



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

**Course : B.A LL.B/BB.A LL.B**

**Semester :IInd**

**SUBJECT: Jurisprudence**

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**LECTURE: 3**

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**Assistant Professor**

# Lecture-5



## Unit-2

### Lecture – 5: Nature of Jurisprudence

#### Natural Law and its perspective:-

##### **What is the Natural Law?**

**Introduction:-** Natural law theory is one of the oldest theory among all the theories. Thus these laws are popularly said to be divine laws. It is said to be emanated from supreme source as observed by many jurist and philosophers. Legal thinkers have expressed diverse views on behalf of natural law. Natural law philosophy dominated the Greece during 5th century BC when it was believed it was eternal to man. Stoic calls it as an order of things embodies reason. Later philosophers such as St. Thomas Aquinas, Thomas Hobbes, and John Locke built on the work of the Greeks in natural law theory treatises of their own. Many of these philosophers used natural law as a framework for criticizing and reforming positive laws, arguing that positive laws which are unjust under the principles of natural law are legally nessasities. The entire history of natural law reveals an attempt by the jurists to provide the concept and contents of natural law in human existence.

##### **Development of natural law theory:-**

A brief discussion on natural law theory shall be presented in the historical order to give an idea of the various ideologies that it tried to establish from time to time and its effect on law. Natural law theories may be broadly divided into four classes:-

- I. Ancient period
- II. Medieval period
- III. Period of renaissance
- IV. Modern period

**a) Ancient Period:-** The concept of natural law theory was developed by Greek philosophers around 4th century BC and laid down the essential features.

**Heraclitus:-** Heraclitus was the first Greek Philosopher who pointed three main characteristics of natural law namely, destiny, order and reason. He stated that nature is not scattered heap of things but there is a definite relation between things and a definite order and rhythm of events. According to him “reason” is one of the

essential elements of the natural law. The instability and frequent changes in the early small states of Greece made legal philosophers to think that law was meant to serve the interest of those who were in power and the people are continually struggling for better life. This unstable political condition gave birth to idea of natural law.

**Socrates:-** Socrates said that like natural physical law there is a natural law. Man possesses insight which reveals to him the goodness and badness of things and makes him to know the absolute and eternal moral rules. This human insight is the basis to judge the law. Socrates did not say if the positive law is not in conformity with moral law it would be disobeyed. According to him it was rather appeal of 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. This theory was a plea for security and stability which was one of the principle needs of the age. His pupil Plato supported the same theory but it is in Aristotale that we find a proper elaboration of the theory.

**Plato:-** Socrates disciple plato carried further the natural law theory further through his concept of ideal state which he termed as republic. He contented that only intelligent and worthy person should be king. He argued that justice lies in ordinating means life through reason and wisdom and motivating him to control his passion and desires. In his republic Plato emphasize the need for perfect division of labour and held that each men oath to do his work which he is called upon by his capacities. According to plato law of states are a pale shadow of an absolute idea of an perfect laws against which man made law may be measured.

**Aristotle:-** According to him man is a part of nature in two ways first he is the part of the creature of god and second he posses active reason by which he can shape his will. By his reason men can discovered the eternal principles of justice the men`s region being the part of nature the law discovered by reason is called natural justice. Aristotle defines natural justice as that which everywhere has the same force and that not exist by the people thinking this or that. So far as its relation which positive law or legal justice is concern, he said that legal justice in that which is originally indifferent but when it has been laid down is not indifferent.

**Rome:-** The theory expanded by Stoics had a great influence on the contemporary roman legal system. The Romans did not confine their study of natural law theory merely to theoretical discussion but carried it further to give it a practical shape by transforming their rigid legal system into cosmopolitan living law. The natural law philosophy found an expression in the roman legal system through division of Roman law into three distinct division namely-

- 1 .Jus Civile
- 2.Jus Gentium
3. Jus Naturale.

**b) Medieval Period:-** This period starts from 12th century to mid 14th century in the European history. This period was dominated by Ecclesiastical doctrines which the Christian fathers propagated for establishment of church over the states. The Christian saints especially Ambrose, St. Augustine and Gregory propagated a view

that divine law was superior to all other laws. According to them all laws are either divine or human. St. Thomas Aquinas defined the 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 classified law as:-

- i) Law of God or external law,
- ii) Natural law revealed through reason,
- iii) Divine law or law of scriptures,
- iv) Human laws which we now called Positive law.

**c) Period of Renaissance:-** This period 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. General awakening among the masses coupled with new discoveries of science during the 14th and 15th centuries shattered the foundation of the established values. The natural law theory propounded by Hugo Grotious, Locke and Rousseau revolutionised the existing institutions and held that social contract was the basis of the society.

**Hugo Grotious:-** He propounded the theory of functional natural law and formulated the principles of international law which were equally applicable to all states both during war and peace and he is considered as the founder of modern international law. He therefore treated “Natural Law as immutable which cannot be changed by god himself” Thomas Hobbes:- Hobbes theory of natural law was based on natural right of self preservation of person and property. He made use of natural law to justify the absolute authority of the ruler by endowing him power to protect his subject. Rousseau:- Social contract is not a historical fact but hypothetical construction of reason. The essence of Rousseau theory of general will was that while the individual parts with his natural rights, in return he gets civil liberties such as freedom of speech equality, assembly etc. His natural law theory is confined to the freedom and liberty of the individual. For him, state, law, sovereignty, general will etc are interchangeable terms. His theory is considered to be the forerunner of the modern jurisprudential thought and legal theory. Locke:- He put emphasis on right to life, liberty and property which is inalienable rights and necessary for the well being of the individual. He said that there should not be any law contravening the above rights.

**d) Modern period:-** The natural law theory received a set back in the wake of 19th century pragmatism. The profunder of analytical positivism, notably Bentham and Austin rejected natural law on the ground that it was ambiguous and misleading. Bentham called it a simple nonsense since absolute equality and absolute liberty were repugnant to the existence of the state. The doctrines propagated by Austin and Bentham completely divorced morality from law. All these developments shattered the very foundation of the natural law theory in 19th century. Latter in the 21st century there was revival of natural law school where jurist like Stammler, Fuller and Finnis had made their contribution towers the revival of this school.



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