CHAPTER - VII
LAW, LIBERTY, EQUALITY AND JUSTICE

The concept 'Justice' is surrounded by a host of other concepts, like law, right, liberty, equality, punishment and etc. They are interwoven in such a fashion that they are hardly separable from each other. In this chapter, I shall confine my discussion to some of these concepts only and show the conceptual link between them. Above all, I wish to show that concepts like law, liberty and equality are primarily moral concepts.

Law is a principle that refers to the operational way of things or a principle that guides man either as an individual in the state of nature or as a member of any social organism. The former refers to the natural laws and the latter to the prescriptive or civil laws. The term 'natural law' is ambiguous. It sometimes means the laws of nature. In this sense the law of gravitation can be said to be a natural law. Laws of nature in this acceptation, refer to the laws that operate in the world of nature. The laws of nature in this sense will not be discussed in the dissertation. However, 'natural laws', have also a different connotation. They sometimes stand for laws that operate in the human world. Natural laws in this sense are closely linked to the concept of natural right. In
other words, natural law, natural right, and natural justice are close conceptual neighbours. Natural law as being related to natural right and natural justice will be discussed in the chapter.

Roughly speaking, natural laws, concerning man, describe the way man acts in the state of nature. These laws are natural because they correspond to the nature of man as a rational human being. These laws are founded on a firm basis of morality. They reflect both the ways man acts and ought to act. These laws are valid in themselves. Validity is inherent to them. These laws are as such valid independent of any other external standard. They are

"recognised by Reason a priori even without an external legislation..."1

They constitute a consistent, valid, supreme, and independent standard. They are intrinsic to the nature of human beings. Man does not acquire such laws; he is born with them. Man and the natural laws are co-eval.

As natural laws relating to natural rights are universal in nature, they are the same everywhere and for all time. They do not differ from place to place, from time to time, or from person to person. They are valid for all time to come. Such natural laws are universal
because they owe their origin to the very nature of human beings which extend to all mankind. They are absolute, not relative.

These laws are in a way conceptually linked with the very nature of human being. Man does not acquire them as an external quality like the positive laws. Positive laws always presuppose a maker of it. It is either a monarch, or a group of men or one man or governmental agency that frames the positive laws which are binding on those for whom they are made. But there is no maker of natural laws. They can be said to be eternal since they belong to the very nature of beings as cosmic principles or "Sanātana Dharma" (eternal laws) as depicted by the "Dharma Sāstras" (religious texts) of India.

Natural laws, as objectively existing, are independent of any human existence. Whether there are human beings or not, these laws can be said to continue to exist. Their existence does not depend on their being discovered. Rather, the discovery if any reveals the nature of human beings. Their existence does not depend on human perception or apprehension. The harmony of the universe is independent of any human existence. The nature of man is the bearer of such an equilibrium. No positive law, no command
of authority, no coercion is necessary for things to go their own way. They move quite harmoniously by the merit of their innate nature to make the universe a united one. Things are of such a nature and are endowed with such potentialities that they by themselves make a balanced universe. There is no necessity of presupposing a supreme architect like God. Things, including human beings, are the perfect embodiments of balance which, in turn, sustains the universe. Natural laws are those which make such a harmony possible in the world.

A parallel concept of natural law, in the form of 'ṛta', is found in the "Dharma Śāstras" (religious texts) of India. In Ṛg veda, ṛta points to the supreme transcendental law or cosmic principle or immanent order which subsumes under its control the entire universe, even including the gods. Everything is controlled and governed by ṛta. In the Ṛg Veda, it is described as:

"The Sindhus (rivers) follow the ṛta of Varuna";²

the wheel of ṛta (i.e. the year) revolves round the sky with twelve spokes;

"the dawn, the daughter of heaven, correctly follows the path of ṛta";³
"the young woman (Usas) does not destroy the light of rta,"\(^4\)

"the sun is the bright and lovely face of rta."\(^5\)

Speaking on the importance and superiority of rta, Berolzheimer says:

"... 'rita', ... is at once the organized principle of the universe and the divine ordering of earthly life; as the former it regulates the appearance of the sun and the moon, of day and night and embodies the unchangeable principle that pervades the succession of phenomena; as the latter it is afflicted with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful to men; in the institutions of marriage, of the monarchical state, of the patriarchal home; and in man's sense of responsibility for his sins."\(^6\)

Things, by their own nature, go in their own way without hindering the progress of others. Natural laws, being all pervasive, operate in the most equal manner without any discrimination. Perfect equality in nature and natural phenomena is maintained by the ingrained laws in them.

Prescriptive laws, on the other hand, lack most of the important qualities of natural laws. They are also known as positive laws or civil laws. These laws are made
by men. They emerge either from legislation or from the
voice of a monarch who is viewed with awe and adoration as
the perfect embodiment of law or in the form of customs
and traditions. Prescriptive laws are mostly written and
conventional. These laws come into existence only in a
social organization. Therefore, these laws are the products
of society. They are dependent on human society, not pre­
suppositions of it. With the birth of society, they evolve;
with the abolition of society, they perish. They are made
with the obvious aim of upliftment of the entire society
or for the benefit of a section of it. Whatever the case
may be, these laws are framed in a social setting to suit
the needs of men.

The positive laws are relative. They are not uni­
versal in application as they are confined to different
social settings at different places and times. A legal
code which operates very effectively in one society may
square very badly in other societies. Further, a legal
code of the present may not fare better with the change
of time. Positive laws are best understood in a definite
social perspective. Without this, they stand isolated
and meaningless. They carry weight and importance only
in a society.
One of the important features of the positive laws is that they are always presumed to be good and just. They are supposed to be so because they sometimes work nicely in a social setting. For the pragmatists, they work properly. For the utilitarians, they bring the maximum pleasure for the maximum number. For the democrats, they secure the fundamental liberties. Or they are good and just because they suit the needs of society. In fact, they are justified by their end results.

These positive laws are always supported and supplemented by a coercive standard. Infringement of these laws leads to punishment of some sort. Punishment may either be deterrent, retributive or reformative. The sole aim of such a supplement is to uphold the fabric of legal codes by the fear of punishment.

Though coercion and fear of punishment may succeed in certain cases in erecting a firm basis for the positive laws, still then, their validity can always be doubted. How can a set of legal codes which differs from place to place and time to time, and which is viewed with suspicion, fear and abhorrence, be treated as good and just? A law that does not emerge from the reason and morality of man is no law at all. A law may withstand the revolt of reason
far away from human emotions, passions and errors. They are objective and absolute; supreme in their dispositions. These laws are self-justifying and positive. Laws depend on them for their ultimate justification.

Man is a social animal. But the society should not burden him with an alien load of laws. He should be governed by laws as his nature demands as a rational human being. As man's nature demands that he should be governed by laws which correspond to his nature, so, the society should bear these laws. Society is a harmonious aggregate of human individuals. So, as per the cravings of human nature, the social laws, civil laws, or the positive laws should be guided by the natural laws. A society to be a just one, ought to bear these natural laws or bear at least laws akin to them. It follows from the nature of man as a part of the social organism, that he should be governed by laws of his own nature.

All prescriptive or positive laws ought to aim at fulfilling the end of human nature. Their validity does not lie in themselves, rather lies in their conformity with the natural laws. Kant rightly says:
"... but a merely empirical system (positive laws) that is void of rational principles is, like the wooden head in the fable of Phaedrus, fine enough in appearance, but unfortunately it wants brain."7

The natural laws exist permanently behind the laws of this or that state; and they serve as the ideal excellences towards which the civil laws should tend and approximate.

Any positive law, contrary to natural laws, should be treated as null and void. They are to be repealed because their spirit goes against the very nature of beings for whom they are made. The aim of law is to control and guide human beings for the fulfillment of their nature in the most perfect manner. If a law, instead of providing congenial atmosphere for the fullest manifestation of man throttles human latent talent, it should be immediately revised in the light of the natural laws. Positive laws should be treated just only when they agree with the aim of the entire human race. Positive laws owe all their justification to the natural laws which are just, moral and right in themselves. A law, however beneficial may be, should be abandoned when a single individual man is not benefited out of it. Positive laws should not be contradictory, rather should be the corollary of the natural laws.
Cultures, brought up by positive laws, devoid of morality and the sense of justice, corrupt man and corrode the essence in him, as Rousseau says.

Positive laws which operate in society in the form of civil laws, differ from society to society. Every society remains firm and claims to be justified on its own stand-point. Societies usually give prime importance to their civil laws and fail to see the shaky foundation of such laws. How can, altogether different sets of civil laws be valid and just at the same time? They may be just (in a legal sense), but not from the moral point of view. The framers of such civil laws are always duped with an illusion of a supposition. The civil laws are assumed to be just and valid, though in fact they are not so. Therefore, civil laws should pass through the test of the natural laws and should be scrutinized intermittently in the light of the latter, so that they do not miss the objective for which they are made.

The moralized civil laws provide civil rights to the social beings within a social organism. Such civil laws act as the upholder and protector of the rights conferred upon human individuals. These rights which are sanctioned by law should be in harmony with the nature of
man. Man inheres some rights in him being born as a human individual. They are the natural rights which man enjoys even before the formation of the society, being protected by the natural laws.

By "natural" may be meant what is "original" as opposed to what is acquired. Kant contends:

"Natural Right rests upon pure rational principles a priori. Positive or Statutory Right is what proceeds from the Will of a Legislator."

Natural rights spring from the natural laws. Such rights are co-eval with the birth of man and are inseparable from his personality, because no one has conferred such rights on him. These are the inviolable rights which man possesses in the state of nature and continues to possess them firmly, because he is still the same natural man living in a different setting. Man's rights should not be measured by the calculus of loss and gain, as most of the utilitarians and contractualists uphold. Man has nothing to surrender. To surrender some rights to an alien authority is to restrict one's own nature.

Natural rights are same everywhere and always the same for all men. Man, primarily, is a being of nature and accidentally a being in the society. He enters into the
society with all his worth and personality. It is not that they have to surrender rights in order to form a society as the contractualists say. To deny man of his inherited rights is to take away the worth and value of his personality. As the natural rights are not sanctioned by any authority, the authority has got no right to deprive man of his rights.

"To base natural or fundamental rights on external authority of any kind may seem to involve an obvious contradiction, because the natural rights are supposed to be the very criterion by which the worth of the external authority itself can be judged. If the end of the government be the preservation of certain natural rights, we cannot let government itself determine what their rights are."9

Natural rights cannot be justified by the laws of the government. Rather, the very existence of governments can be justified only by natural rights. The government is supposed to protect and preserve what are extended from the natural state to the society. Man is a value in itself, and the rights and liberties constitute his inherent worth. Natural rights are valid, moral and just by themselves. They are regarded as more fundamental and more basic than the other civil rights. The so called civil rights are deduced as auxiliaries from the basic ones. Natural rights are the innate rights of man and are independent of any other standard. Kant opines:
"Innate Right is that Right which belongs to every one by Nature, independent of all juridical acts of experience."10

They are self-justifying and supreme. They should be the goals of the civil rights. The morality of a society should be implemented and protected by laws. This is possible only when morality is reflected in legality. A moral right is a potential claim of man on his fellow-beings irrespective of its recognition by the government. It is a right which not only claims what the law of the land usually does not recognise but also does what the latter positively forbids.

Society presupposes the natural rights. Natural rights antedate the formation of civil society. Natural rights being inalienable, man cannot surrender it to society. Seen in this light, the views of the contractualists, specially the views of Hobbes, seem untenable. Every individual is expected to live up to his rational and moral nature. His potentialities should not be curbed. The only sanction against the moral nature is the agent's approbation or disapprobation. Civil rights sometimes fall short of such an objective. The fact of the matter is that the civil rights can be treated as the products of the society. Civil laws operate only within the ambit of society and
they come into force with the formation of it. Man acquires them as a member of the society. In the state of nature, distinction between custom and law, between moral (natural) and legal rights cannot be said to exist. Civil rights can be justified only when they bear the immanent importance of the natural rights. Man should be allowed to live with rights which he possesses by virtue of being a human being. He should be allowed to live as a man.

The rights sanctioned in an organized society are the legal rights. A legal right is defined as one man's capacity of influencing the acts of another, by means, not of his own strength, but of the community as a whole. Legal rights constitute the legal personality of man. This determines the status and power of man within the society as a legal personality. The sole aim of the legal personality should be to maintain social conditions for the complete development of the moral personality of man. Both the aspects of the personality should be harmonized. Legal personality should not conflict with the moral one, nor should the moral personality conflict with the legal one. Conflict and contradiction between the two are precluded when both the personalities become one and identical. When legality becomes the voice of morality, only then, a
society can get rid of the evils and perilous consequences of the immoral legal codes, and man's moral growth, instead of being thwarted, will get a favourable moralized climate for a just utilization of his rational liberties.

Liberties are the natural upshot of man's basic rights. Liberties are licensed by rights. Law acts as the protector of them. A civil society is expected to provide liberties to each and everyman in equal manner, treating him as a free moral agent, capable of developing his own capacities in the best possible manner so as not to hinder the progress of his fellow beings. Liberties exercised in proper manner, not only help in developing the innate personality of man, but also help contributing to the moral harmony of a society as a whole. Liberties properly utilized without any transgression, move in harmony with the like liberties of others.

As legal rights derive their sustenance from natural rights and as rights justify the possession of liberties, therefore, liberties are basic to the nature of man. Man is endowed with certain inviolable liberties, not by any government, but by the virtue of being born as a rational animal. As truth belongs to propositions, liberties belong to human personality. Human personality
and his liberties are complementary to each other. Human personality is inconceivable without liberty and vice versa. Man is an end-value. So, he should not be treated as a means-value. His liberties should not be treated and utilized as a means for an extraneous end. It can be said in this connection that what is good to one individual is good for all and for the entire state; because they all possess the same rights and liberties. Unequal distribution of liberties on the basis of caste, colour, sex and origin, can only bring disastrous consequences to the state, as a section of the citizens are suppressed and deprived of contributing to the national good.

Human liberties are uncompromising in nature. How can they be separated from his personality? Man inherits these liberties as a natural man. Instead of curbing, the state should provide favourable conditions for the full flowering of human liberties. Civil laws should not overlook the natural liberties of man. The so called liberties provided by the state should conform to this. A state or government, missing this ultimate end of human liberties in its legislation, can be said to be an unjust one. Any legislation, not incarnated with the garb of fundamental liberties of man, is to be treated as unjust and immoral. It is immoral because it burdens human beings with a
principle of guidance that does not agree with their innate nature. It not only plunges man into utter confusion and pessimism, but brings about disharmony to the state.

Thomas Hobbes is justified with his hypothetical description of man's maximum natural rights and liberties. Man was left with the liberty of choosing between the life of the state of nature and the social life. To enter the society, he had to surrender all his rights and liberties to the Leviathan except the right to self-preservation. Hobbes is stern in denying the basic liberties to man in the social organism. Locke and Rousseau talk of surrendering of rights and liberties, but men surrender it not to any authority other than themselves. Both of them, in this sense, adopt a lenient view towards the liberties of man.

Bentham subordinates human liberties to his hedonistic calculus. But I wish to suggest that liberties should not be measured through profit and loss from the standpoint of utility. The Benthamian utilitarianism fails to stand before the moral strength of the natural liberties of man. Liberties cannot be measured by a gross standard as devised by Bentham. Mill seems to be doing some justice to the liberties of man when he says that
liberties are basic to man and ordinarily, they should not be taken out of them. Interference is justified only when liberty of one harms the well-being of others. In such a case, man can be rightfully prevented in doing harm to others. Mill’s mistake lies in confining rightful and just actions to those which do not harm others. Actions which deviate from the moral way of life can be and ought to be treated as unjust and immoral even if it does not harm others.

Legal liberties like civil, political and economic, cannot be justified as absolute and unconditional. As a matter of fact, legal liberty should conform to the fundamental natural liberties of man. I wish to suggest that liberty is a principle of justice and of morality. The pivotal task of the state is to discover the liberties in which the true significance of man lies. The difficult task, however, is to reconcile the liberty of one with the liberties of others through the instrument of law, keeping moral principles in view.

Law is supposed to safeguard the liberties of men. Equality is supposed to be maintained by law. It is a concept which cannot be treated as a product of society, but presupposes it. Society can be said to have been based on
equality. The contractualists treat men to be equal. In the state of nature, they were equal in the sense that they were in possession of equal number of natural rights and liberties. This feature of the state of nature endows men with equality. Equality can be said to be emanating from the very nature of man. It is appropriate here to quote Kant:

"There is, indeed, an innate Equality belonging to every man which consists in his Right to be independent of being bound by others to anything more than that to which he may also reciprocally bind them. It is, consequently, the inborn quality of every man in virtue of which he ought to be his own master by Right..."11

Men, by birth, are equal. Equality is a fundamental element in the very nature of man. Therefore, they should be treated equally, always and everywhere. There should not be any distinction between the haves and have-nots, between the ruler and the ruled. To treat equals unequally is an act of injustice and immorality.

Equality is as fundamental a concept as man's rights and liberties. It is a category that signifies the status of men in their interrelations in matters of social relation. It determines the criterion of social treatment
and distribution of gain and loss of the state. It keeps men on equal footing, treating them equally. According to Hobbes, men were equal in the state of nature. But such equality was vitiated due to ignorance of the value of human life at the initial state. Further, a sense of equality emerged in them when their life became insecure. Society was formed primarily on the basis of equality.

Locke and Rousseau, not only talk of equality within the society, they also maintain that people were imbued so deeply with the idea of equality that there was harmony even in the state of nature. People were quite conscious of their natural rights and liberties which they possessed in equal manner. Equality stretched to greater extent led to unbearable consequences which happened very often in the state of nature. Society was formed on the presupposition that men were equal and they were to surrender equal number of rights.

Kant also upholds the equality of the rational beings. He accords supremacy to individual dignity. He respects all men as equal in the sense that they are all end-values. Human beings should not be treated as means-value. Kant treats man as a value concept. For Plato, men are endowed with qualities in different proportions.
Some are born wise, some valiant and some others appetitive. The division of society broadly into three classes shows the inequality in innate potentialities. But they are equal in the sense that they are expected to contribute in like manner to achieve social virtue. A member of the producing class has that much of contribution to the social good as a philosopher-king has. Aristotle does not give equal status to men. According to him, some are born superior with noble qualities and some others with base and gross qualities. He admits natural inequalities in men. The Greek race is superior to the barbarians. The latter are born to be slaves. Aristotle is not justified in treating some as barbarians and slaves. A section of people might be possessing less developed faculties; they might not be refined in their outlook and dispositions; yet this does not mean that they have to be reduced to the class of slaves. I wish to suggest in this connection that the government should provide congenial social atmosphere for the development of the talents of the so called slaves. They should be educated and inculcated with noble ideas. Discrimination of any sort is certainly detrimental to human growth and a gross injustice against human equality.
The division of society into four classes (Varna-shrama) in ancient India exhibits the inequalities in human talents. Men with refined and religious attitude were identified as the "Brāhmīns", with valour and courage as the "Kshyatriyas", with commercial attitude of earning wealth as the "Vaishyas" and with an attitude to serve other classes as the "Sudras". No doubt, this division exemplifies the inequality in natural endowments of man, yet, they are treated equal in so far as they perform their assigned duties most perfectly to perpetuate social harmony and to achieve ultimate bliss or liberation. Men are all equal in the sense that their souls bear the aptitude of being liberated from the earthly bondage.

Civil society is regulated by certain civil laws. Civil laws look to the protection of the civil rights and seek to protect the equalities of the social beings. Laws are expected to maintain the social equilibrium. But sometimes the equilibrium is vitiated and disturbed by the unlawful activities of a few offenders. The social set up, therefore, contains in itself a coercive instrument so that people can be restrained from transgressing their own limitations. For a mass of rational beings, coercion is unnecessary. Their innate reason is sufficient to regulate
their conduct in the most reasonable manner. Reason and morality need no guide; they are the guide of themselves. Rather, they are the regulative principles for others. An ideal society with ideal men, guided by reason and moral prescriptions, is hardly instantiated. Law is just a meaningless verbal expression for the unlawful instinctive citizens. Foreseeing such a possibility, the government has erected a network of punishment to maintain social balance. It is not out of context to quote Hobbes:

"Covenants without the sword are but words."12

Punishment is a social concept and a product of the society. Men in the state of nature were being guided by natural laws - the laws of their own nature. To break the natural law is to go against one's own nature. Infringement of natural laws does not incur punishment; it is regarded as an act of injustice and immorality, because natural laws are moral precepts. Violation of the civil laws leads to punishment. It is sometimes argued that to safeguard justice, punishment is necessary. Justice and punishment go together. Accordingly, different theories of punishments have been advanced.
Exemplary or deterrent punishment is expected to deter offenders from committing similar offenses in future. Instead of punishing proportionately the wrong committed, the offender is required to undergo serious and undeserved punishment, with the aim of keeping away other potential offenders and criminals from committing crimes. I wish to suggest in this connection that this theory treats the human person as a mere thing. It makes man a means of reaching an end external to himself with the aim of intimidating future offenders from doing similar crimes. Human person is used as an example for the end of others. Others are to be benefited out of the exemplary punishment. Sometimes for a small fault, the offender has to undergo a serious and dreaded punishment with the aim, not of his betterment, but of that of others. Man is regarded just as a tool to be played and experimented. But he is not a thing which can be utilized for an external end. Man is a value in himself. The law of the land has no right to treat him as a means for the end of others. A human person should not be sacrificed for others. Justice does not lie in treating man as an instrument for the end of others. Once implemented, this kind of punishment brings irreparable loss to human personality which can never be redressed. A theory with the aim of benefiting others at the cost of
the offender, can never be justified and should be rejected as immoral and unjust. Expediency cannot be involved in punishment.

Capital punishment is also self-defeating. Such kind of punishments were rampant in ancient days and still are found to be repeated in the twentieth century in different corners of the globe. Punishment of such a kind should be abandoned as it annuls the basic human rights. Right to life or self-preservation is the most fundamental human right. Life cannot be spared for the sake of punishment. To take away the life of the offender is an act of injustice as it destroys the essence of human life. The offender should not be deprived of his natural rights like right to life. A higher moral and juridical consciousness will never approve such an act to be just and moral. It not only degrades the offender, but also the adjudicator. A higher moral order,

"... transforms or abolishes those forms of punishment which wound the essence of human personality and degrade not only him who suffers them but also, and perhaps to a greater extent, him who inflicts them." 13

The utilitarians fare no better in their treatment of the concept of punishment. Considerations of utility
predominate their views. Utility decides whom to punish and for what action. It maintains that no one should be punished unless it brings about valuable consequences. Punishments which will not engender good consequences, ought to be given up. It always justifies punishment in terms of results. If the result is satisfactory, punishment is just; otherwise unjust. I wish to suggest in this connection that the offender should not be treated as a means for the greater satisfaction of others. Human person is an end in himself. He should not be subdued for an alien end. How can the personality of a man be measured on the basis of profit and loss? Everything should be judged by human values. In the utilitarian scheme of things, there is every chance of an innocent being punished. If by punishing an innocent, for no fault of his, brings pleasant consequences, the punishment is justified by the utilitarians. How do they justify the suffering of an innocent for a greater end? Innocent persons are, no doubt, human beings with human values. Human values should, in no case, be sacrificed for an end exterior, however pleasant may be.

"Punishing the innocent people is not punishment, it is judicial error or terrorism."
Human personality should not be measured by quantitative gains. To subordinate human values to the hedonistic calculus in way of punishment is the gross kind of thing, and is base and unjust.

The retributivists, who treat punishment for the sake of punishment, are often charged with vindictive barbarism. It does not take anything other than punishment, to be the end of it. It is argued that the offender is to be punished as he violates the law. Infringement of law automatically leads to punishment. Consequences are not taken into consideration. Punishing the law breakers is sufficient to justify punishment. Guilt is a logical presupposition of punishment. It constitutes the necessary condition for it. The guilty is to be punished. That the offender has committed a guilt, is sufficient to justify infliction of punishment. Retributive theory takes law in its strictest sense and seeks to award punishment proportionate to the violation of law. Infringement of law leads to only one result, i.e. punishment.

The theory of retribution does not take morality into consideration. Conscience has no part to play. Mercy fails to break the logical link between guilt and punishment. Just because someone is guilty, he is to be punished. That is all. This shows that retributive theory;
"...is not a moral but a logical doctrine, and that it does not provide a moral justification of the infliction of punishment but an elucidation of the use of word."\textsuperscript{15}

The retributivists ignore other factors which should be taken into account to determine the justness of punishment. They overlook the regulative role of reason and morality. A theory, based on strict legality in its rigorous form, should not be treated as just and moral. It ought to be regulated by morality. Or else, it may not hesitate to take away the essence of humanity in the name of punishment. There is every possibility of human values falling prey to the tentacles of strict punishment, because it is blind with the logical link between guilt and punishment. A theory, not respecting overtly the moral nature and values in human personality, should be viewed with suspicion and ought to be abandoned as unjust.

The ancient India had developed a detailed theory of punishment. As depicted in the religious texts (Dharma S\”astras), punishment (Danda) is inflicted on the guilty to purify them of their guilt. Punishment is awarded in accordance with the caste of the offender. These texts, therefore, admit degree of punishment. A Brahmin, abusing a Sudra has to pay no fine. But a Sudra, doing so has to
undergo a corporal punishment. The sanctity with which the Brahmins are endowed, denies them to receive corporal punishment. Thus the ancient Indian law makers recognize degrees in punishment. Punishment (Danda) is raised to the status of divinity in Manusmrit. In the code of Manu, punishment is personified as a god with black hue and red eyes. It is regarded as the incarnation of law (Dharma). The whole world is under the heel of punishment (Danda), for it is difficult to find a man who is pure by nature. Punishment (Danda) has the only aim to keep the individuals and the nation within the bounds of law (Dharma); and to punish the law-breaker for the good effect of all and the protection of all beings. Punishment is expected to keep

"the whole world in order, since without it the stronger would oppress the weaker and roast them, like fish on a spit; the crow would eat the consecrated rice; the dog would lick the burnt oblation; ownership would not remain with any one; and all barriers would be broken through."16

Capital punishment, in various forms, was prevalent in ancient India. Forging a royal document used to lead to capital punishment. It even took various aggravated forms - like impaling on a stake, trampling to death by an elephant, burning, cutting to pieces, devouring by dogs and mutilations, even for comparatively mild offenses. As
depicted, punishments of such type cannot be justified because it recognises degree of punishment and upholds award of grievous punishments even for minor offences. It is argued that this sort of punishment is inflicted for an expedient end; to keep men away from committing sin. I wish to suggest that, capital punishment is not justifiable on any ground. A fear psychosis degenerates man and its values. Further, the different theories of punishment, in their zeal to protect and preserve justice have sacrificed it in the process.

In this chapter, I have been defending the natural right doctrine. One may raise the following objection to it. Who has conferred the natural rights on man and when? When were the natural rights enforced? How many natural rights are there and etc.? It might be suggested that a natural right is no right at all, for the simple reason that the author of the natural rights cannot be identified. Rights come into force, become obsolete and sometimes they get repealed. In this sense, a right enshrined in a constitution can be treated as a right, because it has a creator; it can be obsolete and can also be repealed. But no such thing can be said to happen to natural rights. It might be argued that the idea of a natural right is a myth. The only rights are municipal rights or constitutional rights.
In this connection, I wish to suggest the following: It is not reasonable to suppose that a "right" qua right is bound to be positive in nature. That is to say, a genuine right must have its author and positive legal sanction behind it. Further, it is equally unreasonable to suppose that political rights are basic and natural rights are secondary or derivative. As a matter of fact, to dispel the misunderstanding about natural right, one has to spell out its nature. It may be pointed out in this connection that natural rights are not on par with political rights. But they (natural rights) constitute the basis of all kinds of rights. That is to say, natural rights provide justification to all kinds of rights. The natural rights work as the spring board for political rights. Political rights draw their sustenance from natural rights. Every conscious human action stands in need of justification. How do we justify a particular action? In answer to this question, it can be said that a particular action is justified by a higher principle and this higher principle, can again be justified by a still higher principle. But this process cannot go on ad infinitum. Therefore, one has to stop at certain principles which do not stand in need of any other justification at all. In other words, these principles must be basic and fundamental in nature. Natural rights embody such principles.
They are basic only in this sense. The concept of natural right, not only gives sanctions to individual liberty but also enjoins upon the rulers to protect such rights. The concept of natural right provides the basis not only for political obligation, but inspires the rulers to protect and safeguard the individual subject. This is how the doctrine of natural right can be characterised as providing a basis for political life in general.

Political phenomenon is a variety of social phenomenon. All social activities, including the political ones, stand in need of justification. Conscious and deliberate human actions can ultimately be justified on moral grounds. Natural rights are meant for providing justification for all kinds of political activities. It is only in this sense that natural rights are basic, fundamental and primary.
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