

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Jurisprudence  
Semester- IV (Batch: 2021-26)

End Semester Examination: May 2023

Date: 04<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: 10/8 Marks: 600-700 words, 5 Marks: 400-500 words, 3 Marks: 300-400 words.

- |   | <b>Marks</b> |
|---|--------------|
| Q.1 "The history of natural law is a tale of the search of mankind for absolute justice and its failure. Again and again, in the course of the last 2,500 years, the idea of natural law has appeared, in some form or another, as an expression of the search for an ideal higher than positive law after having been rejected and derided in the interval. The notion of natural law has changed with the changing social and political conditions. The only thing which has remained constant is the appeal to something higher than positive law. The object of that appeal has often been the justification of existing authority as a revolt against it." Justify the statement in the context of legal anthropological study. How has the theory of Natural Law originated and developed during ancient times?   | (5)          |
| Q.2 How has Prof Hans Kelsen dealt with the "ought" proposition of law in his Pure Theory of Law? Demonstrate how the Grundnorm theory can be applied in the sphere of national and public international law. Support your arguments with the help of relevant case laws and legal provisions.  | (5)          |
| Q.3 Prof H.L.A Hart's famous book "The Concept of Law" is considered the most important legal and philosophical work of the 20th Century. How has Prof Hart ascribed to the positivist school of law in his book?   | (5)          |
| Q.4 What is feminist Jurisprudence? Which are its schools? How have the Indian Parliament, through their enactments and the Supreme Court, through their judgements, applied the principles of feminist jurisprudence? Answer with the help of relevant legal provisions and case laws.   | (5)          |
| Q.5 From 1933 to 1945, the Nazi regime ruled Germany and controlled most of Europe. After the Reichstag Fire Decree, the Enabling Act of 1933 amended the Weimar Constitution to allow the federal government to enact laws (including unconstitutional laws) without going through the Reichstag. Nazi intimidation of the opposition resulted in a vote of 444 to 94. Other mainstream legislation includes the Malicious Practices Act of 1933, which allowed people considered social outcasts, such as Jews, gays and political opponents, to be punished by law. The Treason Law of 1934 restricted freedom of expression among civilians and criminalized any criticism of the Nazi state or the National Social German Workers Party (NSDAP). The Citizenship Act formally defined who among the (state subjects) of the Reich would retain all political rights as | (4x2=8)      |

"Reichsbürger", leaving the remaining population as effective non-citizens with no guaranteed rights. Another similar law protecting German blood and honour was passed. Violating these laws would result in severe prison terms and fines. The laws also included anti-Semitic laws that placed restrictions on Jews. In Nazi Germany, the civil service provided a legal framework for disenfranchising Jews. Anti-Jewish policies and career bureaucrats came together and devised increasingly radical strategies. This caused the judiciary to lose its independence, leaving it under the control of Nazi judges. This came to an end after Germany lost to the Allies at the end of World War II and was followed by the Nuremberg Trials in 1945.

With reference to the above-mentioned factual matrix, answer the question with the help of case laws and legal provisions:

- a) Apply the analytical theory of John Austin, and verify the validity of the laws made in Nazi Germany, the light of the elements of the law.
- b) How has Prof Lon Fuller, a naturalist, responded to the legal system prevailing in Nazi Germany in his book "The Morality of Law".

- Q.6 In *Roe vs Wade*, 410 U.S. 113, a pregnant single woman (Roe) has filed a class action lawsuit challenging the constitutionality of Texas criminal abortion laws in the United States, which prohibit performing or attempting an abortion except on medical advice to save the mother's life. A married couple (the Does) also joined the petition, contending that the laws affect the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood and the woman's health concerns. (10)

As per the Texas States, criminal abortion statutes, except in felonies, provide only life-saving procedures on behalf of the mother regardless of the stage of her pregnancy or other interests at stake. This violated the due process clause of the Fourteenth Amendment to the United States Constitution, which protects the right to privacy, including a woman's conditional right to abortion, from government action. Hence, although the state cannot overrule this right, the state has legitimate interests in protecting both the health of the pregnant woman and the potential of human life. Each of these interests grew at different stages acquired a "mandatory" interest. The Court further ruled that the fundamental right to privacy is protected by the Fourteenth Amendment's due process clause, which is a woman's "fundamental right," meaning that the government could attempts to interfere with the right are subject to "strict scrutiny."

The Court devised a way to balance a woman's right to an abortion against these state interests, through the trimester system. As per this system, during the first trimester, the decision to terminate the pregnancy was at the woman's sole discretion in consultation with the physician. After the first trimester, the state can "regulate the procedure". During the second trimester, the state could regulate (but not ban) abortion for maternal health.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 926-927 (1992), the US Supreme Court, by a 6:3 majority overturned *Roe vs Wade*, 410 U.S. 113. However, it affirmed Roe's key decision, that,

*"The fundamental right to privacy protects citizens from government interference in intimate family matters such as childbirth, parenting, marriage and contraceptive choices. ... These cases embody the principle that personal decisions that profoundly affect physical integrity, identity and destiny should be largely beyond the reach of government. In Roe v. Wade, this Court correctly applied those principles to a woman's right to abortion."*

However, the majority of the Court weakened the protection of abortion rights in *Roe v. Wade*, 410 U.S. 113, by replacing "strict review" with a new, highly subjective test of "overburdening." This means that the government no longer has to raise the high bar for justifying an abortion restriction by showing a compelling interest in passing the restriction and showing that the condition is narrowly tailored to serve that interest. Instead, the Court uses the standard of undue burden to examine whether a restriction constitutes an undue burden or a significant obstacle in the way of a woman seeking an abortion. In the *Casey* case, which challenged several restrictions limiting a woman's access to an abortion, the only restriction the Court rejected as an undue burden was the requirement that a woman notify her husband before having an abortion. The decision in *Casey* prompted states to enact more restrictions on abortion. Restrictions on young women's access to abortion.

With reference to the above-mentioned factual matrix, apply the principles of each school of law, and argue which of the schools of law is better suited to give relief in the legal question.

- a) Natural Law Theory
- b) Analytical Positivism,
- c) Legal Realism
- d) Social Engineering Theory
- e) Feminist Jurisprudence

Support your arguments with the help of case laws and legal provisions.

Q.7 Answer the following:

(3x4=  
12)

- a) Hohfeldian Rights Analysis
- b) The Gunman Theory
- c) Prof H.L.A. Hart and Prof Lon Fuller's debate on law and morality
- d) Roscoe Pounds Social Engineering Theory

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