

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

A JURISPRUDENTIAL ANALYSIS OF LEGAL FORMALISM AND LEGAL REALISM

AUTHORED BY - KANAV BHARGAVA & SAMARTH SHARMA

CRITICAL ANALYSIS

Legal formalism and legal realism are two foundational theories in jurisprudence that offer contrasting views on how judges should make decisions. Legal formalism maintains that legal reasoning is clear and predictable, asserting that judges should rely solely on existing laws without considering outside influences. It focuses on applying established legal principles, minimizing the role of ethics or politics in judicial outcomes.

In contrast, legal realism argues that judges often arrive at decisions influenced by personal biases, societal values, and political contexts. Legal realists believe that understanding judicial decisions requires a value-neutral analysis, similar to the natural sciences. They emphasize that judges operate within a hierarchical framework, where their rulings can reflect broader social dynamics, often justifying their decisions with legal reasoning after the fact.

Originating from thinkers like Oliver Wendell Holmes and Karl Llewellyn in the early 20th century, legal realism challenges the strictures of formalism. Holmes argued that legal principles shouldn't dictate specific outcomes, advocating for a nuanced understanding of justice that incorporates ethical values and social context.

In essence, while formalism seeks certainty and predictability in the law, realism highlights the complexity of human judgment and the importance of ethical considerations in decision-making. This ongoing interplay between the two theories remains crucial in shaping contemporary legal discourse, recognizing that law cannot be separated from the realities of human experience.

A) Legal Formalism as Theory of Law

The Legal Formalist era, spanning from the 1870s to the 1920s, viewed judges as meticulous interpreters of law, applying statutes without personal bias. This school of thought asserts that

legal reasoning is rationally determinate, meaning there is one clear outcome based on the available legal reasons in specific cases. Formalism posits that judges should operate autonomously, relying strictly on facts and legal texts, devoid of moral or political considerations. This approach treats judicial decision-making as a logical application of rules, designed to shield judges from blame.

Justice Antonin Scalia was a prominent advocate of Legal Formalism, arguing that the U.S. Constitution should be interpreted according to its framers' original intent. In his book *A Matter of Interpretation*, he emphasized that legal order must be grounded in law rather than individual will, insisting that due process, including trials, is essential before punishment can be imposed. This reflects the formalist belief in the strict application of legal principles.

However, Legal Formalism has faced substantial criticism, particularly from Legal Realists, who argue that judicial decisions are influenced by factors beyond mere statutes. Critics like legal philosopher H.L.A. Hart contend that labeling judicial practice as “formalist” overlooks the complexities of real-world lawyering, where social contexts and ethical values play significant roles. They warn that an overemphasis on logic can lead to unjust outcomes, advocating for a broader understanding of judicial reasoning that integrates social realities and ethical considerations.

In essence, while Legal Formalism seeks predictability and objectivity, its limitations prompt a reevaluation of how law interacts with human experience and societal values, emphasizing the need for a legal system that acknowledges ethical dimensions in decision-making.

Legal formalism emphasizes strict adherence to legal texts, as seen in *District of Columbia v. Heller* (2008), where the Supreme Court upheld an individual's right to bear arms based on a textual interpretation of the Second Amendment. This principle was further reinforced in *Heller v. District of Columbia* (2008), which highlighted the necessity for judges to apply laws based solely on their written language, disregarding social contexts. Similarly, *Massachusetts v. EPA* (2007) demonstrated formalist principles through strict statutory interpretation of the EPA's authority under the Clean Air Act, underscoring the significance of legislative text in judicial decision-making.

B) Legal Realism as Theory of Law

Even though schools of legal realism emerged in the 1920s and 1930s, they are direct contestations of what is commonly referred to as the straitjacket of formalism, where judges simply regurgitate the legal provisions and apply it to the facts. Often called the American legal realism movement, this movement however is revolutionary not only on theoretical but mainly

on practice by activism and putting more focus on societal interests and policies in undistracted contrast with formalism on legal norms. There are realists of law who believe that a legal order cannot be understood apart from the social order in which the legal order functions and all law shall therefore be a reflection of what the society actually is.

American legal realism was anticipated way before endorsement of this title, with the classic masterpiece 'The Common Law' of Oliver Wendell Holmes Jr., published in 1881, providing the foundation for legal realist thought. Law has not been, as applied to the maintenance of order, cloches proved; law has been experience. Law is culture and culture makes and shapes law Leslie Haber stresses this idea. The high point of the movement of 'Pragmatism' in America was the period of the Great Depression of the 1920s and 1930s within which these intellectual names, Roscoe Pound and Karl Llewellyn, were critic models though engaged in controversies that wit not fail to add up to the propaganda.

Although the legal realist approach has been in decline since the aftermath of World War II, the legacy of this school of legal thought has remained to this day. The movement is heterogeneous in its causes and practises: interplay of power and economics; the particularities of the judging persons; social policy; practical implications; passive and active synthesis of all legal sciences. Legal realists claim that 'what is termed as 'law-in-action' is distinctly different from 'law-in-books' and emphasizes the importance of legal interpretation in practical law.'" Although there has been some sociological divergence that ends law as a doctrine, practioners or the legal realists begin with observing the law in action, capturing the either or relationship of law and society.

Here are some laws that illustrate how legal realism emphasizes context and societal impact in judicial decision-making;

- **Brown v. Board of Education (1954)**

This landmark Supreme Court case declared racial segregation in public schools unconstitutional. The Court emphasized the psychological impact of segregation on Black children, illustrating how external social factors influenced judicial decision-making, a core tenet of legal realism.

- **Olmstead v. United States (1928)**

This case involved wiretapping and the Fourth Amendment. The Court ruled that wiretapping did not constitute a search or seizure under the Amendment, showcasing a flexible interpretation of constitutional rights based on contemporary societal norms and technological advancements.

- **Lochner v. New York (1905)**

Although often critiqued by realists, this case is significant as it reflects the tension between legal formalism and realism. The Court struck down a state law limiting working hours, emphasizing economic liberty over social welfare, which legal realists argue overlooks broader societal implications.

C) Holmes & Cardozo and Other Predecessors of the Movement

1. *Oliver Wendell Holmes*

Legal realism can broadly be found in the Male Jurist Oliver Wendell Holmes, it is famous that he declares that “the life of law has not been logic; it has been experience.” Observation of this subject and the rule of change in law made or changed by judges is intuitive rather than a tentative logical extension or of the current statute but a political ideology or personal bias of the judges but their life experience. He further said that “general propositions do not resolve concrete cases. This is a statement that is most often regarded as a realist position about the legal rules and regulations, they are way too abstract for the specific disputable situation.

Nonetheless, it should also be understood by Holmes that some specific legal rules can assist the judges in arriving at their decisions.

2. *Cardozo*

Practically in every aspect, Benjamin Cardozo, who is at the center of legal realist movement, was a judge and legal writer. Cardozo’s 1921 treatise has taken steps toward an accommodating one which, with the passage of time, was greatly diverged from by the later realists. His position was that there are often times unquestionable legal answers to certain issues; still, where no such resolution exists, judges should play development and social tasks which may in turn lead to more personal perceptions of the judges than of the people or communities their decisions affect.

3. *Karl Llewellyn*

Karl Llewellyn played a leading role in the realist movement regarding judging and the idea that it can only be done in a box of prescribed rules and best practice procedures. Legal rules are studied by him as often very vague, and the purpose of legal certainty is defined as the existence of two dimensions: the tightness of the judicial fashioning of the solution and the accessibility of the relevant knowledge with which to form a prediction. Through his pen, Llewellyn rendered the legal reality more practically sociological rather than the law institutionalised as movement encouragement or constraint.

4. Jerome Frank

Jerome Frank, another influential realist, doubted judges' capacity to make decisions based solely on abstract rules. He believed that legal formalism stems from troubled psychological development and emphasized that law is not just a collection of rules but inherently uncertain. Frank argued that judges often favor outcomes that align with their personal biases—such as their political views or emotional states—prioritizing their preferences over strict legal analysis. His focus on fact-finding realism underscored that judicial decisions are influenced by a variety of extra-legal factors, including the judge's personality and social context. This perspective reflects a broader understanding of how law operates in practice, highlighting the complexities and nuances inherent in the judicial process.

D) Formalism and Realism: Two Different Paths of Judicial-Decision Making?

Legal formalism asserts that law operates independently of politics and individual biases, viewing it as a logical system where judges interpret statutes without personal influence. Formalists argue that laws are a set of objective facts leading to predictable outcomes, regardless of who applies them. In this view, judges merely apply legal rules, guided by inherent logic, without concern for the implications of their decisions or the morality of their judgments. They should not innovate or develop new legal principles based on personal preferences or emotions.

In contrast, legal realists contend that judges often form conclusions about case outcomes before engaging with legal rules. They emphasize that personal characteristics, such as a judge's personality and policy inclinations, can significantly impact judicial decisions. Realists argue that judges may justify their rulings with formal legal reasoning only after arriving at a decision. This perspective challenges the formalist notion that legal rules are the sole determinants of outcomes, positing instead that legal predictability is contingent on specific case facts.

Realists reject the rigid, logical approach of formalism, asserting that judicial decisions often stem from emotional rather than purely logical reasoning. They highlight the importance of psychological factors in understanding law, focusing on human behavior and the beliefs of judges and lawyers. Formalism, according to critics, risks legislative overreach by limiting judicial discretion in favor of an overly simplistic interpretation of statutes.

Justice Antonin Scalia exemplified formalist thought, advocating for tightly constrained judicial interpretation to preserve democratic governance. He argued that overly complex interpretive principles could introduce undue discretion, undermining the rule of law.

Ultimately, the debate between formalism and realism underscores the subjective nature of legal adjudication, shaped by political, social, and moral influences on judges.

E) Criticism against Legal Theories of Formalism and Realism

Legal formalism and realism have also been subjected to criticism of some sort. Legal formalism is based upon the belief that law is nothing more than a collection of rules which must be implemented relatively unemotionally, without consideration of moral and political contexts. While such criticisms are good, they tend to be shallow because as much as there are limitations, addressing the law will always be possible. Formalists maintain that decision-makers only employ logical reasoning, which is mechanical in nature, to reach only the right decisions and none else. But realists maintain that while there are legal rules and precedents, the outcome will differ depending on the inclinations of the judge. Precisely, the above explained belief of formalists which states that since judicial decision takes place within the four corners of the law, all decisions will be law based pursued by the realists whose approach argues quite the opposite that judges defend their decisions after the act rather than endorsing invocation of legal provisions.

That being said, it is worth mentioning that realism has frequently been attacked for its roper's flexibility towards legal rules and legal principles swabbing law for 'fragments of the court decisions'. Such critics contend that this view tends to over-emphasize the individual perceptions of judges which results in law becoming nebulous. It is accepted that law is not only made by the Judges' gavel but most critics argue that judges are mainly interpreters of already made law. Others say that the context of legislative history should be constricted so as to deter judicial activism because such policy consideration should lie only with the political departments. This worry arises from the assumption that dependence on legislative history enhances rather than limits the judiciary's power, thus enabling judges who are not elected to pursue extraneous risk-neutral policy.

Also, many reviews suggest that realists neglect and ignorant about the massive legal framework existing but not brought before the courts. Part of such legislation is typically passed, and goes on the statutes books, and does not undergo judicial review. Hence, it is an overstatement to claim that all judicial decisions are as a result of the characteristics and actions of some judges. Several variables come into play in the decision of a judge. Lastly, the realist theory is too centered on the US legal system, and applying it in all other places may not be possible. In short, while over-inclusiveness and rigidity seek to contain the phenomenon of

how, particularly, judges render decisions, these fundamental concepts, in my opinion, can assist in appreciating systemic law on a slightly more subtle level.

In summary, the constant back and forth of ideas between these two schools of thought helps us appreciate more fully law's place and function in society. Realism without formalism is detrimental as much as formalism without realism. Therefore, such integration of these schools is probably the best answer to the problems of modern jurisprudence.

