
THE PHILOSOPHY OF JUSTICE: HOW ARGUMENT RESHAPES OUR MINDS

Raghav Sharma, B.Sc. LL.B. (Hons.) [Cyber Security], NLIU, Bhopal

ABSTRACT

With the rise of modern tools and Artificial Intelligence (AI) across the face of the legal world, these changes have a pivotal influence on legal research, drafting, fact accumulation and presentation and the overall interaction of the public with the judiciary. While the idea of automating monotonous tasks seems promising, are we as students of the law missing out on the true essence of how we reason and argue? In the hustle and bustle of modern life, it becomes challenging to reflect on certain elements which can't be witnessed directly but actively reshape the way we think and perform. The citizens of our nation consider the legislature as an anchor. After long years of deliberate discussion, through thesis and anti-thesis and synthesis, we live in the era of judicial review and the rule of law. When the legal minds of this nation tremble, they rely on mature reflection, and this inner dialogue crafts their choices and decisions. This makes it imperative for us to give serious thought to legal philosophy and the core of human communication-arguments. This article is not just a call to the aspiring advocates and practicing experts but a plea to the most important aspect of all power, the people. Are we losing sight of the foundation of human articulation and connection in search for the fleeting moment?

Keywords: Artificial Intelligence, Legal World, Legal research, Judicial Review, Rule of Law, Legal Philosophy, Arguments, Human Articulation, Legal History

I. INTRODUCTION

Chief Justice Warren Burger of the US Supreme Court¹, in an interview in July 1986, said:

“The people made the constitution, and the people can change it. The people could abolish the Supreme Court entirely”

The essence of responsibility lies in the confidence of the public. Without proper agenda and performance, **representation is simply presence**. That is what makes institutions weak and accountable people lose credibility. Even after years of structural transformation and drastic changes in the way society functions, the courts stick to precedents set decades ago. The reason for this is that even though the way in which we access and view the law has changed, the underlying philosophy of law continues to be the same since the birth of the Constitution. The cases forming the basic structure of the constitution have a lot to offer if read with careful observation of the opinions of the judges forming the benches. The *Shankari Prasad* (1951), *Sajjan Singh* (1965), *Golaknath* (1967) and *Kesavananda* (1973)² are cases which dealt with the true scope of the powers possessed by the apex court.

What surprises me is that the judgments, when read without prior moral conditioning or legal knowledge, seem to be obvious decisions. It makes one question the proceedings and give thought to the sheer strangeness of the verdicts, often passed with only one or two dissenting opinions³. Why was the importance of judicial review and limiting the powers of the legislature dragged on for decades? This uncovers the essence of human argument and moral philosophy. What seems obvious and straight forward might not, and more often than not, does not stand in the court of law. The nature of human conversation and arguments differs from the articulated facts and statements in the court **due to the barrier called law**. An event may pass in the court of ethics but for it to stand valid in the court of law, it needs to pass through this barrier. Sadly enough, the public opinion of the law is that of a barrier rather than a safeguard. If not for the law and possession of legal knowledge, any able man with emotions surmounting his wits would walk up to the court and fight his own case. This barrier is what makes the

¹ Chief Justice Warren Burger was an American attorney who served as the 15th Chief Justice of the US from 1969 to 1986.

² These cases are referred to as the basic structure cases, as they have formed what we now know as the basic structure of the Indian Constitution and cannot be amended by the score of Article 368.

³ These landmark cases have often seen a verdict by a small majority, with the assenting and dissenting opinions seeing very less difference in the margins.

judiciary stand out and held accountable. This barrier is what keeps the brutes inside the humans in control.

II. THE MORALITY SCALE

At the core of every action hides a motive. At the core of every motive hides a reasoning. At the core of every reasoning hides a thought. When feelings or emotions overpower the sanity of a man he loses all control over the possible outcomes of his actions, or inaction as they often lead to acts which could have been prevented if acted upon, and behaves as if independent and superior to the law of the land. In other words, this person has lost control over his morality scale⁴. Every decision we make in a social setting is, advertently or inadvertently, shaped by our own morality scale and altered to fit our perception of what's ideal. Beyond good and evil, right and wrong, true or false, lies the inner motives which are often materialised in the form of physical or verbal manifestations. The law regards this as *mens rea* (guilty mind) to the *actus reus* (guilty act)⁵. The first specific mention of *mens rea* that we know of is in the writings of St. Augustine⁶. The *Doctrine of mens rea* as advocated for by jurist Lord Edward Coke⁷ is how a law student in his budding years is introduced to the concept of case evaluation and decision formulation. It is due to the concept of *mens rea* (having a guilty mind) that the reasoning of *Eye for an Eye*⁸ has lost its validity in the eyes of the law. Law in its earliest days tried to make men answer for all the ills of an obvious kind that their deeds bring upon their fellows.

Legal historians state that in the early days, the mental state of the wrongdoer was little, if at all, regarded, and that no *mens rea* was required to establish his liability. Revenge was the chief objectives of people affected by the acts of others. Only physical pain inflicted upon the supposed guilty party would be deemed as justice. What these primitive societies chased was not justice but they were feeding their need to be pleased by watching others suffer in the most atrocious of ways and this gave them contentment. The 'guilty thing' was destroyed and this gave the people adequate justice. This is where the concept of justice steps in. The motive of every argument, fact, decision, rebuttal and case is to provide "swift and speedy justice". So I

⁴ This is an original concept by the author and doesn't take reference from any pre-existing theory or concept

⁵ *Actus non facit reum nisi mens sit rea* is a fundamental legal maxim meaning, an act done without a guilty mind does not make the person guilty of it

⁶ *Ream linguam non facit nisi mens rea*, the maxim as written by St. Augustine

⁷ Lord Edward Coke was an English barrister, judge, and politician. Often known as the greatest jurist of Elizabethan and Jacobean eras

⁸ This primitive idea was rampant and popular, while not practiced wholly, was pretty much the custom, and a system imposing almost absolute liability was prevalent

must deliberate upon the concepts of justice as approached in the traditional (Victorian)⁹ way and in the Indian way. The Victorian concept of justice is based on the idea that justice is blind and she shall carry her duties without bias and not go by appearances. The Indian model of justice is just as imaginative, portraying a lady bold and confident, with a sword and a scale, very similar to the Victorian concept. The detail which makes all the difference is, in India the lady is not blindfolded. The sword is not held high but its tip rests near her feet and she is free to wield the sword swiftly and strike at her own accord, carefully viewing the parties in question and making her decision.

Focusing on the morality scale of justice again. It is evident that since the guilty mind is an imperative part of a criminal act, the morality scale shall come into the picture too. Justice often becomes a matter of perception and perceptions will always differ. An American writer Henry Louis Menken stated, '**Injustice is relatively easy to bear, what stings is justice**'. No matter what landmark case we study or what decision we attribute ourselves with there will always be someone who will articulate the **rightness behind injustice and the wrongness behind justice**. This is what makes justice **unpredictable, unsatisfying and often immoral**. But that too depends on the morality scale you come from. The role of law and advocacy is to make this concept of morality and legality simple and comprehensible. It would be false to say that what is moral can't be legal and vice-versa!

The system of social justice is built inherently upon the human tendency to question the moral wrong, not the legal wrong. Even today, when there already exists a specific law concerning most of the affairs that we might have to deal with during this life, the popular notion is to favour the moral aspect and not the legal aspect of an action. This covers a major reasoning for why a vast number of people commit and then go on to support honour crimes and crimes of passion. Giving the appearance of justice to the parties is as important as the administering of justice itself. As long as the majority is guided by the emotions and moral admonitions it becomes imperative for us to adjust the morality scale of the population and make it to be in tune with what's legal. To think of justice before we think of morality is what the representatives must thrive to do. It is only possible when upon mature reflection. When critics write without fear or flattery, when judgements are taken as moral compasses and when laws are made not for the public sentiment but for the public contentment, we can truly transform

⁹ This ideal of justice is taken from the border-design of the Royal Charter signed by Queen Victoria

the way we think during this phase of legal transition.

III. THE FUNDAMENTAL WRONGS AND THE WAY FORWARD.

When the concept of mental intent came into being, in the early stages, law treated intentional crime to be worse than unintentional crime. Later on as the morality scales of the people started to adjust naturally with time, other modes of punishment started to appear on the face of the legal landscape. Monetary compensation to the aggrieved party of the relatives of the aggrieved party (if it was a case of murder) or the King, or both was considered as just and fair. Slowly as men started to distinguish one type of crime from the other, they naturally drew more exact lines separating the mental elements necessary for each crime. At times it is important for us to see ourselves as others see us. It is true that the position of lawyers as the servants of the society is indispensable and it shall continue to be the same. “The manner in which the legal minds discharge their duties is how the public opinion is built and the public is a better safeguard for the independence of jurists than any law of constitution.” – Justice Dorab Patel (Pakistan)¹⁰.

What I ask for is a reshaping of the public sentiment toward the law and the justice system. Judicial efficacy is always put to the test by the voice of the crowd and it is a respectable deal that amidst such diversity the rule of law receives much respect, as it must. Argument is inherent in human interactions and in everyday life much of it is in vain. There are instances where such an act is carried that the emotion to argue is suppressed by the feeling of trust and content. This is exactly what the judiciary needs. Certain cases are given the distinction of being landmark ones whereas there are some judgements which fuel the hope of humanity and makes the people feel heard and seen. *Romesh Thapar and Brij Bhushan* (1950), *The Fundamental Rights Case* (1973), *Maneka Gandhi* (1978), *Navtej Singh Johar* (2018), *Hussainara Khatoon* (1979)*Vishaka* (1997), *D.K Basu* (1997)¹¹ and many more are cases which make the law credible.

Despite of the challenges faced by the judiciary, like judicial backlog, disproportionate representation, lack of transparency in appointment and under-trials the most prominent issue

¹⁰ Justice Dorab Framrose Patel was a Pakistani jurist who served as the former justice of Supreme Court of Pakistan and former Chief Justice of Sindh High Court. Patel was a founding member of the Asian Human Rights Council in 1987 and the co-founder of the Human Rights Commission of Pakistan

¹¹ These are examples of the many cases which deal with the score of the fundamental rights and other natural rights which have now become an indispensable part of our daily being

which is ignored during public discourse on this topic is the understanding of the concept of justice and legality. When people approach the court without adjusting their morality scales, they walk into the courts expecting disappointment. Establishing guilt and innocence is a concept much understood by the legal workforce, whereas the general public often works on the establishment of moral justice. It is often misunderstood but the law doesn't speak for the people, the people speak for the law!

Institutions must focus on rendering the legal knowledge of the people more effective. This shift in mindset will prove to be revolutionary when it comes to the functioning of the judiciary. Basic concepts of law and justice must be taught to every citizen at the foundation stage. When exposed to the working of the legal world, the young minds not only understand the importance of having the law, but the perils of not having legal support at all! As citizens of the world's largest democracy, we could naturally evolve into become the world's largest legally aware society. This small shift in the way we approach the law, not acting as passive consumers but active participants, could bring out a plethora of opportunities amidst the legal world itself. Even if that doesn't happen people would still possess the adequate knowledge required to fundamentally transform the ill-formed mindset the society has fed into them and re-adjust their morality scales. Simply by observing we would understand the responsibilities of becoming global citizens¹². What would become more important who not be arguing what's ethically right, but supporting what's legal. By introducing this change, the structure of our society would not be easily corrupted by narrow loose-talks or unaware points of question. When we think of it, many uncertain 'issues' can be answered simply by understanding where they come from. People would finally start taking part in the nation-building endeavours and by actively witnessing change, they could be transformed into change makers of the dawning age. It wouldn't matter if the field is AI or entrepreneurship, a more legally aware citizen not only understands what to do but what not to do, not just morally, but legally. The essential thing in life is not conquering all aspects of it, but simply taking part and fighting well.

The true essence of education lies not only in understanding the textbook principles which endow us with the theoretical knowledge but in comprehending the factors affecting our rights and duties. No citizen's fate would depend on the whims and dispensation of one man and a more nuanced approach would come into play in terms of political, social, economic, geo-

¹² All individuals are part of a wider, interconnected world and this mindset emphasizes shared responsibility and civic engagement

political, global and the legal world and how a citizen places himself in this complex but intricately tied-together web of ideas and actions, thoughts and emotions, actions and repercussions and morality could be balanced with legal outcomes. True justice allows us to argue more, not just emotional arguments feeding on pleasure, but rational arguments making us more aware. Argue all you can, not just in the courts and on the podiums, but in the face of adverse opinions.