THE CASE OF THE SPELUNCEAN EXPLORERS

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ABSTRACT

The relationship between law and morality is one of the most multifaceted topics of legal philosophy due to large variations in jurists' views. Accordingly, they applied as the basis for forming various schools that represent unique approaches to legal adjudication. An epitomic example is the debate between Hart[1] and Lon L Fuller[2] in which positive law schools and positive law school highlighted their ideologies similar to the discourse of Ronald Dworkin[3] and HLA Hart.[4] In all these debates, one common thread is that morality is subjective depending on the individual's views and often evolves with time. In India itself, there was a time when adultery was a criminal offence[5] but was just declared as merely the basis of a divorce[6]. The primary function of law is to regulate human behaviour to maintain a peaceful society. However, like morality, it also changes with societal changes. This article, drawing on the work of Lon L. Fuller, "The Case of the Speluncean Explorers"[7], aims to explore the various ways in which the relationship between law and morality is conceptualized.

Keywords: Legal Adjudication, Morality, Societal Changes.

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[1] H.L.A. Hart, "Positivism and the Separation of Law and Morals" (1958) 71 Harv L Rev 593

[2] Lon L. Fuller, "The Morality of Law"(1958) 71 Harv L Rev 630

[3] Ronald Dworkin, Taking Rights Seriously (Duckworth 1977)

[4] H.L.A. Hart, The Concept of Law (2nd edn, Oxford University Press 2008)

[5] Section 497 of the Indian Penal Code (IPC) (repealed)

[6] Joseph Shine vs. Union Of India on 27 September, 2018 AIR 2018 SUPREME COURT 4898, 2019 (3) SCC 39, 2019 CRI LJ 1, 2018 ALLMR(CRI) 4065, (2018) 11 SCALE 556, (2018) 252 DLT 388, (2018) 3 ALLCRIR 2955, (2018) 3 DMC 383, (2018) 3 HINDULR 537, (2018) 4 ALLCRILR 894, (2018) 4 CRILR(RAJ) 1043, (2018) 4 CRIMES 1, (2018) 4 CURCRIR 199, 2018 (4) KCCR SN 364 (SC), (2018) 4 MAD LJ(CRI) 369, (2018) 4 RECCRIR 480, (2018) 6 KANT LJ 465, (2018) 72 OCR 662, 2018 CRILR(SC MAH GUJ) 1043, 2018 CRILR(SC&MP) 1043, 2019 (106) ACC (SOC) 26 (SC), 2019 (1) ABR(CRI) 99, (2019) 2 BOMCR(CRI) 503, 2019 (2) SCC (CRI) 84, 2019 CALCRILR 1 481, AIR 2019 SC(CRI) 102, AIRONLINE 2018 SC 241

[7] Fuller, L. L., (1949), The Case of the Speluncean Explorers, Harvard Law Review, 62, 616

INTRODUCTION

Law is generally considered objective, as it appears to be based on an established set of rules and principles (though its application can involve a degree of subjectivity). In contrast, morality is entirely subjective since it is shaped by various personal, cultural, and societal factors. The relationship between law and morality can vary depending on the different interpretative approaches of the jurist. This dynamic is illustrated in The Case of the Speluncean Explorers[8] (a hypothetical legal case) showcased by Lon L. Fuller. This case specifically builds a quite peculiar and complex case before the court, where 5 judges, each employing a distinct method of adjudication, highlight the varied interpretation of the law and its relation to moral reasoning.

THE FACTS OF THE CASE

The Case of the Speluncean Explorers is a hypothetical legal case set in the Supreme Court of Newgarth. There were five members of the Speluncean Society, an organisation for amateurs interested in cave exploration. They embarked early in May 4299 on an expedition to explore a cave in the central plateau of this commonwealth. However, during their exploration, a landslide occurred. Due to which the opening of the cave was blocked. Upon learning of the incident, management of the society initiated a rescue mission to rescue them. They mobilised themselves with fully equipped machines and expert personnel. However, due to recurring landslides, 10 members of the rescue team lost their lives. Additionally, the mission exhausted most of the society's treasury, forcing them to raise additional funds through public events and the government. On the 20th day, the trapped individuals discovered that they had a wireless communication device and successfully used it to contact with organisation. During their conversation with the experts, they learned that the rescue team would likely reach them in 10 days, even if no new landslides occurred.

They had a slim survival chance due to their described circumstance, such as scarce food provisions which were already depleted and at that moment, as indicated by the experts. Out of desperation, one of the trapped men, Whetmore, who had taken over the representative role, asked the question whether they could survive if they consumed among themselves. Although the question was not responded to directly but the silence from the other side made the trapped individuals deepen their sense of despair. The batteries of the wireless

[8] Fuller, L. L., (1949) "The Case of the Speluncean Explorers," Harvard Law Review, 62, 616

communication device eventually became exhausted, leading to their only source of communication getting disabled. When imprisoned individuals were finally rescued, it was discovered that they ate one of their companions (Whetmore), who was selected from a fair dice roll. It was also revealed initially that he was the one who was suggested to die to decide who would be sacrificed. However, after they started rolling the dice, he changed his mind and argued to wait for another week. Despite his objection, others persisted him accused him of breach of faith and on his behalf, the die was rolled by someone else, to which he did not object. At that moment, he ended up with the lowest score and was subsequently killed. The imprisoned man was rescued on the 32nd day after they entered the cave. Upon rescue, the defendants were taken to the hospital, where they underwent treatment for the mental trauma and malnutrition. After considering the above facts of the case, the trial court held the defendants guilty under Article 12-A of the Newsgarth constitution. This outcome raises various questions, like whether the judgment of the trial court was just and fair. Can the practice of cannibalism be morally accepted by the law, or can be ever be justified or accepted under the law in extreme circumstances? In the above case, five different judges delivered their individual opinions, each reflecting a distinct legal philosophy and method of adjudication. Their views are summarized as follows:

Justice Truepenny C.J: Chief Justice Truepenny held that the trial court's decision was just and fair as it followed the statute of Newgarth, which clearly states that: "whoever shall wilfully take the life of another shall be punished by death." Though he expressed sympathy for the defendant still, he emphasized the need to uphold the law as per the given statutes. However, he suggested that the case be referred to the chief executive, recommending to reduce their penalty be reduced to imprisonment. He can be classified as a proponent of positivist school due to his use of legal thought, due to his use of a formalistic method of adjudication. This approach means that there should be strict adherence to the letter of the law, regardless of the outcome's perceived fairness. This can be further explained by the following example. For instance, suppose A and B are two farmers with equal landholdings and living in equally likely circumstances. However, A's land is registered under the Land Amendment Act of 1967[9] while B's land is registered under the Land Amendment Act of 2013[10]. Due to a development project, both of their land was acquired by the government. A got the compensation of 3, 00000 on the other hand, B got the compensation of 6, 00000

[9] The Land Acquisition (Amendment and Validation) Act, 1967, is officially cited as Act No. 13 of 1967
[10] The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013)

(because the 2013 Act mandates compensation of no less than twice the market value of rural land). Now the question arises, was this outcome just and fair for A? If A file suit in the court claiming equal compensation according to the new land amendment act, however, the judge dismisses the case on the basis that the statute states this, so he would do this only. In this case judge is applying the law in a rigid, formalistic manner, often referred to colloquially as "lakeer ke fakeer," meaning one who blindly follows the line without deviation. To address such rigid applications of law, HLA Hart introduced the theory of open texture[11] in legal language. Then, since establishes cannot address all problems therefore, he categorized cases into hard and easy cases, while easy cases a judge should approach it by the law wording. However, in hard cases, the decision can be made according to the judge's discretion since the facts do not align neatly with the existing legal framework. It can further be illustrated from the following example: suppose there is a law that "No vehicles are allowed in the park." If a teenager rides a motorbike in the park, in this case, he would be handling according to previous guidelines or previous case laws or according to the statute provided later the most preferably the judge can declare him guilty and impose a penalty, as it was an easy case which aligns with the statutes neatly.

Accordingly, however an activist file a case against the management of the park under this statue because of a memorial in which real car was used but it had neither fuel nor engine, such a case would be categorised as a hard case in such situation judges can pass the judgement according their discretion like in this case judge can understand the essence of the statues like vehicles are not allowed to avoid noise and air pollution protect the park from any damages and accordingly, he can pass on the judgement to dismiss the suit filed. The relationship between positive law and morality is quite complex. However, often been overlooked in beginning of the theories. For instance, John Austin (Father of positive school) argued that there is no necessary relation between law and morality[12]. According to his command theory[13], law is simply the command of the sovereign, which is absolute, and people are bound by it regardless it is moral or immoral. Under this view, abhorrent practices like human experiments and slavery could be justified as lawful since it was sanctioned by the sovereign. It can be further illustrated by hypothetical examples like it is a crime to wear pink in public and the criminal would be punishable to death (no matter how much law sounds absurd but people have to still follow it simply because it was enacted by appropriate

[11] The Concept of Law, Oxford: Clarendon Press, 1961
[12] Austin, John. The Province of Jurisprudence Determined. Cambridge: Cambridge University Press, 1995
[13] John Austin, The Province of Jurisprudence Determined (1832)

authority) or if a person is drowning and if don't save him you are not liable for his murder cause it's not your legal duty but surely you moral duty but on the other hand if you push someone intentionally you are bound by the legal duty and would be held guilty. The strict separation between law and morality resembles the Nazi regime and is thereby heavily criticised (where laws were deeply immoral, as in the case of the nazi wife case). Later, HLA Hart[14] agreed on the fact that there is a minor role of morality in the law in his debate with Lon L Fuller[15]. Though Hart did criticise Lon L. Fuller's 8 principles[16] for being rational such as clarity, consistency, and prospectivity rather than a basis moral foundation of the legal system. However, still adamantly believe that law should be different from morality.

Froster J: The judge delivered his judgment by using a liberal adjudication approach. One can also closely align them with the views of Lon L. Fuller himself. According to him, it was an embarrassment for the judge to deliver such a hasty decision in such a complicated case (moral and legal complexity). He stated that the court declares that under our law, these men have committed a crime. He expressed that in such a situation, our law is itself convicted in the tribunal of common sense. Through the views and the approach, we can consider that his views reflect to natural school (one of the most prominent and enduring school of legal thoughts worldwide). While the law is maintained by positive school it is initiated or structured by natural school through human values and moral reasoning. In his view he clearly gave the verdict of defendant being not guilty due to 2 major reasons which are as follow.

Law of Nature: Firstly, he argued that the law of the Commonwealth was simply not applicable in this case as this situation was governed by the laws of nature rather than civil law. To support his reasoning, he especially refers to the maxim cessante ratione legis cessat et ipsa lex, which means reason of law ceases, law ceases itself. He expressed his view by emphasising that the law is built for the people and the primary purpose is to enhance their lives and regulate fairness and equity as well as their relations. However, he in this case emphasises that the tragic events that occurred are not within "a state of civil society but rather in "a state of nature. He pointed out that the law is often based on territory. To illustrate this, consider the example of adultery, which has been decriminalised in India and treated as only a ground of divorce under family law. However, in contrast, it is a criminal

[14] H.L.A. Hart, "Positivism and the Separation of Law and Morals" (1958) 71 Harv L Rev 593
[15] Lon L. Fuller, "The Morality of Law" (1958) 71 Harv L Rev 630
[16] "The Morality of Law" is: Fuller, L. L. (1964). The Morality of Law. New Haven: Yale University Press

offence in Iran, Afghanistan, Bangladesh and many more. Therefore, if A cheats on B in India, B can use it to take a divorce under family law[17] but if A cheats on B in Iran[18], B can make him liable for it under criminal law. On a similar basis, in this case, the event took place in a remote area where the stone blocking them barred them from the state, forming a new territory under an extraordinary situation. Hence, he concluded that under this fact, the defendants are not guilty of any crime. The whole event of dice death roll took place under a agreement between them and since they were in an extraordinary situation (not in the arena of civilised society) they formed a new contract and accordingly formed a new government with its own rules and regulations. as they were no longer within the domain of a functioning legal system (contract theory of the state formation propounded mainly by philosophers such as Thomas Hobbes[19], John Locke[20], and Jean Rousseau).[21]

Furthermore, the judge himself acknowledged that many people might find this theory's reasoning uncomfortable, as it gives much more importance to the contract rather than human life. However, he pointed towards the fact that 10 workers died during the rescue mission just to save 5 individuals, so the question of the value of life is thoroughly negated as it simply challenges the simplistic view that every life must be preserved at all costs. As established earlier, law exists for the people for a reason, and when the reason ends, law ceases itself and as well (cessante ratione legis cessat et ipsa lex). In this case, as a new contract came into existence in an extraordinary condition, a new government was formed among the trapped individuals. While the value of life remains important. However, with the given circumstance, 10 individuals died for saving 5 trapped individuals is justified by society. Then, if one more dies to save four, on a mutual agreement, not something to be judged through traditional legal and moral standards.

JUDICIAL INTERPRETATION

Notwithstanding the first ground, the judge further elaborates on his second ground, acknowledging that, on the surface it is clear that defendants have violated the statute under 12-A which states "He who shall wilfully take the life of another will be hanged" or more plainly anyone who commits murder will be sentenced death penalty.

[17] Section 13(1)(i) of the Hindu Marriage Act, 1955
[18] Section 65 of "Islamic Penal Code of the Islamic Republic of Iran"
[19] Hobbes, Thomas. Leviathan, social contract theory. 1651
[20] Locke, Two Treatises of Government, social contract theory, 1689
[21] Rousseau, Jean-Jacques. The Social Contract. Translated by Maurice Cranston, Penguin Books, 2004

However, he also shed some light on ancient legal wisdom: "Man may break the letter of the law without breaking the law itself". This principle states that we should look toward the essence of law to serve justice rather than rigid literal interpretation of legal texts. He further elaborates, all given statutes are indeed binding for the judges and must be interpreted reasonably, which does not imply in literal interpretation in every case. Instead, the judges must understand the underlying reason behind the law and act by the purpose. To support this purpose, he even illustrated a hypothetical case, Fehler vs. Neegas[22] where due to a clerical error in a major section of a legal document changed the meaning of the whole document contrary to the original intent. In this case, the court allows the amendment of this mistake to reflect the true intentions of the parties involved.

This principle can further be supported by the real world, like in Indian law, when a contract is not performed according to section 10 of the Specific Relief Act [23] (as amended in 2018. Additionally, under chapter III and section 26 of the same act, the parties to a contract can seek rectification in the plaint On a similar basis, he further argued that self-defence is a valid exception to section 12-A of the statute. According to this principle, the one who reasonably believes imminent danger to his life, like a reasonable, prudent person, may take self-defence (use necessary force, even lethal force, to protect themselves) against the person whom he feels threatens him like a prudent person. We can refer to Darshan Singh V. State of Punjab[24], where the Supreme Court laid down guidelines for the Right of Private Defence for Citizens by the bench comprising Justices Dalveer Bhandari and Asok Kumar Ganguly. Likewise, he argues that in this case it was a case of self-defence and should be excused of killing as in this case they felt threatened with of slow death by starvation, they acted out of necessity to preserve their own lives. Therefore, their actions should be excused under the broader moral and legal reasoning that underpins self-defence. Which was, however, not accepted as there is a difference between self-defence and self-preservation. He further dwells that many people and disappointed with the facts of judicial interpretation as an ordinary person cannot understand, and he often criticises in a satirical tone. There must be judicial interpretation like the theory of open texture by HLA Hart[25] but again the problem arises to what extent it is allowed like can a judge according to his discretion held a for example would a minor would be held liable for theft under 6 years old as he stole a large quantity of gold and fetching a a

[22] Hypothetical case within the fictional Case of the Speluncean Explorers created by legal philosopher Lon Fuller; Rameshwar Prasad vs. The State of Bihar & Ors on 4 March, 2009 C.W.J.C.NO. 15153 OF 2008
[23] Act No. 18 of 2018, Specific Relief (Amendment) Act, 2018
[24] 18.05. 1999 and 19.05. 1999
[25] The Concept of Law, Oxford: Clarendon Press, 1961

high price can judicial interpretation can be justified to such a level. Due to judicial interpretation (referred to as the golden rule), many amendments are seen under article 21[26] at present, which changes its standing from an animal-like existence to being a human life standing, and the procedure should be just and fair.[27] However, to what extent is the major issue because everything is wonderful in limits, but if it exceeds, it may cause chaos in the real world.

CRITICISM

Both propositions set forward by Justice Froster were heavily criticized by Justice Tatting J., stating that it was filled with contradictions and fallacies. He first referred to the first proposition. He pointed out a few questions about why they were in a state of nature and when they became part of nature from a civilised society. He expressed his confusion between the point that whether it was because of the thickness of the rock, the new charter they formed, or because of starvation. Later, he was confused about whether it was the threat of starvation reaching a certain degree or when they decided to throw the dice. He further raised the question: if they were part of nature, why was this case being dealt with in the court? And if there was a new contract between them, then defences like self-defence would not hold in that case. He described the law of nature as quite topsy-turvy and audacious, suggesting it implies that the law of contract is more fundamental than the law against murder. For the second proposition, he agreed with the idea that law should be applied for the fulfilment of its purpose and accepted the fact that self-defence is an exception to murder. However, he pointed out a basic difference between murder and self-defence. In the case of murder, there is an intent and will to kill someone, whereas self-defence is an orderly outlet for the instinctive human demand for retribution—it is an impulse deeply ingrained in human nature. In this case, the defendants had the will, or we can consider it a great deliberation. Secondly, what triggered them to do so? Starvation does not even provide a defence against larceny (Commonwealth v. Valjean)[28], so how can it be considered a valid defence against murder, which is ten times more heinous?

Tatting J.: He officially withdrew from the case, stating his dilemma between emotions and logic. On the emotional side, he felt sympathy toward the defendants but also disgust at their

[26] Indian Constitution, found in Part III, Article 21, "Protection of Life and Personal Liberty"
[27] Maneka Gandhi v. Union of India (1978) 1 SCC 248
[28] Hypothetical case within the fictional Case of the Speluncean Explorers created by legal philosopher Lon Fuller

monstrous act. From the logical aspect, he wished to rely solely on his intellectual reasoning and disregard his emotional side, approaching the matter purely as a rational person. These are his opinions on the propositions put forth by Justice Foster, which, although he partially agreed with, he also found filled with fallacies and contradictions. In the end, he refused to participate further and withdrew from the case. Even while agreeing with Foster's first proposition, he explicitly condemned it by stating that if Whetmore had possessed a gun and used it, he would still be acquitted, rendering the self-defence plea meaningless in such a case. The foremost point he raised was: why are we even making a judgment in this case if, according to Justice Foster, the events took place outside the scope of civil law? He found it peculiar that in Foster's reasoning, the law of contract seemed to hold greater weight than the law against murder. He also strongly condemned the comparison between the theory of self-defence and that of self-preservation by referring to the case Commonwealth v. Valjean (4291)[29], in which a person was acquitted for larceny due to necessity. He acted as a rational and prudent judge who understood both sides of the case too well—almost to a fault—and was therefore caught between them, much like how most people would feel in such a morally complex situation. One could also say that he rescued himself from this particular case by stating that there is no clear way to distinguish between principles in a free and rational manner.

Keen J.: He concluded that the conviction should be affirmed by the trial court, as he believed one needs to keep personal feelings and opinions aside while dealing with a case, particularly under N.C.S.A. (N.S.) § 12-A. Before giving his view, he brought up two major questions in front of the court, which had been largely ignored in previous opinions. Firstly, he referred to executive clemency and elaborated on whether it should be extended to these individuals. He condemned Justice Truepenny's suggestion to instruct the chief executive to pardon the defendants, arguing that the entire decision lies solely with the executive and that the judiciary should not be guilty of interfering in such matters. He added that, as a private individual, he would have pardoned the defendants, believing they had already suffered enough to account for their actions. However, he clarified that this opinion was expressed solely in his capacity. As a judge, it was neither his function to direct the chief executive nor to speculate on what the executive may or may not do. His decision, he said, must be guided solely by the law of the Commonwealth. He essentially drew a line between the organs of

[29] Hypothetical case within the fictional Case of the Speluncean Explorers created by legal philosopher Lon Fuller

government, emphasizing that all organs—executive, legislative, and judiciary—are separate and must operate within their own spheres[30]. While in his private thoughts, he might have pardoned the defendants, he asserted that it was not his role as a judge to make such a decision. The second question he raised was whether what these men did was "right" or "wrong," "wicked" or "good." He believed this question to be particularly insignificant, as he was bound to apply the law of the land, not his moral conceptions. By raising this point, he effectively dismissed Justice Foster's first proposition. Notwithstanding the above, he stated that the most important question was whether the defendants were liable under N.C.S.A. (N.S.) § 12-A. To that end, he emphasised Whetmore's objection before the dice roll and the fact that the act committed by the defendants was wilful. Although the written law required the conviction of the defendants—a conclusion not easily accepted in a case where distinguishing between legality and morality is difficult he approached the matter by applying the law of the Commonwealth and interpreting it reasonably.

Secondly, he addressed Justice Foster's second proposition. While he agreed that the law should be interpreted reasonably and according to its purpose, he referred to an earlier time when judges had liberal powers of adjudication. However, the resulting uncertainty gave rise to conflict, which ultimately led to the separation of powers: each organ of government came to define its functions. A representative is now elected to make decisions on behalf of the people—whether popular or not—and the judiciary is obligated to enforce written law faithfully and interpret it according to its plain meaning, without reference to personal feelings, desires, or individual conceptions of justice. In this way, he rejected the idea of broad judicial interpretation. Ultimately, it was concluded that Justice Keen was a positivist textualist, emphasising the plain meaning of the law, unlike Justice Foster. He dismissed both of Foster's propositions and emphasised the separation of powers, condemning Justice Truepenny's act of seeking a pardon from the chief executive. Keen argued that such decisions are solely at the discretion of the executive, and any interference by the judiciary would be a violation of constitutional limits. He demonstrated fidelity to the legislature and was clearly against the judicial interpretation approach. He concluded that self-defence could not be accepted in this case, as Whetmore posed no immediate threat to the others and the act was committed wilfully, not as a natural, impulsive response for survival.

[30] Montesquieu, (1750), The spirit of the laws. APA style guidelines (Original work published 1748)

His views can be illustrated through the Nazi wife case[31], described in the following example: A and B are husband and wife. A soldier returned home after a long time and expressed to his wife his disapproval of the Nazi regime and Hitler's tactics. After he left, the wife reported him. As a result, the husband was arrested. According to the German law of that time, "a man who would say a thing like that does not deserve to live." He was tried by a tribunal, and instead of being given the death penalty, he was sent to the front lines. After the fall of the Nazi regime, this case was brought before the court, and the wife was convicted of false imprisonment. This illustrates that, at the time she reported him, she was acting within the law. The court, likewise, had convicted the husband based on the written law. The moral dilemma is clear: was this fair? It is precisely because of such questions that positive textualism is often criticised and not given absolute importance. Its shortcomings—especially in morally complex cases—are significant, which is why it is sometimes cast aside. As a result, literalism, a stricter subset of the positive school, was employed by Justice Keen. Regardless of his personal feelings or intentions, he applied the statute directly, with no legal interpretation.

Justice Handy: He was quite amazed by the tortured ratiocination of this simple case, in which differences between positive law and the nature of law, their analysis, and the separation of powers and judicial function were discussed. Amidst all this, he raised the question of the legal nature of the bargain struck in the cave—whether it was unilateral or bilateral—and whether Whetmore's revocation was valid or not. Now moving toward his fundamentals, he stated that people are not ruled by the government or by some individuals chosen by others, but rather by people selected through a fair process of election.

In a case, two parties hire a lawyer on each side. The case is then analysed based on rules and abstract principles. Each party is expected to make distinctions and present all possible arguments to become the dominant force in the case. One could argue that the judiciary is quite disassociated from the people and other organs of the state, as judges are not elected by the public but appointed by passing an examination. Any government official, including judges, can work more efficiently in completing daily tasks by treating legal principles and rules as instruments. Adherence to such a policy ensures smooth functioning and avoids conflict between law and the masses, because if such a conflict arises, the entire economy, political system, legal system, and social life of the people would be ruined. Keeping this in

[31] Harvard Law Review, 1951, pp. 1005–7

mind, the case becomes easier to judge. He further pointed out the actual scenario of the case. Firstly, it has gained enormous public interest—almost all magazines and newspapers, both within and outside the country, have expressed their opinions. About ninety per cent of them expressed the belief that the defendants should be pardoned or let off with a token punishment. He emphasised that it is already clear what the most obvious thing to do is: accept public opinion, which is backed by common sense. At the same time, there is no need to rely on any legal trickery or exploit a loophole in the statute to declare them innocent. Though the idea of asking the masses is quite audacious—some may argue that public opinion is emotional and capricious, based on half-truths and unverified testimony—he noted that there are four ways to convict a person: first, the most normal and widely used method, in which the judge follows the statute; second, by jury; third, through pardon or commutation by the chief executive; and lastly, through the prosecutor's decision not to ask for an indictment. In all these cases, the emotional aspect is not ignored. According to the poll, 90% believe that the defendants should be pardoned and given a token punishment. Most indirectly stated that they should be convicted by one branch of the government and then pardoned by another, as suggested by Chief Justice Truepenny. However, in this case, one is merely justifying their morality rather than the morality of the public.

His viewpoint was similar to the concept of Volksgeist given by Friedrich Karl von Savigny, who firmly believed that law is the manifestation of the common consciousness of the people. He argued that law grows with the growth and strengthens with the strength of the people, and it dies away as the nation loses its nationality. He believed law is the people's popular will (Volksgeist), which met various criticisms, such as the point that the will of the people is not always right. For example, slavery is a taboo even if a majority supports it. Furthermore, in many situations, people may not have their own well-formed will. In those cases, how should justice be served? This remains a crucial question.

Another actual scenario he put forth was that the Chief Executive would never pardon the defendants, as he is in his later years and holds strict views that would not be swayed by public opinion. It was to his disappointment that judges still try to stick rigidly to statutes in such cases, rather than tackling them with common sense, which, to his dismay, is often lacking among well-educated people. One might even say that common sense is not common anymore. Here we can observe the contrary approach of Justice Handy, who, unlike the other judges who tried to find a solution strictly within the statute, used a practical approach to decide the case. The case is quite complicated, but as one delves deeper, it becomes clear that

all the debate is merely a clash of different thoughts, and the case itself is extremely easy under the given circumstances. By comprehending it using common sense, a direct verdict could be passed due to the lack of evidence. He concluded that the defendants were innocent of the crime charged and that the conviction and sentence should be set aside. Justice Handy represented the views of the Legal Realism school, which emphasises the practical application of the law rather than its theoretical aspects. It is a subset of the natural law school and focuses on empirical facts along with the political and social context.

CONCLUSION

In this case, the verdict of the lower court was upheld as the case showed a 2–2 ratio, with one judge bailing out. Further, we can understand the relation between various schools and morality. Overall, we can understand that there are three types of relationships: firstly, when law and morality completely overlap; secondly, when they have something in common; and lastly, when there is nothing in common. As time goes on, most present judicial legal systems opt for the second situation, where law and morality overlap—but again, the degree of overlap depends on each country. History has also shown cases of the first and third situations. The most epitome example of the third case is the regime of Nazism, and for the first case, we can refer to Khan Gul v. Lakha Singh[32], in which a minor was held liable contrary to the law of contract, because that aligned with the morality in that case.

Further, the relation between the schools is explained in detail.Cannibalism is morally unacceptable in the present civilised world and is universally condemned. It is the act of consuming another individual of the same species as food. It is a common ecological interaction in the animal kingdom and has been recorded in more than 1,500 species. Human cannibalism is also well documented, both in ancient and recent times. Some live examples may include the Aghoris, as well as some tribes on the Andaman and Nicobar Islands. It is mainly practised in cases of food shortage.

In a constrained environment, consuming the flesh of one's species is highly nutritious; however, studies show that it gravely affects the survivability of the species. Cannibalism can potentially reduce the prevalence of parasites in the population by decreasing the number of susceptible hosts and indirectly killing the parasite in the host.

[32] AIR 1928 Lah. 609

Some examples of diseases transmitted by cannibalism in mammals include the human disease Kuru[33], which is a prion disease that degenerates the brain. There are different types of cannibalism as well, such as sexual cannibalism, size-structured cannibalism, filial cannibalism, infanticidal cannibalism, and many more. In legal terms, it is a heinous crime. Though not directly named as such, the acts involved are criminalised. For example, if someone is killed for consumption, they would be prosecuted under Section 302 of the IPC[34]. If human flesh is obtained through theft from a burial ground, charges under Section 297 IPC[35] (trespass to a place of burial) or other relevant laws could apply. Some of the landmark cases include the English case R v. Dudley and Stephens[36] and, in India, the P. Rathinam vs Union of India on 26 April 1994.[37]

[33] Fore people of Papua New Guinea by D. Carleton Gajdusek and Vincent Zigas in 1957
[34] 302 Indian Penal Code 1860
[35] 297 Indian Penal Code 1860
[36] (1884) 14 QBD 273
[37] 1994 AIR 1844, 1994 SCC (3) 394