

## Abstract

Natural law is known as a higher law or the law of nature which has been continually dominating the entire basis of politics, Law, Religion and social philosophy. Natural law is said to be these sets of unwritten law which contains the principles of ought as revealed by the nature of man or reason or derived from god.

Natural law is universal and common to all humanity. It goes beyond the difference in culture, religion and various formulation of the moral law. The Articles like Article 14, 19 and 21 has been widely interpreted in the India scenario especially by the Indian judiciary due to largely impact of natural law theory.

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## Natural law (School of Jurisprudence)

1. Natural law is a philosophy of law that forces on the law of nature. This school of jurisprudence represents the belief that they are inherent laws that is common to all societies.
2. Natural law is also known as the moral law Divine law, the law of God, law of Reason, law of nature, Universal law and unwritten law.
3. The school of thought tells us that the law is rational and reasonable. Natural law proposes that laws are a logical progression from morals. Therefore, actions that are considered to be morally wrong will be against the law.
4. The sources of Natural law was that-
  - 
  - God
  - Nature
  - Reasons
5. The classification of Natural law school in to four parts are:-

(A) Ancient period/classical period

(B) Medieval period/middle ages

(C) Renaissance period

(D) Modern period

(A) Ancient period/classical period

The story of natural law behind the philosophers of ancient Greece. The Greeks traditionally regarded law as being closely related to justice and ethics. Greek who were the first distinguished law from blind faith?

The ancient period is further divided into two periods that are:

1. Greek period

The main authors of Greek period are as follows;

Heraclites ( 530-470 B.C)

The foundation of Natural law philosophy was by the Heraclites and it also gives three aspects\_ unlimited goals, stages and reason are important for the natural law.

Socrates (470-399)

According to Socrates “Law is a product of correct reasoning”<sup>1</sup>. ‘Human insight’ that a man has 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.

Plato (427-347 B.C )

It is a supporter \_ minimum governance policy means “ultimate” justice is discoverable through reason. Plato also supports the Socrates theory of Natural law. According to Plato, we live in an orderly universe.

Aristotle (385\_322 B.C)

It believes that Natural law has elements of reason, justice and ethics mean that “Universal and immutable standards discoverable through reason and man-made law should conform to these standards. 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.”<sup>2</sup>

## 2. Roman period

The Natural law philosophy found on expression in the Roman legal system through the division of Roman law into three distinct divisions \_ jus civil, jus gentiam and jus natural. It also gives natural law is equal to universal law and the code of gaudier also.

The main author Roman periods as follows:-

Cicero

He said the law is the highest reason, implanted in nature which commands what ought to be done and forbids the opposite. This reason when firmly fixed and fully developed in the human mind is law.

(B) Medieval period/Middle ages

It is a time of catholic philosophers or logicians of the Middle Ages gave a new theory of 'Natural law'. Though they too gave it the logical basis. They departed from the orthodoxy of the early Christian father. Their views are more logical and systematic.

The main authors of the medieval period are as follows;-

Augustine (354-430 A.D)

It believes that what are states without justice but robber hands enlarged (De civitas Dei) (The city of god). It also believes that natural law as a part of natural foundation of Christianity due to its origins in the old Testament early church father.

Thomas Aquinas (1226-1274)

It believes that 'unjust' law deserve no obedience' means that man finds out natural law by applying 'reason' and studying scriptures of the revelation of God. St. Thomas Aquinas gave four-fold classification of law's namely;-

Law of God or external law

Law of nature (which revealed through nature)

Human law (which we now called positive law)

Law of divine or the law of scripture

(C) Renaissance Period

It is revival of learning as scholar re-studying Greeks and Roman instead of relying on scriptures, they looked at the purpose of human life itself to extract Natural law principles

The main authors of Renaissance period are as follows:-

Hugo Grotius (1583-1645)

It is known as father of international law. Grotius built his legal theory on 'Social Contract'.<sup>4</sup> His view in brief is that political society rest on a 'social contract' It is the duty of the sovereign to safeguard the citizens because the form was given power only for that purpose.

Thomas Hobbes (1558-1679)

It was a supporter of absolute power of the ruler and subjects had no right against the sovereign.

John Locke ( 1632- 1704)

John Locke too recognized the existence of certain inalienable natural rights. He categorized them as "life, liberty and estate (property) Locke's social contract is based upon liberalism.

Rousseau (1712- 1778)

According to Rousseau, “man by nature never thinks and he who thinks is a corrupt creature.” He believed that the state of nature was an idyllic state where in man did not reason things out and lived in absolute liberty with the free mind.

Immanuel Kant (1724-1804)

He emphasized that the basis of social contract was ‘reason’ but Kant gave a sharp distinction between natural law rights and acquired rights and recognized only one natural right that is the right to freedom.

Hegel (1770-1831)

Hegel also plays a vital important role in natural law school. School of Hegelianism Aristotle of modern times. It is the most prominent philosophy of the philosophical school jurist and it also give their theory in which they said that state and law is a reason of growth of the human logic.

(D) Modern period

The modern period is further divided into two that is:-

1. 19th century unfavorable to natural law.

The decline of natural law theories took place in the 18th- 19th Century with the advancement of empirical methods of study and scientific behavior. Natural law theories were denounced primarily because its source was said to be a divine entity. The profounder Austin rejected Natural law on the

ground that it was ambiguous and misleading and mercilessly criticized the natural law school as “simple nonsense, natural and imprescriptible right rhetorical nonsense upon stilts.”

## 2. 20th century the Revival of Natural

Towards the end of the 19th century, a revival of the natural law theories took place. It was due to many reasons:-

The 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 aspiration of the people because of their refused to accept morality and reason as an element of law.

Secondly, it was realized that abstract thinking or a priors assumption were not completely futile.

Thirdly, the impact of materialism on society and the changed socio-political condition compelled the 20th-century legal thinker to look for some value-oriented ideology which could prevent general moral degradation of the people.

The main authors of the 19th century the Revival of natural law are as follows:-

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.”

Kohler (1849 – 1919)

Kohler defines 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 force upon the individual”

HLA Hart ( 1907 – 1992 )

Hart, 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 live continuously together in close proximity. “These simple fact constitute a case of indisputable truth in the doctrines of natural law”.

Natural law Theory and Fundamental Rights

Articles – 14, 19 and 21

In Indian law especially in the Indian constitution, there has been a large impact of 14, 19 and 21 has been widening widely interpreted in the Indian scenario especially by the Indian judiciary. Moreover, the Fundamental Rights conferred under the Indian Constitution have a large base in natural law theory. Since the age of Greeks all the thinker of those theorists under natural law theory have influenced Indian law to a large extent, not only Fundamental Rights but even many more provision under the Indian Constitution are influenced by the natural law theory. This could be found through the case laws:-

Case 1:- Maneka Gandhi v. Union of India

In this case, the meaning and content of life and personal liberty under Article 21 came up for consideration and the Supreme Court held that the law established by the state should be just fair and reasonable.



### Application of Natural Law theory

If one analysis the Judgment, one would find a reference to Locke's theory whereby the natural right of men such as the right to life, liberty and property remained with him, so in the Maneka Gandhi case also the Natural law theory principle could be evolved.

### Case 2:- Indian express newspaper v. Union of India

In this case, the theory of Rousseau has been applied, the Rousseau's theory of freedom and liberty was said to be the natural right of every citizen by the Supreme Court which also been conferred upon under Article 19.

### Case 3:- ADM Jabalpur v. Shivakant Shukla

It is also known as the Habeas Corpus case. It is one of the important case when it comes to rule of law. In this case the question was whether there was any rule of law in Indian Constitution apart from Article 21. This was in the context of suspension of enforcement of Articles 14, 21 and 22 during the proclamation of emergency. The answer is even in absence of Article 21 could not be deprived without authority of law.

### Application of Natural law theory

In this case Stammler's four point principle with special reference to the "principle of respects" the content of the person's violation must not be against the arbitrary will of another. Thus in this case the natural law theory has been applied by the Indian judiciary.