

A STUDY OF ONE OF THE MOST FASCINATING AND ANCIENT THEORIES OF JURISPRUDENCE: THE NATURAL LAW THEORY BY THOMAS AQUINAS

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ABSTRACT

There is no exact meaning of Natural Law. In jurisprudence, Natural Law, the law or the rule that imply in the nature which regulates the activities of nature in the organic or inorganic state. Natural laws are known as high law or laws of nature which have been constantly dominated on the full basis of politics, law, religion and social philosophy. Natural law is referred to as the sets of unwritten laws that include the nature of man or reasoning or the principles derived from God. It is an understanding of the moral law that is either given with nature and is known through reason or given independently of nature with moral reason. Natural law is universal and common to all humanity. It goes beyond differences in various formulations of culture, religion, and moral law. It is often understood as the basic source of norms whereby the moral norms that are formulated positively should be achieved when morally appropriate. Natural law is the oldest theories among all the ores, called as God made Laws, emanated from supreme source. These were evaluated by many jurist and philosophers like St. Thomas Aquinas. Thomas Hobbes, John Locke etc. These philosophers used natural law as the framework for criticizing and structuring the law in human existence.

INTRODUCTION

Law like language and culture, is shaped by social, associative, economic and political contexts. Because of its vividness and variable content, law remains as a difficult concept to define, yet there is no end to an unwavering effort to provide the most appropriate and acceptable definition of law. The search for finding a relevant way of defining law has been ongoing for decades altogether however the large area which it covers cannot be explained precisely by any single definition. In search of a comprehensive answer to questions relating to the meaning, source, subject, aspect, and force of law, many jurists have, since ancient times, invested their energy and expertise in outlining various dimensions of law; This has given rise to many theories and schools of thought. Such theories can be classified into (i) natural (ii) analytical, (iii) historical, (iv) philosophical (v) sociological and (vi) American realism. This paper mainly focuses on the concept of Natural law that was coined by St. Thomas Aquinas in the medieval era and states how this ancient theory is still relevant in the Indian society. There is no exact meaning of Natural Law. In jurisprudence Natural Law, the law or the rule that imply in the nature which regulates the activities of nature in the organic or inorganic state. Natural laws are known as high law or laws of nature which have been constantly dominated on the full basis of politics, law, religion and social philosophy. Natural law is the oldest theories among all the ones, called as God made Laws, emanated from supreme source. These were evaluated by many jurist and philosophers like St. Thomas Aquinas. Thomas Hobbes, John Locke etc. These philosophers used natural law as the framework for criticizing and structuring the law in human existence. 'Natural law' is a time-honored approach for identifying the 'method' through which legal principles can be deduced and is used to determine the 'content' of law so that the subjective conditions of human existence can be completed and the ongoing contemporary problems in society can be dealt with adequately.

According to Thomas Aquinas theory of natural law is derived from the Supreme being. He quotes natural theory as 'Law is nothing but an ordinance of reason for the common good made by Him who has the care of the community.

Natural law is known as higher law or law of nature, which has been consistently representing the entire basis of politics, law, religion and social philosophy. Natural laws are said to be those sets of unwritten laws that include the principles described as derived from God. According to Aquinas, everything in the terrestrial world is created by God and endowed with a certain nature

that defines that each has its essence. As Aquinas argues, God's active role in creating and sustaining the various races involved in creation can be called a law. After the law was defined as “*an ordinance for the general good, created, and proclaimed by someone caring for the community*’ Aquinas states that the entire universe is governed by the Supreme lawgiver.”

THE EVOLUTION AND EXPLANATION OF NATURAL LAW THEORY

Natural law theory has a history reaching back centuries ago and the vigour with which it flourishes notwithstanding periodic eclipse, especially in the 19th century, is indicative of its vitality. 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. 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. Sophist calls it as an order of things embodies reason. There is no one theory and many versions of it has evolved within a considerable span of time.

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 wanting. The entire history of natural law reveals an attempt by the jurists to provide the concept and contents of natural law in human existence. Natural law theory, however, should not be dismissed simply on account of its variety. On the contrary, this fact is a clue to understanding the vivid approaches that this theory has to offer. No other fundamental or legal political theory is so bejeweled with stars as that of natural law, which scintillates with contribution from all ages. Old ideas have been abandoned or refurbished and the new ones put forward, while forgotten lessons have blossomed with new significance.

Development of Natural Law Theory:-

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Natural laws are known as high law or laws of nature which have been constantly dominated on the full basis of politics, law, religion and social philosophy. Natural law is referred to as the sets of unwritten laws that include the nature of man or reasoning or the principles derived from God. It is an understanding of the moral law that is either given with nature and is known through reason or given independently of nature with moral reason. Natural law is universal and common to all humanity. It goes beyond differences in various formulations of culture, religion, and moral law. It is often understood as the basic source of norms whereby the moral norms that are formulated positively should be achieved when morally appropriate. Natural law is the oldest theories among all the ores, called as God made Laws, emanated from supreme source. These were evaluated by many jurist and philosophers like St. Thomas Aquinas. Thomas Hobbes, John Locke etc. These philosophers used natural law as the framework for criticizing and structuring the law in human existence.

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:-

- a. Ancient period
- b. Medieval period
- c. Period of renaissance
- d. Modern period

Ancient Period:

The main concept of the Natural law theory was first put forward during the 4th century BC by the Greek philosophers namely

- *Socrates*

Socrates said that there is a natural law, like natural physical law. Man has insight that reveals to him the goodness and badness of things and makes him to know the absolute and eternal moral laws. This human insight is the basis for judging the law. Socrates did not say that if the affirmative law does not conform to the moral law, it would be disobeyed. According to him there was an appeal of insight to believe it and that is why he preferred to drink poison in

obeying the law than flee from prison. This theory was a plea for security and stability that was one of the principle needs of the age.

- ***Plato***

Plato, a disciple of Socrates, further expanded natural law theory through his concept of the ideal state, which he called a republic. He stated that only an intelligent and capable person should be king. He argued that justice means life through logic and knowledge and motivating him to control his passions and desires. In his republic, Plato emphasized the need for complete division of labor, stating that each man takes an oath to perform his task which he says is based on his abilities. According to Plato's law of states, there is a shadow of the absolute idea of an absolute law, against which a man-made law can be measured.

- ***Aristotle***

According to him, man is part of nature in two ways, first he is part of the creature of God and second he keeps active cause by which he can shape his will. Because of that men can discover the eternal principles of justice, the field of which men are discovered by nature 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 its relation which is positive law or legal justice is a matter of concern, he said, adding that legal justice which is fundamentally indifferent, but when it has been determined it is not indifferent.

The doctrine was further extended and it had considerable influence on the contemporary Roman legal system. The Romans did not confine their study of natural law theory to mere theoretical discussion, but proceeded to give it a practical form by converting its rigid legal system into a metropolitan way of life.

Medieval Period:

This period begins in the European history from the 12th century to the middle of the 14th century. This period was dominated by ecclesiastical doctrines that Christian fathers propagated for the establishment of the Church in the states. Christian saints especially Ambrose, St. Augustine, and Gregory offered a view that the divine law was superior to all other laws. According to him all laws are either divine or human

- ***St. Thomas Aquinas*** (1225-1274)

The most influential writer within the traditional approach to natural law was undoubtedly Thomas Aquinas; his most valuable work is 'Summa Theologica'. He defined law as "***an ordinance of reason for the common good made by Him who has the care of the community***".

He divided the law into four categories:

- i. Eternal Law or (Lex Eterna): which is immutable which he called divine knowledge
- ii. Natural Law (Lex Naturalis): It is part of the eternal law that can be revealed by reason
- iii. Divine Law (Law of Scriptures): It is a branch of eternal law revealed through scriptures, and the church is the authoritative interpreter of it
- iv. Human Laws (Lex Humana): This law according to Aquinas was made by humans and it was in his view the most unjust law that existed.

This theory of Human laws was unjust and absurd according to him as it only put stress and importance on

- It nurtured the interest of the law-giver only.
- It exceeds the power that any law maker is bound to exercise.
- This theory of law in his view also puts unnecessary burden on the people who would be subjected to this theory.

He regarded the state as an institution which was intended to supply the essential needs of men and procure their security and well-being. Such a law made by the state must conform to the natural law, "*Every human law has just as much of the nature of the law as it is derived from the law of nature.*" But if in any way it deviated from the law of the nature, it is no longer a law but a distorted form of law. Thus, he gave the phrase "*Lex iniusta non est lex*" an unjust law is not a law, and such unjust laws need not be followed.

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 Hobbes, Locke and Rousseau revolutionized the existing institutions and held that social contract was the basis of the society.

- ***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.

- ***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.

- ***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.

Modern Period:

Natural law theory got a setback in view of 19th century pragmatism. Scholars of analytical positivism, particularly Bentham and Austin, rejected natural law on the grounds that it was vague and inaccurate. Bentham called it a simple nonsense because absolute equality and absolute freedom were abhorrent to the existence of the state. The principles promoted by Austin and Bentham completely divorced morality from the law. All these events broke the very foundations of natural law theory in the 19th century. The 21st century was the revival of the later Natural Law School where jurists like Stamler, Fuller and Finis contributed to the revival of this school.

Thomas Aquinas Natural law theory

The derivation of natural law theory is that it is derived from the law of God provides the basis for the scholastic thought of St. Thomas Aquinas which is not only outstanding in itself, but whose enduring value was indorsed by Pope Leo XIII in 1879, who enabled it to become part of the teaching of the Catholic Church. The Thomistic scheme has to be set in the context of its time.ⁱ. There was, first a need for stability in a world emerging from the Dark Ages. Secondly, the struggle between the church and the state was emerging and there was a need for the church to establish its supremacy by rational argument rather than by force, since secular authority had the monopoly of the force. Thirdly, it was necessary for Christendom to unite in the face of the spreading heathers menace and a need was felt for unifying Christian philosophy. The available philosophic material consisted largely of the natural law philosophies of Greece and Rome. Aquinas endeavored to meet all three needs and his doctrine may be presented as follows.

St. Thomas Aquinas never thought of himself as the philosopher rather believed that *'falling short of the true and proper wisdom to be found in Christian revelation'*.ⁱⁱ He believed *'that for the knowledge of any truth whatsoever man needs divine help, that the intellect may be moved by God to its act.'*ⁱⁱⁱ Though he had written many descriptions on Aristotle's philosophy he also believed that human had natural ability to adopt many things without the knowledge of special divine powers, that occur time to time.^{iv}

St. Thomas Aquinas's ethics are based on the concept of "first principles of action".^v In his *Summa theologies*, he wrote that –*'Virtue denotes a certain perfection of a power. Now a thing's perfection is considered chiefly in regard to its end. But the end of power is act. Wherefore power is said to be perfect, according as it is determinate to its act.'*^{vi}

Thomas emphasized that *"Synderesis is said to be the law of our mind, because it is a habit containing the precepts of the natural law, which are the first principles of human actions."*^{vii}

According to Thomas *"all acts of virtue are prescribed by the natural law- since each one's reason naturally dictates to him to act virtuously. But if we speak of virtuous acts, considered in themselves, i.e., in their proper species, thus not all virtuous acts are prescribed by the natural law: for many things are done virtuously, to which nature does not incline at first but that, through the inquiry of reason, have been found by men to be conductive to well living."*

Therefore, we must determine if we are speaking of virtuous acts as under the aspect of virtuous or as an act in its species.^{viii}

He defined law as “*an ordinance of reason for the common good made by Him who has the care of the community*”.

Since the world is ruled by divine providence, the whole community of the universe is governed by divine reason. Divine law is supreme. But the whole of divine law is not accessible to men. Such a part of it as is intelligent to man reveals itself through eternal law as the incorporation of divine wisdom, which gives direction to all actions and movements. Natural law is a part of divine law, that part which reveals itself in natural reason. Man, as a reasonable being applies this part of divine law to human affairs and he can thus distinguish between good and evil. It is from the concept of eternal law as revealed in natural law that man derives the human law. But St. Thomas establishes a fourth category, which stands in a similar situation to human law as eternal law does to natural law. That is *lex divina*, the positive law that is enacted by God himself to mankind in form of the scriptures.

There is a connection between means and ends. There is an unshakeable relation between a given operation and its result in the nature of things. Natural phenomenon has certain inevitable consequences and thus one adopts a particular method due to its natural properties. There is also a tendency to develop in certain ways which is naturally inherent in things: an acorn can only evolve in an oak it will not evolve into an arch. He appreciates the relation between both of these mainly the relation between means and ends and the destined development of phenomenon around him. He can also, within limits, choose for himself the ends which he wants and the devise means of achieving them. Law thus consists of means of achieving ends. The relation between an end and the method by which its fulfillment is sought is initially conceived in the mind of the legislator, but those who are required to conform to his directions can also appreciate the connection by others to the prescribed patterns of conduct, it is essential that these should be made known to them. Therefore, law in all-embracing significance is ‘nothing else than an ordinance of reason for the common good made by him who has the care of the community and promulgated’.^{ix} Though Man can to a large extent control his own destiny, he too is subject to certain basic impulses, which can be perceived by observing human nature. At the lowest level there are impulses, shared with other creatures, to reproduce the species and rear children, at the highest level there is the impulse to improve to take such

decisions as are necessary for the attainment of higher and better things.^x This list is peculiar to Man by virtue of his reason. these basic principles of impulse point to a certain direction as they are not only the means of achieving survival and continuity, but also perfection. The framework of human nature is itself a means to certain ends, the establishment of the ends and these means of achievement could only have originated in the reason of some superhuman legislator. This is the *eternal law*; *'the eternal law is nothing else than the plan of the divine wisdom considered as directing all the acts and motions'*^{xi} to the attainment of the ends. Man, however, unlike the rest of the creation, is free and rational and capable of acting contrary to eternal law. Therefore, this law has to be promulgated to him through reason. This is the concept of natural law. *'Thus natural law is nothing else but a participation of eternal law in a rational creature.'*^{xii} where the dictates are revealed by reason reflecting on natural tendencies and needs.

In St. Thomas's system, the state is a natural institution, born from elementary social needs of men. In making the social life of men secure and serving the common good, it is an imperfect reflection of God's realm and not an evil as St. Augustine had taught. Moreover the lowest categories of law, human laws are recognized to be variable according to time and circumstances. Their purpose is an interesting anticipation of utilitarianism- to be useful to men, to further the commonwealth, whilst at the same time being part of divine and natural law. Human laws are thus valid within their province, within the limit of justice as ordinate by higher law. This leads us to Thomas's conclusion in regard to the practical relation between human laws and higher laws. The state, the worldly authority has a legitimate function and sphere; to regulate social life justly, that is to the common good within the limits of the authority of the law-giver. State laws must not be tyrannical. When a law is unjust either in respect of the end (that is laws conducive not to the common good but to the cupidity of the law giver), or in respect of the author (as when a law is made that exceeds the power given by Him), or in respect from (as when burdens are imposed unequally on the common man) such a law is unjust and is therefore a contradiction to natural law and divine law. Thus St. Thomas's system clearly upholds the supreme authority of the church, gives the state or rather the Emperor his due share and at the same time discourages civil revolution by opposing the injustice of oppressive laws the beneficial effect of order as against disturbance.

St. Thomas starts from the contention that by natural law all things are common but he later makes a significant distinction between the acquisition and use of property. He justifies the power to possess individual property as follows:

First, because every man is more careful to procure what is for himself alone than that which is common to many or to all: since each one would shirk the labour and leave to another that which concerns the community, as happens when there is a great number of servants. Secondly, because human affairs are conducted in more orderly fashion if each man is charged with taking care of some particular thing himself, whereas there would be confusion if everyone had to look after any one thing indeterminately. Thirdly, because a more powerful state is ensured to man if each one is contented with his own. Hence it is to be observed that quarrels arise more frequently when there is no division of the things possessed.^{xiii} St. Thomas maintains that the use of things must be not by man for his own benefit but for the common good. He justifies the difference between rich and poor saying that it is not unlawful to anticipate someone else in taking possession of something at first which was a common property provided others get a share, but complete exclusion of others makes property unlawful.^{xiv} The theoretical justification for this distinction by St. Thomas is the distinction between natural and positive law. He considers the right to the acquisition of property as one of the matters left by natural law to the state as a proper agency for the regulation of social life. Thus there is no foundation whatsoever, in St. Thomas's teaching, for the elevation of the right of private property into a principle of natural law. Even some three and a half centuries later, Suarez, one of the most influential of Spanish-Catholic natural law philosophers,^{xv} substantially agreed with St. Thomas. The most famous champion of the supremacy of the Holy Roman Empire of the German nation was Dante Alighieri.^{xvi} He pictured a supreme order without the interposition of the Church.

Just as many modern codes are silent on important questions, thus necessitating decisions according to justice and reason, so the law of God as revealed in scriptures might be silent and ambiguous, and thus the authority of the law of nature would be invoked in the service of whatever cause the learned interpreter wished to support. For St. Thomas himself the law of the nature was not merely a matter of expediency; but it often deteriorated to that function in the innumerable controversies which accompanied the bitter struggle for supremacy between rival powers, above all the Pope and the Emperor. Once the medieval structure of Europe and

the claim of the Church had collapsed for universal leadership under the onslaught of new ideas and forces, the doctrine of natural law was bound to be relegated to temporary oblivion. But the Catholic Church survived and continued to command not indeed the universal allegiance of Christendom but still that of hundreds of millions all over the world. After the tremendous social changes of the industrial revolution, the Church found itself faced with the necessity of redining its belief and views in the light of new social conditions. Towards a solution to the problem the theory of St. Thomas Aquinas and his doctrine of natural law provided a starting point and strong guidance. From it some of the great Popes, above all Leo XIII, have developed modern principals of Catholicism. This shows the greatness as well as the elasticity of the Thomistic system.^{xvii}

Criticism of Thomas Aquinas Natural law theory

- The natural law is based on reason, law could not be based only on reason but instead legislature and other sources should also be considered. The tradition, customs, moral values, judge made laws, society also should be taken into account which is not emphasized in the natural law theory of Thomas Aquinas.
- During the Medieval Period, church was the absolute to make rules or laws whereby they said that Law is divine and made by God himself which was not acceptable to many theorists. According to medieval period theorists, the church made laws are supreme and the laws are Laws of God or eternal and divine law or law of scriptures which is not justified as in those era the Church tried dominating the whole of Europe by saying that the law is made by the Church fathers and it may be called as law made by fathers.
- Although law may be of a divine origin but all laws in the society could not be made by divine being, even society makes law by its customs and traditions.
- As Thomas Aquinas said that law is a law of God or eternal law, but we see the legal implications in modern world. The God made laws although are playing an important role in legal system but it is not extensive as he has failed to render light on the scope of modern scenario, where the Judge made laws, customary laws, laws made by kings has its own role to play.

- Thomas Hobbes natural law theory of self preservation of person and property and his saying of endowing the rights to absolute authority is not justified as we had seen in the past events that endowing the absolute power to authority leaves peoples in tyranny or monarchy where the absolute power had spoiled many societies in the history and if it is implied in the present day the same situation may replay. The monarch may exploit the society for his selfish needs.

Thus the saying of giving absolute power is not much applicable in the modern society. As modern society needs everyone to be equal wherein giving absolute power to some authority may create chaos in the society. It may also lead to revolution as we have seen that after any vesting of absolute power to any authority the authority tries to exploit the subjects thus the revolution starts among the subjects to bring down the absoluteness of power vested in the authority.

RELEVANCE OF THE NATURAL LAW THEORY BY ST. THOMAS AQUINAS IN THE INDIAN SOCIETY

India is a hierarchical society. Whether in north India or south India, Hindu or Muslim, urban or village, virtually all things, people, and social groups are ranked according to various essential qualities. Although India is a political democracy, notions of complete equality are seldom evident in daily life. Societal hierarchy is evident in caste groups, amongst individuals, and in family and kinship groups. Castes are primarily associated with Hinduism, but caste-like groups also exist among Muslims, Indian, Christians, and other religious communities. Within most villages or towns, everyone knows the relative rankings of each locally represented caste, and behavior is constantly shaped by this knowledge.

Individuals are also ranked according to their wealth and power. For example, some powerful people, or “big men,” sit confidently on chairs, while “little men” come before them to make requests, either standing or squatting not presuming to sit beside a man of high status as an equal.

Hierarchy plays an important role within families and kinship groupings also, where men outrank women of similar age, and senior relatives outrank junior relatives. Formal respect is

accorded family members- for example, in northern India, a daughter-in-law shows deference to her husband, to all senior in-laws, and to all daughters of the household. Siblings, too, recognize age differences, with younger siblings addressing older siblings by respectful terms rather than by name.

Customs and practices related to the Natural law theory in the present day:

In India there are various customs that are interpreted as derived from God and are thus practiced with great relevance in the entire country. The people of India believe it to be a form of natural law and state that such laws and customs could not be interfered with.

Purity and Pollution

Many status differences in Indian society are expressed in terms of ritual purity and pollution, complex notions that vary greatly among different castes, religious groups, and regions. Generally, high status is associated with purity and low status with pollution. Some kinds of purity are inherent; for example, a member of a high-ranking Brahmin, or priestly, caste is born with more inherent purity than someone born into a low-ranking sweeper, or scavenger, caste. Other kinds of purity are more transitory-for example, a Brahmin who has just taken a bath is more ritually pure than a Brahmin who has not bathed for a day.

Purity is associated with ritual cleanliness-daily bathing in flowing water, dressing in freshly laundered clothes, eating only the foods appropriate for one's caste, and avoiding physical contact with people of significantly lower rank or with impure substances, such as the bodily wastes of another adult. Involvement with the products of death or violence is usually ritually polluting.

Family Authority and Harmony

In the Indian household, lines of hierarchy and authority are clearly drawn, and ideals of conduct help maintain family harmony. All family members are socialized to accept the authority of those above them in the hierarchy. The eldest male acts as family head, and his wife supervises her daughters-in-law, among whom the youngest has the least authority. Reciprocally, those in authority accept responsibility for meeting the needs of other family members.

Traditionally, males have controlled key family resources, such as land or businesses, especially in high-status groups. Following traditional Hindu law, women did not inherit real estate and were thus beholden to their male kin who controlled land and buildings. Under Muslim customary law, women can-and do-inherit real estate, but their shares have typically been smaller than those of males. Modern legislation allows all Indian women to inherit real estate. Traditionally, for those families who could afford it, women have controlled some wealth in the form of precious jewelry.

Veiling and the Seclusion of Women

A significant aspect of Indian family life is *parda* or curtain, or the veiling and seclusion of women. In much of northern and central India, particularly in rural areas, Hindu and Muslim women follow complex rules of veiling the body and avoidance of public appearance, especially before relatives linked by marriage and before strange men. *Parda* practices are linked to patterns of authority and harmony within the family. Hindu and Muslim *parda* observances differ in certain key ways, but female modesty and decorum as well as concepts of family honor and prestige are essential to the various forms of *parda*. *Parda* restrictions are generally stronger for women of conservative high-status families. Restriction and restraint for women in virtually every aspect of life are essential to *parda*, limiting women's access to power and to the control of vital resources in a male-dominated society. Sequestered women should conceal their bodies and even their faces with modest clothing and veils before certain categories of people, avoid extramarital relations, and move about in public only with a male escort. Poor and low-status women often practice attenuated versions of veiling as they work in the fields and on construction gangs.

Hindu women of conservative families veil their faces and remain silent in the presence of older male in-laws, both at home and in the community. A young daughter-in-law even veils from her mother-in-law. These practices emphasize respect relationships, limit unapproved encounters, and enhance family lines of authority.

For Muslims, veiling is especially stressed outside the home, where a conservative woman may wear an all-enveloping black burkha. Such *parda* shelters women-and the sexual inviolability of the family from unrelated unknown men.

In south India, *parda* has been little practiced, except in certain minority groups. In northern and central India today, *parda* practices are diminishing, and among urbanites and even the rural elite, they are rapidly vanishing. Chastity and female modesty are still highly valued, but as education and employment opportunities for women increase, veiling has all but disappeared in progressive circles.

OTHER SIGNIFICANT RELEVANCE OF NATURAL LAW IN INDIAN SOCIETY

The natural law is based on reason, law could not be based only on reason but instead legislature and other source should also be considered. The tradition, customs moral values, judge made laws, society also should be taken into account which is not emphasized in natural law theory.

Modern society needs everyone to be equal wherein giving absolute power to some authority may create chaos in the society. It may also lead to revolution as we have seen that after any vesting of absolute power to any authority the authority tries to exploit the subjects thus the revolution starts among the subjects to bring down the absoluteness of power vested in the authority.

Context of India-

Relevance in the society

In India the theory was applied in the old age wherein the poor farmers took shelter for protection under the Zamindars to escape from being killed or exploited by others. The Zamindars as time passed became very powerful and they became the absolute authority as the absolute rights of the farmers are being vested in them. Zamindars had started to exploit the poor farmers and took away land and amenities leaving nothing to them but to get more exploited. Thus then the revolution against the started wherein all the poor farmers being exhausted of all the atrocities by those Zamindars came along. They tried to take back their rights which were endowed to the Zamindars for their protection. Thus it is evident from the history that by giving absolute power to an authority it 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

Relevance in the Indian constitution

The 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 when being curtailed lead to such situations. 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 powers) Act 1958,^{xviii} which depicts that natural law theories are not excusive but some act should be done against it for the welfare of the society.

Relevance in the rights

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 but there is some restrictions in those natural rights 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.

Relevance in the previous decisions of the Indian Judiciary

In the Indian Constitution there is a great significance of natural law theory particularly in relation to Article 14, 19 and 21^{xix} which has been the fundamental backbone of the decisions of the Indian judiciary. There have been relevant case laws which ascertain the fact that natural law theory given by Thomas Aquinas in the earlier days is still relevant in India.

- In the case of *Mohd. Ahmed Khan v Shah Bano Begum [AIR 1985 SC 945]*^{xx} which was concerned with the issue of alimony the decision of the court was reversed due to the protests of the Muslim community stating that the Supreme Court had no right to interfere in their personal law which is the Sharia law. The Sharia law is also known as the Divine law (Lex divina) as it emerges from scriptures and is considered to be formed by God.
- In the case of *Air India v Nargis Mirza [AIR 1829, 1982 SCR (1) 438]*^{xxi} The Supreme Court struck down the rules of Air India and Indian Airlines regarding the pregnancy and retirement of the airhostesses during their years of service. The court held that it

was unconstitutional and also violated the Article 14 which deals with equality before law and equal protection of laws.

This case is a classic example of how the Indian judges uphold the natural law theory even to this date as the theory given by Thomas Aquinas states that the supreme being has formulated this theory for the greater good of the entire community and thus the entire community should be treated with respect, dignity and equality.

- In the case of *Maneka Gandhi V/S Union of India 1978 [AIR 597, 1978 SCR (2) 621]*^{xxii} 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.

Moreover the fundamental rights conferred under Indian constitution have a large base in natural law theory. Almost all the fundamental rights conferred under Indian constitution relates to natural law as all the fundamental rights are the basic rights of a human being which the natural law theory tries to confer upon the society since age of Greeks. All the thinking of those theorists under natural law theory have influenced Indian laws to a large extent, not only fundamental rights but even many more provisions under Indian constitution are influenced by the natural law theory.

ENDNOTES

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- ⁱ Ross, *Like a harlot natural law is at the disposal of everyone*, *On Law and Justice* P261
- ⁱⁱ B. Davies- *Aquinas*. Continuum International Publishing Group P14, 2004
- ⁱⁱⁱ Available at <http://www.saints.sqpn.com>, 22/10/1974. Retrieved 17/01/2010.
- ^{iv} *Summa, I-II*, Q109a1. <http://www.ccel.org>. 25/03/2012.
- ^v *Geisler*, P.727.
- ^{vi} *Summa, Q55a1*. <http://www.ccel.org>. 2/02/2012
- ^{vii} Zalta, N. Edward, D. Langston, *The Standford Encyclopedia of Philosophy*.
- ^{viii} *Summa*, Question 94 A.3
- ^{ix} Aquinas, *Summa Theologica* Part 2, Q. 90, Art 4.
- ^x Aquinas, *Summa Theologica* Part 2, Q. 94, Art 2
- ^{xi} Aquinas, *Summa Theologica* Part 2, Q. 93, Art 1.
- ^{xii} Aquinas, *Summa Theologica* Part 2, Q. 94, Art 2
- ^{xiii} Aquinas, *Summa Theologica*, Part 2, Q. 66, Art.2.
- ^{xiv} This foreshadows some modern doctrines on the social function of property.
- ^{xv} *Treatise on Laws and God the Law-Giver* (1612), Book II, Chap. XIV
- ^{xvi} *De Monarchia*, written about 1312
- ^{xvii} The legal theory of the contemporary Catholic Church though based on the Thomistic principles is also very concerned with modern political and social problems.
- ^{xviii} *The armed forces (special powers) act*, 1958
- ^{xix} Prof. M.P.Singh, Constitution of India.
- ^{xx} Mohd. Ahmed Khan v Shah Bano Begum [AIR 1985 SC 945]
- ^{xxi} Air India v Nargis Mirza [AIR 1829, 1982 SCR (1) 438]
- ^{xxii} Maneka Gandhi V/S Union of India 1978 [AIR 597, 1978 SCR (2) 621]