INCOHERENT HARMONY: A STUDY OF INDIAN COURT'S USE OF POSITIVE AND NATURAL LAW

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ABSTRACT

This research paper explores how the Indian judiciary combines the two distinct jurisprudential approaches, i.e. positive and natural law, in deciding cases, and whether this practice is coherent or flawed. Positive law posits legal rules as they are, independent of any moral standing; natural law asserts that whether a law is valid or not depends on its moral standpoint. Through a detailed analysis of the landmark judgement of K.S. Puttaswamy v. Union of India, where the Supreme Court recognised the right to privacy as a fundamental right even if it finds no explicit mention in Article 21 of the Constitution of India. The paper argues that in the Indian context, the blending of both positive and natural law is not only coherent but also essential for delivering substantive justice in a complex and pluralistic society.

Keywords: Natural Law, Positive Law, Judicial Interpretation.

INTRODUCTION

The two important realms of jurisprudence are theories of positive and natural law, and they are often found at crossroads. Positive law, in its simplest term, refers to "law as it is" - a man-made system of rules enforced and recognised by the state, which are usually independent of any moral considerations. Legal positivists like John Austin posit that law is separate from its moral merit. According to his school of thought, the existence of law is one thing, but its goodness or badness has nothing to do with it. At the same time, this does not mean that the aspect of morality is unintelligible or not important; it is just that it does not determine whether a rule qualifies as law within a legal system.

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Natural law theory posits that law is linked to morality. It emphasises what the law ought to be and is based on universal moral principles and the nature of human beings, according to Saint Aquinas.

Time and again, Indian courts have tried to use attributes of both positive and natural law while giving judgments. This approach seems to have two tenets: one, that written law may not always lead to justice. But at the same time, mixing these two ideas can also create confusion; it may go against legal clarity and legal objectivity, which are considered some of the most important aspects of law according to many jurists, because positive and natural law have very different understandings of what law means.

Through this paper, I aim to explore whether using positive and natural law together is a flawed and incoherent idea or whether it is necessary in today's time. To study this question, I will assess the landmark judgement of the Indian judiciary in the case of K.S. Puttaswamy v. Union of India.

UNDERSTANDING POSITIVE AND NATURAL LAW

Positive Law: Legal positivism posits that law is "what it is" -that is, rules, regulations that are enacted, adopted or recognised by a competent authority. As John Austin says, law is one thing, and its merit or demerit is another, but this in any way does not mean that the merit of law is not important or unintelligible.

H.L.A. Hart formally developed the "separation thesis", according to which law and morality are conceptually distinct. This means that moral considerations can certainly have an influence on laws, but there is no prerequisite for legal validity. While John Austin also argued for a separation between law and morality, Hart's version is more nuanced.

Hart expanded the scope of legal positivism through his interpretations, while he mentioned that though there may be a peripheral connection between law and morality but morality is not an essential for the laws to be valid, so he distinguished between primary rules which impose duties and secondary rules which allows people to create, change or extinguish rights and obligations and one of these secondary rules was the "rule of recognition" that conferred validity to the rules in the legal system. [1]According to Hart, the rule calls out for an Internal

[1] Rule of Recognition in a Modern Legal System, LawTeacher.net (Sept. 24, 2021), https://www.lawteacher.net/free-law-essays/public-law/rule-of-recognition-law-essays.php.

point of view, which means that people don't just abide by the rules and accept them merely because they have to or because of an external fact, but accept them as a standard for evaluating and guiding behaviour. In such cases where there is no higher legal authority, the rule of recognition provides a base or a standard to identify what, according to courts, is valid; it is the rule from which all the other legal rules derive their authority. He further elucidated the aforementioned rule. In a legal system, the judges do not merely apply rules based on morality or personal opinion, but are bound by a well-laid-out, established criteria or a settled practice of adjudication. Unlike other positivists, Hart's approach to legal positivism is more flexible and cohesive. According to him, a legal right exists where a valid rule supports it, and this rule is part of a larger system recognised by both judges and legal institutions. Thus, while law and morality are conceptually distinct, Hart allows room for moral considerations, which makes it an essential condition for validity.

Natural Law: Natural law is based on Aristotle's postulate that "man is a political animal, and that his nature requires living in a society."[2] According to natural law, there are some moral standards that guide human behaviour that are rooted in human beings and the world.

Natural law theorists do not draw a line between law and morality; according to them, morality and law are not conceptually distinct; rather, they are of believe that natural law derives its authority not from any already existing human convention, but from its logical relationship to moral standards.[3] This is known as an overlap thesis. The overlap thesis posits that there exists a non-conventional relationship between law and morality.

According to Thomas Aquinas, law is divided into four categories: "(1) eternal law, (2) natural law, (3) human law, and (4) divine law". As Aquinas explains, the first precept of natural law is that we should do good and avoid evil; this principle is derived from the rationality of human beings. Aquinas also believed that when human law deviates from natural law, it is no longer truly law, but rather a perversion of it.

Classical naturalism, of which Thomas Aquinas is an important part, advocates the importance of human beings' had in the creation of laws. Although they at the same time argue that all valid law must reflect moral principles.

[2] Thomas D'Andrea, The Natural Law Theory of Thomas Aquinas, Public Discourse (Aug. 22, 2021), https://www.thepublicdiscourse.com/2021/08/77294/.
[3] Kenneth Einar Himma, Natural Law, Internet Encyclopedia of Philosophy, https://iep.utm.edu/natlaw/.

For instance, issues like which side of the road people should drive on are coordination problems that can be resolved in different ways without violating morality. Therefore, while natural law theory allows human discretion in making laws, it is limited. As discussed in the above sections 2.1 and 2.2, positive and natural law are two distinct standpoints in jurisprudence. Positive law is based on the principle that law must be understood as it is, and morality is no prerequisite for legal validity, while Natural law, on the other hand, holds that there is an unconventional intrinsic relationship between law and morality.

However, in my opinion, these two theories seem incompatible when viewed in isolation. In the context of the Indian Judiciary, the situation is more complex. India, being a diverse country, has to inculcate and cater to pluralistic societal needs. This makes it difficult to adopt a purely positivist or naturalist approach.

The Indian Constitution, though the longest written constitution in the world, has room for judicial interpretations, due to which Judicial activism is prominent in India. To explain this further, let us take Article 21, which explicitly guarantees only the right to life and personal liberty if we go by the raw provisions of the Constitution. However, the judiciary, through the landmark judgement of K.S. Puttaswamy v. Union of India[4] interpreted Article 21[5] to include the right to privacy, amongst other rights.

K.S. PUTTASWAMY v. UNION OF INDIA: JURISPRUDENTIAL ANALYSIS

Facts

Justice K.S. Puttaswamy, a retired judge from the Karnataka High Court, filed a petition before the Supreme Court to challenge the constitutional validity of the Aadhaar scheme, which was introduced by the Unique Identification Authority of India (UIDAI). The Aadhaar project assigned a unique 12-digit identification number to Indian residents, requiring them to provide biometric and demographic data. This number was linked to various government welfare schemes, with the stated aim of improving service delivery and preventing fraud by eliminating duplicate or fake beneficiaries. As the scheme expanded, numerous other petitions raising concerns about different aspects of Aadhaar were combined with the original case. In 2015, a

[4] K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, AIR 2017 SC 4161.
[5] Constitution of India, art. 21.

three-judge bench of the Supreme Court began hearing arguments specifically questioning whether the collection and storing of such personal data infringed upon the right to privacy.

Issue

The central question before the Court was "whether the right to privacy is a fundamental right protected under Part III of the Indian Constitution."

Judgement

A nine-judge bench of the Supreme Court delivered a judgment, declaring that the right to privacy is indeed a fundamental right, safeguarded by Article 21 of the Constitution. The Court clarified that privacy is not limited to physical spaces but also covers personal autonomy, individual choices, and the freedom to make decisions about one's own life. This right shields individuals from unwarranted intrusion by both the state and private parties. The judgment specifically recognised that privacy extends to areas such as family, relationships, and sexual orientation.

The bench overturned previous Supreme Court rulings in M.P. Sharma and Kharak Singh, which had denied the existence of a fundamental right to privacy, and reaffirmed the broader interpretation established in the Maneka Gandhi case.

To determine when the state may impose restrictions on the right to privacy, the Court laid down a three-part test:

- Legality: There must be a law in place that justifies the restriction.
- Legitimate State Aim: The law must pursue a legitimate government objective.
- Proportionality: The restriction must be necessary and proportionate to the aim pursued.

The Court also emphasised that the state's responsibility goes beyond simply avoiding privacy violations; it must actively protect citizens' privacy. Recognising the growing importance of informational privacy in the digital era, the Court highlighted the urgent need for a comprehensive data protection framework and left the task of enacting such legislation to Parliament.

In summary, the Supreme Court's judgment established privacy as a core constitutional value, providing robust protection against both governmental and private intrusions, and setting the stage for future data protection laws in India.

ANALYSIS

The Puttaswamy judgement was concerned with the question, whether the right to privacy falls within Part III of the Constitution, particularly under the scope of Article 21.[6] which guarantees the right to life and personal liberty. If we consider the raw provisions of Article 21 in the Constitution, it does not mention the right to privacy. From a positivist perspective, H.L.A. Hart advocated, law is to be understood "as it is". He also acknowledged the existence of penumbra cases, wherein the written law is unclear, due to which the judges get to interpret the law. In doing so, judges often rely on what Hart describes as the "internal aspect of law", which, in my opinion, is peripheral to the idea of morality.

In the aforementioned case, the court did not restrict its interpretation to the literal reading of the constitution. Instead, it went beyond it, covering the naturalist principles which are moral to interpret the right to privacy as a fundamental right.

As mentioned in the case, the Court, while pronouncing its judgment, expanded its positivist scope and, rather than just restricting itself to the raw provisions of the constitution, it drew upon naturalist principles which are intrinsically moral, to support its reasoning. The following references, directly cited in the official judgment, indicate that the judges relied on such moral and philosophical foundations to arrive at their conclusion.

John Stuart Mill, A naturalist, in his essay "On Liberty (1859)",[7] reinforced the idea that individuals must have a protected sphere of autonomy. Further, the bench also referred to John Locke, who in his Second Treatise of Government.[8] states that "the lives, liberties and estates of individuals are, as a matter of fundamental natural law, a private preserve." This reaffirms the emphasis of the court on the idea that certain aspects of individual life, such as privacy, exist before and beyond legal codification.

[6] Ibid.
[7] JOHN STUART MILL, ON LIBERTY (Penguin Classics 2010).
[8] JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Phoenix 1993).

Thus, in K.S.Puttaswamy v. Union of India, the court went beyond strict adherence to a positivist approach and interpretation of law and brought in natural law, which is intrinsically linked to morality, to establish privacy as a constitutionally protected fundamental right.

CONCLUSION

Through this paper, as per my research question, I aimed to assess whether the Indian judiciary's approach of combining the attributes of both natural and positive law in pronouncing judgments is incoherent and goes against the principle of legal clarity. Hart sought to separate law from morality because he believed that incorporating morality would compromise clarity and objectivity.

Through the lens of my project, based on my understanding of positive and natural law as explained in the first chapter and after analysing the K.S. Puttaswamy judgement, I think that using both naturalist and positivist attributes is coherent and not flawed in the Indian context.

As evident in the case, had the court strictly followed a strict positivist approach of reading only what was explicitly written in the Constitution, the right to privacy would not have been included under Article 21. It was due to the interpretation of the bench that drew upon moral and naturalist reasoning, such as works of Mill and Locke, that they could interpret privacy as a fundamental right.

Even in Indian Express Newspapers v. Union of India[9] Through an analysis of the judgment, it comes to notice that it consists of elements of Jean Jacques Rousseau's theory of natural law, which holds that people, in pursuit of freedom and equality, surrender their rights not to a monarch but to the community. Rousseau's idea of liberty and collective will will be reflected in the court's recognition that the right to freedom is a natural right of every citizen, forming the very foundation of Article 19.[10]

This indicates that the foundation of a positive law, Article 19, lies in moral and naturalist principles, like Rousseau's. Therefore, in my view, these two approaches cannot be used in isolation, especially in a diverse and evolving legal system like India's.

[9] Indian Express Newspapers v. Union of India, (1985) 1 SCC 641.
[10] Constitution of India art. 19.