



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. Ist Semester

SUBJECT: Jurisprudence

SUBJECT CODE: BAL206/BBL 206

LECTURE: 1

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Lecture-5



Natural Law Theory with Indian Perspective

Natural Law Theory with Indian Perspective

Indian Constitution and Natural Law

Natural-Law

Indian Constitution is based on the pillars of Natural Justice, which is a revised version of natural law. Although the Constitution does not specifically talk about the principle of natural justice/law, the provisions are embodied in this sense. Starting from the Preamble, the words Justice inclusive of social, economic and political and equality of status and though, etc. prove that natural law principles are there in the Indian Constitution.

Apart from the Preamble, Article 14 ensures equality before the law to all the citizens without any discrimination of any sort. Then there is an Article 21 which guarantee Right to Life and Liberty, which is also the most comprehensive article of the whole constitution is based on the premises of natural justice. Article 14, 19 and 21 which is also the golden triangle of the constitution has drawn inspiration from natural law.

Prominent Indian case-laws

In *Air India v. Nargis Mirza*, the Supreme Court had struck down the Air India and Indian Airlines regulations on retirement and pregnancy bar on the services of air hostesses as unconstitutional on the ground that regulations were arbitrary and unreasonable under Article 14 of the Constitution.

In *Maneka Gandhi v Union of India*, the meaning 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.

In *A.D.M. Jabalpur v Shivakant Shukla*, this was a case of Habeas Corpus petition. This was in the context of suspension of enforcement of Articles 14, 21 and 22 during the time of emergency. Court held that even in the absence of Article 21, the right to life and liberty of a person cannot be taken away.

Natural Law theory and its influence in Indian laws relating to Fundamental rights

Natural law theory is one of the oldest theories among all the theories. Thus these laws are popularly said to be god made laws. It is said

to be emanated from supreme source as observed by many jurist and philosophers. Legalthinkers have expressed diverse views on behalf of natural law. Natural law philosophy dominated the Greece during the century BC when it was believed it was eternal to man. Sophist 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 In Indian laws especially in Indian constitution there has been a largely impact of natural law theory.

The articles like Article 14,19and 21 has been widen widely interpreted in the Indian scenario especially by the Indian judiciary. This could be found through the case laws In the case of Air India V/S Nargis Mirza the Supreme Court had struck down the Air India and Indian Airlines regulations on the retirement and pregnancy bar on the services of airhostess as unconstitutional on the ground that the regulations were arbitrary and unconstitutional under Article 14 of the Indian constitution. Now if one analyzes Stammler's four point principle with special reference to "principles of respect" :

the content of the person's volition must not be against the arbitrary will of another. Thus in this case the natural law theory has been applied by Indian Judiciary. In the case of Maneka Gandhi V/S Union of India the meaning and content life and personal liberty under article 21 of Indian constitution came up for consideration and the supreme court held that the law established by the state should be just fair and reasonable . If one analyses the judgement one would find reference of LOCKE'S theory whereby the natural rights of man such as right to life, liberty and property remained with him. So in Meneka Gandhi case also the natural law theory principles could be evolved. In case of Indian Express Newspaper V/S Union of India the theory of Rousseau in which he mentioned of freedom and liberty (freedom of speech and expression) has been applied, the Rousseau's theory of freedom of speech and expression was said to be natural right of every citizen by the Supreme court which is also been conferred upon under Article 19 of Indian constitution, wherein the freedom of speech and expression is said to be among the basic right of a human being to live in a society with dignity. To guarantee and promote fundamental rights and freedoms of the citizens and the respect for the principles of the democratic state based on rule of law.

The popular Habeas Corpus case ADM Jabalpur V/S Shivakant Shukla is one of the important cases when it comes to rule of law. In this case the question was whether there was any rule of law in India apart from article 21. This was in context of suspension of enforcement of Art. 14, 21 and 22 during the proclamation of emergency. The answer is even in absence of article 21 of constitution the right to life and liberty of a person could not be deprived without authority of law. Without such sanity of life and liberty the distinction between lawless society and one governed by laws would cease to have meaning.

For eg:- In India the theory was applied in the old age wherein the poor farmers took shelter for protection under the Jamindars to escape from being killed or exploited by others. The Jamindars as time passed became very powerful and they became the absolute power authority as the absolute rights of the farmers are being vested in them. Jaminders had started to exploit the poor farmers and took away land and amenities leaving nothing to them but to get more exploited in hands of those Jaminders. Thus then the revolution against the Jaminders had started wherein all the poor farmers being exhausted of all the atrocities by those Jaminders came along. They tried to take back their rights which were endowed to the Jaminders for their protection. Thus it is evident from the history that giving absolute power to an authority results in being exploited by that authority. So we can say that Thomas Hobbes is not justified in saying of endowing absolute power to an authority which may lead to abuse of power by that authority.

Indian constitution provides for emergency provisions wherein Fundamental rights are being curtailed. Fundamental rights being the natural rights or the most essential rights for human existence like freedom of speech and expression and many other rights being curtailed. Thus sometimes the theory of natural law is being denied as for the wellbeing of the society. Other than the above rights even right to life is being the most essential right as natural law is infringed by way of Special power for armed forces(Special power)Act 1958. Which depicts that natural law theories are not excusive but some act should be done against it for the welfare of the society.

The natural law theory saying „ought to be“ may not always confirm to the needs of the society. For instance it is natural to beget children as it is natural but there is some restrictions in those natural right as to the number of children in conformity with Indian laws such as family planning measures etc. So the natural right may not be superior always.

The concept of morality in natural law theory is of great importance but this theory is not applicable as such it may happen in Indian laws as according to Muslim law marring 3 wife is moral but in Indian law it is immoral. Thus the theory of morality as said in natural law theory is not applicable in all times or in all aspects.

SELF-TEST QUESTIONS

S.N	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Which Article guarantee Right to Life and Liberty	Article 14	Article 15	Article 19	Article 21
2	Which Article's are called the golden triangle of the constitution has drawn inspiration from natural law.	Articles 14,15,16	Articles 14,16,19	Articles 14,18,19	Articles 14,19,21
3	In which SC said law established by the state should be just, fair and reasonable.	Air India v. Nargis Mirza	Maneka Gandhi v Union of India	A.D.M. Jabalpur v Shivakant Shukla	KeshwaNand Bharti v. UOI
4	Which case famous as Habeas Corpus case	Air India v. Nargis Mirza	Maneka Gandhi v Union of India	A.D.M. Jabalpur v Shivakant Shukla	KeshwaNand Bharti v. UOI
5	In which case the Rousseau's theory of freedom of speech and expression was said	Air India v. Nargis	Maneka Gandhi v	A.D.M. Jabalpur v	KeshwaNand Bharti

	to be natural right of every citizen by the Supreme court which is also been conferred upon under Article 19 of Indian constitution,	Mirza	Union of India	Shivakant Shukla	v. UOI
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Answers: 1-(d),2-(d), 3-(b),4-(c),5-(b)