Q1 Explain the law relating to notice under section 80 of civil procedure code.

Ans **Provision contained in Section 80:**

In a suit filed by an individual against an individual, the plaintiff may not give a notice to the defendant before filing the suit. But, where a suit is filed by an individual against the Government or against a public officer, a notice thereof is mandatory. The plaint shall contain a statement that such notice has been served. Section 80 provides for requirement of notice prior to institution of suit against the Government or against a public officer in respect of act done or purporting to be done by him in his official capacity. It prohibits institution of a suit against the Government or a public officer until expiration of two months after delivery of notice to the officers named in the provision. However, where an immediate relief is sought, the court may allow institution of suit against the Government or any public officer without serving such notice. But, in that case, the court shall not grant any relief in the suit without hearing the defendant. If upon hearing the parties the court is satisfied that no immediate relief need be granted in the suit, the plaint shall be returned. The plaint so returned may be presented after complying with the requirement of notice. Notice is essential if the suit is filed against the Government or a public officer:

A notice under Section 80 is required to be given when :

(i) the suit is filed against the Government; or (ii) the suit is filed against a public officer in respect of act done or purporting to be done by him in his official capacity. It may be noted that a notice is required in all the suits against the Government. But, in case of suit against a public officer, notice is necessary only when the suit is in respect of any act done or purporting to be done by such public officer in discharge of his duty and not otherwise.

In ***State of A.P. v. Pioneer Builders***, the Apex Court held that service of notice is imperative except where urgent and immediate relief is to be granted by the court in which case a suit against the Government or a public officer may be instituted in the absence of notice but with the leave of the court. Such leave is a condition precedent and must precede the institution of a suit without serving notice. Though no procedure is specified as to how the leave is to be sought for or given, yet the order granting the leave must indicate the ground(s) pleaded and application of mind thereon. The court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit However if the court is of the opinion that no urgent or immediate reli deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in subsection (1)

In ***Prem Lata Nahata v. Chandi Prasad Sikaria*****,** the Supreme Court held that in a case not covered by Section 80 (2), it is provided in Section 80 (1) that "no suit shall be instituted". This is therefore a bar to institution of the suit and that is why courts have taken a view that in a case where notice under Section 80, C.P.C. is mandatory, if the averments in the plaint indicate the absence of notice, the plaint is liable to be rejected.

Non compliance with requirement of notice :

A notice under Section 80 is a pre-requisite for filing a suit against the Government. However the court may permit institution of suit against the Government without notice, if an urgent or immediate relief is prayed for, but no relief shall be granted without affording an opportunity to the Government of hearing.

In ***Bujaj Hindustan Sugar & Industries Ltd. v. Balrampur Chini Mills Ltd*.,** the Supreme Court held that a suit can be instituted against Government without complying with the requirement of serving notice under Section 80 (1) only with the leave of court as enjoined under Section 80 (2). If the leave is refused and the plaint returned, there is no suit pending before the court and without the suit being registered court cannot grant any interim relief at that stage.

Requirements before filing of a suit against the Government:

A plain reading of the provision contained in sub-section (1) reveals that before filing a suit against the Government, following requirements must be fulfilled :

(i) a written notice to the named officer of the Government; (ii) delivery of such notice in the manner prescribed; and (iii) expiration of two months period after delivery of such notice.

No suit against the Government can be filed unless above conditions are satisfied.

Who is a public officer :

The term "Public Officer" is defined in Section 2 (17) of the Code. The definition says that every Judge; every member of an All-India Service; every commissioned or gazetted officer in the military, naval or air forces of the Union; and every officer of a Court of Justice and of Government who performs the duty as mentioned, is a public officer.

Requirements before filing of a suit against the public officer:

For instituting a suit against a public officer in respect of any act purporting to be done by him in his official capacity, it is necessary to ensure that

(i) a notice in writing is served upon such public officer;

(ii) such notice is dilivered to the public officer in the manner prescribed; and

(iii) two months period has expired after delivery of such notice. No suit against the public officer can be filed unless above conditions are satisfied. However, these conditions apply only when the suit relates to an act done or purporting to be done by the defendant public officer in his official capacity. If the suit is not in respect of an act done or purporting to be done by a public officer in his official capacity, there is no need to give notice to him under Section 80 before instituting the suit. The expression "an act done or purporting to be done by a public officer in his official capacity" covers the acts as also illegal omissions. It includes both past and future acts. All acts done or which

could have been done by a public officer under the colour or guise of his official duties fall within the ambit of the expression.

Contents of notice :

A statutory notice must be in writing and must contain following particulars :

(i) name, description and residential address of plaintiff so that the noticee may identify him;

(ii) cause of action; and

(iii) relief sought.

It is not necessary that the notice is in a particular form. If the notice sufficiently discloses the identity of the plaintiff, the nature and basis of claim and relief sought, it is valid. No suit shall be dismissed. merely because there is any error or defect in the notice.

Suit shall not be dismissed on the ground of technical defects in the notice :

There is no prescribed form for a notice under Section 80. What is necessary is that the notice must contain the identity of the plaintiff and the particulars relating to cause of action and relief claimed and it must be delivered to the defendant. If there is an error or a technical defect in the notice, the suit against the Government or the public officer shall not be dismissed on that ground alone.

Modes of delivery of statutory notice :

No suit against the Government or a public officer for an act in his official capacity shall be instituted unless a written notice thereof is served and two months time has expired since such service. The service of notice may be effected by personal delivery, by leaving the notice at the office of the noticee or by sending it through registered post. The modes in which the notice may be served are as under.

Suit against the Central Government, except Railway :

In case of a suit against the Central Government, except railway the notice may be delivered to or left at the office of the Secretary that Government.

Suit against Railway :

In case of a suit against. Railway, the notice may be delivered to st left at the office of the General Manager of that Railway.

Suit of the State against the Government of Jammu and Kashmir:

In case of a suit against the Government of the State of Jammu and Kashmir, the notice may be delivered to or left at the office of the Chief Secretary or any other officer authorised by that Government in this behalf.

Suit against any other State Government :

In case of a suit against any other State Government, except the Government of the State of Jammu and Kashmir, the notice may be delivered to or left at the office of the Secretary to that Government or the Collector of the District.

Suit against a public officer:

In case of a suit against a public officer, the notice may be delivered to him or left at his office..

Statement in the plaint:

A plaint can be presented only upon expiration of two months after the notice has been duly served upon the Government or the public officer. The plaint must contain a statement that a notice prescribed by Section 80 has been served upon the defendant Government or public officer. In the absence of such statement, the court will reject the plaint.

Requirement of notice may be dispensed with in case of urgency:

In the cases where an urgent relief is needed, a suit may be filed against the Government or any public officer without giving statutory notice under Section 80. However, leave of court is necessary. But in that case, no relief shall be granted without hearing the defendant. If upon hearing the parties the court is satisfied that no immediate relief is required, it shall return the plaint. The plaint so returned may be presented after complying with the requirement of notice.

Object of statutory notice under Section 80 :

Statutory notice is not a mere formality. The object is to afford an opportunity to the Government or the public officer to reconsider the matter in light of settled legal position. If it appears that the claim is just and proper, the Government or the public officer may take appropriate decision within the prescribed period of two months to settle the claim. In this manner, both time and money may be saved and the litigation may be avoided. The provisions of Section 80 are mandatory and must be strictly complied with. No court can dispense with the requirement of statutory notice.

In **State of A.P. v. Pioneer Builders**, it was held that the purpose of notice under Section 80 is to give the Government sufficient notice of the suit which is proposed to be filed against it so that it may reconsider the decision and decide for itself whether the claim could be accepted or not.

Q2 What is the difference between review , revision and appeal ?

Ans **MEANING OF APPEAL**:

An appeal is a complaint made by the aggrieved party to a superior court contending that a decree passed or an order made by an inferior court is illegal and should not be allowed to survive. It is a legal recourse available to unsuccessful party to get the decree or the order of lower court set aside

at the hands of superior court. An appeal is in the nature of judicial examination by a higher court of the decision of an inferior court.

In **Kamla Devi v. Kushal Kunwar**, it was observed that an appeal is the right of entering a superior court invoking its aid and interposition to redress an error of the court below. The central idea behind filing of an appeal revolves around the right as contradistinguished from the procedure laid down therefor. A right of appeal under the Code is statutory. Appeal is a continuation of the original proceedings.

OBJECT OF APPEAL:

The object of appeal is to provide an opportunity to the aggrieved party to show how the decree passed by lower court is illegal. The purpose of appeal therefore is to rectify any possible error.

ESSENTIAL INGREDIENTS OF AN APPEAL:

There are three essential elements of a decree viz., a judgment of a court, a party aggrieved by such judgment and an appellate court which is competent to entertain and hear the appeal.

WHO MAY PREFER AN APPEAL:

Following persons are entitled to file an appeal :

(i) A party to suit, who is aggrieved by the judgment and decree passed by the court in such suit;

(ii) Legal representative of the aggrieved party, if such party is dead;

(iii) Guardian of a minor appointed by court, in case of a suit

by or against the minor;

(iv) A person who is not a party to decree or order but is bound by or aggrieved by it or is prejudicially affected by it. However, leave of court shall be necessary. The party who prefers an appeal is called "Appellant" and the superior court competent to entertain, hear and decide an appeal is called "Appellate Court." An appeal is a continuation of the suit.

WHO ARE BARRED FROM FILING AN APPEAL:

A party, who agrees to waive his right to appeal, is disqualified from filing an appeal. However, such agreement must be clear and specific and must be valid.

IN WHICH COURT THE APPEAL MAY BE FILED:

The court authorized to entertain, hear and decide the appeal is called "Appellate Court." If the law provides for an appeal from a decree, it also specifies the court to which the appeal shall lie, i.e., the appellate court. The appellate court is a court superior to the court passing the decree and is

competent to judicially examine the decision of the inferior court. An appellate court may confirm the impugned decree or may quash, alter, vary or modify such decree.

KINDS OF APPEAL:

The appeals may be classified in two kinds viz., first appeal and second appeal.

First appeal:

The appeal which arises from an original decree is known as first appeal. Original decree means, a decree passed by a court in a suit in exercise of its original jurisdiction. Thus, first appeal is that by which the appellant challenges an original decree passed by a court. Sections 96 of Code of Civil Procedure, 1908 deal with fist appeal.

Second appeal :

The second appeal is that which is filed against the decree passed by an appellate court in first appeal. In other words, an appeal questioning the legality of the decree of an appellate court is called second appeal. Section 100 of Code of Civil Procedure, 1908 provides for second appeal.

RIGHT TO APPEAL IS CREATED BY LAW:

The statute itself declares whether a decree is appealable or not and also identifies the court to which appeal lies. For example, Section 100 of the Code of Civil Procedure, 1908 declares the High Court to be competent to entertain, hear and decide the second appeals arising out of the decree passed by its inferior court in first appeal. Similarly, Section 96 (1) of Code of Civil Procedure, 1908 provides that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court. Thus, the right to appeal in a litigant is created by the statute only and in the absence of clear stipulation, no person can enjoy such right.

RIGHT TO APPEAL IS NOT NATURAL RIGHT:

The right to appeal is not inherent right of a party. It is conferred by the legislation. Unless the law clearly provides that an appeal shall lie against a decree or an order, no appeal can be preferred. In certain cases, the appeals are expressly forbidden. For example Section 96 (3) lays down that no appeal shall lie from a decree passed by the court with the consent of parties. It means that appeal against a consent decree is impermissible in law and hence, right to appeal does not exist.

In **Hero Vinoth (Minor) v. Sheshammal Mahadevan**,' the Supreme Court held that it must be kept in mind that right of appeal is nether a natural right nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with the law in force at the relevant time.

DISTINCTION BETWEEN RIGHT TO APPEAL AND RIGHT TO SUE :

Every person is entitled to bring a suit for enforcement of his civil rights unless the law prevents him from doing so. Conversely, right to appeal is not an inherent right. No appeal can be filed if law does not provide for. This is precisely the difference between right to appeal and right to sue. Whereas the right to appeal is subject to sanction of law, the right to sue is intrinsic and cannot be withdrawn except by law.

LIMITATION PERIOD FOR FILING APPEAL :

The right to appeal is created by law. The law may also prescribe a period within which such right must be exercised. This period is called limitation period. The Code of Civil Procedure, 1908, confers right to appeal but does not provide the limitation period within which the appeal must be filed. Article 116 of The Limitation Act 1963 states that an appeal against a decree or order can be filed in a High Court within the decree or the order appealed against. After expiry of limitation period, ninety days and in any other court within thirty days from the date of the right to appeal vanishes. In such a situation, the appeal is said to be "time barred" or "barred by limitation." However, a delay in filing of the appeal may be condoned by the court if it is satisfied that there were sufficient grounds that prevented the appellant from filing the appeal within stipulated limitation period.

APPEAL IS A CONTINUATION OF SUIT :

When an appeal is preferred against a decree, the proceedings before appellate court are said to be continuation of suit and hence the appellate court may consider the subsequent events for the purpose of modifying the relief.

In *Inderchand Jain v. Motilal,* it was held that an appeal is a continuation of the suit. Any decision taken by the appellate court would relate back unless a contrary intention is shown to the date of institution of the suit. Appellate court while exercising its appellate jurisdiction would be entitled to take into consideration the subsequent events for the purpose of moulding the relief.

Review:

The term "**review**" means to reconsider or to re-examine. When the court re-examines its own judgment passed earlier, it is known as review. The review is done by the same court and by the same Judge.

The general rule is that once a judgment is pronounced or order is made by a court, such court ceases to have control over it. The court cannot alter or change it. But Section 114 of Code of Civil Procedure, 1908, grants substantive right of review under certain circumstances.

Provisions contained in Section 114:

Section 114 lays, down that if any person is aggrieved by a decree or order, from which no appeal lies or the appeal lies but not preferred, may apply for a review of judgment. Similarly, any person aggrieved by a decision on a reference from a Court of Small Causes may also apply for a review of judgment. The application for review shall be made to the Court that passed the decree or made the order.

Court to which application for review shall be made :

An application for a review of judgment shall be made to the court that passed the decree or made the order.

Circumstances in which an application for review may be made:

Under following circumstance, an application for review may be made :

(i) when any person is aggrieved by a decree or order from which no appeal is allowed; or

(ii) when any person is aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred,

(iii) when any person is aggrieved by a decision on a reference from a Court of Small Causes.

Cases in which no appeal is allowed:

A decree or order from which no appeal lies is open for review. Therefore, after an appeal has been dismissed on the ground that it was time-barred, Cases an application for review may be made. in which appeal lies but not preferred:

In cases where the law provides for appeal but the aggrieved party has not preferred an appeal, an application for review may be made. Such, application shall not be rejected only on the ground that the order is appealable. An application for review may be filed so long as appeal is not preferred. If the appeal has already been preferred, an application for review is not tenable.

Decision on a reference from Small Causes Court:

A review of a judgment on a reference from a Small Causes Court is allowed.

In Haridas Das v. Usha Rani Banik,' the Supreme Court held that seeking review on the ground that review petitioner had not highlighted all the aspects of the case or could have argued more forcefully or cited binding precedents to get a favourable judgment is not permissible. Moreover, where the remedy of appeal is available, the power of review should be exercised by the court with the greatest circumspection. Section 114 does not adumbrate the ambit of interference expected of the court.

Who may apply for review :

The party who is aggrieved by a decree or order may apply for review of the judgment. Any person aggrieved by a decision on a reference from a Court of Small Causes is also entitled to make a review application. The decree or order should either be non-appealable or if appealable, no appeal should have been preferred from it. A party who is not appealing appealable decree or order may apply for a review of judgment, if some other party has filed an appeal which is pending. But where from an the ground of such appeal is common to the applicant and the appellant, even review application lies. Similarly, when the aggrieved party is respondent and he can present to the Appellate Court the case on which no he applies for the review, no application for review may be made.

Form of application for review :

The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.

Hearing of review application :

The hearing of review application is conducted in following stages :

(i) The court shall hear the application ex parte. If the court is not satisfied about the sufficiency of ground, it shall reject the application at once. Otherwise the court may issue notice to the opposite party.

(ii) The application for review shall be heard by the same court and same Judge. After hearing the parties, the court may reject the application or allow it.

(iii) After allowing the application for review, the matter shall be heard on merits by the court. After re-hearing, the court may either confirm the original decree or vary it.

Rejection of review-application :

Where it appears to the court that there is not sufficient ground for a review, it shall reject the application. If the review-application is filed on the ground of discovery of new and important matter or evidence and no strict proof thereof is given, such application shall be rejected.

Grant of review-application :

Where the court is of opinion that the application for review should be granted, it shall grant the same. If the review-application is granted, a note thereof shall be made in the register. The court may re-hear the case at once or make an order as to the re-hearing. But no review-application shall be granted without previous notice to the opposite party. The adversary shall be heard in support of such decree or order. Similarly, a review-application filed on the ground of discovery of new and important matter or evidence shall not be granted if the applicant fails to give strict proof that the matter was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

Application for review in court consisting of two or more judges :

If a decree is passed by a Bench of two or more judges and an application for its review is presented, it shall be heard by:

(i) same Bench of Judges;

(ii) anyone of the judges who continues to be attached to the court at the time of making review-application and who is not precluded from considering the review-application by absence or other cause for a period of next six months.

Review-application shall be rejected if court equally divided :

If the review-application is heard by a Bench of more than one the decision shall be according to the opinion of the majority. But where the court is equally divided, the application shall be rejected.

Order of rejection not appealable-Objections to order granting judge,application :

If the court rejects the review-application, such order shall not be appealable. However, an order granting a review application may be objected to by an appeal. If the review-application is dismissed in default. the applicant may apply for its restoration. The court shall issue notice thereof to the opposite party. If the court is satisfied that the applicant was prevented from appearing by any sufficient cause, it shall order that the review-application be restored upon such terms as to costs as it thinks fit. The court shall also appoint a day for hearing the same.

LIMITATION :

An application for review must be filed within a period of thirty days from the date of decree or order.

Revision:

The term "revision" means critical or careful examination or perusal with a view to correcting or improving. Section 115 of the Code, empowers the High Court to entertain a revision in any case decided by subordinate court. This jurisdiction of High Court is called "revisional jurisdiction.

Provision contained in Section 115:

Section 115 authorizes the High Court to call for the record d has been case which has been decided by its subordinate court and in which no of appeal lies. On perusal of record, the High Court may make appropriate order, if it appears that the subordinate court : any

(i) has exercised a jurisdiction not vested in it by law; or

(ii) has failed to exercise a jurisdiction so vested; or

(iii) has acted in the exercise of its jurisdiction illegally or with material irregularity.

However, the High Court shall not vary or reverse -

(i) any order made, or

(ii) any order deciding an issue in the course of a suit or other proceeding, or

(iii) any decree or order against which an appeal lies.

But the High Court may vary or reverse any order which, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. A revision shall not operate as a stay of suit or other proceedings except where such suit or other proceeding is stayed by the High Court.

Object of Section 115:

The basic purpose of enacting Section 115 is to keep a check on the subordinate courts and to ensure that they do exercise their jurisdiction, do not step out of their jurisdiction and do not act arbitrarily or illegally.

In *Dwarika Prasad v. Nirmala,* the Supreme Court held that supervisory jurisdiction of High Court under Section 115 is intended to ensure that justice is done between the parties.

Who may file a revision:

The person aggrieved by an order passed by subordinate court may file a revision against that order.

Revisional jurisdiction may be exercised suo motu :

The High Court may suo motu exercise its revisional jurisdiction.

Conditions to be fulfilled :

Before exercising revisional jurisdiction, following conditions must be Conditions to be fulfilled :

(i) the case must have been decided;

(ii) the court which decided the case must be subordinate to the High Court;

(iii) the order passed by the subordinate court should be non-appealable;

(iv) the subordinate court must have exercised a jurisdiction not vesting in it or failed to exercise its jurisdiction or acted in the exercise of its jurisdiction illegally or with material The case must have been decided : irregularity

A case is said to have been decided if the court adjudicates for a purpose of the suit, some rights or obligations of parties in controven In order to invoke the revisional jurisdiction of the High Court, it is

necessary that the case should have been decided. In other words, t revision lies if the case is not decided by the subordinate court.

Case must have been decided by a court :

The High Court may entertain only those cases under revision whic are decided by a court. The term "court" denotes a court of civil judicature i.e., pertaining to rights and remedies of a citizen. Unless, the case is decided by a court, the High Court cannot exercise its revisional jurisdiction over it.

Court deciding the case must be subordinate to High Court:

A court is said to be subordinate to High Court when it is subject to its appellate jurisdiction. In other words, if an appeal from the decre passed by a court lies before a High Court; such court is subordinate to High Court. The term appeal includes both first and second appeal. The High Court may exercise its revisional jurisdiction in respect of the case which is decided by a court and such court is subordinate to the High Court.

Order passed by the subordinate court should be non-appealable : The High court may exercise its revisional jurisdiction in respect of those cases in which no appeal is provided to the High Court. The term appeal includes both first and second appeal. Thus, where an appeal, either first or second appeal, lies to High Court, no revision shall lie. But where the order of subordinate court is non-appealable, the revision is competent.

Jurisdiction exercised is not vested in subordinate court :

In certain cases, the subordinate court misinterprets the statutory provisions and assumes a jurisdiction which it is not actually vested with. For example, where the court entertains a suit not falling within its territorial or pecuniary jurisdiction or jurisdiction as to subject matter, or an appeal from a non-appealable order. A revision lies where the subordinate court has exercised the jurisdiction which is not vested entertains in it by law.

Failure to exercise the jurisdiction :

If the subordinate court fails to exercise the jurisdiction vested in it by law, a revision lies. This happens when the subordinate court erroneously thinks that it does not have jurisdiction to entertain and try a suit and therefore refuses to exercise it. In such cases, revisional jurisdiction of the High Court may be invoked.

Illegal exercise of jurisdiction : A revision also lies where the subordinate court has exercised its jurisdiction illegally or with material irregularity. The expressions "illegally" and "material irregularity" denote the flaw in procedure. Therefore, any defect in procedure renders the case subject to revision by High Court. For example, where the court decides a case ignoring the evidence on record or decides case without recording reasons for judgment or orders for appearance in public of a pardanashin lady or violates the principles of natural justice.

LIMITATION:

The period of limitation for filing a revision application is ninety days from the date of decree or order sought to be revised.

In **V.D. Chavan v. Sambaji and Chandrabai**, there was a 79 days in filing revision. The cause of delay stated was the death of a close relative, in the last rites of whom the participation of appellant was required as he was an elderly member of the family. Moreover, in the same month one of his close friends had also died. Hence, it was not possible for him to go to Bangalore immediately and instruct his lawyer and being an old man he could not make frequent travels from Dharwad to Bangalore. It was held that the cause shown was sufficient to condone the delay. The High Court's order dismissing the petition on the grounds of limitation was set aside. The matter was remitted to High Court for decision afresh.

Q3 (a) When can a temporary injunction be granted by civil court ?

Ans WHAT IS INJUNCTION

Injunction is an order by which the court either forbids a party to suit from doing some act or compels a party to suit to carry out certain act.

Meaning of the term "injunction":

In its literal sense, the term "injunction" means a "ban", "embargo", or "restriction". Injunction is a judicial process. By grant of injunction, a party to suit is ordered to desist from doing certain acts or "prohibition" is directed to do certain acts.

Purpose of injunction :

The predominant purpose of grant of injunction is to protect the disputed property until the rights of parties to the suit in respect of such property are finally determined. The basic object is to maintain status quo at the time of institution of suit in respect of disputed property so as to avoid any change in position till final adjudication.

KINDS OF INJUNCTION :

Considering the duration for which injunction is granted, the injunctions may be of two kinds viz., permanent injunction and temporary injunction.

Permanent injunction :

Permanent injunction is everlasting in its effect. It perpetually restrains a party from doing a specified act. It is effective forever. The permanent injunction may be granted only on merits at the conclusion of trial after hearing the rival parties to the suit.

Temporary injunction :

Temporary injunction is granted by the court for a short-term. It remains in force for the time-being only. It temporarily restricts a party to the suit to refrain from doing a specified act. It is effective until further orders of court. If temporary injunction is not vacated earlier, it survives only till disposal of the suit.

In view of nature of injunction, the injunctions may be of two kinds viz., prohibitory injunction and mandatory injunction.

Prohibitory injunction :

When the court grants injunction restraining a party to suit from doing certain act, it is known as "prohibitory injunction" or injunction" or "restrictive injunction". The prohibitory injunction could be temporary or permanent in nature. "preventive

Mandatory injunction :

When the court grants injunction ordering or compelling or commanding a party to carry out certain act, it is known as "mandatory injunction".

WHO MAY MAKE APPLICATION FOR GRANT OF INJUNCTION :

Any party to suit may apply for grant of injunction against the adversary. It is necessary that the applicant is a party to suit. An alien is not competent to make such application. Usually it is the plaintiff who applies for grant of injunction against the defendant. However, the defendant is not precluded from making such application. The defendant may also pray the court for grant of injunction against the plaintiff.

PARTY AGAINST WHOM INJUNCTION MAY BE ISSUED :

An injunction may be issued against any party. It is issued on application of a party to suit against the other side. If, the plaintiff applies for injunction, it may be issued against the defendant. If, the defendant applies for injunction, it may be issued against the plaintiff. However, an injunction can be issued only against a person who is a party to suit. It cannot be issued against a stranger who is not impleaded. It also cannot be issued against a judicial officer.

CASES IN WHICH TEMPORARY INJUNCTION MAY BE GRANTED: [Order XXXIX, Rule 1] :

In following circumstances the court may grant temporary injunction until disposal of the suit or until further orders :

(i) If there is a danger that the disputed property may be wasted, damaged or alienated by any party to the suit.

(ii) If the disputed property is in danger of being wrongfully sold in execution of a decree.

(iii) If the defendant threatens or intends to dispose of his property for defrauding his creditors.

(iv) If the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any disputed property.

(v) If the defendant is about to commit a breach of contract or other injury of any kind.

(vi) If the court is of the opinion that grant of injunction is necessary in the interest of justice.

Factors to be considered by the court before granting temporary injunction

Temporary Injunction is the discretionary power vesting in the court. It must be exercised judiciously since it adversely affects the rights of rival party. Following aspects must be considered by the court before granting temporary injunction :

A strong case for grant of injunction :

Unless a strong case is made out by the applicant, the court should not grant temporary injunction. The court must satisfy itself that temporary injunction is necessary to prevent likely wastage, damage or alienation of disputed property and to forbid the defendant from disposal of his property or dispossessing the plaintiff from any disputed property. The burden lies on the applicant to satisfy the court in respect of these circumstances.

Irreparable injury to be caused to the applicant :

Mere existence of above circumstances is not enough for grant of temporary injunction. It must be coupled with the case of irreparable injury to be caused to the applicant. The applicant must satisfy the court that if his application for grant of temporary injunction is not allowed, he will suffer irreparable injury. The expression "irreparable injury" denotes a substantial injury that cannot be measured in terms of money and hence cannot be sufficiently compensated by way of granting damages.

In *M. Gurudas v. Rasaranjan*," the Supreme Court observed the court has to consider balance of convenience of parties and irreparable injuries, if any, that might be suffered by the plaintiff if injunction is refused.

Balance of convenience in favour of applicant :

Temporary injunction may be granted by the court only when it is satisfied that balance of convenience lies in favour of the applicant. The expression "balance of convenience in favour of applicant" means that hardship caused to the applicant by refusal of injunction shall be greater than the hardship caused to opponent by grant of injunction. For arriving at a conclusion relating to balance of convenience, the court makes an assessment of comparative inconveniences likely to be caused to the parties by grant or non-grant of injunction. The balance of convenience lies in favour of the party which is to be inconvenienced more. If, the degree of injury likely to be caused to the applicant due to denial of injunction is higher than the injury caused to the opponent by grant of injunction, the court may grant injunction, otherwise the court may decline to grant it.

Q.3(b) What do you understand by inherent power of civil court .

Ans Section 151 states that the Court has inherent powers to make necessary orders for achieving the ends of justice or to prevent the abuse of the process of Court. Such inherent power cannot be limited or otherwise affected by any provision of the Code.

What is meant by "inherent powers" :

The term "inherent" denotes "natural" or "intrinsic" or "inbuilt" or "inborn" or "a permanent quality", or "an essential element". Therefore inherent powers are those which are naturally vested in the civil Court. In other words, the Courts of civil jurisdiction are essentially clothed with such inherent powers. The Court may exercise its inherent power for achieving the ends of justice or to prevent abuse of the process of the Court.

Nature of the provision :

A plain reading of Section 151 reveals that it does not confer any power on the Court, instead recognizes certain inherent powers vested in the civil Court. It declares that such powers have been vested in every Court of civil jurisdiction and no provision of this Code shall be deemed to limit these inherent powers. Thus Section 151 preserves the powers of Courts to make such orders as may be necessary for ends of justice or to prevent the abuse of process of the Court.

When the provision applies :

The provision deals with inherent powers of the Court and as such it applies to Court only and not to any other authority. Thus only a civil Court may exercise the inherent powers preserved by this section. No other authority is entitled to exercise these inherent powers.

Exercise of inherent power is at the discretion of the Court:

The Court is under no obligation to exercise its inherent powers. It is entirely at the discretion of the Court whether to exercise inherent powers or not.

When inherent powers may be exercised by the Court :

The Court has to exercise its inherent powers in exceptional circumstances only. Before exercising these powers, the Court must be satisfied that such exercise is necessary (i) for achieving the ends of justice, or (ii) to prevent abuse of process of the Court. Unless these conditions are fulfilled, the Court cannot exercise its inherent powers.

In *Meera Chauhan v. Harsh Bishnoi,*' the Apex Court held that inherent powers must be exercised only in exceptional circumstances for which C.P.C. lays down no procedure. Where injunction order of the court is violated, the court can execise its inherent powers to restore the order.

When the Court cannot exercise its inherent powers under Section 151 :

The Court may not exercise its inherent powers in following

circumstances : (i) if the Court is satisfied that such exercise is not necessary for the ends of justice or to prevent abuse of process of the Court, or

(ii) if the Court has no jurisdiction over the proceedings before it, in which the exercise of inherent powers is necessary, or

(iii) if the exercise of the inherent powers would contravene any express provisions of law.

Meaning of "ends of justice":

The expression "ends of justice" denotes full and complete justice between the parties. The ends of justice may be met with only when the matter is decided on the principles justice, equity and good conscience.

Meaning of "abuse of process of Court" :

When a person initiates a legal process for drawing an advantage or a benefit to which he does not deserve, it is said to be "abuse of process of Court".

Inherent powers and jurisdiction of Court:

The inherent powers and jurisdiction are two different aspects but have a peculiar inter-relationship. The Court may exercise its inherent powers only if it has jurisdiction to entertain and try the subject matter of the suit. If the Court has no jurisdiction, there is no question of inherent powers as well. But where the Court has jurisdiction, it has discretion as to exercise of inherent powers.

AMENDMENT OF JUDGMENTS, DECREES OR ORDERS [Section 152]

Section 152 empowers the Court to correct any mistake in its judgment, decree or order provided that such mistake is clerical or I arithmetical and has arisen from accidental slip or omission. Such correction may be made by the Court at any time either on its own motion or on application of any party in this behalf.

When Section 152 is attracted:

Section 152 is attracted only when a judgment is pronounced, a decree is passed or an order is made and a clerical or arithmetical mistake occurs therein.

Essentials of Section 152:

The following are essential ingredients of the provision:

(i) there must be an apparent mistake in the judgment, decree or order passed by the Court;

(ii) such mistake must be clerical or arithmetical; and (in) such mistake must have occurred due to accidental slip or omission.

When the above mentioned essential conditions are satisfied, the Court may make correction of errors or mistake at any time either suo motu or on application of any party.

GENERAL POWER TO AMEND (Section 153

The Court may at any time and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit, and all necessary amendments shall be made for the purpose of determining the real question or issue raised or depending on such proceeding.

Section 153 provides that the Court may amend any defect or error in any proceeding before it. Such amendment may be allowed at any time. All necessary amendments shall be made for determination of the real question or issue between the parties to suit.

The essential ingredients of the section are as under:

(i) the Court may allow amendment to rectify any defect in proceedings,

(ii) the amendment must relate to any defect or error in any proceeding in a suit,

(iii) such proceeding must be pending before the Court,

(iv) the amendment may be allowed at any time during perdency of proceedings

, (v) the amendment must be for the purpose of determining the real issue between the parties, and

(vi) the Court may impose costs amendment. on the party applying for

Application of Section 153 :

Section 153 applies to any proceeding in a suit. Thus, any defect or error in a pending proceeding may be rectified by the Court at any time. by way of amendment. The general power conferred by this section may be exercised by any Court including the Court of first instance, the appellate Court and the revisional Court.

POWER TO AMEND DECREE OR ORDER WHERE APPEAL IS SUMMARILY DISMISSED [Section 153A]

Section 153A states that Court may amend its decree even after summary dismissal of an appeal filed against it. A judgment-debtor may challenge the decree passed by the Court of first instance by filing an appeal before appellate Court. If such appeal is dismissed in limine. without issuing notice to the respondent, the Court passing the decree may still exercise the power under Section 152 to amend such decree.

Application of the provision :

The provision shall apply only when the appeal against the decree or order is dismissed in limine. The expression in limine means summarily i.e., without issuing notice to the respondents. If such dismissal takes place after hearing the parties, the section has no application. Thus the Court passing the decree may amend the decree even after summary dismissal of the appeal against it. Dismissal of appeal has the effect of confirming the decree or order passed by the Court of first instance. Yet the Court's power to amend under Section 152 remains unaffected.

PLACE OF TRIAL TO BE DEEMED TO BE OPEN COURT [Section 153B]

Section 153B declares that the place of trial of any suit shall be deemed to be an open Court to which the general public may have access. However, the Judge may prohibit the entry of general public or of a parti cular person in the Court room during inquiry or trial of a particular case.

In other words, the Judge may order trial of a particular case in camera.