

**LEGAL STUDIES(074)**  
**CLASS XII**  
**MARKING SCHEME**

Q.No.	ANSWERS	MARKS
1.	<p>The landmark 1973 Supreme Court case of <i>KeshavandaBharathi v. State of Kerala</i> discussed the question about.....</p> <p>a) collegium model of appointment of judges in India  b) scope of separation of powers in India  c) the basic structure or feature of the constitution  d) Power of judicial review</p> <p>Ans. a)</p>	1
2.	<p>What does Latin phrase <i>audi alteram partem</i>, means?</p> <p>a) 'listen to the other side'  b) 'one cannot be forced to be a witness against himself'  c) 'justice delayed is justice denied'  d) 'my rights imply your duty'</p> <p>Ans. a)</p>	1
3.	<p>A sells his garden as well as his house through one instrument to B. Whereas; B wants to retain only the house and wants to cancel the transfer regarding the garden. Can B have the right to partial selection?</p> <p>a) Yes, B has the right to selection.  b) Yes, B can have partial selection only if ratified by A.  c) No, B has to accept or reject the transfer in totality.  d) No, because House and garden are inseparable.</p> <p>Ans. c)</p>	1
4.	<p>“You must not use a steam hammer to crack a nut if a nut cracker would do.” This statement refers to which doctrine of Administrative Law.</p> <p>a) Doctrine of Legitimate expectation  b) Doctrine of proportionality  c) Doctrine of Governmental liability  d) Doctrine of Separation of powers.</p> <p>Ans. b)</p>	1
5.	<p>Rahul is facilitating an alternative dispute resolution in which parties appoint a neutral third party who facilitates the parties in achieving an acceptable, voluntary agreement, which is more formal than negotiation. What is Rahul facilitating?</p> <p>a) Arbitration  b) Mediation  c) Conciliation  d) Administrative Tribunal</p>	1

	Ans. b)	
6.	Which Indian Statute provides for statutory free legal aid under criminal law a) Code of Criminal Procedure b) Advocates Act c) Indian Penal Code d) Indian Evidence Act.	1
	Ans. a)	
7.	With regards to International Human Rights “ICCPR” stands for: a) International Covenant on Civil and Political Rights. b) International Covenant on Criminal and Penal Rights. c) International Charter on Civil and Political Rights. d) International Committee on Civic and Public Rights.	1
	Ans. a)	
8.	The International Criminal Court was set up with a purpose of prosecuting criminals for 4 major crimes. Which amongst the following <b>doesn't</b> belong to that category? a) Genocide b) War Crimes c) Crimes against Humanity d) Intellectual Property Piracy.	1
	Ans.d)	
9.	A public authority was given the duty to construct a community centre for public in Uddeshyanagar and land was also allotted for this purpose. But instead of constructing community centre, the public authorities started constructing shops on that allotted land. What remedy is available to the citizens of Uddeshyanagar under Indian Constitution?  Ans. Under article 32 of the Indian Constitution the Supreme Court has the power to enforce fundamental rights, and provides one the right to move the Supreme Court for the enforcement. Here in the above mentioned case citizens of Uddeshyanagar have the right to apply for the writ of mandamus, i.e., to order to a public authority to do its duty.	2
10.	A boy is sinking in the swimming pool of a resort. A man who is beside the pool does not make any attempt to save this boy. Will the man be criminally liable? If yes why; if no why not?  Ans. No, he is not criminally liable. This is a moral omission of not saving someone's life; mere moral omissions of not doing something would not complete the requirement of actus reus.	2
11.	Kapoors and Bedis are neighbours living on the first and second floor of ABCL Apartments. The issue between the two is that the water from the kitchen area of Bedis seeps through and the wall of Kapoors kitchen is drenching. The electric gadgets are fitted on that wall and it leads to electric	2

	<p>shock. Kapoors have been trying to draw the attention of Bedis to this problem. How can this issue between the two be resolved?</p> <p>Ans. Mediation. It will help them to negotiate and resolve the issue mutually.</p>	
12.	<p>Who is an Ombudsman? Identify the Ombudsman in India that brings the Members Of Parliament, Union ministers and even the Prime Minister in its preview.</p> <p>Ans. Ombudsman means the representative of people. Whether appointed by a legislature, the executive, or an organization, the typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systemic issues leading to poor service or breaches of people's rights.</p> <p>Lokpal is the Ombudsman in India that brings the Members Of Parliament, Union ministers and even the Prime Minister in its preview.</p>	2
13.	<p>Who all can avail free legal aid under the provision of Legal Services Authorities Act?</p> <p>Ans. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is-</p> <ul style="list-style-type: none"> <li>(a) A member of a Scheduled Caste or Scheduled Tribe;</li> <li>(b) A victim of trafficking in human beings or beggar as referred in article 23 of the Constitution;</li> <li>(c) A woman or a child;</li> <li>(d) A person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);</li> <li>(e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood drought, earthquake or industrial disaster; or</li> <li>(f) An industrial workman; or</li> <li>(g) In custody, including in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956, or in a Juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986, or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987.</li> </ul>	2
14.	<p>'Prevention is better than cure', in the light of above statement explain the pre litigation legal services provided to the accused.</p> <p>Ans. It is rightly said that prevention is better than cure. In these days, the number of litigations is increasing day by day which is against smooth administration of justice.</p>	2

	<p>So far emphasis was given only on post litigation assistance or help but now it is being realized that pre-litigation legal services are more useful than post-litigation legal services. The pre-litigation legal services include:  Legal education  Legal advice  Legal awareness  Pre-litigation settlement etc.  Litigation is not a luxury but it should be used as a last resort. In criminal cases, prosecution is initiated by the State and when legal aid is provided to the accused, the expenditure of both the parties is managed by the State. Sometimes, it is criticized that legal aid in criminal cases is encouraging litigation.</p>	
15.	<p>A frustrated judge in an English court finally asked a barrister after witnesses had produced conflicting accounts,’ Am I never to hear the truth? ‘No, my lord, merely the evidence’, replied counsel.  To which judicial system does this judge belong? What is his role in such a system? Give two disadvantages of this system.</p> <p>Ans. Adversarial System. The role of the judge/decision maker is rather passive as the judge decides the claims based solely on the evidences and arguments presented by the parties and their lawyers.  The disadvantages of an adversarial system are the following:</p> <ul style="list-style-type: none"> <li>• The cost of the justice system falls upon the parties. This creates an in-built discrimination amongst the litigants. Parties with better resources are able to access justice by hiring competent lawyers and presenting sophisticated evidences which may not be immediately available for parties that lack these resources. Accessibility and affordability to justice are important challenges for the adversarial system of dispute resolution.</li> <li>• The role of lawyers and the procedural formalities, e.g. cross examination may prolong the trial and lead to delays in several matters.</li> <li>• Judges play less active role; a judge is not duty bound to ascertain the truth but only to evaluate the matter based on the evidences presented before him/her. <b>(any two)</b></li> </ul>	4
16.	<p>Article 14 of the constitution provides to all the right to equality. Article 16 provides for Reservation and affirmative action for government jobs to backward classes. Are these two provisions contradictory to each other? Explain giving reasons.</p> <p>Ans. No, as both aim at the providing equal opportunities to all the citizens of India.  Article 16 is also based on the equality principle of Article 14. It provides for equality of opportunity in matters of public or State employment and bars any discrimination to any citizen on grounds of religion, race, caste, sex,</p>	4

	<p>descent, place of birth, or residence.</p> <p>However, this article allows State to provide reservation or affirmative action programs for government jobs to backward classes like Schedule Castes and Scheduled Tribes who because of historical and continued disadvantages based on caste status and otherwise have not been adequately represented in the services under the State.</p>	
17.	<p>What changes did the Advocates Act 1961 bring in legal profession in India?</p> <ul style="list-style-type: none"> <li>• Ans. After the enactment of the Advocates Act, 1961 all the old categories of practitioners (vakils, barristers, pleaders of several grades, and mukhtars) were abolished and consolidated into a single category called "advocates" who enjoy the right to practice in courts throughout India. The Advocates Act also established an All India Bar Council for the first time, with the Attorney-General and Solicitor General of India as ex- officio members of the Bar Council.</li> <li>• The All India Bar Council has one member elected to it by each State Bar Council and it elects its own Chairman and Vice Chairman. The Act has created a State Bar Council in each State with the Advocate General of the State as an ex- officio member, and 15-25 Advocates elected for a period of five years.</li> <li>• The Bar Council of India regulates the content, syllabus, duration of the law degree, subject to which every University can lay down its own provisions. The Council has a Legal Education Committee for this purpose. State Council rules need to be approved by the Bar Council, however the Central Government has overriding power to make rules.</li> <li>• In order to be eligible for enrolment, an Advocate must be: a citizen of India, atleast 21 years of age and must have an LLB degree from an Indian University. A foreign national may be enrolled on a reciprocal basis with the country of his citizenship, and his foreign degree may be recognized by the Council for the purpose. In the absence of such reciprocity, foreign nationals cannot practice law in India. The Act recognizes only one class of practitioners, that is, Advocates. An Advocate on the State Rolls is entitled to practice as of right before any tribunal, or authority of India, or any court including the Supreme Court. In 1977, the provisions relating to dual system (Advocates and Attorneys) in the Bombay and Calcutta High Courts were deleted.</li> <li>• Any advocate enrolled in the State Rolls is entitled to practice in the Supreme Court. The Advocate- on- Record (AOR) is another category of Advocate in the Supreme Court.</li> </ul>	4
18.	<p>What is National Legal Services Authority (NALSA) Regulations, 2010? Explain its relevant features.</p> <p>Ans. In 2010, the National Legal Services Authority (NALSA) of India adopted the National Legal Services Authority (Free and Competent Legal</p>	4

<p>Services) Regulations in exercise of its power under Section 29 of the Legal Services Authorities Act, 1987.</p> <p>The Regulations are applicable to the Legal Service Committees of the Supreme Court, High Courts, the States, districts and taluks. Some broad features of the Regulation relevant in the context of the paper are as follows:</p> <p><b>Selection of Panel Lawyers</b></p> <p>The legal services institution is vested with the authority to invite applications from legal practitioners with requisite professional experience to indicate the types of cases as they may be entrusted with. The panel shall be prepared by the Executive Chairman of the legal service institution in consultation with the Attorney-General (for Supreme Court), Advocate-General (for High Courts), Government pleader (for districts/Taluks) and the Bar Association President. The legal practitioner shall have three years or more of experience at the bar for being considered for empanelment. The personal traits like competence, integrity, suitability and experience shall be given due consideration. Separate panels shall be maintained for different types of cases. The Regulations also provide for retainer lawyers. The Panel has to be reconstituted every three years without disturbing the work of panel lawyers already representing on-going cases. In such cases where the panel lawyer wishes to withdraw from a case entrusted to him shall communicate this to the Member Secretary and the latter may permit him to do so. The panel lawyer is barred from taking any fee, remuneration or other valuable consideration from any person for whom legal services are rendered under the Regulation or Act. The panel lawyer may be withdrawn from a case or his name removed from the panel on account of nonperformance of duties satisfactorily or for actions against the object and purpose of the Act or Regulations.</p> <p><b>Payment of Fee</b></p> <p>The Regulations specify the rules regarding the payment of fees for panel lawyers which shall be in accordance with the State regulations without any delay on receipt of completion of proceedings for them. It suggests periodic revision of honorarium for the different types of services provided by panel lawyers in legal aid cases.</p> <p><b>Senior Advocates</b></p> <p>The services of senior advocates may be availed if the Chairman of the legal services institution forms an opinion to that effect in cases of great public importance and where serious threats to life and liberty of the applicant exists. The Legal Services Authorities Act of 1987 provides free legal aid to certain categories of citizens. The preamble of the Act says: "An Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize lokadalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity." The society is rapidly progressing and the reflections of the</p>
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	<p>same can be found on all fronts. Given the socio-economic changes in the last decade, the Preamble sets forth the need to address the grievances of weaker sections of the society.</p> <p>None should be denied justice for being a poor or being disabled, the evils in social hierarchy should also not affect anyone seeking justice.</p>	
19.	<p>Distinguish between Public International Law and Private International Law.</p> <p>Ans. Public international law (or the law of nations) is a body of customary or conventional rules which are considered as legal binding by civilized states in their intercourse with each other and is concerned solely with the rights and obligations of sovereign states.</p> <p>Private international law (or the conflict of laws) may be defined as the rules voluntarily chosen by a given state for the decision of cases which have a 'foreign' element or complexion.</p> <p>Thus, where two Englishmen make a contract in Portugal for the sale of goods situated in Lisbon, payment to be made in London, an English court would certainly recognize and apply Portuguese law as far as it affected the validity of the contract.</p> <p>The private international law forms part of municipal laws of a state and is meant for purpose of deciding whether a given case involving "foreign" element (i shall be adjudicated upon by its own domestic laws or by laws of some other state; and (ii) shall be subject of its courts of some other state.</p> <p>Thus private international law deals with cases in which some relevant fact has a geographical connection with a foreign country and may on that ground raise a question as to the application of Indian or some other appropriate foreign law to the determination of the issue or as to the exercise of jurisdiction by Indian or foreign courts.</p> <p>The public international law is concerned solely with rules concerning the rights and obligation of the states (i.e. countries) interest. Whereas, generally, speaking individuals and their dealings are the sole concerns of private international law.</p> <p>Thus in the case of private international law, the disputes are of a private character, though one of the dispute, may be a sovereign state. Moreover, unlike public international law, private international law of every state is different. Also there are as many systems of private international law as there are systems of municipal law, thus, we have rules of private international law in the fields of birth, marriage, divorce insolvency, wills contracts death and the like.</p>	4
20.	<p>What is a Treaty? How can a state express its willingness to be bound by a treaty?</p> <p>Ans. A Treaty/International Convention/Charters refers to legally binding,</p>	4

	<p>written, agreements in which states agree to act in a particular manner as specified in the agreement. Treaties are often complex documents, particularly with regards to those involving more than two parties as they are binding upon them and are to be entered into in good faith. Agreements which are between different nations but without the intention of creating binding obligations are not considered treaties, however they may have political effects. The final text has to be 'adopted' in an international conference by way of two-thirds majority.</p> <p>A state may express its consent to be bound by a particular treaty in certain cases, the most common of which are:</p> <p><b>Consent by signature</b></p> <p>In certain cases, treaties may be given force by way of signatures of representatives who have been given the full powers, i.e. authorization in writing from their state to be able to take decisions on its behalf.</p> <p><b>Consent by exchange of Instruments</b></p> <p>In some scenarios, consent may be recorded by way of exchanging certain instruments, i.e. documents which contain the terms agreed to by both sides, when these instruments provide that on such exchange they will be in effect.</p> <p><b>Consent by Ratification</b></p> <p>Ratification is simply understood to be the act by which a State establishes its consent to be bound by a treaty on the international plane. This was initiated as a measure to ensure that the representative who signed a treaty had due authority, by seeing whether the state agrees to 'ratify' the same. Ratification differs from country to country but usually requires a sign that the state consents to follow the provisions of the treaty i.e. could be assent by the President of the State or require a vote of a majority in the legislature. In multilateral treaties, involving a number of countries, ratification is usually the most preferred method of expressing assent where one party collects the ratification of the others. They are generally considered to be the most accepted as they are in a written form and have been explicitly assented to by the states party to the dispute.</p>	
21.	<p>'The Indian Constitution contains several provisions to serve the twin functions of Independence and Impartiality of Indian Judiciary.' Explain the features of the constitution for the independence and impartiality of the judiciary.</p> <p>Ans. Provisions relating to the judges Independence of judges is crucial to ensuring independence of judiciary. The following legal provisions mandate judge's independence and impartiality:</p> <p>i) Once appointed, judges are provided with a security of tenure till they reach retirement age. This age remains 62 for the High Court judges and 65 for the Supreme Court judges. Judges are not allowed to practice as advocates in the same or equivalent courts, post their retirement. For example, a retired High Court judge can practice in the Supreme Court, but is prevented from</p>	5



	<p>practicing in the same or other High Courts. This ensures that ex-judges practicing at the bar do not influence the decision of the bench, with whom they may have presumed familiarity.</p> <p>ii) Judges cannot be easily removed from their office except for proven misbehavior and incapacity. The legal process is kept stringent to ensure security of tenure of the judges.</p> <p>iii) The salaries and allowances of judges are fixed and not subject to vote of the legislature. Judges derive their salaries from the consolidated fund of India (for the Supreme Court) and consolidated fund of state (in case of High Courts). Their emoluments cannot be altered to their disadvantage except in the event of financial emergency.</p> <p>iv) Even the judicial conduct of the judges has been kept immune from examination by other Constitutional organs. The conduct of judges of both the Supreme Court and High Courts cannot be discussed in Parliament or state legislature, except when a motion for removal of a judge is being presented to the President.</p> <p>v) Supreme Court of India has been authorized to have its own establishment and to have complete control over it. It is further authorized to make appointments of officers and staff of the court and determine their service conditions.</p> <p>Therefore one can conclude that independence of judiciary is a constitutionally conferred protection.</p>	
22.	<p>Shine Soap Co. advertised that it would give a reward of Rs.1,000 who developed skin disease after using, "Aroma" soap of the company for a certain period according to the printed directions. Ms. Supriya purchased the advertised "Aroma" and developed skin disease in spite of using this soap according to the printed instructions. She claimed reward of Rs.1,000. The company refused the reward on the ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer. Decide whether Ms. Supriya can claim the reward or not. Refer the relevant case law, if any</p> <p>Ans. .Yes, Ms. Supriya is justified in her claim.</p> <p>In an English case Carlill v. Carbolic Smoke Ball Co. (1893, 1 QB 256), the company was the manufacturer of a medicine called smoke ball which was used for the treatment of influenza. The company believed that the medicine completely cured influenza. An advertisement was put up offering a reward of £100 to anyone who got influenza again after using the smoke ball medicine continuously for fifteen days. In the advertisement, it was also stated that £1000 was deposited in a Bank, namely, Alliance Bank for paying the reward if such situation arose. Seeing the advertisement, Mrs. Carlill bought the smoke ball medicine and used it as per the directions</p>	5

	<p>provided. Mrs. Carlill got a fresh episode of influenza. Mrs. Carlill sued the company for the reward of £100. The manufacturing company stated that: (1) there was no intention to enter into a legal relationship with anyone through the advertisement, and the advertisement was put up only to boost the marketing of the smoke ball medicine; (2) the advertisement was not an offer as it was not made to any particular person and an offer cannot be made to the public at large or to the whole world; (3) acceptance by the offeree had not been communicated, and so there was no binding contract. The Court rejected these contentions of the company and allowed Mrs. Carlill's claim for £100. The Court also stated that deposit of £1000 in the Alliance Bank by the smoke ball company was evidence that the company had real intention to enter into a legal relationship with anyone who accepted the offer. An offer can also be made to the world at large. It is called a general offer and it is valid. In the case of general offer, there is no need for communicating acceptance to the offeror. Merely fulfilling the conditions of the offer itself is treated as acceptance to create a contract.</p>	
23.	<p>Article 32 and Article 226 gives special powers to the Apex court and High Court for safeguarding the fundamental rights of the citizens. Along with this another extra judicial power is granted to citizens to move these judicial bodies for social interest. Identify these measures to protect/ safeguard the fundamental rights of the citizens.</p> <p><b>Ans. Remedies for enforcement of fundamental rights</b>— Article 32 guarantees the aggrieved ones, whose fundamental rights have been violated or denied, to petition directly to Supreme Court for the enforcement of fundamental rights. Unlike cases of other matters where one has to exhaust remedies of lower courts, in matters of fundamental rights violation one can approach the Supreme Court directly. Similarly, Article 226 authorizes High Courts to take up matters of fundamental rights violations directly for their enforcement.</p> <p><b>Public Interest Litigation</b> – Also known as Social Action Litigation. Article 32 allows for the practice of Public Interest Litigation, which is a process by which letters written to Supreme Court or High Courts by public-spirited persons or organizations alleging fundamental rights violations are converted into petitions. The author of the letter alleges violations of fundamental rights of the weaker sections of Indian society who are unable to approach the court; they include people in custody, victims of police violence, forced bonded laborers, migrant and contracted laborers, child workers, rickshaw pullers, hawkers, pensioners, pavement dwellers, and slum dwellers. Courts can also act upon newspaper reports alleging fundamental rights violations of victims</p>	5
24.	<p>“Law is an exciting and challenging profession.” In the light of the above statement evaluate the opportunities for law graduates in India.[Any 5]</p>	5

	<p>Ans. Law is an exciting and challenging profession. Law graduates in India have various options and opportunities open to them after their graduation. A law degree, in addition to being a professional degree, is now considered to be training in a discipline which trains the mind to think analytically and communicate systematically. Following are some of the opportunities available (and opted for by law graduates) to graduates after they obtain their degrees in law:</p> <p><b>Litigation:</b> Graduates may practice as an advocate in a court of law. This can be achieved by working under experienced advocates or being attached to litigation departments of law firms or companies in order to practice in the Courts of India.</p> <p><b>Law Firm Practice:</b> Law firms vary in size and practice areas. Law firms may range from boutique law firms specializing in specific areas of law (such as Intellectual Property Rights and Tax law), to mid- sized law firms as well as large law firms which are full service law firms with different practice groups such as general corporate, mergers and acquisitions, employment law, taxation, international trade, insurance, intellectual property, and project finance and infrastructure. Transactional law at lawfirms typically involves practicing in commercial and economic laws and advising on issues pertaining to a commercial transaction between two or parties. This would usually include advising on the laws applicable to the transaction, drafting contracts and other documents and helping clients with the commercial negotiations and the management and execution (i.e. successful completion) of the transaction. Corporate lawyers would also advise on regulatory issues and legal compliance. Centres for Legal Process Outsourcing (LPOs) also have a lot of transnational transactional work.</p> <p><b>Corporate Sector:</b> Large corporations often have an in-house legal practice. An inhouse counsel will give legal advice to the company, have expertise in the business of the company and be responsible for ensuring that the business of the company is being run in compliance with applicable laws and when required will bring in external lawyers. Several organisations such as commercial banks, multi-national companies, investment firms, insurance companies, e-commerce ventures, media houses are hiring law graduates for managing their legal departments.</p> <p><b>Public Policy:</b> Lawyers have an important role in formulating and advising on public policy. Several organizations employ law graduates for policy making and have institutionalized fellowships where law graduates can be Research Assistants. For example, a law graduate interested in public policy can apply to serve as a Legislative Assistant under the Legislative Assistants to Members of Parliament (LAMP) Fellowship programme run by PRS Legislative Research. Institutions such as Competition Commission of India and Securities Exchange Board of India also employ law graduates for policy making in the respective fields. Law firms have established Government</p>	
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	<p>Policy Departments where they employ law graduates for policy research.</p> <p><b>Legal Research and Academia:</b> Graduates may attach themselves with Research Centres and think tanks. Law graduates may take up teaching and research as a profession. At least a post graduate degree in Law or related disciplines is expected to build a career in academics. Universities employ postgraduates in law as lecturers/Assistant Professors at the beginning of their careers. Short term positions and opportunities as Visiting Professors/ Adjunct professors are also available in academia.</p> <p><b>Non-Governmental Organizations:</b> Not-for-profit organizations, especially organizations with a social justice orientation have positions for law graduates. These range from small grass-root level organizations to large well-funded organizations. They may be general in nature providing free legal aid, legal education and legal awareness to more specialist organizations involved in areas such as women and child rights, environmental law, employment laws, consumer rights and public health.</p> <p><b>Government Institutions:</b> Government departments, statutory authorities, public sector undertakings and regulatory bodies also provide interesting opportunities to lawyers. Graduates may opt for jobs in the government sector in institutions such as National Human Rights Commission, Law Commission of India, and National Commission for Women etc.</p> <p><b>Further study:</b> Law is an interdisciplinary subject and graduates may opt for further studies in related disciplines such as Business, Economics, Anthropology and Sociology. Traditionally, law graduates pursue Master of Laws (LL.M) degree followed by research degrees such as M.Phil or Ph.D. A variety of opportunities are available in India and abroad for advanced studies in law.</p> <p><b>Judicial Services/clerkships:</b> The court system provides several avenues to law graduates. The higher judiciary, that is judges of the High Courts and Supreme Courts have law clerks cum research assistants who assist a judge in researching for cases, maintaining paperwork etc. Judicial clerks often sit in court hearings with the judges. Graduates may write the All India Judicial Services Examination to avail of positions in the Indian Judiciary. Qualifying candidates start in subordinate courts and may then progress to hold offices in the High Courts and even the Supreme Court of India.</p>	
25.	<p>Shriram Food and Fertilizers Industry (SFFI) a subsidiary of Delhi Cloth Mills Limited was producing caustic and chlorine. On December 4th and 6th 1985, a major leakage of oleum gas took place from one of the units of SFFI in the heart of the capital city of Delhi which resulted in the death of several persons.</p> <p>The leakage was caused by a series of mechanical and human. Within two days, another leakage, though this time a minor one took place as a result of escape of oleum gas from the joints of a pipe. SFFI had several units engaged in the manufacture of caustic soda, chlorine, hydrochloric acid, stable bleaching powder, super phosphate, vanaspati, soap, sulphuric acid, alum anhydrous sodium sulphate, high test hypochlorite and active earth. All units were set up in a single complex situated in approximately 76 acres and</p>	6

	<p>they are surrounded by thickly populated colonies within a radius of 3 kilometres from this complex.</p> <p>At this juncture M.C.Mehta moved to the Supreme Court to claim compensation for the losses caused and pleaded that the Shriram Foods and Fertilizer Industries should not be allowed to restart. Identify the method which he adopted to move the court. Explain its characteristics.</p> <p>Ans. . This has been possible through the judicial activism of the Supreme Court through Public Interest Litigation (JanhitYachika) (PIL). This extraordinary jurisdiction has been invoked either through writs or even by writing letters to Judges, whose modalities are maintained under the guidelines for PIL enacted by the Court.</p> <p>The first ever PIL is listed as HussainaraKhatoon v. State of Bihar and dates back to 1979. A public interest activist lawyer filed this case on behalf of thousands of prisoners of the Bihar jail against the inhuman conditions of the prison. A Supreme Court bench headed by Justice P.N. Bhagwati declared the right for free legal aid and expeditious trial of these prisoners, which ultimately led to their release. Since then, PILs have encompassed several issues including socio-economic rights (freedom from bonded labour), legal entitlements (right to food; right to work), environment issues (clean air and water) and political reforms (disclosure of assets by members of the executive; disbursement of natural resources done by the government).</p> <p>The progress of PIL has thus seemed to incorporate several issues. Yet common characteristics encompass these litigations. These characteristics include:</p> <ul style="list-style-type: none"> <li>i) PILs can be termed as non-adversarial litigation that pits the interest of one party over the other. Rather than focussing on traditional litigation of adversary character, PILs are recognised as tools for social change.</li> <li>ii) PILs are based on the tenets of citizen standing and representative standing which expands the rights of third-parties to approach the Court.</li> <li>iii) PIL from its inception is modelled on remedial nature which aims at creating a dynamic, welfare oriented model of judiciary. PIL thus incorporates the Directive Principles whose claims cannot be brought directly to the Courts, into the domain of fundamental rights under Part III of the Constitution, which can be invoked before the Courts as a matter of rights by the citizens of India. Therefore PILs are creating new rights and laws within the realm of the state. These laws are also democratising citizen's access to justice, thereby strengthening the democracy in India.</li> <li>iv) PIL further strengthens the role of judiciary as a monitor and watch-dog agency. Fear of being dragged to the Court via PIL has improved the quality of several social institutions in the country such as jails, protective homes, mental asylum etc.</li> </ul> <p>However, with the advent and growth of PILs, they have also been misused for private gains, and led to frivolous litigation on unnecessary issues. They have also been criticised for judicial over-reach and stepping into the shoes of</p>	
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	legislature.	
26.	<p>Diya and a friend Priya were at a café in GK Market. Priya ordered and paid for a bottle of Mango Mania for Diya. The Mango Mania was in an opaque bottle. Diya drank some of the contents and her friend lifted the bottle to pour the remainder of the Mango Mania into the tumbler. The remains of a snail in a state of decomposition dropped out of the bottle into the tumbler. Diya later complained of stomach pain and her doctor diagnosed her as having gastroenteritis and being in a state of severe shock. Diya sued Sip Drinks, the manufacturer of the drink, for negligence.</p> <p>Explain the tort of negligence in the light of the above situation</p> <p>Ans. The basic understanding of negligence is that wrong-doer or the defendant has been careless in a way that harms the interest of the victim or the claimant. For example, when the defendant carries out an act of constructing something on her premises, she owes a duty of care towards the claimant and that the standard of duty of care depends on whether the claimant was on the site or in the neighborhood as well as whether the claimant was a lawful visitor or trespasser. Generally, in order to argue successfully that the defendant has been negligent, the victim or the claimant must establish three elements against the defendant in a tort of negligence case - 1) the defendant owes a duty of care to the victim; 2) there has been a breach of duty of care on part of the defendant; and 3) the breach of the duty to care resulted in the harm suffered by the claimant. Let's consider these elements here.</p> <p><b>Duty of Care</b></p> <p>The duty of care principle can be explained by citing an actual case law. In a 1932 English case of Donoghue v Stevenson, the claimant Donoghue drank a soft drink manufactured by the defendant Stevenson. The drink had a decomposed snail in the bottle that made the claimant ill. The court held that the manufacturer owed duty of care to those who are 'reasonably foreseeable' to be affected by the product. So the duty of care is owed to those whom one can reasonably foresee as being potentially harmed. This principle is applicable to numerous fact situations; as another example, a landlord owes a duty of care with reasonable foresight to his tenants and should ensure that no hazardous substance like petrol is stored by him in the basement of the apartment being dwelt by the tenants.</p> <p><b>Breach of Duty of Care</b></p> <p>Once the duty of care is proven the claimant then must establish that the duty of care was broken; i.e., the defendant was unsuccessful in fulfilling the duty of care in accordance with the standard of 'reasonableness'. The standard is that of 'reasonable conduct' or 'reasonable foresight', however, the act need not be flawless. In the case of Donoghue v Stevenson above, the court held that the manufacturers of products owe a duty of reasonable care to the consumers who use the products. Similarly, the standard of duty</p>	6

	<p>of reasonable care will vary based on the peculiar fact situation of every case.</p> <p><b>Harm to the Claimant</b>  In the case of <i>Donoghue v Stevenson</i>, the negligence on part of the manufacturer of the soft drink resulted in the illness or injury to the claimant.  Or, in the second example, the apartment catches fire because of petrol being stored in the basement causing damage to the tenants</p>	
27.	<p>What is meant by Arbitration? What is the procedure followed for administering justice by this mechanism? Distinguish between foreign arbitration and International commercial arbitration.</p> <p><b>Ans. Meaning:</b>  Arbitration is a term derived from the nomenclature of Roman law. Arbitration is a private arrangement of taking disputes to a less adversarial, less formal and more flexible forum and abiding by judgment of a selected person instead of carrying it to the established courts of justice.</p> <p><b>Process of arbitration</b></p> <ul style="list-style-type: none"> <li>• Arbitration can be chosen by the parties either by way of an agreement (Arbitration Agreement) or through the reference of the Court (Court Referral of Arbitration).</li> <li>• The parties in an arbitration have the freedom to select a qualified expert known as an arbitrator.</li> <li>• The process of dispute resolution through arbitration is</li> <li>• confidential, unlike the court proceedings which are open to the public.</li> <li>• The decision rendered by an arbitrator is known as an arbitral award. Similar to a judgment given by a judge, the arbitral award is binding on the disputing parties.</li> <li>• Once an arbitral award is rendered, it is recognised and enforced (given effect to) akin to a court pronounced judgment or order.</li> <li>• In addition to an arbitral award, the arbitrator also holds power and authority to grant interim measures, like a judge in the court.</li> <li>• Arbitrators are free to base their decisions on their own conception of what is fair and just. Thus unlike judges, they are not strictly required to follow the law or the reasoning of earlier case decisions.</li> </ul> <p><b>Foreign Arbitration</b> - An arbitration where proceedings are conducted in a place outside India and the award is required to be enforced in India.  <b>International Commercial Arbitration</b> - An arbitration in which at-least one of the disputing parties is a resident/body corporate of a country other than India.  Arbitration with the government of a foreign country is also considered to be an international commercial arbitration.</p>	6
28.	Ms. Usha Raja, Technical Assistant in the Herb Research and Development	6

	<p>Institute, Gopawar, was being sexually harassed by the Director of the Institute. Allegations of further harassment by way of non-renewal of her job contract with effect from 1.5.2014 were also leveled. She moved an NGO, Sakshi, for help. It approached the NHRC for action. What are the powers and functions of NHRC in resolving the issue?</p> <p><b>Ans. Powers and Functions of the Commission</b>  The Commission is vested with the functions as given below.  <b>Inquiry and Investigation</b> – One of the Commission's roles is to conduct inquiry and investigation into the alleged violation of human rights or abetment (aiding or supporting) or negligence in the prevention of such violation by a public servant. The complaint can be filed by the victim or his or her representative, or the court may direct the Commission with a complaint, and at times the Commission may initiate inquiry and investigation on its own (soumotu). For example, the Commission may inquire soumotu based on some human rights violations news or report published through the media. Soumotu inquiry is especially useful when the victims belong to weaker section of the society and have limited access to justice delivery mechanisms.  The Commission has the powers of a civil court and in conducting an inquiry or investigation it can utilize various powers including the following –</p> <ul style="list-style-type: none"> <li>• summon and enforce the attendance of witnesses and examine them on oath;</li> <li>• ask for production of any document before itself;</li> <li>• receive evidence on affidavits;</li> <li>• request public record from any court or office; and</li> <li>• examine witnesses or documents.</li> </ul> <p>Once the inquiry is completed, the Commission can make recommendations to governmental authority in cases where any public servant is the perpetrator of human rights violation. The recommendation may include payment of compensation to the victims or suggest initiation of proceedings for prosecution of the public servant. The Commission can also approach the Supreme Court or the High Court for directions and orders. The Commission may also ask the State authority to provide immediate interim relief to the victim.</p> <p><b>Intervening in court proceedings</b> – The Commission may with the permission of the court intervene in court proceedings concerning human rights violations. For example, the Commission can request the Supreme Court to transfer pending riot cases out of a state in which the riots had happened to ensure the witnesses are not threatened in any manner and that evidences are not damaged.</p> <p><b>Inspection of jails, etc.</b>–The Commission may also visit any jail or other governmental institutions, where prisoners are lodged or detained, to study the living conditions of the inmates and make recommendations to the government.</p> <p><b>Awareness and Sensitization</b> – The Commission can review various human</p>	
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	<p>rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation. The Commission can also evaluate various factors, including acts of terrorism, which prevent the enjoyment of human rights and recommend appropriate remedial measures to the government. The Commission's role includes studying various international human rights laws and makerecommendations for their effective implementation at the domestic level (within the State). Furthermore, the Commission can undertake and promote research in the field of human rights as well as spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars, and other available means.</p> <p>Lastly, the Commission can encourage and support the efforts of nongovernmental organizations and institutions involved with human rights work.</p>	
29.	<p>What are the regulatory and representative functions performed by the Bar Council of India? Also state its statutory functions?</p> <p>Ans. The Bar Council of India was established by Parliament under the Advocates Act, 1961. It performs the regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar. It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.</p> <p>In addition, it performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financialassistance to organise welfare. The regulatory and representative mandate of the Bar Council for the legal profession and legal education in India is reflected by its statutory functions which are as follows</p> <p>-</p> <ul style="list-style-type: none"> <li>• To lay down standards of professional conduct and etiquette for advocates.</li> <li>• To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.</li> <li>• To safeguard the rights, privileges and interests of advocates.</li> <li>• To promote and support law reform.</li> <li>• To deal with and dispose of any matter which may be referred to it by a State Bar Council.</li> <li>• To promote legal education and to lay down standards of legal education. This is done in consultation with the Universities in India imparting legal education and the State Bar Councils.</li> <li>• To recognise Universities whose degree in law shall be a qualification for enrolment as an advocate. The Bar Council of India visits and inspects Universities, or directs the State Bar Councils to visit and inspect Universities for this purpose.</li> <li>• To conduct seminars and talks on legal topics by eminent jurists and publish journals and papers of legal interest.</li> </ul>	6

	<ul style="list-style-type: none"> <li>• To organise legal aid to the poor.</li> <li>• To recognise on a reciprocal basis, the foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.</li> <li>• To manage and invest the funds of the Bar Council.</li> <li>• To provide for the election of its members who shall run the Bar Councils.</li> </ul>	
30.	<p>Explain the functions of Central Authority constituted for legal services.</p> <p>Ans. The Central Authority shall perform all or any of the following functions, namely</p> <ol style="list-style-type: none"> <li>a) Lay down policies and principals for making legal services available under the provisions of this Act;</li> <li>b) Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act.</li> <li>c) Utilize the funds at its disposal and make appropriate allocation of funds to the State Authorities and District Authorities.</li> <li>d) Take necessary steps by way of social justice litigation with regard to consumer protection, environment protection or any other matter of special concern to the weaker sections of the society.</li> <li>e) Organize legal aid camps, especially in rural areas, slums or labour colonies.</li> <li>f) Encourage the settlement of disputes by way of negotiations arbitration and conciliation;</li> <li>g) Undertake and promote research in the field of legal services with special reference to the need for such services among the poor.</li> <li>h) To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV A of the Constitution;</li> <li>i) Monitor and evaluate implementation of the legal aid programmes at periodic intervals.</li> <li>j) Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities.</li> <li>k) Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance.</li> <li>l) Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of society.</li> <li>m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level.</li> <li>n) Coordinate and monitor the functions of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluka Legal Services Committees and voluntary social service institutions and other legal services organizations and give general directions for the proper implementations of the legal service programmes.</li> </ol>	6