NATURAL LAW

1. Rules and principles which are considered to have emanated from some supreme source.

2. Natural law has been envisaged as a mere law of self-preservation or is an operative law of nature constraining man to a certain pattern of behaviour.

3. Dr. W. Friedman points out that the history of natural law is a tale of the search of mankind for absolute justice and its failure. It figures in offering help with two vital contemporary problems,
   - Validity of the unjust law
   - Abuse of liberty

4. Natural law (jus natural) was the principal instrument in the transformation of the old civil law (jus civile) of the Romans. In the name of natural law, the validity of International Law was asserted.

5. Through the theories of Locke and Paine, natural law has provided the foundation for the individualist philosophy of the American and other modern Constitutions.

6. Natural law has been used to support almost any ideology.

7. The most important and lasting theories of natural law have been inspired by the idea of a universal order governing all men and the inalienable rights of the individual.

8. Natural law theories may be broadly divided into,
   - Ancient theories
   - Medieval theories
   - Renaissance theories
   - Modern theories

9. Law can only be true law if it is obligatory and since law contrary to the principles of natural law cannot be obligatory, human law at variance with natural law is not really law at all, but merely an abuse or violation of law – “lex injusta non est lex”
10. Salmond – “by natural law or moral law is meant the principles of natural justice if we use the term justice in its widest sense to include all forms of rightful action.”

ANCIENT THEORIES

1. GREECE

1. Laid the basis of natural law and developed its essential features.

2. Heraclites laid the basis of natural law. He found it in a rhythm of reasons and events which he termed it as destiny, order and reason of the world. Nature is not just substance, but a relation, an order of things.

3. The Greek School of Enlightenment (sophists) developed in 3\textsuperscript{rd} century B.C. - contact between nature and institution is the most characteristic work.

4. Nature is not just substance, but a relation, an order of things.

5. If there is anything universally valid, it is that which is valid, by nature for all men without distinction of people and time, what nature determines is justly authorised. It is the order of things that embodies reason.

SOCRATES (470-399 B.C) – ‘HUMAN INSIGHT’- POSITIVE LAW TO BE OBYED:

1. Man possesses ‘insight’ and this ‘insight’ reveal to him the goodness and badness and makes him know the absolute and eternal moral rules. This human ‘insight’ is the basis to judge the law.

2. He defined virtue, the fundamental ethical corruption, as insight, in turn, as knowledge of the good, the concept of good with no universal content.

3. One of the dictates of natural law is that authority a Positive Law should be obeyed.

4. Socrates did not say that if the positive law is not in conformity with moral law, it would be disobeyed. According to him, it was rather the appeal of the ‘insight’ to obey it.

5. His theory was a plea for security and stability, which was one of the principal needs of the age.
PLATO:

1. Laid the foundation for much of subsequent speculation of natural law themes.

2. “God gave all men in equal measure a sense of justice and of ethical reverence so that in the struggle of life, they may be able to perform permanent unions for mutual preservation.”

3. In the ideal state of Plato, each individual is given that role for which he’s best fitted by reason of his capacities. His ‘Republic’ is a constructive attempt to discover the basis of justice.

4. The administration of Justice is given to the philosopher kings whose education and wisdom is such that there is no necessity to link them up with a higher law.

ARISTOTLE (384-322 B.C) Man part of nature in two ways- Man’s reason-the basis; Even the deficient law to be obeyed

1. Man part of nature in two ways:
   - He’s the part of the creatures of the God
   - He possesses active reason by which he can shape his will

2. By his reason, man can discover the eternal principles of justice, called ‘natural justice’.

3. Aristotle defined natural justice as “that which everywhere has the same force and does not exist for the people thinking this or that”

4. The relation between natural justice and positive law, he said that ‘legal justice is that which is originally indifferent but when it has been laid down, is not indifferent”

5. Natural law as opposed to positive law has invariable contents. Positive law should try to incorporate in itself, the rules of natural law. But even if it is deficient or falls short of natural law principle, it must be obeyed. The law should be reformed rather than being broken.

6. Aristotle gave the fullest “elaboration of natural law” in Greek philosophy and inspired great philosophers like Kant, Hegel, Kelsen and Stammler.
ROScoe POUND (SUMMARISED OBSERVATIONS)

1. It was the result of the views and ideas expressed by thinkers, philosophers and orators and not of jurists or lawyers.

2. It was influenced by politically declared laws and tribal customs which were not differentiated in social order of those times.

3. Enacted laws were in fact the declared customs the validity of which was not effected by their indifference to natural law philosophy.

4. There was a growing consciousness that law was a product of wisdom and reason which is conferred validity.

STOICS:

1. Postulates of reason are of universal force.

2. They are binding on all men everywhere.

3. Men are endowed with reason irrespective of nationality and race.

2. NATURAL LAW IN ROME

1. The theory of Stoics exercised great influence upon the jurists during the Republican period and some of them paid high esteem to natural law.

2. The theory of ‘Natural law’ did not remain confined only to theoretical discussions. The romans used ‘Natural law’ to transform their narrow and rigid system into a cosmopolitan one. Natural law exercised a very constructive influence on the Roman law.

3. Three divisions of law:
   - Jus civile
   - Jus genetium
   - Jus naturale

4. ‘Jus civile’ or Roman civil law was only for Roman citizens.
5. Roman magistrates applied the natural law principles which were common with foreign laws with foreign citizens also. The law which grew this way is called ‘Jus genetium’ became a part of Roman law.

6. Both ‘jus civile’ and ‘jus genetium’ were merged to be known as ‘jus naturale’ as Roman citizenship was extended to everyone except a few categories of persons.

7. Roman lawyers did not bother themselves with the problem of conflict between ‘positive law’ and ‘natural law’.

8. Lord Lloyd conquest and commerce necessitated the development of law which could be applied to foreigners. Jus genetium and Jus civile stripped off formalities and cosmopolitan trimmings was the result.

9. Gaius wrote that, “all people who are covered by laws and customs applied partly their own laws and partly law which is common to all mankind. The law which people has made is peculiar to that people and is called Jus civile, the special law of the state, but that which natural reason has appointed for all men is in force equally among all people and is called Jus genetium, being the law applied by all the races.

**CICERO:**

1. Law is the highest reason implanted in the nature, which commands what ought to be done and forbids the opposite. This reason when firmly fixed and fully developed in the human mind is law.

2. Since law is a natural force, it is mind and reason of the intelligent man, the standard by which justice and injustice are measured.

3. Man stands highest in creation by virtue of his faculty of reasoning and his welfare is the supreme purpose of creation. As welfare is the chief objective of creation, man should spare no effort to help others.

4. Cicero not only held fast to the thought of a moral world order, which determines with universal validity, the relation of rational beings to each other, but also thought of the subjective aspect of consonance with his theory that this command of reason is innate in all human beings equally and has grown with their instinct of self-preservation.
3. INDIA: HINDU SYSTEM-SOURCE OF LAW IS GOD

1. The most ancient legal system in the world.

2. They developed a very logical and comprehensive body of law very early times. A sense of justice pervades the whole body of law.

3. According to the Hindu view, law owes its existence to God.

4. The King is simply to execute the law and he himself is bound by it and if he gains against this law, he must be disobeyed.

5. The Puranas were full of instances where the Kings were dethroned and beheaded when they were against the established law.

THE MIDDLE AGES

ACQUINAS – CHURCH AS THE LAW GIVER

1. The theology of the Catholic Church set the tone and pattern of all speculative thought. Though they too had the theological basis, they departed from the orthodoxy of early Christian fathers. Their views are more logical and systematic.

2. Two vital principles animated medieval thought and those were
   - Unity and
   - Supremacy of law.

3. Unity was derived from God and involved one faith, one church and one empire. The supremacy of law was not merely man made but was conceived as a part of the unity of the universe.

4. The view of St. Thomas Acquinas may be taken as representative of the new theory. His theory has to be set in the context of his time. There was a need for stability in a world emerging from dark ages.

5. The struggle between church and the state for supremacy, christendon to unit, unifying the Christian philosophy. Acquinas tried to meet all these three needs.
6. According to Acquinas, law is “nothing else than an ordinance of reason for the common good, made by him, who has the care of the community and promulgated.”

7. To quote Acquinas, “the natural law is nothing but a participation of the eternal law in a rational creature”.

8. Acquinas divided laws into four categories-
   - Law of God
   - Natural law which is revelled through the reason of man
   - Divine law or the law of scriptures
   - Human laws

9. Natural law is a part of divine law. It is that part which reveals itself in natural reason. It is applied by human beings to govern their affairs and relations. The Church is the authoritative interpreter of the divine law.

10. The scheme of Acquinas dividing laws into four categories is regarded as the first of its kind in the history of jurisprudence. Law was no longer the product of original sin. It became a part of the divine scheme.

11. The test by which laws are to be adjudged is the following dictate, “Every human being has so much of the nature of law as it is derived from the law of nature. If it departs from natural law on any point, it is no longer law, but perversion of law.”

12. Acquinas beautifully blended political philosophy with that of Christian faith and built a very logical and elastic theory of natural law.

**GROTIOUS:**

1. He said, “Natural law is so immutable that it cannot be changed by God himself”

2. The nature of human intellect desires a peaceful society and from that are derived the principles of natural law which are independent of divine command.

3. On his principles of natural law, Grotius built his system of International Law. The most fundamental of his principles is ‘pact sunt servanda’, the respect for promises given and treatise signed.
4. In the writings of Grotius, the idea of natural law assumed a constructive and practical function comparable to that which it did in the time of Roman Empire.

5. Grotius called human nature as the Grandmother, natural law the parent and positive law the child.

**RENAISSANCE THEORIES**

1. Renaissance and reformation paved way for the spiritual emancipation of the individual. ‘Rationalism’ became the creed of the age. The ideas of natural law were used for a very different purpose in the English Revolution of 1688, American declaration of Independence and French Revolution.

2. The use of social contract as a definite concept in political and legal controversy can be traced to the Marsilius of Padua. The concepts of society of these exponents are individualistic with social contract theory as the base. The main exponents of this theory are Grotius, Hobbes, Locke and Rousseau.

3. The most far reaching consequence of this theory was that, it held, people are the source of political power.

**GROTIIUS:**

1. Hugo Grotius used the social contract for two purposes. Internally for the justification of the absolute duty of obedience of the people of the government and internationally to create a basis for legally binding and stable relations among states. He put forward social contract as an actual fact in human history.

2. The sovereign is bound by natural law. The law of nature is discoverable by man’s reason. It is a self-supporting reason of man.

3. His main concern was for the stability and order of international society. His theory served that purpose by stressing the equivalence of different forms of government established by different people by freeing the ruler from internal restriction.

**REFER HOBBES, LOCKE AND ROUSSEAU FOR SOCIAL CONTRACT THEORY**
STAMMLER:

1. Stammler was an exponent of natural law with a variable context. He says that “all positive laws is an attempt at just law and justice is a harmony of wills or purposes within the framework of social life.” Stammler distinguished between the concept of law and the idea of law or justice.

2. Stammler sought to provide a formal, universally valid definition of law without reference to its content. He defined law as “a species of will, others regarding, self-authoritative and inviolable”

KOHLER:

1. Kohler is a neo-Hegalian. He gives a new interpretation to legal history.

2. He says that legal interpretation shouldn’t be materialistic.

3. He says that there is no eternal law.

FULLER:

1. He is regarded as the leading contemporary natural law lawyer.

2. He sees law as a ‘purposive activity’. He maintains the need for rules of law to comply with internal morality. He does not contend that the rules of a legal system must conform to any substantive requirements of morality or any other external standard.

HART:

1. He combines positivism with natural law. He has attempted to restate a natural-law from a semi-sociological point of view.

2. Hart places a primary emphasis on an assumption of survival of human goal.