

Welcome students. Today I'm taking a topic in Legal Theory, which is also known as Jurisprudence and my topic is Natural Law Theory. I am Miss Ruby Luis, Assistant Professor from G. R. Kare College of Law. The entire outline of my today's lecture on Natural Law Theory will deal with the introduction, definition, characteristics, the historical evolution, criticisms and Natural Law in India. From this core lecture you will be able to understand Legal Theory in its true sense, comprehend Natural Law Theory, analyze the views of the exponents of Natural Law Theory.

To introduce when we know when we talk about Natural Law Theory, it is something which emanates from Natural Law which has come from God himself. It has a divine origin, therefore it is superior to all other laws. It is binding and it is universally applicable everywhere. It reflects a perpetual quest for absolute justice. International Law owes a lot to the Natural Law Philosophy. Natural law has acted as a catalyst for bringing about transformation of the old prevailing legal system. When we say that Natural Law comes from God himself, we know that this is what teaches ethics. What is right and what is wrong. When we come to the meaning of Natural Law, it has been interpreted differently at different times depending on the needs of the developing legal thoughts. Natural law is inherent in nature and is independent from conventions, legislations or any other institutional devices. We say that Natural Law is divine and eternal. It is not a man-made law. It is something which has come from God. If we look at an example, Christian Law is a good example for Natural Law, The Ten Commandments, it is not a man-made Law, but something what God has given to us. It gives importance to values and ethics.

Let's look at how Natural Law has been defined by different jurists. The first one I'm dealing with are Dias and Hughes, they describe Natural Law as a law which derives its validity from its own inherent values differentiated by its living and organic properties, from the law promulgated in advance by the State or its agencies. The definition looks very technical, but what it means in simple language is that natural law has its own inherent values with something which is divine internal and which comes from God.

Cohen says that Natural Law is not a body of actual elected or interpreted laws. We do not have any legislation known as the Natural Law legislation nor does it depend on conventions, but this is something which comes to us from the divine source. It is in fact a humanistic approach of judges and jurists. The judges and jurists apply the principles of Natural law.

Let's look at the characteristics of Natural Law Theory. It is a priori method different from empirical method. It is something which is original which comes right from the beginning. It has something which has an original impact. The 10 Commandments which came to the Christians, they were the first laws in the Christian law which told them what was right and what was wrong. It symbolizes a physical law like do not steal. It has an universal applicability. For example, stealing, killing is something which is wrong all over the world. It has been used to defend a change or to maintain status quo. As per the requirements of time the concept of Rule of law in England and India and Due process in USA are based on the Natural Law Philosophy. When we talk about the Rule of law in India we are giving supremacy to the law.

Let's look at the historical evolution of Natural Law Theory. In the ancient period we are learning the Greek system and the Roman system. Then we'll see the medieval period. The period of renaissance and

then the decline of the Natural Law Theory. To begin with, the ancient period, I'm dealing with the Greek system. The first Jurist, a famous Greek philosopher, Heraclitus, has given the main characteristics of law of nature like destiny, order and reason, so his definition of Natural Law Theory in the Greek system tells us about 3 important characteristics being destiny, order and reason.

Socrates, was a prominent stoic philosopher and an admirer of truth and moral values. He says virtue is knowledge and whatever is not virtuous is a sin. To him, justice may be of two kinds, natural justice, and legal justice.

Aristotle who came up with the moral logical interpretation of the Natural Law Theory. According to him, man is a creation of God who possesses the insight and reason which enables him to articulate his action. He defined natural law as reason unaffected by desires. So Aristotle believes that we all are creations of God. God has created us in such a way that we have the ability to think and to really reason different things, to reason between what is right and what is wrong.

Looking at the salient features of the Greek Natural Law. It was a result of the views and ideas expressed by thinkers, philosophers or orators and not of jurists or lawyers, because then we had only thinkers and philosophers. Jurists, and lawyers come up in the later stage. It was influenced by tribal customs and politically declared laws were not differentiated from social laws. So in the beginning, when the King would declare a law, it didn't come with the legislation, it came with customs and traditions. Enacted laws were declared customs. The validity of these customs were not affected by the indifference to natural law principles. There was growing consciousness that the law was a product of wisdom and reason, which confirmed its validity, so people realized that the law came from people who had great wisdom and knowledge.

In the ancient period we look at the Roman system. The Romans did not confine their study only to Natural Law Theory, to the theoretical part, but they also gave it a practical shape. Cicerio says that natural law is a creation of reason of the intelligent man who stands highest in creation by virtue of his Faculty of reasoning. So it is similar to what we have learned earlier in the Roman system. Just like the Greek system, we are saying that human beings are the most intelligent and the other highest creature because they have the ability to think.

When we come to the Medieval period, it was governed by the ecclesiastical doctrines. That is, the Christian priest propagated the superiority of the church over the state, and we have seen the Saint Agustine, who pointed out that divine wisdom prevailed in scriptures and these holy scriptures or moral precepts were actually principles of natural law. Then we have Gierke, who opined that Christian theology centered around two fundamental principles, one is unity derived from God, involving one faith, one church and one empire. Second one was the supremacy of law, both divine and man made as a part of the universe. In the Medieval period, Saint Thomas Aquinas defined law as an ordinance of reason for common good made by him, who has a care of the community and promulgated through reason. He gave a four fold classification of law. He said, love of God or external law, Natural law, which is revealed through reason, Divine law or the law of scriptures, Human laws or positive law. He regarded the Church as the authority to interpret this divine law. Now let's look at the tenets of natural law theory in the medieval period, the supporters of the Natural Law Theory believed that the institutions of slavery, property,

State, etc represented evil desires as they were not the creation of nature. God never created slavery or property. It was human desire, human evil desire which created these things. The existence of the state and society is essential for the development of morals and ethical values in man. Law is the greatest binding force for those who govern and the governed. Thus, natural law theory accepted the supremacy of law. The medieval thinkers believed in two facets of human activities namely worldly and Godly. Then we have the period of Renaissance, it is also known as the modern classical era, marked by rationalism and emergence of new ideas in different fields of knowledge. Grotius was considered as the founder of Modern International Law and he was a strong supporter of Renaissance and Reformation. Thomas Hobbes used Natural Law Theory to support absolute authority of the ruler. He completely denounced the religious and metaphysical character of the Natural Law. After the period of Renaissance, there was a decline of natural law theory.

Natural Law Theory suffered a setback in the wake of the 19th century development and pragmatic approach to law, the Industrial Revolution and scientific discoveries created an environment which was not conducive to Natural Law philosophy. The propounders of analytical positivism, such as Bentham and Austin rejected the natural law theory on the ground that it was ambiguous and misleading.

Now the 20th century of natural law, the legal theories of the 19th century, which overemphasized positivism, failed to satisfy the aspirations of the people because of their refusal to accept morality and reason as elements of law. The impact of materialism on the society changed and the changed socio-political conditions compelled the 20th century legal thinkers to look for something value oriented. What happened was that because of the decline of the Natural Law Theory, people had lost their morals and ethics. The World War - I shattered the Western society and there was a search for a value conscious legal system. The new approach was concerned with practical problems of the society and not the abstract ideals.

John Rawls made a significant contribution to the revival of Natural Law in the 20th century. He postulates three levels of justice, namely, local justice, domestic justice and global justice.

Let's look at the criticisms of Natural Law Theory. The moral proposition that is ought to be may not always be in conformity with the needs of the society. The concept of morality is varying from place to place. Therefore it would be wrong to say that natural law had an universal applicability of law. The rules of morality embodied in the natural law are not amenable to changes, but legal rules need to be changed. With the changing needs of the society, legal disputes may be settled by Courts, but disputes regarding morality and law of nature cannot be subjected to judicial scrutiny.

Now we'll have a look at Natural Law in India. The principles of equality, justice and good conscience play an important role in the Indian Laws. For ancient Indian philosophers, Natural law, that is *Dharma* was a righteous code of conduct. The principles of natural justice, the doctrine against bias, judicial review, reasoned decisions, etc were embodied in the administrative law. Principles of natural justice find a prominent place in the Indian Constitution.

For today's lecture I have referred to various books that are Freemans, Lloyds introduction to Jurisprudence, Solomon on Jurisprudence, Jurisprudence and Legal Theory, by V. D. Mahajan,

Lectures on jurisprudence by N. K. Jaikumar and Studies in Jurisprudence and Legal Theory by Dr. N. V. Paranjpe.

Thank you.