

## NATURAL LAW AND THE UNIVERSAL SYSTEM OF JUSTICE

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### ABSTRACT

*Basically natural law consists of rules which are totally on basis of man and also based upon what is right or what is wrong. Basically natural law has its own universal application and the natural rights also here in every human being in all ages and in all times. It asserts that certain rights are inherent by virtue of human nature, endowed by nature- traditionally by god or transcendent source and that these can be understood universally through human reason. It is a type of moral theory and which is totally depends upon the human behavior. This does refer to jus natural but does not refer to law of nature.*

*There are theories of different which are being given by so many numbers of philosophers. These theories are being explained in the research paper. Natural law has two division these are:- According to natural law moral theory, the moral standards that govern human behavior are, in some sense, objectively derived from the nature of human beings and the nature of the world. While being logically independent of natural law legal theory, the two theories intersect. However, the majority of the article will focus on natural law legal theory<sup>1</sup>.*

*According to natural law legal theory, the authority of legal standards necessarily derives, at least in part, from considerations having to do with the moral merit of those standards. There are a number of different kinds of natural law legal theories, differing from each other with respect to the role those morality plays in determining the authority of legal norms.<sup>2</sup>*

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<sup>1</sup> <http://www.iep.utm.edu/natlaw/> Last assessed at 30<sup>th</sup> November 11.00 A.M.

<sup>2</sup> *Ibid*

## INTRODUCTION

### *Natural Law and the Universal System of Justice:*

Jurisprudence does not have any definite or uniform definitions. Because every jurist has its own notion of subject- matter and it is interpretation of law which every lawyer has to know. Law in different countries is therein differently because of the social and political conditions arise differently. The word “jurisprudence” means “**case law**”<sup>3</sup>. We can take it case law because the law which is developing day-by-day through judges is interpreted through case law. That’s why it is called judicial interpretation also. The study was started with Romans and after it is being spread over whole world due to acquisition of British Empire in India the modernization and augmentation of different empire in different countries. Basically the jurisprudence is Jurisprudentia which either knowledge of law or skill in law<sup>4</sup>.

Then after when the Jurisprudence had been used by early English lawyers in 19<sup>th</sup> century in England<sup>5</sup>. Basically it has been developed with passage of time and also by ever changing society.

First the law has been from the civil law system because at that in England there was no uniform tort and now uniform punishment.<sup>6</sup>It was all depending upon the law of nature and then the Bentham has developed two of theories: one is expository and the other one is censorial Jurisprudence<sup>7</sup>. And then the Austin has taken up expository approach that is law as it is<sup>8</sup>.

The sources of law are being legal customs, divine rights, natural and legal rights, human rights, civil rights and common law. Historical or judicial precedent and can modify or even create a source of law. With the passage of time it turn over to legislation, charter human and regulation which are codified and enforced by the legal system. The origin is also from the analytical positivist school of thought and historical school too<sup>9</sup>.

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<sup>3</sup> “Jurisprudence and Legal Theory”, V.D.Mahajan, Fifth Edition,2016

<sup>4</sup> *Ibid*

<sup>5</sup> <https://www.jstar.org/tc/accept?origin=/stable/pdf/1323454.pdf>. last assessed at 1th December 2018.

<sup>6</sup> *Ibid*

<sup>7</sup> “Jurisprudence and Legal Theory”, V.D.Mahajan, Fifth Edition,2016

<sup>8</sup> *Ibid*

<sup>9</sup> <http://www.desikanoon.co.in/2012/08/jurisprudence-notes-sources-of-law.html?m=1> last assessed at 1<sup>th</sup> December 2018

## **SCHOOLS OF JURISPRUDENCE**

### ***Analytical Legal positivism school of Jurisprudence:***

The proper bounds of law is to be maintained and they have just explained the natural law with vague terms and it was just explained law is a social need and they has to be changed with an ever changing society and it has emphasis on analysis of positive law and they came to be called positivists and analysts. Austin was the founder of this approach and he owned Bentham on many points his prepositions.<sup>10</sup>

Positivism as per Prof. dias is being explained that the positivist movement started at the ginning of the 19<sup>th</sup> century.<sup>11</sup> It represented priori method of thinking which turned away from the realities of actual law in order to discover in nature or reason the principles of universal validity. Actual laws were explained or condemned according to those principles. Positivist does not deny judges to make law. That this school is all can call it as sources.<sup>12</sup> It does not ignore the historical analysis.

### ***Analytical School:***

This school is known by different name. It is positive school because the variables of this school neither are concerned neither with past nor with the future but with law as it exists i.e as it is (positum)<sup>13</sup>. This was mainly dominated in England and also it was propounded by John Austin. This is named the analytical Jurisprudence because of the explanation of legal concepts and also to connect it with basic concepts. The term positivism was first used in Auguste comte, French thinker.

The purpose of this school is to analyze the legal concepts by ignoring historical origin or development and also **Salmond** has stated this that is compare civil law with other forms of law. The main task of the analytical School is to maintain systematic law.

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<sup>10</sup> “Jurisprudence and Legal Theory”, V.D.Mahajan, Fifth Edition,2016

<sup>11</sup> Ibid

<sup>12</sup> <http://www.desikanoon.co.in/2012/08/jurisprudence-notes-sources-of-law.html?m=1>

<sup>13</sup> “Jurisprudence and Legal Theory”, V.D.Mahajan, Fifth Edition,2016

In India though the constitution of India is supreme but due to division of powers, entities, it can that powers which cannot be achieved even by their cooperation. These austinian is not to be found in India. Because in India sovereign there is not unlimited, illimitable and indivisible. It could not be otherwise as India has a federal constitution.<sup>14</sup>

***Historical School of Jurisprudence:***

This school was found its origin in Germany at the beginning. Thought there is no founder of this theory but there are two followers they are: Fedrick Von savigny was famous and Sir Henry Maine was another supporter.<sup>15</sup>

It regards the people themselves as law makers and law for the society. Its sanction is not coercive authority of the state but a general sense. People obey law as a matter of habit. In this the enforcement of law is totally depends upon the people otherwise it would not be accepted.<sup>16</sup>

Whenever it is being passed it should be accepted or it should be obeyed gladly by social body. Notwithstanding the absence of any command of the sovereign. The customs observed and followed became the social habit and a pattern of social behavior. Change of human nature is not be able to frequently so it change the nature of law. Thus law is not self-created and self-executed, it not the creation of law maker but the result of slow development of society through centuries.<sup>17</sup>

No legislature authority can abrogate customary laws. This theory is against the prirori notion of natural law theories.<sup>18</sup> Prof. dias points out that the historical school arose more or less contemporaneously with the analytical school at the beginning of the 19<sup>th</sup> century against the natural law theories<sup>19</sup>.

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<sup>14</sup> *Ibid*

<sup>15</sup> <http://www.shareyouressays.com/essays/6-modern-schools-of-law-analytical-historical-philosophical-comparative-sociological-and-marxian-concept-of-law/88611> Last assessed at 1st December 2018

<sup>16</sup> *Supra* note 1

<sup>17</sup> *Ibid*

<sup>18</sup> "Jurisprudence and Legal Theory", V.D.Mahajan, Fifth Edition,2016, page 484

<sup>19</sup> *Ibid*

Therefore it did not take history, traditions, customs, habits and religious as true basis of law.

***Philosophical School of Jurisprudence:***

According to Salmond Philosophical Jurisprudence is the common ground of moral and legal philosophy of ethics and jurisprudence.<sup>20</sup> In this the Kant has shown law is the free activity in moving of any individual will is moulded by ethics in the path of virtue. So that it may freely identify itself with general will. Law works in opposite direction that's why it is general will. Hence they both coincide and overlap with each other with highest stages of development<sup>21</sup>.

This school is totally based upon the certain ideal which law is meant to achieve. This jurist nor the arbitrary command of a ruler nor the creation of historical necessity. To him law is product of human reason and its purpose it's to elevate human personality. It is interestingly development of the idea of justice as an ethical and moral phenomenon and its manifestation in the principles applied by courts. It is totally depends upon human personality constituting the criterion of rights and wrong and also has a goal of making man virtuous and perfect. Its also regards ethics and jurisprudence, And has a object to secure liberty of individual fo the human perfection and human personality.<sup>22</sup>

Accoding to salmond in his *Book of Ethical Jurisprudence* which may concern the concept of law, the relation between law and justice and for maintaining the justice law has made and legal concept are so fundamentals that principles which are so fundamental in their nature as to be the subject matter of analytical Jurisprudence.<sup>23</sup>

It is no legal philosophy but to the science of legislation. It is more ethical than law. It is more ethical than law. Lord Bryce said it is metaphysics with any concrete system at all. Hugo Grotius in this book the *law of war and peace* he has elaborated that natural law is the rational that natural law is the social nature, has it quality of moral baseness and moral necessity. The view of Grotius is that the agreement of mankind concerning certain rules of conduct is an indication of that those rules, originated in right reason. Such utterances would only with the

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<sup>20</sup> Supra note 1

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

philosophers, the pronounces of historians and man of letter and the teaching of the Roman law. He builds up a system of natural law that should command universal respect by its own inherent moral worth.<sup>24</sup>

Thus the precision of this school is that it is not concern about the actual law of the past and present is but to develop the idea of justice as an ethical principle and ideal system of justice.<sup>25</sup>

18<sup>th</sup> century but their faith in law of nature which could be discovered by human reason. In the 19<sup>th</sup> century the engaged themselves in the metaphysical discussions of existing law and in attempts to create a perfect system of law in codes and legislation. In the 20<sup>th</sup> century to social interest and ideals.<sup>26</sup>

### ***Sociological School of Jurisprudence:***

The relation between the individual, society, and state has been changing and various theories regarding than have been propounded from time to time. In the beginning, society was governed by customs which had social sanction. Then the supremacy of priests. Then it dominated by all institutions. Then it set out by philosophers and thinkers then there were industrial revolutions with political changes and then because of that balance of welfare of society and individual the tendency towards socialization. Thus this view has been evolved called sociological approach the first decade of the 20<sup>th</sup> century.<sup>27</sup>

Basically the sociological school is totally against the orthodox concept of law and it is devoted not only to the ethical content and aim of law but to actual circumstances which condition their scope and operation. This is with the view of law with morphology of society. Law is the comprehensive prepositions applicable by accurate interpretations, to all claims, relationships and conflicts of interests.<sup>28</sup>

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<sup>24</sup> *Supra* note 2

<sup>25</sup> <http://www.shareyouressays.com/essays/6-modern-schools-of-law-analytical-historical-philosophical-comparative-sociological-and-marxian-concept-of-law/88611> Lat assessed at 1st December 2018

<sup>26</sup> *Supra* note 1

<sup>27</sup> "Jurisprudence and Legal Theory", V.D.Mahajan, Fifth Edition,2016,

<sup>28</sup> *Ibid*

This elaborates law is a social function an expression of human society with the external bonds of its individual members. It is towards the social justice and must see certain ends and should be furnish it with rationale. It is change in political shift from the doctrine of laissez faire. Montesquie (1689-1755) was the first French philosopher who recognize also it explained the law should be concurrent to soil, climate of each country also give importance to history to know the structure of society and also drew attention to the part played by economic factors. Herbert Spencer (1820-1903) in this theory of the origin of law. According to him law arises from four sources inherited usages with<sup>29</sup>. He said evaluation is the key to emerge. Though when the laws were evolved.

***Natural law school of jurisprudence:***

There is no unanimity about the definition and exact meaning of Natural Law. In jurisprudence the term ‘Natural Law’ means those rules and principles which are supposed to have originated from some supreme source other than any political or worldly authority. It is basically a priori method different from empirical method, the forms, accepts things or conclusions in relation to a subject as they are without any need or enquiry or observation while empirical or a posteriori approach tries to find out the causes and reason in relation to the subject matter. It symbolizes Physical Law of Nature based on moral ideals which has universal applicability at all places and terms. It has often been used either to defend a change or to maintain status quo according to needs and requirement of the time. For example, **Locke used Natural Law as an instrument of change but Hobbes used it to maintain status quo in the society.**<sup>30</sup>

The concepts of ‘Rule of Law’ in England and India and ‘due process’ in USA are essentially based on Natural Law. Natural Law is eternal and unalterable, as having existed from the commencement of the world, uncreated and immutable. Natural Law is not made by man; it is only discovered by him. Natural Law is not enforced by any external agency. **Natural Law is not promulgated by legislation; it is an outcome of preaching of philosophers, prophets, saints etc. and thus in a sense, it is a higher form of law**<sup>31</sup>.

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<sup>29</sup> “Jurisprudence and Legal Theory”, V.D.Mahajan, Fifth Edition,2016, pg.526

<sup>30</sup> <http://www.legalservicesindia.com/article/article/natural-law-519-1.html> last assessed at 2nd December 2018

<sup>31</sup> *Ibid*



Natural Law has no formal written Code. Also there is neither precise penalty for its violation nor any specific reward for abiding by its rules. Natural Law has an eternal lasting value which is immutable. Natural Law is also termed as Divine Law, Law of Nature, Law of God, etc. Divine Law means the command of God imposed upon men. Natural Law is also the Law of Reason, as being established by that reason by which the world is governed, and also as being addressed to and perceived by the rational of nature of man.<sup>32</sup>

It is likewise the Universal or Common Law as being of all inclusive legitimacy, the same in all spots and official on all people groups.<sup>33</sup>

## CRITICAL ANALYSIS

- **Analytical law school** is very stringent and it has a point of law to be unchanged as per passage of time. But it needs to be flexible because of ever- changing society. But as it is stringent then law would be supreme but it can only be in federal country not in the quasi-federal country like India.
- **Sociological school** is depends upon the society and the people of society. Though it is against the orthodox concept of law. But somewhere it is lacking behind the intention of the people of their own because of so many religious, perceptions may be there would be conflicts for the same.
- **Philosophical school** is that which is totally depends upon the philosophers and noble personalities would be somewhere become complex and had so many views and perceptions differently in different situations.
- **Realism** is that this indicates about the judgment made by courts would be applicable. Though the judiciary is separate power. But if this would there then what is need of other authorities like president, prime minister. Thus this theory is also lacking behind somewhere.

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<sup>32</sup>*Supra* note 1

<sup>33</sup> *Ibid*



- **Historical** school is totally based upon historical legal concepts. But it is very different to adjust that past concept in 21<sup>st</sup> century. Though it can take its reference but with modifications.
- **Natural law school** is basis of divine origin but it has been evolved as per passage of time. It has principle of virtue and now it has been changed to human rights and has different declaration, UN, convention throughout the world. Because human rights are the rights which are given by virtue of birth.

Previously the natural law jurisprudence can also be similar to the retributive theory of criminal jurisprudence.

## **UNIVERSAL SYSTEM OF JUSTICE**

These theories are somewhere applicable or applied in some or the other part of law in 21<sup>st</sup> century.

- Historical can be seen in customary law which is there for the citizens like Hindu law, Muslim law etc. to every sect of religion.
  - Analytical can be in constitution is supreme which cannot be changed but it can be amended.
  - Sociological in the customs of society or we can say the fundamental rights.
  - Philosophical is somewhere on their holy books and all the perceptions of priests and counselor because they had their own fundamental rights.
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- Realism in that judicial interpretation is must for the advanced society and to deal with different situation by being towards society.
  - **Natural law theory** is universally applicable theory because of the human right which is provided by convention to the people to live with liberty and with freedom. Though it also has some previous concept to some legislation. Like **self defense** in law of crimes can be a part of natural law. It is most popular argument because somewhere it indicates right to defend himself. Somewhere the self defense is part of the natural law theory because all the tradition, customs support this one and the legal philosophers

also has different perceptions which supports it. It has described that human nature is natural and if the individual is having some of the emotions attached to that person then may be it can happen. But the reasonable defense can be supported but in natural law it has not been explained the defense should be reasonable this has been made by the legislations. That's why this was the drawback of that theory in which the defense was not explained reasonable or unreasonable. This is on the human rights and personal self defense in intentional level and the natural law also claims universal and permanent validity independent of any human action providing it with authority. Further there are some theories which are being supported by the natural law in case of self defense they are:

- Aristotle already distinguished a “particular law which each community lays down and applies to its own members from a universal law being the law of nature which is grounded in a natural justice and injustice that is binding on all men even on those who have association or covenant with each other. Similarly Cicero took the view that there is a true law which indicated to be right reason comfortable to nature, universal, unchangeable, eternal<sup>34</sup>.
- Hugo Grotius considered natural law to be rooted in human nature famously declaring that it would exist if there is no god, that he takes no care of human affairs.<sup>35</sup>

Thus International law scholars adhering to the natural law tradition have variably considered natural law to be rooted in nature, reason, inherently valid concepts of justice, or divine command.

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<sup>34</sup><https://books.google.co.in/books?id=K214DQAAQBAJ&pg=PA28&lpg=PA28&dq=can+we+take+self+defence+as+natural+law+concerns&source=bl&ots=PQgobnUeaJ&sig=V9FTBCW1fbFqlb9QHEoD4V6GnwY&hl=en&sa=X&ved=0ahUKEwil3MmN0cbYAhWKQ48KHEx5CEgQ6AEITjAE#v=onepage&q=can%20we%20take%20self%20defence%20as%20natural%20law%20concerns&f=false> last assessed at 3<sup>rd</sup> December 2018

<sup>35</sup> *Supra* note 1

## **CONCLUSION**

The conclusion of this research the researcher concludes that the all schools are being made for the interpretation of law and its sign is because somewhere in some or the other thing we have some concepts as fingerprints in our society as a law. Though the natural is being the most important blue print for our human rights, fundamental rights but it has some drawbacks that why it has been evolved. And it has been evolved up the human rights, conventions in the world. Because somewhere this theory supports homosapeans and thus it has given these rights by virtue of birth.

At last this has been proved that these theories, schools are the interpretation of jurisprudence and jurisprudence is the interpretation of law.

