

UNIT – 2

OVERVIEW OF GENERAL LAWS AND PROCEDURES IN INDIA

STRUCTURE

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 SUBJECT

2.3.1 CONSTITUTION OF INDIA

2.3.1.1 FREE SPEECH AND EXPRESSION ON THE INTERNET

2.3.1.2 RIGHT TO PRIVACY

2.3.2 INTERPRETATION OF STATUTES

2.3.3 LAW OF SPECIFIC RELIEF

2.3.4 LAW RELATING TO ARBITRATION AND CONCILIATION

2.3.4.1 ARBITRATION

2.3.4.2 CONCILIATION

2.3.4.3 ALTERNATIVE DISPUTE RESOLUTION (ADR)

2.3.5 LAW RELATING TO TORTS

2.3.6.1 KINDS OF TORTIOUS LIABILITY

2.3.6.2 REMEDIES IN TORTS

2.3.6 LAW RELATING TO LIMITATION

2.3.7 LAW RELATING TO EVIDENCE

2.3.8 LAW RELATING TO TRANSFER OF PROPERTY

2.3.9 LAW RELATING TO STAMPS

2.3.10 LAW RELATING TO REGISTRATION OF DOCUMENT

2.3.11 LAW RELATING TO INFORMATION TECHNOLOGY

2.3.12 THE CODE OF CIVIL PROCEDURE, 1908 (C.P.C.)

2.3.13 THE CODE OF CRIMINAL PROCEDURE, 1973

2.3.14 LAW RELATING TO RIGHT TO INFORMATION

2.4 SUMMARY

2.5 GLOSSARY

2.6 SAQS

2.7 REFERENCES

2.8 SUGGESTED READINGS

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

2.10 ANSWER SAQS

2.1 INTRODUCTION

Indian law refers to the system of law which operates in India. It is largely based on English common law. Various Acts introduced by the British are still in effect in modified form today. Much of contemporary Indian law shows substantial European and American influence.

India had a historically independent school of legal theory and practice. The Arthashastra, dating from 400 BC, and the Manusmriti, from 100 AD, were influential treatises in India. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

The primary source of law is in the enactments passed by the Parliament or the State Legislatures. The President and the Governor have limited powers to issue ordinances. Secondary source of law is the judgments of the Supreme Court, High Courts and some of the specialised Tribunals.

The Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India. The Constitution declares India to be a sovereign socialist democratic republic, assuring its citizens of justice, equality, and liberty.

Indian Penal Code (IPC) provides a penal code for all of India including Jammu and Kashmir, where it was renamed the Ranbir Penal Code (RPC). Indian Penal Code came into force in 1862 (during the British Raj) and is regularly amended, such as to include section 498-A.

The Civil Procedure Code (C.P.C.) regulate the functioning of Civil Courts. It lays down the: Procedure of filing the civil case. - Powers of court to pass various orders. - Court fees and stamps involved in filing of case. - Rights of the parties to case (plaintiff & defendant) - Jurisdiction & parameters of civil courts functioning. - Specific rules for proceedings of a case. - Right of Appeals, review or reference.

Indian civil law is complex, with each religion having its own specific laws which they adhere to after independence Indian laws have adapted to the changing world. The most recent being the Domestic Violence Act [2005].

Industrial and Labour Laws The most notable laws are as follows: Industrial Dispute Act, 1947, Wages Act, 1948, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Beedi and Cigar workers Act, 1974, Equal Remuneration Act, 1976, Contract Labour Act, 1970, Child Labour Act, 1986, Bonded Labour System Act, 1976, The Employee's Provident Funds Act, 1952.

The Right to Information emerges out of the umbrella of Right to Freedom of Speech and Expression and Right to Life. From the perspective of citizenship, right to information is the primary tool in the hands of the citizen.

The three-tiered system of Indian judiciary comprises of Supreme Court (New Delhi) at its helm; High Courts standing at the head of state judicial system; Followed by district and sessions courts in the judicial districts, into which the states are divided. The lower rung of the system then comprises of courts of civil (civil judges) & criminal (judicial/metropolitan magistrates) jurisdiction.

2.2 OBJECTIVES

After reading this unit you are able to understand the following:

- Constitution of India
- Free speech and expression on the internet
- Interpretation of statutes
- Law of Specific Relief
- Law relating to arbitration and conciliation
- Arbitration
- Alternative dispute resolution (ADR)
- Law relating to torts
- Law relating to limitation
- Law relating to evidence
- Law relating to transfer of property
- Law relating to stamps
- Law relating to registration of document
- Law relating to information technology
- The code of civil procedure, 1908 (C.P.C.)
- The code of criminal procedure, 1973
- Law relating to right to information

2.3 SUBJECT

2.3.1 CONSTITUTION OF INDIA

The Constitution of India came into force on January 26, 1950. The preamble to the Constitution sets out the aims and aspirations of the people of India. Constitution of India is basically federal but with certain unitary features. The essential features of a Federal Polity or System are – dual Government, distribution of powers, supremacy of the Constitution, independence of Judiciary, written Constitution, and a rigid procedure for the amendment of the Constitution. The fundamental rights are envisaged in Part III of the Constitution. These are: (i) Right to Equality; (ii) Right to Freedom; (iii) Right against Exploitation; (iv) Right to Freedom of Religion; (v) Cultural and Educational Rights; (vi) Right to Constitutional Remedies.

The Directive Principles as envisaged by the Constitution makers lay down the ideals to be observed by every Government to bring about an economic democracy in this country.

Article 51A imposing the fundamental duties on every citizen of India was inserted by the Constitution (Forty-second Amendment) Act, 1976. The objective in introducing these duties

is not laid down in the Bill except that since the duties of the citizens are not specified in the Constitution, so it was thought necessary to introduce them.

The most important legislative power conferred on the President is to promulgate Ordinances. The ambit of this Ordinance-making power of the President is coextensive with the legislative powers of the Parliament. The Governor's power to make Ordinances is similar to the Ordinance making power of the President and has the force of an Act of the State Legislature.

The Union of India is composed of 29¹ States and both the Union and the States derive their authority from the Constitution which divides all powers-legislative, executive and financial, between them. Both the Union and States are equally subject to the limitations imposed by the Constitution. However, there are some parts of Indian Territory which are not covered by these States and such territories are called Union Territories.

The courts in the Indian legal system, broadly speaking, consist of (i) the Supreme Court, (ii) the High Courts, and (iii) the subordinate courts. The Supreme Court, which is the highest Court in the country is an institution created by the Constitution. The jurisdiction of the Supreme Court is vast including the writ jurisdiction for enforcing Fundamental Rights.

The increasing complexity of modern administration and the need for flexibility capable of rapid readjustment to meet changing circumstances, have made it necessary for the legislatures to delegate its powers. While delegating the powers to an outside authority, the legislature must act within the ambit of the powers defined by the Constitution and subject to the imitations prescribed thereby.

2.3.1.1 FREE SPEECH AND EXPRESSION ON THE INTERNET

The freedom of speech and expression is enshrined as a fundamental right under the article 19(1) (a) of the constitution of India. The Supreme Court in *Cricket Association of Bengal v. Ministry of Information & Broadcasting (Govt. of India)*², has held that this freedom includes the right to communicate through any media - print, electronic and audio visual. This freedom includes the freedom of press as it partakes of the same basic nature and characteristic (*Maneka Gandhi v. Union of India*³). However no special privilege is attached to the press as such, distinct from ordinary citizens. In *Romesh Thapar v. State of Punjab*⁴, it was observed that, freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government is possible. Imposition of pre-censorship on publication under clause (2), violates the freedom of speech and expression.

Regarding Commercial advertisements it was held in *Hamdard Dawakhana v. Union of India*⁵, that they do not fall within the protection of freedom of speech and expression because such advertisements have an element of trade and commerce. A commercial advertisement does not

¹Talangna state from Andhra Pradesh

²AIR 1995 SC 1236,

³ AIR 1978 S.C. 597

⁴ AIR 1950 S.C. 124

⁵AIR 1960 SC 554

aim at the furtherance of the freedom of speech. Later the perception about advertisement changed and it has been held that commercial speech is a part of freedom of speech and expression guaranteed under Article 19(1)(a) and such speech can also be subjected to reasonable restrictions only under Article 19(2) and not otherwise⁶.

Internet empowers freedom of expression by providing individuals with new means of expression. On the other hand the free flow of information raised the need for content regulation not least to minor's access to potentially harm full information. The internet has become a vital communication medium which individuals use to exercise their right to freedom of expression or the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, as guaranteed under article 19 of both Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.⁷

Article 19(1) (a) is applicable to all kinds of platforms and all means of communications including the internet. However this right is not absolute and subject to certain reasonable restrictions which can be imposed by the State under article 19(2) of the constitution of India. The Information Technology Act, 2000, after its amendment in 2008 has provided for such reasonable restrictions.

2.3.1.2 RIGHT TO PRIVACY

Privacy is a very old concept. With the advent of digital world, privacy is increasingly becoming important and gaining centre stage attention. Privacy is a fundamental human right recognised in the UN Declaration of Human Rights, the International covenant on Civil and Political Rights and many other international and regional treaties. India does not specifically have a dedicated law on privacy. However, the right to life and personal liberty given in the article 21 of the constitution of India also included the right of privacy⁸. Some portions of privacy are covered under the Information Technology Act, 2000, as amendment by the Information Technology (Amendment) Act, 2008.

2.3.2 INTERPRETATION OF STATUTES

A statute normally denotes the Act enacted by the legislature. The object of interpretation in all cases is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used. The General Principles of Interpretation are Primary Rules and other Rules of Interpretation.

The primary rules are:

Literal Construction: According to this rule, the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning.

⁶ Tata Press Ltd. v. MTNL, AIR 1995 SC 2438

⁷ Pavan Duggal, Textbook on cyber Laws, Universal Law Publishers, 2014 Edition, p. 10-11

⁸Gobind v. State of M.P., AIR 1975 S.C. 1378,

The Mischief Rule or Heydon's Rule: The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". Rule of Reasonable Construction i.e. *Ut Res Magis Valeat Quam Pareat*: According to this rule, the words of a statute must be construed *ut res magis valeat quam pareat*, so as to give a sensible meaning to them. A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning.

Rule of Harmonious Construction: Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, an effect may be given to both.

Rule of Eiusdem Generis: The *eiusdem generis* rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose.

Other Rules of Interpretation are: *Expressio Unis Est Exclusio Alterius*: The rule means that express mention of one thing implies the exclusion of another.

Contemporanea Expositio Est Optima Et Fortissima in Lege: The maxim means that a contemporaneous exposition is the best and strongest in law. The "*Noscitur a Sociis*" i.e. "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words.

Strict and Liberal Construction: What is meant by "strict construction" is that "Acts, are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended", while by "liberal construction" is meant that "everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute".

Presumptions: Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions.

Internal and External Aids in Interpretation.

Internal Aids in Interpretation: The following may be taken into account while interpreting a statute:

Title; Preamble; Heading and Title of a Chapter; Marginal Notes; Interpretation Clauses; Proviso; Illustrations or Explanations; and Schedules.

External Aids in Interpretation: Apart from the intrinsic aids, such as preamble and purview of the Act, the Court can consider resources outside the Act, called the extrinsic aids, in interpreting and finding out the purposes of the Act.

There are: Parliamentary History; Reference to Reports of Committees; Reference to other Statutes; Dictionaries and Use of Foreign Decisions.

2.3.3 LAW OF SPECIFIC RELIEF

The expression 'specific relief' means a relief in specie. It is a remedy which aims at the exact fulfilment of an obligation. The specific Relief Act applies both to movable and immovable property. The Act applies in cases where court can order specific performance of a contract or act. As per the Act, specific relief can be granted only for the purpose of enforcing individual civil rights and not for the mere purpose of enforcing a civil law.

Under the Specific Relief Act, 1963, remedies have been divided as specific relief (Sections 5-35) and preventive relief (Sections 36-42). These are:

- (i) Recovering possession of property (Sections 5-8);
- (ii) Specific performance of contracts (Sections 9-25);
- (iii) Rectification of Instruments (Section 26);
- (iv) Rescission of contracts (Sections 27-30);
- (v) Cancellation of Instruments (Section 31-33);
- (vi) Declaratory decrees (Sections 34-35); and
- (vii) Injunctions (Sections 36-42).

Generally, only a party to the contract can get its specific performance. The section 15 gives the list of persons who can sue for specific performance of a contract.

2.3.4 LAW RELATING TO ARBITRATION AND CONCILIATION

2.3.4.1 ARBITRATION

Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a court of law. In 1899 an Indian Act entitled the Arbitration Act of 1899 was passed. It was based on the model of the English Act of 1899. With a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and also to provide for a law relating to conciliation and related matters, a new law called Arbitration and Conciliation Act, 1996 has been passed.

The Act has been divided into four Parts and contains three Schedules. Part one deals with Arbitration (Sections 2 to 43); Part two deals with enforcement of certain Foreign Awards (Sections 44 to 60); Part three deals with conciliation (Sections 61 to 81); and Part four contains supplementary provisions (Sections 82 to 86). Similarly schedule one contains provisions relating to convention on the Recognition and Enforcement of Foreign Arbitral Awards; Schedule two deals with Protocol on Arbitration Clauses and Schedule three contains provisions relating to Execution of Foreign Arbitral Awards.

Section 2(1) (a) of the Act, defines the term —arbitration, as to mean any arbitration whether or not administered by a permanent arbitral institution.

As per Section 2(1) (c), "arbitral award" includes an interim award. The definition does not give much details of the ingredients of an arbitral award.

Arbitral tribunal means a sole arbitrator or a panel of arbitrators. [Section 2(1) (d)].

Section 31 of the Act lays down the requirements as to form and contents of an arbitration award. The award should state the reasons upon which it is based. In other words, unless (a) the parties have agreed that no reasons are to be given or (b) the award is an arbitral award on agreed terms under Section 30 of the Act, the award should state the reasons in support of determination of the liability/non-liability. The legislature has not accepted the ratio of Constitution Bench in the *Chokhamal Contractor's case*⁹, that the award, being in the private law field, need not be a speaking award even where the award relates to the contract of private parties or between person and the Government or public sector undertakings (*Tamil Nadu Electricity Board v. Bridge Tunnel Constructions & Others, AIR 1997 SC 1376*). Date and Place are to be mentioned in the award in accordance with Section 20 of the Act and the award should be deemed to have been made at that place.

The parties can approach the Court for setting aside the Award. Section 2(e) specifically provides that "Court" means the principal Civil Court of original jurisdiction in a district, including High Court and excludes any Civil Court of grade inferior to such principal Civil Court or any Court of small causes.

Section 37 of the Act provides that an appeal shall lie from the following orders (and from no others) to the court authorised by law to hear appeals from original decrees of the court passing the order, namely; (a) granting or refusing to grant any measures under Section 9; (b) setting aside or refusing to set aside an arbitral award under Section 34. An appeal may also lie against the decision of the arbitral tribunal (a) accepting the plea referred in Sub-section (2) or Sub-section (3) of Section 16 or (b) under Section 17 of the Act relating to granting or refusing to grant any interim measures¹⁰. Section 37(3) prohibits making of second appeal from an order passed in appeal under Section 37(1) and (2) of the Act but the right to appeal to the Supreme Court is always open to a party aggrieved.

Chapters I and II of Part II of the Arbitration and Conciliation Act, 1996 deal with the enforcement of certain foreign awards made under the New York Convention and the Geneva Convention, respectively.

2.3.4.2 CONCILIATION

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement. He does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences.

⁹AIR 1990 SC 1426

¹⁰Section 37(2)

Mediation is usually a voluntary process that results in a signed agreement which defines the future behaviour of the parties. The mediator uses a variety of skills and techniques to help the parties reach the settlement, but is not empowered to render a decision.

Under the old law, there are no special provisions to deal with the award based on compromise. As against, the new law facilitates the arbitrator to promote efforts to arrive at settlement of dispute through conciliation. Part III of the Act contains provisions in this regard.

2.3.4.3 ALTERNATIVE DISPUTE RESOLUTION (ADR)

There is a growing awareness that courts will not be in a position to bear the entire burden of justice system. A very large number of disputes lend themselves to resolution by alternative modes such as arbitration, mediation, conciliation, negotiation, etc. The ADR processes provide procedural flexibility save valuable time and money and avoid the stress of a conventional trial.

2.3.5 LAW RELATING TO TORTS

The word 'tort' is a French equivalent of English word 'wrong'. The word tort is derived from Latin language from the word Tortum. Thus, simply stated 'tort' means wrong. But every wrong or wrongful act is not a tort. Tort is really a kind of civil wrong as opposed to criminal wrong. Wrongs, in law, are either public or private.

Section 2(m) of the Limitation Act, 1963, states, 'Tort means a civil wrong which is not exclusively a breach of contract or breach of trust'.

In general, a tort consists of some act or omission done by the defendant (tort feisor) whereby he has without just cause or excuse caused some harm to plaintiff. To constitute a tort, there must be:

- (i) A wrongful act or omission of the defendant;
- (ii) The wrongful act must result in causing legal damage to another; and
- (iii) the wrongful act must be of such a nature as to give rise to a legal remedy.

As was stated in *Ashby v. White*, (1703) 2 Ld. Raym. 938 legal damage is neither identical with actual damage nor is it necessarily pecuniary. Two maxims, namely: (i) *Damnum sineinjuria*, and (ii) *injuria sine damnum*, explain this proposition.

Damnum Sine Injuria

Damnum means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts.

Thus, if A own a shop and B open a shop in the neighbourhood, as a result of which A lose some customers and my profits fall off, A cannot sue you for the loss in profits, because B are exercising your legal right.¹¹

Injuria Sine Damno

It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

The leading example is the case of *Ashby v White* referred to above where a person was wrongfully not allowed to vote and even though it has not caused him any damage, since his legal right to vote was denied, he was entitled to compensation.

2.3.5.1 KINDS OF TORTIOUS LIABILITY

There are following types of tortuous liability:

(A) STRICT OR ABSOLUTE LIABILITY

In some torts, the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant's part. In other words, the defendant is held liable without fault.

The rule in *Rylands v. Fletcher (1868) L.R. 3 H.L. 330* is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants. It was held in that case that: "If a person brings or accumulates on his land anything which, if it should escape may cause damage to his neighbours, he does so at his own peril. If it does not escape and cause damage he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent damage

Exceptions to the Rule of Strict Liability

The following exceptions to the rule of strict liability have been introduced in course of time, some of them being inherent in the judgment itself in *Ryland v. Fletcher*:

- (i) Damage due to Natural Use of the Land
- (ii) Consent of the plaintiff
- (iii) Act of Third Party
- (iv) Statutory Authority
- (v) Act of God
- (vi) Escape due to plaintiff's own Default

¹¹GloucesterGrammer School case, (1410) Y.B. Hill. 11 Hen, 4, of. 47, pp. 21, 36

The Supreme Court has discussed the applicability of the rule of *Rylands v. Fletcher* in the case of *M.C. Mehta v. Union of India and Others (1987) 1. Comp. L.J. p. 99 S.C.* while determining the principles on which the liability of an enterprise engaged in a hazardous or inherently dangerous industry depended if an accident occurred in such industry. While imposing absolute liability for manufacture of hazardous substances, the Supreme Court intended that the requirement of non-natural use or the aspect of escape of a dangerous substance, commonly regarded as essential for liability under *Rylands v. Fletcher*, need not be proved in India.

(B) VICARIOUS LIABILITY

Normally, the tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort. The common examples of such a liability are:

(a) Principal and Agent (Specific authority)

The maxim - *Qui facit per alium facit per se* means – he who acts through another is acting himself, so that the act of the agent is the act of the principal. When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same.¹²

(b) Partners

For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable therefore to the same extent as the guilty partner. The liability of the partners is joint and several.¹³

(c) Master and Servant (Authority by relation)

A master is liable for the tort committed by his servant while acting in the course of his employment. The servant, of course, is also liable; their liability is joint and several.

(d) Employer and Independent Contractor

It is to be remembered that an employer is vicariously liable for the torts of his servants committed in the course of their employment, but he is not liable for the torts of those who are his independent contractors.

(e) Where Employer is Liable for the acts of Independent Contractor

This may happen in one of the following three ways:

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability
- (iii) Negligence of independent contractor

¹²*Lloyd v. Grace, Smith & Co. (1912) A.C. 716,*

¹³*Hamlyn v. Houston & Co. (1903) 1 K.B. 81*

(f) Where Employer is not Liable for the acts of an Independent Contractor

An employer is not liable for the tort of an independent contractor if he has taken care in the appointment of the contractor.¹⁴

(g) Liability for the acts of Servants

An employer is liable whenever his servant commits a tort in the course of his employment. An act is deemed to be done in the course of employment if it is either:

- (i) a wrongful act authorized by the employer, or
- (ii) a wrongful and unauthorized mode of doing some act authorized by the employer.

(C) VICARIOUS LIABILITY OF THE STATE

The Position in India

Unlike the Crown Proceeding Act, 1947 of England, we have no statutory provision with respect to the liability of the State in India. When a case of Government liability in tort comes before the courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. If it is a sovereign function, it could claim immunity from the tortious liability, otherwise not. A sovereign function denotes the activity of the State which can be done only by the State like defence, police, etc. The State is not liable vicariously for any breach by its employees. A non-sovereign function covers generally the activities of commercial nature or those which can be carried out by a private individual like transport, hospitals etc. in which the State is equally liable similar to a private person.

2.3.5.2 REMEDIES IN TORTS

(1) JUDICIAL REMEDIES

Three types of judicial remedies are available to the plaintiff in an action for tort namely:

- (i) Damages or Compensation,
- (ii) Injunction, and
- (iii) Specific Restitution of Property.

(2) EXTRA JUDICIAL REMEDIES

In certain cases it is lawful to redress one's injuries by means of self-help without recourse to the court. These remedies are:

- (a) Self Defence
- (b) Prevention of Trespass
- (c) Re-entry on Land

¹⁴*Philips v. Britania Hygienic LaundryCo. (1923)*

- (d) Re-capture of Goods
- (e) Abatement of Nuisance
- (f) Distress Damage Feasant

2.6 LAW RELATING TO LIMITATION

The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petitions or applications. The Act applies to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless its application is excluded by any enactment. The Act extends to whole of India except the State of Jammu and Kashmir.

Limitation Bars Remedy, But Does Not Extinguish Rights

The Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process.¹⁵

Computation of the period of limitation or different types of suits

The Courts in India are bound by the specific provisions of the Limitation Act and are not permitted to move outside the ambit of these provisions. The Act prescribes the period of limitation in Articles in Schedule to the Act. In the Articles of the Schedule to the Limitation Act, Columns 1, 2, and 3 must be read together to give harmonious meaning and construction. The Schedule containing the table showing the relevant Articles prescribing limitation period for a specified suit and also time from which such period commences is given at the end of this Lesson.

Extension of the time in certain cases

Doctrine of sufficient cause

Section 5 allows the extension of prescribed period in certain cases on sufficient cause being shown for the delay. This is known as doctrine of 'sufficient cause' for condonation of delay which is embodied in Section 5 of the Limitation Act, 1963.

It is the Court's discretion to extend or not to extend the period of limitation even after the sufficient cause has been shown and other conditions are also specified. However, the Court should exercise its discretion judicially and not arbitrarily.

The test of "sufficient course" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike.¹⁶

¹⁵*Bombay Dying & Mfg. Co. Ltd. v. State of Bombay*, AIR 1958 SC 328.

¹⁶*R B Ramlingam v. R B Bhvansewari* (2009) 2 SCC 689

Persons under legal disability

Section 6 is an enabling section to enable persons under disability to exercise their legal rights within a certain time. Section 7 supplements Section 6, Section 8 controls these sections, which serves as an exception to Sections 6 and 7.

Limitation and writs under the Constitution

The subject of limitation is dealt with in entry 13, List III of the Constitution of India. The Legislature may, without violating the fundamental rights, enact statutes prescribing limitation within which actions may be brought or varying or changing the existing rules of limitation either by shortening or extending time provided a reasonable time is allowed for enforcement of the existing right of action which would become barred under the amended Statute.

The State cannot place any hindrance by prescribing a period of limitation in the way of an aggrieved person seeking to approach the Supreme Court of India under Article 32 of the Constitution. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(2) of the Constitution. It is against the State action that Fundamental Rights are claimed.¹⁷

2.7 LAW RELATING TO EVIDENCE

The "Law of Evidence" may be defined as a system of rules for ascertaining controverted questions of fact in judicial inquiries.

The Indian Evidence Act, 1872 is an Act to consolidate, define and amend the Law of Evidence. The Act extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Court-martial (other than the Court-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy Discipline Act, 1934 or the Air Force Act) but not to affidavits presented to any Court or officer, or to proceedings before an arbitrator.

Judicial Proceedings

The Act does not define the term "judicial proceedings" but it is defined under Section 2(i) of the Criminal Procedure Code as "a proceeding in the course of which evidence is or may be legally taken on oath". Under this Act the proceedings under the Income Tax are not "judicial proceedings". The Act is also not applicable to the proceedings before an arbitrator.

Evidence

The term evidence is defined under Section 3 of the Evidence Act as follows: "Evidence means and includes: (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; (2) all documents (including electronic records) produced for the inspection of the Court; such documents are called documentary evidence." In general the rules of evidence are same in civil

¹⁷*Tilokchand Motichand v. H.P. Munshi*, AIR 1970 SC 898

and criminal proceedings but there is a strong and marked difference as to the effect of evidence in civil and criminal proceedings. In civil proceedings it is sufficient if the evidence shows that in all probability the accused would have committed the wrong; but in criminal proceedings, evidences must show beyond all doubts that the accused alone would have committed the crime.

The Act is divided into three parts:

Part I Relevancy of Facts-Chapter I containing Sections 1 to 4 deals with preliminary points and relevancy of facts is dealt with in Chapter II containing Sections 5 to 55.

Part II On proof (Chapters III to VI) containing Sections 56 to 100. Part III Production and effect of evidence (Chapters VII to XI containing Sections 101 to 167).

Fact

According to Section 3, 'fact' means and includes: (a) anything, state of things, or relation of things capable of being perceived by the senses; (b) any mental condition of which any person is conscious. Thus facts are classified into physical and psychological facts.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. (Section 3)

Under Civil Procedure Code, the Court has to frame issues on all disputed facts which are necessary in the case. These are called issues of fact but the subject matter of an issue of fact is always a fact in issue. Thus when described in the context of Civil Procedure Code, it is an 'issue of fact' and when described in the language of Evidence Act it is a 'fact in issue'. Thus distinction between facts in issue and relevant facts is of fundamental importance.

Relevancy of opinion of third person

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule. These are:

(i) Opinions of experts. (Section 45)

Opinion of experts are relevant upon a point of (a) foreign law (b) science (c) art (d) identity of hand writing (e) finger impression special knowledge of the subject matter of enquiry become relevant

(ii) Facts which support or are inconsistent with the opinions of experts are also made relevant. (Section 46)

(iii) Others: In addition to the opinions of experts, opinion of any other person is also relevant in the following cases:

(a) Opinion as to the handwriting of a person (Section 47)

(b) Opinion as to the digital signature of any person, (Section 48)

(d) Opinion as to usages etc. (Section 49)

(e) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

Privileged communication

There are some facts of which evidence cannot be given though they are relevant. Such facts are stated under Sections 122, 123, 126 and 127, where evidence is prohibited under those Sections. They are also referred to as privileged communications.

Oral, documentary and circumstantial evidence

Oral evidence means statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. But, if a witness is unable to speak he may give his evidence in any manner in which he can make it intelligible as by writing or by signs. (Section 119)

Documents produced for the inspection of the Court is called **Documentary Evidence**. Section 60 provides that the contents of a document must be proved either by primary or by secondary evidence.

Primary evidence

"Primary evidence" means the document itself produced for the inspection of the Court (Section 62).

Secondary evidence

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 defines the kind of secondary evidence permitted by the Act.

Special Provisions as to Evidence Relating to Electronic Record

Section 65A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65B.

Presumptions

The Act recognises some rules as to presumptions. A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists. A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and until the truth of such inference is disproved.

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 115). Estoppel is based on the maxim '*allegans contraria non est audiendus*' i.e. a person alleging contrary facts should not be heard.

2.8 LAW RELATING TO TRANSFER OF PROPERTY

The law relating to transfer of property is governed by the Transfer of Property Act, 1882. The Act deals with (i) various specific transfers relating to Immoveable property and (ii) lays down general principles relating to transfer of both moveable and immoveable property.

Some of the important terms used under the Act are as follows:

- "Instrument" means a non-testamentary instrument.
- The term "property" signifies the subject matter over which the right of ownership or any less right carved out of ownership (e.g. mortgage right) is exercised.

Chapter II of the Act is divided into two parts. Part A deals with the rules pertaining to both moveable and immoveable property (Section 5 to 37), Part B embodies the rules relating to immoveable property (Section 38 to 53A). The other chapters of the Act deal with transfers such as sales, mortgages, leases, gifts, exchanges and actionable claims. The rules relating to these transactions are referred to as rules governing special transfers to immoveable property. The fundamental rule relating to all transfers is that a transfer cannot be effected in another way except as prescribed under the Act. Furthermore, the Act states that certain kinds of property cannot be transferred at all.

The distinction between moveable and immoveable property was explained in the case of *Sukry Kurdepa v. Goondakull*¹⁸.

Rules relating to transfer of property (whether movable or immovable)

- The first point to note is that transfer *inter vivos* (i.e., between living persons) alone is contemplated by the Act. A transfer by means of a will is not a transfer according to the Act, because it is not a transfer between two living persons.
- A transfer of property not in existence operates as a contract to be performed in future which may be specially enforced as soon as the property comes into existence.¹⁹
- Section 6 (h) provides that no transfer can be made in so far as it is opposed to the nature of the interest attached thereby or for an unlawful object or consideration or to a person legally disqualified to be a transferee.

2.9 LAW RELATING TO STAMPS

The Indian Stamp Act, 1899 is a fiscal legislation dealing with tax on transactions. The tax is levied on in the shape of stamps recording the transactions.

The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. The Act is divided into eight Chapters and there is a schedule which contains the rates of stamp duties on various instruments.

Entry 91 of Union List gives power to the Union Legislature to levy stamp duty with regard to certain instruments (mostly of a commercial character). Entry 63 of State List confers on the

¹⁸(1872) 6 Mad. H.C.71, by Holloway J.

¹⁹*Jugalkishore v. Ram Cotton Company*, (1955) I SCR 1369

States power to prescribe the rates of stamp duties on other instruments. As per 'Principles' for levy of duty fall in the Concurrent List, entry 44.

Instrument includes every document by which any right or liability, is, or purported to be created, transferred, limited, extended, extinguished or recorded. Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule.

Government can reduce or remit whole or part of duties payable. The payment of stamp duty can be made by adhesive stamps or impressed stamps. Instrument executed in India must be stamped before or at the time of execution. Instrument executed out of India can be stamped within three months after it is first received in India. In some cases, stamp duty is payable on *advalorem* basis, i.e. on the basis of value of property, etc. In such cases, value is decided on prescribed basis.

An instrument not duly stamped cannot be accepted as evidence by civil court, an arbitrator or any other authority authorized to receive evidence. However, the document can be accepted as evidence in criminal court.

A levy of a penalty or payment in respect of an unstamped or insufficiently stamped document does not necessarily exempt a person from liability for prosecution for such offence. Revenue Authority has been authorized to refund the penalty in excess of duty payable on instrument in certain cases.

The Collector has got the power notwithstanding anything contained in the order of the lower court, to prosecute a person if any offence against the Stamp Act which he considers that the person has committed in respect of such an instrument.

2.10 LAW RELATING TO REGISTRATION OF DOCUMENT

Registration means recording of the contents of a document with a Registering Officer and preservation of copies of the original document. The Registration Act, 1908 is the law relating to registration of documents. The object and purpose of the Act among other things is to give information to people regarding legal rights and obligations arising or affecting a particular property, and to perpetuate documents which may afterwards be of legal importance, and also to prevent fraud.

It was held by the Privy Council in *Kalyana Sundram v. Karuppa*, AIR1927 PC 42, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective. And if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with²⁰.

²⁰Cf. Mulla Registration Act (1998) page 36

A gift deed can be registered even if the donor does not agree to its registration (*Kalyan Sundaram Pillai v. Karuppa Mopnar*, AIR 1927 PC 42; *Venkata Rama Reddy v. Pillai Rama Reddy*, AIR 1923 Mad. 282).

A document other than a will must be presented within four months of its execution. In cases of urgent necessity, etc. the period is eight months, but higher fee has to be paid (Sections 23-26). These limits are mandatory (*RamSingh v. Jasmer Singh*²¹). If delay is due to act of Court, it has to be disregarded (*Raj Kumar v. Tarapa*²²).

Registration of documents relating to immovable property is compulsory. Registration of will is optional. Some documents though related to immovable property are not required to be registered. These are given in Section 17(2) of the Act. Documents relating to immovable property should be registered in the office of Sub-Registrar of sub-district within which the whole or some portion of property is situated. Other documents can be registered in the office of Sub-Registrar. All persons executing the document or their representatives, assign or agents holding power of attorney must appear before registering officer.

After all formalities are complete, the Registering Officer will endorse the document with the word 'Registered', and sign the same. The endorsement will be copied in Register. After registration, the document will be returned to the person who presented the document.

2.11 LAW RELATING TO INFORMATION TECHNOLOGY

Information technology is a very fascinating subject. The technological developments in information technology are racing beyond our imagination. The use of such technology for the storage, retrieval and dissemination of information has given rise to several legal, social and ethical problems. In this context, the word 'information' is not to be taken as limited to news or informative material. Rather, it is to be understood as encompassing all matter that is intended to be recorded electronically, whether it be correspondence, Government documents, legal instruments, private exchanges of news and views or any other matter which emanates from man and is transformed into machine-recorded data.

The Information Technology Act has been passed to give effect to the UN resolution and to promote efficient delivery of Government services by means of reliable electronic records. The Act came into effect on 17.10.2000.

2.12 THE CODE OF CIVIL PROCEDURE, 1908 (C.P.C.)

Laws are of two types: (i) substantive law; and (ii) procedural law. Substantive law determines rights and liabilities of parties and procedural or adjective law prescribes practice, procedure and machinery for the enforcement of those rights and liabilities.

The Code of Civil Procedure is an adjective law it neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts. The Civil Procedure Code consists of two parts. 158 Sections form the first part and the rules and orders contained in

²¹AIR 1963 Punj. 100

²²AIR 1987 SC 2195

Schedule I form the second part. The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised.

The Code defines important terms that have been used thereunder and deals with different types of courts and their jurisdiction. Jurisdiction means the authority by which a Court has to decide matters that are brought before it for adjudication. Under the Code of Civil Procedure, a civil court has jurisdiction to try a suit if two conditions are fulfilled: (i) the suit must be of a civil nature; and (ii) the cognizance of such suit should not have been barred. Jurisdiction of a court may be of four kinds: jurisdiction over the subject matter; local or territorial jurisdiction; original and appellate jurisdiction; pecuniary jurisdiction depending on pecuniary value of the suit.

The Code embodies the doctrine of *res judicata* that is, bar or restraint on repetition of litigation of the same issues. It enacts that since a matter is finally decided by a competent court, no party can be permitted to reopen it in a subsequent litigation.

In any suit the court may grant an injunction, which is a matter of discretion of Courts. The Code also provides for making certain interlocutory orders. It can also order for detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein.

Every suit shall be instituted in the Court of the lowest grade to try it. The Code specifies the categories of suits that shall be instituted in the court within the local limits of whose jurisdiction the property is situated. It also lays down provisions relating to appeals, reference, review and revision. In certain cases, a subordinate court may make a reference to a High Court.

A procedure by way of summary suit applies to suits upon bill of exchange, hundies or promissory notes, when the plaintiff desires to proceed under the provisions of Order 37. Order 37 provides for a summary procedure in respect of certain suits. The object is to prevent unreasonable obstruction by a defendant.

2.13 THE CODE OF CRIMINAL PROCEDURE, 1973

Criminal law occupies a pre-dominant place among the agencies of social control and is regarded as a formidable weapon that society has forged to protect itself against anti-social behaviour. The law of criminal procedure is intended to provide a mechanism for the enforcement of criminal law.

The Code of Criminal Procedure, 1898 (Cr. P.C.) was repealed by the Code of 1973 enacted by Parliament on 25th January, 1974 and made effective from 1.4.1974 so as to consolidate and amend the law relating to Criminal Procedure. It is an Act to consolidate and amend the law relating to the procedure to be followed in apprehending the criminals, investigating the criminal cases and their trial before the Criminal Courts. The Code also provides machinery for punishment of offences under other Acts.

The law of criminal procedure is meant to be complimentary to criminal law. It is intended to provide a mechanism for the enforcement of criminal law. The Code of Criminal Procedure creates the necessary machinery for apprehending the criminals, investigating the criminal

cases, their trials before the criminal courts and imposition of proper punishment on the guilty person. For the purpose of the Code all offences have been classified into different categories. Firstly, all offences are divided into two categories – cognizable offences and non-cognizable offences; secondly, offences are classified into bail able and non-bail able offences; and thirdly, the Code classifies all criminal cases into summons cases and warrant cases.

The Code enumerates the hierarchy of criminal courts in which different offences can be tried and then it spells out the limits of sentences which such Courts are authorized to pass.

The Code contemplates two types of arrests – (a) arrest with a warrant; and (b) arrest without a warrant. Powers to arrest without a warrant are mainly conferred on the police. The Code envisages the various circumstances under which a police officer may arrest a person without a warrant. Persons arrested are to be taken before the Magistrate or officer-in-charge of a police station without unnecessary delay.

Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant. This information given to a police officer and reduced to writing is known as First Information Report (FIR). The investigation of the case proceeds on this information only.

Any Magistrate of first class and of the second class specially empowered may take cognizance of an offence upon: (i) receiving a complaint of facts constituting such offence; (ii) a police report of such facts; (iii) information received from any person other than police officer; (iv) his own knowledge that such offence has been committed.

No Court shall take cognizance of an offence after the expiry of the period of limitation. The object is to prevent the parties from filing the case after a long time so that the material evidence may not vanish.

Summary trial means the —speedy disposal of cases. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

2.14 LAW RELATING TO RIGHT TO INFORMATION

Throughout the world, the right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. In India also, the Government enacted Right to Information (RTI) Act in 2005 allowing transparency and autonomy, and access to accountability in public authorities.

Before dwelling on the RTI Act, 2005, mention should be made that in *R.P.Limited v Indian Express Newspapers*, the Supreme Court read into Article 21 the right to know. Article 21 confers on all persons a right to know which include a right to receive information.

A citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). The State is not only under an obligation to respect the Fundamental Rights of the citizens, but it is equally under an

obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

The Government enacted Right to Information (RTI) Act, 2005 which came into force on October 12, 2005. Some key features of the said Act are as follow:

- The RTI Act extends to the whole of India except Jammu & Kashmir.
- It provides a very definite day for its commencement i.e. 120 days from enactment.
- It shall apply to Public Authorities.
- All citizens shall have the right to information, subject to provisions of the Act.
- The Public Information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- Fee will be payable by the applicant depending on the nature of information sought.
- Certain categories of information have been exempted from disclosure under Section 8 and 9 of the Act.
- Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.
- The Act specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.
- The Public Information Officer has been empowered to reject a request for information where an infringement of a copyright subsisting in a person would be involved.
- Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.
- Stringent penalty may be imposed on a Public Information Officer for failing to provide information. The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty.

2.4 SUMMARY

Indian law refers to the system of law which operates in India. It is largely based on English common law. Much of contemporary Indian law shows substantial European and American influence.

The Constitution provides that the law declared by the Supreme Court shall be binding on all courts within India. The Constitution declares India to be a sovereign socialist democratic republic, assuring its citizens of justice, equality, and liberty.

The Constitution of India came into force on January 26, 1950. The preamble to the Constitution sets out the aims and aspirations of the people of India. Constitution of India is basically federal but with certain unitary features. The fundamental rights are envisaged in Part III of the Constitution. These are: (i) Right to Equality; (ii) Right to Freedom; (iii) Right against Exploitation; (iv) Right to Freedom of Religion; (v) Cultural and Educational Rights; (vi) Right to Constitutional Remedies. The Directive Principles as envisaged by the Constitution makers lay down the ideals to be observed by every Government to bring about an economic democracy in this country. Article 51A imposing the fundamental duties on every citizen of

India was inserted by the Constitution (Forty-second Amendment) Act, 1976. The Union of India is composed of 29²³ States and both the Union and the States derive their authority from the Constitution which divides all powers-legislative, executive and financial, between them.

The courts in the Indian legal system, broadly speaking, consist of (i) the Supreme Court, (ii) the High Courts, and (iii) the subordinate courts.

Indian Penal Code (IPC) provides a penal code for all of India including Jammu and Kashmir, where it was renamed the Ranbir Penal Code (RPC). Indian civil law is complex, with each religion having its own specific laws which they adhere to after independence Indian laws have adapted to the changing world. The most recent being the Domestic Violence Act [2005].

The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used. The General Principles of Interpretation are Primary Rules and other Rules of Interpretation.

The expression 'specific relief' means a relief in specie. The specific Relief Act applies both to movable and immovable property. Under the Specific Relief Act, 1963, remedies have been divided as specific relief (Sections 5-35) and preventive relief (Sections 36-42).

Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a court of law. With a view to consolidate and amend the law relating to domestic arbitration, international commercial arbitration, enforcement of foreign arbitral awards and also to provide for a law relating to conciliation and related matters, a new law called Arbitration and Conciliation Act, 1996 has been passed.

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement. Mediation is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences.

Tort is really a kind of civil wrong as opposed to criminal wrong. , a tort consists of some act or omission done by the defendant (tortfeasor) whereby he has without just cause or excuse caused some harm to plaintiff. As was stated in *Ashby v. White*, (1703) 2Ld.Raym.938 legal damage is neither identical with actual damage nor is it necessarily pecuniary. Two maxims, namely: (i) *Damnum sineinjuria*, and (ii) *injuria sine damnum*, explain this proposition. Three types of judicial remedies are available to the plaintiff in an action for tort namely:

- (i) Damages or Compensation,
- (ii) Injunction, and
- (iii) Specific Restitution of Property.

The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petitions or applications. The Act applies to all civil proceedings and some special criminal proceedings which can be taken in a Court of law unless its application is excluded by any enactment. The Act extends to whole of India except the State of Jammu and Kashmir.

²³Talanga state from Andhra Pradesh

The Indian Evidence Act, 1872 is an Act to consolidate, define and amend the Law of Evidence. The Act extends to the whole of India except the State of Jammu and Kashmir and applies to all judicial proceedings in or before any Court, including Court-martial (other than the Court-martial convened under the Army Act, the Naval Discipline Act or the Indian Navy Discipline Act, 1934 or the Air Force Act) but not to affidavits presented to any Court or officer, or to proceedings before an arbitrator.

The law relating to transfer of property is governed by the Transfer of Property Act, 1882. The Act deals with (i) various specific transfers relating to Immoveable property and (ii) lays down general principles relating to transfer of both moveable and immoveable property.

The Indian Stamp Act, 1899 is a fiscal legislation dealing with tax on transactions. The tax is levied on in the shape of stamps recording the transactions. The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. The Act is divided into eight Chapters and there is a schedule which contains the rates of stamp duties on various instruments.

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The Information Technology Act has been passed to give effect to the UN resolution and to promote efficient delivery of Government services by means of reliable electronic records. The Act came into effect on 17.10.2000.

The Code of Civil Procedure is an adjective law it neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts. The Civil Procedure Code consists of two parts. 158 Sections form the first part and the rules and orders contained in Schedule I form the second part. The object of the Code generally is to create jurisdiction while the rules indicate the mode in which the jurisdiction should be exercised.

The Code of Criminal Procedure, 1898 (Cr. P.C.) was repealed by the Code of 1973 enacted by Parliament on 25th January, 1974 and made effective from 1.4.1974 so as to consolidate and amend the law relating to Criminal Procedure. It is an Act to consolidate and amend the law relating to the procedure to be followed in apprehending the criminals, investigating the criminal cases and their trial before the Criminal Courts. The Code also provides machinery for punishment of offences under other Acts.

Throughout the world, the right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. In India also, the Government enacted Right to Information (RTI) Act in 2005 allowing transparency and autonomy, and access to accountability in public authorities.

2.5 GLOSSARY

1. *RES JUDICATA*– also known as claim preclusion means ‘a matter (already) judged’
2. *BAILABLE* – the case (reference with crime done) where bail is available
3. *cognizable* – capable of being known; being within jurisdiction of a court

2.6 SAQS

1. TRUE AND FALSE STATEMENT:

- (i) The right to speech and expression includes right to make a good or bad speech. (True or False)
- (ii) The fundamental duties are imposed upon the States and not upon the citizens. (True or False)
- (iii) With respect to the subjects enumerated in the Concurrent List, only the Parliament and not the State Legislature has powers to make laws. (True or False)
- (iv) All facts logically relevant are not, however, legally relevant. (True or False)
- (v) A presumption is in itself evidence, but only makes a prima facie case for the party in whose favour it exists. (True or False)
- (vi) According to the Rule of Literal Construction, a statute is interpreted according to the general meaning of the words even if it leads to absurdity. (True or False)
- (vii) Generally, only a party to the contract can get its specific performance. (True or False)
- (viii) Under the Specific Relief Act, a Court can give either specific relief or compensatory relief and not both. (True or False)
- (ix) The act of trespassing upon another’s land is not actionable if it has not caused the plaintiff the slightest harm. (True or False)
- (x) A mere acknowledgement of payment is always registerable. (True or False)
- (xi) A document executed outside India can be valid even if it is not registered in India. (True or False)
- (xii) Under the Indian law, a person has a right to demand a Government agency to accept an electronic record. (True or False)
- (xiii) The Civil Procedure Code consolidates and amends the law relating to the procedure of the courts of civil jurisdiction. (True or False)
- (xiv) In a non-cognizable case, a police officer can arrest a person without a warrant. (True or False)
- (xv) Summary trial is conducted in those offences which are not punishable with imprisonment for a term exceeding two years. (True or False)
- (xvi) The RTI Act is applicable to the whole of India with all its provisions. (True or False)

2. TICK (✓) CORRECT ANSWER:

- (i) Which of the following courts can advise the President on a reference made by the President on questions of fact and law?
(a) Supreme court (b) High court (c) Criminal court (d) Civil court
- (ii) The purpose of the interpretation is:
(a) To understand the statute according to one’s own comprehension

- (b) To make a guess of what is written
 - (c) To see what is the intention expressed by the words used
 - (d) To be able to change the meaning according to the situation
- (iii) Which of the following is not a feature of an arbitral agreement?
- (a) Oral (b) Mention of place (c) Bearing a date (d) Written
- (iv) Which of the following States does not come under the purview of the Act of Limitation? (a) Punjab (b) Jammu & Kashmir (c) Uttar Pradesh (d) Bihar
- (v) Which Article of the Indian Constitution states that the State cannot place any hindrance by prescribing a period of limitation in the way of an aggrieved person seeking to approach the Supreme Court of India?
- (a) Article 30 (b) Article 32 (c) Article 34 (d) Article 36
- (vi) How many kinds of Appeals are there under the Civil Procedure Code?
- (a) Two (b) Three (c) Four (d) Five
- (vii) Which one of the following is the essential ingredient to try a person under criminal law? (a) A guilty personality (b) A guilty mind or intent (c) An intention (d) A motive
- (viii) When a person is arrested without a warrant, he/she can be kept in the custody not more than: (a) 24 hours (b) 48 hours (c) 72 hours (d) 15 days
- (ix) Which of the following Articles grant us right of freedom of speech and expression:
- (a) Article 19 (b) Article 19(1) (c) Article 19(1)(a) (d) Article 21
- (x) Which of the following acts as a chairman of the Central Information Commission:
- (a) President of India (b) Prime Minister of India (c) The Leader of Opposition in the Parliament (d) Any designated member of the Parliament

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7. Law of Information Technology (Cyber Law) — *D.P. Mittal*.
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14. The Code of Civil Procedure, 1908
15. Civil Procedure Code—*M.P. Tandon*
16. The Code of Criminal Procedure, 1973.
17. Civil Procedure Code—*M.P. Tandon*

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. What do you understand by an arbitration agreement? What are its essentials?
2. Period of Limitation once starts cannot be stopped. Comment.
3. Explain the doctrine of 'Sufficient-Cause' for condonation of delay.
4. What is a tort? Explain the general conditions of liability for a tort.
5. Discuss the rule laid down in *Rylands v. Fletcher*. What are the exceptions to this rule?
6. Explain whether specific performance of part of a contract is allowed. Is there any exception to this rule?
7. The Constitution of India is 'federal in character but with unitary features'. Comment.
8. Discuss the need and object for interpretation of statutes.
9. Write short notes on:
 - (i) Golden rule. (ii) Harmonious construction.

10. D executes an agreement in favour of C, (with witnesses) by which he promises to repay a loan taken by him from C. Discuss whether this is an agreement, a promisory note or a bond.
11. Discuss the validity of the agreements in the following cases :
 - (a) A agrees to sell certain vehicles to B, the agreement is oral.
 - (b) A agrees to sell a garden to B, orally.
 - (c) A agrees to sell, to B, a health resort by a written agreement. The agreement is not registered.
12. What is *res judicata* and stay of suits?
13. Explain in brief Summary Procedure.
14. Distinguish between:
 - (a) Cognizable and Non-cognizable offences
 - (b) Inquiry, Investigation and Trial
 - (c) Bailable and Non-bailable offences
 - (d) F.I.R. and Complaint.
15. The RTI Act confers on all citizens a right to information. Enumerate the salient features of the Act.

2.10 ANSWER SAQS

1. (i) True (ii) : False (iii) : False (iv) True (v) False (vi) False
 (vii) True (viii) True (ix) False (x) False (xi) False (xii) False (xiii)
 True (xiv) False (xv) True (xvi) False
2. (i) (a) (ii) (c) (iii) (a) (iv) (b) (v) (b) (vi) (c) (vii) (b)
 (viii) (a) (ix) (c) (x) (b)