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## UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: B.A.LLB (Hons.)EL / BA.LL.B(Hons.) CLL

Subject (Course): Interpretation of Statutes

Course Code : LLBL 511

No. of page/s: 03

Semester – IV

Max. Marks : 100

Duration : 3 Hrs

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### Refer to the annexure for relevant provisions

#### Section A (10 Marks)

(Attempt any five. Each question carries equal marks i.e. 2 X 5= 10 marks)

1. What is a non-obstante clause?
2. What is role of legislative history in interpretation?
3. What is meant by 'Ut Res Magis valeat Quam Pereat'?
4. What is the meaning of 'Expressio Unious Est Exclusio Alterius'?
5. What is meant by 'Prospective Overruling'?
6. What is meant by 'jus dicere'?

#### Section B (20 marks)

(Attempt any two questions. Each question carries equal marks i.e. 10 X 2 = 20)

7. Discuss the difference between 'ejusdem generis' and 'noscitur-a-soscis'. Elucidate with examples.
8. Why are penal statutes interpreted strictly? Justify and explain with relevant case laws.
9. State the concept of 'Pacta Sunt Servanda'.
10. The function of the court is to interpret the law and not to legislate. Discuss with the help of relevant case laws.

#### Section C (20 marks)

**(Attempt any two questions. Each question carries equal marks i.e. 10 X 2 = 20)**

11. There is a presumption of implied repeal. Explain the rules of repealing statutes with relevant case laws.
12. Explain the 'doctrine of colourable legislation' with suitable examples and case laws.
13. Can fiscal statutes be retrospective? Explain the concept of retrospectivity along with the rules of interpretation of fiscal statutes.
14. What are 'internal' and 'external' aids to the interpretation of statutes? Assess the importance of any two of the following in the interpretation of statutes :
  - (a) Preamble
  - (b) Parliamentary History;
  - (c) Proviso

### **Section D (50 marks)**

**(Attempt all questions = 12.5\*4 = 50 marks)**

15. In a Leading Case, A law of 1939 prescribing punishment for currency related offences, prescribed a maximum fine of 100 dollars for certain currency offences. The defendant committed such an offence while the 1939 Regulations were in force. Subsequently, in 1940, the Regulations were amended to provide a maximum fine of three times the amount involved in the currency offence. The question was whether the defendant was liable to a maximum fine of 100 dollars or to the much larger sum involved on the basis of the 1940 amended regulations. The Divisional Court held that the defendant was liable to the maximum prescribed by the 1940 amendment. The court was conscious that it was dealing with retrospective legislation. All three members of the court, however, held that the language of the regulation was clear. Imagine you are the appellate Authority and the case has come up for appeal. Write a judgment citing reasons for your verdict.
16. A law was made prohibiting slaughter of cows. This law was in news and in political discussions and finally it was challenged in the Supreme Court as being unconstitutional. The petitioner contended that this law violates the fundamental right to freedom of conscience and free profession, practice and propagation of religion as provided by Article 25 of the Constitution of India.  
The state, on being called upon to defend the law, contended that it's a law made in furtherance of the Directive contained under Article 48 of the Constitution. Therefore, it cannot be held unconstitutional.  
Interpret the two provisions and give your opinion justified by logic and supported by judicial pronouncements.

17 One person borrowed some money from Dehradun Bank. He defaulted in repayments and was served notices for ensuring payments which he never did. The bank initiated proceedings for recovery and the court asked him to show cause why he should not be committed to prison; and finally, by the orders of the court, warrant for his arrest was issued under section 51 and order 21 rule 37 of the Code of Civil Procedure.

He filed a petition in the Supreme Court challenging his arrest as being violative of his civil and political rights; specifically the right under Article 11 of the International Covenant on Civil and Political Rights, which says that no person shall be arrested for breach of a civil obligation.

The bank pleaded that the said Covenant is an international commitment and has not been specifically adopted by the Indian parliament. The bank also contended that the said International law cannot be enforced as being contrary to the express provisions of Indian law.

Interpret the relevant laws and decide the case supported by logic and decided cases.

18 One person went to a doctor. He was not benefited by the treatment. He went to a very famous doctor who owned a nursing home also. The doctor admitted the patient to the hospital, immediately after examination; and declared an emergent need of surgical intervention. After surgery, the patient felt relief but the next day he felt severe pain in the abdomen. He had to be taken to a higher medical center where he had to be operated again. It was found that the earlier surgeon had left a scissor in the patient's abdomen. Looking it as an apparent case of medical negligence, the patient filed a case under Consumer Protection Act, 1986. The doctor defended by claiming that the medical service and negligence is not covered under section 2(o) of the Consumer protection act.

Interpret and decide the case. Justify your judgment by appropriate logic and case laws.

19 "Posts, telegraphs, telephones, wireless, broadcasting and other like forms of communication".....Entry 31 List I.

'Public health, and sanitation' ...Entry 6, *List II*.

"Theaters and dramatic performances, cinemas, sports, entertainments and amusements".....Entry 33, *List II*.

Keeping in view the above entries in VII Schedule of the constitution, discuss the validity of the Public Nuisance Act, 1992, enacted by the State of Haryana, which authorizes the District Magistrates to issue orders regulating and even prohibiting the use of sound amplifiers, loudspeakers and other means of road-side entertainments/amusements if it is so required in public interest. Acting under the above law, the D.M., Gurgaon banned the use of sound amplifiers/loudspeakers after 10.30 p.m. which principle of interpretation would be applied by Courts.

## **Annexure: Relevant Legal Provisions**

### **Constitution of India**

#### **Article 12:**

In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

#### **Article 13: Laws inconsistent with or in derogation of the fundamental rights.-**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

#### **Article 14: Equality before law:**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

#### **Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or  
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.  
(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

### **Article 19: Protection of certain rights regarding freedom of speech etc**

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable

restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

#### **Article 20: Protection in respect of conviction for Offences:**

- (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
- (2) No person shall be prosecuted and punished for the same offence more than once.
- (3) No person accused of any offence shall be compelled to be a witness against himself.

#### **Article 21: Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### **Article 25: Freedom of conscience and free profession, practice and propagation of religion**

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
  - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
  - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

#### **Article 48: Organisation of agriculture and animal husbandry**

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

#### **Article 226: Power of High Courts to issue certain writs**

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

#### **Article 227: Power of superintendence over all courts by the High Court:**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

### **Article 368: Power of Parliament to amend the Constitution and procedure therefor**

- (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article
  - (2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in
    - (a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
    - (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
    - (c) any of the Lists in the Seventh Schedule, or
    - (d) the representation of States in Parliament, or
    - (e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent
  - (3) Nothing in Article 13 shall apply to any amendment made under this article
  - (4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground
  - (5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article
- PART XXI TEMPORARY,  
TRANSITIONAL AND SPECIAL PROVISIONS

### **Code of Civil Procedure, 1908**

**Section 51: Powers of court to enforce execution.-** Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree holder, order execution of the decree

- (a) by delivery of any property specifically decreed;



(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfied—

(a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court. or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

Explanation : In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

**Order 21 Rule 37. Discretionary power to permit judgment debtor to show cause against detention in prison.**- (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor who is liable to be arrested in pursuance of the application, the court shall, instead of issuing a warrant for his arrest, issue a notice calling upon on him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court. /

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor.

## **The International Covenant on Civil and Political Rights, 1966**

**Article 11: No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation**

## **Indian Evidence Act, 1872**

**Section 25: Confession to police-officer not to be proved:** No confession made to a police-officer shall be proved as against a person accused of any offence.

**Section 26: Confession by accused while in custody of police not to be proved against him:** No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

**Explanation:** In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

**Section 27: How much of information received from accused may be proved:** Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

**Section 113A: Presumption as to abetment of suicide by a married woman:** When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**Explanation:** For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code.

**Section 113-B: Presumption as to dowry death:** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

**Explanation-** For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code.

## **Code of Criminal Procedure**

### **Section 133: Conditional order for removal of nuisance**

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court

**Explanation-** A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or re-creative purposes.

## **Consumer Protection Act, 1986**

Section 2(o):

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

Roll No: -----



## UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

**Program:** B.A.LLB (Hons.)EL / BA. LL.B CLL  
**Subject (Course):** Interpretation of Statutes  
**Course Code :** LLBL 511  
**No. of page/s:** 03

**Semester – IV**  
**Max. Marks : 100**  
**Duration : 3 Hrs**

### **Refer to the annexure for relevant provisions**

#### **Section A (10 Marks)**

**(Each question carries equal marks i.e. 2 X 5 = 10)**

1. What is an enabling clause?
2. What is the meaning of ‘generalia specialibus non derogant’?
3. Can retrospective operation be given to a penal statute? Why?
4. Is the Ninth Schedule of Constitution amenable to judicial review?
5. What is the meaning of ‘ut res magis valeat cum pereat’?

#### **Section B (20 marks)**

**(Attempt all questions. Each question carries equal marks i.e. 10 X 2 = 20)**

6. What is meant by ‘harmonious construction’? Explain with suitable examples and case laws.
7. What is meant by ‘revival of legislation’? Compare Indian and British laws on this point.

#### **Section C (20 marks)**

**(Attempt all questions. Each question carries equal marks i.e. 10 X 2 = 20)**

8. How has the process of interpretation been useful in furthering judicial activism? Explain with specific reference to the judicial activism towards conservation of environment, in India.

9. Every 'ex-post-facto law' is retrospective but every retrospective law is not 'ex-post-facto'. Explain the statement and clarify difference between –ex-post-facto' laws and retrospective laws. Also refer to the constitutional protection against 'ex-post facto' laws. Justify your answer.

**Section D (50 marks)**

**(Attempt all questions 12.5 X 4 =50 marks)**

10. Omega industries were a large industrial group operating in India and abroad. The group was involved in the manufacturing of a large variety of consumer products. They were having a manufacturing unit operating in the city of Agra in Uttar Pradesh. This unit had large release of liquid chemical waste in the river Yamuna. This was continuously polluting the river water. A public-spirited lawyer filed an application to the sub-divisional magistrate; under section 133 of Cr.P.C. for removal of the nuisance. The magistrate ordered the industrial unit to stop releasing waste into the river 'yamuna'; but the industry, in spite of abiding by the order, challenged the applicability of section 133 Cr.P.C. over such cases. The industry contended that after enactment of Water Act, which is a special law for prevention, control and abatement of water pollution, the general remedy under section 133 stands repealed to the extent of its application on water pollution cases.
- Interpret the relevant laws and decide the matter. Justify your decision by appropriate logic and decided cases.

11. Mr. A was arrested on suspicion of having murdered his missing wife. He was remanded to seven days police remand where on strict interrogation and after use of third degree treatment, he confessed to the investigating officer of having committed the murder. Based on his confession the investigating officer recovered the dead body of the victim, which, could be identified by relatives, and identity was confirmed. From a different place, as stated, the murder weapon was recovered and many other facts and evidences were also collected. Later during trial, Mr. A denied all charges stating that

the confession was forcibly obtained by the police. He also contended that his confessional statement could not be proved in the court as it was irrelevant.

The prosecution pleaded relevancy of the statement under section 27 of the Indian Evidence Act, 1872 and the Court held it admissible. Mr. A challenged the constitutionality of section 27 of the evidence act as violative of Article 20(3) of the Constitution.

Interpret the relevant provisions of law and decide. Support your answer by appropriate logic and relevant judicial pronouncements.

12. An amendment was brought to the State Municipality Act, in state 'A'. The amended law provided that a person having more than three children was disqualified from contesting municipal elections in the state 'A'. This was to apply on the election of municipal council member and mayor. Mr. 'X' filed nomination for such election and his nomination was cancelled on the ground that he had 9 children. Mr. 'X' filed a writ petition challenging constitutional validity of the new law, claiming that it violates the political rights under article 19(1). He also sought an interim remedy that he be allowed to contest the election or the municipal election be stayed till the time the case was decided. Decide the case and support your answer by suitable pronouncements.

13. Article 13 (4) of the Constitution of India states that "Nothing in this article shall apply to any amendment of this Constitution under Article 368."

Article 368 (3) of the Indian Constitution states that "Nothing in Article 13 shall apply to any amendment made under this Article."

Critically analyse the concept in the wake of the presumption that laws in abrogation of fundamental rights shall be void.

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(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

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(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or  
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.  
(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

### **Article 19: Protection of certain rights regarding freedom of speech etc**

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause

(4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable



restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

#### **Article 20: Protection in respect of conviction for Offences:**

(4) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(5) No person shall be prosecuted and punished for the same offence more than once.

(6) No person accused of any offence shall be compelled to be a witness against himself.

#### **Article 21: Protection of life and personal liberty**

No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### **Article 25: Freedom of conscience and free profession, practice and propagation of religion**

(3) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(4) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

#### **Article 48: Organisation of agriculture and animal husbandry**

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle

#### **Article 226: Power of High Courts to issue certain writs**

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

#### **Article 227: Power of superintendence over all courts by the High Court:**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) Call for returns from such courts;

(b) Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) Prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practicing therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

### **Article 368: Power of Parliament to amend the Constitution and procedure therefor**

- (6) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article
- (7) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill: Provided that if such amendment seeks to make any change in
- (f) Article 54, Article 55, Article 73, Article 162 or Article 241, or
  - (g) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
  - (h) any of the Lists in the Seventh Schedule, or
  - (i) the representation of States in Parliament, or
  - (j) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent
- (8) Nothing in Article 13 shall apply to any amendment made under this article
- (9) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty second Amendment) Act, 1976 shall be called in question in any court on any ground
- (10) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article
- PART XXI TEMPORARY, TRANSITIONAL AND SPECIAL PROVISIONS**

### **Code of Civil Procedure, 1908**

**Section 51: Powers of court to enforce execution.-** Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree holder, order execution of the decree

- (a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfied—

(a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree,—

(i) is likely to abscond or leave the local limits of the jurisdiction of the Court. or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

Explanation : In the calculation of the means of the judgment debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.

**Order 21 Rule 37. Discretionary power to permit judgment debtor to show cause against detention in prison.**- (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment debtor who is liable to be arrested in pursuance of the application, the court shall, instead of issuing a warrant for his arrest, issue a notice calling upon on him to appear before the court on a day to be specified in the notice and show cause why he should not be committed to the civil prison:

Provided that such notice shall not be necessary if the court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment debtor is likely to abscond or leave the local limits of the jurisdiction of the court. /

(2) Where appearance is not made in obedience to the notice, the court shall, if the decree holder so requires, issue a warrant for the arrest of the judgment debtor.

## **The International Covenant on Civil and Political Rights, 1966**

**Article 11: No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation**

## **Indian Evidence Act, 1872**

**Section 25: Confession to police-officer not to be proved:** No confession made to a police-officer shall be proved as against a person accused of any offence.

**Section 26: Confession by accused while in custody of police not to be proved against him:** No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

**Explanation:** In this section "Magistrate" does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure.

**Section 27: How much of information received from accused may be proved:** Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

**Section 113A: Presumption as to abetment of suicide by a married woman:** When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

**Explanation:** For the purposes of this section, "cruelty" shall have the same meaning as in section 498-A of the Indian Penal Code.

**Section 113-B: Presumption as to dowry death:** When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

**Explanation-** For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code.

## **Code of Criminal Procedure**

### **Section 133: Conditional order for removal of nuisance**

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers—

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation or the keeping of any goods or merchandise; is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute

(2) No order duly made by a Magistrate under this section shall be called in question in any civil Court

**Explanation-** A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or re-creative purposes.

## **Consumer Protection Act, 1986**

Section 2(o):

"service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

