

Legal Studies-2019

Marking Scheme

Q No	Value Point	Marks allotted
SECTION A		
1	A Or D	1
2	A	1
3	A	1
4	B	1
5	D	1
6	C Or D	1
7	C	1
8	A or C	1
SECTION B		
9	<p>No, Ms. Sheetal cannot do so due to the operation of Doctrine of Election.</p> <p>According to the principle of Doctrine of Election (Section 35 of the TPA), a party to the transfer cannot accept as well as reject in a single transaction. In other words, while claiming advantage of an instrument, the burden of the instrument should also be accepted. If a party to the transfer gets two selections (a benefit and a burden), then he has to accept both the benefit and the burden or none. He cannot accept the benefit and reject the burden in a single transaction.</p> <p>In Cooper v. Cooper 1874, LR 7 HL 53, the Court held that the doctrine of election applied on every instrument and all types of property</p>	2
10	<p>Mediation is a method of ADR in which parties appoint a neutral third party who facilitates the mediation process in-order to assist the parties in achieving an acceptable, voluntary agreement. Mediation is relatively inexpensive, fast, and confidential. Further, mediation and arbitration differ on the grounds of the nature of award rendered. The outcome of mediation does not have similar binding like an arbitral award. However, though non-binding, these resolution agreements may be incorporated into a legally binding contract, which is binding on the parties who execute the contract.</p> <p>Thus, in the process of mediation, the mediator merely facilitates the resolution of disputes and does not suggest any solutions. However, in the case in question, the mediator has decided on a solution for the parties.</p> <p>Moreover, the outcome of mediation is not binding on the parties, though in the case in question, the mediator has claimed that the outcome of mediation is legally binding.</p> <p>These are the two errors in the case discussed above.</p>	2
OR		

	<p>Benefits of ADR over litigation are as follows:</p> <ol style="list-style-type: none"> 1. The lack of number of courts and judges which creates an inadequacy within the justice delivery system; 2. The increasing litigation in India due to increasing population, complexity of laws and obsolete continuation of some pre-existing legal statutes; <p>Delay in disposal of cases resulting in huge pendency in all the courts. (Any 2)</p>	
11	<p>The statutory body discussed above is the Lokpal.</p> <p>The legislation aims to combat acts of bribery and corruption of public-servants, a term that has been given a fairly wide interpretation in the Act. The Act applies to the public servants in and outside India. It includes in its purview even the current and ex-prime ministers of India except in matters pertaining to international relations, external and internal security, public order, atomic energy and space. Besides the Prime Minister, it brings within its purview any person who is or has been a Minister of the Union and any person who is or has been a Member of either House of Parliament. It also includes any Group 'A', 'B','C' or 'D' official or equivalent from amongst the public servants defined in the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union.</p>	2
12	<p>Sumit can approach the National Human Rights Commission. The specific legislation called the Protection of Human Rights Act was enacted by the Parliament in 1993, which in turn established the National Human Rights Commission as an independent institution with powers and functions to promote and protect human rights. 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> <p>summon and enforce the attendance of witnesses and examine them on oath;</p> <p>ask for production of any document before itself;</p> <p>receive evidence on affidavits;</p> <p>request public record from any court or office; and</p> <p>examine witnesses or documents.</p> <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.</p>	2

13	<p>Article 19 provides 'reasonable restrictions' on the freedoms granted by it, which means that these rights are conditional. The State can 'reasonably' limit or take away the right to 'freedom of speech and expression' when there is a threat to the sovereignty and integrity of India, or the security of the State, or friendly relations with foreign States, or public order, or decency or morality, or in relation to contempt of court, or defamation or incitement to an offence. For example, the State can prohibit someone from making inciting speeches that may provoke others to commit violence.</p> <p>However, at times Supreme Court can invalidate State's restrictions if it finds them to be unreasonable. As an instance, State cannot put restriction as an excuse because it is unable to maintain public order, e.g., application of aforementioned restrictions on the sale of a book because of a few unruly protesters; such restrictions are unreasonable and breach the right to freedom of speech and expression of the author.</p>	2
14	<p>Main functions of State Bar Council are:</p> <ol style="list-style-type: none"> 1. Admitting law graduates on its Roll, 2. Determining cases of misconduct against Advocates on the Roll 3. Organizing legal aid 4. Electing one member to the All India Bar Council. <p style="text-align: center;">OR</p> <p>In India advertising by lawyers has been strictly restricted by the Bar Council of India. The restrictions are as follows:</p> <ol style="list-style-type: none"> 1. An advocate is prohibited from promoting himself through circulars, advertisements, touts, personal communications, interviews other than through personal relations, furnishing or inspiring newspaper comments or producing his photographs to be published in connection with cases in which he has been engaged or concerned. <p>An amendment to this rule allows advocates to furnish certain information on their websites after intimating and taking approval from the Bar Council of India. However, only 5 pieces of information can be put up on the internet, i.e., (i) the name of the advocate or the firm, (ii) the contact details, (iii) details of enrolment with the Bar, (iv) his professional and academic qualification and (v) the areas of practice</p>	2

SECTION C

15	<table border="1"> <tr> <td data-bbox="284 304 735 365">Attorney General</td> <td data-bbox="743 304 1190 365">Advocate General</td> </tr> <tr> <td data-bbox="284 365 735 546">The Attorney General is the first legal officer of the country. He is appointed under Art 76 of the Indian Constitution.</td> <td data-bbox="743 365 1190 546">Advocate general is the highest law officer in the state. He is appointed under Art 165 of the Indian Constitution.</td> </tr> <tr> <td data-bbox="284 546 735 786">Appointed by president. Holds office at the pleasure of president, tenure is not fixed by Constitution.</td> <td data-bbox="743 546 1190 786">Appointed by Governor. No fixed tenure, holds office at the pleasure of Governor.</td> </tr> <tr> <td data-bbox="284 786 735 952">Resignation to be submitted to President.</td> <td data-bbox="743 786 1190 952">Resignation to be submitted to Governor.</td> </tr> <tr> <td data-bbox="284 952 735 1115">Assisted by a Solicitor General and 4 Additional Solicitors General</td> <td data-bbox="743 952 1190 1115">Assisted by Additional Advocate Generals.</td> </tr> </table>	Attorney General	Advocate General	The Attorney General is the first legal officer of the country. He is appointed under Art 76 of the Indian Constitution.	Advocate general is the highest law officer in the state. He is appointed under Art 165 of the Indian Constitution.	Appointed by president. Holds office at the pleasure of president, tenure is not fixed by Constitution.	Appointed by Governor. No fixed tenure, holds office at the pleasure of Governor.	Resignation to be submitted to President.	Resignation to be submitted to Governor.	Assisted by a Solicitor General and 4 Additional Solicitors General	Assisted by Additional Advocate Generals.	4
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16	<p>Article 14 provides to all the right to equality before law and equal protection of the law. It prohibits discrimination on grounds of religion, race, caste, sex or place of birth. It means that law treats everyone equally without consideration of their rank or status or other backgrounds.</p> <p>Article 16 is 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, descent, place of birth, or residence. 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> <p>Equality principle states that one uniform law cannot be applied to all equally as some may not be similarly placed as others. Thus Article 16 is not contradictory to Article 14 but furthers the principle of equality of Article 14.</p>	4										

	OR	
	<ul style="list-style-type: none"> • The article described is Article 21. • The meaning of 'right to life' includes right to human dignity, right to basic requirements of life, right to participate in activities and expression, right to tradition, heritage, and culture, etc. • 'Personal liberty' means various rights that provide for personal liberty of a person, i.e., everyone has right to do his or her will freely. • The meaning of 'right to life and personal liberty' is broad and embraces many aspects including dignity, food, shelter, etc. • A person can be deprived of his or her 'right to life or personal liberty' only by procedure established by law. This means that any law that limits or takes away one's right to life and personal liberty must contain a procedure that is fair and reasonable and not arbitrary. 	
17	<p>i. The Committee in its report stated that it was not practical at that time to organize the Bar on an all-India basis. However, the Committee suggested the establishment of Bar Council for each of the High Courts.</p> <p>ii. The Committee suggested that a Bar Council should have power to make rules in matters such as qualifications and admission of persons to be Advocates of the concerned High Court, legal education, discipline and professional conduct of Advocates, terms on which Advocates of another High Court could appear occasionally in the concerned High Court or any other matter prescribed by the High Court.</p> <p>iii. Giving effect to the Chamier Committee recommendations, the Central Legislature enacted the Indian Bar Councils Act, 1926. The Act was to provide for the constitution and incorporation of Bar Councils, to confer powers and impose duties on the Bar Councils and to consolidate the regulations pertaining to the legal profession.</p> <p>iv. The Bar Councils could, with the consent of the High Court, make rules for: a) the rights and duties of Advocates of High Court and professional conduct; and b) legal education and examinations.</p>	1 x 4

18	<p>i. In a participatory democracy, it is essential that citizens have faith in their institution. A judiciary that is as fair and independent is an important component in sustaining their trust and confidence.</p> <p>ii. Citizens agree to a limitation on their freedom in exchange for peaceful coexistence, and they expect that when conflicts between citizens or between the state and citizens arise, there is a place that is independent from undue influence, that is trustworthy, and that has an authority over all the parties to solve the disputes peacefully.</p> <p>iii. It is also the responsibility of the State to ensure that fair and impartial justice is made available at the door steps of the poor and economically weaker sections irrespective of their caste, creed, religion, geographical position at free of cost.</p> <p>iv. Denying access to the courts forces dispute resolution into other arenas and results in vigilantism and violence. As envisaged under Article 15 of the Constitution of India, the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them. Based on this cardinal principle, no citizen shall on the grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability. Article 14 of the Constitution of India provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.</p>	1 x 4
OR		
<ul style="list-style-type: none"> • The Parliament has made certain amendments in Legal Services Authorities Act by passing an Act known as the Legal Services Authorities (Amendments) Act, 2002. The purpose of this amendment is to bring out certain changes in the Legal Services Act, 1987 (hereinafter referred to as the principal Act) especially for the establishment of permanent Lok Adalats to settle disputes concerning public utility services at pre-litigation state. • The reason behind creation of these courts was the realisation that litigation oriented legal services cannot bring out desired result, therefore, it encouraged pre-litigation legal services specially in public utility service. • "Public utility service" means any- 1) Transport service for the carriage of passengers of goods by air, road or water; or 2) Postal, telegraph or telephone service; or 3) Supply of power, light or water to the public by any establishment; or 4) System of public conservancy or sanitations; or 5) Service in hospital or dispensary; or 6) Insurance service. 		

19	<p>i. UNESCO: UNESCO was set up to promote coordination between members keeping in mind the fact mere economic and political arrangements are not enough to ensure growth and stability in member states.</p> <p>By promoting culture, preserving the heritage, sharing knowledge and understanding that are beneficial for the whole of mankind, UNESCO aims to aid sustainable development and foster greater cooperation between nations.</p> <p>ii. World bank and IMF: These two sister institutions were started in order to aid the economies of various nations which had suffered immense losses subsequent to the Second World War.</p> <p>The World Bank aids member states by providing loans to member states for the purpose of development and raises its funds by way of the world's financial markets.</p>	4
20	<p>i. Grounds of impeachment- Incapacity; Proven misbehavior.</p> <p>ii. The impeachment process in the Parliament is governed under Article 124(4) of the Constitution</p> <p>iii. Inquiry commissions report regarding the charges levied.</p> <p>iv. Based on the findings, the recommendation to impeach the judge has to be made by the Chief Justice of India to the President of India.</p> <p>v. If it is accepted then the proposal of impeachment must be introduced in the Parliament for discussion by 100 MPs in Lok Sabha or 50 MPs in Rajya Sabha.</p> <p>vi. The copy of the proposal is given to the concerned judge before the proceeding starts in the Parliament of India.</p> <p>vii. Under this scheme, the motion of impeachment has to be passed by the two-third majority members present and voting must be done separately in the each house of the Parliament.</p> <p>viii. If the motion is passed then the formal announcement is done by the President of India.</p>	0.5x8=4
SECTION D		
21	<p>i. Chief Vigilance Officer/ Ombudsman can be approached by Gaurav for redressal of his grievance.</p> <p>ii. Functions of Chief Vigilance Officer include:</p> <p>a) To investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation.</p> <p>b) To identify systemic issues leading to poor service or breaches of people's rights.</p>	1 2

iii.	<p>Advantage of this system is:</p> <ol style="list-style-type: none"> a. he or she examines complaints from outside the offending state institution, thus avoiding the conflicts of interest inherent in self-policing <p>Disadvantages of this system are:</p> <ol style="list-style-type: none"> a. The system relies heavily on the selection of an appropriate individual for the office, and b. cooperation of at least some effective official from within the apparatus of the state. 	1 1
OR		
<p>This very concept of settlement of dispute through mediation, negotiation or through arbitral process known as decision of "Nyaya-Panchayat" is conceptualized and institutionalized in the philosophy of Lok Adalat.</p> <p>Composition – It is presided over by a sitting or retired judicial officer such as the chairman, with usually two other members- a lawyer and a social worker</p> <p>Jurisdiction - A Lok Adalat has jurisdiction to settle any matter pending before any court, as well as matters at pre-litigative stage, i.e. disputes which have not yet been formally instituted in any Court of Law. Such matters may be in the nature of civil or compoundable criminal disputes.</p> <p>Benefits - The benefits of Lok Adalat include:</p> <ol style="list-style-type: none"> 1. There is no court fee and even if the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat. 2. There is no strict application of the procedural laws and the disputing parties can directly interact with the judges. 3. The decision of Lok Adalat is binding on the parties and its order is capable of execution through legal process. (Any 2) 		
22	<ol style="list-style-type: none"> 1. Absolute liability is the principle that can be used for claiming relief for Chintu and his friends. 2. Absolute Liability was introduced by the Supreme Court in the aftermath of the two instances of gas leaks from factories injuring many. The first case was about the infamous Bhopal gas leak disaster of 1984 and the second incident of 1985 in Delhi, due to leaked oleum gas. 3. The then Chief Justice of India P.N Bhagwati, in the famous 1987 case of M.C. Mehta v. Shri Ram Foods and Fertilizer Industries, held: "We are of the view that an enterprise, which is engaged in a hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm is done on account of such activity, the 	1 1 2

	<p>enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."</p> <p>4. The principle of absolute liability has evolved from the principle of strict liability. Strict liability torts do not care about the intention or carelessness of the defendant when the defendant caused the injury. The claimant does not have to establish any sort of or level of blame attributable to the defendant based on the intention or the degree of carelessness. However Strict liability is available in a very limited context.</p>	1
23	<p>In an adversarial system, the knowledge and experience of a judge is not fully utilized because:</p> <ol style="list-style-type: none"> 1. In an adversarial system, the parties in a legal proceeding develop their own theory of the case and gather evidence to support their claims. 2. The parties are assisted by their lawyers who take a pro-active role in delivering justice to the litigants. 3. The lawyers gather evidence and even participate in cross-examination and scrutiny of evidence presented by the other disputing party. 4. 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. 5. 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. 	1 X 5
24	<p>Social engineering may be defined as the science and art of making appropriate adjustments to human relationships as well as to promote the welfare of the community as a whole. The purpose of social engineering was:</p> <ol style="list-style-type: none"> a. To establish justice in the earth b. To hold back the strong from oppressing the weak". <p>There were three processes whereby the developing civilization progressively moved towards social engineering through free legal aid:</p> <ol style="list-style-type: none"> a. The first was to grant aid to vulnerable communities; b. The second was to put restrictions upon the exercise of privileges accorded by law to those well-off; c. The third was to strip those fortunate of their privileges and place the strong and weak on an equal footing before the law. 	2 3

SECTION E

25	<p>The scope of judicial review in courts in India has developed with respect to three issues: 1) protection of fundamental rights as guaranteed in the Constitution; 2) matters concerning the legislative competence between the centre and states; 3) fairness in executive acts; and 4) Basic Structure of the Constitution (Any 3):</p> <p>(a) Individual and Group Rights</p> <p>Article 13(2) of the Constitution of India provides that: "The State shall not make any law which takes away or abridges the rights conferred by this Part (Part III - Fundamental Rights) and any law made in contravention of this clause shall, to the extent of the contravention, be void."</p> <p>Furthermore, Article 32 offers the Supreme Court the power to enforce fundamental rights, and provides one the right to move the Supreme Court for the enforcement of those rights. From this article, the Supreme Court derives authority to issue directions or order or writs</p> <p>(b) Centre-State Relations</p> <p>Article 246 of the Constitution provides that the Parliament has exclusive powers to make laws with respect to matters itemized in the 'Union List' (List 1 of the Seventh Schedule of the Constitution). It provides further that both the Parliament and the Legislature of any State have powers to make laws with respect to matters enumerated in the 'Concurrent List' (List III of the Seventh Schedule of the Constitution). With respect to the States, it provides that the Legislature of any State has exclusive power to make laws with respect to matters listed in the 'State List' (List II of the Seventh Schedule).</p> <p>This Article delivers clear division of lawmaking powers (division of powers) as well as room for intersection between the Centre and the State. Judicial review helps demarcate the legislative competencies and ensures that Centre does not exert its supremacy over the state matters and likewise states do not encroach upon matters within the ambit of the Centre.</p> <p>(c) Fairness in Executive Actions</p> <p>In matters of executive or administrative actions, judicial review practice of courts have often employed doctrines like 'principles of natural justice', 'reasonableness', 'proportionality', and 'legitimate expectation</p> <p>(d) Basic Structure</p> <p>Article 368 confers power to the Parliament to amend the Constitution: "by way of addition, variation or repeal any provision of this Constitution"</p>	6
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	<p>This Article in its wordings does not provide any limitation on the power of the Parliament to amend the Constitution. Article 13(2) limits Parliament's amending authority in matters of fundamental rights.</p> <p>The doctrine of the basic structure invalidates any constitutional amendments that destroys or harms a basic or essential feature of the Constitution, like secularism, democracy and federalism.</p>	
	<p style="text-align: center;">OR</p> <p>The main reasons for granting an independent status to the judiciary are as follows:</p> <p>First, Judiciary's independence is linked to its role as the watch-dog in a democracy. It monitors and maintains the checks and balances over the other arms of the government. Thus judiciary emerges as a mediator when any organ of the government exercises 'excess power' which tends to violate the larger societal or individual interest.</p> <p>Second, in-order to ensure that constitutionally guaranteed freedoms such as freedom to speak in public or peacefully assemble, are interpreted as per the true constitutional philosophy, judiciary has been kept free from any external pressures.</p> <p>Third, Judiciary acts as a guardian of fundamental rights which are constitutionally granted to every citizen in India. Our Constitution grants us unique rights such as: Civil and political rights- e.g. the right to life; right to freedom of discrimination based on religion, race, caste, sex or place of birth. Economic, social and cultural rights- e.g. freedom to practice any religion; protection of interests of minorities. An independent and impartial Judiciary has empowered Indian citizens and performed this role.</p> <p>Fourth, in the domain of criminal law as well, independence of judiciary is linked to the granting of a fair trial to the accused. This becomes extremely important even when the accused are foreign nationals or persons who have committed crimes against the state, e.g. terrorists.</p> <p>Lastly, independence of judiciary is vital for the respect of due-process of law. Due process of law means that the State must respect all the legal rights that are owed to a person and conform to the norms of fairness, liberty, fundamental rights etc. Only an independent judiciary can make this concept operational.</p> <p>Therefore independence of judiciary remains a vital and core principle even in the modern democracy.</p>	

26	<p>(1) Discharge by Breach of Contract-Breach means failure to perform the obligation by a party. When a party to a contract does not perform his part of the obligation due to which the contract becomes broken, the person who suffers because of the breach is entitled to receive compensation or damages from the party who has breached the contract (Section 73)</p> <p>(2) A common remedy for breach of contract is awarding damages to the affected party. Monetary compensation given to the affected party for the loss or injury caused to him due to the breach is called damages.</p> <p>(3) The Doctrine of Restitution. The basis of this Doctrine is awarding damages for the pecuniary loss incurred by the party to the contract.</p>	6
27	<p>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. (Any 6)</p> <ul style="list-style-type: none"> • Litigation: Graduates may practice as an advocate in a court of law. • Law Firm Practice: Law firms vary in size and practice areas. Law firms may range from boutique law firms specializing in specific areas of law to mid-sized law firms as well as large law firms which are full service law firms with different service groups. • Corporate Sector: Large corporations often have in-house legal practice. An in house 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. • Public Policy: 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. • Legal Research & Academia: Graduates may attach themselves with Research Centers and think tanks. Law graduates may take up teaching and research as a profession. • Non – Governmental Organizations: Non – Profit Organizations, especially organizations with social justice orientation have positions for law graduates. • Government Institutions: Government departments, statutory authorities, public sector undertaking and regulatory bodies also provide interesting opportunities to lawyers. 	6

	<ul style="list-style-type: none"> • Further Study: Law is an interdisciplinary subject and graduates may opt for further studies in related disciplines such as Business, Economics, Anthropology and sociology. • Judicial Services/clerkship: The court system provides several avenues to law graduates. The higher judiciary, that is judges of the High Courts and Supreme Court have law clerks cum research assistants who assists a judge in researching for cases, maintaining paper works etc. • Other Avenues: Law graduates may opt for different career paths such as politics, journalism (legal journalism), legal publishing, Fellowships, civil services etc. 	
28	<p>Since 1952, the Government of India started addressing the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions.</p> <p>The 14th Report of the Law Commission of India mooted the idea of providing free legal aid to the poor by the State. The Report highlighted the responsibility of the legal community to administer legal aid scheme and the State to fund legal representation to the accused in criminal proceedings, appeals and jails.</p> <p>In 1960, the Union Government initiated the national legal aid scheme which faced financial shortages and died a natural death.</p> <p>In 1973, in the second phase, the Union Government constituted a committee under the chairmanship of Justice Krishna Iyer to develop a legal aid scheme for states. The Committee devised a strategy in a decentralized mode with legal aid committees in every district, state and the centre.</p> <p>A committee on judicature was set up under the chairmanship of Justice P N Bhagwati to implement the legal aid scheme. This Committee suggested legal aid camps and nyayalayas in rural areas and recommended the inclusion of free legal aid provision in the Constitution.</p> <p>Article 39A of the Constitution - inserted by the 42nd Amendment Act in 1976 - Directed the state to provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities to secure justice are not denied to any citizen by reason of economic or other disabilities. Legal aid schemes were floated across states through legal aid boards, societies and law departments thereafter.</p> <p>Subsequently, the Parliament enacted the Legal Services Authorities Act, 1987</p>	6
29	<p>India follows the following provisions of law while implementing an International treaty in the domestic terrain:</p>	6 2

	<ul style="list-style-type: none"> • Article 51 of the Indian Constitution specifically states that the State shall endeavour to 'foster respect for international law and treaty obligations in the dealings of organized peoples with one another'. • Under Article 253 of the Constitution of India, the Parliament and the Union of India have the power to implement treaties and can even interfere in the powers of the state government in order to give power to provisions of an international treaty. • In the land mark case of Kesavananda Bharti v. State of Kerala, it was observed that the court must interpret the provisions of the constitution in light of Charter of the United Nations. • In the case of Magan Bhai Patel v Union of India, the court held that if a treaty or international agreement restricts the rights of the citizens or modifies the laws of the state it would require to have a legislative measure. • In the case of Sheela Barse v Secretary Children's Aid Society, the Supreme Court held that India had ratified conventions regarding the protection of children and this placed an obligation on the State Government to implement these principles. • The most revolutionary of these cases was the case of Vishaka v State of Rajasthan, in which the Indian courts used the provisions of the Convention on Elimination of all forms of Discrimination against Women, (CEDAW), to create legally binding obligations regarding sexual harassment. <p>In the current case, where under an International treaty, to which India is a signatory, a species of fish is declared as endangered and restrictions are put on the right to trade of that species by prohibiting the killing of the fish.</p> <p>If this treaty is to be enforced in India, the Indian Parliament needs to pass a domestic legislation regarding prohibition of the killing of such species of fish.</p>	2
	<p style="text-align: center;">OR</p> <p>A. A Treaty refers to legally binding, written, agreements in which states agree to act in a particular manner as specified in the agreement.</p> <p>B. Treaties are binding upon the parties when entered in to in good faith and with intention of creating binding obligations.</p> <p>C. A state may express its consent to be bound by a particular treaty in certain cases, the most common of which are:</p>	2

	<ol style="list-style-type: none"> 1. Consent by signature- 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. 2. Consent by exchange of Instruments - 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. 3. Consent by Ratification - 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. 	
30	<p>Article 20 of the Indian Constitution provides human rights framework to the criminal justice system. It provides for safeguards to persons who are accused of having committed crimes.</p> <p>The rights of persons accused of crimes are:</p> <ol style="list-style-type: none"> 1. Article 20 provides that no person can be convicted for the commission or omission of an act that does not amount to an offence by any law in force at the time of such act. 2. Secondly it provides that any person who is convicted of a crime should not receive a penalty greater than what is provided in the law in force at the time of the act of offence. 3. It provides for another important right that “No person shall be prosecuted and punished for the same offence more than once.” <p>This means that if someone commits an offence, that person should not be harassed and punished repetitively (more than once) for the same offence.</p> <ol style="list-style-type: none"> 4. Further it states that “No person accused of any offence shall be compelled to be a witness against himself.” This provision safeguards the accused's right against self-incrimination. <p>An accused may give information based on own knowledge if he or she chooses to, but cannot be forced to be self-witness against himself or herself. Every accused has a right to fair trial.</p>	1 x 6
