
KAUSHAL KISHOR V. STATE OF UTTAR PRADESH (2023): AN ANALYSIS THROUGH H.L.A. HART'S LEGAL POSITIVISM

Aparna M.P., Maharashtra National Law University, Mumbai

ABSTRACT

The Supreme Court of India's decision in *Kaushal Kishor v. State of Uttar Pradesh* (2023) re-examines the constitutional relationship between law, morality, and judicial function. The central propositions of H. L. A. Hart's legal positivism are embodied in the judgment which affirms moral lapses in a minister's private speech does not always attract constitutional liability. This paper analyses the reasoning of the Court through Hart's theoretical framework: the rule of recognition, the separation of law and morality, and judicial discretion in hard cases. It also contrasts the natural-law and Dworkinian approaches that view morality as integral to legal interpretation with Court's positivist restraint. The analysis exhibits that *Kaushal Kishor* portrays a persistent positivist adherence to constitutional text and institutional authority within India's expanding rights jurisprudence.

1) Introduction

The philosophical foundation of adjudication remains to be defined by the convergence between law and morality. In *Kaushal Kishor v. State of Uttar Pradesh*, a Constitution Bench of the Supreme Court debated the normative tension between moral obligation and legal accountability. Public outrage and a constitutional petition claiming violation of the victim's right to life and dignity under Article 21 of the Constitution were ignited by a state minister's slanderous remarks about a sexual-assault victim. The petitioners contended that minister's speech flouted the "constitutional morality" inherent in fundamental rights and sought the Court to hold the State vicariously liable for it. The Court rejected this plea and held that fundamental rights operate predominantly in a vertical dimension, between the State and individuals, rather than horizontally among private actors.¹ The judgment underlined that constitutional liability must derive from clearly defined legal rules rather than moral disagreement. This reasoning highly concurs with Hart's legal positivism, which insists that the sanity of law rests upon its source, not its moral content.²

2) Theoretical Framework: H. L. A. Hart's Legal Positivism

Hart's positivism turned out to be a shift from both Aquinas' moral-naturalist traditions and the command theory of John Austin. For Hart, a legal system is composed of primary and secondary rules. Primary rules impose duties, while secondary rules grant powers to recognise, alter, and adjudicate those primary obligations.³ The rule of recognition is one of the secondary rules, serves as the ultimate criterion for legal validity. Officials accept it as a social fact that determines the sources of law such as, statute, precedent, or the constitution.⁴ Crucially, Hart distinguished law from morality, arguing that the two domains may overlap but are conceptually independent. If a rule satisfies the accepted criteria of validity within the system, it could be legally valid yet morally unjust.⁵ Hart also recognised that judges encounter hard cases where language is ambiguous or social developments disclose gaps in the law. Judges exercise limited discretion, in such circumstances, yet their reasoning must resonate with the

¹ *Kaushal Kishor v. State of Uttar Pradesh*, 2023 SCC Online SC 8 [para 147].

² H. L. A. Hart, *The Concept of Law* (Oxford University Press 3rd ed 2012) 181.

³ *ibid* 94.

⁴ *ibid* 100–101.

⁵ *ibid* 203.

system's recognised sources.⁶ Thus, for Hart, adjudication is not moral invention but rather an exercise in rule-application constrained by institutional authority.

3) Case Background and Judicial Reasoning

The petitioners in *Kaushal Kishor* contended to hold the government liable for a minister's private speech, asserting that such remarks infringed Article 21 and devalued victims' dignity. The Court underscored that moral wrong does not ipso facto translate into a constitutional wrong while faulting the minister's behaviour.⁷ The doctrine of state responsibility cannot be invoked unless the act derived from the State or constitutes official policy. Writing for the majority, Chief Justice Chandrachud, emphasized that fundamental rights "do not operate in a vacuum" but are enforceable only against conduct directly linked to the State.⁸ However, the bench acknowledged that the State holds a positive duty to prevent violations of dignity when its own omission causes harm, thus preserving limited horizontal effect under Article 21.⁹ Still, the Court insisted upon adherence to the textual boundaries of the Constitution and refused to constitutionalise moral accountability. This reasoning demonstrates Hart's separation thesis. The Court illustrated a positivist insistence that the rule's institutional legitimacy, the Constitution itself and not public morality determine its validity by drawing a line between ethical condemnation and legal enforceability.

4) Hartian Analysis of the Judgment

a) Separation of Law and Morality

Kaushal Kishor echoes Hart's assertion that "the existence of law is one thing; its merit or demerit another".¹⁰ The Court explicitly distinguished the morally reprehensible comments of the minister from legal culpability. The Court exemplified Hart's contention that moral imperatives cannot by themselves generate legal obligations by rejecting the plea to impose liability in the absence of statutory or constitutional authority.¹¹ This position runs counter to the natural-law argument that unjust actions are invalid due to a lack of moral justification. The

⁶ *ibid* 272–273.

⁷ *Kaushal Kishor* (supra n 1) [para 170].

⁸ *ibid* [para 159].

⁹ *ibid* [para 176].

¹⁰ Hart (supra n 2) 203.

¹¹ *ibid* 205.

Court's reasoning demonstrates internalised positivism; the legitimacy of the law stems from social acceptance within a formal framework rather than from its alignment with morality.

b) Rule of Recognition and Institutional Legitimacy

Hart's notion of the rule of recognition is reflected in the Court's approach in determining constitutional liability. The Constitution functions as the ultimate validating rule in India accepted by officials and courts as the final source of legal authority.¹² The bench in *Kaushal Kishor* refused to infer duties from nebulous concepts of "constitutional morality" unless those concepts could be linked to a constitutional provision, instead basing its reasoning firmly on constitutional text and precedent.¹³ Such reasoning confirms Hart's claim that the legitimacy of law arises from institutional acceptance of rules, not from external moral principles. The Court additionally affirmed the legal system's hierarchical coherence, that is an essential aspect of Hartian positivism that maintains predictability and prevents judicial overreach, by limiting the horizontal operation of fundamental rights.

c) Judicial Discretion in Hard or Borderline Cases

Hart observed that language often leaves "open texture," requiring judges to exercise discretion in hard or borderline cases.¹⁴ *Kaushal Kishor* presented precisely such ambiguity: the Constitution neither explicitly permits nor forbids horizontal enforcement of rights. The Court's cautious interpretation, which recognises moral concerns but refuses to impose new liability, illustrates Hart's ideal of constrained discretion. The judges interpreted constitutional silence as a check on power instead of enacting moral laws. This is in line with Hart's view that while judicial creativity is inevitable, it must remain internal to the system's recognised rules.

d) Positivist Restraint and Predictability

According to Hart, positivism's chief virtue, lies in promoting certainty and predictability.¹⁵ Courts maintain stability in a pluralistic society where moral consensus is elusive by holding up the distinction between what is law and what ought to be. This virtue is demonstrated by *Kaushal Kishor*: the Court would have undermined the concept of State accountability and

¹² *ibid* 100–101.

¹³ *Kaushal Kishor* (supra n 1) [para 185].

¹⁴ *ibid* 272–273.

¹⁵ *ibid* 210.

blurred the boundaries of Article 21 if it conflated moral outrage with constitutional liability. Instead, by grounding its analysis in identifiable legal sources, the Court ensured consistency and foreseeability, the core positivist values.

5) Limited Comparative Engagement

a) Natural Law Theory

From Aquinas to Fuller, Natural-law proponents, conceive law as a rational expression of moral order. For Aquinas unjust laws are “perversions of law”.¹⁶ Fuller believed that the inner morality of law which includes publicity, generality and congruence provides the foundation of legality.¹⁷ In respect to this perspective, the minister’s speech, diminishing human dignity, would constitute a moral wrong which requisite legal correction. Therefore a natural-law approach might have expanded Article 21 to identify moral injury as a constitutional harm. However, the Supreme Court explicitly rejected this path. It treated dignity as a constitutional value rather than a free-floating moral norm. This restraint marks the difference between Fuller’s moralised legality and Hart’s structural legality.

b) Dworkin’s Interpretivism

Ronald Dworkin’s “law as integrity” invalidates Hart’s separation thesis, contending that legal rights are grounded in moral principles that best justify a community’s legal history.¹⁸ According to Dworkin, judges must interpret statutes and precedents in their truly moral light, ensuring harmony between law and justice.¹⁹ In Kaushal Kishor case, a Dworkinian judge might have invoked the principle of constitutional morality to extend protection of dignity even against private actors, complying law with evolving social morality. However majority of the court consciously declined such interpretivism. It adhered its reasoning to textual and structural analysis, maintaining what Hart would call fidelity to the rule of recognition. The judgment thus draws a line between institutional authority and moral aspiration which Dworkin would conceal in his pursuit for moral coherence.

¹⁶ Thomas Aquinas, *Summa Theologica* (II-I, Q. 95, Art. 2).

¹⁷ Lon L. Fuller, *The Morality of Law* (Yale University Press rev ed 1969) 42–44.

¹⁸ Ronald Dworkin, *Law’s Empire* (Harvard University Press 1986) 225–228.

¹⁹ *ibid* 239.

6) Discussion: Positivism within Indian Constitutional Adjudication

Throughout history, Indian constitutional jurisprudence fluctuated between textual positivism and moral activism. Cases like *Kesavananda Bharati v. State of Kerala* (1973) demonstrated a natural-law-inspired defence of higher constitutional morality whereas *Maneka Gandhi v. Union of India* (1978) took a rights-expansive, purposive approach. In this scenario, *Kaushal Kishor* represents a return to positivist discipline. The Court emphasised that constitutional adjudication must derive legitimacy from institutional sources by separating legal from moral wrongs. The judgment thus reinforces the conceptual clarity of India's constitutional order: morality may inspire reform, but it cannot substitute for law. This, in Hartian terms, reasserts the authority of the secondary rules, especially the rule of recognition which maintain stability and unity in a complex legal system.²⁰

7) Conclusion

Kaushal Kishor v. State of Uttar Pradesh depicts how Hart's positivist jurisprudence remains to influence constitutional reasoning in India. Hart's separation of law and morality is embodied in the Court's approach, which rests on legal sources, prudent in its expansion of morality, and respectful of institutional boundaries. The positivist belief claims that constitutional liability cannot be deduced from ethical expectations derives not from the virtue of law but from the source of its authority. To maintain the autonomy of law and the predictability of rights adjudication, the court resisted the influence of natural-law idealism and Dworkinian moral interpretation. In a constitutional democracy characterised by moral pluralism, such positivist restraint ensures that justice remains an outcome of legal reasoning rather than moral enthusiasm. Thus, *Kaushal Kishor* represents as a contemporary reaffirmation of H. L. A. Hart's insight that legality depends not on what the law ought to be, but on how a society's established institution chosen to define it.

²⁰ Hart (supra n 2) 116.

References

1. Kaushal Kishor v. State of Uttar Pradesh (2023) https://main.sci.gov.in/supremecourt/2020/17800/17800_2020_6_1501_41117_Judgement_03-Jan-2023.pdf
2. H. L. A. Hart, The Concept of Law (2012) <https://books.google.com/books?id=hC0UDAAAQBAJ>
3. ibid 94 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
4. ibid 100–101 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
5. ibid 203 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
6. ibid 272–273 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
7. Kaushal Kishor – para 170 – https://main.sci.gov.in/supremecourt/2020/17800/17800_2020_6_1501_41117_Judgement_03-Jan-2023.pdf
8. ibid para 159 – https://main.sci.gov.in/supremecourt/2020/17800/17800_2020_6_1501_41117_Judgement_03-Jan-2023.pdf
9. ibid para 176 – https://main.sci.gov.in/supremecourt/2020/17800/17800_2020_6_1501_41117_Judgement_03-Jan-2023.pdf
10. Hart (supra n 2) 203 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
11. ibid 205 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
12. ibid 100–101 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
13. Kaushal Kishor – para 185 – https://main.sci.gov.in/supremecourt/2020/17800/17800_2020_6_1501_41117_Judgement_03-Jan-2023.pdf
14. ibid 272–273 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
15. ibid 210 – <https://books.google.com/books?id=hC0UDAAAQBAJ>
16. Thomas Aquinas, Summa Theologica – <https://www.newadvent.org/summa/2095.htm>

17. Lon L. Fuller, The Morality of Law (1969) –
<https://books.google.com/books?id=J3XnCgAAQBAJ>
18. Ronald Dworkin, Law's Empire (1986) –
<https://books.google.com/books?id=fGFhQgAACAAJ>
19. ibid 239 – <https://books.google.com/books?id=fGFhQgAACAAJ>
20. Hart (supra n 2) 116 – <https://books.google.com/books?id=hC0UDAAAQBAJ>