness and transparency.
- **Article 11 (Presumption of Innocence):** A person accused of a crime is presumed innocent until proven guilty. They are entitled to a fair defense and trial. This protects individuals from being punished without a fair process and ensures that they have the opportunity to defend themselves.
- **Article 12 (Right to Privacy):** No one has the right to interfere with a person's private life, family, home, or correspondence. If someone violates a person's privacy, they have the right to legal protection against such violations.

Rights Related to Movement and Nationality

- **Article 13 (Freedom of Movement):** Every individual has the right to move freely within their country and to leave and return to their country. This article ensures that people are free to live where they choose within their country and can travel abroad if they wish.
- **Article 14 (Right to Asylum):** If a person is being persecuted in their country, they have the right to seek refuge in another country. This right protects people from political persecution and ensures that those at risk of harm can find safety elsewhere.
- **Article 15 (Right to Nationality):** Everyone has the right to belong to a country and to have a nationality. A person cannot be arbitrarily deprived of their nationality, and they are also free to change their nationality if they wish.



Rights Related to Marriage and Family

- **Article 16 (Right to Marriage and Family):** Men and women have the right to marry and start a family when they are legally able to, without discrimination based on race, nationality, or religion. Marriage should be entered freely by both partners, and families are entitled to protection by society and the state.
- **Article 17 (Right to Own Property):** Everyone has the right to own property individually or jointly with others. Property cannot be taken from a person unlawfully or arbitrarily.

Rights Related to Freedom and Expression

- **Article 18 (Freedom of Religion or Belief):** Everyone has the right to practice their religion or belief freely, change their religion if they choose, and express their beliefs publicly or privately.
- **Article 19 (Freedom of Expression):** Everyone has the right to freely express their opinions and share information. This includes the right to seek, receive, and share ideas through any medium (newspapers, social media, etc.), regardless of national borders.
- **Article 20 (Freedom of Assembly):** Individuals have the right to organize peaceful meetings and to form and join associations. This ensures the right to participate in peaceful protests or gatherings.

Rights Related to Participation in Public Affairs

- **Article 21 (Right to Participate in Government):** Everyone has the right to participate in their country's political life, either directly or through freely chosen representatives. Governments must be based on the will of the people, expressed through regular, free, and fair elections.
- **Article 22 (Right to Social Security):** Everyone, as a member of society, has the right to social security and to the realization of economic, social, and cultural rights necessary for their dignity and the development of their personality.

Rights Related to Work and Fair Conditions

- **Article 23 (Right to Work):** Everyone has the right to work in fair conditions, to choose their job freely, and to receive equal pay for equal work. This article also ensures protection against unemployment and supports the right to join trade unions.
- **Article 24 (Right to Rest):** Everyone has the right to rest, leisure, and to take regular paid holidays. Working hours should not be excessive, and workers are entitled to time off to recharge.

Rights Related to Adequate Living and Education

- **Article 25 (Right to an Adequate Standard of Living):** Everyone has the right to live in conditions that support their health and well-being, including food, clothing, housing, and medical care. The article also protects individuals from hardship in cases of unemployment, illness, disability, or old age. Special care is provided for mothers and children.
- **Article 26 (Right to Education):** Everyone has the right to education, which should be free, especially at the elementary and basic levels. Education should be directed toward the full



development of the human personality and promote respect for human rights. Parents have the right to choose the education for their children.

Rights Related to Culture and Society

- **Article 27 (Right to Participate in Cultural Life):** Everyone has the right to freely engage in cultural activities, enjoy the arts, and share in the benefits of scientific advancement. This article also protects the intellectual property rights of creators, such as writers, artists, and scientists.

Rights Related to Global Order and Duties to Society

- **Article 28 (Right to a Free and Fair World):** Every person is entitled to live in a world order where their rights and freedoms are fully respected. This requires international cooperation and a global commitment to human rights.
- **Article 29 (Duty to Your Community):** Everyone has responsibilities toward their community, where their personality can fully develop. These responsibilities include respecting others' rights and freedoms and following the law, which should allow for a just society.
- **Article 30 (Rights are Inalienable):** No one has the right to destroy or take away the rights that are set forth in this Declaration. The rights and freedoms outlined here cannot be violated by anyone, institution, or government.

Q6. Examine the role of UN High Commissioner in the protection and promotion of Human Rights. [2021, 2016, 2013]

OR

Q7. Discuss the function of the office of the High Commission for Human Rights. [2013]

Answer: - The **Office of the United Nations High Commissioner for Human Rights (OHCHR)**, also known as the **United Nations Human Rights Office**, is a department of the Secretariat of the United Nations. It is responsible for promoting and protecting human rights as outlined in international law and the **Universal Declaration of Human Rights (1948)**. The OHCHR was established by the **United Nations General Assembly** on **20 December 1993**, following the **1993 World Conference on Human Rights**.

The office is headed by the **High Commissioner for Human Rights**, who coordinates human rights activities throughout the UN system and serves as the secretariat of the **Human Rights Council** in **Geneva, Switzerland**. The current High Commissioner is **Volker Türk** of Austria, who succeeded **Michelle Bachelet** of Chile on **8 September 2022**.

Functions of OHCHR include the following: -

1. Promote Universal Enjoyment of All Human Rights

The OHCHR works to ensure that all human rights are universally enjoyed by giving practical effect to the international will and resolve, as reflected in the principles outlined by the United Nations.

2. Lead on Human Rights Issues



The OHCHR plays a leading role in addressing human rights issues globally and stresses the importance of human rights at both the **international** and **national** levels.

3. Promote International Cooperation for Human Rights

It fosters international cooperation to uphold human rights standards and encourages collaborative efforts among member states and organizations.

4. Coordinate Action for Human Rights within the UN System

The OHCHR ensures effective coordination across the United Nations system, working with various bodies and organizations to advance human rights initiatives.

5. Promote Universal Ratification and Implementation of International Standards

The OHCHR advocates for the worldwide ratification of international human rights treaties and works to ensure that they are fully implemented by member states.

6. Assist in the Development of New Norms

The OHCHR plays a role in the creation and development of new human rights norms, reflecting the evolving challenges and needs of societies across the globe.

7. Support Human Rights Bodies and Treaty Monitoring

It provides support to human rights organs, including the Human Rights Council, and assists in the functioning of treaty monitoring bodies, which ensure states' compliance with international human rights treaties.

8. Respond to Serious Violations of Human Rights

The OHCHR responds to serious violations of human rights by providing emergency interventions and supporting accountability measures at the international level.

9. Undertake Preventive Human Rights Action

The office takes proactive steps to prevent human rights violations by engaging in early warning and preventative strategies, aiming to reduce conflicts and protect vulnerable groups.

10. Promote National Human Rights Infrastructure

The OHCHR encourages countries to establish and strengthen national human rights frameworks and institutions, such as national human rights commissions and ombudsman offices, to protect rights locally.

11. Undertake Human Rights Field Activities

The office carries out human rights activities on the ground, in various countries, to assess and respond to human rights situations directly, often in post-conflict or crisis areas.

12. Provide Education, Advisory Services, and Technical Assistance

The OHCHR offers human rights education, advisory services, and technical assistance to governments, civil society organizations, and other stakeholders to help improve human rights practices.



These functions outline the OHCHR's comprehensive role in advancing and protecting human rights worldwide, ensuring that all individuals can enjoy their fundamental rights regardless of their background, status, or location.

Q8. Explain the Universal Declaration of Human Rights 1948 and its utility. [2016]

OR

Q9. Write a note on Universal Declaration of Human Rights, 1948. [2019, 2018, 2014]

Answer: - *For utility of UDHR refer to Question No 1.*

The **Universal Declaration of Human Rights (UDHR)** is an important international document that was adopted by the **United Nations General Assembly** to protect the rights and freedoms of all people. It was drafted by a UN committee led by **Eleanor Roosevelt** and was approved on **10 December 1948** during the **third session of the General Assembly** at the Palais de Chaillot in **Paris, France**. Of the **58 countries** in the United Nations at that time, **48 voted in favor**, none voted against, **eight abstained**, and **two did not vote**.

The UDHR is a key text in the history of human rights, consisting of **30 articles** that outline an individual's **basic rights and freedoms**. These rights are considered **universal, inherent, and inalienable**, meaning they apply to everyone, everywhere. The Declaration says that all people are "**born free and equal in dignity and rights**", no matter their **nationality, gender, race, religion, or any other status**.

The UDHR is seen as a **milestone document** because it uses **universal language**, without referring to any specific culture, political system, or religion. It helped to create international human rights laws and was the first step toward forming the **International Bill of Human Rights**, which was completed in **1966** and came into effect in **1976**.

Although the UDHR is **not legally binding**, many of its ideas have been included in **other international treaties, regional human rights agreements, and national laws**. Today, all **193 UN member states** have agreed to at least one of the **nine binding treaties** based on the UDHR, with most countries agreeing to four or more. While the UDHR itself is not legally enforceable everywhere, many of its principles have become part of **customary international law** and are respected in various countries, although some courts are more restrictive about how they apply it.

The impact of the UDHR is seen in its **530 translations**, the highest number for any document in history. Its influence on **legal, political, and social changes** globally and within countries shows how important the UDHR has been in shaping the world's commitment to human rights.

Q10. Write Short Notes: -

a) Human Rights and United Nations Charter. [2021, 2016, 2014]

Answer: - The **United Nations (UN) Charter** is the document that founded the United Nations. It was signed on **June 26, 1945**, in **San Francisco** by **51 original member states**. This treaty outlines the **purposes, principles, and structure** of the UN, aiming to promote **peace, security, and cooperation** among countries.



The UN Charter also lays the foundation for **human rights protection** worldwide. Although the Charter doesn't go into great detail about human rights, it sets the stage for the development of international human rights laws. Here are the key parts of the Charter related to human rights:

1. **Purposes and Principles:** Article 1(3) mentions one of the UN's goals is to “**promote and encourage respect for human rights and fundamental freedoms for all.**”
2. **Preamble:** Human rights are mentioned in the **Preamble** of the UN Charter, where it says the UN seeks to “**reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small**” and “**promote social progress and better standards of life in larger freedom.**”
3. **Human Rights Commission:** Article 68 asks the **Economic and Social Council (ECOSOC)** to create a commission to promote human rights, which led to the formation of the **UN Commission on Human Rights**.
4. **International Cooperation:** Article 1(3) and Article 56 encourage **international cooperation** to achieve the UN's purposes, including promoting human rights.
5. **Fundamental Freedoms:** The Charter mentions “**fundamental freedoms**” in Articles 1(3) and 55, which are later explained in detail in the **Universal Declaration of Human Rights (1948)** and other human rights treaties.

The human rights sections in the UN Charter are general, but they have been built upon and expanded in several important international documents, such as:

- The **Universal Declaration of Human Rights (1948)**
- **International Covenant on Civil and Political Rights (1966)**
- **International Covenant on Economic, Social and Cultural Rights (1966)**
- Various other **conventions and treaties** on specific human rights issues (such as **torture, discrimination, and refugees**)

These documents have clarified and expanded the idea of human rights, making them a central part of **international law** and efforts to protect human dignity around the world.



INTERNAL AND EXTERNAL AIDS TO CONSTRUCTION

SYLLABUS

7. Internal Aids to Construction.

Q1. What is meant by Internal Aids to Construction of Statutes? [2023, 2017, 2013]

OR

Q2. What is meant by internal and external aids to construction of statutes? Explain in detail with examples. [2019, 2018, 2014]

OR

Q3. Discuss the 'External Aids' to Construction of Statutes. [2024, 2016]

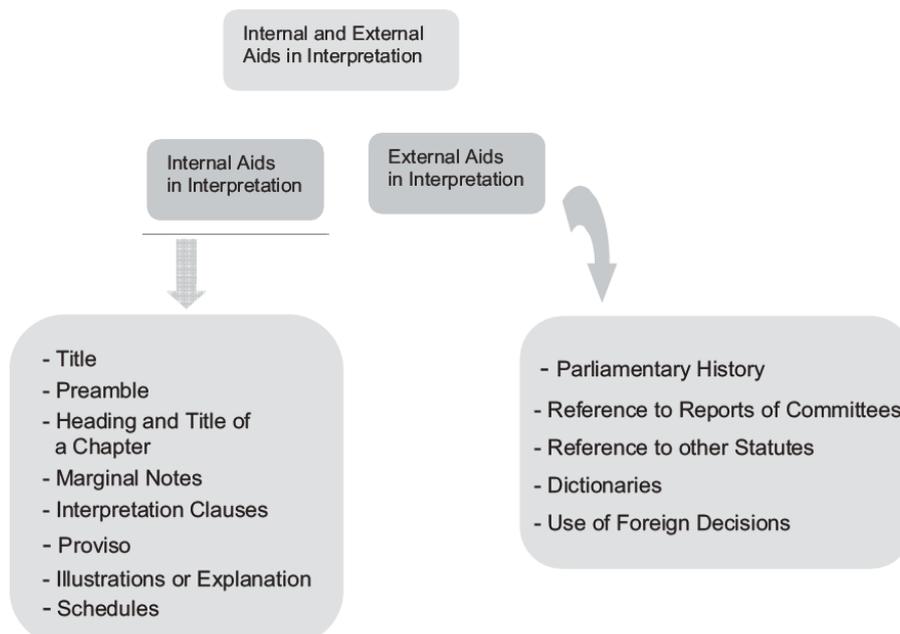
OR

Q4. Write Short Notes.

a) Internal Aids to Construction. [2021]

b) External Aids to Construction [2021]

Answer: -



A. INTERNAL AIDS IN INTERPRETATION



Internal aids mean those materials which are available in the statute itself, though they may not be part of enactment. These internal aids include, long title, preamble, headings, marginal notes, illustrations, punctuation, proviso, schedule, transitory provisions, etc. Following are internal aids in the interpretation of statutes:

- 1) **Short title:** The short title is a nickname of statute, such as Indian Evidence Act, 1872, Indian Penal Code, 1860. It identifies an Act but does not describe it. It only provides facility of reference. The short title is merely for convenience.
- 2) **Long title:** The long title of the Act may be referred for ascertaining its general scope and throwing light on its construction. It is a legitimate aid. The long title of the Act is a part of it and is *admissible to construction*.
- 3) **Preamble:** The main objective and purpose of the Act are found in the Preamble of the statute. It contains the recitals showing the reason for enactment of the Act. If the language of the Act is clear the preamble must be ignored. **Example:** The preamble of Indian Penal Code, 1860 reads: Whereas it is expedient to provide a general Penal Code for India.
- 4) **Marginal Notes:** Marginal notes are those notes which are inserted at the side of the sections in an Act and express the effect of the sections. **Example:** Section 11 of the Indian Contract Act, 1872 reads as: Who are competent to contract? Marginal notes appended to the articles of the Constitution have been held to constitute part of the constitution as passed by the Constituent Assembly. Therefore, they have been used for construing articles.
- 5) **Heading & title of a chapter:** Headings may be given to group of sections in an Act. These are generally treated as preamble to the group of sections. Headings prefixed to sections cannot control the plain words of the provisions. Only in the case of ambiguity or doubt, heading or sub-heading may be referred to as an aid in construing provision.

Example: The heading before Sections 172 to 190 of the Indian Penal Code, 1860 reads: “Of the contempts of lawful authority of public servants”

Chapter titles or headings may be referred to as construction of doubtful expressions, but cannot be used to restrict the plain terms of an enactment.

- 6) **Definitions/Interpretation clauses:** Statutes contain definitions of certain words and expressions used in an Act. Definition gives the interpretation of certain words or expressions, they may include or exclude something, may be of restrictive extensive, ordinary or special kind. When a word or expression has been defined *prima facie*, such definition governs that word in the body of an Act everywhere, unless specially excluded. The object of definitions is to avoid of frequent repetitions in describing the subject matter, to which the word or expression so defined is intended to apply. A definition is not to be read in isolation, it must be read in context of its use. Where definition itself is ambiguous, it has to be interpreted in the light of other provisions of the Act.



- 7) **Proviso:** A clause which is an exception to the main provision is known as proviso. Thus, proviso is made when a special case is removed from the general clause and a separate provision is made for it.

The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.

- 8) **Illustrations or explanations:** An illustration is appended to a section with the purpose of illustrating the provision of law explained therein. **Example:** 16 illustrations [(a) to (p)] have been appended to Section 378 of Indian Penal Code, 1860 which illustrate various aspects of the offence of theft. Illustrations appended to sections are part of the statute and they help to furnish some indication of the presumable intention of the legislature.
- 9) **Exceptions & saving clauses:** The purpose of adding an exception to an enactment is exempting something which would otherwise fall within the ambit of main provision. **Example:** Five exceptions have been provided under Section 300 of the Indian Penal Code, 1860 which deals with those exceptional circumstances when culpable homicide is not murder. Similarly, a saving clause is generally appended in cases of repeal and re-enactment of statute. It is normally appended in the repealing statute and its object is that the right already created under the repealed enactment is not disturbed.
- 10) **Schedules:** The schedules are attached to statute to deal with as to how claims or rights under it are to be asserted or as to how powers conferred under it are to be exercised. **Example:** The Companies Act, 2013 contains 7 Schedules. Schedules attached to a statute, forms part of it and must be read together with it for all purposes of construction. But expressions in the schedule cannot control or prevail against the express enactment.
- 11) **Punctuations:** Commas, semi-colons, full stops etc. are also important in interpretation of statute.
- 12) **Non Obstante Clause:** *Non obstante* clause usually starts with the word 'Notwithstanding anything contained in.....'. *Non obstante* clause is employed to give overriding effect to certain provisions over some contrary provisions that may be found in the same enactment or some other enactments, which is to say to avoid the operations and effect of all contrary provisions.

(B) EXTERNAL AIDS IN INTERPRETATION

To find the true intention of the legislature, there exist many rules, principles and aids in interpretation of statutes. Apart from the intrinsic aids, such as preamble and purview of the act, the Court, can consider resources outside the Act, called the extrinsic or external aids. Where the words of an Act are clear and unambiguous, no recourse to extrinsic matter, even if it consists of the sources of the codification, is permissible.

Following are external aids used in interpretation of Statute:

- 1) **Dictionaries:** When a word or expression is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance.



But courts must be careful because it is not necessary that dictionary meanings of a word may be the true meaning in a particular context.

- 2) **Historical background:** The Courts take recourse of such historical facts and surrounding circumstances which existed at the time of passing of the Statutes and as may be necessary to understand the subject matter of the statutes. Like any other external aid, the inferences from historical facts and surrounding circumstances, must give way to the clear language employed in the enactment itself.
- 3) **Parliamentary history:** The Supreme Court, enunciated the rule of exclusion of parliamentary history as in English Courts, but the court used this aid in resolving questions of construction in many occasions. The court has now changed the view that legislative history within circumspect limits may be consulted by courts in resolving ambiguities.

- 4) **Reference to other statutes:** A statute must be read as a whole, as words are to be understood in their context. Extension of this rule or context, permits reference to other statutes in *pari materia*, i.e. statutes dealing with the same subject matter or forming part of the same system. Viscount Simonds conceived it to be a right and duty to construe every word of a statute in their context and he used the words in their widest sense including “other statutes in *pari materia*”.

The phrase ‘pari materia’ is used in connection with two laws relating to the same subject matter that must be analyzed with each other.

- 5) **Reference to reports of committees:** The report of a committee on whose report an enactment is based, can be looked into

“so as to see the background against which the legislation was enacted, the fact cannot be ignored that the Parliament may, and often does, decide to do something different to cure the mischief”.

So we should not be unduly influenced by the report. When the parliament has enacted a statute as recommended by the report of a committee and there is ambiguity or uncertainty in any provision of the statute, the court may have regard to the report for ascertaining the intention behind the provision.

- 6) **Use of foreign decisions:** Use of foreign decisions of countries following the same system of jurisprudence as of India and rendered on statutes in *pari material*, has been permitted by practice in Indian Courts. The assistance of such decisions is subject to the qualification that prime importance is always to be given to the language of the relevant Indian Statute, the circumstances and the setting in which it is enacted and the Indian conditions where it is to be applied.
- 7) **Statement of objects and reasons:** The statement of objects and reasons as well as the “Notes on clauses of the Bill” can be made use of in the interpretation of statutes, if the same have been adopted by the Parliament without any changes in enacting the bill.

Q5. Under what circumstances the court can look into the internal and external aids in the interpretation of the statutes? [2022]



Answer: - The court uses internal and external aids to interpret statutes when the language of the statute is unclear or ambiguous. Internal aids are elements within the statute itself, while external aids are outside resources that provide context and clarity.

Internal Aids:

- 1) **Ambiguous or uncertain language:** When the statute's language is unclear or open to multiple interpretations, the court looks to internal aids for guidance.
- 2) **Definitions and explanations:** If the statute contains definitions or explanations that need further clarification, the court examines these internal aids to understand the legislature's intent.
- 3) **Preamble or statement of objects and reasons:** The preamble or statement of objects and reasons provides context and background information on the statute's purpose and intent. The court considers these internal aids to understand the legislature's objectives.

External Aids:

- 1) **Silence or unclarity:** When the statute is silent or unclear on a particular point, the court seeks external aids to fill the gap or provide clarity.
- 2) **Historical context and background:** The court examines historical context and background materials to understand the social, political, and economic conditions that led to the statute's enactment.
- 3) **Expert opinions and reports:** The court considers expert opinions and reports to gain a deeper understanding of complex issues or technical aspects related to the statute.
- 4) **Other statutes and legal provisions:** The court refers to other statutes and legal provisions that relate to the same subject matter to ensure consistency and harmony in the legal framework.

By considering both internal and external aids, the court engages in a comprehensive and nuanced interpretation of the statute, ensuring that the legislature's intent is understood and applied accurately.

Q6. Assess the importance of the following with respect to interpretation:

- a) **Preamble and Long Title [2022]**

Answer: -

PREAMBLE IN STATUTES

The **preamble** of a statute has been a subject of conflicting opinions over time. In some cases, it was said that the **preamble** is not a part of the statute itself but serves to explain the **motive** behind it. In other words, it is intended to show the **purpose** of the law. However, other views suggested that the preamble should be **considered** because it provides the **key to understanding the statute's intent** and the problem it aims to solve.

Modern Rule



The modern rule lies between these views:

- If the main **enacting part** of the statute is **clear and unambiguous**, the preamble cannot change or limit it.
- But, if the statute is unclear or ambiguous, the preamble can be used to help **explain** and **clarify** its meaning.
This principle was highlighted in **Raj Mal v. Harnam Singh (1928)**.

Key Court Decisions

1. **Powell v. Kempton Park Race Course Co. (1899):**

- The court recognized that a **preamble can offer useful insights** into what the statute aims to achieve.
- However, if the statute is **clear** on its own, the preamble cannot **alter** its meaning.

2. **Kashi Prasad v. State (1967)** (Allahabad High Court):

- Although the preamble **cannot override the main body** of the statute, it is still treated as a **useful tool** for interpretation.

3. **Kamalpura Kochunni v. State of Madras:**

- The **Supreme Court** stated that the preamble can be referred to when there is **ambiguity** in interpreting the statute. It helps to understand the **true scope** of the law.

4. **Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P. (2013):**

- The court ruled that if the language of a statute is **clear and unambiguous**, the **preamble cannot be used** to change or clarify its meaning.

5. **Burrakar Coal Company v. Union of India (1961):**

- The court held that **no preamble** can be used to **distort** the clear intention of the legislature.

6. **Kerala Education Bill, 1957:**

- It was observed that the **policy** and **purpose** of an Act can often be **derived** from its preamble.

7. **Global Energy Ltd. v. Central Electricity Regulatory Commission:**

- The court emphasized that the **objective of the legislation** should be understood in the context of its preamble.

8. **Maharashtra Land Development Corporation v. State of Maharashtra:**

- The **Preamble is a guiding light** in interpreting the Act.

9. **Kesavananda Bharati v. State of Kerala (1973):**

- The **Supreme Court** relied heavily on the **Preamble to the Constitution** of India to interpret the **power of Parliament** under Article 368, especially in determining the **basic structure** of the Constitution.



10. A.C. Sharma v. Delhi Administration (1973):

- The appellant argued that after the creation of the Delhi Special Police Establishment, the preamble of the **Delhi Special Police Establishment Act, 1946** removed the power of Delhi Police to investigate bribery.
- The court, however, ruled that **no preamble can override the clear language** of the statute.

11. Rashtriya Mill Mazdoor Sangh v. NTC (South Maharashtra):

- The **Supreme Court** held that if the **language of the statute is clear**, the **preamble cannot limit or restrict** its scope.

Limitations of the Preamble in Statutory Interpretation

- **When to use the preamble:** It should only be used when the language of the statute is **ambiguous** or **unclear**.
- **Cannot change or extend meaning:** The preamble cannot be used to **expand** or **limit** the meaning of words in the main body of the statute.
- **In case of conflict:** If there is a **conflict** between the preamble and a section of the statute, the **section will prevail** over the preamble.
- **Not a source of power:** The preamble is not a **source of power, prohibition, or limitation** in itself.

Conclusion

While the **preamble** is not a substitute for the **clear language** of a statute, it can provide **valuable context** and **guidance** when interpreting statutes, especially when their provisions are unclear or ambiguous. However, the **primary intention** of the legislature and the **clear words** of the statute should always take precedence.

LONG TITLE

A **long title** is placed at the beginning of a statute and serves to provide a **general description** of the statute's purpose. It usually begins with the words "**An Act to...**" and outlines the main objectives of the statute.

For example:

- The long title of the **Code of Criminal Procedure, 1973** is: *An Act to consolidate and amend the law relating to criminal procedure.*
- The long title of the **Prevention of Corruption Act, 1988** is: *An Act to consolidate and amend the law relating to the prevention of corruption and matters connected therewith.*

Historical Perspective on Long Title

In the past, the **long title** was not considered a part of the statute itself and was **not used** as a tool for interpretation. However, over time, the **courts have changed their view**, and the long title is sometimes referred to, but only to **clarify ambiguities** or **remove confusion**. If the words in the statute are clear and unambiguous, the long title is not consulted.



Case Examples Involving Long Title

1. Poppatlal Shah v. State of Madras (1953)

- The Supreme Court used the **title of the Madras General Sales Tax Act, 1939**, to **clarify** that the **purpose** of the Act was to **impose taxes** on sales within the province.

2. Amarendra Kumar Mohapatra v. State of Orissa (2014)

- The Court held that while the **title** of a statute indicates the **general scope** of the legislation, the **true nature** of the Act must be determined by its **substance**, not just the title.

3. Manoharlal v. State of Punjab (1961)

- It was observed that the **long title** of an Act may indicate its **main purposes**, but it cannot **control** the **operative provisions** of the statute.

4. Fisher v. Raven (1964)

- The House of Lords examined the **long title** of the **Debtors Act, 1869**, which reads: "An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors, and for other purposes."
- The House of Lords used the **long title** to interpret the phrase '**obtained credit**' in Section 13(1) as referring to credit for the payment of money.

Limitations of the Long Title as an Aid to Interpretation

- **No Role in Clear Language:** The **long title** is not useful when the language of the statute is **clear** and **precise**.
- **Can Be Used for Ambiguity:** The long title can only be referred to when there is an **ambiguity** or when the words in the statute can have **alternative meanings**.
- **Does Not Override Clear Meaning:** The long title **cannot change** or **override** the clear meaning of the statute's provisions.
- **Cannot Restrict Statute's Language:** The long title cannot be used to **narrow down** or **limit** the plain meaning of the statute.

When to Use the Preamble and Long Title for Interpretation

The **Preamble** and **Long Title** of a statute should be consulted for interpretation when:

1. The statute is **ambiguous** or **unclear**.
2. To understand the **legislative intent** and **purpose** behind the statute.
3. To **resolve conflicts** or inconsistencies within the statute.
4. To determine the **scope** and **application** of the statute.
5. The statute is **silent** on a specific issue.
6. To gain insight into the **historical context** and background of the statute.



7. To understand the **core principles** and **objectives** of the statute.

Conclusion

While the **long title** and **preamble** are not as authoritative as the actual provisions of the statute, they can serve as valuable tools when the statute's language is ambiguous or unclear. They help to shed light on the **intentions** of the legislature and provide a **general understanding** of the statute's objectives. However, these tools should not be used to contradict or limit the statute's **clear language**.

b) Parliamentary History [2022]

Answer: - The **Supreme Court** has followed the English Courts' rule of **excluding Parliamentary history** when interpreting statutes. However, the Court has occasionally used **legislative history** as a tool for resolving ambiguities. The Court now believes that, under certain limits, **historical facts** and **surrounding circumstances** from the time a law was passed may help in understanding the statute. However, the **clear language** of the statute should always take priority over any historical facts or circumstances.

c) Proviso [2022]

Answer: - A **proviso** is a part of a law that **adds exceptions** or **special cases** to what is mentioned in the main section. The **natural assumption** is that, without the proviso, the main part of the section would have included the situation mentioned in the proviso.

- As **Lord Macmillan** explained, the purpose of a proviso is to **exclude certain cases** that would otherwise be included by the general language of the law. It only affects those specific cases.
- **Hidayatullah, J.** also said that a proviso is typically used to **limit** or **create exceptions** to the general rule in the main part of the law. It's not meant to set a **general rule**.

Difference Between Proviso, Exception, and Saving Clause

- An **exception** is used to **restrict** the main rule to certain situations. It applies only to those particular cases.
- A **proviso** is used to **remove specific cases** from the general rule and treat them separately.
- A **saving clause** is used to **protect existing rights**, remedies, or privileges that might otherwise be lost under the law.

Key Takeaways:

- **Parliamentary history** can be consulted in certain cases but should not override the **clear wording** of the statute.
- The **proviso** usually excludes specific cases from the general law, creating **exceptions** or addressing special situations.

d) Statutes in Pari-materia. [2022]

Answer: -

The phrase '**in pari materia**' refers to statutes that are related to **the same person or thing** or **same class of persons or things**. It's different from '**similis**', which means similarity, as **pari materia** implies



identity. This phrase is used for public laws or statutes made at different times that deal with the same subject. **Two laws** cannot be considered in *pari materia* if they have **different scopes**.

It's a common legislative practice for one statute to **refer to provisions of another statute** if they're relevant to the subject or purpose of the new law. This is allowed when it helps achieve the **object** of the new law.

Generally, the words of a later law cannot be used to interpret an earlier statute. However, in some **special cases**, the later law may help in understanding the earlier law, but strict conditions apply. For this to work:

- Both laws must deal with **the same subject**.
- The **earlier statute** being interpreted must be **ambiguous** and capable of being understood in different ways.

Even though a **repealed statute** is treated as if it never existed, it can still be considered when interpreting the **same subject** in another law, as long as it's in **pari materia**.

Regulations can't change the **meaning** of the words in a statute. However, they can be helpful in **understanding** how the **government department** interprets the statute. While regulations don't **control the construction** of the law, they may assist in interpreting and applying the statute, especially when providing **detailed guidelines** that align with the terms of the statute.

Q7. Explain how Preamble and Proviso are Internal Aids. [2023, 2017, 2013]

Answer: - Both the **Preamble** and the **Proviso** are considered **internal aids** to the construction of a statute, helping interpret the statute's provisions when needed. Here's an explanation of each and how they serve as internal aids:

Preamble as an Internal Aid

The **Preamble** of a statute serves as an **aid to construction**, primarily revealing the **purpose** and **intention** behind the enactment. It contains **recitals** explaining the reasons for the statute's enactment, which can provide valuable context when interpreting the statute. However, the Preamble does not have the power to override the **clear language** of the statute. Its role is to help understand the law only when there is **ambiguity** in the statutory language.

- 1. When the language is clear:** If the wording of the statute is explicit and unambiguous, the Preamble must be **ignored**. This aligns with the principle that the plain meaning of the statute should prevail.
- 2. When there is ambiguity:** If the statute's language creates doubt, the Preamble can be consulted to clarify its meaning. For example, when there are words or phrases that have more than one interpretation, the Preamble may help in **determining the correct meaning** and **scope** of the law.
 - **Example:** The **Indian Penal Code, 1860** begins with the Preamble, "Whereas it is expedient to provide a general Penal Code for India." If there were any doubts regarding the intent behind the law, this preamble could help clarify that the purpose was to create a **general penal code** for India.



3. **Legal Precedents:** Various courts, including the **Supreme Court** and **Privy Council**, have affirmed that the Preamble may be referred to when the statute is unclear, but **cannot override** the provisions of the enactment. **Lord Halsbury** stated in **Powell v. Kempton Park Race Course Co.** (1899) that **if an enactment is clear**, the preamble cannot qualify or limit it. Similarly, in **Raj Mal v. Harnam Singh** (1928), the court ruled that the Preamble can be used to **explain** an ambiguous enactment.
4. **Concluding Thought:** The Preamble is an essential tool when interpreting the statute, but its use is **limited to cases of ambiguity**. It cannot contradict or alter the statute's express provisions.

Proviso as an Internal Aid

A **Proviso** is a part of the statute added to **qualify** or **restrict** the general provisions in the main enactment. It **excludes** certain matters from the broad language of the statute and applies only to **specific cases**. A Proviso is often used to **create exceptions** to the general rule set out in the enactment.

1. **Role of a Proviso:** When a **Proviso** is found in a statute, it is presumed that, without it, the general enactment would have included the matter addressed by the Proviso. The **Proviso's purpose** is to **exclude** particular cases or circumstances from the general scope of the main statute.
 - **Lord Macmillan's View:** He explained that the **proper function of a Proviso** is to **except** cases that would otherwise fall under the general provisions of the statute. The Proviso has a **specific effect** and only applies to **the cases it mentions**.
2. **Interpretation of Proviso:** Generally, the **Proviso is not interpreted as a general rule**. It is not meant to introduce new or general provisions into the statute, but to address **specific cases** or exceptions to the law.
 - **Hidayatullah, J.** emphasized that a **Proviso** typically **qualifies** or **creates an exception** to the enactment, focusing only on particular circumstances that the main enactment does not address.
3. **Distinction between Proviso, Exception, and Saving Clause:**
 - **Exception:** Restrains the enactment to **particular cases**.
 - **Proviso:** Removes special cases from the general enactment and provides for them separately.
 - **Saving Clause:** Preserves certain existing **rights, remedies, or privileges** from being affected by the statute.

Each of these provisions serves a unique function in the statute, but all are intended to provide **specific exceptions** or **clarifications** that help in interpreting the law accurately.

Conclusion: The Role of Preamble and Proviso as Internal Aids

Both the **Preamble** and the **Proviso** help in **understanding the statute** when there is **ambiguity** or **need for clarification**.



- The **Preamble** offers insight into the **legislative intent** and primary objective of the statute, guiding the interpretation of unclear provisions but never overriding the clear wording of the enactment.
- The **Proviso** helps to **restrict or qualify** the main enactment, providing **exceptions** to the general rule and applying to specific cases.

Together, these two internal aids assist in **correctly construing** a statute by providing additional context and clarifying the meaning of its provisions.



POLLUTION CONTROL BOARDS IN INDIA

SYLLABUS

4. Administration and functioning of Pollution Control Boards with reference to Water Act.

Q1. Briefly discuss the emergency measures that the State Board may take to mitigate Air pollution under the Air (Prevention and Control of Pollution) Act, 1981. [2024, 2023, 2021, 2018, 2015]

Answer: - Under **Section 17**, the **State Boards** are responsible for various functions to reduce and manage air pollution. Here's what the State Boards must do:

1. Plan and Implement Programs:

- The **State Board** is responsible for creating and executing **comprehensive programs** to prevent, control, or reduce air pollution. It also **advises the State Government** on matters related to air pollution.

2. Collect and Share Information:

- The Board **collects and shares information** about air pollution. It also organizes **training and awareness programs** to educate people about controlling, preventing, and reducing air pollution.

3. Inspect and Issue Orders:

- The Board can **inspect** industrial plants, control equipment, or manufacturing processes at **reasonable times**. If needed, it can issue orders to improve pollution control measures.

4. Monitor Air Quality:

- The Board will **inspect and assess** air quality in areas designated for **air pollution control** whenever necessary.

5. Set Emission Standards:

- The Board sets **standards** for **emissions of air pollutants** from sources like **automobiles** and **industries**. However, **ships** and **aircrafts** are not covered under these standards.

6. Advise on Industry Location:

- The **State Board** advises the **State Government** on whether a particular location is suitable for setting up an **industry**, considering the impact on air quality in that area.

7. Establish Labs:



- The State Board will set up **labs** in the state to help carry out its functions more effectively.

These measures are part of the emergency actions the State Board can take to control and reduce air pollution.

Q2. What steps should be taken by the state Board under the Air (Prevention and Control of Pollution) Act, 1981, in case of an accidental emission of any air pollutant in excess of the standards as laid down by the State Board? [2022, 2019, 2015, 2013]

Answer: - Section 23 outlines the steps to be taken if an **accidental emission** of air pollutants occurs in excess of the prescribed limits. Here's what needs to be done:

1. Immediate Reporting:

- If there is an **accidental emission** of pollutants beyond the allowed limits, the person **operating the industrial plant** must immediately **inform the State Board** and other relevant authorities about the situation.

2. Remedial Actions:

- Once the **State Board** and other authorities are informed, they must **act quickly** to take **remedial measures** to control and reduce the emission of air pollutants. These actions should be taken as soon as possible.

3. Recovery of Expenses:

- If the **State Board** or any authority spends money on handling the situation, the person responsible for the emission must pay back the costs. This amount will include **interest** at a reasonable rate, starting from the date the demand is made.
- The **State Board** can recover this amount **as arrears of land revenue** or **public demand**.

In short, if there is an accidental release of pollutants, the responsible party must **report immediately**, and the authorities will **take necessary actions** to fix the problem and **recover expenses** if any costs are incurred in the process.

Q3. Discuss about the important functions of the Central Board for prevention and control of Water Pollution. [2022, 2019, 2017]

Answer: - The **Central Board** has several important functions, which are:

1. Advise the Central Government:

- The **Central Board** advises the **Central Government** on any matters related to **preventing and controlling water pollution**.

2. Coordinate with State Boards:

- It **coordinates the activities** of the **State Boards** and helps **resolve any disputes** between them.

3. Provide Technical Assistance:



- The **Central Board** offers **technical help and guidance** to the State Boards. It also **sponsors research and investigations** related to water pollution, and works on ways to **prevent, control, or reduce** it.

4. Plan and Organize Training:

- The Board **plans and organizes training** for people working or intending to work in the **prevention, control, or reduction of water pollution**. The **Central Board** sets the **terms and conditions** for such training.

5. Mass Media Programs:

- The **Central Board** organizes wide-reaching programs, using **mass media**, to raise awareness about **preventing and controlling water pollution**.

In summary, the **Central Board** advises the government, coordinates with the State Boards, provides technical support, organizes training programs, and runs awareness campaigns to manage and prevent water pollution.

Q4. State the powers of Board as laid down under Water (Prevention and Control of Pollution) Act, 1974. [2021]

Answer: -

Powers of the Central Pollution Control Board

The **Central Pollution Control Board (CPCB)** has several important powers under the **Water (Prevention & Control of Pollution) Act**:

- **Give Directions to State Pollution Control Boards:**
 - The **CPCB** can **direct** the **State Pollution Control Boards (SPCBs)** on matters concerning pollution control.
- **Perform Functions of State Pollution Control Boards:**
 - If a **State Board** doesn't follow the **CPCB's directions**, the **CPCB** has the power to step in and **perform the functions** of the **State Board**.
- **Issue Directions under Section 33A:**
 - The **CPCB** can **order the closure, prohibition, or regulation** of any **operation, industry, or process** causing pollution. It can also regulate the supply of **electricity, water, or any other service** to polluting industries.

Powers of State Pollution Control Boards

The **State Pollution Control Boards** have the following powers to prevent and control **water pollution**:

- **Obtain Information:**
 - The **State Boards** can **maintain records of effluent flow or volume**, conduct **stream surveys**, and gather information about the **disposal systems** of industries and businesses.
- **Take Samples for Analysis:**



- They can **take samples** of **effluents** from **streams** or **wells** to check for pollution.
- **Inspect Premises:**
 - The **State Boards** have the right to **enter and inspect any time** to perform their duties or examine plants, records, etc.
- **Impose Restrictions on Discharge Outlets:**
 - They can **impose restrictions** on new or modified **discharge outlets** to control pollution.
- **Refuse or Withdraw Consent for Industries:**
 - The **State Boards** can **deny or withdraw consent** for the **establishment of any industry** or business that fails to meet pollution standards.
- **Carry Out Other Tasks:**
 - The **State Boards** can perform **other activities** as directed by the **CPCB**.
- **Emergency Operations:**
 - In case of **excess pollution**, the **State Board** can take **emergency actions** to **dispose of polluting materials** from streams or wells.
- **Legal Action:**
 - The **State Boards** can **apply to the courts** to **restrain** industries that are causing pollution or to **restrict polluting activities**.

Both the **Central Pollution Control Board (CPCB)** and **State Pollution Control Boards (SPCBs)** have significant powers to **monitor** and **control** water pollution, from **issuing directions** to **inspecting industries**, **refusing permissions**, and taking **legal actions** when necessary.

Q5. What are the respective roles of the Board Analysts and the Govt. Analysts in making the report under the Water (Prevention and Control of Pollution) Act, 1974? [2021]

OR

Q6. Short Note on Analysts [2018]

OR

Q7. Short Note on Government Analyst. [2013]

Answer: - Section 53: Appointment of Analysts

- **Central Government:** The **Central Government** can appoint **qualified persons** as **Government analysts** for the analysis of **water, sewage, or trade effluent** samples sent to **laboratories** established under the **Water (Prevention & Control of Pollution) Act**. This is done through an official **notification**.
- **State Government:** Similarly, the **State Government** can appoint **qualified persons** as **analysts** for analyzing **water, sewage, or trade effluent** samples at **laboratories** within the state.



- **Central and State Boards:** Both the **Central Pollution Control Board (CPCB)** and **State Pollution Control Boards (SPCBs)** may, with **government approval**, appoint persons as **Board analysts** to analyze samples in **laboratories** that are either **established or recognized** under the Act.

Section 54: Use of Analysts' Reports as Evidence

- Any report signed by a **Government analyst** or a **Board analyst** can be used as **evidence** in legal proceedings under the **Water (Prevention & Control of Pollution) Act**. The report is accepted as **proof** of the facts stated within it.

In summary, **qualified analysts** are appointed by the **Central and State Governments**, as well as **Central and State Pollution Control Boards**, to analyze water, sewage, or effluent samples. Their reports are treated as **legal evidence** in pollution control proceedings.

Q8. How is the Central Pollution Control Board constituted under the 'Water (Prevention and Control of Pollution) Act, 1974? [2022, 2015, 2014, 2013]

OR

Q9. Discuss the Constitution of the 'Central Pollution Control Board' as provided under the Water (Prevention and Control of Pollution) Act, 1974. [2021]

OR

Q10. State the composition of the Central Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974. [2024, 2019, 2017]

Answer: - The **Central Government** has the power to establish the **Central Pollution Control Board (CPCB)** through a notice in the **official gazette**. The composition of the **CPCB** includes the following members:

1. **Chairman:** The **Chairman** must have knowledge or practical experience in **environmental protection**. The **Central Government** appoints the chairman.
2. **Central Government Representatives:** There will be **up to 5 officials** who will represent the **Central Government** on the Board.
3. **State Board Members:** The **Central Government** will nominate **up to 5 members** from the members of the **State Pollution Control Boards**.
4. **Special Interest Representatives:** The **Central Government** will appoint **up to 3 members** to represent **agriculture, fisheries, trade**, or other relevant interests as determined by the government.
5. **Representatives of Government-Controlled Companies:** **2 members** will represent **companies or corporations** that are owned or controlled by the **Central Government**.
6. **Member Secretary:** A **full-time member secretary** is appointed, who must have **scientific management knowledge** and expertise in **environmental pollution prevention**.



In summary, the **CPCB** is made up of various members representing different governmental bodies and sectors, with a **Chairman** and a **Member Secretary** responsible for leading and managing the board's activities.

Q11. What is the power of State Board to take samples of air or emission? [2017]

Answer: - Section 26(1) allows for the collection of samples of air or emissions from chimneys, flues, ducts, or any other prescribed outlet. These samples can be used in legal proceedings if the following conditions are met:

- 1. Notification to the Occupier or Agent:** The person taking the sample must **notify** the **occupier** (or their agent) of the location from where the sample has been taken.
- 2. Presence of the Occupier:** The sample must be collected **in the presence of the occupier or their agent**.
- 3. Proper Sealing and Marking of the Sample:**
 - The sample should be placed in a **container**, which should be **marked and sealed**.
 - Both the person taking the sample and the occupier (or their agent) must **sign** the sealed container.
 - The sample is then sent to a **laboratory for testing and analysis**.

If the Occupier or Agent is absent or Refuses to Sign:

- If the **occupier or agent wilfully absents themselves**, the sample will still be sealed and signed only by the person taking the sample.
- If the **occupier or agent refuses to sign** the sealed container, the person taking the sample will **sign it** instead.

Analysis and Report:

- The sample will be sent to a **State Board-recognized laboratory** for analysis.
- The **Board analyst** will analyze the sample and submit a **report in triplicate** to the **State Board**.

On receipt of the report:

- One copy will be sent to the **occupier or their agent**.
- One copy will be kept for possible **legal proceedings**.
- One copy will be retained by the **State Board**.

Costs:

- If a sample is analyzed at the **occupier's request**, or if they wilfully absent themselves or refuse to sign the container, the **occupier** or their agent will need to **pay for the analysis costs**.
- If they fail to pay, the amount can be **recovered** from them as **arrears of land revenue** or **public demand**.



In summary, these conditions ensure that the process of collecting air or emission samples is done **fairly**, **transparently**, and with proper documentation, which can be used in legal proceedings if necessary.

Q12. Discuss briefly the Public Liability Insurance Act, 1991. [2024, 2015]

Answer: - The **Public Liability Insurance Act of 1991** is designed to protect people affected by accidents involving hazardous substances. It requires **owners of hazardous substances** to have insurance to provide **direct compensation** to anyone harmed due to accidents involving those substances. This includes compensation for death or injury, and property damage, which will be given to the **legal heirs** of the deceased.

The main purpose of this Act is to provide **immediate relief** to people who suffer due to accidents related to hazardous substances. The Act also protects businesses such as **shopping centers, nightclubs, and theaters** from accidents that happen at their premises by ensuring they have insurance coverage.

Key Points of the Act:

- **Who is affected?**
 - The Act applies to **owners** involved in the **production or handling of hazardous substances**. This includes businesses and companies that might cause harm to people or property through accidents.
- **What does it cover?**
 - The insurance covers **immediate compensation** to people affected by accidents involving hazardous substances, such as **injury, death, or damage to property**. The insurance will be provided by the **owner** of the hazardous substance, not the employee (i.e., **non-workmen**).
- **Purpose of the Act:**
 - To **save the owner** from heavy penalties by ensuring they have the **mandatory insurance** to cover third-party liabilities caused by accidents with hazardous substances.
 - **Compulsory Insurance:** Before handling hazardous substances, owners must buy **one or more insurance policies** to cover possible accidents.
 - If an accident occurs, the **Collector** verifies it and orders compensation to the victims.

Salient Features of the Act:

1. No Fault Compensation:

- The **owner** is required to provide relief if someone dies, gets injured, or suffers property damage due to an accident with hazardous substances—**without fault** (even if the owner is not at fault).

2. Insurance Amount:

- The insurance coverage should be **higher than the owner's paid-up capital** but **less than Rs. 50 Crores**.



- The **paid-up capital** refers to the **market value of all assets and stocks** on the day of insurance.

3. Environmental Relief Fund Contribution:

- The owner must **contribute additional amounts** to the **Environmental Relief Fund**.

4. Information and Inspection:

- The owner must **provide any necessary information** to verify compliance with the Act.
- The owner must **allow inspections** to check if they are following the Act's rules.

5. Payment of Award:

- The owner must **pay any amount** specified by the **Collector** as compensation to victims.

6. Follow Government Directions:

- The owner must follow **written directions** from the **Central Government**. These directions can include:
 - **Prohibition or regulation** of handling hazardous substances.
 - **Regulation or stoppage** of services such as **electricity, water**, or other services.

The **Public Liability Insurance Act, 1991** ensures that those handling hazardous substances take responsibility for accidents that harm people or property, by having **insurance coverage** in place. This **compensation mechanism** ensures **immediate relief** for victims and helps prevent serious penalties for businesses.

Q13. Define the term 'Board' as laid down under the Water (Prevention and Control of Pollution) Act, 1974. [2013]

Answer: - The Act gives powers to two main bodies: the **Central Pollution Control Board** and the **State Pollution Control Boards**, to **control and prevent water pollution**.

Section 2 of the Act defines board as to mean either the central board or the state board. Further, according to Section 2 (b) Central Board means Central Pollution Control Board and according to Section 2 (h) State Board means State Pollution Control Board.

Central Pollution Control Board (CPCB)

The **Central Government** has the authority to set up the **Central Pollution Control Board (CPCB)** through an official gazette notification. The **composition of the board** is as follows:

- **Chairman:** A person with expertise in environmental protection, appointed by the **Central Government**.
- **5 Central Government Representatives:** Appointed by the Central Government.
- **5 Members from State Boards:** Nominated by the Central Government.
- **3 Members for Specific Interests:** Representing agriculture, fisheries, or trade, as decided by the government.



- **2 Members from Central Government-owned Companies.**
- **Member Secretary:** A full-time professional with qualifications in scientific management and pollution control.

Functions of the Central Board (Section 16):

- **Advise the Central Government** on water pollution prevention.
 - **Coordinate between State Boards** and resolve disputes.
 - **Provide technical assistance** and conduct research on water pollution issues.
 - **Organize training programs** for people working in water pollution control.
 - **Run awareness programs** through mass media on water pollution prevention.
-

State Pollution Control Board (SPCB)

Each **State Government** can set up a **State Pollution Control Board** by issuing a gazette notification. The **composition of the State Board** includes:

- **Chairman:** A person with experience in environmental pollution control, appointed by the State Government.
- **5 Government Representatives:** Appointed by the State Government.
- **2 Members from Local Authorities** within the state.
- **3 Members** to represent interests like agriculture, fisheries, and trade.
- **2 Members from State-controlled Companies.**
- **Member Secretary:** An expert with qualifications and experience in environmental pollution control.

Functions of the State Board (Section 17):

- **Plan and implement water pollution control** programs in the state.
 - **Advise the State Government** on water pollution issues.
 - **Collaborate with the Central Board** on training programs for water pollution control.
 - **Set and modify effluent standards** for sewage and trade effluents.
 - **Promote the use of treated sewage** in agriculture.
 - **Set up laboratories** to analyze water quality and perform other functions related to pollution control.
-

Joint Board



The **State Governments** of different states or the **Central Government** can enter into agreements to form a **Joint Board** to handle water pollution issues affecting multiple states or union territories.

Composition of Joint Board (Section 14):

- **Chairman:** An expert in environmental pollution control, appointed by the Central Government.
- **2 Members from each State:** Nominated by the respective state governments.
- **Non-official Members:** To represent agricultural, fisheries, trade, or other interests.
- **2 Members from Central Government-controlled Companies.**
- **Member Secretary:** Appointed by the Central Government with expertise in science, engineering, or management related to pollution control.

Disqualification of Members (Section 6)

A person can be disqualified from being a member of the board if:

1. **Insolvency** or failure to pay debts.
2. **Unsound mind** or conviction for a crime involving moral turpitude.
3. **Conflicts of interest** (e.g., if they hold a salaried position with a company linked to the board).
4. **Misuse of power** by holding a position in the board.

Board Meetings (Section 8)

- The board must hold a meeting every **three months** to review its activities and discuss future plans.
- If the **Chairman** feels there is an urgent matter, a meeting can be called at any time.

Q14. Write Short Notes.

a) Green Bench [2023, 2021, 2018, 2016, 2014]

Answer: - A **Green Bench** is a special judicial bench that hears cases related to **environmental protection** and the **preservation of forests**.

The **Green Bench** was an early form of the **National Green Tribunal**. The **first Green Bench** was set up in **Kolkata**.

On **April 16, 1996**, the **Supreme Court (SC)** directed that a special division bench be created to handle **environment-related cases**. This direction was given by **Justices Kuldip Singh** and **S. Saghir Ahmed**. The SC instructed the **Chief Justice of the Calcutta High Court** to form this bench, which led to the creation of the **first Green Bench**. The SC also directed that the bench meet **once a week** to handle such cases.



Following this, another Green Bench was set up in **Chennai**. On **September 2, 1996**, in the **Tamil Nadu tanneries case**, a full bench of the SC, including **Justices Kuldip Singh, Falzan-uddin, and K. Venkataswami**, asked the **Chief Justice of the Chennai High Court** to establish a special Green Bench to handle **environmental cases**, including the tanneries case in the state.

b) National Board for Wild Life [2021]

Answer: - The **National Board for Wildlife (NBWL)** is the highest authority in India for **wildlife-related matters**. It plays a key role in promoting **wildlife conservation** and the **development of wildlife and forests**.

- The NBWL is a **statutory body** formed under **Section 5A of the Wildlife (Protection) Act, 1972 (WLPA)**.
- It **approves projects**, including **government projects**, that are located in or around **protected areas** such as **national parks and wildlife sanctuaries**.
- The NBWL acts as an **advisory board** and provides advice to the **central government** on policies related to wildlife conservation.
- The Board was established in **2003** under the WLPA, replacing the earlier **Indian Board for Wildlife** formed in **1952**.
- The **Prime Minister** of India is the **chairperson** of the NBWL.

Composition of NBWL

- The NBWL consists of **47 members**, including the **Prime Minister** as the **chairperson**.
- The **Minister of Environment, Forests and Climate Change** serves as the **Vice-Chairperson**.
- According to the WLPA, a new NBWL must be constituted every time a new government is formed, with the **Prime Minister** as the chairperson.

Functions of NBWL

The key functions of the NBWL are:

- **Promoting and developing wildlife conservation.**
- Advising the government on issues related to **wildlife preservation**.
- Granting or rejecting **clearances for projects** in and around **protected areas**.
- **No changes to the boundaries** of protected areas can occur without the NBWL's approval.

c) State Water Laboratory. [2013]

Answer: - According to **Section 52 of the Water (Prevention and Control of Pollution) Act, 1974:**

1. The **State Government** can:
 - **Establish a State Water Laboratory, or**



- **Specify an existing laboratory or institute** to be recognized as a **State Water Laboratory**. This laboratory will carry out the functions assigned to it under this Act.
2. The **State Government** can, after consulting the **State Board**, create rules that cover the following:
- **Functions** of the **State Water Laboratory**.
 - The **procedure** for submitting samples of **water, sewage, or trade effluent** to the laboratory for analysis or testing. This also includes:
 - The **form** of the laboratory's **report**.
 - The **fees** that must be paid for the report.
 - Any other matters that may be needed to help the laboratory carry out its duties effectively.



THE EMPLOYEE'S STATE INSURANCE ACT, 1948

SYLLABUS

5. The Employee's State Insurance Act, 1948:

- a. Definitions.
- b. E.S.I. Corporation, Standing Committee and Medical Benefit Council.
- c. Contributions.

Q1. Explain the concept 'Social Security'. [2023]

Answer: - Social security is a concept where the **state** takes responsibility for protecting its citizens from certain life risks or challenges. The **definition** of social security can differ from country to country depending on their laws, traditions, and values. The key idea is that the **community works together** to support individuals when they face problems they cannot solve on their own, such as illness, unemployment, or accidents. It is built on the principles of **human dignity** and **social justice**.

The idea behind social security is that the **state** should ensure that every citizen has a **minimum standard of living** to cover all life's challenges, from birth to death. This means providing support for issues like **sickness, unemployment, old age, disability**, and even **death**.

ILO Definition

According to the **International Labour Organization (ILO)**, social security refers to the **protection** society provides to its members through public measures to prevent economic and social distress caused by various life situations like:

- **Sickness**
- **Maternity**
- **Workplace accidents**
- **Unemployment**
- **Disability**
- **Old age**
- **Death**

This protection is particularly important in countries undergoing **industrialization**, as it helps improve workers' morale by offering them **security** against work-related risks.

Social Security and the "Five Giants"

5.1 | Shri Radharaman Institutes



Social security aims to fight against the five major challenges (called "**giants**") that people face:

1. **Want** (lack of basic needs)
2. **Disease** (health issues)
3. **Ignorance** (lack of education)
4. **Squalor** (poor living conditions, especially in rapidly growing cities)
5. **Illness** (general health concerns)

The goal is to provide protection, especially for the poor, to ensure they can live with a **decent standard of living**.

Q2. Discuss the constitution of the corporation under the Employee's State Insurance Act, 1948. [2024, 2023, 2021, 2019, 2018, 2017, 2014]

OR

Q3. Discuss the composition of the Standing Committee and Corporation under Employee's State Insurance Act, 1948. [2022]

Answer: - As per Section 3, the Central Government is responsible for setting up the Employees' State Insurance Corporation (ESIC) to manage the Employees' State Insurance Scheme as per the law.

The **ESIC** is a **corporate body** with **perpetual succession**, which means it continues to exist even if the members change, and it has a **common seal**. It can **sue** and **be sued** under its official name.

Section 4: Composition of the ESIC

The **ESIC** consists of the following members:

1. **Chairman:** Appointed by the **Central Government**.
2. **Vice-Chairman:** Appointed by the **Central Government**.
3. **Maximum five persons:** Appointed by the **Central Government**.
4. **State Representatives:** One person representing each **State** where the Act is applicable, appointed by the **State Government**.
5. **Union Territories Representative:** One person appointed by the **Central Government** to represent **Union Territories**.
6. **Employer Representatives:** Ten persons representing employers, appointed by the **Central Government** in consultation with recognized employers' organizations.
7. **Employee Representatives:** Ten persons representing employees, appointed by the **Central Government** in consultation with recognized employees' organizations.
8. **Medical Profession Representatives:** Two persons representing the medical profession, appointed by the **Central Government** in consultation with recognized medical organizations.



9. **Members of Parliament (MPs):** Three MPs—two from **Lok Sabha** and one from **Rajya Sabha**.
10. **Director General:** The Director General of the Corporation, as a member **ex officio** (by virtue of their position).

Standing Committee of ESIC

The **Standing Committee** of the **ESIC** is composed of:

1. **Chairman:** Appointed by the **Central Government**.
2. **Three members of the Corporation:** Appointed by the **Central Government**.
3. **State Representatives:** Three members from the **Corporation**, each representing a **State Government** as chosen by the **Central Government**.
4. **Elected Members** (Eight members):
 - Three members representing **employers** from among the Corporation members.
 - Three members representing **employees** from among the Corporation members.
 - One member representing the **medical profession** from among the Corporation members.
 - One **Member of Parliament** (MP) from the Corporation.
5. **Director General:** The **Director General** of the Corporation, as a member **ex officio**.

Q4. What types of establishments come within the purview of the Employee's State Insurance Act, 1948? [2024, 2023, 2021, 2019, 2017]

Answer: - The Employees' State Insurance (ESI) Act applies to **factories** that are **non-seasonal** and employ **10 or more persons**.

State Government Extension (Section 1(5)):

The **State Governments** have expanded the coverage of the ESI Act to include the following establishments that employ **10 or more persons** in certain States and Union Territories (where the **State Government** is the appropriate Government):

- **Shops**
- **Hotels**
- **Restaurants**
- **Cinemas, including preview theatres**
- **Road motor transport undertakings**
- **Newspaper establishments**
- **Private medical institutions**



- **Educational institutions**
- **Contract and casual employees of Municipal Corporations and Municipal Bodies**

Central Government Extension (Section 1(5)):

The **Central Government** has extended the coverage of the ESI Act to the following establishments that employ **20 or more persons** (where the **Central Government** is the appropriate Government):

- **Shops**
- **Hotels**
- **Restaurants**
- **Road motor transport establishments**
- **Cinemas, including preview theatres**
- **Newspaper establishments**
- **Establishments engaged in insurance business**
- **Non-banking financial companies**
- **Port Trust**
- **Airport authorities**
- **Warehousing establishments**

Q5. State the law relating to resignation, cession and disqualification of the membership of the corporation. [2023, 2019, 2018, 2014]

OR

Q6. Under what circumstances the members of Corporation and Standing Committee are disqualified? [2022]

Answer: -

RESIGNATION OF MEMBERSHIP

As per **Section 11**, a member of the Corporation, the Standing Committee, or the Medical Benefit Council can resign by submitting a **written notice** to the **Central Government**. Once the **Central Government** accepts the resignation, the member's seat becomes **vacant**.

CESSATION OF MEMBERSHIP

As per **Section 12**, a member will stop being part of the Corporation, Standing Committee, or Medical Benefit Council if they **fail to attend three consecutive meetings**. However, the body can **restore** the member to their position if allowed under the **Central Government's rules**.

- **Central Government's Authority:** If the **Central Government** believes that any person appointed to represent **employers, employees, or the medical profession** no longer represents



them, the Government can declare that person no longer a member, via a **notification in the Official Gazette**.

- **Members from Parliament:** If a member is from either the **Lok Sabha** or the **Rajya Sabha**, they will lose their membership if they become a **Minister, Speaker, Deputy Speaker, or Deputy Chairman** of the Rajya Sabha. Membership also ends if they stop being a **Member of Parliament**.

DISQUALIFICATION

As per **Section 13**, a person will be disqualified from being chosen as or being a member of the Corporation, the Standing Committee, or the Medical Benefit Council if:

1. They are declared **of unsound mind** by a competent court.
2. They are an **undischarged insolvent** (a person unable to pay their debts).
3. They have an **interest in a contract** with the Corporation or any work being done for it, except if they are a **medical practitioner** or a **shareholder** (not a director) of a company.
4. They have been **convicted of a crime** involving **moral turpitude** (a serious crime that is morally wrong).

Q7. What is meant by Contribution? [2022, 2014]

OR

Q8. Short Note on Contribution. [2015]

Answer: - Contribution refers to the **money** that the **principal employer** must pay to the **Corporation** for each employee. This includes any amount that is also payable by or on behalf of the employee as per the law.

- The contribution is a fixed amount that both the **employer** and the **employee** must pay, depending on the situation.
- The **rates** of contribution are generally set by the **government**, but they can **change** over time. The government sets a **unit standard** for how much the employer must pay.
- If the employer fails to pay the contributions, they will be charged **12% interest** on the unpaid amount.

Payment of Contributions

- **Contribution rates** are decided by the **Central Government**.
- The **wage period** (the period in which an employee is paid) is used to determine when the contributions must be paid. Typically, the contributions are due at the **end of the wage period**.
- If an employee works for only part of the wage period or for more than one employer during the same period, the contribution payment date will be set by specific **regulations**.

Principal Employer's Responsibility



- According to **Section 40** of the Act, the **principal employer** is responsible for paying both the **employer's contribution** and the **employee's contribution** for every employee, whether the employee is directly employed by them or by an **immediate employer**.
- However, the principal employer can **deduct the employee's contribution** from the employee's wages (unless the employee is exempted).
- The principal employer must also bear the **expenses** of sending the contributions to the Corporation.

Interest on Unpaid Contributions

- If the principal employer **does not pay the contributions on time**, as per **Section 39(5)**, they must pay **simple interest** at the rate of **12% per annum** until the contribution is paid.
- The interest rate may be **higher**, but it cannot exceed the **interest rate charged by any scheduled bank**.
- The unpaid interest can be recovered as an **arrear of land revenue** or through new Sections **45-C to 45-I** of the Act.

Recovery of Contribution from Immediate Employer

- **Section 41** states that if the **principal employer** pays the contributions for an employee working through an **immediate employer**, they can **recover the paid contributions** (both employer's and employee's share) from the immediate employer. This can be done through:
 - **Deducting from any payments** the principal employer owes to the immediate employer, or
 - Treating it as a **debt** owed by the immediate employer.
- The **immediate employer** can recover the **employee's share** of the contribution by **deducting it from the employee's wages**.
- The immediate employer is required to **maintain a register** of employees they employ and submit it to the principal employer before settling any payments owed. However, the immediate employer is **not required** to have a separate account with the **ESI Corporation**.

Method of Payment of Contribution

Section 43 of the Act allows the **Corporation** to create **regulations** for how **contributions** must be paid and collected. These regulations can include the following points:

1. Manner and Time for Payment

The **regulations** will set out how and when contributions should be paid.

2. Payment by Stamps



Contributions may be paid using **adhesive stamps** or other stamps. These stamps may be attached to **books, cards,** or other items. The regulations will also specify the **time, conditions,** and **manner** in which these stamps should be applied.

3. Evidence of Payment

The regulations will specify the **date** by which evidence must be provided to the Corporation to show that the contributions have been **paid**.

4. Entry of Contributions in Books or Cards

There will be **records** of the contributions made and the **benefits distributed** for each insured person in their **books or cards**. These records will include details of the payments and the benefits provided.

5. Handling of Books or Cards

The regulations will also cover how **books or cards** are **issued, sold,** and **managed,** including their **custody, inspection,** and **replacement** if they are lost, destroyed, or damaged.

Q9. Discuss the powers and functions of 'Standing Committee' under the Employee's State Insurance Act, 1948. [2016]

OR

Q10. What are the power of Standing Committee under E.S.I. Act, 1948? [2013]

Answer: - The **Standing Committee** is responsible for **managing the affairs** of the **Employees' State Insurance Corporation (ESIC)**. It acts as the **executive body** that carries out the Corporation's administration. While doing so, the Standing Committee works under the **general supervision and control** of the Corporation.

According to **Section 18**, the Standing Committee has the following powers and duties:

1. Managing the Affairs

The **Standing Committee** is in charge of administering the Corporation's day-to-day affairs and can exercise many of the **Corporation's powers** and perform its functions, as long as it is authorized by the Corporation.

2. Reporting to the Corporation

The Standing Committee must bring certain **cases and matters** to the **Corporation** for **consideration and decision**, as specified in the **regulations**.

3. Discretionary Power

Additionally, the Standing Committee has the discretion to refer any other **case or matter** to the Corporation if it believes it should be decided by them.

Q11. Examine the procedure for supersession of the 'Corporation' and 'Standing Committee'. [2016, 2013]

Answer: - According to **Section 21:** -



1. Reason for Supersession

If the **Central Government** believes that the **Corporation** or the **Standing Committee** is **failing to perform its duties** or is **misusing its powers**, the Government can **supersede** them. This means the Government can take over their functions.

2. Procedure Before Superseding

Before taking this action, the **Central Government** must give the **Corporation** or **Standing Committee** a chance to explain why they should not be superseded. They will **consider any explanations or objections** before making the final decision.

3. Vacating Offices

Once the notification to supersede is published, all the **members of the Corporation or Standing Committee** will be considered to have **vacated their offices** from that date.

4. Reconstitution After Supersession

- **For the Standing Committee:** A new **Standing Committee** will be formed **immediately** following the procedures outlined in **Section 8** of the Act.
- **For the Corporation:** The **Central Government** can either:
 - Appoint new members to the Corporation as per **Section 4**, and also form a new **Standing Committee** under **Section 8**.
 - Alternatively, the Government can appoint an **agency** to carry out the functions of the Corporation for a time period it deems fit. This agency will have full authority to exercise all the powers and functions of the Corporation.

5. Report to Parliament

The **Central Government** must provide a full report to **Parliament** about the action taken, explaining the reasons behind it, within **three months** from the date of the notification to supersede the Corporation or Standing Committee.

Q12. Write Short Notes.

a) Insured Person. [2023, 2019, 2018, 2016]

Answer: - As per **Section 2(14)**, an **employee** is a person who is or was employed in a job where **contributions** are, or were, paid under the **ESI Act**. Because of these contributions, the person is entitled to benefits provided under the Act.

Eligibility for ESI Coverage

- **Salary Limit:** Workers earning **less than Rs. 21,000 per month** are covered under the ESI scheme.
 - For **persons with disabilities**, this limit is **Rs. 25,000 per month**.

Contribution Rates



- **Employee:** 0.75% of the employee's gross salary
- **Employer:** 3.25% of the employee's gross salary

Please note: These rates can be **revised periodically**.

Exemption for Low-Wage Workers

- Workers whose **daily average wage is up to Rs. 50** are **exempted** from contributing to the ESI fund.
- However, **employers** must still continue contributing for these workers.

b) Standing Committee. [2024, 2023, 2019, 2017, 2015]

Answer: - The **Standing Committee** is the **executive body** of the **Corporation** and plays a crucial role in managing its operations.

Composition of the Standing Committee:

- **Nominated Members:**
 - **Three members** representing the **Central Government**.
 - **Three members** representing the **State Governments**.
- **Elected Members** (elected through voice vote from the main body of the Corporation):
 - **Three members** representing **employers**.
 - **Three members** representing **employees**.
 - **One member** representing **Parliament**.
 - **One member** representing the **medical profession**.
- **Ex-officio Members:**
 - **Secretary, Ministry of Labour, Government of India:** Functions as the **Chairman** of the Standing Committee.
 - **Director General, ESIC:** Serves as an **ex-officio member**.

Powers and Functions:

- The **Standing Committee** is responsible for **administering the affairs** of the **Corporation**.
- It can exercise **any powers** and perform **any functions** of the Corporation, but always under the **supervision** and **control** of the Corporation.
- The **Standing Committee** can also create **non-statutory sub-committees** for **specific purposes** whenever necessary.

c) Dependent. [2022, 2019, 2018, 2016, 2013]

Answer: - A **dependent** is defined as someone who relies on a deceased insured person's earnings. The following are considered dependents:



1. Immediate Family Members:

- **Widow (wife).**
- **Legitimate or adopted son** who is under **25 years old**.
- **Unmarried legitimate or adopted daughter.**

2. Mother:

- **A widowed mother.**

3. Infirm Child:

- **A son or daughter** (legitimate or adopted) who is over **25 years old**, but is **incapacitated** and **wholly dependent** on the deceased insured person's earnings.

4. Other Relatives (Wholly or Partially Dependent on the Insured's Earnings):

- **Parents** (other than a widowed mother).
- **Minor illegitimate son** or **unmarried illegitimate daughter.**
- **Legitimate or adopted daughter**, or **illegitimate daughter** if she is:
 - **Minor** (unmarried) or,
 - **Widowed and a minor.**
- **Minor brother** or **unmarried sister**, or a **widowed sister** (if a minor).
- **Widowed daughter-in-law.**
- **Minor child** of a **pre-deceased son.**
- **Minor child** of a **pre-deceased daughter** if **no parent** of the child is alive.
- **Paternal grandparent** if **no parent** of the insured person is alive.

d) Wages. [2024, 2017, 2013]

Answer: - Under Section 2(22), wages refers to any **remuneration** (payment) made to an employee in cash for fulfilling the terms of their employment contract, whether written or implied. It also includes:

- **Payment during authorized leave, lock-out, strike** (if not illegal), or **lay-off.**
- **Other additional remuneration** paid at intervals not exceeding **two months.**

However, **wages do not include** the following:

- 1. Employer Contributions** to any **pension fund, provident fund**, or under this Act.
- 2. Traveling allowance** or the **value of traveling concessions.**
- 3. Special expenses** paid to the employee to cover costs incurred due to the nature of their job.
- 4. Gratuity** payable on discharge.



Wages are all **regular payments** made to employees under the contract, including payments during authorized leave or a lay-off.

Traveling allowance and **special expenses** are not part of wages, and **employers are not required to pay contributions** on them.

Sales commissions and **incentives** are considered wages if paid at intervals not exceeding two months, but this must be determined in each case.

Legal Precedents:

- **Handloom House Ernakulam v. Reg. Director, ESIC** (1999 CLA 34 SC 10): Sales commissions and incentives are wages if paid at intervals not exceeding two months.
- **S. Ganesan v. The Regional Director, ESI Corporation** (2004 Lab.I.C 1147): Traveling allowance does not form part of wages under the ESI Act.

e) **Employee. [2024, 2017, 2015, 2013]**

Answer: - Under Section 2(9), an **employee** is any person employed for **wages** in a factory or establishment that falls under the **Employees' State Insurance (ESI) Act**, and includes:

1. Direct Employees:

Employees directly hired by the **principal employer** to do any work related to the factory or establishment, whether the work is done in the factory, establishment, or elsewhere.

2. Employees through Immediate Employer:

Employees hired by or through an **immediate employer** to work on the premises of the factory or establishment or under the supervision of the principal employer, doing work that is part of the factory's regular tasks or activities.

3. Lent or Hired Employees:

Employees whose services are temporarily **lent or hired** to the principal employer by someone else, under a contract of service.

4. Other Employees:

- Employees working on tasks related to the administration of the factory or establishment.
- Employees involved in the **purchase of raw materials** or the **distribution/sale of the factory's products**.
- **Apprentices** (except those under the **Apprentices Act, 1961**), including those whose training period is extended.

However, an **employee** does **not include**:

- **Members of the Indian Naval, Military, or Air Forces.**
- Employees whose **wages (excluding overtime)** exceed a certain limit set by the **Central Government**.



Wage Limit for Coverage:

- The **Central Government** has set the wage limit for employees under the ESI Act as **Rs. 21,000 per month**.
- If an employee's wages exceed **Rs. 21,000 per month** after the beginning of the **contribution period** (but not before), they will continue to be considered an employee under the ESI Act **until the end of that period**.

f) **Disablement.** [2024, 2019, 2017, 2015, 2013]

Answer: - The term "**disablement**" refers to the **loss of capacity to work** or move, which leads to a reduction in the **earning capacity** of an employee. Essentially, it is an injury caused by an **accident** that results in the **loss of ability** to earn a living.

Case Example: Ball v/s William Hunt (1912)

In this case, an employee was **blind in one eye**, but this condition was not visible to others. Later, the employee suffered an **employment injury** that required the removal of the damaged eye. As a result, the **visible defect** from the injury made it impossible for the employee to find work, even though they were physically capable of doing the same type of job as before the accident.

Legal Ruling

It was held that **incapacity for work** includes being **unable to get employment**, even if the person is physically able to work. This means that the **visible defect** caused by the injury, despite not affecting the person's physical ability, still counts as a form of **disablement** because it **reduces the employee's ability to earn**.

g) **Partial and Total Disablement.** [2018]

OR

h) **Partial Disablement.** [2022, 2016]

OR

i) **Total Disablement.** [2022, 2016]

Answer: -

PERMANENT DISABLEMENT

Permanent disablement refers to the loss of the ability to work permanently due to an accident. It is a disability that **lasts forever** and can be divided into two types:

1. Permanent Partial Disablement

This means a permanent injury that reduces the **earning capacity** of the employee for any job they were able to do at the time of the accident. Even though the employee may still be able to work, their ability to earn is reduced.

- **Example:** If a worker loses a thumb, they may lose 30% of their earning capacity.



- **Important Note:** Every injury listed in **Part II of the Second Schedule** to the Act is automatically considered as permanent partial disablement.

2. Permanent Total Disablement

This means the injury is so severe that it incapacitates the employee from performing any work that they could do before the accident.

- **Example:** If a person loses both hands or one hand and one foot, or suffers severe disfigurement.
- **Important Note:** If the total loss of **earning capacity** from multiple injuries adds up to **100% or more**, it is considered permanent total disablement.
- To determine whether the injury is permanent or temporary, the overall impact on the employee's ability to work is considered.

TEMPORARY DISABLEMENT

Temporary disablement refers to an injury that requires medical treatment and temporarily incapacitates an employee from doing their usual work. It lasts for a **temporary period** and is subdivided into two types:

1. Temporary Total Disablement

This means the employee is completely unable to do any work due to the injury, but only for a **temporary period**. After the healing process, they may be able to return to work.

2. Temporary Partial Disablement

This means the injury **reduces the employee's earning capacity** temporarily for jobs they could previously do well, but they can still perform some work. This is a **temporary** condition.