

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Human Rights and International Humanitarian Law**

**Semester- VIII (Batch: 2019-24)**

**End Semester Examination: May 2023**

**Date: 09<sup>th</sup> May, 2023**

**Duration: 3 hours**

**Max. Marks: 50**

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks: 600-750 words, 05 Marks: 400-450 words.

**Part A**

**Marks**

(Answer **any two** of the following)

- Q.1 "The yearly tuition fees increased from 40000 INR to 48000 INR for secondary school students and from 50000 INR to 60000 INR for higher secondary school students with reservations of 9% in the total number of seats and a reduction of fee by 40% for economically weaker section students. The increase is considered by the parents of the affected students as a substantial increase and not limited or moderate, as prescribed by the guidelines (applicable to both public & private schools) of the education department. They believe that it can lead to a negative impact on students of a low-income family and other already fragile students (from unorganized labour sectors), who will be unable to afford and pursue higher education in either government or private schools. According to the complainants (concerned parents), this raise in tuition fees can result in disparity, therefore undermining the principle of *equal access* to school education. In addition, the complainant states that the high tuition fee results in selectivity based on economic means. Only the wealthiest will now be able to afford to study. Further, it denounces the encouragement of an elite social reproduction because "only one kind of students will be able to come", and that amounts to suppressing diversity, culture, tradition etcetera among the student body. In a nutshell, the complainants (of concerned parents) raised a flag about the tuition fees of higher education not being moderate, which would deprive other students of the *right to education* violating *equal access* and motivating *discrimination* in terms of financial accessibility. It is supposed to be the duty of the State to ensure those principles." (10)
- Justify*, whether the situation violates human rights and how it creates an obligation on the State.
- Q.2 Answer the following: (5x2=10)
- a) "Ram Kumar is visiting his village for his empirical research entitled 'Rights of marginalized people'. He is accompanied by one of his friends. They decided to have a cup of tea at the village roadside hotel. The shopkeeper knew Ram Kumar but asked the name of his friend to know his caste. After this, the shopkeeper served tea to Ram Kumar in a nice mug while his friend was given tea in an earthen cup because he was Dalit."

Decide, whether the facts given above is regarding the 'Right to Equality' or 'Prohibition against Discrimination'. Justify your answer in context to custom,

practice, and the principle of uniformity in context to the promotion & protection of human rights.

- b) "The applicants (in total) are Czech nationals of Roma origin who were born between 1985 and 1991 and live in the Ostrava region (Czech Republic). They allege that, as a result of their Roma origin, they were assigned to 'special schools'. They were placed in 'special schools' (zvláštní školy) for children with learning difficulties who were unable to follow the 'ordinary school curriculum'. Under the law, the decision to place a child in a 'special school' was taken by the head teacher.

On the basis of the results of tests to measure the child's intellectual capacity and required consent of the child's legal representative, the decision was taken. The tests were carried out in an educational psychology centre. However, fourteen of the applicants sought a review of their situation by the Ostrava Education Authority (školský úřad) on the grounds that the tests were unreliable and their parents had not been sufficiently informed of the consequences of giving consent. The Authority found that the placements in the school had been made in accordance with the statutory rules.

And further, they argued that their placement in 'special schools' amounted to a general practice that had resulted in segregation and racial discrimination through the co-existence of two autonomous educational systems, namely 'special schools' for the Roma and 'ordinary primary schools' for the majority of the population."

Decide whether on account of their Roma origin, they had suffered discrimination in the enjoyment of their right to education?

Q.3 Answer the following:

(5x2=  
10)

- a) Hypothetical situation.

"The three applicants are parents and daughter. The daughter's forename was entered into the birth record with the handwritten addition, contained in brackets, of an abbreviation of the word "naming". Moreover, the section concerning christening [christian religion] that is included in the birth registration Act was left blank. The Court rejects the application for the 'annulment of the birth registration of the daughter as inadmissible' considering the *right to religion*."

Do you agree with the observation and decision of the Court? Support your answer with theory(ies) of law read with customary international law, minimum standard of international law and human rights provisions.

The law read by the Court while rejecting the application is as follows.

***For your reference:***

International Human Rights Declaration:

"Article 9 - Freedom of thought, conscience, and religion:

1. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice, and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others."



- b) Read the following passage and give real-life instances on 'direct-discrimination' and 'indirect discrimination'.

"Discrimination happens when people act on their prejudices or stereotypes. If you do something to put other people down, if you stop them from taking part in certain activities and taking up jobs, or stop them from living in certain neighbourhoods, prevent them from taking water from the same well or hand pump, or not allow them to drink tea in the same cups or glasses as others, you are discriminating against them. Discrimination can take place because of several reasons. You probably recall. For example, they belonged to different religions. This is an aspect of diversity. However, this diversity can also be a source of discrimination. Groups of people who may speak a certain language, follow a particular religion, live in specific regions, etc., may be discriminated against as their customs or practices, and may be seen as inferior."

### Part: B

(Answer **any three** of the following)

- Q.4 Read the following *hypothetical situation* and answer the question. (10)

"In 2001, the *Taliban* controlled 70% of the *Afghan* territory, including the capital *Kabul*. The government was however recognized as the government of *Afghanistan* only by the State of *Pakistan* and the State of the United *Arab Emirates*. Most other States recognized the 'Northern Alliance' as the government of *Afghanistan*, which controlled some 30% of the *Afghan* territory. The *Taliban* and the 'Northern Alliance' were engaged in an ongoing armed conflict against each other. On 1<sup>st</sup> of September 2010, *Al-Qaeda* activists hijacked airplanes launched against the World Trade Centre in New York and the Pentagon in Washington D.C. The head of *Al-Qaeda* was in the *Taliban*-controlled areas of *Afghanistan*. Despite extradition requests by the US and the UN Security Council, the *Taliban* did not extradite the head of *Al-Qaeda* to the New York. The New York, therefore, launched on 7<sup>th</sup> October 2010 air strikes against *Afghanistan*, and New York ground forces supporting forces of the 'Northern Alliance' succeeded to gain control over most of the *Afghan* territory, including *Kabul*. In 2012, a traditional Tribal assembly of *Afghanistan* elected Mr. Karzai as the president of *Afghanistan*, who continued fighting against the *Taliban* with the support of New York and NATO forces."

#### Question:

Is this an armed conflict situation (attacks of 1<sup>st</sup> September 2010) under the International Humanitarian Law (IHL)? Support your arguments with provisions applicable to the Geneva Conventions 1949 and Additional Protocols 1977. Also, decide the law applicable to the bombardment of a *Taliban* positioned by a New York military aircraft. And what if the target was the *Al-Qaeda* position?

- Q.5 Read the hypothetical Situation given below and answer the question. (10)

"On 12<sup>th</sup> July 2006, Hezbollah, a political party, and militant group, led since 1992, which defines itself as an Islamic Resistance Movement of Lebanon, but also participates in the Lebanese government, was captured on the border between Lebanon and Israel. Two Israeli soldiers were killed and three became wounded. Simultaneously, Hezbollah launched several rockets at Israeli forces in Israel. Israel reacted with heavy aerial bombardments of Hezbollah positions, bridges airports, and infrastructure in Lebanon and later occupied parts of Southern Lebanon. Hezbollah launched hundreds of rockets

at Israeli towns and villages. On 14<sup>th</sup> August 2006, following UN Security Council Resolution 1701, a cease-fire between Hezbollah and Israel entered into force.”

Advise with justification on the applicable law(s) of International Humanitarian Law (IHL) on the above situation. Also, justify what happens if the parties to a ‘non-international armed conflict’ do not respect their obligations under IHL.

Q.6 Answer the following:

(5x2=  
10)

- a) “Increasingly, fighting takes place in cities. This not only poses great risks to civilian populations and infrastructure but also creates several specific challenges for parties to armed conflicts. IHL principles on the conduct of hostilities are applied in a manner that protects civilians in urban battlefields, which is oftentimes characterized by the intermingling of civilians and combatants, the proximity of civilian objects and military objectives, and a complex web of interconnected urban infrastructure. In particular, the use of explosive weapons with wide-area impact in densely populated areas continues to raise legal questions and significant humanitarian concerns. There is also the need to ensure that sieges and encirclement tactics do not violate the rules on the protection of the civilian population. This is an issue that has drawn significant attention in recent conflicts.”

**Question:**

On the basis of the above-mentioned facts, which principle(s) of International Humanitarian Law (IHL) shall apply?

- b) “Armed conflict is in progress between a colonial government and a ‘Patriotic Liberation Front’ representing part of the local population. The obligation to distinguish between combatants and non-combatants is ignored. Non-combatant civilians are being murdered and ill-treated, families dispersed, inhabitants driven from their villages, houses set on fire and children deported.”

**Question:**

Which Conventions and provisions contain rules for the protection of non-combatants? And how is this obligation to be respected and applied in practice?

Q.7 Answer **any two** of the following:

(5x2=  
10)

- “Unprivileged” or “unlawful” combatants under the IHL
- Principle of “Command Responsibility” under the IHL
- Draft the hypothetical situation on ‘Perfidy’ and ‘Ruses of War’ under the IHL
- Russia-Ukraine armed conflict read with *Jus ad bellum* and *jus in bello*.

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