

OPEN NANO JOURNAL



ELSEVIER

ISSN:2352-9520

Impact Factor-10.9

 <https://opennano.life/>

SPINOZA AND ALF ROSS- A LEGAL COHESION AMIDST DISCORD

I) Prof. (Dr.) Abhijit Bhattacharjee

PRINCIPAL, JALPAIGURI LAW COLLEGE,

UNIVERSITY OF NORTH BENGAL

II) Sakyasuddha Sarkar

Researcher, B.A. (HONS.) LL.B, LL.M, UGC NET, WEST BENGAL SET

Abstract

Both law and philosophy as disciplines are interconnected with each other, and this is more true in the arena of jurisprudence. The views of Spinoza and Alf Ross play a crucial role in the interpretation of the legal norms prevalent in both social and legal arenas. The concept of God as an essence and the concept of Vacillation, as propounded by Spinoza, can be applied in the arena of reductionism, in the sense of the term as used by Alf Ross. The problem of scepticism in the domain of the reductionist approach can be diluted up to some extent by applying the philosophy of Spinoza, and both these two concepts must be considered together in a harmonious manner, to decipher the true purport of the Scandinavian Realist approach as propounded by Alf Ross.

Keywords:- 1) Benedictus De Spinoza; 2) Vacillation; 3) Alf Ross; 4) Reductionism.

I) INTRODUCTION

The interrelation between philosophy and law, if not a direct one, ultimately leads to a cohesion in the discourse, because the study of law is an unique exercise that comprises within its fold the traces of philosophy also, at least from the perspective of axiology.

This uniqueness of legal discourse can be attributed to the somewhat orthodox approach of law, where traditional legal discourses attempted to separate the study of law from the study of other social sciences pertaining to social behaviour like economic political science etc., but notwithstanding that the modern legal analysis stepped virtually in all the areas of human life, both in the private and public sphere. This somewhat self-imposed isolation, though artificial, is being diluted, though not in its entirety, with the advent of the realist approach in the domain of legal discourse.

But even in this modern era, the study of law or better to say any legal analysis is incomplete, if not unfruitful, without the due consideration of logic and history¹ because, from the perspective of both the naturalist approach and realist approach, the analysis of any legal norm must be made in the context of the history of human civilization as well as the logic underlying within the interpretation of such normative principles.

It can be admitted without any hesitation that the concept of God, as an almighty force, plays an important role in the study of law, which is evidently clear from the acceptance of '*Lex Divina*' by Aquinas.² Far from making the spectrum convoluted, this approach provides a ready solution to the issue of multiplicity of concepts in the legal domain, but admittedly, in the modern era, this approach may create more confusion and may attract more criticism than achieving equilibrium.

But the Kantian approach to law suggests that the senses of human beings are the chief source of knowledge, along with a reservation for the presence of some transcendental values as to justice and moral law.³

This invariably leads the legal discussion towards the attempt to trace some transcendental values in law, which can be reduced to legal aphorisms.

II) SPINOZA FROM THE SPECTACLE OF REDUCTIONISM

The somewhat narrow view about legal policy, as envisaged by Learned Justice Schiemann in *Percy v. Hall*,⁴ is worth remembering in the attempt to discuss Spinoza from the spectacle of law. The Learned Judge pointed out that the issue of legal policy, which is restricted to the availability and the proper remedy (to be chosen during the course of the litigation, not dehors the legal postulates), is a narrow one, specifically in the illuminating light of the Barber Principle.⁵

The remark of the learned author Bennion is also important in the attempt to decipher the ideas of Spinoza, which can be applied in the legal discourse, where Bennion observes that legal policy is a conglomeration of legal principles.⁶ This implies that the legal principles shall be interpreted in the light of and with the aid of legal policy (and also vice versa), which can arise

¹ BENJAMIN N. CARDOZO, THE GROWTH OF THE LAW 89 (LAW & JUSTICE PUBLISHING CO. 2025).

² DENNIS LLOYD, LLOYD'S INTRODUCTION TO JURISPRUDENCE 77 (9th ed., M. D. A. FREEMAN ed., South Asian edition, SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021).

³ RWM DIAS, JURISPRUDENCE 475 (5th ed., LexisNexis 2017).

⁴ [1997] 4 All ER 523.

⁵ F.A.R. BENNION, UNDERSTANDING COMMON LAW LEGISLATION: DRAFTING AND INTERPRETATION 24 (1st Indian ed., OXFORD UNIVERSITY PRESS 2004).

⁶ *Id* at 94.

in a society due to the contribution of different elements playing within the social and legal fabric.

The most pertinent element of Spinoza's approach is his attempt to exorcise the arbitrary attitude of orthodox theology and he made attempts, however rudimentary, to infuse the temper of scientific interpretation methods in the discussion of philosophy⁷ and the conjoint reading of this approach of Spinoza with that of Hume, clearly suggests a more result oriented approach which is squarely applicable in legal discourses.⁸

In this context, Spinoza's idea about knowledge and perception, which essentially depends upon the existence of experience,⁹ plays a role in the interpretation of law and also in the judicial process while deciding a lis, as the concept of '*Vacillation*'¹⁰ is an integral part of legal logic, in the sense aforementioned.

On the other hand, the spectrum is lumbering with the very idea of Spinoza's approach to the concept of decision and the concomitant process of making it. The import of body activity (not in the strictest sense) with that of the mind of an individual (including the legal professionals) within the sphere of decision-making process,¹¹ creates a fertile ground for reductionism, even at the risk of the 'Ockham Razor' effect.¹²

But in the contrast, the acceptance of rationality by Spinoza¹³ with that of perception, as propounded by Spinoza himself, possess the competence to perplex a legal mind, because if perception is passivity of mind,¹⁴ then every attempt to interpret a legislation will be a futile exercise, because a legal structure which encompasses legal instruments is a perception forming exercise in effect.

The matter is not ephemeral in nature, as the axiom that man and God are both thinking things creates a legal conundrum, as on this presupposition to look at the transcendental policy of justice, the essence of it must be derived from God only, as according to Spinoza, presence of God can be gathered from its essence.¹⁵

⁷ Michah Gottlieb, Spinoza's Method(s) of Biblical Interpretation Reconsidered, Vol. 14, No. 3 Jewish Studies Quarterly 286, 294 (2007).

⁸ RWM DIAS, JURISPRUDENCE 476 (5th ed., LexisNexis 2017).

⁹ BENEDICTUS DE SPINOZA, ETHICS 52 (1st ed., True Sign Publishing House 2022).

¹⁰ *Id* at 86.

¹¹ BENEDICTUS DE SPINOZA, *supra* note 9, at 79.

¹² Brian H. Bix, *Ross and Olivecrona on Rights*, 34 AUSTL. J. LEG. PHIL. 103, 105 (2009).

¹³ Ariela Di Castro-Bzhezinsky, Spinoza, Social Contract, and Liberalism, 64 Iyyun: The Jerusalem Philosophical Quarterly 33, 43 (2015).

¹⁴ BENEDICTUS DE SPINOZA, *supra* note 9, at 36.

¹⁵ BENEDICTUS DE SPINOZA, *supra* note 9, at 21, 22, 32, 35.

Hence, from the spectacle of Spinoza, every human feeling, like pleasure, pain, etc., is nothing but an endeavour of the mind triggered by or facing a catalytic impact from the outside world.

III) ALF ROSS AND REDUCTIONISM

The attempt of Ross to interpret the law in an oxymoron manner, devoid of idealism, with the solemn attempt to confine the legal discourse within the time and space¹⁶ (i.e. within the periphery of the existing time) leads to reductionism, even in the anti-metaphysical sense.¹⁷

The attempt of Ross to interpret jural concepts like right, duty, obligation, etc., as a presentation of the existing facts in a given society,¹⁸ *prima facie*, gives the impression that Ross intentionally tried to avoid the concept of '*Vacillation*' as propounded by Spinoza.

It can be submitted that the concept of, or better to say, the metaphysics applied by Ross, in the famous form, called '*Tu-Tu*', pointed towards the presence of linguistic-legal metaphor within the legal discourse.¹⁹

To usefully elucidate this issue, if the concept of legality as propounded by Shapiro is taken into cognizance, where Shapiro compared law and legality with that of a 'Plan', it is clear that the attempt of Ross to interpret law in a sceptical manner is not ubiquitous.²⁰

If this entire spectrum is interpreted in the light of the approach that law is only binding when it has some social value,²¹ it clearly demonstrates the shadow of metaphysics behind this approach also.

IV) CONCLUSION

Fyodor Dostoyevsky, in his famous work 'Notes from Underground' pointed out that even education can make a person superstitious, only with a reservation that he is aware about his superstitious nature,²² and hence the preconception of mind, even in the form of superstition, may not be avoided altogether, even with every conscious attempt of the human mind.

¹⁶ Torben Spaak, Alf Ross on the Concept of a Legal Right, Vol. 27 No. 4 Ratio Juris 461, 463 (2014).

¹⁷ Torben Spaak, Legal Argumentation and the Nature of Law, Research Paper Series no. 133 Stockholm Faculty of Law 1, 21 (2023).

¹⁸ Brian H. Bix, *supra* note 12, at 108.

¹⁹ Brian H. Bix, *supra* note 12, at 114.

²⁰ DENNIS LLOYD, LLOYD'S INTRODUCTION TO JURISPRUDENCE 333 (9th ed., M. D. A. FREEMAN ed., South Asian edition, SWEET AND MAXWELL, Reprinted in India by THOMSON REUTERS 2021)

²¹ RWM DIAS, JURISPRUDENCE 468 (5th ed., LexisNexis 2017).

²² FYODOR DOSTOYEVSKY, NOTES FROM UNDERGROUND 3 (Penguin Random House UK 2009).

It will not be out of the context to mention that, even Kautilya, connected the legal dictates with that of the God,²³ though in an indirect manner and this clearly shows the interconnection between the metaphysical concept of essence (in the form of God) with that of legal reductionism, as the dictates of the God must be reduced in some form of proposition or postulates for the purpose of normative analysis.

It is pertinent to note that the concept of Raz about legal authority adulates the normative approach of law,²⁴ which stands diametrically opposite to that of '*Vacillation*' as comprehended by Spinoza.

But the apparent rejection of the subjective reductionism as 'teleological pseudoexplanation' by Ross and at the same time accepting, though indirectly, the behaviourism²⁵ suggests a contradiction from the perspective of reductionism or the reductionist approach.

The recent attempt to apply a reductionist approach to achieve a utilitarian purpose²⁶ (though not in the sense of Bentham) as propounded by Posner suggests a subjective-behaviourist reductionism in contrast to the sceptic-demystifying reductionism of Alf Ross.

This enigma can be resolved, up to a great extent, if not completely, by using the concept of '*Vacillation*' of Spinoza, inter alia, with other propositions. Though it is true that involving the concept of God as an essence can create confusion, it must not lose sight of the fact that the ideas of Spinoza are a product of his time, and they can be applied only with required modifications in the discourse of reductionism in law.

Before parting with this issue, though with prolixity, the concept of Foucault regarding rationality can be considered, where Foucault points out empathetically that discipline (it can be considered as a norm, as propounded by Raz) is the generalisation of the requirements.²⁷ If this view, with all its shortcomings be considered in the light of both Spinoza and Ross, it is submitted that the ideas of Spinoza in general and the idea of '*Vacillation*' in particular is relevant even today in the legal analysis, at least so much as to interpret the legal norms is concerned from the perspective of reductionism and the linguistic-legal analysis of Ross is mostly in symphony with it.

²³ KAUTILYA, ARTHASHASTRA 86 (FINGERPRINT 2023).

²⁴ Jeffrey A. Pojanowski, *Legal Thought in Enlightenment's Wake*, 4(1) JURISPRUDENCE 158, 169 (2013).

²⁵ Giorgio Ridolfi, Reductionism in Alf Ross's Early Philosophy: A Comparison with Georges Politzer and Theodor Geiger, Vol. 36 No. 1 RATIO JURIS 93, 96 (2023).

²⁶ Amy L. Peikoff, *Beyond Reductionism: Reconsidering The Right To Privacy*, PAPER NO. 10-32 CHAPMAN UNIVERSITY, SCHOOL OF LAW, Vol. 3 No. 1 NYU JOURNAL OF LAW AND LIBERTY, 1, 5 (2008).

²⁷ 3 MICHEL FOUCAULT, POWER ESSENTIAL WORKS 1954-84 231 (Penguin Random House UK 2020).