

**PERSPECTIVE OF NATURAL LAW IN TODAY'S
GLOBALIZED SCENARIO**

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ABSTRACT

The natural law philosophy occupies an important place in the realm of politics, law, religion and ethics from the earliest times. Natural law principles endows some basic and inalienable rights on an individual that cannot be waived under any circumstances. It has played the role of harmonising, synthesising and promoting peace and justice in different periods and protected public against injustice, tyranny and misrule. The main objective of this study is to highlight the perspective of natural law theory in globalized scenario. The topic of natural law in today's globalized scenario takes us through the changes that have taken place in natural law theory over centuries and bring forth the views of various jurists. With the advancements and developments in the legal system of the nation, laws also change and they are amended but natural law is a kind of law that does not change. In this research paper, researcher has tried to look upon the fact that in today's scenario what is the perspective of natural law? Does it change with the changing times? Does natural gets moulded with the advancements in the legal system of the nation?

Keywords: natural law, legal system, globalized scenario.

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INTRODUCTION

In jurisprudence, the term 'Natural Law' means those rules and principles which are considered to have emanated from some supreme source. Various theories have been propounded since very early time about the source, authority and relation of mostly divergent in nature and supporting contrary ideologies, proceed from the common ground that the source of these rules is not any worldly authority.² Natural law theory is a philosophy of law that centers on the laws of nature. This school of jurisprudence represents the belief that there are innate laws that are common to all societies, whether or not they are written down or officially enacted. It tells us that 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. But also, actions that are considered to be morally right can't truly and justly be against the law. Natural law exists regardless of what laws are enacted. The natural law theory reflects a perpetual quest for absolute justice. Thus it should not be misconceived that natural law has a mere theoretical significance. Its practical value is a historical fact as it generated a wave of liberalism and individual freedom. The law of nations derives its force and authority from the natural law.³

According to natural law theory,

*“Natural law being co-existent with mankind and emanating from God Himself is superior to all other laws. It is binding over all the globe in all countries and at all the times and no man-made law will be valid if it is contrary to the law of nature”.*⁴

The exponents of natural law philosophy believe that law is inherent in the nature of man and is independent of convention, legislation or any other institutional devices. The theory does not differentiate between 'law as it is' from 'law as it ought to be'. Dr. Friedmann has commented that the history of natural law is a tale of the search of mankind for absolute justice and its failure. Therefore, with the changes in social and political conditions, the notions about natural law have also been changing. Thus the natural law has brought about a transformation of the old prevailing legal system. The greatest contribution of natural law

² Dr. B.N. Mani Tripathi (2013) "Jurisprudence: The Legal Theory", Allahabad Law Agency, p: 97

³ Dr. N.V. Paranjape (2013) "Studies in Jurisprudence and Legal Theory", Central Law Agency p: 138

⁴ Blackstone: Commentaries, Introduction, p. 39

theory to the legal system is its ideology of a universal order governing all men and the alienable rights of the individual.⁵

In the ancient societies, natural law was believed to have a divine origin. During the medieval period it has a religious super-natural basis but in modern times it has a strong political and legal mooring.⁶ It has been rightly pointed out by Lord Lloyd that natural law has been devised as a mere law of self-preservation or a law restraining people to a certain behaviour.⁷ It has found expression in modern legal systems in the form of socio-economic justice. The natural law theory acts as a catalyst to boost social transformation thus saving the society from stagnation.

Thus it very clear from the above explanation of natural law that there lies no unanimity about the exact meaning of the natural law and even it is interpreted differently at different times depending on the needs of the developing legal system in the society. But the greatest attribute of the natural theory is its adaptability to meet new challenges of the transient society.⁸

Dias and Hughes 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.⁹

According to Cohen, natural law is not a body of actual enacted law enforced by Courts, it is in fact a way of looking at things and a humanistic approach of judges and jurists.¹⁰

According to Italian jurist Del Vecchio, “natural law is the criterion which permits us to evaluate positive law and to measure its intrinsic justice”.¹¹

⁵ Friedmann : Legal Theory, p: 43-45

⁶ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency* p: 139

⁷ Lloyd: “Introduction to Jurisprudence”, p: 79-81

⁸ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency* p: 139

⁹ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 139

¹⁰ Cohen & Cohen : Readings in Jurisprudence and Legal Philosophy, (1951), p: 430

¹¹ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 139

Thus the origin and evolution of natural law can be concluded by saying that natural law means “those rules and principles which are supposed to have originated from some supreme source other than any political or worldly authority. Some thinkers believe that these rules have a divine origin, some find that their source in nature while others hold that they are the product of reason. Even the modern sociological ideology and the concept of law as a means to reconcile the conflicting interests of individuals in the society.”¹²

Talking about the contemporary position of natural law, it can be inferred that “now natural law is relative and not abstract and unchangeable. The new approach is concerned with practical problems and not with abstract ideas. It attempts to harmonize the ‘natural law’ with the variability of human ideals and takes into account the new legal theories putting emphasis on society. To distinguish this approach to ‘natural law’ from the old theories, the former has been called ‘natural law with a variable content’.¹³ ‘Contemporary natural law theories gain considerable advances in sophistication and acceptability over the classical versions in three ways:

1. They do not appear to depend on controversial metaphysical or theological theories.
2. Some contemporary natural law theorists argue that the connection between law and morality is necessary only at the level of an entire system- that legal systems may contain particular laws that are unjust in some other way but that the system as a whole must satisfy certain moral demands in order to count as legal.
3. Other contemporary theories argue that too sharp a conceptual separation of law from morality will force us to miss the essential nature of certain features of judicial deliberation- e.g.: deliberation about constitutional rights.’¹⁴

JURISPRUDENTIAL STUDY

From jurisprudential point of view, natural law means those rules and principles which are supposed to have originated from some supreme basis other than political or worldly

¹² Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 139-140

¹³ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 105

¹⁴ Article of 3 page.

authority. Whether or not the cosmos is actually constructed with natural philosophies of rights and ethics entrenched in existence, the conviction that this type of law subsists, prevents positive law from being capricious and allows for theories such as justice and basic rights to sway the creation of legal systems.

The concept has existed since the dawn of written philosophy; Aristotle is typically considered the father of the idea. Natural law theory has evolved 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 theory has been through various stages which may broadly be studied under the following heads:

- Ancient Period,
- Medieval Period,
- The Period of Renaissance, and
- Decline of Natural Law Theory due to 19th Century Positivism.”¹⁵

1. Ancient Period:

- **Socrates (470 – 399 B.C.)** - He believed that there exists a law similar to natural physical law termed as natural moral law. This is because of the capacity of humans to distinguish between good and bad and appreciate moral values, as human beings have ‘human insight’. ‘He divided justice into two kinds, namely, (a) natural justice; and (b) legal justice. The rules of natural justice are applicable to all places whereas principles of legal justice may vary from place to place depending on the statutory law and social conditions of the place. Thus natural law is a specie of law which is universal and immutable and uniformly applicable to all the persons at all the places and times. However, Socrates did not deny the authority of the positive law but he pleaded for the necessity of natural law for security and stability of the community.’¹⁶

¹⁵ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 141

¹⁶ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 142

- **Aristotle (384 – 322 B.C.)** - According to him, any law that is positive law which is contrary to the principle of natural law is invalid. He pointed out that ‘man is part of nature in two ways, (a) He is a creation of God; and (b) He possesses insight and reason which enable him to articulate his actions. He defined natural law as ‘reason unaffected by desires.’¹⁷ In the words of Aristotle, “so far its relation with positive law is concerned, natural law is originally different but once the positive law has been laid down, it is not different.”¹⁸

2. Medieval Period:

- **St. Thomas Aquinas (1225 - 1274)**– “In his view, social organization and State are natural phenomenon. He defined 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 gave a fourfold classification of law, namely, (a) Law of God or external law; (b) Natural law which is revealed through “reason”; (c) Divine law or the law of Scriptures; (d) Human laws which we now called ‘Positive Law’.”¹⁹

He agreed that natural law emanates from ‘reason’ and is applied by human beings to govern their affairs and relations. In his opinion positive law should be accepted only to that extent to which it is compatible with natural law.

3. The Period of Renaissance:

- **Hugo Grotius (1583-1645)**– “He emphasized that natural law is not merely based on ‘reason’ but on ‘right reason’, i.e. ‘self-supporting reason’ of a man. He was of the belief that however bad a ruler may be, the subjects are bound to obey him. He formulated the doctrine of social life of men as its unique characteristics for peace and tranquility with fellowmen according to the measure of the intelligence with the intelligence of other fellow men with

¹⁷ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 142

¹⁸ Quoted by Lloyd Dennis in *Introduction to Jurisprudence* (1959), p: 64

¹⁹ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 145 - 146

whom he has to live with. He believed whole universe is regulated by the law of nature. He also developed the concept of “*Pacta sunt Servanda*”. He conceptualized the notion of a state as an association of the freemen joined together for the enjoyment of rights and for their common interest. This association is a result of a contract in which people have transferred their sovereign power to a ruler who has acquired it as his private power and whose actions under ordinary circumstances are not subject to legal control. However, the ruler is bound to observe the natural law and the law of nations. Hugo Grotius is considered to be father of international law. He gave two treaties, namely, (a) Internal treaty or duties; (b) International (external) treaty or duties.”²⁰

- **Thomas Hobbes (1588 - 1679)** –“His theory of natural was based on natural right of self- preservation of property and person. He made use of the natural law to justify the absolute authority of the ruler by endowing him power to protect his subjects. He accepted the ideal principles underlying natural law but did not give it much credence for it lacked sanction which in his view was essential to command obedience from the people.”²¹

4. Decline of Natural Law Theory due to 19th Century Positivism –“The natural law theory suffered a setback in the wake of 19th century developments and pragmatic approach to law by the positivists. The industrial revolution and scientific discoveries had created an environment which was not conducive to natural law philosophy.”²² “A reaction against this abstract thought was overdue. The problems created by the new changes and developments demanded practical and concrete solution. Modern skepticism preached that there are no absolute and unchangeable principles. The historical researches disclosed that the ‘social contract’ was a myth. In this changed climate of thought it became difficult for the ‘natural law’ theories to survive.”²³ All

²⁰ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 102 - 103

²¹ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 148

²² Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 151

²³ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 105

these developments shattered the very foundation of the natural law theory in 19th century.

David Hume rejected the theory of natural law alleging that it was vague, obscure and contrary to empirical approach to law. Thus, he destroyed the theoretical basis of natural law by his analytical positivism.

August Comte denounced natural theory as false, non- scientific and based on super natural beliefs.

John Austin called it ambiguous and misleading and mere expression of ‘positive morality.’

Twentieth Century Revival of Natural Law-‘The end of 19th century, a revival of the ‘natural law’ theories took place. It was due to many reasons: (i) a reaction against 19th century legal theories which had exaggerated the importance of ‘positive law’ was due; (ii) it was realized that abstract thinking was not completely futile. The pure positivist approach failed to solve the problems created by the changed social conditions. The material progress and its effect on the society made the thinkers to look for some values and standards. The emergence of ideologies such as Marxism caused development of counter ideologies and thus contributing to the revival of ‘natural law’ theories.’²⁴

Applicable Theories

- **Natural Law theory and Legal Positivism-**

‘Natural law theorists argue that morality is not simply a desirable feature to import into law but rather an essential part of law as it really is. Natural law theories maintain that there is an essential (conceptual, logical, necessary) connection between law and morality. The demands of law and the demands of morality do not just happen to overlap sometimes as a matter of fact; their overlap is not just a contingent matter for empirical discovery. Rather, it is part of the very meaning of “law” that is passes a moral test. No rule can count as a law unless

²⁴ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 105

what it requires is at least morally permissible. Moral validity is a logically necessary condition for legal validity. Satisfying certain demands of morality is part of the very definition of “law.”²⁵

‘Legal positivism holds that law is one thing and morality another, and that neither can be reduced to the other. Positivists happily concede that it is a good idea for law to conform to morality, i.e. to be fair and humane- but an unfair rule is still a valid law provided only that it is made in accordance with the accepted law making rules of an existing legal system. The validity of a particular rule is determined by its pedigree, not by its content.’²⁶

Interdisciplinary Linkage

- **Sociology and Natural Law-**

As time changes, society also develops and with this changing time law also changes with a great speed. But certain law like natural law does not change with the changing times. With the advancements in every nation’s legal system the fundamental principles of natural law remain absolute and does not change with the developments in the society.

ANALYSIS ON INDIAN LEGAL PROVISION

It must be stated that the principles of natural law find a prominent place in the Constitution of India. The provisions relating to Preamble, FR’s and DPSP amply show that the framers of the Constitution of India were conscious about the inclusion of natural rights in the Constitution. The Right to Equal Justice and Free Legal Aid (**Art. 39A**)²⁷ and workers participation in Management of Industries (**Art. 43A**) have further been inserted in the Constitution by 42nd Amendment Act, 1976 to ensure adequate protection to poor and indigent persons. **Art. 15(4)** provides for special provision for advancement of Backward Classes by way of exception to Arts. 15(1) & (2) and Art. 29(2). This clause applies in both

²⁵ Article of 3 page

²⁶ Article of 3 page

²⁷ Constitution of India

the situations of socially and educationally backward classes. Here natural law theory comes into picture for the protection of backward classes of citizens against discrimination.

With respect to protection against double jeopardy and prohibition against self- incrimination **Arts. 20(2) & 20(3)** highlights the principles of natural law theory in the Constitution.

The provision of Art. 311 of the Constitution which provides adequate protection to civil servants against arbitrary dismissal, removal or reduction in rank is also based on the principle of natural justice.²⁸ In the case of *Union of India v. Tulsiram Patel*²⁹ the SC held that the dismissal, removal or reduction in rank of a government servant under the second proviso of Art. 311(2) without holding inquiry is in public interest and therefore, not violative of Arts. 311 (2) and 14 of the Constitution.

The basic structure theory propounded by the SC of India in *Kesawananda Bharti v. State of Kerala*³⁰, furnishes the best illustration of judiciary's zeal to incorporate the principles of natural law in the Constitutional Jurisprudence. Adopting the 20th Century revivalist approach to the natural law philosophy, the SC ruled that FR's are not absolute and immutable but they are relative in nature and changeable in order to build a 'just' social order.³¹ The SC affirmed the doctrine of basic structure in *Minerva Mill Ltd. v. Union of India*.³² The Court held that FR's enshrined in Part III and DPSP in Part IV of the Constitution taken together constitute the core of the Constitution of India and form its conscience. This doctrine has given a new shape to the Indian Constitutional Mechanism by postulating new ideals and values in order

²⁸ Dr. N.V. Paranjape (2013) "Studies in Jurisprudence and Legal Theory", *Central Law Agency*, p: 165

²⁹ (1985) 3 SCC 398

³⁰ AIR 1973 SC 1461. The basic structure may be said to consist of (1) supremacy of the Constitution (2) Democratic Republican form of Government (3) Secularism (4) separation of powers and (5) federal character of the Constitution.

³¹ Observation of Mather, J. in Keshavanand Bharti Case which is also called the Fundamental Rights Case (AIR 1976 SC 1461)

³² AIR 1980 SC 1789

to strengthen the cause of democracy.’³³ It has become a sheet anchor of individual liberty and social justice.³⁴

The principle of natural justice was earlier confined to only judicial and quasi-judicial enquiries and did not extend to administrative actions. But with the decision in *Maneka Gandhi's* case,³⁵ the scope of natural justice principles now extend to even to purely administrative actions. The SC in this case noted, “for the applicability of the doctrine of natural justice....”³⁶

COMPARATIVE STUDY

1. Comparison between different schools:

‘The **historical school** under the patronage of Savigny opposed the view propagated by the **philosophical school** that law is made consciously by human reason embodied in legislation and asserted that law is in fact the product of *Volkgeist*. The main defect of the philosophical theory of law lay in assumption that an ideal law is discoverable by reason and the actual system of law should correspond to this reason based law. The ideology of the philosophical school was therefore, not acceptable to the advocates of the historical school of jurisprudence.’³⁷

‘Italian jurist, Del Vecchio developed a theory of law similar to Stammler’s legal philosophy but quite independent of it. He believed that human mind can discover rules of justice unaided by positive law. He was thus convinced about the existence of the natural law and treated positive law as an hindrance in the process of legal reforms.’³⁸

³³ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency* p: 166

³⁴ Article 39

³⁵ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (626)

³⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 (626)

³⁷ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 79 - 80

³⁸ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 81 - 82

2. Comparison between India and other countries:

- **United Kingdom**

‘In England, ‘natural law’ never flourished in the form of a theory, its principles found their place in the body of law. The judicial control of administrative tribunals, recognition of foreign judgments, and application of foreign law in case of conflict of laws are founded on the principle of natural justice. Many concepts of the English Law such as quasi- contract, unjust enrichment, etc. are based on ‘natural law’ principles.’³⁹ ‘The operation of rule of law in the English legal system is an embodiment of English ideas of natural rights. The principles of natural justice incorporated in the British administrative law are essentially based on the ideology of natural law.’⁴⁰

- **America**

Even the American Legal System had been greatly affected by natural law theories. In no other legal system than in America the principles of natural justice had created the impact. ‘The ‘Declaration of Independence’ reflects a great influence of the ideas of Locke and Rousseau on it. It says that the rights of life, liberty and the pursuit of happiness are the inalienable rights of men. In America the power of legislation is limited by the principles of natural justice.’⁴¹

- **India**

‘Apart from the fact that modern Indian judicial system having been founded on the British pattern, the fine principles of equity, justice and good conscience and natural justice occupy an important place in the Indian Law. The higher values of universal validity, righteousness, non- violence, etc. were already incorporated in the ancient legal system.’⁴² During the medieval and British period in India, natural law found its expression in the religious preaching’s. It suffered a temporary setback during the Mughal rule in India. Then came British rule in India. ‘They applied doctrine of justice, equity and good conscience and started

³⁹ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 108

⁴⁰ Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 163

⁴¹ Dr. B.N. Mani Tripathi (2013) “Jurisprudence: The Legal Theory”, *Allahabad Law Agency*, p: 108

⁴² Dr. N.V. Paranjape (2013) “Studies in Jurisprudence and Legal Theory”, *Central Law Agency*, p: 163-164

codification of law in order to ensure certainty, uniformity and rationality of laws.⁴³

CONCLUSION

The motive behind this research was to look upon the perspective of natural law in today's globalized scenario. After research and analysis of the fact, the researcher has reached to the conclusion that upkeep of natural law principles is of great importance be it for giving a judgment or for guiding the basic structures of the Constitution or for the benefit of a society. No one should be deprived of his natural right that is provided to an individual by nature. The use and applicability of natural law principles varies from country to country and these principles have evolved from time to time according to the advancements and changing needs of the society.

SUGGESTIONS/ RECOMMENDATIONS

Jurisprudence is a very important aspect of study of law. The subject of Jurisprudence occupies an important place in the legal system. Many theories have been propounded by jurist for centuries which are still applicable in the present world. The theories of natural law exposes that its conception has been changing from time to time. It has been used to support almost any ideology- theocracy, absolutism, individualism and has encouraged revolutions and bloodshed also. 'Natural law' has greatly influenced the positive law and has revised it. As the law is an instrument not only of social control but of social progress as well, it must have certain ends.⁴⁴ The study of law would not be comprehensive unless it outspreads to the above mentioned aspect also. The 'natural law' theories have fundamentally been the theories to achieve the ends of justice. The jurists like Kelsen and Duguit, whose subject- matter of study was only the positive law, could not keep the natural law away from their theories. The 'natural law' principles have been exemplified in rules in several legal systems and have become their ideal principles.

⁴³ Dr. N.V. Paranjape (2013) "Studies in Jurisprudence and Legal Theory", *Central Law Agency*, p: 164

⁴⁴ Dr. B.N. Mani Tripathi (2013) "Jurisprudence: The Legal Theory", *Allahabad Law Agency*, p: 107

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