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# Role of Natural Law Philosophy in Shaping Modern Judicial Approach

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## ABSTRACT

*The role of natural law has been pivotal to Indian legal machinery. It has widened the horizon of judiciary to look beyond the “BLACK LETTERS” of statute and to embrace the basic human values above everything. The recent judicial approach as evident in cases like Sabrimala Temple Case, Puttaswamy case, vindicate the role of natural law as an instrument of perpetual quest for absolute justice. This paper discusses the contribution of natural law in sculpting the modern judicial system in India, citing the recent landmark pronouncements by the Apex Court. Beginning with the meaning of Natural Law and its presence in Indian legal context with reference to Fundamental Rights, the paper further delves separately concerning the role of natural law with respect to gender equality, LGBT community issues, and the Right to privacy. The paper emphasize deeply on the reliance of Indian Judiciary on encompassing natural law philosophy in its judgment through important case laws.*

## I. INTRODUCTION

Natural law propounds that every human being possesses some innate values that govern his reasoning and behavior which enable them to distinguish between good and evil. It is independent of any convention, legislation, or norms created by society. The natural law has always been dynamic in nature. It has been given different interpretations by various scholars or jurists in different era depending upon the prevailing societal necessities.

The idea of natural law began with ancient Greeks' conception of a universe that is governed by an unchanging, or eternal law. It received its most important formulation in stoicism that argued that all humans have reason within them and obey its law<sup>3</sup>. The natural law was given practical application in juristic sense by the Romans through the division of Roman law into three distinct divisions namely *jus civile*, *jus gentium*, *jus naturale*.<sup>4</sup> During the Medieval period,

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<sup>3</sup> Diksha pareek , “Natural law and its revival”, available at: <https://blog.ipleaders.in/11052-2/>

<sup>4</sup> Prof. S.N.Dhyani, *Fundamentals of Jurisprudence(The Indian Approach)* 83 ( Law Agency, Allahabad, 3<sup>rd</sup> edn., 2004)

the Christian Church fathers rooted natural law in divine authority and postulated its supremacy over all other laws. However, the radical developments during the Renaissance and the Reformation freed the natural law from its former religious trappings and made it open to rational enquiry. Natural law theory eventually gave rise to concept of ‘natural rights’, and that a social contract is the basis of society.

The two principal developments contributed to the decline of the natural law theory in the 19<sup>th</sup> century, namely the rise of legal positivism and non-cognitivism in ethics<sup>5</sup>. However, the 19<sup>th</sup> century legal theories which overemphasized analytical and historical approaches, paved way to Nazism, Fascism and eventually I and II World War. Such socio-political conditions compelled the 20<sup>th</sup> century legal thinkers to look for some value-oriented ideology to prevent general moral degradation of people, which led to the revival of natural law in its modified form, concerning with practical problems of the society.

## II. NATURAL LAW IN INDIAN CONTEXT WITH RESPECT TO FUNDAMENTAL RIGHTS

The modern trend of guaranteeing fundamental rights to the people may be traced to the U.S. Constitution drafted in 1787. It is the first constitution in the world which made basic human right justiciable and enforceable through the instrumentality of court. Bill of Right came to be incorporated in the U.S. Constitution in 1791 in the form of ten amendments which embody the Locke’s ideas of protection of life, liberty and property.<sup>6</sup>

The concept of human right can be traced to be the natural law philosophers such as Locke and Rousseau. According to Locke, man is born with a title to perfect freedom and an uncontrolled enjoyment of all rights and privileges of the law of nature and he has by nature a power to preserve his property that is his liberty and estate, against the injuries and attempts of other men.<sup>7</sup>

Modern trend of fundamental rights is based on the Charter of Human Right enacted by the United Nations Organization (UNO), and the European Convention on Human Rights. The preamble to the Universal Declaration of Human Rights inter alia declares:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world”.<sup>8</sup>

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<sup>5</sup> Raymond Wacks, *Understanding jurisprudence (An Introduction To Legal Theory)* 21 (Oxford University Press, New York, U.S., 3<sup>rd</sup> edn., 2012)

<sup>6</sup> M.P.Jain, *Indian Constitutional Law* 875 (LexisNexis, Haryana, 8<sup>th</sup> edn., 2018)

<sup>7</sup> *Id.* at 874

<sup>8</sup> *Id.* at 875

Coming to India, few good reasons made the enunciation of the fundamental right in the constitution rather inevitable. For one thing, the main political party, the Congress had for long been demanding these rights against the British rule. During the British rule in India, human rights were violated by the rulers on a very wide scale. Therefore, the framers of the Constitution, many of whom had suffered long incarceration during the British regime, had a very positive attitude towards these rights<sup>9</sup>. While drafting fundamental rights, several members of the Constituent Assembly relied upon the natural rights theory and put their opinion on fundamental rights. One of them was Mr. Mahavir Tyagi who argued that every individual is entitled to three inalienable and inherent natural rights, viz. life, liberty and pursuit of happiness, and that “the 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 own rights and deposits it with the State”<sup>10</sup>. This argument reflects an important conception of the natural rights theory. At the time the drafting of Part III, Mr. Tyagi noted that the Constitution being drafted was one which guaranteed “inherent rights. Indian constitution is inspired from the principle of natural justice which is a resurrected form of natural law. Although the constitution doesn’t explicitly mention these principles of natural justice/law but they are intrinsically enshrined in the constitution. The Preamble provides for social, economic, and political justice and equality of status and of opportunity, also liberty of thought and expression. Apart from this, Articles 14, 19 and 21 which constitute the golden triangle of the constitution has drawn inspiration from the natural law.

The Fundamental Rights under Indian constitution draw its inspiration from U.S. Rights of Bill and Universal Declaration of Human Rights, 1948.

The Supreme Court in *Chairman, Railway Board v. Chandrima Das*<sup>11</sup> observed that “the applicability of Universal Declaration of Human Rights and principles thereof have to be read, if need be, into domestic jurisprudence”.

Article 14 of the constitution ensures equality before law to all the citizens without discrimination of any sort. Then there is article 21 which guarantees Right to life and liberty, which is also the most comprehensive article of the whole constitution, is based on the premises of natural justice.

*Maneka Gandhi v. Union of India*<sup>12</sup> case is a historic landmark in interpreting the part III of the

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<sup>9</sup>*Id.* at 878

<sup>10</sup> CAD, 16 Sept 1949, Volume IX

<sup>11</sup> AIR 2000 SC 988

<sup>12</sup> AIR 1978 SC 597

constitution. In this case, the Supreme Court put an end to the restrictive interpretation of the Part III of the constitution which was approved in the former A.K.Gopalan case. It was held that Part III of the constitution cannot be read in isolation and put forward the principle of inclusivity construction of constitution. Delivering the judgment, Bhagwati, J., said, “The correct way of interpreting the provisions of part III is that attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content”.

### **III. NATURAL LAW IN RECENT JUDGEMENTS: GENDER EQUALITY WITH RESPECT TO WOMEN**

Women have been exploited since the existence of the human kind. It has been seventy years that India got independence with a number of legislations having been enacted for upliftment of women, yet they were never effective to bring about a radical change in the situation. The Indian male-dominated patriarchal society has always treated them as chattel and relegated them to the household. Women are treated as second class citizens in our society, often deprived of their fundamental human rights and liberty.

#### **Case Summary**

A group of five women lawyers challenged Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, which authorizes prohibition on women “of menstruating age” to enter Sabrimala Temple. They went to the Supreme Court after the Kerala HC upheld the centuries-old restriction, pleaded that the restrictions were an encroachment of Articles 14, 15 and 17 of the Constitution. It was argued that the custom is discriminatory in nature and stigmatized women, and that women should be allowed to pray at the place of their choice.

#### **Timeline of the case:**

S. Mahendran filed a plea in Kerala HC seeking ban on women’s entry in temple in 1990. On April 5, 1991, Kerala HC upheld the age-old restriction on women’s entry in the temple. In 2006, a petition was filed in the Apex Court by Indian Young Lawyers’ Association challenging the ban on women’s entry, on the grounds that such ban infringed the freedom to follow and propagate religion, as secured by Article 25 of the Indian Constitution. The case was referred to a SC Constitution bench on October 13, 2017. In January 2018, the temple authorities made it compulsory for female devotees to furnish their age proof while entering the temple. On July 24, 2018, SC made it clear that the prohibition on entry of women would be tested on constitutional morality. July 26- The Pandalam Royal family challenged the

petition seeking entry of women into the temple, calling it “mischievous” as it being against practices of the Hindu religion. It was argued the temple deity, Lord Ayyappa, is an eternal celibate and therefore women of menstruating ages should not be allowed in the premises. Finally on September 28, 2018, SC ruled in favour of women, declaring the ban to be unconstitutional.<sup>13</sup>

#### IV. JUDGEMENT ANALYSIS:

The **core issue** involved in this case was that: Whether the exclusionary practice based upon a biological factor exclusive to the female gender amounts to "discrimination" and thereby violates the very essence of Articles 14, 15 and 17?

A five-judge Constitutional bench, with the majority of 4:1, has ruled in favour of allowing women of all ages to enter Sabrimala temple. Chief Justice of India, Dipak Misra said that the provision of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which authorised the restriction, violated the right of Hindu women to practice religion. It also said that patriarchy in religion cannot be allowed to trump the right to pray.

J. Deepak Misra and J. Khanwilkar observed:

“Any relationship with the Creator is a transcendental one crossing all socially created artificial barriers and not a negotiated relationship bound by terms and conditions. Such a relationship and expression of devotion cannot be circumscribed by dogmatic notions of biological or physiological factors arising out of rigid socio-cultural attitudes which do not meet the constitutionally prescribed tests. Patriarchy in religion cannot be permitted to trump over the element of pure devotion borne out of faith and the freedom to practice and profess one’s religion. The subversion and repression of women under the garb of biological or physiological factors cannot be given the seal of legitimacy. Any rule based on discrimination or segregation of women pertaining to biological characteristics is not only unfounded, indefensible and implausible but can also never pass the muster of constitutionality<sup>14</sup>.”

J. Nariman: "To exclude women of the age group 10-50 from the temple is to deny dignity to women. To treat women as children of lesser god is to blink at the Constitution<sup>15</sup>.”

In this case, the Supreme Court took a transformative approach by interfering in the religious matter and putting individual dignity above it. Denying women the right to worship on the basis

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<sup>13</sup> “Freedom of Religion and sabrimala Judgement (2018)”, available at:

<http://www.legalserviceindia.com/legal/article-418-freedom-of-religion-and-sabrimala-judgement-2018-.html>

<sup>14</sup>*Ibid.*

<sup>15</sup>*Ibid.*

of their biological phenomenon is a gross violation of basic human right of liberty and freedom. Faith is a matter of individual concern and not a collective concern. Every person is free in the matter of his relation to his Creator, if he believes in one. A person is completely free to worship God according to the dictates of his conscience. A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person. J.Chandrachud observed that the Sabarimala temple practice of keeping out women tant amounted to untouchability, and a travesty to their constitutional rights which the guaranteed right to freedom of worship<sup>16</sup>. By placing constitutional morality over and above faith, the Supreme Court freed women from the shackles of patriarchal society.

## **V. GENDER EQUALITY: WITH RESPECT TO LGBTQ COMMUNITY**

Transgender in India have been subjected to atrocities, social stigma, and marginalization due to lack of sensitization on the part of society. They are not even treated as humans. They have always been the victims of harassment and vilified in every sphere of their life. They are deprived of any social and cultural participation, and hence have very limited access to even basic amenities like education, medical facilities, and employment opportunities. This indeed is a sheer violation of their basic human rights. It was the NALSA case in 2014 which secured them a constitutional status and a treatment as any other citizen of the country.

### **National Legal Services Authority v. Union of India &Ors.**

The Supreme Court, in its landmark judgment, held that transgender were entitled to a third gender status as a means to equal treatment under the law, including legal recognition. As regards Article 21 or the right to personal freedom, the court held, "the gender to which a person belongs is to be determined by the person concerned." The decision leads the path for transgender to use a third gender category on necessary identity documents. The Court also declared transgender people to be a "socially and educationally backward class," entitling them to affirmative action in education and government employment. The Court directed the Government to include transgender people in public welfare schemes, to provide appropriate health care, and to promote general awareness.

### **Navtej Singh Johar v. Union of India**

The Delhi High Court in 2009, in the case of Naz Foundation v. Govt. of N.C.T. of Delhi, held Section 377 to be *ultra vires* the Constitution, as regards consensual sexual conduct between

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<sup>16</sup> "A yr after Sabarimala verdict, Justice DY Chandrachud reveals he received vile threats, was advised not to see social media, The Economic Times", available at: <https://economictimes.indiatimes.com/magazines/panache/a-yr-after-sabarimala-verdict-justice-d-y-chandrachud-reveals-he-received-vile-threats-was-advised-not-to-see-social-media/articleshow/71374292.cms>

two adults of the same sex. However, in 2014, a two-judge bench of the Supreme Court, in the case of Suresh Kumar Koushal v. Naz Foundation, overturned the Delhi HC decision and held Section 377 to be constitutional. A petition was filed in 2016 challenging the 2014 decision.

The petitioner in the case, Navtej Singh Johar, a dancer who was identified as part of the LGBT community, sought a declaration that Section 377 was unconstitutional. He further pleaded for the recognition of the right to sexuality, right to sexual autonomy and right to choice of a sexual partner to be part of the right to life guaranteed by Article 21 of the Constitution of India.

## VI. ANALYSIS<sup>17</sup>:

The SC unanimously reasoned that discrimination on the basis of sexual orientation infringed: (i) Right to equality (Article 14); (ii) Right against discrimination (Article); (iii) Right to freedom of speech and expression (Article 19); and (iv) Right to privacy (Article 21), because gender identity is intrinsic to one's personality which can't be denied to anyone.

### RIGHT TO EQUALITY

The Supreme Court held that there was no intelligible differentia between people "who supposedly engage in 'natural' intercourse and those who engage in 'carnal intercourse against the order of nature'" and hence Section 377 was not in consonance with Article 14.

### RIGHT AGAINST DISCRIMINATION

Article 15 prevents the State from discriminating against any citizen only on the grounds of sex, religion, race, caste, or place of birth. Earlier, this provision was narrowly interpreted to mean that discrimination, which is not *only* on the grounds mentioned above, is permitted. However, in the NavtejJohar Case, the SC took a cosmopolitan view and held that *any* ground of discrimination, whether direct or indirect, which is founded on a particular understanding of the role of the sex, including sexual orientation, constitutes *discrimination* under Article 15. Therefore, Section 377 was held to be discriminatory under Article 15.

### RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

Article 19 provides for the freedom of speech and expression to all citizens. The SC noted that Section 377 denied the right to express one's sexual identity. Also, a consensual carnal intercourse among adults in a private space does not, in any way, harm public decency or

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<sup>17</sup>Avik Biswas and Savithran Ramesh, "India : Supreme Court Recognizes Rights Of The LGBT Community", available at: <http://www.mondaq.com/india/x/737300/Human+Rights/Supreme+Court+Recognizes+Rights+Of+The+Lgbt+Community>,

morality. Consequently, Section 377 does not qualify as a reasonable restriction on an individual's freedom of speech and expression.

## **RIGHT TO PRIVACY**

The SC found Section 377 to have a chilling impact on Article 21 as over the years, the SC has interpreted Article 21 quite broadly, so as to include within it, the right to live with dignity; the right to privacy; and the right to autonomy.

Every human being by the virtue of being a human possesses certain inherent rights, that can't be abridged by majoritarian sentiments. In both the cases, the court put constitutional morality above majoritarian morality. The judges relied upon the basic inherent rights of the human, i.e. natural rights. The judgement has opened the door for a dynamic interpretation of the constitution in the light of natural rights. In "Navtej Singh Johar", Justice Malhotra goes so far as to state that "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries."<sup>18</sup> These cases struck a powerful blow for the liberation of a group that had long been stigmatized and discriminated against, in public and in private. It also liberated Indian equality jurisprudence from its six decade-old fetters of 'intelligible differentia' and 'rational nexus'; from a vision of equality bounded in a nutshell to infinite space. The Court revived the the hopes that K.T. Shah and B.R. Ambedkar nurtured while formulating the equal protection and non-discrimination clauses, and restored them to Nehru's 'magic of the human spirit'<sup>19</sup>.

## **RIGHT TO PRIVACY**

According to Black's Law Dictionary, Right to Privacy means "right to be let alone"; the right of a person to be free from any unwarranted interference<sup>20</sup>.the term privacy has very wide meaning and interpreted according to the situation and demand . Tom Gaiety said 'right to privacy is bound to include body' inviolability and integrity and intimacy of personal identity including marital privacy.'<sup>21</sup> It goes on to include privacy of sexual orientation.

### **Case:**

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<sup>18</sup> Para 20, Navtej Singh Johar v. Union of India WP(Crl.) No. 76/2016

<sup>19</sup>Gautam Bhatia, *The Transformative Constitution*56(HarperCollins Publishers India, 2019)

<sup>20</sup> "Legal Analysis of Right To Privacy In India" , available at: <http://www.legalserviceindia.com/legal/article-676-legal-analysis-of-right-to-privacy-in-india.html>

<sup>21</sup>*Ibid.*

The case was filed by 91 yr old retired HC judge KS Puttaswamy against the government's Aadhaar scheme (a form of uniform biometrics-based identity card) which the government proposed making mandatory for access to government services and benefits.

In this case Supreme Court took dynamic interpretation of the constitution and gave historical verdict on privacy. The nine judge bench unanimously held that the right to privacy not only emanates from the guarantee of life and personal liberty in Article 21 of the constitution, but also intrinsically enshrined under various facets of freedom and dignity recognised by the fundamental rights contained in Part III of the Indian constitution.

### **Judges' ratio based on natural rights:**

Chandrachud J., writing for the plurality, observed that "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."<sup>22</sup>

Justice Bobde noted that "privacy, with which we are here concerned, eminently qualifies as an inalienable natural right, intimately connected to two values whose protection is a matter of universal moral agreement: the innate dignity and autonomy of man."<sup>23</sup>

Justice Nariman observed that "we do not find any conflict between the 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."<sup>24</sup>

Justice Sapre held that "in my considered opinion, "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."<sup>25</sup>

Justice Kaul noted that "primal natural right which is only being recognized as a fundamental right falling in part III of the Constitution of India."<sup>26</sup>

Puttaswamy advanced two important theoretical propositions about constitutional law. The first was the doctrine of living constitutionalism and the second was the endorsement of natural

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<sup>22</sup> Para 40, Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

<sup>23</sup> Para 12, Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

<sup>24</sup> Para 45, Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

<sup>25</sup> Para 25, Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

<sup>26</sup> Para 7, Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1

rights.<sup>27</sup> By these opinions of the judges, we can infer that the judges have given the ratio of the judgement on the basis of natural law principle. They are of the view that natural rights are inseparable and inalienable rights of every human being.

## VII. CONCLUSION

In the 20<sup>th</sup> century Natural law has been moulded by jurists into natural rights which are “universal and immutable”, “unchanging and everlasting.” It is an inseparable and indispensable part of human existence. These are the principal rights which enable a man to lead a happy and prosperous life. Coming to the Indian interpretation, these rights have been constantly included in the Fundamental Rights by various judicial pronouncements and legislative amendments as per the necessities of the citizens. The judicial approach has been dynamic towards the inclusion of these inseparable rights in recent times. The judges heavily rely on natural law philosophy in the ratio of their judgements. As J. Chandrachud observed in K.Puttaswamy case that, “There are certain rights which are natural to or inherent in human being. Natural rights are inalienable because they are inseparable from human personality. The human element in life is impossible to conceive without the existence of natural rights.” According to Chief Justice Misra, “the purpose of having a constitution is to transform society”.

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<sup>27</sup>Gautam Bhatia, “Revisiting the Aadhar Judgement (Indian Constitutional Law and Philosophy)”, available at: <https://indconlawphil.wordpress.com/>