Course Name- B.A.LL.B 6th sem
Subject- Jurisprudence
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Concept- Conceptions of Natural law

Introduction:

Modern conceptions of Law and Justice owe a lot to the ancient philosophers of Greece and Rome in content and approach. Modern notions of equality, equal application of laws, human rights and sovereignty are incomplete without an understanding of Natural Law, which is inherent in all laws and is the litmus test for determining the legitimacy of every law. Natural Law is ubiquitous and is applicable to all without distinctions of caste, creed, gender, geography and other such parameters. An understanding of the evolution of natural law is necessary to study the growth of Law as it exists today, across civilizations and cultures and the only way to do so is to begin with the origins of Natural Law in early Greek and Roman societies.

Greeks and their Conception of Natural Law:

Greeks were the earliest to have a conception of Natural Law principles.
1 That there exist universal principles which govern the cosmos and are applicable to all human beings without discrimination was discerned by the Greeks in their philosophical pursuits concerning social norms, human society and moral values.

2 They were also the first among peoples all over the world to shape law as an entity distinct and separate from mere blind faith or a set of religious rites.

3 Their theories of law and justice underwent a long and arduous journey- a journey that has best been described in the words of W. Friedmann as a 'search for absolute values'.

4 The very first contours of Natural Law were drawn, in and around the 5th century B.C., by an enlightened group of Greek philosophers- the Sophists, who conceived of Nature as not just a substance but a relation, an order of things. The era of Sophists was followed by Stoics, who gave a completely different dimension to the idea of Natural Law.

Evolution of Principles of Natural Law among the Sophists:

The fifth century B.C. witnessed a massive transformation in Greek philosophy, with the emphasis of Greek philosophers shifting from ancient, traditional values. The phenomenal rise of the Sophists, who identified Law as a purely human invention born out of necessity, detached from metaphysics and alterable at will, was witnessed in this era. This rationalisation of Law and Justice was triggered by the prevalent social circumstances of Greece which witnessed frequent changes in the laws in the city states of the democratic republic.

The Sophists questioned the reasons behind such frequent changes in laws and while pondering over their validity arrived at the conclusion that natural law is different from and opposed to, written law. For instance, Sophocles, in his magnum opus, Antigone, states that natural or divine law is wise while written law is arbitrary. One of the chief proponents of Sophism, Heraclitus conceived of Nature as a rhythm of events. For the first time, Nature

was identified as a concept beyond matter or substance and was seen as an entity which is a relation, an order of things. This realisation of Nature as an existing superior entity, lent strength to the idea of Natural justice which, according to the Sophists, was a body of permanent, unchangeable, non-negotiable rules which were never arbitrary and always applicable equally to all human beings.

The Sophist philosopher Callicles, also propagated the idea of natural justice in similar lines. The principle of "right of the strong" was stressed by him. He proclaimed that in nature, the strong prevail over the weak but human laws are designed to protect the weak and bring about equality among all human beings, which in essence is against the fundamental law of Nature. This is because in nature, inequality has been created by giving different measures of strength to every member of the human and animal species and in both societies the law of nature proclaims that the strong should prevail over the weak. Similarly, Thrasymachus emphasized that Law was a weapon created by the strong and the mighty to promote their own advantage. He further emphasized that the path of injustice is much more rewarding than the path of justice and it pays to act unjustly, if one can get away with it.

Plato's Contribution to the Theory of Natural Law:

The rise of Socrates is perhaps the most interesting chapter in Greek philosophy. Socrates, along with Plato, was able to spread the idea that the notion of Justice was miscalculated by Thrasymachus and other early Sophist thinkers. He also argued that such notions of Law and Justice would endanger the moral fabric of society and create more chaos than harmony, more insecurity than security, thus causing social degeneration from within and without. Plato based his philosophy on the teachings of Socrates. His ideas of Law and Justice revolved around his fundamental belief in the innate inequality of human beings. Plato opined that Nature has endowed human beings with varying degrees of capacity.15 On this premise, he justified the creation and continuity of a Class system in society based on division of Labor. According to him, the objective of human life was to deliver the specific functions which a human being was expected to discharge as per his capacity. Justice, according to him, was to keep to one's work without interfering with that of others. Thus, Plato divided men into four sections: Gold, Silver, Copper and Iron.

The first class of people was supposed to be the ruling class whereas the second class was concerned with defense or military activities. People belonging to the first two classes were required to shun all indulgences of private life including the right to create a family and acquire private property. In the first two classes, union of men and women was required to be temporary as the focus of these classes was to protect the State and discharge functions that would serve public good. On the other hand, the last two classes, i.e. Iron and Copper were supposed to be the producing class. Together, they constituted the largest class of the society and were permitted to form families and maintain private property . Further, Plato's philosophy is characterized by a strong dislike for Law. In "The Republic", Plato advocates that justice should be administered without law as according to him, Law is a body of abstract and simple principles, not suitable for application to complex situations of life. It is on this ground that Plato preferred the administration of justice by a wise man trained in kingship to the authority of Law.

Aristotle's Idea of Natural Law:

Like his predecessors, Plato's pupil, Aristotle also made a significant contribution to the domain of Natural Law. However, unlike Plato, Aristotle's perception of the Law was based on a deep and pragmatic understanding of human nature. Aristotle believed that Plato's conception of justice demanded exceptional nobility from individuals which was the very antithesis of average human nature. He conceived of man as a part of nature, as an animal endowed with one strikingly unique feature: Rationality. Man according to Aristotle, was the best of animals when he was controlled by law, but his segregation from laws, made him the worst of all beings in nature. He opined that it is the Law which must be treated as supreme and not individuals since no human being is above the pollution of vices that come with untrammelled power and pride. Aristotle identified Natural Justice as a body of those principles which could not be altered and had the same validity everywhere. The legitimacy of these principles did not depend on their acceptance or non-acceptance by any segment of society or individuals. In contrast to this, Aristotle also evolved the conception of Conventional Justice which was capable of variations and alterations. As one can see, Aristotle marked the beginning of a significant qualitative change in the content of Greek philosophy: a change from Idealism to Realism, from abstraction to concreteness, from radical arguments to a state of balance in the idea of Law and Justice.

Rise of the Stoics and their Idea of the Law of Nature:

Aristotle's conception of Law and his emphasis on Man's Reason in the "Logic" shaped the Stoic's philosophy of Justice. The Stoic school of thought was led by Zeno. Zeno and his followers were pantheists who identified Nature with God. According to them, Law could be conceived only with Nature at the center. Stoics advocated for unity of all human beings and believed that law prevails in Human Reason. According to them, all human beings are equal and laws therefore, are applicable to all equally. They propagated a cosmopolitan philosophy where distinctions between all city-states would pale into oblivion. The Stoics built their philosophy on the premise that Natural Laws have universal validity and are not capable of change in any part of the world.

After the Greeks, it was the turn of Romans to inquire into the domain of Nature, Law and Justice. They were inspired heavily by the Greeks, particularly the philosophy of the Stoics and attempted to give shape to the hitherto abstract forms of Law and Justice.

In order to appreciate the positioning of natural law in ancient Rome, we need to distinguish with clarity amongst three simultaneous concepts in vogue in the Roman Legal System. The first one is jus civile which refers to the Civil law of Rome. It was meant for the citizens of Rome alone and was not applied to non-citizens. Jus gentium referred to a body of principles applied to non-citizens. It reflected the common principles found across legal systems. Jus naturale refers literally to natural law though it carried different connotations in the writing of different philosophers.

Jus civile
As stated above, it referred to the civil law of Rome applied specifically and categorically to Roman citizens. It was the positive law of the land enacted by the legislative authority.

Jus gentium
The Roman empire was vast and consisted of a heterogeneous population. Jus Civile, or the Civil Law, was applicable to Roman citizens. However, the Roman empire consisted of a huge number of non-Roman people who were used to their own set of customs, rules and

practices. The judicial magistrates administering the law found it unfeasible to apply the Roman civil law to the people from foreign lands.25 The very conception of jus civile was state specific and thus was not considered a proper law to be applied to those who were not citizens of the state. They also found it beyond them to apply the foreign law of the parties in cases before them.26 This necessitated the development of rules which could be uniformly applied to this diverse population in similar factual contexts.
Though the magistrates could not apply the foreign laws directly, they utilised the content of these various foreign laws to decipher some common principles and unify the application of rules across the variety of population living in Rome. The process of creating these general principles was more inductive than deductive. The magistrates progressed from various individual cases to general principles. This body of principles came to be known as jus gentium or "law of the nations".

It has to be seen here that evolution of jus gentium Roman Empire can be traced back more to the peculiarities of the Roman legal system than to a clear philosophical proposition. The legal system of Roman empire, in terms of its functioning has often been compared to the later English system. It was not a system based on well debated philosophies or abstract theories. The legal principles which came to prevail were not deduced from general principles of law. The process was primarily inductive in nature. The general principles evolved out of particular applications of logic and reason in individual cases. The legal system responded to the needs of actual cases and over a course of time, a collective of such recorded applications of rules emerged as a generalised principles of law.

This body of general principles was not perceived as a higher body of principles. It was more in the nature of common principles prevalent in the laws and usages of different communities which reflected a sense of right common to all. Gaius dissects the nature of jus gentium as one informed with the natural reason common in all men.

Jus natural

The term 'natural law' or just naturale has in the context of the Roman legal system has to be understood in two perspectives. One was in the sense of a higher order of principles providing a validating yardstick for the positive law made by men. The most vocal expression of this perspective can be seen in the works of Cicero. In the other sense, which is used by many Roman jurists, it reflected not a universal law of higher order, but a reasonable proposition oriented towards the solution of a given case. In its later sense, natural law represented a prima facie reasonable proposition rather than an enlightened rationality.

Cicero (106-43 B.C.)
The most prominent of Roman scholars whose work contributed to the idea of natural law was Cicero. Like the Stoic philosophers, Cicero considered the faculty of reason as the fulcrum of the universe.

He identified True Law as reason in conformity with nature. He contended it to be of universal application and of immutable character. The nature of this law was to be beyond the confines of countries and societies. He invested law with the force of nature as designed by divine dispensation. This element of reason, present in intelligent men was the parameter for the justness of an act. The faculty of reason in every man ensures that a sense of justice is inherent in human nature. He was categorical in his view that natural law presented us with a yardstick to judge the validity of positive law enacted by any ruler, however legitimate.

Evolution Through Natural Law

The Roman philosophers are usually not credited with any original principle or philosophy of natural law developed by them. Even much of what Cicero says is only a reaffirmation of principles developed in Stoic philosophy. The greatest contribution of the Roman lies in the gradual implementation of natural law principles41 into the jus civile and jus gentium through sustained creativity. More than jus civile, reformations in relation to which took much longer time, various principles of natural law manifested themselves through the instrumentality of jus gentium. There was no separate sphere of law recognized as jus naturale but the principles of jus naturale as recognized under the Stoic philosophy found expression in the shaping and moulding of jus gentium.

As has been noted earlier, the Roman legal system thrived not on philosophical inclinations but on the basis of requirements in actual individual cases as they emerged. Thus, apart from Cicero, not many indulged in the philosophical debate as to the requirement of jus civile or jus gentium to conform to a higher order of jus naturale.45 The legal system evolved through sustained and vigorous application of natural law doctrines in individual cases, not through a philosophical dialogue on the supremacy of natural law.

Impact of this application of natural law principles to reshape the value orientation of law can be seen in several areas like the a melioration of slaves and the reformulation of family relations. The principle of equality as a fundamental Stoic philosophy has significant impact on the adaption of positive law to propositions which were more harmonious to such am principle. This can be seen in successive reforms which were directed at providing more humane legal conditions to slaves. A similar evolution can also be seen in the progressive improvement in the legal position of wives vis-à-vis their husbands. From being under absolute and complete control of their husbands and having no proper claims or rights against the husbands, the wives acquired a progressive status of independence over a course of time. Similar trends, though much more gradual and tedious in terms of the transformation, can be seen in the contours of legal relations between a father and his children. The extent of control at one point of time extended to the right of a father to force his grown up sons/daughters to divorce their spouse. Such autocratic and absolutist elements of control were gradually decimated through constant infusion of humanitarian principles based on equality of human beings.

Difference between Greek and Roman Schools of Thought: Concluding Remarks

It is interesting to note that a very strong difference prevailed between the Greek and Roman schools of Natural Law. Although both of them believed in the existence of universal principles, the Greeks believed in the existence of an absolute ideal. Their idealism pervadestheir philosophy in all its manifestations. The absolute ideal acquired various perceptions but no conclusion could be reached in relation to its exact composition. What remained is a combination of ideas that emerged from the journey towards perfection which by themselves could not be integrated with social life. On the other hand, the Romans followed a more pragmatic approach towards the law. Consequently, Natural Law evolved from an interaction of the law with social institutions.