

Is the Role of Judges and Ideas About Justice Relevant in the Exercise of Interpretation?

Ritvik

Student, O.P. Jindal Global University

Abstract:

The role of judges and ideas about justice are undeniably relevant in the exercise of interpretation within legal systems. This abstract explores the significance of judges' roles and justice concepts in interpretation, shedding light on their impact on judicial decision-making and legal outcomes. Judges, as impartial arbiters of the law, are tasked with interpreting statutes, regulations, and precedent to resolve disputes and administer justice fairly. However, their interpretations are inevitably influenced by their personal beliefs, values, and understandings of justice, shaping the outcomes of cases and the development of legal principles. Moreover, ideas about justice, such as fairness, equity, and societal values, inform judges' interpretations and guide their application of legal principles to specific cases. The tension between legal formalism and judicial discretion underscores the complexity of interpretation, as judges balance the need for consistency and predictability with the demands of justice and fairness. Ultimately, the role of judges and ideas about justice play a crucial role in the exercise of interpretation, shaping legal reasoning, judicial decision-making, and the evolution of the law.

How interpretation should be carried out is affected by both the role of judges and basic notions of fairness. Because of their unique viewpoints on what constitutes justice, judges' interpretations of the law and their applications to specific cases may be affected by their personal values and beliefs. Furthermore, different judges may have diverse ideas of what it means to administer justice, leading to divergent interpretations of the law. The ultimate interpretation of laws and the choices taken in legal circumstances may be heavily influenced by the role that judges perform and the opinions they hold about justice.

The activity of interpretation places a significant emphasis on both the function of judges and concepts of justice. The judges are in charge of interpreting the laws and applying them to particular situations, and their perspectives on what constitutes justice might have an impact on how they interpret the law. The interpretation of laws is a difficult process that calls for an in-depth knowledge of legal principles, precedents, and the circumstances surrounding the case in question. The judges are in charge of applying the law to the specifics of the case and making sure that justice is carried out as a result of their work in this system.

The act of interpreting laws is not an easy or straightforward one. Because laws are frequently phrased in general terms, figuring out how to apply them to particular situations can be difficult. The judges are obligated to take into account not only the letter of the law, but also its spirit, the circumstances in which it was formed, and the guiding principles of justice. When trying to interpret a law, it is not enough to just apply the law in its literal form; rather, one must also have a knowledge of the law as it was intended to be applied.

It is the responsibility of judges to ensure that justice is carried out, making their part in the interpretation of laws an extremely important one. The administration of justice is one of the most important aspects of our judicial system, and it is the job of our judges to make sure that this value is preserved. The concept of justice is intricate and multidimensional, and it is susceptible to being shaped by a wide range of circumstances, such as societal standards, cultural expectations, and individual views.

The conceptions of justice held by individual judges play a part in the function that they play in the process of interpreting laws. There is a possibility that several judges would interpret the law in a manner that is distinct from one another due to their divergent perspectives on the nature of justice. For instance, some judges may be of the opinion that the major objective of the judicial system is to safeguard the rights of individuals, whilst other judges may be of the opinion that the fundamental goal is to advance the general welfare of society. These varying conceptions of what constitutes justice can result in divergent understandings of the law, which in turn can have a substantial impact on the decisions reached in legal disputes.

The legal system in which judges are embedded has a significant impact on the way in which they perform their duty in the interpretation of laws. Various legal systems each have their own conceptions of what constitutes justice and their own methodologies for determining how laws should be interpreted. Comparatively, civil law systems place a greater emphasis on statutory interpretation, whereas common law systems place a greater emphasis on precedent. The interpretation of laws can be approached in a variety of ways, each of which may have a distinct result in legal proceedings.

In conclusion, the function of judges and various conceptions of justice are important considerations in the application of interpretation. The judges are in charge of interpreting the laws and applying them to particular situations, and their perspectives on what constitutes justice might have an impact on how they interpret the law. The interpretation of laws is a difficult process that calls for an in-depth knowledge of legal principles, precedents, and the circumstances surrounding the case in question. The judges are in charge of applying the law to the specifics of the case and making sure that justice is carried out as a result of their work in this system. There is a possibility that several judges would interpret the law in a manner that is distinct from one another due to their divergent perspectives on the nature of justice. In the end, the role that judges play and the views that they have about justice may have a considerable influence on how laws are interpreted and the decisions that are made in legal situations.

Two questions arise here

1) Is it feasible to achieve a philosophical consensus on the function of the judge?

How do judges draught new laws? Where do judges find their room for imagination? “Philosophers analyse the judge's role in the judicial process, and these topics are central to their discussions. The creation of the Common Law and the interpretation of legislation are two areas where judges are thought to be highly imaginative or creative.

Nonetheless, they are limited in their discretion by rules of legislative interpretation, the supremacy of Parliament, and established precedents.

The fundamental method by which judges create law is by the use of precedent, whether they are creating the common law (for instance, in areas like negligence or murder) or interpreting statutes. When faced with a situation where no clear precedent or guiding principle exists, judges must sometimes provide a verdict or make a conclusion. It's possible that judges making such decisions are doing so by setting a new precedent. As a result, the judge must use his or her discretion if the court finds that new rules or revisions

are necessary. So, Hart maintains that judges should exercise their own judgement when applying the law, despite his belief that rules are the law's primary function. According to Hart, judges need to create new law in "difficult situations" since legislation and common law principles are often too vague. When deciding how to weigh competing interests whose weight changes from case to case, courts or authorities sometimes have to give a lot of room for interpretation.

Dworkin, however, argues that principles are necessary for making decisions in such grey areas. He argues that the rules that apply in every situation are grounded in and informed by a body of law. The regulations are applied based on principles. Rules have meaning because of principles. Using precedent, judges do not make "new" law; rather, they just locate and declare what already exists. An impartial judge decides cases "not in accordance with his own private judgement, but according to the established laws and traditions of the realm; not entitled to create a new law, but to uphold and explain the current one." There are two main reasons why he is against this judge-made law. The first line of defence is that democratically elected officials should run the country, and that judges should not be creating laws. The second line of defence is that the losing party should not be punished for breaking an already existing responsibility but rather for breaking a newly established duty formed after the fact if the court makes up a new statute and applies it retroactively to the case at hand. In answer to Dworkin's first argument, Hart contends that the judge's discretion is constrained by a number of factors and that the judge's power is used solely to resolve particular pending cases; the judge lacks the jurisdiction to enact sweeping reforms or create new regulations. If new legislation is passed, it will likely build on pre-existing legal principles or root reasons. Dworkin's theory of adjudication relies heavily on this idea, which he calls "constructive interpretation." Judges' judgements are limited, in Dworkin's opinion, by their own judgement, thus he calls this kind of discretion "weak discretion." Dworkin acknowledges the need for some discretion but rejects the existence of broad discretion. All the tools that judges need to make decisions are provided under the current legislation. A judge does not make a decision in the absence of any law, but rather in light of pre-existing rules that both express and are inspired by core legal principles. A judge's job when faced with a complex case is to figure out what ruling is required by the full body of precedent.

In response to Dworkin's second criticism, Hart argues that the absence of comprehensive legal regulation and the inability to rely on a known state of clearly established law render it mostly useless in difficult cases.

There is room for the courts to exert discretion in any legal system, whether it is to make vague standards binding, to clarify laws, or to create and qualify norms that are only generally articulated by authoritative precedents. However the fact that the setting in which they occur and their principal result are universal rules should not be lost sight of regardless of how crucial or understudied these actions may be. This is a set of standards, the application of which individuals can evaluate on a case-by-case basis without any intervention from the state.

Hart argues that the statute regulating open texture is a conservative prediction of what courts would do. The rules are usually expressed in the form of a prediction of the court's verdict, despite the fact that everyone is familiar with them. Keep in mind, nevertheless, that the knowledge that courts do not see legal standards as prophecies but as decision-making criteria precise enough, despite their open character, to constrain but not remove their discretion, is the foundation for such predictions.

The use of words like "option" and "discretion," as well as expressions like "creative activity" and "interstitial legislation," to characterise choices does not mean that courts decide randomly without

offering reasons when the law fails to identify a unique conclusion. And the legislature will always be available to overturn any arbitrary decisions.

Raz argues that judges do change the law, but they do it by thinking about the consequences of internal legal difficulties rather than acting as political agents. By creating laws, judges do not make statements of policy or reflect societal or political trends. Instead, they analyse the motivation behind the legislation, reveal its latent strength, and explain its significance. He argues that judges can create new rules even when bound by precedent so long as they do it in a way that is clear and distinct. But, there are two crucial conditions that must be met for this type of legislation to be enacted. The first need is that the modified rule be the precedent's rule with an extra condition for its application, and the second requirement is that the modified rule be such that it supports the precedent's ruling. The judge must approve just that change to the rule that would improve it the greatest. Subject to the constraints of the law, courts, in the exercise of their legislative function, should adopt the most optimum legislation feasible. In a decision that he deems to be limited to applications, they may establish a new rule. In light of the foregoing, it seems reasonable to conclude that judges make pronouncements of legal significance, and their defence against accusations that they create new legal precedents or principles can be summarised as follows: they discover the law by applying established precedents and principles. Dworkin would argue that a weak judgement constrained by specific limits, such as a limited choice, cannot be termed infinite authority. Even if Hart's law is transparent, it is nevertheless subject to legal constraints and must use existing laws as its foundation. Same goes for Raz. Is it always doable to establish laws in light of our actual life conditions, though? Now we may go on to our second question.

2) If judges do not make the law, then is it always possible to proclaim law?

My viewpoint is that it is of the utmost importance to debunk "the juvenile concept" that judges do not have the last word over legislation. Sabyasachi Mukharji, who serves as Chief Justice, is a judge.

In the case of *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*, the Supreme Court ruled that judges have the responsibility to do more than interpret the law; rather, they must also establish new legal precedents and mould the law to reflect the shifting social and economic context in order to put the Constitution's lofty ideals into practise. This decision was made in light of the fact that judges have the duty to do more than interpret the law. In the society of today, judicial activism, which was formerly unusual but is now widely expected, is a must.

Every statutory provision must be interpreted so as to keep pace with changing concepts and values, and it must, to the extent that its language permits or rather does not prohibit, undergo adjustments through judicial interpretation so as to conform to the needs of a rapidly evolving society that is undergoing rapid social and economic transformation. This was stated by the court in the case *S. P. Gupta v. President of India*.

Yet, the judge ruled as follows: "The rule of law is not a singular occurrence in and of itself. As a result of this, it plays a function in society and needs to be examined within the context of the broader social, economic, and political environment in which it will be implemented. In this particular situation, the judge is required to display some degree of discretion as well as originality. Through a process known as dynamic interpretation, it is the responsibility of the judge to infuse the dry skeleton of the legislature with meaning. This meaning is what will bring the law into accordance with the prevalent ideas and values and turn it into an efficient tool for the administration of justice."

As can be seen from what has been discussed so far, the creative activity of the judge manifests itself in the judge's interpretation of the law and the Constitution in order to keep up with the times. Additionally, this is the area in which the judge most obviously contributes to the process of legal development.

In most cases, judges do not simply follow previous decisions or see themselves to be constrained by pre-existing criteria. On occasion, the court will draught brand new rules and regulations. Yet, courts are required to always act within the bounds defined by the Constitution and are not permitted to ever go beyond those restrictions. When "new social conditions and factual situations necessitate the Judges to speak," the judges "must speak up," as the expression goes.

The Supreme Court of India stated in the case of *M.C. Mehta v. Union of India* that the law cannot remain unchanged and that it must evolve its own unique set of principles (*Shriram - Oleum Gas*). This judgement demonstrates that the courts play an active role in the operation of our judicial system; they establish new standards and guidelines, and they provide an interpretation of our legal system and constitution that is alive and evolving.

Justification

Critiques of judicial activism aside, "While the courts must always operate within the bounds of the law, they must always rise to the occasion in their role as "guardians of the constitution." The courts must not be afraid to exercise their constitutional duties to protect and enforce the human rights of the people, and they must not shy away from doing so.

It is a widely held belief that judges, through the use of their own judgement, filled the power vacuums left by previous rulers. Austin acknowledged the value of judicially enacted laws when he said, "I cannot understand how any person who has considered the subject can suppose that society could have survived without judges legislating, or that there is any danger in allowing them the power which they have in fact exercised, to make up for the negligence or incapability of the rulers." Austin was referring to the fact that he could not comprehend how anyone who had thought about the subject could think that society could have survived without judges legislating.

In addition to this, realists placed a strong focus on the necessity of judicial discretion. It was determined that judges were in fact the ones responsible for drafting legislation. The quest for realism centred on figuring out what steps to take next.

His judge achieves a satisfying middle ground between passivism and activism. In spite of the fact that the constitution is worded in a certain way, he will not always yield to the authority of those who have been elected. As a consequence of this, he will fight against the representatives of the majority in order to safeguard democracy and minority rights. But, when he considers that the problem at hand is one of policy rather than principle, he shall submit to the opinion of the legislative body.

The law needs to be construed in a way that allows it to be applied to a variety of different scenarios. When it comes to closing the gap between the law as it currently stands and the law as it should be, it is up to the judges to exercise their creative faculties.

Others, however, have questioned whether the meaning of a phrase or statement must be consistent regardless of when or where it is used. The court has held that it would be erroneous to read the Constitution simply in light of what its original authors meant, as there may have been situations that could not have been predicted at the time, or problems that were not properly considered.

Directions by the courts

Yet, the courts have made it plain that they cannot govern permanently and that any rules they establish are merely temporary until the legislature adopts a legislation expressly authorising them. Yet, this does not mean that the courts may do anything they like. It is vital to find a balance between passivity and aggressive activism. The former might jeopardise judicial power, while the latter could jeopardise the achievement and defence of people's rights, the provision of functional governance, and the accomplishment of the document's declared goals. It is undesirable for a judge to pursue his or her own conceptions of justice outside the confines of the law, which is known as "judicial adventurism."

The courts have no problem executing so-called "constitutional policy," which involves ensuring that everyone has a fair chance at life and a good level of living.

Given the significance of the court's position, it should be more responsive to criticism and exercise its contempt jurisdiction with extreme restraint. If this does not occur, the court system will appear authoritarian. Dworkin is committed to the notion that there is a fundamental test for law because he contends that judges have a duty to utilise certain principles but not others or to attach a specific weight to one principle but not a greater weight. The basic notion of a fundamental recognition standard is key to the Dworkinian perspective.

Dworkin contends that Hart's theory of the rule of recognition does more than just assert that there is a criteria for identifying what is law and what is not. Hart, according to Dworkin, must argue that laws are distinguished not by their justice or fairness (a matter of their essence) but by their legislative or precedent origin (a matter of source or pedigree). Hart contends that the objective of a rule of recognition is to provide a body of publicly ascertainable standards, but Dworkin contends that a rule of recognition only makes sense if it identifies the law by criteria of genealogy. Even if it were part of the rule of recognition, the statement "all fair rules are legal standards" would not provide greater confidence than our differing notions of justice.

For an idea to be regarded a legal principle, it is not necessary for it to have been established in a statute or case. To quote him directly:

"...a concept is a legal principle if it appears in the most plausible theory of law that can be offered to justify the explicit substantive and institutional laws of the jurisdiction in question."

Dworkin meant by this that when a judge articulates a new legal concept, he does so within the framework of pre-existing legal precedent, as opposed to creating something entirely new. By demonstrating the principle's appropriate justification for the black-letter regulations, it is possible to demonstrate that the concept is indeed embedded in the existing rules and judgements.

Dworkin's criterion for what makes a principle legally binding is that it must be an integral part of any theory of law that can be used to defend pre-existing legal norms and institutions. Dworkin argues that the process of developing such a theory would inevitably be fraught with controversy because it raises fundamental questions.

Dworkin Ian's assertion that positivists believe law can only be properly determined through tests of genealogy rests on an overly restrictive interpretation of Hart's theory. Hart's discussion of a rule of recognition definitively validating legal laws centres on the hypothetical transition of a "pre-legal" community into one with a legal system.

Articles 14, 19, and 21 of the Constitution are interpreted in moral terms such as justice, rationality, and equality. When interpreting these regulations and deciding what constitutes law, officials (judges)

frequently use moral reasoning. The identification and evaluation of competing factors is at the heart of this deliberation.

Let's now discuss the concept of judicial discretion. Dworkin seems to imply that principles eliminate all indeterminacies in the law, since he rejects the concept of judicial discretion outright. He seems to believe that anyone who is comfortable with the concept of judicial discretion must either deny the existence of legal principles or believe that such principles are incapable of removing doubts because they must be evaluated against one another.

Hercules must now develop a theory of contract, which is a defence of the canons of positivism.

Dworkin and positivists disagree on whether law and morality have essential ties.

In the Hart-Dworkin dispute, Raz takes the position of the judge, which amounts to the same thing: historically, judges had some discretion in declaring the law when confronted with difficult situations. When I began working on actual cases, I realised that it wasn't always possible to make a blanket declaration of law. This calls for a compromise on the judge's proper function.”¹

¹ Srivastava, A. (2018). *Do the judges make or declare law with reference to Hart and Dworkins Principle in Indian legal system*. Legal Service India. Retrieved April 4, 2023, from <https://www.legalserviceindia.com/articles/juju.htm>