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# **AN ANALYTICAL STUDY ON THE LEGAL PHILOSOPHIES THAT BINDS THE INDIAN CONSTITUTION THROUGH THE LENS OF LEGAL PHILOSOPHY OF ROSCOE POUND**

AURTHORED BY - SARATHY G

## **1. INTRODUCTION**

Among all sovereign nations, India has the longest constitution. It is essentially a document that provides the core values, norms, and regulations that underpin a nation. It establishes the fundamental guidelines for how the government should operate and spells out how it should interact with its organs. The philosophies of the Indian constitution is based on ideas such as democratic, secularism, socialism, the rule of law, Fundamental duties, and rights, and so forth.

The "Theory of Interests" introduced by Roscoe Pound asserts that "Interest" is a demand or a desire that people or groups attempt to gratify, such as the right to property, free will, etc. These very interests served as the impetus for the creation of law, which in turn were intended to safeguard and advance the unique interests of different people and groups which goes on like a cycle.

His approach emphasises how the law reflects social and cultural values in addition to being a system of rules and regulations. Since everyone's interests are unique and depend on their environment, upbringing, and culture, by pursuing and satiating them, they eventually get enshrined in the law. In order to shed light on the legal philosophies that underlies the Indian Constitution, this study will attempt to investigate how the Indian Constitution and Pound's theory of interest relate to one another.

### **1.1. STATEMENT OF PROBLEM**

The philosophies such as fundamental duties, rights and legal principles are all enshrined in the Indian Constitution. Pound's theory of interest, states that law or legal rights are established to safeguard and advance the diverse interests of the people, which vary from person to person owing to a variety of factors. This study tries to examine how far can Pound's theory can be

applied to the Indian Constitution's philosophies.

### **1.2. RESEARCH OBJECTIVES**

- To provide a detailed analysis of the legal philosophies that binds the Indian Constitution
- To dive deep on Roscoe Pound's theory of interest and understand its application on the Indian Constitution

### **1.3. SCOPE AND LIMITATIONS**

This research focuses on the Indian Constitution and how Pound's theory of interest relates to the constitution of India. Therefore, scope of this research will be solely on the Indian Constitution and Pound's sociological jurisprudence, not other philosophers, or other constitutions.

There are several limitations on this study that must be acknowledged. First, just a small number of secondary sources were used in the investigation. Second, because the research is mostly reliant on the researcher's arguments, not every argument can be supported by a source owing to a shortage of sources. Moreover, every argument is open to biases that may arise from the researcher's analysis and interpretation of the data. Thirdly, given only ten days to concentrate on this research while also working on two other research topics, the researcher does not have enough time to devote to it so there might not be a detailed analysis to substantiate the objectives to be attained in this research.

### **1.4. RESEARCH METHODOLOGY**

This research being not being a well-researched topic calls for a theoretical research methodology. Theoretical research involves the researcher's development of theories and expanding existing ones. This is all done by analysing the legal philosophies of the Constitution and the Interest theory by Pound.

## **2. REVIEW OF LITERATURE**

- *Understanding Jurisprudence: An Introduction to Legal Theory by Raymond Wacks:*  
The Book by Wacks provides a comprehensive and understandable review of the difficult and confusing subject of sociological jurisprudence. This book does a good job of explaining sociological jurisprudence and emphasises that it is all about the social context of legal concepts and how the law is shaped by society. The different ways Pound's idea

has been developed and criticized by various theorists are examined in-depth throughout the course of several chapters on this specific subject.

- ***Jurisprudence-The philosophy and method of law by Edgar Bodenheimer:***

The book does justice explaining sociological jurisprudence, including its history and where it originated from. The author makes the case that sociological jurisprudence provides a perspective on how social environment is recognised by law and how it influenced the creation of legal institutions.

- ***Roscoe Pound and Sociological Jurisprudence by Julius Stone:***

Julius Stone starts off with Pound's perspective on the function of law in the society, highlighting his theory that law ought to be viewed as a vessel for advancing justice and welfare. Furthermore, the article gives a overlook of Pound's works such as the book "The Spirit of the Common Law" and others to name a few, and discusses how his concepts has been accepted and interpreted by legal theorists of next generations.

### **3. LEGAL PHILOSOPHIES OF THE INDIAN CONSTITUTION**

Constitution is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state, and declares the principles governing the operation of those organs<sup>1</sup>. The Indian constitution aims to sets the basic structure, powers and primary duties of the government and also explains how each institution should interact with others.

Through the constitution, the states have reasserted certain legal principles. The Indian constitution is a example of democratic legislation, it upholds the citizen's fundamental rights among other things it performs. India has one of the longest constitutions and that is needed for diverse nation like Indian, with the people following different religions, speaking different languages, etc. Because of the diversity of the nation, the constitution is based of different philosophies. These philosophies are all inspired by different factors like the citizens, morals and ideals.

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<sup>1</sup> Wade, H. and Phillips, J., 'Constitutional Law' p 1.

### **3.1.BACKGROUND OF THE INDIAN CONSTITUTION**

From its development during colonization till present, the administration system of India has changed. Prior to 1947, India was divided into two main groups – the 11 province British India and the princely states governed by the Indian princes under the subsidiary alliance policy. Eventually they both came together to form the Indian Union.

The constitution from its inception has gone through many changes due to numerous acts and amendments that were added, they all helped in its advancement. For instance, the Regulating Act 1773, was the first ever step taken by the British to oversee and control the East India Company's affairs. Then, with the passage of the Charter Act 1833, India made steps towards centralization by making the governor-general of Bengal as the governor-general of India.

Then the Government of India act 1858, replaced the rule of the company with the Crown's powers, which the secretary of the state for India wielded. Then came Indian Council Act 1861, which established Indian representation in organizations like legislative councils etc.

Additionally, the Government of India Acts of 1919 and 1935 added to their own rules and aided in the constitution's development. The Indian constitution was enacted by the constituent assembly on November 26, 1949, following India's independence. According to the constitution, India is a sovereign socialist, secular, democratic republic with a president as its head. The constitution has undergone numerous amendments—105 to be exact—and is one of the longest ever.

### **3.2.LEGAL PHILOSOPHY OF THE INDIAN CONSTITUTION**

The Indian constitution is founded on a number of legal philosophies that represent the national values and guiding ideas. These legal philosophies influence how the Constitution is interpreted and used because they are woven into its structure. The philosophies have been restricted to the directive principles of the state, fundamental rights and duties, the preamble, socialism, secularism, and democracy values established in the constitution in order to narrow the project's research.

#### **3.2.1. DIRECTIVE PRINCIPLES OF THE STATE**

Directive principles of the state or DPSP is dealt under Art 36-51 of the Indian Constitution. They

are borrowed from the Ireland Constitution which itself is copied from the Spanish Constitution. DPSP are tenets that the state is supposed to keep in mind as it creates policies and passes legislation. Although the Indian Constitution did not initially categorise DPSPs, they are typically divided into three types based on their content and direction: socialistic principles, Gandhian principles, and liberal-intellectual principles.

### **3.2.1.1. SOCIALISTIC PRINCIPLES**

The concept of "Socialism" is the foundation of the Socialistic Directive Principles. The state must provide social and economic equality to all its citizens in order to qualify as a welfare state, which is its ultimate purpose. The socialistic principles are covered in the following articles – 38, 39, 39A, 41, 42, 43, 43A and 47.

### **3.2.1.2. GANDHIAN PRINCIPLES**

Gandhian Principles are ideologies based on Gandhi. Some of Gandhi's ideas were adopted as Directive Principles in order to realise his dreams. Some of his ideas are incorporated into the DPSP, which provides guidance to the state through these articles – 40, 43, 43B, 46, 47, 48.

### **3.2.1.3. LIBERAL-INTELLECTUAL PRINCIPLES**

These principles reflect the liberalism ideology and tries to promote equality to all. These articles cover those ideas – 44, 45, 48, 48A, 49, 50 and 51.

## **3.2.2. FUNDAMENTAL RIGHTS**

Fundamental rights are basic human rights given to the citizen by the constitution; without these rights it will be difficult to progress as nation nor preserve human dignity. Art 12-35 covers these rights. They are called fundamental rights because they are enshrined in the constitution and can be enforced in the court in case of violation of one's fundamental rights. These rights are-

- **Right to equality** - These rights vary from abolishment of untouchability, to giving equal opportunities, no discrimination etc.
- **Right to freedom** - These rights vary from freedom of speech, right to assemble, Protection of liberty, etc.
- **Right against exploitation** - These rights are prohibition of human trafficking and child labour.
- **Right to freedom of religion** - These rights vary from propagating religion, maintaining

of religious institutions, no need to pay tax for maintain religious institutions.

- **Minorities Rights** - These rights vary from protection of minority interests and minorities education opportunities and institutions.
- **Right to constitutional remedies** - This right is for individual to move their case to supreme court if they feel they have deprived of their justice.

These fundamental rights are the backbone of our nation and if they are breached by anyone, the person's whose rights have been breached can straight move their case to supreme court bypassing the lower courts, that is how important these rights are.

### **3.2.3. FUNDAMENTAL DUTIES**

Fundamental Duties are the moral obligations that Indian people must fulfil in order to maintain the nation's unity and foster a sense of patriotism. The Constitution (42nd Amendment Act, 1976) added the fundamental duties to Part IV-A of the Constitution. The Constitution's Article 51(A)2 lists 11 fundamental obligations. These are a constant reminder to the people of India that while they can enjoy their fundamental rights, they still have to perform their duties to the society and the nation. They encourage a sense of devotion and discipline among the people and act as an inspiration for the people. These duties guide the citizen in the proper course and also tell them that they are not just spectators but also an active participant in the nation.

### **3.2.4. RULE OF LAW**

Le principe de legalite which literally translated to “the principle of legality” is the origin for the term Rule of law. It is one of the most fundamental legal philosophies that the Constitution is based on. Numerous scholars have described the doctrine of rule of law as a representation of supreme authority which no men can overrule. In the case **Gouriet v Union of post office workers**<sup>3</sup>, it was held that no matter how powerful a person may be, law will always prevail over them.

Even if the concept of ‘rule of law’ has been use plentiful times in courts, it is not clearly defined in the constitution. But it doesn't matter if it is not recognised as the basic idea of rule of law is included into many provisions of the constitution. For example, in the Preamble clearly expresses

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<sup>2</sup> Constitution of India, art 51(A) (as of 28 September 2023)

<sup>3</sup> 3 ALL ER 70

promotion of equality and justice. In *Art 14*<sup>4</sup>, it states that the state shall not deny to any person equality before the law or the equal protection of laws within India.

#### **4. EXPLORING ROSCOE POUND'S LEGAL PHILSOPHY**

Pound, the leading exponent of 'sociological jurisprudence', lived a long and productive life. His prolific output, with its propensity for 'classification' is, to a large extent, consolidated in his five-volume work, *Jurisprudence*, which was published in 1959. It constitutes a powerful reaction against British analytical legal theory, and demonstrates a knowledge of and sympathy for Continental juristic thought.<sup>5</sup>

Pound believed there existed a concept called 'social engineering.' It refers to his belief that law should be serve as a tool for shaping and improving society efficiently. Law to him, should be responsive to the dynamic changing social conditions and should be used to achieve desired social outcomes. For Pound the task of lawyers and legislators is 'social engineering'.<sup>6</sup> Through law, we identify and protect certain demands called 'interests', which leads to social cohesion.

A human being's (individual or collective) interest is a demand or desire that they attempt to satisfy. We shall create social cohesion, which is the harmonious integration of persons and groups in a society, as described above paragraph, by identifying and defending the interests. Through social engineering, we may effectively create a society that guarantees the fulfilment of the greatest number of interests with the least amount of resource waste. To put it simply, we safeguard and satisfy these interests, resulting in social cohesion, through law and lawmakers who carry out their social engineering work.

There are various interests according to Roscoe Pound' theory of interests and they are –

- **Individual Interests** – These are what humans wants as a individual living being like freedom of speech, movement, life etc. These include
  - Personality: These include freedom of will, privacy and etc.
  - Domestic relations: These include wanting children, husband and wives.

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<sup>4</sup> Constitution of India, art 14 (as of 28 September 2023)

<sup>5</sup> Raymond Wacks, *Understanding Jurisprudence: An Introduction to Legal Theory* (3rd edn, Oxford University Press 2012).

<sup>6</sup> *Ibid.*

- Interest of substance: These include interest in property, employment and succession.
- **Public Interests** – These are interests that humans can hold against the state and what the state owes to the humans as a political organization, like right to ration
- **Social Interests** – These interests are what humans own to a society such as general security, conservations of social resources. This includes social interest in security of social institutions, in general morals, in general progress.

In an event of conflicts of interests, Pound argues that they may be weighed only against other interests on the same thought or line. Therefore, an individual interest cannot be weighed against an public interests. In the hierarchy of the interests, the social interest comes first, with public interest in the second and finally individual interests in the end.

Pound stated that to achieve social cohesion maximum number of interests must be satisfied. But how can we recognise all the interests? Clearly not all interests can be satisfied, as each interest differ from one other based on the individual or the group's environment, culture and other factors. Here is where Jural postulates come into play. Jural Postulates refers to the principles that on which the interests are recognised, if the interests apply with the jural postulates, they are recognised. These postulates are the foundational base for laws. Pound identified 5 postulates and they are – No intentional aggression, Beneficial control over what people acquire under the existing social and economic order, good faith in dealings, Due care not to injure, Control over dangerous activities.<sup>7</sup>

Pound said that these postulates are not absolute and they have a relative value. They set a ideal standard which law should pursue in a society. These postulates are changing in nature and newer postulates may emerge.

#### **4.1.NO INTENTIONAL AGGRESSION**

The main objective of law is to stop intentional aggression between individuals or groups. So therefore, the interest of an individual or the group should be that they do not cause aggression towards another intentionally. If the interest does not fulfil this postulate, it cannot be turned into law. It is also important to note that Pound didn't advocate for complete termination of aggression, he acknowledged there exists a little aggression in humans but law should try to

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<sup>7</sup> *Supra* Note 5.

minimise it. Moreover, intentional aggression can lead to social inequalities, such as discrimination and prejudice.

#### **4.2. BENEFICIAL CONTROL OVER WHAT PEOPLE ACQUIRE UNDER THE EXISTING SOCIAL AND ECONOMIC ORDER**

When a person invests their time and efforts to achieve a thing, they have legitimate claim over it and no other person can enjoy fruits of other person's labour.

#### **4.3. GOOD FAITH IN DEALINGS**

This postulate states that in a civilized society, men must should act in good faith and should carry out their undertaking accordingly. Moreover, men must be able to assume that those with whom they deal with will also act in good faith.

#### **4.4. DUE CARE NOT TO INJURE**

Men who engage in some type of conduct should take due care not to injure any other person or cause unreasonable risk of injury upon others.

#### **4.5. CONTROL OVER DANGEROUS ACTIVITIES**

Similar to the above postulate, men who engage in activities that are considered dangerous, must have control over them so that the act will not cause injury to others.

### **5. INTERPLAY BETWEEN POUND'S THEORY OF SOCIOLOGICAL JURISPRUDENCE AND THE LEGAL PHILOSOPHIES OF THE INDIAN CONSTITUTION**

Pound argues that law is a tool for social engineering which is used to achieve social cohesion. He also states that law as such is inspired by interest which rise from different social contexts. This law should be adaptable and address the changes that happen in the world. The philosophy behind the Indian constitution is based on similar notion of Pound's. Like how he states that law is inspired by interests which are in turn rise due social context, traditions and other factors, the Constitution also draws inspiration from various traditions and the from the freedom struggle. This chapter will align the above stated legal philosophies and check whether they align with the postulates laid by Pound to recognised as an Interest.

## **5.1.DIRECTIVE PRINCIPLES**

- **No intentional aggression** – The Liberal-Intellectual principles aligns with the first postulate. The postulate basically talks that no one should intentionally harm someone in pursuit of their interest and the prevention of the same. This postulate's influence can be clearly seen in article 51<sup>8</sup>, which talks about promotion of international peace and security, fostering respect for international law and treaties. While it does not directly delve about intentional aggression, this article tries to prevent from aggression happening by promoting peace and at the same time respecting international law which discourages acts of aggression and promotes peaceful solutions. Therefore, the first postulate aligns with DPSP
- **Beneficial control over what people acquire under the existing social and economic conditions** – The DPSP and the second postulate by Pound go hand in hand. Both talk about individual enjoying their fruits of labour and no one having claim over it. The effect of the postulate can be observed in socialistic principles such as article 39<sup>9</sup>, which prohibits the concentration of wealth and production resources and calls for equal pay for work done by men and women. This all stops people from taking advantage of the poor, something the postulate also aims to stop even though it neither particularly addresses the poor nor the rich. Therefore, the second postulate aligns with DPSP
- **Good faith in dealings** – This postulate applies to DPSP, specifically under socialistic principles and that too under article 39<sup>10</sup>. The postulate strives for a fair dealing between individuals or groups in pursuit of interest. This is evident in article 39, which lays out various guideline like equitable distribution of material resources, equal pay for men and women and finally promotion of equal justice. This is all influenced by the notion of fairness and equality, which the postulate also strives to achieve. Therefore, the third postulate aligns with DPSP.
- **Care not to injure** – DPSP goes hand in hand with the fourth postulate also. Article 47<sup>11</sup> which talks about prohibition of intoxicating drinks and drugs aligns with this postulate. The postulate talks about we taking care not to bring harm to others and DPSP guides the state to not bring harm to its citizens, by prohibiting drinks and drugs. This prevents harm to the consumer's health and there is a less risk that they would cause harms to others

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<sup>8</sup> Constitution of India, art 51 (as of 28 September 2023).

<sup>9</sup> Constitution of India, art 39 (as of 28 September 2023)

<sup>10</sup> Ibid.

<sup>11</sup> Constitution of India, art 47 (as of 28 September 2023)

while intoxicated. Additionally, article 39 also lays out the guideline for the state to preserve the health and strength of workers and children against forcible abuse. With these articles, it is evident enough that DPSP aligns with the fourth postulate

- **Control over dangerous actions** - The fifth postulate talks about safeguarding others while engaging in a dangerous activity. While not true to the definition of the postulate, DPSP also executes the same by ensuring that the state protects the public and guaranteeing a secured society. The postulate expresses that it is the individual or the group's responsibility take care and not injure while engaging in activities and the state here is taking that responsibility and takes control to prevent injury to the public. For instance, take article 42<sup>12</sup>, it lays down the guidelines for the state to make sure that the working conditions are just and humane. This ensures that employees are not working in dangerous work environments that can cause injury to them. The state takes responsibility here by enforcing measures and provisions to create humane working conditions and thus preventing harm to people by taking control over dangerous actions. Example of this article is construction workers getting safety equipment and sanitation workers getting proper working equipment.

With above arguments, it can be said that DPSP clearly aligns with the Jural postulates laid out by Roscoe Pound, though not in the literal sense it carries out the nature and essence of the postulates and can be identified as interest, specifically public interest.

## **5.2.FUNDAMENTAL RIGHTS**

As explained in the first chapter, fundamental rights are rights given by the state to its citizens. These are basic rights and are enforceable in court. These rights are very essential for society's improvement and must be given to all citizens of the state without discrimination. To check whether they can be identified as an interest, we must apply the 5 postulates.

- **No intentional aggression** – This postulate's essence can be seen in the fundamental rights through right to equality and religion. Right to equality guarantees individuals are shielded from intentional aggression or discrimination based on their race, caste, and religion. This right makes sure that in a civilized society there rises no aggression based on bias. In right to religion, the citizens are allowed to practice any religion without fear of riots and aggression happening based on their religion. Additionally, right to assembly

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<sup>12</sup> Constitution of India, art 42 (as of 28 September 2023)

without arms also falls into the purview of the first postulate, as it allows the citizens to assemble and give their opinions in a peaceful manner so that there will not arise a situation where the citizen have to express their opinions in an aggressive method. With the above arguments, it is evident that the fundamental rights align with the first postulate laid by Roscoe Pound.

- **Beneficial control over what people acquire under the existing social and economic conditions** – This postulate's essence is evident in article 32<sup>13</sup> which provides constitutional remedies. Quo warranto is one of the remedies offered by article 32, in layman's terms it means a person should vacate an office if they assumed it wrongfully through illegal methods. This article ensures that only person who rightfully have earned their position through their fruits of labour under existing social and economic conditions have claim over it. No one else can claim the office through illegal factors such as financial background or political backgrounds or nepotism. So therefore, fundamental rights align with the second postulate also.
- **Good faith in dealings** – As stated above, article 32<sup>14</sup> provides constitutional remedies in case of breaches. It grants 5 types of writs – Habeas Corpus, Mandamus, Quo warranto, Prohibition and Certiorari. These different writs all give different remedies based on the type of breach. With these writs, the fundamental rights prevent breaches in contracts and dealings based on good faith. For instance, take Mandamus, if person A files a complaint to the police to act in a case. The person complained to the police assuming in good faith that they will act and in case they do not act, then A can file mandamus writ to the supreme court and they will order the authority to do its duty. Therefore, the breach of good faith is undone and thus the second postulate also aligns with fundamental rights.
- **Care not to injure** – This postulate aligns with the right against exploitation, especially article 23<sup>15</sup> which prohibits traffic in human beings and forced labour. The postulate as explained in the previous chapter states that humans should take due care not to injure others in pursuit of interests. Here there exist two exploitations – trafficking and forced labour. In trafficking the article prevents harm to the humans who are kidnapped by prohibiting the act and in case of forced labour, it prevents physical and psychological harm to the workers who will be beaten and threatened to work. So therefore, fundamental rights take care and prevents these harms happening to its citizens and in doing so align

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<sup>13</sup> Constitution of India, art 32 (as of 28 September 2023)

<sup>14</sup> Ibid.

<sup>15</sup> Constitution of India, art 23 (as of 28 September 2023)

with the fourth postulate also.

- **Control over dangerous activities** – This postulate's essence can be seen in article 21<sup>16</sup> which talks right to life and liberty, and in article 24<sup>17</sup> which deals with prohibition of children employment. In regards to article 21, while it grants a right for the citizens to live their life to their fullest liberty it also enforces a corresponding duty on people who engage in dangerous activities to have control over that act and take care not to injure others. Article 24 forbids employers from hiring children as workers. For instance, if person A hires individuals to work in his chemical factory, the law require him to refrain from hiring children in order to protect them from harm caused by working a dangerous environment. Through this the state exercises control over dangerous activities and prevents harm caused to the children. Thus, it is evident that fundamental right aligns with the fifth postulate also.

It is sufficed to say that fundamental rights should be recognised as an interest. By upholding the postulates, fundamental right ensures that social cohesion can exists as it also strives for equality and justice.

### **5.3.FUNDAMENTAL DUTIES**

- **No intentional aggression** – The duties have incorporated this postulate in various duties that the citizens must uphold. Firstly, “Renouncing practices derogatory to the dignity of women” – this duty makes sure the citizens don't take part in gender-based aggression specifically on the female gender, this duty prevents from intentional aggression towards women is prevented and peace is ensured. Secondly, “To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities” – This duty makes sure that their exists peace between all the citizens by making the citizen to promote harmony and peace between people regardless of their section, religion, language, or section. This therefore ensures that there will not rise any intentional aggression between people based on language, religion and other factors mentioned in the duty. So, it is sufficed to say that the first postulate checks out.
- **Beneficial control over what people acquire under the existing social and economic conditions** – Fundamental duties are duties that citizens have towards the state. The duties like promoting prosperity, harmony, respecting flag among others, these duties are all

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<sup>16</sup> Constitution of India, art 21 (as of 28 September 2023)

<sup>17</sup> Constitution of India, art 24 (as of 28 September 2023)

essential for the welfare of the nation but it does not carry the essence of the second postulate. The second postulate talks about individual having claim over things they worked to achieve and other individual not having claim over the fruits of other's labour. This is not addressed directly or implicitly in the duties. But it is also to be noted that it does not mean the duties don't support the postulate. When the citizens fulfil their duties, it creates a civilized society where individual's claim over the things they acquired will most likely be protected from others claiming it. So therefore, it can be said even though we cannot see the postulate's direct essence in the duties, the duties still work towards the same goal through indirect methods, so we can say that the duties align with the second postulate.

- **Good faith in dealings** – The whole concept of fundamental duties is built on the faith and trust that the citizens will perform the duty and promote peace and equality in the nation. This is evident because the duties are not enforceable in courts and state can't do anything if the citizens don't fulfil their duties. For instance, the duty to protect and improve the environment is fully based on good faith. The citizens are assumed to act in good faith to take all steps in protecting and improving the nature. So therefore, fundamental duties align with the second duties as well.
- **Care not to injure** – This postulate can be seen in the duties renounce practices derogatory to the dignity of women, safeguard public property and abjure violence. The former duty makes the citizens to renounce derogatory practices against women and makes sure the citizen do not injure others. The later duty outright says that we should not take part in violence and not cause harm. These two duties are evidence enough that fundamental duties align with the fourth postulate as well.
- **Control over dangerous activities** – The duty to abide by the Indian constitution and respect its ideals and institutions reflects this postulate. Basically, this duty asks the citizens to respect and follow the constitution and the institutions under it. By doing so the state will have control over citizens and can prevent them from engaging in dangerous activities or at least if they engage in those activities, they engage with the guidance and control of the state. For instance, even though police officers have risky jobs, the state has laws that they must abide by to ensure that they do not hurt themselves or others while carrying out their duties.

With the fundamental duties aligning with all the postulates, it is safe to say the philosophy of fundamental duties can be recognised as a interest as laid out by Roscoe Pound.

#### **5.4.RULE OF LAW**

It is to be noted that the doctrine of rule of law is not clearly defined in the Indian constitution and therefore the research takes and analyses acts and statutes established by the constitution that has the doctrine incorporated in it. By analysing the below mentioned acts and seeing whether they align or not align with the postulates, we can know whether the doctrine as a philosophy that binds the constitution can be recognised as an interest or not.

- **No intentional aggression** – The doctrine of rule of law very well aligns with the first postulate that is no intentional aggression. The doctrine though not clearly defined in the constitution still has its influence in the its acts and one of that acts we are going to see that aligns with the first postulate is the protection of women from domestic violence act 2005<sup>18</sup>. In this act it lays out various intentional aggression carried by the abuser on the abused varying from physical to mental abuse. The act also punishes the abuser based on the abuse they have performed. The act tries to prevent intentional aggression from happening by enforcing penalties and punishments. Moreover, as the doctrine of rule of law is based on that the law is supreme all is subject to the punishments of this act, therefore it can be ensured that all individual who engages in the act of intentional aggression is punished irrespective of their financial or political background. The protection of women from domestic violence act is one of the many acts that punishes intentional aggression. Therefore, it can see very well that the doctrine of rule of law goes hand in hand with the first postulate.
- **Beneficial control over what people acquire under the existing social and economic conditions** – For this postulate, the Indian Contracts Act<sup>19</sup> can be considered. The act sets out contract laws that protects the people's claim to property, assets. It gives regulations for the people to follow so that they don't exploit and have false claim over other person's assets. They only have claim over assets that they have earned legally through contracts. This clearly aligns with second postulate, that states people can claim things if they earned it and no one else can have claim over it.
- **Good faith in dealings** – Again the above stated act can be utilised. It governs contracts between parties. The contracts are based on trust and good faith and each party assumes the other party will function in good faith to perform their part of their contract let it, working or transfer of property. If by chance a breach of contract happens, the law being

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<sup>18</sup> Protection of Women from Domestic Violence Act, 2005, Act No 43 of 2005 (India).

<sup>19</sup> The Indian Contract Act, 1872, Act No 9 of 1872 (India).

the supreme power provides remedies for the cheated party to uphold the faith. The constitution incorporating the rule of law and at the same time upholding good faith through the act, it aligns with the third postulate.

- **Care not to injure** – The doctrine of rule of law has placed many laws to address injury that take place due to various reasons. For instance, section 353 of the Indian Penal Code<sup>20</sup> talks about assault. It also provides legal consequence that will take place if the aggressor continues with the act of assault. Assault is just a basic section and has lesser punishment compared to other heinous acts of injury such as murder and rape which has even heavier punishments such as life imprisonment and death row. These types of punishment will instil fear in the criminals and will stop them from engaging in these activities. Therefore, it can be said the rule of law also aligns with the fourth postulate.
- **Control over dangerous activities** – The doctrine of rule of law has many acts that set out regulations for people engaging in dangerous activities. The regulations act as a control over the activities by providing them with guides to act upon ensuring that they don't harm themselves or others while discharging their duty. By enforcing stringent laws, the doctrine tries to protect people from harms that happen from dangerous activities. Example of such act will be the Police Act 1861<sup>21</sup>. This act lays out regulations which the police must follow to ensure safety for themselves and others. Through the act the doctrine has control over the officers as the law is always supreme. The acts lay various laws explaining about their powers, to penalties if they disobey the regulations. This clearly shows that the doctrine has control over the officers who engage in dangerous jobs. As a result, the doctrine aligns with the fifth postulate also.

The doctrine of rule of law aligns with the postulates through many of the acts which have incorporated the doctrine. The researcher has restricted the study to a smaller number of acts because of textual constraints, but all the acts stated are in line with the postulates. It is also important to highlight that many of the acts established by the constitution have also included the doctrine. Not all acts can be used to determine if they are consistent with the postulates. However, it can be argued that many acts will concur with the postulates.

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<sup>20</sup> Indian Penal Code 1860, § 353, No 45 of Acts of Parliament, 1860 (India).

<sup>21</sup> The Police Act, 1861, Act No 5 of 1861 (India).

## **6. CONCLUSION**

This research project has analysed four legal philosophies that bind the Indian Constitution namely Directive principle of state policy, fundamental rights, fundamental duties and the doctrine of rule of law. The philosophies are explained in a brief manner and later seen whether they apply with the jural postulates laid by Roscoe Pound, to check whether these philosophies can be recognised as a interest. It has been established that the philosophies do in fact align with the postulate, according to the researcher's interpretations. These philosophies by aligning with Roscoe Pound's theory of interest helps with legislators to perform their task of social engineering and in turn social cohesion may exists.

