Page 690 - 701 **DOI:** *https://doij.org/10.10000/IJLSI.111969*

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 3

2024

Rationality and Decision-Making in the Judicial System: An Examination from Jurisprudential Aspect

YUGAL BHATT[1]

ABSTRACT

This paper examines the intersection of legal positivism and rationality in the context of the judicial system. Legal positivism, rooted in the Enlightenment movement, emphasizes the separation of law from morality and the factual basis of law. However, the discretion given to judges in interpreting and applying the law may make the rationality suffer as a result of overburdened judiciary, resulting in inconsistent and irrational decision-making. Decision fatigue refers to the mental exhaustion that occurs when individuals are faced with making numerous decisions over an extended period. This paper explores the impact of various factors on judges' rationality and objectivity, drawing on empirical studies that demonstrate things like the influence of factors such as mental exhaustion and glucose levels on judicial decision- making. Furthermore, it questions the effectiveness of legal education and experience in enhancing decision-making skills, highlighting the limitations of the case method in developing evaluative reasoning abilities. The findings suggest that the current legal system may not effectively promote rational decision-making, and there is a need for further empirical research and reforms to address the limitations and improve the rationality of judicial judgments. There is a need for further empirical studies to relate them with jurisprudential theories as to how they perform in real world and practice. An attempt has been made also to highlight the importance of such studies.

Keywords: *jurisprudence, legal positivism, legal education, judiciary, jurimetrics.*

I. INTRODUCTION

Legal positivism, rooted in the Enlightenment movement, emphasizes the factual basis of law and the separation of law from morality. It argues that by distinguishing legal duties from moral duties, the legal system can be improved and made more objective. However, the discretion given to judges in interpreting and applying the law in a huge number of cases can lead to decision fatigue making it difficult for humans to exercise intellectual with high rationality.

[1] Author is a student at Himachal Pradesh National Law University, India.

 [ISSN 2581-9453]

Decision fatigue refers to the mental exhaustion that occurs when individuals are faced with making numerous decisions over an extended period. In the context of the legal system, judges often have a heavy workload and are required to make complex decisions on a daily basis. The high volume of cases, coupled with the open and flexible nature of language, leaves room for judicial discretion. However, this discretion can lead to inconsistencies and irrational decision- making. The discretion may be necessary to fulfill the gap in the laws to deal with various situations but if the judiciary legislates when overburdened with huge number of cases, rationality suffers.

Research has shown that decision fatigue can affect the rationality and objectivity of judges' decisions. For example, a study analyzing the parole board's rulings in Israel found that judges were more likely to grant favorable parole decisions at the beginning of a session and after a meal break, while the likelihood decreased as the session progressed. This suggests that judges' decision-making abilities are influenced by factors such as mental exhaustion and glucose levels.

The natural theory proponent Dworkin provides judges the duty or rather the herculean task to find law and normal citizens belief judges to be an expert while the empirical quoted prove the opposite. Further, Holmes, Judge while emphasizing the need for the appellate to explicitly state laws forgets the biases present on the bench.

Legal education and experience on the bench do not necessarily improve decision-making skills. Studies have shown that legal training primarily focuses on conditional logic and does not significantly enhance overall reasoning and problem-solving abilities. Similarly, years of experience as a judge do not necessarily lead to better judgment or decision-making. In fields characterized by low-validity environments, such as judging, feedback is often delayed or absent, hindering the improvement of expert performance.

The case method, commonly used in legal education, also has limitations in developing sound decision-making skills. The emphasis on studying appellate decisions and the potential bias in presented facts may not adequately prepare students for real-life conflicts with factual ambiguities. Moreover, the case method may overlook models of sound decision-making that arise from lower courts or cases that were not appealed.

In conclusion, legal positivism highlights the importance of separating law from morality, but the discretion given to judges can lead to decision fatigue and irrational decision-making. Legal education and experience on the bench do not necessarily enhance decision-making skills, and the case method may have limitations in developing evaluative reasoning abilities.

 [ISSN 2581-9453]

Understanding the concepts in the paper is essential and is not necessarily an attack on the system but rather the purpose is to draw the limitations and how the rationality suffers in the legal system with reference to jurisprudential theories.

II. LEGAL POSITIVISM AND DECISION FATIGUE

Legal positivism originated within the broader intellectual movement of the 18th century known as the Enlightenment. This period marked a shift away from traditional beliefs, superstitions, and irrationality towards embracing empirical evidence and scientific reasoning. The command theory of law, despite its limitations and theoretical flaws, serves the purpose of demystifying the law by highlighting its factual basis rather than being founded on mere belief. This theory holds intuitive appeal for both legal professionals and the general public, and with some minor refinements, it offers a valuable framework for comprehending the legal system. It can be argued that the contributions of Bentham and Austin paved the way for the development of later legal theorists like Hart and Kelsen. Legal positivism is derived from utilitarian moral theory, which aims to promote the overall welfare of society. The fundamental premise of legal positivism is that by avoiding the conflation of law with morality, we can improve the legal system. Positivists are careful to distinguish between legal duties and moral duties, and they cannot be accused of blurring the lines between the two.

According to legal positivists, judges have a wide degree of discretion in deciding cases due to the open and flexible nature of language. While some laws are explicit and leave little room for interpretation, such as laws that establish the voting age or the maximum term of parliament, most laws pertain to rules of conduct. It is impossible to create a legal rule regarding conduct that can address all future questions without excessive detail. Even if such an incredibly complex law were to be written down, it would be incomprehensible. Consequently, legal rules often have areas of uncertainty (referred to as "penumbras") where judicial discretion plays a crucial role. The main problem with this that when judges are given wide powers with no clear guidelines on how to exercise them, it becomes dangerous and the rational process of decision making suffers.

The main objective of this section is to demonstrate that rationality which is decision backed by sound logical reasons is not possible in the real world. The rule-based, analytical, rational, step by step decision making is possible in theory, but in practice it is limited in the case of both ordinary subjects and professional judges. The particular attack is on the judges being given discretion in the decision where the judges are overloaded with cases.

The judicial system in India is currently facing significant challenges. As of May 2022, an

overwhelming number of cases, totaling over 4.7 crore, are pending across various levels of the judiciary. Subordinate courts bear the largest burden, accounting for 87.4% of the pending cases, followed by the High Courts with 12.4%. Shockingly, nearly 1, 82,000 cases have remained unresolved for more than three decades. This surge in litigation indicates a growing number of individuals and organizations resorting to the courts for justice. Unfortunately, the available number of judges has not kept pace with this increase in cases. Insufficient infrastructure has resulted in overwhelmed courts, exacerbating the already substantial backlog of cases.[2] This shows that the judges in India suffer from a major overburden where they are not able to reach decision with rationality. There is a high probability that the judges may face decision fatigue.

A well-known representation of legal positivism often suggests that justice is determined by personal biases and arbitrary factors, such as "what the judge ate for breakfast." In a recent investigation, researchers aimed to examine the validity of this representation and whether there is any scientific evidence supporting it. The results were surprising to proponents of positivism, as they contradicted the assumptions underlying the caricature. The study analyzed 1,112 judicial rulings made by the Israeli parole board over duration of ten months.[3] According to the study, it was discovered that the likelihood of a prisoner receiving a favorable ruling experience a significant increase at the start of each session. However, as the session progresses, the probability of a favorable ruling gradually declines to nearly zero. Interestingly, after a break for a meal, the probability of a favorable ruling jumps back up to approximately 0.65.[4] This means that a prisoner is 650% more likely to receive a favorable parole decision if their case is heard immediately after the meal break compared to being the last case before an upcoming break.[5] It's important to note that the study thoroughly examined and accounted for other potential explanations.

These findings, while unsettling, align with previous research that has shown how repeated judgments or decisions can deplete an individual's executive function and mental resources. This mental depletion leads to a tendency to simplify decisions and maintain the status quo. In the case of parole judges, the status quo is to deny parole. However, food breaks serve as

[2] Sumeda (2022) *Explained: Over 47 million cases pending in courts: Clogged state of Indian judiciary, Explained | Over 47 million cases pending in courts: clogged state of Indian judiciary The Hindu*. Available at: https://www.thehindu.com/news/national/indian -judiciary-pendency-da ta-courts-s tatistics-explain-judges- ramana-chi ef-justiceundertrials/article65378182.ece

[3] Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, Extraneous Factors in Judicial Decisions, 108 *Proc. Nat'l Acad. Sci. U.S.* 6889 (2011).

[4] Ibid.

[5] Kathleen D. Vohs et al., Making Choices Impairs Subsequent Self-Control: A Limited Resource Account of Decision Making, Self-Regulation, and Active Initiative, 94 *J. Personality & Soc. Psychol.* 883 (2008).

a means to replenish glucose supply to the brain, enabling individuals to make more effortful decisions.

> The authors of the study thus summarized their main findings: "*We have presented evidence suggesting that when judges make repeated rulings, they show an increased tendency to rule in favor of the status quo. This tendency can be overcome by taking a break to eat a meal, consistent with previous research demonstrating the effects of a short rest, positive mood, and glucose on mental resource replenishment. Our results do indicate that extraneous variables can influence judicial decisions, which bolsters the growing body of evidence that points to the susceptibility of experienced judges to psychological biases. Finally, our findings support the view that the law is indeterminate by showing that legally irrelevant situational determinants-in this case, merely taking a food break-may lead a judge to rule differently in cases with similar legal characteristics."*[6]

Thus, the idea of Hart that is the discretion being given to judges is attacked with the help of an empirical study. This is just one demonstration from the point of view of empiricism or empirical data. Empirical studies are rare in the field of legal studies. There is a necessity of these types of studies to make full use of data sciences in the real world.

III. DOES LAW INCREASE RATIONALITY IN DECISION MAKING?

In his work "Taking Rights Seriously," Dworkin argued that judges, when faced with difficult cases, do not engage in legislating but instead rely on legal principles to arrive at the correct decision. Expanding on this idea in "Law's Empire," Dworkin contended that judges are involved in creative interpretation in every case, even when dealing with clear statutes. This duty to interpret stems from the need for the law to demonstrate consistency and integrity. Dworkin asserted that the purpose of creative interpretation is not simply to uncover the original intent of the lawmaker, but to impose a purpose onto the text itself. This differs from the type of statutory interpretation taught in law schools or expressed by judges in their written opinions.

One would naturally assume that specialized training, such as legal education, improves the ability to make decisions and solve problems. The notion that specialized training is beneficial can be traced back to ancient times, as the ancient Greeks recognized its importance. Plato, for example, advised statesmen to study arithmetic, noting that even those who may be initially less capable would significantly improve their mental agility through such training.

[6] Shai Danziger, Jonathan Levav & Liora Avnaim-Pesso, supra note 3.

Similarly, during the medieval period, scholars believed that the study of logic, particularly syllogisms, served as a means of training and sharpening the mind.[7]

However, during the late 19th and early 20th centuries, influential psychologists like William James and Edward Thorndike challenged the notion that training in subjects such as mathematics, logic, or Latin could enhance reasoning abilities in everyday life situations. These critics argued that disciplines like mathematics or formal logic bore little resemblance to real-life events. Thorndike conducted research that demonstrated the limited transfer of training across different tasks. For instance, he observed that skills acquired in one task, such as canceling letters, did not necessarily translate to improved performance in a different task, such as canceling parts of speech.[8] Similarly, subsequent studies confirmed that the solutions to one problem were not readily transferable to solve another problem that was structurally identical.

However, it appears that these researchers made an erroneous inference by concluding that no formal discipline can enhance reasoning and problem-solving abilities based on their findings.

Several studies have demonstrated that there is a distinction between probabilistic and deterministic models. Probabilistic sciences, such as psychology or economics, deal with unpredictable phenomena and causes that are typically neither necessary nor sufficient. On the other hand, deterministic sciences, like chemistry or physics, deal with phenomena characterized by necessary and sufficient causal relationships. Probabilistic sciences expose individuals to the messy and uncertain phenomena encountered in everyday life.[9]

Regarding the field of law, the current empirical research, albeit limited in scope, indicates that legal education does not significantly enhance reasoning and problem-solving skills, particularly beyond minimal levels or in contexts outside of conditional logic. This is primarily due to the fact that law, as an academic discipline (though not necessarily in real-world legal practice), aligns more closely with the deterministic science model. Legal issues are addressed using logic, preferably through deduction, with minimal exposure to uncertainty and probabilistic considerations.

More recent empirical study, conducted on the effectiveness of legal training in enhancing problem-solving skills, yielded similar results. The study's author noted that third-year law

[7] Darrin R. Lehman, Richard O. Lempert & Richard E. Nisbett, The Effects of Graduate Training on Reasoning: Formal Discipline and Thinking About Everyday-Life Events, 43 Am. Psychol. 431 (1988).
[8] Ibid.
[9] Thomas Gilovich, *How We Know What Isn't So: The Fallibility of Human Reason in Everyday Life* 190 (1991).

students, unlike final-year medical students, had not yet developed the ability to adequately distinguish between relevant and irrelevant facts. Furthermore, the 2007 report on legal education by the Carnegie Foundation concluded that students' moral reasoning does not appear to undergo significant development during law school. Another study investigating the decision- making abilities of practicing attorneys found that their skills in this area were subpar.[10]

Collectively, these studies indicate that legal training does not offer substantial improvements in reasoning and problem-solving skills compared to certain other disciplines. The only significant reasoning skill that sees improvement through legal education is conditional logic. However, it would be an exaggeration to claim that conditional logic is the most critical skill in legal judgment and decision-making.[11] As a result, legal training falls short in developing crucial problem-solving and decision-making skills, such as judgment under uncertainty, navigating complex factual patterns with unclear causal connections, and other elements vital to real-life judicial decision-making.

IV. AN ATTACK ON CASE LAW METHOD

The empirical studies presented here is a direct attack on Dworkin's theory which expects judges to perform a herculean task of finding law and not formulating it but the studies show that they are no better equipped to perform this with the legal education at hand.

One reason is that the case method, which is the staple of legal education, is insufficient to develop sound decision-making skills. The main problem is that it foregoes evaluative reasoning skills: "reading, discussing and questioning students about cases in which the judges have already simplified, synthesized and occasionally omitted facts to support their conclusions - may not promote evaluative reasoning skills in real-life conflicts rich with factual ambiguities."There are other major drawbacks of the case method.[12] For example, the facts presented in a judicial opinion may be biased to support the stated result. Also, the case method typically relies on appellate decisions; however, these decisions are usually the result of poor decision-making in lower courts, and so studying only appellate decisions may exclude models of sound decision making, i.e. cases that were not appealed. Needless to mention, most law students who fail even primitive legal reasoning and problem-solving skills

[10] Randall Kiser, *Beyond Right and Wrong: The Power of Effective Decision Making for Attorneys and Clients* 29-141 (2010).
[11] Darrin R. Lehman, Richard O. Lempert & Richard E. Nisbett, "The Effects of Graduate Training on Reasoning: Formal Discipline and Thinking about Everyday-Life Events," Am. Psychol. 43 (1988): 431-42, 329.
[12] Thomas Gilovich, *How We Know What Isn't So: The Fallibility of Human Reason in Everyday Life* 192-93 (N.Y.: The Free Press, 1991).

in law schools, are not appointed to the bench. Yet, it would be equally naive to expect that a lawyer becomes a judge only after he or she had developed superior decision-making and problem-solving skills.

One of the reasons for the limited development of sound decision-making skills in legal education is the reliance on the case method. This method, which forms the core of legal education, lacks emphasis on evaluative reasoning skills. By focusing on reading, discussing, and questioning students about cases where judges have already simplified, synthesized, and sometimes omitted facts to support their conclusions, the case method may not effectively promote evaluative reasoning skills needed in real-life conflicts characterized by factual ambiguities. This limitation is highlighted by the fact that the case method has other significant drawbacks.

One drawback is that the facts presented in a judicial opinion may be biased to support the desired outcome. Additionally, the case method typically relies on appellate decisions, which may not necessarily reflect models of sound decision-making since these decisions often arise from poor decision-making in lower courts. By solely studying appellate decisions, students may miss out on learning from cases that did not undergo the appeals process but exemplify strong decision-making.

It is worth noting that most law students who struggle with even basic legal reasoning and problem-solving skills do not go on to become judges. However, it would be unrealistic to expect that a lawyer automatically develops superior decision-making and problem-solving skills upon becoming a judge.

V. JUDICIAL JUDGMENT DOES NOT IMPROVE WITH EXPERIENCE

The focal point of Holmes' legal theory lies with the appellate judge. While social forces may contribute to the content of the law, Holmes, as a legal realist, emphasizes that what truly matters are the specific decisions made by appellate courts to determine what the law is. In common law systems, it is the judges of the highest court of appeal, such as the state Supreme Court or the US Supreme Court in the United States, the House of Lords in Britain, or the High Court of Australia, who serve as the ultimate arbiters of the law, distinct from matters of fact.

However, Holmes inadvertently created confusion by failing to carefully distinguish between what judges ought to do and what they actually do. He interchanged descriptions and prescriptions without providing clear distinctions. Holmes' prescriptive argument was that judges should abandon pretense and openly engage in legislation. He advocated for judges to

acknowledge their inherent duty to consider "considerations of social advantage" when formulating legal judgments. According to Holmes, judges already perform this role, often unconsciously. However, judges tend to conceal the underlying policy basis of their judgments, preferring to dress them in the language of logic while avoiding explicit discussions about policy. The main thing is that Holmes as a proponent of legal realism in America preached the judges to perform the role of legislator.

Dworkin suggests in his theory the role of judges. The judges are in his theory required to perform a Herculean task of finding the law and not just making it. However, when the judges in the appellate courts perform this task of discovering it, they are no better equipped to it than ordinary people. There is this myth surrounding dispute settlement that is judges rise above ordinary human reasoning capabilities when they sit on the bench or have spent a certain number of arbitrary years on bench. They are in practice not able to exercise reasoning ability and make pure logical decisions devoid of any emotions or demonstrating high level of rationality. One perspective suggests that judges acquire specialized decision-making and problem-solving skills through their experience on the bench. This viewpoint aligns with the concept of so called expert judgment. Below a study has been quoted to challenge this notion that the expert performance improves with the number of years on the bench.

Contrary to popular belief, research indicates that years of experience do not necessarily improve expert performance.[13] For instance, experienced surgeons are no better than medical residents when it comes to predicting hospital stays after surgery. Similarly, clinical psychologists with extensive clinical experience are no more accurate than novices in assessing personality disorders. Additionally, auditors with years of experience are not superior to newcomers in detecting corporate fraud. This pattern holds true across various domains.[14]

However, there are exceptions in fields characterized as "regular, high-validity environments." These fields have predictable patterns, and experts in these domains acquire expertise through extensive practice and learning from feedback. The predictability of outcomes largely depends on the quality and promptness of feedback. Nonetheless, such high-validity environments are relatively scarce.

Judging, if anything, takes place within a low-validity environment. One of the reasons for

[13] Geoffrey Colvin, *Talent Is Overrated: What Really Separates World-Class Performers from Everybody Else* 3-6 (N.Y.: Penguin Books, 2008).
[14] Colin F. Camerer & Eric J. Johnson, The Process-Performance Paradox in Expert Judgment: How Can Experts Know So Much and Predict So Badly? (Cambridge Univ. Press 1991).

this is that judges rarely receive prompt feedback regarding the quality of their decisions. In most cases, any feedback they do receive comes months later when the appellate court reviews the case. In reality, judges often receive no feedback at all, let alone the immediate feedback necessary for improving expert performance. In comparison, the case method offers certain advantages over actual judging experience in terms of providing law students with immediate feedback on their decision-making and legal reasoning skills.

In general, the institutional structure of courts and the nature of judging mean that judicial experience alone does not significantly enhance judicial decision-making. Empirical research on decision-making, in general, is typically applicable to judicial decision-making with equal relevance.

Another reason that compounds the problem is that most judges are generalists, and thus any feedback, if it ever reaches them at all, is dispersed: With the exception of the tasks judges perform repeatedly; it might take a long time for judges to accumulate enough feedback to avoid errors. It is as if a professional tennis player divided his time or her time among tennis, volleyball, softball, soccer, and golf rather than concentrating on tennis - the player's opportunity to develop "tennis intuition" would diminish. Moreover, because the benefit of experiential learning in a low-validity environment is limited, training may be necessary to compensate for deficiencies in the learning environment.

VI. LEGISLATURE AND ROLE OF COURTS IN LAW MAKING

Legislatures possess a distinct advantage over courts in accommodating diverse perspectives and interests. Moreover, legislatures are better equipped to devise comprehensive solutions to societal issues, whereas the judicial process typically allows for incremental changes to the law. The legislature has committees like standing committees which hold the unique advantage to include members from various fields providing a multidimensional perspective on any subject. The role of courts should be to highlight the need for the law on any particular subject and make any slow and gradual changes to fulfill the gaps. The Common Law system possess the unique capability that there can be no gap, the role of judges is to fulfill the gaps in the laws.

Nevertheless, it is not our intention to delve into the debate regarding whether judges create law. However, it is undeniable that judges can exert significant influence on shaping the law. In India, there are notable instances where court judgments have contributed to the creation of new legal frameworks. For instance, in the landmark case of ***Vishaka v. State of***

Rajasthan[15], the Supreme Court established guidelines and norms against sexual harassment in the workplace, recognizing it as a violation of women's fundamental right to equality.

The Court emphasized that these guidelines should have the force of law, upholding the principle of gender equality. In **Indira Swahney I**[16] and ***Indira Swahney-II***, the judiciary declared that caste alone should not serve as the sole determinant for identifying socially and economically backward classes. They further established that individuals belonging to the socially and economically advanced "creamy layer" would not be considered part of the backward class, irrespective of their caste.

In the case of ***Raj Narain v. State of UP***[17], the Supreme Court ruled that individuals cannot exercise their freedom of speech and expression without access to information. Consequently, the right to information became enshrined in Article 19 as a fundamental right. In the case of ***People's Union for Civil Liberties (PUCL) & another* v. *Union of India and another***[18], the Supreme Court asserted that obtaining information about essential details concerning candidates contesting in elections to the parliament or State Legislature promotes freedom of expression. Thus, the right to information constitutes an integral part of Article 19(1)(a).

It is important to note that the right to information, as described here, differs in nature from the right to receive information about public affairs or the right to obtain information through the press and electronic media, although there may be some overlapping aspects between them.

VII. CONCLUSION

In conclusion, this paper has firstly examined the intersection of legal positivism and rationality in the context of the judicial system. It has highlighted the potential challenges and limitations of the legal system in promoting rational decision-making. The discretion given to judges, combined with factors such as decision fatigue, can lead to inconsistencies and irrationality in judgments. Empirical studies have shown that judges' decision-making abilities are influenced by factors like mental exhaustion and glucose levels. Furthermore, legal education and experience on the bench may not significantly enhance overall reasoning and problem-solving skills. The case method, commonly used in legal education, has limitations in developing evaluative reasoning abilities and may overlook models of sound decision-

[15] (1997) 6 SCC 241.
[16] (1993) AIR SC 477.
[17] (1975) AIR SC 865.
[18] (2003) AIR SC 2363.

making.

The findings suggest that the current legal system may not effectively promote rational decision- making, and there is a need for further empirical research and reforms to address these limitations and improve the rationality of judicial judgments. Empirical studies that examine the relationship between judicial decision-making and jurisprudential theories can provide valuable insights into how the legal system performs in the real world. It is crucial to understand and acknowledge the limitations of the system in order to make improvements and ensure that rationality is upheld in the pursuit of justice. These empirical studies are states with reference to positive law theory and natural law theory.

In conclusion, this paper highlights the importance of considering the challenges and limitations of the legal system in promoting rational decision-making. While legal positivism emphasizes the factual basis of law and the separation of law from morality, the discretion given to judges and the overburdened judiciary may lead to decision fatigue and inconsistent judgments. This is studied with reference to positive law theory which provides a wide discretion to judges. Empirical studies have demonstrated the influence of factors such as mental exhaustion and glucose levels on judicial decision-making, questioning the effectiveness of legal education and experience in enhancing decision-making skills. Additionally, the case method in legal education has limitations in developing evaluative reasoning abilities. Further research and reforms are needed to address these limitations and improve the rationality of judicial judgments, promoting a more just and effective legal system. Moreover, the empirical studies are necessary to make use of the advanced studies in the data science world in legal field.

*****

 [ISSN 2581-9453]