

Justice, Dharma and Law: A Comparative Study of The Western and Indian Legal Traditions

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Abstract - The concept of Justice is one of the most fundamental and enduring concerns of the legal philosophy, and yet, its content and relationship to positive law has been understood very differently across jurisdictions. This article undertakes a systematic comparative analysis of justice in Western Legal Thought as well as in Indian Legal Thought, with attention also given to the concept of Dharma as the normative foundation of the Indian Legal Tradition. With the help of doctrinal and philosophical research, this study traces the evolution of justice in Western Legal Thought from ancient Greek Philosophy which is Plato's functional justice, Aristotle's distribution and corrective justice, through Roman Jurisprudence, the natural law tradition of Thomas Aquinas, the social contract theory of Hobbes, Locke and Rosseau, then the Legal Positivism of Bentham, Austin and Hart and the contemporary Liberal Theory of Dworkin and Rawls. It then also examines the Indian concept of Dharma as the cosmic and moral order, the Dharma shastra literature, Kautilya's Artha shastra and the post-colonial constitutional synthesis effected by Dr. B.R.Ambedkar. This study finds significant convergences between the two traditions, particularly in the recognition of a higher normative standard transcending the positive law and the value placed on procedural fairness and significant divergences in their treatment of individualism versus relational obligation, universalism versus pluralism and the separability of law from morality. This article finally concludes that a productive dialogue between these traditions offers rich normative resources for contemporary jurisprudence, particularly in the Indian constitutional context, where the inherited Dharmic tradition and the liberal constitutional framework remain in creative and ongoing tensions.

Keywords: *Comparative Jurisprudence, Constitutional Morality, Dharma, Indian Legal Thought, Justice, Legal Tradition, Legal Positivism, Natural Law, Western Legal Thought.*

I. INTRODUCTION

Every legal system rests on some conception of justice, which is an idea on what is right, fair and also

proper that gives law its moral authority and social legitimacy. Yet, what justice demands and how law ought to embody it has been answered in a profoundly different way across traditions. The Western legal philosophy, from its Greek origins to contemporary liberal theory and the Indian Dharmic Tradition, which is rooted in the Vedic cosmology and which is elaborated across the millennia of juristic scholarship, represents two of the world's richest engagements.

The relationship between law and justice occupies a contested space. Legal positivists in the Western tradition, such as Hart (1961) and Austin (1832) insisted that the legal validity is independent of moral merit, while the natural law theorists, from Aquinas to Finnis (1980) argued that an unjust law lacks genuine legal authority. In the Indian tradition, the Dharma which is law, duty, righteousness and cosmic order refuses this situation entirely.

This article has three principal aims; first, to map the main conceptions of justice in Western legal thought; second, to analyze the concept of Dharma and its role as the normative foundation of the Indian legal tradition; and third, to identify the convergences and divergences between these traditions with a view to articulating their mutual relevance for contemporary jurisprudence. The study is confined to legal-philosophical and doctrinal analysis, and empirical socio-legal questions about the actual administration of justice falls outside its scope.

II. MATERIALS AND METHODS

This research employs a qualitative, doctrinal methodology combining comparative legal philosophy with classical textual analysis. The study proceeds in four methodological steps, as follows:

a. Step 1: Source Identification and Selection: Primary legal- philosophical sources were identified from two bodies of literature; the canonical

Western legal and political philosophy, including the works of Plato, Aristotle, Aquinas, Hobbes, Locke, Rousseau, Bentham, Austin, Hart, Dworkin, and Rawls; and the classical Indian jurisprudential texts, including the Manu smriti, the Yajnavalkya Smriti, the Artha shastra of Kautilya, and the Bhagavad Gita, supplemented by secondary scholarship in Indological and Comparative Legal Studies. Constitutional materials, including the Constitution of India (1950) and significant Indian Supreme Court judgments, were also consulted.

b. Step 2: Conceptual Mapping: Key concepts such as justice, natural law, Dharma, Danda, Nyaya, distributive justice, corrective justice, and constitutional morality were identified and mapped across the two traditions to establish a common analytical vocabulary for comparison.

c. Step 3: Comparative Analysis: The mapped concepts were subjected to systematic comparative analysis, employing the method of 'functional equivalence' as described by Zweigert and Kötz (1998). The legal concepts and institutions serving similar social functions in different legal systems were compared, in respect to the sensitivity to the different cultural and philosophical contexts in which they operate.

d. Step 4: Critical Synthesis: The findings of the comparative analysis were synthesized to identify convergences, divergences, and areas of productive tension between the two traditions, with reference to contemporary jurisprudential debates in the Indian constitutional law.

No empirical fieldwork, surveys, or primary data collection were undertaken. The study relies entirely on published primary texts, reported judgments, and peer-reviewed secondary literature. The translations of Sanskrit texts are drawn from established scholarly editions which are cited in the references.

III. OBSERVATIONS AND RESULTS

Justice in Western Legal Thought:

The Western Tradition exhibits the tensions between substantive and procedural conceptions of justice that

runs from antiquity to present. Plato in the Republic has defined Justice as a hierarchical part of the soul and of polis which performs its specific function and which is an organic conception that has subordinated the procedural regularity to substantive excellence. In contrast to this, Aristotle has distinguished the General Justice (which is justice in conformity to law and common good) from Justice itself, and subdivided it into Distributive Justice (which is proportional allocation of the social goods according to its merit) and Corrective Justice (which is restoration of an equilibrium after a wrong). This Aristotelian taxonomy created an enormous influence on the subsequent Western Legal Thought and still continues to structure debates in private and public law.

On the other hand, Roman Jurisprudence, which is built on Greek Philosophy, formulated the maxim “*justitia est constans et perpetua voluntas ius suum cuique tribuendi*”, which means that justice will remain constant and perpetual will to render to each his due. Further, the Roman Law has also distinguished *ius civile* (which is civil law of a particular community), *ius gentium* (which is the common law present for all the people) and *ius naturale* (which is natural law being grounded due to universal reason), which is a tripartite framework that has structured the natural law debate for centuries. The Natural Law Tradition which has been culminated in Aquinas has held that human law derives its binding force from the conformity with the eternal and natural law. An unjust law (*lex iniusta*) lacks genuine legal authority and may thus generate a moral obligation of disobedience in extreme cases, where a person that profoundly has influenced constitutionalism, civil rights jurisprudence and post-war international human rights law. Certain social contract theorists such as Hobbes, Locke and Rousseau grounded justice in a sovereign command, natural rights and general will, respectively, thus, producing the liberal constitutional framework of individual rights and limited government that continues to dominate Western Jurisprudence.

Table 1: Major Conceptions of Justice in Western Legal Thought

Thinker	Period	Conception of Justice	Relation to Law
Plato	4 th Century BCE	Functional harmony of the soul and polis	Law is an instrument of just polis
Aristotle	4 th Century BCE	Distributive and Corrective Proportionality	Law as reason without passion

Roman Jurisprudence	1 st – 3 rd Century CE	Suum cui que tribure (to each his due)	Law is stratified as civil, gentium and natural
Aquinas	13 th Century CE	Conformity to the eternal and natural law	Unjust law lacks authority (<i>lex iniusta</i>)
Hobbes / Locke / Rousseau	17 th – 18 th Century	Contractual / Natural Rights / General Will	Law as a social contract which enforces rights
Bentham / Austin / Hart	19 th – 20 th Century	Legal Positivism where the law is separated from morality	Validity is pedigree and not moral content
Dworkin / Rawls	20 th Century	Rights as trumps, and Justice as fairness	Law incorporates moral principles

Dharma: Foundation, Structure and Jurisprudential Significance:

The concept of Dharma is derived from the Sanskrit root *dhri* (which means to hold or sustain) and denotes the cosmic and moral order that sustains existence. The Vedic precursor concept of *Rta* (which is the universal law that governs both natural phenomena and human conduct) establishes Dharma's cosmological dimension. Dharma is not a human invention, but is a discovered order which is apprehended by the sages and is articulated in the Vedic corpus, thus forming a fundamental structural difference from Western Positivism, as in the Indian Tradition, the positive law (also known as *Rajadharma*) is legitimate only insofar as it reflects and gives expression to Dharma since the law-maker does not create justice, but discovers and enforces it. The *Dharmashastra*, which is the body of texts that applied the concept of Dharma to legal and social life has constituted as one of the world's most sophisticated pre-modern legal Corpora. The *Manusmriti* (2nd century BCE – 3rd century BCE) is an organized social obligation into the framework of varnashrama Dharma, wherein the duties are determined by one's varna (which means social class) and ashrama (which is stage of life). *Yajnavalkya Smriti* (3rd – 5th century BCE) and the commentarial tradition of *Vijnanesvara* (12th century CE) and *Jimutvaha* (12th century CE) elaborated the rules of inheritance, contract and procedure with remarkable technical precision.

The *Arthashastra* of Kautilya (4th century BCE – 3rd century CE) represents a distinctive strand of Indian legal thought that prioritizes *raison d'état* and empirical governance alongside Dharma. Kautilya's famous axiom "*praja-sukhe sukham rajnah, prajanam ca hite hitam*" (which means that in the happiness of his subjects lies the king's happiness or their welfare is his welfare) articulates a consequentialist conception of justice oriented towards welfare maximization. The *Arthashastra*'s treatment of evidence, the judicial procedure and the punishment which anticipates the several principles of modern administrative and criminal law, which also includes proportionality and the right to be heard.

The concept of *Nyaya* is often translated as justice of logical inference that provides a further window into the Indian Legal Tradition's understanding of the relationship between Law and Justice. In Legal contexts, *Nyaya* connotes as not just a mere formal identity, but also substantive rightness whose outcome would reach a wise, impartial and knowledgeable adjudicator by applying dharmic principles to the facts. This substantive dimension of *Nyaya* resonates with Dworkin's "Right Answer Thesis" whose proposition is that there is always a correct legal answer to every case, which is being determined by the underlying moral principles of the legal order.

The comparative analysis between both the legal traditions has been stated in the table below:

Table 2: Comparative Framework between the Western Legal Thought and Indian Dharmic Tradition

Analytical Dimension	Western Legal Thought	Indian Dharmic Tradition
Source of Normative Authority	God / Nature / Reason / Consent	Cosmic order (Dharma / Rta) and Vedic revelation
Relationship of Law and Justice	Contested Positivism separates and Natural Law unifies	Law is valid only in so far as it embodies Dharm

Individual v. Community	Primacy of individual rights (liberal tradition)	Individual embedded in relational obligation
Universal v. Plural	Universal Natural Law / Human Rights	Context-sensitive, different dharmas for different roles
Procedural Justice	Natural Justice, due process and rule of law	Impartial, adjudication, evidence – based (Arthashastra)
Punishment Theory	Retributive, deterrent and rehabilitative	Danda – proportional, deterrent and welfare oriented
Higher Law Doctrine	Natural law / Constitutional supremacy	Dharma transcends and limits Positive (royal) Law
Contemporary Expression	Human Rights, Constitutional democracy	Constitutional morality, Fundamental Rights (Art. 14 – 21)

IV. DISCUSSION

The comparative findings presented above invite several observations about the relationship between justice and law in the two traditions, and about the implications of this comparison for contemporary jurisprudence. The most fundamental convergence between the Western natural law tradition and the Indian Dharmic tradition lies in their shared insistence that positive law is accountable to a higher normative standard. For Aquinas, an unjust law is no law at all, while for the Dharmashastra tradition, the royal law that violates Dharma lacks legitimacy, and the king who enforces it forfeits his moral authority. This structural homology is significant because it suggests that the idea of a higher law, which is a standard by which positive law can be evaluated and, in extremis, disobeyed is not a peculiarly Western invention but a cross-cultural jurisprudential insight. Finnis, in his reconstruction of natural law, argued that the identification of basic goods through practical reason is a universal human capacity, which the Dharmic tradition's grounding of normative authority in the cosmic order of Rta can be read as a parallel, if culturally distinct, articulation of this capacity.

The divergence between the Individualist orientation of Western Liberal Legal Theory and the relational orientation of Dharmic thought has important practical implications. Rawls has constructed his Theory of Justice as a veil of ignorance, that strips away all the social particularity, which is a methodological move that reflects the liberal premise that the individuals are the primary bearers of rights and interests, and that social arrangements are those

which are rational, disembodied individuals that would choose freely. In contrast to this, Doniger observed that the Dharmic Tradition conceives the individual as always-ready which is embedded in a web of obligations, such as to family, community, caste, cosmos and defines justice in terms of proper performance of relational duties rather than just maximization of individual freedom. This tension is not merely philosophical, as it structures some of the most contested areas of Indian Constitutional adjudication, which includes debates regarding personal law, affirmative action (reservations) and the rights of religious communities. The positivist separation of law and morality, which is elaborated by Hart, has no true analogue in the Dharmic tradition, and this absence is jurisprudentially significant. Hart's rule of recognition which is also the master rule by which the legal officials identify valid law, is a pure formal criterion wherein it tells us whether a norm belongs to the legal system but says nothing about whether it is just or not. The Dharmic tradition's concept of dharmasabha (which means the court of righteous men) is operated on a different logic, wherein its task was precisely to determine the dharmic correctness of a proposed rule of decision, and not merely its formal identity. In this respect, the Dharmic tradition is closer to Dworkin's interpretivism, which states that the legal interpretation is inherently a moral practice which is aimed at the best justification of the legal order. The concept of constitutional morality, represents an important contemporary synthesis of these traditions. As the court stated in *Navtej Singh Johar*¹, that "the Constitution is a transformative document that must be interpreted considering the evolving constitutional values, and not frozen social prejudices", this

¹ Supreme Court of India, *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

interpretative approach resonates simultaneously with the natural law tradition, Dworkin's rights-as-trumps and the Dharmic insistence that temporal authority must answer to transcendent normative principles.

Ambedkar's foundational critique of the Dharmic tradition deserves sustained attention in this context, because for Ambedkar, the varna system enshrined in the Manusmriti was not a contextual imperfection, but the structural heart of a system of graded inequality that the dharmic ideology sustained and legitimized. Ambedkar's solution, which was constitutional democracy grounded in the values of liberty, equality and fraternity was explicitly modelled on the Western Enlightenment tradition, and he was deeply skeptical of any attempt to rehabilitate Dharma as a normative framework. This critique must be taken seriously and any comparative jurisprudence that engages with the Dharmic tradition is obligated to reckon with the historical reality that Dharma is frequently operated to entrench caste hierarchy, gender subordination, and the exclusion of the lowest strata of society from a legal protection. The emancipatory potential of Dharma must be distinguished from its historical record, and the criteria for that distinction cannot themselves be internal to the tradition but must draw on external standards of equal human dignity, the standards that the constitutional tradition, deeply influenced by Western liberal thought, most forcefully articulates.

The concept of environmental justice provides an illuminating contemporary site of convergence. The Dharmic tradition's insistence on the interdependence of all beings and the moral significance of the natural world has been invoked in recent Indian judicial decisions recognising the rights of rivers and other natural entities (*Salim v. State of Uttarakhand*, 2017). This development has no direct parallel in the mainstream Western legal tradition, which has historically anthropocentric both rights and justice. However, it resonates with the emerging field of environmental ethics in Western philosophy, particularly with the 'intrinsic value' tradition associated with thinkers such as Rolston and the rights-of-nature movement. This convergence suggests that the dialogue between traditions is not merely retrospective but has productive implications for addressing some of the most pressing legal challenges of the twenty-first century.

Finally, Gandhi's concept of satyagraha, which is truth-force, or the force of the soul, merits attention as a creative synthesis of the two traditions. Gandhi drew simultaneously on the Western tradition of civil disobedience and on the dharmic obligation to resist adharma, thus constructing a theory of principled law-breaking that was simultaneously a legal argument (an unjust law that lacks genuine authority) and a moral and spiritual discipline. Gandhi's satyagraha thus occupies the same theoretical space as the natural law tradition's doctrine of justified disobedience, but grounds it in a characteristically Indian idiom of moral striving and cosmic order. The fact that the doctrine of civil disobedience was independently developed in both traditions suggests that the insight it embodies that the law's claim on conscience depends on its moral quality is a genuinely cross-cultural jurisprudential truth.

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