

BEYOND POSITIVISM: LIMITS OF WESTERN JURISPRUDENCE AND THE INDIAN KNOWLEDGE SYSTEM AS AN ALTERNATIVE

AUTHOR – DR. NAMRATA TIWARI, ASSISTANT PROFESSOR AT CAREER COLLEGE OF LAW, BHOPAL

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Abstract

Western jurisprudence, which has had a serious impact on contemporary legal systems, is based on Enlightenment reasonableness, legal positivism, and the liberal tradition of individual rights. This system has enriched constitutional governance, human rights, and the rule of law, but its shortcomings appear when applied outside its cultural and philosophical roots. Its rigid isolation of law from morality, focus on individual rights at the expense of collective obligations, and mechanistic comprehension of justice tends to render it unsuitable for societies such as India, where law has long been inextricably linked with moral, religious, and communal aspects. This paper critically discusses these limitations of Western jurisprudence, observing that its pretenses of universality commonly involve a cover-up for cultural blindness by disregarding diverse epistemological traditions. Conversely, the Indian knowledge system (IKS) offers a rich jurisprudential option, rooted in texts and traditions like the Vedas, Dharmashastras, Arthashastra, Buddhist and Jain philosophies, and indigenous customary practices. Underlying it is dharma, which combines law, morality, and cosmic order, providing a more integrated vision of justice. In contrast with the positivist command-and-sanctions model, dharma calls attention to duty, ethical accountability, and balance between the individual, society, and nature. The pragmatic principles of governance in Kautilya's Arthashastra, the environmental and empathetic ethos of Buddhist and Jain philosophy, and the reconciling practices of indigenous peoples collectively offer models of justice beyond abstract, confrontational models of Western law. This research contends that there is a need to work towards a plural jurisprudence that synthesizes the merits of Western right doctrines with Indian practices of duties, reconciliation, and integral order. This is not only a means of overcoming the cultural deficit of Western jurisprudence but also gives access to greater understanding for coping with urgent contemporary issues such as ecological disasters, social disintegration, and the quest for restorative justice.

Keywords: Western Jurisprudence, Indian Knowledge System, Dharma, Positivism, Duties, Alternative Jurisprudence

Introduction:

Law, as a social phenomenon, does not arise autonomously; it is deeply influenced by the epistemological and cultural underpinnings of the societies in which it arises. The Western legal tradition, traceable to Greek rationalism, Roman law, Enlightenment philosophy, and modern liberalism, has developed a jurisprudential tradition that values rationality, codification,

and universality. This tradition spawned such paradigmatic ideas as natural rights, the sovereignty of law, constitutionalism, democracy, and the contemporary rule of law. This system's power is that it can establish uniformity, predictability, and individual protections that are now cornerstones of international legal thought. This jurisprudence has limitations, too. Its inclination to divorce law

from morality, its dependence on legal positivism, and its emphasis on individual rights at the expense of communal responsibilities frequently cause friction when adopted in non-Western societies. In multicultural societies like India, where law has traditionally been conceived as not separate from moral and religious aspects, Western jurisprudence at times seems reductionist and insufficient. Western legal classifications' implicit assumption of universality may cover up the multiple epistemologies and socio-legal contexts that construct justice in other cultures.

India offers a special and fertile context for rediscovering jurisprudence. With its pluralist cultures and millennia-long civilizational wisdom, the Indian imagination of law goes beyond codified order to take in ethical, spiritual, and cosmic aspects of order. The Indian knowledge system (IKS), which draws on materials including the Vedas, Dharmashastras, Arthashastra, Buddhist and Jain traditions, and indigenous customary laws, provides jurisprudential options in the form of holistic and integrative offerings. At the center of this system is dharma, a concept that brings together law, morals, and cosmic order defining justice not as the settling of conflicts but as the sustenance of harmony between the individual and society and with nature. In response to urgent global issues ranging from environmental crises and social disintegration to growing inequality the need for a re-examination of legal bases is urgent. This paper contends that aspects of the Indian knowledge system can enrich, challenge, and even redefine Western jurisprudence. Through engagement with India's legal-philosophical traditions, it is possible to conceive of a plural jurisprudence that transcends the narrow dichotomies of Western thinking and towards models of justice that are more ethical, inclusive, and sustainable.

Limits of Western Jurisprudence

The study of jurisprudence has for centuries been dominated by Western legal ideas, influenced by Greek rationalism, Roman law,

Enlightenment philosophy, and contemporary liberal traditions. This intellectual development has made huge contributions to the emergence of democracy, constitutionalism, and human rights globally. Yet, when translated into non-native cultural environments, Western jurisprudence displays significant limitations, especially in countries such as India, where law traditionally has been interpreted as inextricably linked with morality, duty, and spiritual order. Indian knowledge system (IKS) provides a rich and alternate basis for jurisprudence, based on the texts of the Vedas, Dharmashastras, and Arthashastra, and strengthened by Buddhist, Jain, and local traditions. Dharma, a concept that brings together law, morality, and cosmic equilibrium, is at the center of this system. In contrast to Western legal positivism, which dissociates law from ethics, Indian traditions highlight duties over rights, synthesis between individual and society, and justice as a comprehensive order. Venturing into the edge of Western jurisprudence and the potential within the Indian knowledge system paves the way towards a pluralist and context-sensitive conception of law one that engages with new challenges such as ecological emergency, social inequality, and the quest for restorative justice.

Overemphasis on Positivism: Western law, especially after the post- Enlightenment era, developed towards legal positivism, which is adamant about distinguishing law from morality. John Austin defined law as the "command of the sovereign backed by sanction," and H.L.A. Hart followed up and sharpened positivism by isolating a system of primary and secondary rules. This method certainly affords clarity and formal certainty. But it also deprives law of its moral and ethical aspect, leaving it a closed code of rules. In such cultures as India, where dharma traditionally entwined law, morality, and spirituality, this separation is inadequate. Thus, for instance, in ancient Indian law books such as the Manusmriti and the Mahabharata, legal norms

were constituted not just as enforceable sanctions but as obligations towards maintaining social and cosmic order. Such divergence reflects how positivist law fails to incorporate the moral foundations that continue to play a central role in Indian jurisprudence.

Individualism vs. Collectivism: Western legal philosophy, especially following the liberal revolutions in America and Europe, prioritized individual rights a heritage of intellectuals such as John Locke and John Stuart Mill. While this rights orientation promoted personal freedoms and democratic rights, it tends to overlook social obligations and the situatedness of the individual in communities. In contrast, Indian jurisprudence always prioritized duties (dharma) as much as, if not more than, rights. The Indian Constitution itself is a demonstration of this synthesis: while Part III ensures fundamental rights, Part IV adds Directive Principles of State Policy, and Article 51A lists Fundamental Duties, an unusual constitutional provision. This obligation-oriented approach is consistent with the Indian ethos that real justice is not just done by protecting rights, but also by meeting duties owed to family, society, and nature.

Universalism and Cultural Blindness: Western jurisprudence tends to extend its categories rights, justice, sovereignty, contract as universally applicable, failing to note that they are culturally specific. Western universalism is prejudicial when Western legal codes are transplanted into plural societies such as India. Colonial codification in India in the 19th century, for example, attempted to substitute varied customary and community-based laws for homogeneous statutes inspired by British law. Although this brought legal certainty, it excluded indigenous epistemologies and living traditions. A stark illustration is personal laws in India: efforts to unify them under a Uniform Civil Code tend to conflict with India's plural tradition of family, marriage, and inheritance, which mirrors the balance between Western universalism and Indian legal pluralism.

Mechanistic Conception of Justice: Justice has been narrowed down in most of Western thought to procedural justice or distributive devices through utilitarian calculation. Courts end up being rule arbiters in this system, rather than protectors of comprehensive well-being. Indian law, though, encompasses justice on a larger scale using notions such as Rta (cosmic order) and Dharma (moral and social obligation). For example, in the Bhagavad Gita, justice is not rule-following but doing one's duty in accord with cosmic order. In contemporary language, this is seen in Indian courts' habitual recourse to "constitutional morality" (for example, Navtej Singh Johar v. Union of India, 2018) in order to construe justice as something transcending procedural law, combining ethical and social values. The mechanistic Western model is therefore lacking in the multidimensionality appreciated by Indian traditions.

Fragmentation of Knowledge: The Western paradigm is apt to compartmentalize the disciplines: law, politics, economics, religion, and ethics as distinct fields. This Enlightenment rationalism-inspired intellectual fragmentation has facilitated specialization but restricts the ability of law to deal with complicated, interrelated challenges. For example, climate change litigation in Western jurisdictions usually is articulated in terms of statutory compliance and regulatory structures, failing to capture its richer ethical and ecological nuances. Conversely, Indian systems develop out of an integrated epistemology in which law, philosophy, religion, and ethics are entwined. The concept of dharma pervades social, spiritual, political, and ecological orders. Village panchayats are examples of traditional Indian practice illustrating this integration by settling conflicts through consensus, ethics, and the value system of society, as opposed to formal codes of law. Such integrated strategies are increasingly necessary in responding to global crises such as environmental devastation, where compartmentalized Western legal

strategies have been unable to yield transformational results.

Indian Knowledge System as an Alternative

Law is not developed in isolation; it develops in the philosophical, cultural, and social environment of a society. The Western legal tradition formed by Greek rationalism, Roman codification, Christian theology, Enlightenment rationality, and liberal individualism has developed jurisprudence that emphasizes reason, codification, and universal principles. This tradition has had a profound impact on international discourses of human rights, democracy, and the rule of law, offering strong instruments for checking authoritarianism and advancing equality. Yet, the transplantation of Western jurisprudence to non-Western societies frequently results in cultural dissonance. Its detachment on positivist grounds from morality, its undue preoccupation with individual rights, and its mechanistic view of justice all too often fall flat with societies that see law as relational, spiritual, and embedded in the natural and moral order. India provides a persuasive alternative. With its depth of civilisation, pluralistic traditions, and holistic epistemologies, the Indian Knowledge System (IKS) offers a distinct vision of jurisprudence one that includes ethics, duties, spirituality, and ecological balance in law. From the dharma principle in the Manusmriti and Mahabharata, to expedient rule in Kautilya's Arthashastra, to Jain and Buddhist ecological ethics, to customary tribal laws based on consensus, the Indian way shows how law can be contextual, restorative, and holistic.

Dharma as a Jurisprudential Principle: Dharma is not religion but a thoroughgoing principle of cosmic and social order that regulates personal and collective behavior. It synthesizes duties, rights, ethics, and morality into an overarching framework. In contrast to legal positivism, which defines law as commands supplemented by sanctions, dharma operates as a regulative standard for human flourishing and collective good. For example, the Manusmriti and

Mahabharata define dharma as dynamic changing with time, place, and circumstance indicative of a contextual jurisprudence rather than static rule-following. Because dharma is so malleable, it is more sensitive to social reality than Western law's fixed categories.

Arthashastra and Pragmatic

Governance: Kautilya's Arthashastra is a realistic but ethically based model of law and state. While it acknowledges the primacy of state power and discipline, it underlines the responsibility of the king to promote welfare, justice, and stability. The text harmonizes realpolitik with ethics, balancing material success (artha) with moral order (dharma). Thus, while urging strict punishment for corruption, it also underlines economic policy that promotes collective well-being. This pragmatic approach is a counterpoint to Western models based on sovereignty that tend to sever politics from ethics.

Buddhist and Jain Traditions: Buddhist and Jain philosophies have a significant impact on jurisprudence by stressing non-violence (ahimsa), compassion (karuna), and interdependence (pratītyasamutpāda). In Buddhist philosophy, dhamma has a more than legalistic connotation and refers to a society led by compassion and harmony. Jain legal philosophy stresses self-restraint (aparigraha) and equality and opposes exploitative and hierarchical structures. They also emphasize an ecological aspect, viewing human beings as an integral part of nature a dimension frequently missing in anthropocentric Western legal models. Today's uses are evident in Indian environmental jurisprudence, where courts have applied ecological values consonant with these traditions (M.C. Mehta v. Union of India, 1986).

Customary Laws and Community

Practices: India's indigenous and tribal cultures uncover legal systems based on agreement, reconciliation, and harmony with nature. For instance, panchayats of central and northeastern Indian tribes frequently settle

disputes by using restorative measures to reintegrate criminals into society in place of punishing them in segregation. These tactics question the adversarial and penalized paradigms of Western criminal law. They also provide excellent lessons for contemporary restorative justice movements and green law, where community-based conservation methods (e.g., wildlife protection by the Bishnoi community) illustrate how traditional law supports environmental harmony.

Integration of Spirituality and Law: In contrast to Western jurisprudence, where law tends to be divorced from spirituality, the Indian epistemological tradition views law as a method of maintaining dharma, thus securing social harmony and individual liberation (moksha). Legal rules were considered in the past as tools for moral development, rather than as instruments of coercion. This synthesis of law, ethics, and spirituality finds expression in the Indian philosophical concept of the Purusharthas (dharma, artha, kama, moksha), whereby law undergirds a harmonized quest for material and spiritual aspirations. Such a comprehensive perspective transcends Western jurisprudence's limited instrumental rationality, projecting law as an instrumental agent of both society and self-transformation.

Towards a Plural Jurisprudence

The boundaries of Western jurisprudence and the depth of the Indian epistemological tradition indicate the necessity of a plural jurisprudence one that synthesizes the best in both traditions. This jurisprudence would neither discard the success of Western legal philosophy in codification, protection of rights, and rule of law, but would supplement it with the integral, ethical, and contextual understanding of Indian philosophy. The following aspects are necessary for developing such a plural framework:

Balance Rights with Duties: Western legal traditions, particularly since the Enlightenment, have placed great stress on individual rights as the basis of liberty and justice. Though this has helped contain state power and confer

freedoms, it tends to result in an excess of entitlements without linkages to duties. Indian jurisprudence, however, acknowledges a balance between duties and rights. The dharma concept imposes responsibilities not only on the individual but also toward family, community, nature, and the universe. This is exemplified in the Indian Constitution, where Fundamental Duties (Article 51A) are codified along with Fundamental Rights. Example: The free speech right (a Western pillar) should be exercised responsibly without provoking violence or hatred, a lesson derived from the Indian premise that duties check rights. Similarly, the duty to protect the environment complements the right to life under Article 21.

Recognize Law's Moral and Spiritual Dimensions:

Western positivism tends to require the divorcing of law from morality (Austin, Hart), perceiving law as a matter of command or social fact. This is certain to bring about clarity but loses law its ethical depth. Indian perspectives perceive law as intrinsically linked with morality (nīti) and spirituality (moksha). A plural jurisprudence would re-insert this ethical dimension so that laws are not merely procedurally sound but morally equitable as well. Example: The Indian Supreme Court in *Navej Singh Johar v. Union of India* (2018) legalized same-sex relations, prioritizing constitutional morality a concept that combines law with humane and ethical considerations, above and beyond codification. This is in keeping with the Indian practice of setting law consistent with higher values such as dignity, compassion, and justice.

Integrate Ecological and Cosmic Concerns into Justice:

Western law treats law as an anthropocentric system, centered on governing interactions between humans. Indian knowledge systems position law within a greater order of nature (ṛta) and the cosmos. Justice is distributive-procedural, but also ecological and cosmic. Example: Tribal laws against over-harvesting forests, or Jain doctrines of non-violence to all creatures, exemplify this ecological law. In modern India,

the Ganga and Yamuna rivers have been established as legal persons by the courts (2017 Uttarakhand HC), their rights as part of a living system an unimagined concept in mainstream Western legal thought.

Draw from Both Codified Law and Customary

Practices: Codified law, evolved in the West, is certain, uniform, and predictable. But it is unable to cater to the nuances of multi-cultural societies. Indian jurisprudence demonstrates that there can exist customary laws, traditions, and practices along with codified statutes in a plural legal order. Example: The Sixth Schedule to the Indian Constitution acknowledges the legal autonomy of Northeast India's tribal communities to govern land, forests, and disputes through customary law. Likewise, village panchayats and councils usually settle disputes by reconciliation, illustrating how informal justice mechanisms supplement codified law. This plural mechanism escapes the inflexibility of a solely codified system and is respectful of cultural diversity.

Move from Adversarial to Reconciliatory

Justice: Western law tends to take an adversarial model approach, in which conflict is cast as a struggle between parties, culminating in punishment or triumph for one side. While this guarantees fairness through process, it tends to create polarization and overlook restoration. Indian traditions, on the other hand, focus on reconciliation, consensus, and restoration. Justice is not just punishment but the healing of relationships and restoration of equilibrium. Example: Panchayat mediation practice is about seeking compromise and satisfaction in contrast to victory. Likewise, Gandhian concepts of satyagraha and non-violent conflict resolution emphasize reconciliation over coercion. In contemporary systems, this is in line with restorative justice models employed in juvenile justice and community conflicts that focus on repairing harm instead of vindictiveness.

A plural jurisprudence thus attempts to combine the salience of Western law

(codification, protection of rights, rule of law, checks in institutions) with the sagacity of the Indian knowledge system (duty, spirituality, ecological awareness, reconciliation). Such a jurisprudence would be more capable of addressing the multifaceted crises of contemporary times ranging from ecological disaster to social disintegration while being based on cultural pluralism and ethical universality.

Conclusion

The jurisprudence debate has traditionally been held by the Western tradition, whose evolution from Greek rationalism and Roman codification through Enlightenment liberalism and contemporary positivism yielded influential doctrines of rights, codification, and procedural justice. These advances cannot be overlooked; they have provided societies with instruments for controlling arbitrary power, promoting legal certainty, and protecting fundamental liberties. Still, their cultural particularity and epistemological presuppositions are revealed when this model is universally applied. By demanding the dissociation of law from morality, simplifying justice into procedures or distributive calculations, and giving primacy to the individual over the collective, Western law typically cannot offer solutions to those societies in which the law has traditionally been thought of in terms of being moral, religious, and holistic. India provides a different line. Based on the Indian knowledge system (IKS), its law takes inspiration from sources as eclectic as the Vedas, Dharmashastras, Arthashastra, Buddhist and Jain ethics, and tribal customary law. Central to it is the concept of dharma not a fixed rule, but a living, context-conditioned norm that reconciles rights with obligations, law with morality, and human existence with order of the cosmos. Kautilya's Arthashastra shows the confluence of pragmatics and ethics in the practice of governance; the Buddhist and Jain focus on non-violence and interdependence puts compassion and ecological awareness at centre stage; while tribal councils and indigenous cultures show restorative and

reconciliatory justice. All these traditions collectively show that jurisprudence can be adaptive, ethical, people-focused, and ecologically aware, providing a different alternative to the confines of Western positivism. The challenge is not to replace one tradition with another but to create a plural jurisprudence. A pluralist understanding acknowledges the abiding worth of Western contributions codification, equality before the law, protection of rights, and institutional accountability and complements them with Indian wisdom. This plural jurisprudence is not only an intellectual exercise but also a practical imperative. World problems like climate change, mass inequality, cultural fragmentation, and the crisis in systems of delivery of justice cannot be effectively met by a jurisprudence that is narrowly positivist or mechanistic. They require integral approaches that understand the interdependence of law, society, and nature an insight well rooted in the Indian tradition. In conclusion, the exchange between Western jurisprudence and Indian knowledge system provides a means to go beyond the limitations of each. By synthesizing the universal accomplishments of Western law and the contextual insights of Indian traditions, we are able to create a jurisprudence which is inclusive, moral, ecologically green, and culturally sensitive. It would enrich global legal thinking and enable societies to respond to the needs of the twenty-first century to establish a system of law that maintains rights, discharges obligations, restores balance, and sustains life in all its forms.

References

- Dworkin, R. (1977). *Taking Rights Seriously*. Harvard University Press.
- Hart, H. L. A. (1961). *The Concept of Law*. Oxford University Press.
- Menski, W. (2006). *Hindu Law: Beyond Tradition and Modernity*. Oxford University Press.
- Rangarajan, L. N. (1992). *Kautilya: The Arthashastra*. Penguin Books.
- Sen, A. (2009). *The Idea of Justice*. Harvard University Press.
- Upadhyay, S. K., & Acharya, A. (2024). *Limitations of Positive Legal Jurisprudence and the Role of Indian Spirituality: Some Primary Reflections*. *ShodhKosh: Journal of Visual and Performing Arts*, 5(6), 1612-1616.
- Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.
- M.C. Mehta v. Union of India, (1986) 2 SCC 176.
- Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
- State of Uttarakhand v. Mohd. Salim, (2017) SCC Online Utt 367 (declaring Ganga and Yamuna as legal persons).
- Baxi, U. (1982). *The Crisis of the Indian Legal System*. Vikas Publishing.
- Baxi, U. (2012). *The Future of Human Rights* (3rd ed.). Oxford University Press.
- Berman, H. J. (1983). *Law and Revolution: The Formation of the Western Legal Tradition*. Harvard University Press.