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International Law

Mock #5

Q No: 2

Relation between positive law theory, natural law theory & international law. Evolution and development of international law.

1. Introduction:

The evolution of international law traces back to the 5th century uptill 15th century. The states and territories were related and use to interact by international law. Back then two school of thoughts: naturalist (nature is international law) and positivist (consent is the basis of international) dominated international law. But by the time as human race stepped into evolution and development, wars, treaties and conventions played a desicive role in the formation and evolution of international law as a legal and formal body. Now, let's discuss

in detail the relation between positive and natural school of thought with international law and its evolution.

2. Natural law theory and international law:

Naturalist school of thoughts believe in natural law theory as a key development figure in international law. According to natural law theory, there is some universal natural law that governs and binds the state in their international affairs. As per belief of naturalist, this natural and universal law governs the states in their regional affairs. Natural law theory explain more about laws of nature and tells how individuals and states are related to it. In a nutshell, natural law theory and naturalist school of thought believes in the binding principles of nature and its impacts on entities. This how they relate natural law theory as universal to international law but it has some limitations as well.

3. Limitations of natural law theory:

Natural law theory was developed in the earlier stages of international law and hence had some limitations.

- * It completely relied upon laws of nature.

- * It was not specific regarding to other subjects of international law.

- * It was raw and did not have any formal bindings and legalities.

- * It was considered as a principle rather than a law.

4. Positive law theory and international law:

In a stark contrast to naturalist school of thought, there was another school of thought who had their own beliefs regarding international law. Positive law theory says that it's not people, not individuals, not states but consent that forms international law without the consent of states and individuals.

international law cannot be practised

or implemented. Positivist says that consent forms the basis of international law.

If there is no consent of states, no proposal can be turned into law. The supremacy of international law lies in the consent of states. When states show their consent and free will regarding any matter, it becomes the case of international law. But like natural law theory, positive law theory had some limitations as well:

4. Limitations of positive law theory.

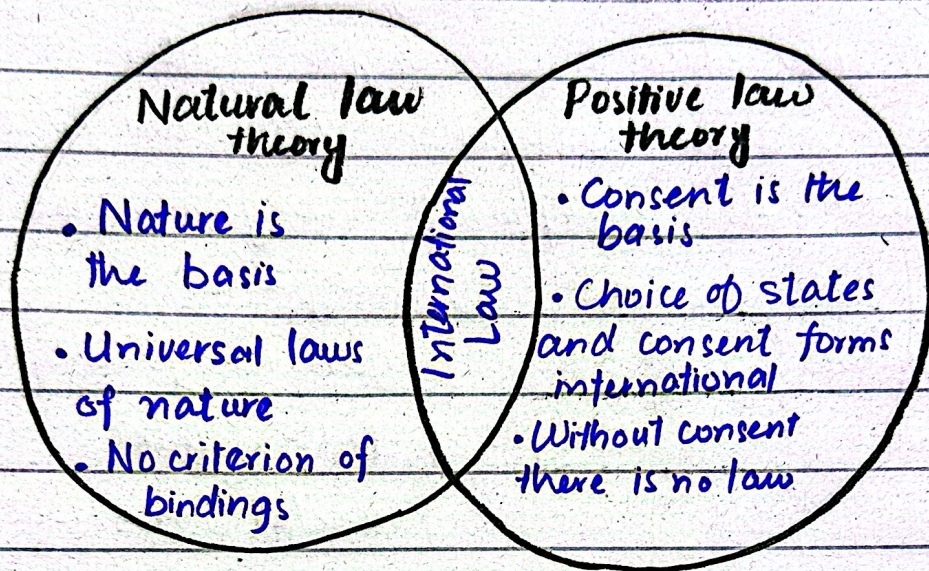
→ It failed to explain the area of influence of international law.

→ It failed to explain the sensitivity of matters and their approach in international law.

→ It was unable to elaborate the functional principles and their bindings on states and individuals.

→ Positive law theory was limited only when the consent is given, it was limited in case of no consent.

5. Positive law theory, natural law theory and international law:



As per their need of hour, naturalist and positivist school of thought were quite justified but for an international law and for its subjects they had some limitations. Positivist and naturalist measured the circumstances on international scale like in international law. They explained the scenarios and situations at international law but were unaware of the sensitivity and legality of international law. There were no international courts or bodies.

6. Development and evolution of international law:

The formal evolution of international law began after the massive destructions of WW-I and WW-II. Its development began with the development of league of nations and then after its failure, with the advent of United Nations.

The great powers of world discussed and finalised some universal laws regarding affairs like wars, treaties, threats and use of force. International law was developed with the passage of time regarding the sensitivity and importance of incidents. It eventually developed the laws of seas, laws of territories, laws of treaties, state recognition, cases of insurgents, belligerents and many more. Thus, it didn't developed over the time but with course of time it developed and emerged as a legal body.

7. Conclusion:

The above given debate can be concluded as positive and natural law theories do provide some basis for the evolution of international law but with few limitations. International law evolved and developed with the passage of time and series of events. Those events affected the legality and binding nature of international law making it impactful.
