

## Marking Scheme

| Q No | Value Point   | Marks allotted |
|------|---|----------------|
| 1    | D   | 1              |
| 2    | B   | 1              |
| 3    | A   | 1              |
| 4    | C   | 1              |
| 5    | B   | 1              |
| 6    | C   | 1              |
| 7    | A   | 1              |
| 8    | D   | 1              |
| 9    | <b>A Regulator alleviates the work of the tribunal it is associated with by formulating laws and policy in a particular area.</b>   | 1              |
|      | <b>For example TRAI (Telecom Regulatory Authority of India) functions alongside the tribunals Telecom Disputes Settlement and Appellate Tribunal (TDSAT) in formulating laws and policy for resolving telecom disputes in India</b>   | 1              |
| 10   | High Pendency   | 1              |
|      | Poor Infrastructure   | 1              |
| 11   | The arrangement is termed as ' <b>Plea Bargaining</b> '   | 1              |
|      | It refers to the <b>negotiations between the prosecution and defendant in which defendant agrees to plead guilty in return of less harsher punishment than what is to be delivered normally.</b>  | 1              |
| 12   | <b>Saahi is a refugee.</b>  | 1              |
|      | The International law dealing with his rights is <b>Convention Relating to the Status of Refugees, 1954.</b>  | 1              |
| 13   | The adversarial system <b>ended the era of informal dispute settlement</b> though panchayats etc. prevalent in the Indian society. It was <b>easily accessible, not technical or formal and was conducted in a language known to parties.</b>   | 1              |
|      | The adversarial system <b>requires pleadings and court fees, which, with added complexities like corruption and poverty among the Indian masses, makes access to justice highly problematic.</b>  | 1              |
| 14   | Lok Adalat: It means, People's Court. It has <b>jurisdiction to settle any matter including civil or compoundable criminal disputes pending before any court, as well as matters at pre-litigative stage</b> , i.e. disputes which have not yet been formally instituted in any Court of Law. | 1              |
|      | Permanent Lok Adalat: Permanent Lok Adalats, were created by Legal Services Authorities (Amendments) Act, 2002. <b>These courts settle disputes concerning public utility services at pre-litigation state.</b> Eg Transportation, sanitation, etc.   | 1              |
|      | Values: Speedy justice, no lawyer needed, equality between the parties as no court fees.  |                |
| 15   | The major reasons for granting special status (independence) to Judiciary in India are:   |                |
|      | 1. As the <b>watch-dog in a democracy, judiciary cautions the other arms of the government when any of them exercises 'excess power' which tends to violate the larger societal or individual interest.</b>   | 1              |
|      | 2. Independent judiciary is <b>vital for the respect of due-process of law wherein State must respect all the legal rights owed to a person and confirm to the norms of fairness, liberty, fundamental rights etc.</b>  | 1              |

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|    | 3. Independence of judiciary is linked to <b>the granting of a fair trial to the accused especially when the accused are foreign nationals or persons who have committed crimes against the state, e.g. terrorists.</b>  |   | 1                     |  |
|    | 4. Judiciary acts as a <b>guardian of fundamental rights by fully translating the provisions of extensive rights guaranteed under the Constitution into the lives of citizens.</b>   |   | 1                     |  |
| 16 | Adversarial system<br>The role of the judge/decision maker is <b>passive</b> as the <b>judge decides the claims based solely on the evidences and arguments presented by the parties and their lawyers.</b>  | Inquisitorial system<br>The judge/decision is <b>active</b> in dispensing justice as he/she <b>determines the facts and issues in dispute and also decides the manner in which the evidence must be presented before the court.</b> | 1                     |  |
|    | The parties assisted by pro active lawyers, develop their theory of the case and gather evidence to support their claims. <b>Lawyers participate in cross-examination and scrutiny of evidence presented by the other disputing party.</b>   | <b>Less reliance is placed on cross-examination</b> and other techniques often used by lawyers to evaluate evidences of their opposing counsel.   | 1                     |  |
|    | <b>Previous decisions made by higher Courts form a precedent which will bind the lower Courts.</b>   | <b>Judges tend to be free to make decisions on a case-by-case basis</b>   | 1                     |  |
|    | The system empowers the <b>parties to the dispute to take control of their own case on the basis that they are better placed to present their best case.</b>   | The system <b>preserves equality between the parties</b> as even the stronger party with more resources and expert lawyers may not be able to influence the judges.   | 1                     |  |
| 17 | <b>Helping in dispute resolution through ADR methods.</b>  |   | 1                     |  |
|    | <b>Not filing baseless and frivolous cases</b>   |   | 1                     |  |
|    | <b>Not adding to already high pendency of cases in courts</b>  |   | 1                     |  |
|    | <b>Focus on client assistance and cost effective ADR techniques.</b>   |   | 1                     |  |
| 18 | Vanya may appear for Bar Examinations in the US; however, criteria for eligibility to take the bar examination differ from state- to state in this matter. Students who have completed an <b>LLM from USA itself</b> may qualify to sit the bar exam in some states. Some states may allow some foreign-educated lawyers to take the bar examination without earning their degree locally. In such cases:<br>I. Foreign-educated lawyers must first get their law degree reviewed and analysed by the American Bar Association (ABA).<br>II. If accepted, they are allowed to sit for that state's bar exam in much the same way a domestic applicant would.<br>III. Even if deferred, applicants may be asked to complete course work at an ABA-approved college before sitting for the bar exam. This course work usually takes the form of a one-year LL.M program at an ABA accredited school.<br>Foreign Lawyers may also take up work as a Foreign Legal Consultant (FLC). As an FLC, it is possible to advise on home country law and international law but not to appear in court. |   | 1<br>½<br>½<br>1<br>1 |  |
| 19 | According to Bar Council of India, an advocate is prohibited from promoting himself through <b>circulars, advertisements, touts, personal communications and</b>   |   |                       |  |

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|    | <p>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> <p>An amendment to above rule allows advocates to furnish only <b>5 pieces of information</b> i.e. <b>the name of the advocate or the firm, the contact details, details of enrolment with the Bar, professional and academic qualification and the areas of practice on their websites after intimating and taking approval from the Bar Council of India.</b></p> <p>a. is allowed under the rules of BCI</p> <p>b. is not allowed by the Bar Council of India</p>  | <p>1</p> <p>1</p> <p>1</p> <p>1</p>  |
| 20 | <p>Selection of Panel Lawyers</p> <p>The panel shall be prepared by the <b>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.</b></p> <p>The legal practitioner shall <b>have three years or more of experience at the bar</b> for being considered for empanelment.</p> <p>The personal traits like <b>competence, integrity, suitability and experience</b> shall be given due consideration.</p> <p>Separate panels shall be maintained for different types of cases.</p> <p>Senior Advocates The services of senior advocates may be availed if the Chairman of the legal services institution forms an opinion to that effect in special cases</p>   | <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1</p> |
| 21 | <p>Yes, Ms. Riya can claim the reward based on the famous English case <b>Carlill v. Carbolic Smoke Ball Co.</b>, the manufacturer of a medicine called smoke ball which was used for the treatment of influenza. An advertisement was put up offering a <b>reward of £100</b> to anyone who got <b>influenza again after using the smoke ball</b> medicine continuously for fifteen days. In the advertisement, it was also stated that £1000 was deposited in the Alliance a Bank for paying the reward. Seeing the advertisement, <b>Mrs. Carlill bought the smoke ball medicine and used it as per the directions provided. She got a fresh episode of influenza.</b> She sued the company for the reward of £100.</p> <p>The manufacturing company stated that:</p> <p>(1) <b>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;</b></p> <p>(2) <b>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;</b></p> <p>(3) <b>acceptance by the offeree had not been communicated, and so there was no binding contract.</b></p> <p>The Court <b>rejected these contentions</b> of the company and allowed Mrs. Carlill's claim for £100. The Court also stated that <b>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.</b></p> <p><b>An offer can also be made to the world at large.</b> It is called a <b>general offer</b> and it is valid. In the case of general offer, there is no need for communicating acceptance to the offeror. <b>Merely fulfilling the conditions of the offer itself is treated as acceptance to create a contract.</b></p> | <p>1 1/2</p> <p>1/2</p> <p>1/2</p> <p>1/2</p> <p>1</p> <p>1</p>            |

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| 22 | <p>Functions of the National Human Rights Commission (Any 6) -</p> <ol style="list-style-type: none"> <li>1. 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. After inquiry recommendations to governmental authority in cases where any public servant is the perpetrator of human rights violation.</li> <li>2. Intervening in court proceedings – The Commission may with the permission of the court intervene in court proceedings concerning human rights violations.</li> <li>3. Inspection of jails, etc. – 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.</li> <li>4. Awareness and Sensitization – review various human rights laws either in the Constitution or other statutes and recommend measures to the government for their effective implementation.</li> <li>5. evaluate various factors, including acts of terrorism which prevent the enjoyment of human rights and recommend appropriate remedial measures to the government.</li> <li>6. study various international human rights laws and make recommendations for their effective implementation at the domestic level (within the State).</li> <li>7. 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.</li> <li>8. encourage and support the efforts of nongovernmental organizations and institutions involved with human rights work.</li> </ol> <p>Powers of the commissions are as follows (any 4):-</p> <ol style="list-style-type: none"> <li>1. summon and enforce the attendance of witnesses and examine them on oath;</li> <li>2. ask for production of any document before itself;</li> <li>3. receive evidence on affidavits;</li> <li>4. request public record from any court or office; and</li> <li>5. examine witnesses or documents.</li> </ol> | <p><math>\frac{1}{2} \times 6 = 3</math></p> <p><math>\frac{1}{2} \times 4 = 2</math></p>       |
| 23 | <p>International law can be applied in the Indian jurisdiction by keeping the following provisions in mind:</p> <ol style="list-style-type: none"> <li>i. <b>Article 51 of the Indian Constitution</b> specifically states that the State shall endeavor to 'foster respect for international law and treaty obligations in the dealings of organized peoples with one another'.</li> <li>ii. <b>Under Article 253, the Union of India</b> 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.</li> </ol> <p>Case Laws</p> <ol style="list-style-type: none"> <li>a. In the case of <b>Kesavananda Bharti v. State of Kerala</b>, it was observed that the court must interpret the provisions of the constitution in light of Charter of the United Nations.</li> <li>b. In the case of <b>Magan Bhai Patel v Union of India</b>, the court held that if a treaty or international agreement restricts the rights of the citizens or modifies the laws of the state would require to have a legislative measure.</li> </ol>   | <p><math>\frac{1}{2}</math></p> <p><math>\frac{1}{2}</math></p> <p><math>\frac{1}{2}</math></p> |

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|    | <p>For example if India is a party to an international agreement to stop the killing of a species of turtle, it restricts the right to trade of certain fishermen by prohibiting killing of the turtle. 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 turtle species.</p> <p>c. In the case of <b>Sheela Barse v Secretary Children's Aid Society</b>, the Supreme Court held that <b>India had ratified conventions regarding the protection of children and this placed an obligation on the State Government to implement these principles.</b></p> <p>d. In the case of <b>Vishaka v State of Rajasthan</b>, the Indian courts used the provisions of the <b>Convention on Elimination of all forms of Discrimination against Women, (CEDAW)</b>, to create legally binding obligations regarding sexual harassment.</p>  | <p>1½</p> <p>1</p> <p>1</p>                           |
| 24 | <p>a. One of the most influential documents in International human rights law is the <b>Universal Declaration of Human Rights</b> which deals with various provisions, a few of them being:</p> <ol style="list-style-type: none"> <li>i. <b>liberty of a person (Article 3)</b></li> <li>ii. <b>equality before law (Article 7)</b></li> <li>iii. <b>prohibitions on torture (Article 5)</b></li> <li>iv. <b>socio-economic rights such as right to work and equal pay (Article 23)</b></li> </ol> <p><b>While it is not a binding document, per se, there have been many instances where it has been referred to by cases of the International Court of Justice.</b></p> <p>b. Generally human rights violations are dealt with by the state in which they occur. However, there are certain human rights, established under treaty that may constitute <i>erga omnes</i> obligations for the state parties.</p> <p>This means that <b>there are some violations that are so grave, that any state may take action against such crimes, regardless of whether they occurred in their jurisdiction or not.</b> All states have a shared interest in elimination of such grave violations.</p>                 | <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> |
| 25 | <p>a.</p> <ol style="list-style-type: none"> <li>i. <b>Article 368</b> confers power to the Parliament to amend the Constitution without providing any limitation.</li> <li>ii. <b>Article 13(2)</b> limits Parliament's amending authority in matters of fundamental rights conferred by Part III - Fundamental Rights.</li> </ol> <p>However in 1971, the <b>Parliament adopted the 24<sup>th</sup> Amendment</b> to the Constitution altering Articles 13 and 368 to possess unlimited powers of amendments including authority to amend the fundamental rights.</p> <p>In <b>1973 Supreme Court case of Keshavanda Bharathi v. State of Kerala</b> while discussing the question about the unlimited constitutional amendment powers of the Parliament, the Supreme Court established the <b>doctrine of the basic structure or feature of the constitution</b> which invalidates any amendment that destroys an essential feature of the Constitution, like secularism, democracy and federalism.</p> <p>b. <b>Principle of proportionality</b> is utilized by courts in administrative law especially in service matters to offer safeguards to the aggrieved against any disproportionate sentence.</p> | <p>½</p> <p>½</p> <p>½</p> <p>½</p> <p>1</p>          |

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|    | <p>For example, Supreme Court, in a case, has held that the quantum of penalty or punishment sentenced by a court martial on any army persons should not be disproportionate to the offence.</p> <p>c. The Latin phrase '<i>audialterampartem</i>', means '<b>listen to the other side</b>' was applied by the Supreme Court in several cases including the decision of <b>Maneka Gandhi v. Union of India</b> where <b>her passport was confiscated by the government without giving her any chance of prior hearing</b>. Invoking its judicial review powers in administrative matters, the Supreme Court held that in the matter of confiscation of passport a hearing should have been given to the petitioner in the interest of the principles of natural justice. Consequently, a hearing was given and the passport was returned to her. This is an example where the court adopted the principle of <b>post decision-hearing</b>, in situations of urgency where prior hearing is not feasible, and recognized that a chance of hearing cannot be debarred completely.</p>  | <p>1</p> <p>1</p> <p>½</p> <p>½</p>                            |
| 26 | <p>(a)</p> <p>i. To usher in as quickly as possible, socio-economic movements in the country.</p> <p>ii. In order to meet this, the Court was disallowed from putting a spanner in the wheels of administration.</p> <p>(b) Special Courts had been established to expeditiously dispose the matter pending by this system. It resulted in the <b>dual system of justice</b> in which an all private parties' dispute found its way in the civil court, while a dispute between a private individual and Government departments went to the administrative law courts.</p> <ul style="list-style-type: none"> <li>• The highest administrative court was <b>Conseil de' Etat</b>.</li> <li>• Initially direct filing of cases was not allowed and a Minister had to forward a petition to the court. The decision of the court could have only been of advisory value for the minister.</li> <li>• In 1872, the Government passed the <b>Blanco decree</b> by which Conseil de' Etat was made an independent system of court where direct filing of cases as well as open hearings were allowed.</li> <li>• <b>Speedy administration</b> was a characteristic of Droit and an institution was created by the name of <b>Tribunal Desk Conflict</b> to decide where different types of cases were to go.</li> </ul> | <p>½</p> <p>½</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> |
| 27 | <p>The most suited ADR is <b>Arbitration</b>.</p> <p>Process of arbitration:<br/>Arbitration can be chosen by the parties either by way of an agreement (<b>Arbitration Agreement</b>) or through the reference of the Court (<b>Court Referral of Arbitration</b>).</p> <p>Characteristics:</p> <ul style="list-style-type: none"> <li>• <b>The parties have the freedom to select a qualified expert known as an arbitrator. The entire process of arbitration is confidential.</b></li> <li>• <b>The decision rendered by an arbitrator is known as an arbitral award. It is binding on the disputing parties and is recognised and enforced like a court pronounced judgment or order.</b></li> <li>• <b>The arbitrator also holds authority to grant interim temporary relief in order to preserve and protect certain rights of the parties.</b></li> <li>• <b>Unlike a judgment rendered by a judge in the court, the arbitral award does not hold precedential value for future arbitrations.</b></li> <li>• <b>Arbitrators are free to base their decisions on their own conception of</b></li> </ul>   | <p>½</p> <p>½</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>          |

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|    | what is fair and just. Thus unlike judges, they are not strictly required to follow the law or the reasoning of earlier case decisions.  | 1                                    |
| 28 | <p><b>Articles 36 to 51 in Part IV</b> of the Constitution lay down the guiding principles of governance for the State are called the '<b>Directive Principles of State Policy</b>'. Salient features of the directive principles:</p> <ul style="list-style-type: none"> <li>• It is the duty of the State to apply these principles in making laws and policies on social and human development.</li> <li>• These principles endeavor to minimize income inequalities and to eliminate inequalities based on status, facilities, and opportunities amongst both individuals and groups of people. Directive principles of policies guide State to achieve various goals.</li> <li>• These provisions are not enforceable by any court of law, but they provide guidance in carrying out and drafting laws and policies regarding human and social development.</li> </ul> <p>Supreme Court has raised the status of elementary education for children between age six and fourteen, which was earlier a policy goal provision in the Directive Principles of State Policy, to the status of fundamental right affirming that depriving one from education amounts to depriving one's right to life (Art. 21 Fundamental Right). Accordingly, right to education for ages six to fourteen is now part of the fundamental rights chapter</p>   | 1<br>1<br>1<br>1<br>1<br>2           |
| 29 | <p>The <b>Advocates Act 1961</b>, brought about the following changes:</p> <ul style="list-style-type: none"> <li>• All the old categories of practitioners were abolished and consolidated into a single category called "advocates" who enjoy the right to practice in courts throughout India.</li> <li>• It established an All India Bar Council, with the Attorney-General and Solicitor General of India as ex- officio members of the Bar Council. 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.</li> <li>• 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. Its functions include: <ul style="list-style-type: none"> <li>• admitting law graduates on its Roll,</li> <li>• determining cases of misconduct against Advocates on the Roll</li> <li>• organizing legal aid,</li> </ul> </li> </ul> <p>Application for enrolment is therefore made to the State Bar Council. In order to be eligible for enrolment, an Advocate must be:</p> <ul style="list-style-type: none"> <li>• a citizen of India,</li> <li>• atleast 21 years of age</li> <li>• have an LLB degree from an Indian University.</li> <li>• 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.</li> <li>• Advocates have been classified as <b>Senior Advocates</b> and <b>Advocate on record</b>. The designation of an Advocate as a Senior Advocate is the responsibility of the Supreme Court or High Court based on the ability, experience and standing in the Bar of the Advocate in question. The Advocate- on- Record (AOR) is another category of Advocate in the Supreme Court. Only an AOR can file a vakalathnama, a petition, an affidavit or any other application on behalf of a party in the Supreme Court</li> </ul> | 1<br>1<br>1<br>1<br>1<br>1<br>1<br>1 |

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| 30 | <p>The Central Government constitutes the <b>National Legal Services Authority (NLSA)</b> and the <b>Supreme Court Legal Services Committee (SCLSC)</b> for exercising powers and functions as determined by the Central Authority.</p> <p>The NLSA consists of - <b>the Chief Justice of India (CJI) as the Patron-in-Chief, a Judge of the Supreme Court nominated by the President as Executive Chairman, and other members nominated by the Government in consultation with the CJI.</b></p> <p><b>The SCLSC consists of - Judge of the Supreme Court as the Chairman, and other members prescribed by the Government and nominated by the CJI.</b></p> <p>The Central Authority shall perform the following functions (<b>any six</b>)</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</li> <li>i) fundamental duties of citizens under Part IV A of the Constitution;       <ol style="list-style-type: none"> <li>a. Monitor and evaluate implementation of the legal aid programmes at periodic intervals.</li> </ol> </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</li> </ol> | <p>1</p> <p>1</p> <p>1</p> <p>½ X6=3</p> |
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Wish you all the best...

