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Natural Rights: Theory and Practice

Charu Priyadarshi[1], Simant Priyadarshi[2]

[1]LLM, PG Department of Law, Patna University
[2]LLM, ICFAI Law School, The ICFAI University Dehradun, India

Abstract: ***This article explores the concept of natural rights as articulated by Lysander Spooner and delves into the historical origins and persistence of this theory. Spooners perspective, as expressed in the quoted text, emphasizes the inviolable nature of individual rights, irrespective of whether they are violated by an individual or a government. The article examines the multifaceted meanings of the term right and its relationship to natural law, morality, and civil society. It also traces the historical development of the theory of natural rights, highlighting its role in revolutionary movements and its impact on individualism. The study ultimately reveals the evolving nature of the concept, from a tool of revolutionaries to a conservative argument in favor of preserving individual liberties.***

Keywords: natural rights, Lysander Spooner, individualism, natural law, historical origins

1. Introduction

"A man's natural rights are his own, against the whole world; and any infringement of them is equally a crime; whether committed by one man, or by millions; whether committed by one man, calling himself a robber, or by millions calling themselves a government. "

- Lysander Spooner

"Natural" can be used to signify some of those criteria or standards that are normative prior to any human choices. [1] The noun right is one that has many meanings. According to dictionary meaning it means the standard of permitted action within a separate sphere.2A right is a reasonable expectation of the individual under the circumstances of life in a civilized society. Rights came to used also to mean law in general. [3, 4] According to Salmond a natural right is an interest recognized and protected by the rule by a rule of morality. [5]

Natural Rights: Historical Origin and Persistence

In the eighteenth century, the theory of natural rights became the spearhead of revolutionary activity. There had long been a tendency to set up natural law as a body of principles superior to positive law and such a tendency may easily lead to anarchy. The doctrine arose that there were certain innate rights, arising from the very nature of man, which were beyond the assaults of positive law. In the famous Virginian Declaration Of Rights, it was laid down that "all men are by nature equally free and independent and have certain inherent natural rights of which when they enter a society, they cannot by compact deprive or divest their posterity. "On the whole, theories of natural rights tended to be individualistic, to consider man as a unit rather than as a member of society. The Protestant revolt emphasized the liberty of the individual, and, economically, individualism was favoured by the rising middle class. In the spark that led the middle classes finally took control and impressed the vague theories of the philosopher with a bourgeois stamp. The liberty that was protected was that of middle classes to run their businesses as they willed, that of the peasants to till their land free of the burdensome exactions of privilege. There had long been a theory that natural law was immutable, and even today most theories of natural rights retain a trace of individualism. Now the same cry of the revolutionary has become a cry of the conservative who wishes to check attempts on the part of governments to remedy inequalities. [6] The middle classes, having won the freedom, did not desire that freedom to be hampered by restraints imposed in the interest of the laboring classes. Thus the doctrine of natural rights had a great influence in America. The early American judges had a strong regard for the liberty of the individual. [7] In the later and much more individualistic "natural rights" formulation developed during the Enlightenment and influential during the American and French Revolutions, the natural law was viewed as establishing certain moral entitlements that all human beings supposedly have simply by virtue of being human. [8] In the mid - 18th century natural rights were regarded as liberties rather than rights. [9] For the modern person, natural law can no longer be felt to be just there, since nature is no longer just there. [10]

Natural Rights and Needs in Medieval and Early Modern Politics

In the seventeenth and eighteenth centuries the antiquarian interests of the humanists gave place to the new rationalism of the school of natural law. [11] Believing that the law for any society could by the use of reason be derived from principles inherent in the nature of man and society, the adherents of this school rejected the unquestioned authority which the medieval commentators had accorded to the Corpus Iuris, and yet found in the roman law, with its doctrine of jus gentium and jus natural, a great deal which they could accept as being the embodiment of natural reason. The first of the great exponents of the new doctrine was the Dutchman Grotius, who applied it especially to the formation of a body of international law. It was indeed in this field that the school of natural law was most influential, but it encouraged also the elimination from the modern Roman law of the irrational, and therefore peculiarly Roman, features which the Humanists had emphasized, and insisted, even to excess, on the place of logic in law. [12] According to Hugo Grotius, natural law confers upon the individual rights to self - preservation compatible with similar rights of others. [13]

2. Conceptual and Theoretical Basis of Natural Rights

A right is a juristic concept. Juristic concept are not prescribed and defined by law as legal concepts are. They

are worked out by jurist in order to systematize and expound the phenomenon of the legal order, the body of authoritative grounds of or guides to decisions and the operation of the judicial process. [14] Various theories of natural rights have been discussed below.

John Locke's Theory of Natural Rights and Justification of Limited Government

Locke was the theoretician of the rising middle class which was individualistic. He restored the medieval concept of natural law insofar as he made it superior to positive law. He placed the individual in the center and invested him with inalienable natural rights among which right to private property was the most important. [15] Natural rights enjoy priority both in chronological terms, and against the laws that might interfere with them. [16] Locke used the social contract theory by which he tried to justify government by majority which held the power in trust, with the duty to preserve individual rights whose protection was entrusted to them by individuals. Locke stood for liberty. The individual had a natural inborn right to "life, liberty and estate." His state of nature is a paradise lost. It was a state "of peace, goodwill, mutual assistance and preservation." In the state of nature men had all the right which nature could give them. The right to property existed prior to and independent of any social contract whose function was to preserve and protect not only the right to property but also other natural rights. By the social contract theory of Locke, men agreed to unite into one political society. A majority agreement is identical with an act of the whole society. The majority vote can take away property rights and other inalienable rights. In the state of nature all were independent and equal. No one was supposed to harm another in life, health, liberty and possession. Nobody had and an arbitrary power over himself, to destroy his own life or property. The limited power is given to the commonwealth for the good of society. The state can never have a right to destroy, enslave or impoverish the subjects. The law of nature stands as an eternal rule to all men, legislators and others. The fundamental law of nature is the preservation of mankind and no human sanction can be good or valid against it. The legal theory of Locke gave theoretical form to the reaction against absolutism and to the preparation of parliamentary democracy. [17] He put emphasis on the inalienable rights of the emancipation individual. He had great influence on the American Revolution and French Revolution. [18]

Aristotle: Natural Law, Natural Rights and American Constitutionalism

Aristotelian concept eternal principle of justice or natural law can be understood by reasoning and common sense. Because man's reason is a part of nature, hence the law discovered by nature, in this is called "natural law. " [19] Aristotle formulated the theory of justice. He divided justice into two parts i. e. distributive and remedial justice. Distributive justice deals with distribution of honor and wealth among the citizens and works according to the ratio of merit of the particular society. Under the remedial justice, law looks to the nature of inquiry, and attempts to restore the equality that existed before the wrong. Just action is a mean between acting in justly and being unjustly treated. Aristotle also made a useful distinction between natural justice, which is universal, and conventional justice that binds only because it was decreed by a particular authority. [20]

Thomas Hobbes: From Classical to Modern Natural Rights

Hobbes lived during the days of the Civil War in England and hence was convinced of the great importance of state authority which he wanted to be vested in an absolute ruler. He shifted the emphasis from natural law as objective order to natural right as a subjective claim based on the nature of man and prepared the way for individualism in the name of "inalienable rights." For Hobbes, the chief principle of natural law was the right of "self - preservation. " This was connected with his view of state of nature in which "men live without a common power to keep them all in awe, they are in that condition which is called war and such a war as is of every man against every man." Reason dictated to man the rule of self - preservation for which he tried to escape from the state of permanent insecurity. That he did by transferring all his natural rights to the ruler whom he promised to obey unconditionally.

The individual transferred whole of his natural right to the ruler who became absolute ruler. The subjects could not demand the fulfillment of any condition from the ruler. The only condition was that the absolute ruler must keep order. The sovereign of Hobbes is not legitimised by any superior sanction like that of natural law or divine right. [21] He is merely an utilitarian creation. Natural Law was not a superior law. Hobbes expressed the main precept of natural law in the form of man's right to self - preservation. He denied to the church the authority to interpret the law of God. He gave all power to a utilitarian secular sovereign. From his political and legal theory emerged the modern man who is self - centred, individualistic, materialistic and irreligious in the pursuit of organised power. [22] Hobbes used the term "law of nature" and admitted that these were "dictates of reason" not natural duties but "theorems concerning what conduct to the conservation and defence of themselves" [23] According to Hobbes. Persons have a duty to strive for peace to the extent possible. Every persons retains the right to defend themselves against aggressions. [24] Hobbes version of natural rights is more accurately described as liberties. It provides a more accurate basis for the common law's protection of natural rights which may be more accurately described as liberties. [25]

DWORKIN'S "Natural Rights" (Thesis of Fundamental Rights)

Natural Rights came into prominence with the rise of individualism. Each person was thought of as enjoying a area of sanctity. Natural rights are abstract versions of claims, liberties and immunities and in generalisation they are akin to principles, standards and doctrines. It is in this sense that they have been embodied in constitutions and they are called "natural" perhaps because they are thought to be essential to social existence. Dworkin distinguishes between "background rights" which are rights that hold in an abstract way against decisions taken by community or the society as a whole, and more specific institutional rights that hold against the decision taken by the community or the society as a whole, and more specific institutional rights that

hold against a decision made by specific institution. Legal rights are institutional rights or decisions in courts. Institutions about justice presupposes a fundamental right i. e. the right to equality which means right to equal concern and request. The utilitarian approach to justice is rejected on the ground that the individual has rights against the government. [26] The concrete right upon which judges must rely must have two characteristics. They must be institutional rather than background rights, and they must be legal rather than some other form of institutional rights. [27] A process of change from institutional morality to background moral rights to abstract to concrete legal rights is envisaged. [28] The right to recover damages for negligence can be traced back to the background moral principles recognised in law. [29] Now, the "right of free speech" of one individual can be limited by the "right" of another individual to the integrity of his reputation and the right of the individual may be overridden even by government to prevent a catastrophe, or to obtain public benefit. Individual rights are principles which are required fairness of morality and law as a whole incorporates rules and principles. The law should reflect the majority view of the common good. Fundamental rights represent the promise by the majority to the minorities that their views on this will be respected. Such rights are against government and enjoy authority superior to and independent of government. They are usually found in guarantees of due process and equal protection, which call for respect, fairness and equality. Where there is a fundamental right, a person has the right to do something even though it is forbidden by law. Therefore, the thrust of the Dworkinian thesis is anti - government. [30]

John Finnis Theory of Natural Rights

Finnis core concern with the theory of rights sets the classical naturalist concern with the moral or ethical and purposive nature of law into a modern discourse of rights. Finnis theory adds a modern natural law voice to jurisprudential debate. Finnis states that people understand their individual aspirations and nature from an "internal" perspective and that from this there may be extrapolated an understanding of "good life" for humanity in general. [31] Finnis sets out the seven "basic forms of human good." [32]. These are life, knowledge, play, aesthetic experience, sociability or friendship, practical reasonableness and religion. The test of "practical reasonableness" will provide a guidance as to how goods are to be applied as a criterian of evaluation in the context of operation of a real society. [33] According to Finnis, the rights which are derived from the basic goods are not to be deprived of life as a direct means to an end; not to be deceived in the course of factual communication; not to be condemned upon the charges which are known to be false; not to be denied procreative capacity; and to be accorded "respectful consideration" in any assessment of the common good. However the list provided by Finnis is not exhaustive [34]

3. Contemporary Significance of Natural Rights

Right operate as basic types of claims in both moral and legal disclosure. The question about rights include the connection or relationship between moral rights and legal rights and whether rights can be usefully analysed further, and if so, then in what way. [35] Natural Rights have a contemporary significance and are applied even today, by the judiciary, in various numbers of cases.

H. L. A. HART: A Modern Perspective of Natural Rights

Hart regards "minimum morality" as an essential requirement of law. [36] He says that there is a distinctive rational connection between natural facts and the content of legal and moral rules. [37] Hart believes that "minimum content of natural law" separates legal positivism from natural law theory. He believes that there are certain contingent facts of the human situation in the present time. We are all mortal and vulnerable, and that resources are limited, and that we are all dependent to some extent on other people. These facts are contingent in the sense that it is not impossible that the future scientific developments might change these facts. However, given these facts certain consequences are likely to follow. Among these, Hart speculated that any legal or moral system that did not offer certain minimum protections against murder, serious assault and theft to at least a significant minority of the population would not and could not survive for very long. [38]

Contribution of Natural Law oo Legal Thought

The idea of inviolable natural rights became the central plank of the constitutional movements of the 18th and 19th centuries. It inspired the Declaration of American Jurisprudence, the US bill of rights and the French Declaration of Human Rights and the international treaty law on human rights. Although debate continues about the ways and means of promoting these rights domestically and internationally, there is little disagreement about the moral case for their protection. Natural Rights theory marked a break with the theological tradition and created a foundation for a cross - culturally accepted set of ideas about fundamental rights of all human beings. The older Aristotelian - Thomist tradition of natural law, however, did not die. Its modern face is presented by John Finnis' masterful restatement. [39] The American Declaration of Independence stated that men were inalienably endowed with rights to life, liberty and persuit of happiness, and that governments are established to secure these rights. Whenever any form of government becomes destructive of these rights, then it is right of the people to alter and abolish the government and to institute a new government. [40] This marked the beginning of a spectacular career of natural law in American constitutional development. In the federal and state "bill of right", the doctrine persisted explicitly throughout the century. When its revolutionary phase was over, it still continued to operate, endowing traditional legal rights with the authority of natural rights, and these natural rights in turn with the force and immutability of a rigid constitution. [41] The "pursuit of happiness" comprehended the desire "planted" in every breast to possess and dispose of property. [42] There are certain natural and inherent principles of natural justice which inspirit our constitution. [43] The Virginian Declaration Of Rights permits the bill of rights of the American Federal and state constitutions. In the French Declaration Of Right of Men Of 1798, insurrection against government violating the rights of the men was described as the most sacred of rights and the most

indispensible of duties [44]. The fifth amendment of the United Nations constitution provided that "no person shall be deprived of life, liberty or property without due process of law" and the corresponding restriction on the states later imposed by the Fourteenth Amendment 1868. Without due process of law means "arbitrarily and unreasonably. " The fourth amendment was contended to make everyone born in this country a freeman, and as such to give him the right to pursue the ordinary avocations of life without other restraints than such as affect all others, and to enjoy equally with them the fruits of his labour. [45, 46]. The British constitution was "copied from nature" and forbade the supreme power from taking any man's property without his consent. [47]

4. Natural Rights in Theory and in Practice

The terms "law of nature", "natural right" and "natural law" signify distinct concepts, though they have important connections. Human existence depends on life sustaining conditions. Therefore, some philosophers argue that a person is endowed with certain natural rights and liberties simply by virtue of being born. These are the rights that are necessary for the existence as a human being. The most basic of these are the rights of self - ownership and the liberty of self - preservation. [48] Human Rights take the form of positive law and hence must be recognized. [49]

Natural Right: Theory and Practice in Judicial Review

It is due to the impact of natural law principles that we have certain fundamental freedoms and rights guaranteed to us e. g. Right to life, Right to Religion etc. These rights are self - evident and in the absence of these rights, man cannot have secured and peaceful life in modern society. Natural Law theory also generated many natural rights such as Justice, Fraternity, Brotherhood, Liberty and Equality. The court while exercising the power of judicial review of the legislation has been inspired by natural law principles. In determining the validity of enactments the principle of natural justice plays a very important role. [50]

Natural Rights and Modern Constitutionalism

The fourth amendment to the American constitution has been interpreted to give the courts the power to safeguard natural rights and to declare unconstitutional any statute that unreasonably interferes with life, liberty, or property. Thus, under the guise of the supremacy of law, America had achieved the supremacy of judges. Friedmann states that natural law thinking has dominated the supreme court more than any other law court in the world. [51] The interpretation of law of what was unreasonable interference with liberty or property was sometimes affected by the older doctrine that certain rights were fundamental and innate. Later the doctrine of natural law made the supreme court the active guardian of civil liberties such as freedom of person, of thought, and of religious expression. Moreover, the court has taken, since 1937, a more realistic approach towards new legislative experience and criticism that was justified earlier in the century is now out of place. [52] In recent years, the ideas of natural justice have become more and more important and have been relied upon by the supreme court of India and High courts in their decisions. The supreme court observed that the aim of the rules of natural justice is to secure justice or put it negatively, to prevent miscarriage of justice. The rules of natural justice do not supplant the law of land but they supplement it. [53] In another case the Supreme Court observed that natural justice is a great humanizing principle intended to invest law with fairness and to secure justice. The soul of natural justice is "fair play in action" and it has receives widest recognition throughout the democratic world. The Supreme Court held that even the procedure laid down by law must be right, just and fair. It is liable to be set aside on the ground that it is not reasonable. [54] According to Blackstone, the instances of the influence of the idea of the free - willing individual fall under four heads. The first being the assimilation of the "common law rights" of Englishmen to natural rights, and their injection in this form into the United States Constitution. The second being freedom of contract as a natural right. The third being the vested property rights and freedom of testamentary disposition as natural rights and the fourth being no liability without fault as a dictate to natural law. [55]

Natural Rights Emboided under Indian Constitution:

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human personality. The human element in life is impossible to conceive without the existence of natural rights. Right to life and the right to personal liberty. Both rights are natural and inalienable rights of every human being and are required in order to develop his/her personality to the fullest. "Right to privacy of any individual" is essentially a natural right, which inheres in every human being by birth. Such right remains with the human being till he/she breathes last. It is indeed inseparable and inalienable from human being. In other words, it is born with the human being and extinguish with human being. Primal natural right which is only being recognized as a fundamental right falling in part III of the Constitution of India. " Such rights came to be described as "basic", "primordial", "inalienable" or "fundamental" rights. Such rights are a protective wall against State's power to destroy the liberty of the subjects. [56] We can examine rights as historically and socially contingent products, but which reflect universal aspirations for freedom, autonomy and self - actualization. [57]

5. Conclusion and Suggestion

There are certain rights which are inalienable rights. These rights are given to human beings by virtue of the fact that they are born. These rights had significance in the early medieval era. It still holds good today. Thomas Hobbes wrote in "Leviathan" that "jus natural, is the liberty each man hath, to use his own power, as will himself, for the preservation of his own nature; that is to say, of his own life; and consequently of anything, which in his own judgement, and reason, he shall conceive to be the aptest means thereunto. " Similarly, John Locke wrote that every person "hath by nature a power, not only to preserve his

property, that is, his life, liberty and estate, against injuries and attempts of other men; but to judge of and punish the breaches of law in others. " Locke and Hobbes were speaking of a state of nature, by which they meant the conditions before there was civil government. Since these rights are inherent in all persons they must have existed before the establishment of kings, parliaments and courts, that is, before positive law. In other words, there were human rights before there was human law. If they are not derived from human law they must be conferred by a "natural law", so the theory goes. Natural rights are sometimes identified with the law of nature, particularly in the older literature. They are certainly not part of the laws of nature in the scientific sense discussed previously. A law of nature is about what will happen. If thereis fire there will be heat. A person will die if deprived of food. On the contrary, a natural right is about what ought or what ought not to happen. A Law of nature cannot be violated. If violated it ceases to be recognized as a law of nature. Natural Rights can be and frequently are violated. A person has a natural right to live. Yet we know that murder happens and in some places people are put to death by law.[58] However, everyone must yield to another some right of his own in order to secure the maximum happiness of all. [59] The notion of higher norms that rulers must not transgress has appeal in every age. A source of strength is the universal human instinct for self - preservation. No rational person wishes to be deprived of their life, liberty and possessions. Here, the idea of natural rights makes a compelling case for limiting the powers of the rules. The Greek philosophers looked to the cosmic laws that, in their theological view, governed everything and directed each person and object to its proper end. The theological view became the theological jurisprudence of St. Augustine of Hippoband St. Thomas Aquinas. The later scholastic debates, the great discoveries and the enlightenment ideas shaped the new secular natural law tradition based on the natural needs of the individual in society, which has grown in influence with the rise of constitutionalism and liberal democracy. [60] Most importantly, new perceptions emerged, first in Europe and then in the Middle East, Asia, and Africa, that reduced the monarchs' authority. The concept of "divine right" was often eroded by the spread of secularism. Emerging ideas of the individual's natural rights and those of nations' rights (particularly regarding independence and self - determination) gained prominence. [61]

The bulk of the law i. e. that part which defines and implements social, economic and foreign policy cannot be neutral. It must state the majority's view of the common good. The institution of rights is therefore crucial, because it represents the majority's promise to the minorities that there dignity and equality will be respected. When the divisions among the groups are most violent, then this gesture, if law is to work, must be more sincere. The institution requires an act of faith on the part of the minorities, because the scope of their rights will be controversial whenever they are important, and because the officers will act on their own notions of what these rights really are. The officers must show that they understand what rights are, and they must not cheat on the full implications of the doctrine. The governments will not re - establish respect for law without giving the law some claim to respect. If the government does not take rights seriously, then it does not take law seriously. [62] The problem is how to determine natural rights. In the history of natural law theorising, at one point, the doctrines of the church were believed to be the source of natural rights; at another point, human reason replaced canon law. We face here the problem ultimately that without clear standards, there is too much power in the hands of the judges. Today, liberal judges may seek to expand rights by incorporating a "natural right" to privacy, that predates and pre - exists the Constitution; but what is to stop a judge, in the future, from invoking his own conception of natural rights to contract liberty. [63]

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