Natural Law

Natural Law–Its Meaning and Definition

There is no unanimity about the definition and exact meaning of Natural Law. In jurisprudence the term 'Natural Law' means those rules and principles which are supposed to have originated from some supreme source other than any political or worldly authority. It is basically a priori method different from empirical method, the forms, accepts things or conclusions in relation to a subject as they are without any need or enquiry or observation while empirical or a posteriori approach tries to find out the causes and reason in relation to the subject matter. It symbolizes Physical Law of Nature based on moral ideals which has universal applicability at all places and terms. It has often been used either to defend a change or to maintain status quo according to needs and requirement of the time. For example, Locke used Natural Law as an instrument of change but Hobbes used it to maintain status quo in the society. The concepts of 'Rule of Law' in England and India and 'due process' in USA are essentially based on Natural Law. Natural Law is eternal and unalterable, as having existed from the commencement of the world, uncreated and immutable. Natural Law is not made by man; it is only discovered by him. Natural Law is not enforced by any external agency. Natural Law is not promulgated by legislation; it is an outcome of preaching of philosophers, prophets, saints etc. and thus in a sense, it is a higher form of law. Natural Law has no formal written Code. Also there is neither precise penalty for its violation nor any specific reward for abiding by its rules. Natural Law has an eternal lasting value which is

immutable. Natural Law is also termed as Divine Law, Law of Nature, Law of God, etc. Divine Law means the command of God imposed upon men. Natural Law is also the Law of Reason, as being established by that reason by which the world is governed, and also as being addressed to and perceived by the rational of nature of man. It is also the Universal or Common Law as being of universal validity, the same in all places and binding on all peoples, and not one thing at Athens. Lastly in modern times we find it termed as "moral law" as being the expression of the principles of morality. The Natural Law denies the possibility of any rigid separation of the 'is' and 'ought' aspect of law and believes that such a separation is unnecessarily causing confusing in the field of law. The supporters of Natural Law argue that the notions of 'justice', 'right' or 'reason' have been drawn from the nature of man and the Law of Nature and, therefore, this aspect cannot be completely eliminated from the purview of law. It has generally been considered as an ideal source of law with invariant contents.

Evolution, Growth and Decline of Natural Law

The content of 'Natural Law' has varied from time to time according to the purpose for which it has been used and the function it is required to perform to suit the needs of the time and circumstances. Therefore, the evolution and development of 'Natural Law' has been through various stages which may broadly be studied under the following heads:

(1) Ancient Period

(2) Medieval Period

(3) Renaissance Period

(4) Modern period

Ancient Period

Heraclitus (530 – 470 B.C.)

The concept of Natural Law was developed by Greek philosophers around 4th century B.C. Heraclitus was the first Greek philosopher who pointed at the three main characteristic features of Law of Nature namely, (i) destiny, (ii) order and (iii) reason. He stated that nature is not a scattered heap of things but there is a definite relation between the things and a definite order and rhythm of events. According to him, 'reason' is one of the essential elements of Natural Law.

Socrates (470 – 399 B.C.)

Socrates said that like Natural Physical Law there is a Natural or Moral Law. 'Human Insight' that a man has the capacity to distinguish between good and bad and is able to appreciate the moral values. This human 'insight' is the basis to judge the law. Socrates did not deny the authority of the Positive Law. According to him, it was rather the appeal of the '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. He pleaded for the necessity of Natural Law for security and stability of the country, which was one of the principal needs of the age. His pupil Plato supported the same theory. But it is in Aristotle that we find a proper and logical elaboration of the theory.

Aristotle (384 – 322 B.C.)

According to him, man is a part of nature in two ways; firstly, he is the part of the creatures of the God, and secondly, he possesses insight and 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 the nature, the law discovered by reason is called 'natural justice'. Positive Law should try to incorporate in itself the rules of 'Natural Law' but it should be obeyed even if it is devoid of the standard principle of Natural Law. The Law should be reformed or amend rather than be broken. He argued that slaves must accept their lot for slavery was a 'natural' institution. Aristotle suggested that the ideals of Natural Law have emanated from the human conscience and not from human mind and, therefore, they are far more valuable than the Positive Law which is an outcome of the human mind.

Natural Law in Roman System

The Romans did not confine their study of 'Natural Law' merely to theoretical discussions but carried it further to give it a practical shape by transforming their rigid legal system into cosmopolitan living law. In this way Natural Law exercised a very constructive influence on the Roman law through division of Roman Law into three distinct divisions namely 'Jus civile', 'Jus gentium' and 'Jus naturale'. Civil law called 'Jus civile' was applicable only to Roman citizens and the law which governed Roman citizens as well as the foreigners was known as 'Jus gentium'. It consisted of the universal legal principles which conformed

to Natural Law or Law of Reason. Later, both these were merged to be known as ‘Jus naturale’ as Roman citizenship was extended to everyone except a few categories of persons. Roman lawyers did not bother themselves with the problem of conflict between ‘Positive Law’ and ‘Natural Law’. Though there was a general feeling that natural law being based on reason and conscience was superior to Positive Law and therefore, in case of a conflict between the two, the latter should be disregarded.

Natural Law in India

Hindu legal system is perhaps the most ancient legal system of the world. They 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. Under the foreign rule no proper attention could be paid to the study of this legal system. Many theories and principles of it are still unknown, uninvestigated. Whether there was any conception of ‘Natural Law’ or not, and if there was any, what was its authority and its relation with ‘Positive Law’ are the questions which cannot be answered with great certainty. However, some principles and provisions can be pointed out in this respect. According to the 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. Puranas are full of instances where the kings were dethroned and beheaded when they went against the established law.

Medieval Period

Catholic philosophers and theologicians of the Middle Ages gave a new theory of 'Natural Law'. Though they too gave it theological basis, they departed from the orthodoxy of early Christian Fathers. Their views are more logical and systematic. Thomas Acquinas views may be taken as representative of the new theory. His views about society are similar to that of Aristotle. Social organization and state are natural phenomena. He defined law as 'an ordinance of reason for the common good made by him who has the care of the community and promulgated'. St. Thomas Aquinas gave a fourfold classification of laws, namely, (1) Law of God or external law, (2) Natural Law which is revealed through "reason", (3) Divine Law or the Law of Scriptures, (4) Human Laws which we now called 'Positive law'. Natural Law is a part of divine law. It is that part which reveals itself in natural reason. Like his predecessors, St. Aquinas agreed that Natural Law emanates from 'reason' and is applied by human beings to govern their affairs and relations. This Human Law or 'Positive Law', therefore, must remain within the limits of that of which it is a part. It means that Positive Law must conform to the Law of the Scriptures. Positive Law is valid only to the extent to which it is compatible with 'Natural Law' and thus in conformity with 'Eternal Law'. He regarded Church as the authority to interpret Divine Law. Therefore, it has the authority to give verdict upon the goodness of Positive Law also. Thomas justified possession of individual property which was considered sinful by the early Christian Fathers.

The Period of Renaissance

The period of renaissance in the history of development of Natural Law may also be called the modern classical era which is marked by rationalism and emergence of new ideas in different fields of knowledge.

Hugo Grotius (1583 – 1645)

Grotius built his legal theory on 'social contract'. His view, in brief, is that political society rests on a 'social contract'. It is the duty of the sovereign to safeguard the citizens because the former was given power only for that purpose. The sovereign is bound by 'Natural Law'. The Law of Nature is discoverable by man's 'reason'. He departed from St. Thomas Aquinas scholastic concept of Natural Law and 'reason' but on 'right reason', i.e. 'self-supporting reason' of man. Now the question may arise: Should disobey the ruler who did not act in conformity with principles of 'Natural Law'? Grotius believed that howsoever bad a ruler may be, it is the duty of the subjects to obey him. He has no right to repudiate the agreement or to take away the power. Although there is apparent inconsistency in the Natural Law propounded by Grotius because on the one hand, he says that the ruler is bound by the 'Natural Law', and, on the other hand, he contends that in no case the ruler should be disobeyed, but it appears that Grotius's main concern was stability of political order and maintenance of international peace which was the need of the time. Hugo Grotius is rightly considered as the founder of the modern International Law as he deduced a number of principles which paved way for further growth of International Law.

He propagated equality of State and their freedom to regulate internal as well as external relations.

Thomas Hobbes (1558 – 1679)

According to Hobbes, prior to 'social contract', man lived in chaotic condition of constant fear. The life in the state of nature was "solitary, poor, nasty, brutish and short". Therefore, in order to secure self-protection and avoid misery and pain, men voluntarily entered into contract and surrendered their freedom to some mightiest authority that could protect their lives and property. Thus Hobbes was a supporter of absolute power of the ruler and subjects had no rights against the sovereign. Though he makes a suggestion that the sovereign should be bound by 'Natural Law', it is not more than a moral obligation. It would thus be seen that Hobbes used Natural Law theory to support absolute authority of the sovereign. He advocated for an established order. During the Civil War in Britain, his theory came to support the monarch. In fact, it stood for stable and secure government. Individualism, materialism, utilitarianism and absolutism all are interwoven in the theory of Hobbes.

John Locke (1632 – 1704)

According to Locke, the state of nature was a golden age, only the property was insecure. It was for the purpose of protection of property that men entered into the 'social contract'. Man, under this contract, did not surrender all his rights but only a part of them, namely, to maintain order and to enforce the law of nature. His Natural Rights as

the rights to life, liberty and property he retained with himself. The purpose of government and law is to uphold and protect the Natural Rights. So long as the government fulfils this purpose, the laws given by it are valid and binding but when it ceases to do that, its laws have no validity and the government may be overthrown. Locke pleaded for a constitutionally limited government. The 19th century doctrine of 'laissez faire' was the result of individual's freedom in matters relating to economic activities which found support in Locke's theory. Unlike Hobbes who supported State authority, Locke pleaded for the individual liberty.

Jean Rousseau (1712 – 1778)

Rousseau pointed out that 'social contract' is not a historical fact as contemplated by Hobbes and Locke, but it is merely a hypothetical conception. Prior to the so called 'social contract', the life was happy and there was equality among men. People united to preserve their rights of freedom and equality and for this purpose they surrendered their rights not to a single individual, i.e. sovereign, but to the community as a whole which Rousseau named as 'general will'. Therefore, it is the duty of every individual to obey the 'general will' because in doing so he directly obeys his own will. The existence of the State is for the protection of freedom and equality. The Sate and the laws made by it both are subject to 'general will' and if the government and laws do not conform to 'general will', they would be discarded. Rousseau favored people's sovereignty. His 'Natural Law' theory is confined to the freedom and equality of the individual. For him, State, law, sovereignty, general will etc. are interchangeable terms.

Immanuel Kant (1724 – 1804)

The Natural Law philosophy and doctrine of social contract was further supported by Kant and Fichte in 18th century. They emphasized that the basis of social contract was 'reason' and it was not a historical fact. Kant drew a distinction between Natural Rights and the Acquired Rights and recognized only the former which were necessary for the freedom of individual. He favored separation of powers and pointed out that function of the State should be to protect the law. He propounded his famous theory of Categorical Imperative in his classic work entitled Critique of Pure Reason.

Kant's theory of Categorical Imperative was derived from Rousseau's theory of General Will. It embodies two principles:-

1. The Categorical Imperative expects a man to act in such a way that he is guided by dictates of his own conscience. Thus it is nothing more than a human right of self-determination.

2. The second principle expounded by Kant was the doctrine of 'autonomy of the will' which means an action emanating from reason but it does mean the freedom to do as one pleases.

In essence, Kant held that “an action is right only if it co-exists with each and every man’s free will according to the universal law”. This he called as “the principle of Innate Right”. The sole function of the state, according to him, is to ensure observance of law.

Modern Period

19th Century Hostility towards Natural Law

The Natural Law theory received a setback in the wake of 19th century pragmatism. The profounder of analytical positivism, notably, Bentham and Austin rejected Natural Law on the ground that it was ambiguous and misleading. The doctrines propagated by Austin and Bentham completely divorced morality from law. In the 19th century, the popularity of Natural Law theories suffered a decline. The ‘Natural Law’ theories reflected, more or less, the great social economic and political changes which had taken place in Europe. ‘Reason’ or rationalism was the spirit of the 18th century thought. A reaction against this abstract thought was overdue. The problems created by the new changes and individualism gave way to a collectivist outlook. Modern skepticism preached that there are no absolute and unchangeable principles. Priori methods of the natural law philosophers were unacceptable in the emerging age of science. The historical researches concluded that social contract was a myth. All these developments shattered the very foundation of the Natural Law theory in 19th Century. The historical and analytical approaches to the study of law were more realistic and attracted jurists. They heralded a new era in the field of legal thought. In this changed climate of thought it became difficult for the ‘Natural Law’ theories to survive. Therefore, though solitary voices asserting the

superiority of ‘Natural Law’ are still heard, the 19th century was, in general, hostile to the ‘Natural Law’ theories.

20th Century Revival of Natural Law

Towards the end of the 19th century, a revival of the ‘Natural Law’ theories took place. It was due to many reasons: First, a reaction against 19th century legal theories which had exaggerated the importance of ‘positive law’ was due and theories which over-emphasized positivism failed to satisfy the aspirations of the people because of their refusal to accept morality and ‘reason’ as element of law; Second, it was realized that abstract thinking or a priori assumptions were not completely futile; Third, the impact of materialism on the society and the changed socio-political conditions compelled the 20th century legal thinkers to look for some value-oriented ideology which could prevent general moral degradation of the people. The World War 1 further shattered the western society and there was a search for a value-conscious legal system. All these factors cumulatively led to revival of Natural Law theory in its modified form different from the earlier one. The main exponents of the new revived Natural Law were Rudolf Stammler, Prof. Rawls, Kohler and others.

Rudolf Stammler (1856 – 1938)

Stammler defined law as, “species of will, others-regarding, self-authoritative and inviolable”. For him, a just law was the highest expression of man’ social life and aims at preservation of freedom of individuals. According to him, the two fundamental principles necessary

for a just law were: (1) principles of respects, and (2) the principle of community participation. With a view to distinguishing the new revived Natural Law from the old one, he called the former as ‘Natural Law with variable content’. According to him, law of nature means ‘just law’ which harmonizes the purposes in the society. The purpose of law is not to protect the will of one but to unify the purposes of all.

Professor Rawls

Professor Rawls made significant contribution to the revival of Natural Law in the 20th century. He propounded two basic principles of justice, namely, (1) equality of right to securing generalized wants including basic liberties, opportunities, power and minimum means of subsistence; and (2) social and economic inequalities should be arranged so as to ensure maximum benefit to the community as a whole.

Kohler

As a neo-Hegelian, Kohler defined law as, “the standard of conduct which in consequence of the inner impulse that urges upon men towards a reasonable form of life, emanates from the whole, and is forced upon the individual”. He says that there is no eternal law and the law shapes itself as the society advances morality and culturally in course of evolution. He tried to free the 19th century Natural Law from the rigid and a priori approach and attempted to make it relativistic, adapting itself to the changing norms of the society.

The approaches of these philosophers are very scientific and logical and are free from the right and a priori principles.

Lon Luvois Fuller (1902 – 1978)

He rejected Christian doctrines of Natural Law and 17th and 18th century rationalist doctrines of Natural Rights. He did not subscribe to a system of absolute values. His principal affinity was, with Aristotle. He found a "family resemblance" in the various Natural Law theories, the search for principles of social order. He believed that in all theories of Natural Law it was assumed that "the process of moral discovery is a social one and that there is something akin to a 'celebrative articulation of shared purposes' by which men come to understand better their own ends and to discern more clearly the means for achieving them." To fuller, the most fundamental tenet of natural law is an affirmation of the role of reason in legal ordering.

Hart

Hart, the leader of contemporary positivism, though critical of Fuller's formulation, has attempted to restate a national law position from a semi-sociological point of view. Hart points out that there are certain substantive rules which are essential if human beings are to live continuously together in close proximity. "These simple facts constitute a case of indisputable truth in the doctrines of natural law". Hart places primary emphasis here on an assumption of survival as a principal

human goal. “We are concerned”, he says, “with social arrangements for continued existence and not with those of suicide clubs. There are, therefore, certain rules which any social organization must contain and it is these facts of human nature which afford a reason for postulating a ‘minimum content’ of Natural Law”

Finnis

Finnis who in his writing ‘Natural Law and Natural Rights’, restated the importance of natural law. For Finnis, ‘Natural’ is the set of principles of practical reasonableness in ordering human life and human community. Drawing on Aristotle and Aquarius, Finnis sets up the proposition that there are certain basic goods for all human beings. The basic principles of Natural Law are pre-moral. These basic goods are objective values in the sense that every reasonable person must assent to their value as objects of human striving.

Conclusion

This brief survey of the content of ‘Natural Law’ has varied from time to time. It has been used to support almost any ideology, absolutism, individualism and has inspired revolutions and bloodshed also. It has greatly influenced the positive law and has modified it. The law is an instrument not only of social control but of social progress as well, it must have certain ends. A study of law would not be complete unless it extends to this aspect also. The ‘Natural Law’ theories have essentially been the theories regarding the ends of law. The ‘Natural Law’

principles have been embodied in legal rules in various legal systems and have become their golden principles.