

Natural Law Theories

Course Name - B.A.LLB 6th sem

Subject – Jurisprudence

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Introduction

Natural law theory is one of the oldest theories among all the theories. Thus these laws are popularly said to be god made laws.

It is said to be emanated from supreme source as observed by many jurist and philosophers. Legal thinkers have expressed diverse views on behalf of natural law.

Natural law philosophy dominated the Greece during 5th century BC when it was believed it was eternal to man.

Natural Law Theory may be broadly divided into 4 classes:-

1 Ancient Theories

2 Medieval Theories

3 Renaissance Theories

4 Modern Theories

Ancient Theories

Greece

- The Greek thinkers developed the idea of 'Natural Law' and laid down its essential features. There was no distinction between religion and law. In the Greek times all laws were received from the chief God. By the time the priest had every important role in the society.
- The instability of political institutions and frequent changes in law and government in small states in Greece made some jurists to think that law was for the purpose of serving the interest of the strong and was a matter of expediency. But the same condition made different jurists to think in a different line.
- Against changing government arbitrariness, philosophers started thinking of some immutable and universal principles. This gave them the idea of 'Natural Law'. In Socrates, we find a systematic and logical expression of the idea.

Socrates

- Socrates said that like natural physical law there is a natural law. Man possesses insight which reveals to him the goodness and badness of things and makes him to know the absolute and eternal moral rules. This human insight is the basis to judge the law.
- Socrates did not say if the positive law is not in conformity with moral law it would be disobeyed. According to him it was rather appeal of insight to obey it and perhaps that was why he preferred to drink poison in obedience to law than to run away from the prison. This theory was a plea for security and stability which was one of the principle needs of the age. His people Plato supported the same theory but it is in Aristotle that we find a proper elaboration of the theory.

Aristotle (384 to 322 B.C)

- According to him, man is a part of nature in two ways; First, he is the part of the creatures of God, and second, he possesses active reason by which he can shape his will. By his reason man can discover the eternal principle of justice. The man's reason being the part of nature, the law discovered by reason is called 'Natural Justice'.
- Aristotle defined natural justice as "that which every where has the same force and does not exist by the people thinking this or that".
- So far as its relation with positive law or legal justice is concerned, he said that "legal justice is that which is originally indifferent but when it has been laid down is not indifferent". In this way 'Natural law' as opposed to 'positive law' has invariable contents.
- The fullest elaboration of 'natural law' in Greek legal philosophy was made by Aristotle. His thesis has inspired great philosophers even in modern times.

ROME

- Stoics
- In Rome, Stoics built up on the theory of Aristotle but transformed it into an ethical theory. According to them the entire universe is governed by 'reason'.
- The theory of Stoics exercised great influence upon the jurists during Republican Period and some of them paid high esteem to 'natural law'. But in Roman system the theory of natural law did not remain confined only to theoretical discussions.
- Romans were very practical people. They used Natural Law to transform their narrow and rigid system into a cosmopolitan one. In this way natural law exercised a very constructive influence on the Roman Law.

INDIA

- Hindu legal system is perhaps the most ancient legal system of the world. Hindus developed a very logical and comprehensive body of law at very early times. A sense of 'justice' pervades the whole body of law. But the frequent changes in the political system and government and numerous foreign invasions, one after the other prevented its systematic and natural growth.
- According to Hindu view, law owes its existence to God. Law is given in 'Shruti' and 'Smritis'. The king is simply to execute that law and he himself is bound by it and if goes against this law he should be disobeyed

Medieval Theories

- This period started from 12th century to mid 14th century. The period that was highly dominated by church fathers, between the collapse of the Greeks and Romans civilization in the Middle Ages; the natural law was capitalized by the church of fathers.
- Church fathers articulated that mankind is ruled by two laws, natural law and custom. They said because of divine character Natural law is absolutely being and it is superior to other rules of law. It precedes them with time. It came into existence with a very creation of man and it does not vary in time but it remains unchangeable

Thomas Aquinas

- Aquinas theory: St. Thomas Aquinas defined the law as an ordinance of reason for the common good made by him who has the care of the community and promulgated through reason he classified law as:- i) Law of God or external law, ii) Natural law revealed through reason, iii) Divine law or law of scriptures, iv) Human laws which we now called Positive law.

RENAISSANCE PERIOD

- It is in time of 14st and 15nd century when there was new development and development of science of the society.
- Reason must not be theoretical based but practical based.
- Some one has to give the sovereign power to preserve the rights of the individuals.
- This combines the thinking of church and the sovereignty of the state.
- This theory supports social contract which we call as based on society.

RENAISSANCE PERIOD

CONTD....

ROUSSEAU

He classified social contract with natural laws in the following ways:

- ☐ Social contract don't govern with historical fact
- ☐ Social contract must be region based
- ☐ To preserve the right of individual a person has given sovereign powers

Theory of **general will**:- every individual has to follow and to protect the rights such as life, freedoms states has to come forward.

MODERN PERIOD

DOWNFALL OF NATURAL LAW THEORY

❖ Until the beginning of the 19th century natural law theory was a philosophy of content i.e. sought to deduce the contents of just law from fixed premises.

❖ HUMES pointed out that

- No casual connection between facts and ideas.

- One cannot derive an ought from is.

- Concepts such as god and evil are subjective emotional reaction.

❖ Natural law theory gives rise to French revolution

❖ Man is necessarily selfish

❖ Objections from another quarters i.e. historical and sociological

Due to this new climate of opinion the prevailing natural law theories could not survive and analytical and hostile positivism with increased stress.

MODERN PERIOD CONTD....

REVIVAL OF NATURAL LAW THEORY

- ☐ Scientific facts based on assumption
- ☐ Failure of positivism
- ☐ Judicial reasoning is creative and not purely syllogistic
- ☐ Effects of world war

In these circumstances it is hardly surprising that there has been a return to natural law in a new form which strives to take account, not only of knowledge contributed by analytical, historical and sociological approach but also to the increasing collectivist outlook on life.

MODERN PERIOD CONTD.....

NEO THOMISM

- ❑ Neo thomists, as Aquinas's modern followers.
- ❑ They combined the scientific approach and utilize scientific approach to give full explanation of reality through reason and reflection.
- ❑ Humanism of Aquanice
- ❑ Formulate certain broad generalization, so abstract that they can be universal.
- ❑ Evolution of principle of positive law.

MODERN PERIOD CONTD...

JOHN FINNIS

According to him natural law consists of two sets of principles:

- Certain basic values that are goal for human beings
- Practical reasonableness

These values are known are self evident

Rights and obligation components of commercial good.

MODERN PERIODS

CONTD...

JOHN FINNIS CONTD...

Basic things covered under 1st principle:

1. Life
2. Play
3. Aesthetic
4. Experience
5. Sociability(friendship)
6. Practical reasonableness
7. Religion

Things under 2nd principle

Basic requirements of practical reasonableness

MODERN PERIOD

CONTD...

TEMPORAL APPROACH

- The natural law of method is a way of working out just laws and the 20th century has seen versions of natural law with variable content.
- The term temporal approach is in line with the thinking.
- Nature of things
- Maxim sine quibus non
- Present one shattered and different one established, the continuance of the too will require the same condition.
- Temporal approach in legal system

MODERN PERIOD CONTD.....

PROFESSOR LON.L.FULLER

- Sine quibus non for the functioning of law and achieving end.
- Divided morality into two

- Internal morality

They are generality, promulgation, prospectively, intelligibility, unself contradictoriness, possibility of odious, constancy through time and congruence between official action and declaration.

- External morality

- They are aspirations, ideas and it is possible to derive an substantive natural law from it.

MODERN PERIOD CONTD....

HLA HART

- He admits that there is a core of rules indisputable truth in the doctrines of natural laws if survival is taken as the minimum aim of human existence.
- The conditions sine quibus non for achieving this end require that account be taken of five facts:-
 - ❑ Human vulnerability
 - ❑ Approximate equality of people
 - ❑ Limited altruism
 - ❑ Limited resources
 - ❑ Limited understanding

Though he hardly maintain that any law in violation of this is void. He also separate morality from law.

- His concept of primary rules to secondary school

MODERN PERIOD CONTRD...

CONFLICT BETWEEN POSITIVISM AND NATURAL THEORY

- DISCUSSION OF WHAT LAW OUGHT TO BE AND LAW IS TO.
- ORIGIN OF LAW
- PUNISHMENT FOR DISOBEDIENCE
- APPLICABILITY OF LAW
- SOURCE OF LAW

NATURAL LAW IN INTERNATIONAL LAW

□ **UNDR**

Adopted on 10th December 2018. Lays emphasis on right to life, freedom of speech and expression etc

□ **Convention related to status of refugee 1951**

NATURAL LAW THEORY IN INDIAN LEGAL SYSTEM

Indian constitution

- ☐ Article 14
- ☐ Article 21
- ☐ Article 22
- ☐ Article 19
- ☐ Article 20

All personal law such as Hindu law and Muslim personal law

CASE LAWS

- **Air India V/S Nargis Mirza** the Supreme Court had struck down the Air India and Indian Airlines regulations on the retirement and pregnancy bar on the services of airhostess as unconstitutional on the ground that the regulations were arbitrary and unconstitutional under Article 14 of the Indian constitution.
- **Maneka Gandhi V/S Union of India** the meaning and content life and personal liberty under article 21 of Indian constitution came up for consideration and the supreme court held that the law established by the state should be just fair and reasonable .

CASE LAWS

- **Indian Express Newspaper V/S Union of India** the theory of Rousseau in which he mentioned of freedom and liberty (freedom of speech and expression) has been applied, the **Rousseau**'s theory of freedom of speech and expression was said to be natural right of every citizen by the Supreme court which is also been conferred upon under Article 19 of Indian constitution, wherein the freedom of speech and expression is said to be among the basic right of a human being to live in a society with dignity. To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic state based on rule of law.
- **ADM Jabalpur V/S Shivakant Shukla** is one of the important cases when it comes to rule of law. In this case the question was whether there was any rule of law in India apart from article 21. This was in context of suspension of enforcement of Art. 14, 21 and 22 during the proclamation of emergency. The answer is even in absence of article 21 of constitution the right to life and liberty of a person could not be deprived without authority of law. Without such sanity of life and liberty the distinction between lawless society and one governed by laws would cease to have meaning.

CONCLUSION

Apart from its criticism the use of natural law has been prevalent since ages, even in the present legal system the natural law is used extensively. The modern judicial system have been founded on the British Pattern the fine principles of equality, justice and good conscience and natural justice occupy an importance in Indian law. The higher values of universal validity, righteousness, duty, service to mankind, sacrifice, non-violence etc were already incorporated in ancient legal system . The principles of natural law are embodied in dharma referred to duties of man towards gods, sages, man and lower animals and creatures. It has been characterized as a belief in conservation of moral values. During the medieval period and British period in India natural law found its expression in religious preaching of Ramanuja, Sankara, nanak, swami Ramakrishna etc. During the Mughal period there was a temporary clash between the philosophies but after British invasion of India they tried to imply their laws over here, they started codification of laws denying the supremacy of old Indian laws. As due to long rule of British in india and incorporation of their rules in here certain principles of English Natural law found its place in Indian laws. The principle of natural justice, the doctrine of bias, judicial review, reasoned decision and many other precepts of administrative laws are based on natural law.