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Subject: Constitutional Law-II

Attempt Any Three

Questions/Q #3 is essential.

Q1. Discuss the importance along with historical background of Marbury v/s Madison case

(1803) in US Constitution, why this case is important in constitution?

(/06

Ans

- Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), was a landmark U.S. Supreme Court case that established the principle of judicial review in the United States, meaning that American courts have the power to strike down laws and statutes that they find to violate the Constitution of the United States. Decided in 1803, Marbury remains the single most

important decision in American constitutional law. The Court's landmark decision established that the U.S. Constitution is actual law, not just a statement of political principles and ideals, and helped define the boundary between the constitutionally separate executive and judicial branches of the federal government.

- In the fiercely contested U.S. presidential election of 1800, the three main candidates were Thomas Jefferson, Aaron Burr, and the incumbent president, John Adams. Adams was aligned with the pro-business uh pro-national government politics of Alexander Hamilton and the Federalist Party, while Jefferson and Burr were part of the opposing Democratic-Republican Party, which favored agriculture and decentralization. American public opinion had gradually turned against the Federalists in the months prior to the election, mainly due

to their use of the controversial Alien and Sedition Acts, as well as growing tensions with Great Britain, with whom the Federalists favored close ties. Jefferson easily won the popular vote, but only narrowly defeated Adams in the Electoral College.

- As the results of the election became clear in early 1801, Adams and the Federalists became determined to exercise their influence in the weeks remaining before Jefferson took office, and did all they could to fill federal offices with "anti-Jeffersonians" who were loyal to the Federalists. On March 2, 1801, just two days before his presidential term ended,[note 1]Adams nominated nearly 60 Federalist supporters to circuit judge and justice of the peace positions the Federalist-controlled Congress had newly created. These last-minute nominees — whom Jefferson's supporters derisively called the "Midnight Judges" — included

William Marbury, a prosperous businessman from Maryland. An ardent Federalist, Marbury was active in Maryland politics and had been a vigorous supporter of the Adams presidency.

- Marbury v. Madison remains the single most important decision in American constitutional law. It established American judges' authority to review the constitutionality of Congress's legislative acts, and to this day the Supreme Court's power to review the constitutionality of American laws at both the federal and state level "is generally rested upon the epic decision of Marbury v. Madison."

Q3. In what circumstances different types of WRITS are applicable by superior courts? (/06)

Ans

- A writ is an order by a court, directing lower courts to either do something or not do something. The concept of a writ was first developed by the Anglo-Saxons in England. The Monarch would issue letters which held orders and directions. Since then, writs have been incorporated by various countries into their legal systems. India has also done so, empowering the Supreme Court and the High Courts to issue such writs.

● **Types of Writs**

- There are five types of writs which can be issued by the High Courts, but Article 226 has also given the power to issue other writs if they are of like nature to the five types of writs expressly spelled out in the Constitution. The types of writs are as follows:

● **Habeas Corpus**

- Habeas corpus is a Latin term which translates to “you have the body.” This type of writ is used in cases of illegal detention and imprisonment. This writ allows the court to direct the detainer to appear before the court and give a valid reason for the imprisonment or detention. They must provide proof that it is legal, thus the onus of proof is on the detainer, and he must show authority to do the same. If the court finds that the person has been illegally detained, it can order the detainee or prisoner to be set free.

● **Scope and Grounds**

- The court has greatly expanded the scope of this writ as it protects the right to life and liberty. In the case of Sheela Bharse v. State of Maharashtra AIR 1983 SC 378, the court expanded the scope of this writ by adjudging that it is not necessary that the detainee should be the petitioner. An interested party who has some connection with the case may also do so.
- In the case of Kanu Sanyal v. District Magistrate AIR 1973, SC 2684 the court held that it is not necessary to produce before the court the detainee.

● **Prohibition**

- The writ of prohibition is issued by the High Court to judicial and quasi-judicial bodies, refraining the said bodies from continuing with any proceeding which is in

excess of their jurisdictions. The writ of prohibition can be issued only when the case is continuing.

● **Scope and Grounds**

- In the case of Calcutta Discount Co. Ltd. V. ITO AIR 1961 SC372, the Supreme Court held that when a subordinate court or tribunal is shown decisively that they have acted in excess of their jurisdiction, the court will issue a writ of prohibition regardless of whether there exists an alternative remedy or not.

● **Mandamus**

- Mandamus is a Latin term meaning “to command,” and it is a writ which is issued to any person or authority who has been prescribed a duty by the law. Mandamus cannot be issued to a private person or company with private obligations. It also

cannot be issued to enforce a private contract. This writ compels the authority to do this duty. Mandamus does not create a new duty instead it compels the performance of an already existing duty.

● **Scope and Grounds**

- Like the other prerogative writs, the court has taken on the burden of setting the parameters for the application of the writ of Mandamus.
- In the case of, *State of West Bengal v. Nuruddin* (1998) 8 SCC 143, the Supreme Court held the writ of mandamus is a personal action where the respondent has not done the duty they were prescribed to do by law. The performance of the duty is the right of the applicant.
- In *Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and Ors. V. V. R. R Udani and Ors.* AIR 1989 SC 1607, the

court held that it is not necessary that the duty is imposed by statute, mandamus may apply even in cases where the duty is imposed by common law or custom. The ambit of mandamus is very wide, and it must be available when an injustice has occurred. It should not be bogged down with too many technicalities.

● **Quo Warranto**

- Quo warranto is the Medieval Latin term for “by what warrant” and it is the writ which is issued directing subordinate authorities to show under what authority they are holding the office. The writ cannot be issued to a person working in a private field. This writ is issued to a person in an office, the legality of which is being questioned.

Q4. Define Any 2 of following:-,
(/08)

- I. HIMALTONIANISM.
- II. FEDERALISM.
- III. THOMAS JEFFERSON.

Ans

I. HIMALTONIANISM

- Hamiltonian function, also called Hamiltonian, mathematical definition introduced in 1835 by Sir William Rowan Hamilton to express the rate of change in time of the condition of a dynamic physical system—one regarded as a set of moving particles. The Hamiltonian of a system specifies its total energy—i.e., the sum of its kinetic energy (that of motion) and its

potential energy (that of position)—in terms of the Varangian function derived in earlier studies of dynamics and of the position and momentum of each of the particles.

- The Hamiltonian function originated as a generalized statement of the tendency of physical systems to undergo changes only by those processes that either minimize or maximize the abstract quantity called action. This principle is traceable to Euclid and the Aristotelian philosophers.
- When, early in the 20th century, perplexing discoveries about atoms and subatomic particles forced physicists to search anew for the fundamental laws of nature, most of the old formulas became obsolete. The Hamiltonian function, although it had been derived from the obsolete formulas, nevertheless proved to be a

more correct description of physical reality. With modifications, it survives to make the connection between energy and rates of change one of the centres of the new science.

II. THOMAS JEFFERSON.

- Thomas Jefferson (April 13, 1743– July 4, 1826) was an American statesman, diplomat, lawyer, architect, musician, philosopher, and Founding Father who served as the third president of the United States from 1801 to 1809. He had previously served as the second vice president of the United States under John Adams between 1797 and 1801, and as the first United States secretary of state under George Washington between 1790 to 1793. The principal author of the

Declaration of Independence, Jefferson was a proponent of democracy, republicanism, and individual rights for certain categories of people, motivating American colonists to break from the Kingdom of Great Britain and form a new nation; he produced formative documents and decisions at both the state and national levels.

- During the American Revolution, Jefferson represented Virginia in the Continental Congress that adopted the Declaration of Independence. As a Virginia legislator, he drafted a state law for religious freedom. He served as the second Governor of Virginia from 1779 to 1781, during the American Revolutionary War. In 1785, Jefferson was appointed the United States Minister to France, and subsequently, the nation's first Secretary of State under President George Washington from 1790 to 1793. Jefferson and James Madison organized the Democratic-Republican

Party to oppose the Federalist Party during the formation of the First Party System. With Madison, he anonymously wrote the provocative Kentucky and Virginia Resolutions in 1798 and 1799, which sought to strengthen states' rights by nullifying the federal Alien and Sedition Acts.

- As president, Jefferson pursued the nation's shipping and trade interests against Barbary pirates and aggressive British trade policies. Starting in 1803, Jefferson promoted a western expansionist policy, organizing the Louisiana Purchase which doubled the nation's land area. To make room for settlement, Jefferson began a controversial process of Indian tribal removal from the newly acquired territory. As a result of peace negotiations with France, his administration reduced military forces. Jefferson was reelected in 1804. His second term was beset with

difficulties at home, including the trial of former vice president Aaron Burr. In 1807, American foreign trade was diminished when Jefferson implemented the Embargo Act in response to British threats to U.S. shipping. The same year, Jefferson signed the Act Prohibiting Importation of Slaves.

- Jefferson, while primarily a planter, lawyer and politician, mastered many disciplines, which ranged from surveying and mathematics to horticulture and mechanics. He was an architect in the classical tradition. Jefferson's keen interest in religion and philosophy led to his presidency of the American Philosophical Society; he shunned organized religion but was influenced by Christianity, Epicureanism, and deism. A philologist, Jefferson knew several languages. He was a prolific letter writer and corresponded with many prominent people, including Edward Carrington, John

Taylor of Caroline and James Madison. Among his books is Notes on the State of Virginia (1785), considered perhaps the most important American book published before 1800. Jefferson championed the ideals, values, and teachings of the Enlightenment.