

NATURAL RIGHTS- A CUMBRANCE TO INDIAN JURISPRUDENCE

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ABSTRACT

India was a country which was disadvantaged in all aspects when it got independence due to despotic acts of its rulers. The framers of the Constitution were wary of the fact that such tyranny should never happen. To protect the liberties and freedom of the citizens against any powers including the state, the fundamental rights are constituted under Part- III of the constitution.

From the beginning, the subject of natural rights was always in picture when a query involves fundamental rights. Natural rights are the primaevial concept of rights which a human is said to possess from his birth. Such natural rights have been resuscitated now in *Justice K.S. Puttaswamy v Union of India*. The judgement is important for making the right to privacy as an inalienable right by holding them as natural rights. By its precedence, right to intimacy was also held as a natural right. This will further result in validation and invalidation of many rights based on natural rights. Natural rights come with archaic features which are impractical to our Indian framework.

The research seeks to analyse the correct position of natural rights in Indian jurisprudence. This is done by discussing the constraints inherent in the natural rights and deriving an appropriate replacement for it. This is primarily done by analysing various case laws. The views held are validated comprehensively.

INTRODUCTION

The court in *Navtej Singh Johar v Union of India*ⁱ, held section 377 of IPC invalid by making the right to intimacy as natural right on the footsteps *Justice K.S. Puttaswamy v Union of India*ⁱⁱ (hereinafter referred to as “Puttaswamy case”) where Right to Privacy was declared as a natural right. This can be seen as the starting step of many other rights under the facet of article 21 to come under the natural rights domain. This revival of natural rights brings only uncertainty and confusion with the already existing fundamental rights. By this, I don't mean that making the right to privacy and intimacy inalienable is wrong. But the use of natural rights for this purpose is unnecessary.

So, I'll substantiate here why natural rights are an obsolete concept which makes it incompetent for safeguarding our rights. I'll do this by stating various impediments in natural rights theory from its backgrounds. Then I'll discuss the best alternative for natural rights by analysing various judicial pronouncements.

DOWNSIDES OF NATURAL RIGHTS THEORY

- ❖ Natural rights are considered as an intrinsic right of human existence which is not only inalienable but also absolute. Scholars like Sir William Blackstone finds natural rights analogous to absolute rights which exist before the state.ⁱⁱⁱ He argues that it is the principal duty of the law and state to ensure that such rights remain absolute always. Even John Locke finds that all people possess natural rights which are independent of the government and the only job government has to do with it is to protect it.^{iv} But in India, the fundamental rights even right to life cannot be made absolute since they are subject to reasonable restrictions. Making them absolute will be a menace to public order and the socio-economic obligations in the Constitution. Right to life and personal liberty under article 21 is subject to the reasonable procedure established by law.
- ❖ Another aspect which makes the rights less absolute is the waiver of fundamental rights. The court through standard judgements like *Behram Kurshad Pesikaka v State of Bombay*^v and *Basheshar Nath v The Commissioner of Income Tax*^{vi}, held that doctrine of waiver cannot be applied to fundamental rights. But in the Puttaswamy case,

despite recognising the right as a natural right, the concept of “decisional autonomy” has been specified by which one can waive off his right to privacy by his own will. Likewise, Senior Advocates come with logical explanations why these old propositions invalidating waiver of fundamental rights has to be overruled.^{vii}

An ideal explanation of the doctrine of waiver can be,

"Waiver proceeds on the basis that a man not under legal disability is the best judge of his interest and if with knowledge of a right or privilege conferred on him by statute, contract or otherwise, for his benefit, he intentionally gives up the right or privilege, or chooses not to exercise the right or privilege, or chooses not to exercise the right or privilege to its full extent, he has a right to do so".^{viii}

By this interpretation, the concept can be applied selectively to issues where the right is given up unintentionally. Such a thought is given because Justice Subba Rao in *Basheshar Nath case*^{ix} has mentioned poverty and backwardness as the reason to hold that fundamental right cannot be waived. This still makes fundamental rights including the right to life non-absolute which is against the principle of natural rights.

- ❖ Many sources of natural rights thesis have the presence of right to property along with the right to life and personal liberty. Right to property was once a fundamental right under Article 19(f) which was abrogated by 44th constitutional amendment. Now it is only a constitutional right under Article 300A. The “fundamental right” status is snatched from right to property since it was a hindrance in bringing social and economic reforms. By which many land reforms and acquisition laws were enacted by the government without any thwart from the judiciary. But still, the public purpose for enacting the law and compensation has to be specified for any acquisition as per article 300A.

In terms of natural rights, scholars like John Locke and the Declaration of the Rights of Man, 1789 state right to property as a natural and imprescriptible right of the man. Especially John Locke in his Second Treatise of Government wrote that the supreme power cannot take from any man any part of his property without his consent and the preservation of property as the end of the government.^x The natural rights thesis accepted in Puttaswamy case may compel the inclusion of the right to property within the ambit of natural rights.

Such a similar position can be seen in *State of West Bengal v Subodh Gopal Bose*^{xi} where the court recognised natural right and found that it concretises property rights under article 19(1)(f). This shows that the right to property can be an inalienable right which is now only a constitutional right. This may create ambiguity as it is only a constitutional right, which has a status below other ordinary fundamental right.

- ❖ Declaring the right to life and personal liberty as a natural right, impulsively makes other fundamental rights less important. In Part- III of the Constitution apart from article 21, other rights are also important. Even though other important rights in Article 14, 15, 19, 21 and 32 are indeed a part of the basic structure, special status of article 21 as natural right belittles other rights. The immutability of article 21 is overemphasised by this. Due to which other fundamental rights may take a hit in critical times like emergency. If panoply of rights under article 21 like the right to privacy, right to intimacy, etc are made important, then other fundamental rights also deserves to be made substantial as well.

Such a similar argument can be seen in Ray J's opinion in *Kesavananda Bharati v State of Kerala*^{xii} (hereinafter referred to as "Kesavanada Bharathi case") while rejection natural rights. It was opined that "A good many of them are not natural rights at all. Abolition of untouchability (Article 17), abolition of titles (Article 18); protection against double jeopardy (Article 20(2)); protection of children against employment in factories (Article 24); freedom as to attendance at religious instruction or religious worship in certain educational institutions (Article 28) are not natural rights."

Therefore, all fundamental rights require importance. But this natural rights theory gives exclusivity to right to life.

Apart from the above reasons, many scholars like Aquinas with a significant vocabulary of natural law and natural rights are key representatives of Christian characterization of politics.^{xiii} By which natural rights has intrinsic conservative Christian philosophy which shows hostility towards libertarian values.^{xiv}

IDEAL RIGHTS FOR INDIAN JURISPRUDENCE

Juxtaposing the natural rights and fundamental rights show an overt distinction in the essence of both the rights. Judicial interpretation of natural rights shows how it has evolved. The Supreme Court, in the beginning, was more affirmative in cases like *Ujjambai v State of Uttar Pradesh*^{xv} and *I.C. Golaknath v State of Punjab*^{xvi}, that fundamental rights are traditionally natural rights which are inalienable for human development. By this, in Golaknath case^{xvii} the fundamental rights were held to be unamendable by the Parliament. Whereas in cases like *Basheshar Nath v The Commissioner of Income Tax*^{xviii}, it was opined that the doctrine of natural right by John Locke or American Declaration of Independence, 1776 was not the basis on which fundamental rights were enacted. Eventually, in Kesavanada Bharathi case, the decision in *Golaknath case*^{xix} was overruled but not natural rights theory. Chief Justice Sikri in the majority judgement held that he is unable to hold that some rights are not natural or inalienable and regarding fundamental rights, he allowed reasonable abridgements in the public interest. Justice Khanna in his opinion held that natural rights cannot be enforced in a court of law without any sanction from the constitution or any law. By which fundamental rights cannot be made unamendable by describing them as natural rights. Khanna J found that fundamental rights are amendable but the essence or core of that fundamental right should not be taken away. The same Khanna J in his famous dissent in *ADM Jabalpur v Shivkant Shukla*^{xx}, referred to absolute rights of personal security, personal liberty and private property by Blackstone and the inalienable rights from the American Declaration of Independence, 1776. These are nothing but natural rights. Though he held that Article 21 cannot be considered to be the sole repository of the right to life and personal liberty, natural rights were mentioned not even once in his entire dissent. He rather emphasised rule of law against the arbitrariness of the state. The procedure established and authority of law in depriving article 21 was questioned. The majority opinion of Puttaswamy case while overruling of *ADM Jabalpur v Shivkant Shukla*^{xxi}, held that right to life and personal liberty as an inalienable right under natural law.

The revival of natural rights in Puttaswamy case is not at all required given the expansion of basic structure doctrine. The fundamental rights have eventually found its place in the basic *I.R. Coelho v. Union of India*^{xxii} structure doctrine emanated from Keshvanada Bharathi case. First of all, in *Minerva Mills Ltd. v Union of India*^{xxiii} the court held the golden triangle of article 14, 19, 21 as a part of the basic structure. Further in *Fertilizer Corporation Kamgar*

Union v Union of India^{xxiv}, holds article 32 as an integral part of the basic structure of the constitution. Apart from this in, it is noted "*that fundamental rights are interconnected and some of them form part of the basic structure as reflected in article 15, article 21 read with article 14, article 14 read with Article 16(4) (4A) (4B) etc*". The case also stated that inclusion of fundamental rights in basic structure does not make them unamendable as laws in question are scrutinised by "essence of right" test which.

By these developments in the interpretation of fundamental rights, the need for natural rights not at all arise. We can find that Justice Khanna was circumventing the inclusion of natural rights in any situation. He felt that there was no incorporation of natural rights and that does not mean he rejected it altogether. By this, it can be understood that a separate right is not required to protect what was already incorporated in Part- III of the constitution. Fundamental rights are sufficient enough to protect the inalienable rights of people.

It can be argued that natural rights are induced to make important rights inalienable. But to make rights under our rights immutable, the fundamental rights need not be superseded by natural rights. Instead, the fundamental rights have to be treated as an evolution of natural rights theory. Such a stand can be taken by analysing the Constituent Assembly debates in the drafting of the fundamental rights. Where parliamentarian and freedom fighter Mahvir Thyagi argued that state comes into being not because it has any inherent right of its own, but because the individual, who has inherent rights of life and liberty, foregoes a part of his rights and deposits it with the State, which is nothing but the ideology of John Locke regarding natural rights.^{xxv} So the fundamental rights can be assumed as a customised form of natural rights which is more suitable to the Indian context.

CONCLUSION

In the Puttaswamy case, Article 21 may have been classified as natural rights also due to what happened in Habeas Corpus case where a literal interpretation of the constitution has led to the denial of the right to life. To prevent any such situations in future, right to life has been made immutable in the name of natural rights. But such natural right cannot be ideal for Indian context due to its non-specific and conservative nature. The judges themselves have been

referring to ancient sources to establish the right to life as a natural and inalienable right. Natural rights come with features like absoluteness of rights and importance of the right to property which are contradictory to our established principles in our Constitution. The judgements declaring the right to privacy and intimacy as a natural right, make sure that they are not absolute which is nothing but an internal inconsistency. The current position of fundamental rights in basic structure doctrine is itself a virtuous choice. This is because India is a country with social and economic imbalances. Fundamental rights all these years have been tailored in such a way to facilitate such public interest.

Therefore, the acknowledgement of natural rights theory will only amount to complications which have to be faced by the court in future. Holding the right to life and personal liberty as an inalienable right under Article 21 would have further strengthened the fundamental rights which is a practical and safe choice.

ENDNOTES

ⁱ Navtej Singh Johar v Union of India WP (Crl.) 76/2016

ⁱⁱ Justice K.S. Puttaswamy v Union of India WP (C) 494/2012

ⁱⁱⁱ Blackstone, Commentaries on the Law of England

^{iv} Davind Boucher and Paul Kelly, *Political Thinkers* (2nd edn, Oxford 2009) 209

^v Behram Kurshad Pesikaka v State of Bombay AIR 1955 SC 123

^{vi} Basheshar Nath v The Commissioner of Income Tax AIR 1959 SC 149

^{vii} Arvind Dattar, 'Can a Fundamental Right be waived? Legal Notes by Arvind Datar' (Bar and bench, 11 September 2017) <<https://www.barandbench.com/columns/can-fundamental-right-waived-arvind-datar>> accessed 14 October 2020

^{viii} Durga Das Basu, *Commentary on the Constitution of India*, (8th edn, Wadhwa Nagpur 2007) 805

^{ix} (n6)

^x John Locke, *Second Treatise of Government*

^{xi} State of West Bengal v Subodh Gopal Bose 1954 AIR 92

^{xii} Kesavananda Bharati v State of Kerala AIR 1973 SC 1461

^{xiii} (n4)11

^{xiv} Tarunabh Khaithan, Guest Post: Against Natural Rights—Why the Supreme Court should NOT declare the right to intimacy as a natural right' (Indian Constitutional Law and Philosophy, 17 July 2018) <<https://indconlawphil.wordpress.com/2018/07/17/guest-post-against-natural-rights-why-the-supreme-court-should-not-declare-the-right-to-intimacy-as-a-natural-right/>> accessed 14 October 2018

^{xv} Ujjambai v State of Uttar Pradesh 1962 AIR 1621

^{xvi} I.C. Golaknath v State of Punjab 1967 AIR 1643

^{xvii} Ibid

^{xviii} (n6)

^{xix} (n16)

^{xx} ADM Jabalpur v Shivkant Shukla 1976 AIR 1207

^{xxi} Ibid

^{xxii} I.R. Coelho v. Union of India AIR 2007 SC 861

^{xxiii} Minerva Mills Ltd. v Union of India 1980 AIR 1789

^{xxiv} Fertilizer Corporation Kamgar Union v Union of India 1981 AIR 344

^{xxv} Prarthana Bhatia and Raja V.K. Dhandamundi 'Fundamental Rights as Natural Rights: A View from The Indian Perspective' (ISSN 2348-8212, Volume 4 Issue 4) <http://ijlljs.in/wp-content/uploads/2017/12/Article_Submission_Volume_4_Issue_4_IJLLJS.pdf> accessed 14 October 2020.

