

# The Jurisprudence of Nonviolence

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## ABSTRACT

Jurisprudence is the art of interpreting the law. Laws lay down standards for human life in personal and social spheres. Nonviolence is the highest standard of life for man. Truth is an end, while nonviolence is the means. The purpose of the law is to establish a nonviolent order, where justice will automatically arrive. The jurisprudence of nonviolence, declares nonviolence as an undercurrent of every law. Nonviolence is a more profound term, a constructive life force that ensures dignity and righteousness in all facets of life. The paper explores how interpreting law in the light of principles of nonviolence can lead to a peaceful social order.

**Keywords:** Jurisprudence, Law, Truth, Nonviolence, Peaceful-coexistence, Justice, Peace, Humanity, Social order, Life standards

Truth and Nonviolence are as old as the hills, said the apostle of peace- Mahatma Gandhi. Non-violence is implicitly latent in humans. It manifests itself in the form of positive emotions such as love, compassion, respect, unity, and so on, which are central to the genesis of life on earth. Hydrogen meets oxygen to form water. Air, water, fire, ether, and earth unite to form life. Development is all about coming together, living together, and prospering together. And what can be a better means to development than Truth and Nonviolence. Humans, being social organisms, use various mechanisms to ensure a smooth running of their interactive machinery. Law too is one such mode of peaceful co-existence. Ideally, the rule of law is a method of attaining the highest degree of truth and nonviolence in society. Justice can be best defined as the triumph of truth and establishing a non-violent order in a society.

The jurisprudence of nonviolence emphasizes that law is but a manifestation of the idea of nonviolence.

Nonviolence pervades over the purpose, body, and execution of the law. Interestingly, the Natural theory of law theory suggests that law is not formed by humans, instead it is provided by nature in the form of ethics, morality, and the ability to differentiate between right and wrong. According to this theory, morality is an innate feature of human beings, they do not have to work to acquire or create it. Laws are formed based on this innate ability. Great philosophers such as Socrates, Plato, Aristotle, and various modern jurists like Hobbes, Rousseau, and John Locke have supported the biological theory of law, which forms the basis of the nonviolent jurisprudence.

## The Art of Jurisprudence

In order to understand the concept of nonviolent

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jurisprudence, let us first know the meaning of the term- jurisprudence. The word 'jurisprudence', comes from the Latin '*jurisprudentia*', which means knowledge or skill regarding law. According to Encyclopedia Britannica, 'Jurisprudence' is the name given to those studies, researches, and speculations that aim to answer the plain man's question; what is law? It is proposed to define law for the jurists as the sum of the influences that determine decisions in courts of justice. Jurisprudence, to Cicero, is the philosophical aspect of the knowledge of the law. Simply put, the law is about rules and regulations, and jurisprudence is the science of interpreting them. Different scholars have come up with different lenses to look at the law. Some look at law historically, some sociologically, some from the feminist angle, others from environmental point of view and still others from an ethical point of view. The nonviolent jurisprudence attempts to look at the law in light of its ultimate goal, i.e., peaceful coexistence.

### **Nonviolence – the meaning**

Nonviolence in simple words, is the absence of ill-will against all forms of life on earth and beyond. In a larger frame, it is a rule of conduct for society. It ensures a life consistent with dignity and progress. The likes of Gautama Buddha, Mahavira, and even Gandhi have conceived of nonviolence as a basic tenet of personal and social action. It is not limited to overt actions alone but is also at the root of character building. Nonviolence is not mere abstinence from violence but the ancient law of cheerful self-sacrifice, compassion, brotherhood, of love. It does not mean surrender to the wicked or no retaliation. Instead, it thrives on the biblical idea that vengeance belongs to God alone. For humans, even an opponent is worthy of reverence. Nonviolence has an obligatory power to establish peace. It is synonymous with humanism, where man is an end and not means. For Mahatma Gandhi, the law of the human species is nonviolence; violence is for the brute. He views nonviolence as a means and with truth as its end.

### **Purpose of Law**

Law generally speaking refers to different kinds of

rules and regulations, including principles. It is an instrument to regulate human conduct, both at social and personal levels. Law from the legal perspective includes Acts, Statutes, Rules, Regulations, Decrees, Orders, Ordinances, Judgements, and so on. The purpose of the law is justice. It establishes standards for a civilized society. It shows the way to minimum accepted human behavior in any society.

Additionally, the law provides for a formal means to dispute resolution. Another essential function of law is to protect the rights and liberties of individuals from unreasonable intrusions. Roscoe Pound (1959), who treated the law as a species of social engineering, states that it has four primary functions:

1. Maintenance of law and order.
2. Maintenance of status quo in the society.
3. Ensure maximum freedom of individuals; and
4. Satisfy the basic needs of the people.

The most basic function of is to ensure the well-being of its subjects. These purposes of law are in complete consonance with the concept of nonviolence.

### **Law and Nonviolence: Similar Means to Similar End**

Martin Luther King, Jr. (2000) had illustrated six principles of nonviolence. Principle one considers nonviolence a way of life for the courageous. It is active yet nonviolent resistance to evil. Principle two points out winning friendship and understanding as primary goals of nonviolence. Nonviolence redeems reconciliations, and creates a beloved community. Defeating injustice, not people, is the third principle. Evil-doers must also be looked upon as victims of circumstances. The fourth principle holds that suffering without retaliation can educate and transform. Principle five emphasizes choosing spontaneous, unmotivated, unselfish love instead of hate. And finally, principle six of nonviolence insists that the universe is on the side of justice. A careful perusal of these principles helps one in understanding that nonviolence, just like the law, is a means to achieve justice or truth. Laws, therefore,

should be drafted, interpreted, and implemented in a nonviolent manner. Let us look at the intent and manner of some of the important laws in India.

**Nonviolence and Sustainability:** Environment laws have been framed for the conservation of the environment and sustainable use of natural resources. Internationally, there are various rules and regulations to ensure no violence is committed against nature. In India, too, under the Constitution, every citizen is duty-bound to protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures. Further, under Part IV relating to the Directive Principles of State Policy, Article 48A makes it obligatory for the State to protect and improve the environment and to safeguard the forests and wildlife of the country. Other important legislation for environmental protection include:

- ⦿ The Wildlife Protection Act, 1972.
- ⦿ The Water (Prevention and Control of Pollution) Act, 1974.
- ⦿ The Air (Prevention and Control of Pollution) Act, 1981.
- ⦿ The Environment Protection Act, 1986.
- ⦿ The National Green Tribunal Act, 2010.

These laws aim not only to preserve the environment but also to ensure that nature, just like humans, gets due reverence as a separate entity. In the year 2017, the Uttarakhand high court, in a landmark judgment, declared Ganga and Yamuna rivers as living entities. This judgment, by applying the concept of legal person to rivers, laid a historical precedent. Before this it was the New Zealand Parliament that made Whanganui River the first water body in the world to be granted the status of a 'living entity'. Whanganui, Ganga, Yamuna, and their tributaries now possess legal rights, same as a natural person, though they are not natural but legal or juristic persons. This will ensure that the rivers are not misused, exploited, abused, or misappropriated by anyone for personal use. This is nothing but the idea of nonviolence jurisprudence being implemented. Mahatma Gandhi had time and again emphasized that-

*"The Earth provides enough resources to satisfy everyone's needs, but not everyone's greed".*

Justice for all and responsibility are essential dimensions of nonviolence. Indifference towards the intensive exploitation of earth and its resources, of the marginalized, polluting the environment, wasting the bounties of nature, are all forms of violence. Nonviolence cultivates sustainability by being compassionate about all living forms, including their surroundings. It is a sustainable development centered principle. Agenda2030 commits governments, nations, and individuals towards respecting nature and its resources, preserving indigenous cultures, and countering policies that lead to violence.

### **Regulation of the Human Relations through Nonviolence**

Human relations, including business relations such as contracts and agreements, family matters, marriage and divorce, also come under the purview of the law. The function of law is to keep human behavior in a check, so as to maintain cordial relationships. Any unacceptable behavior, for example adultery, cheating, breach of contract and others, needs to be corrected and justice delivered to the affected. Laws most of the time only reprimand and punish, but nonviolence aims at transformation of the wrongdoer. Nonviolence warrants internal realization of what is wrong and should not be repeated. Relationships more than anything else thrive on the principle of nonviolence. Laws should thus be framed and interpreted in a nonviolent framework.

### **Nonviolence in Economic Transactions**

Law sets the rules, regulations, and procedures to be followed in the performance of economic activities such as sale and purchase, trade, labor engagement, capital investment, and so on. Law bestows validity and legality upon financial deals and agreements. Laws such as wealth tax, sales tax, property tax, income tax, GST, and customs and excise duties generate government revenue significant for the development of the nation. Economic laws, too, are a manifestation of the concept of nonviolence. Nonviolence is based on the idea of economic

justice. Trusteeship, Want-less-ness, Dignity of labor, equal pay for equal work, balanced regional growth are its pillar stones. In the economic sphere, too, nonviolence is the cardinal principle of action.

### **Criminal Justice through Nonviolent Means**

The criminal justice system and laws it comprises abhor violence. Any crime is an offense against the state, the society as a whole. However, penal provisions are not meant for revenge or fostering the feeling of vengeance. These are in place to correct the wrong behavior and show other members of society the right way to live. Not every crime is violent in action, but all crimes are violent in spirit. Criminal laws intend to transform a violent bend of mind into a nonviolent one. Any punishment is effective only if it brings about a change of heart. It becomes a mere formality otherwise. A nonviolent social order can be established only by making people understand the necessary condition of peace to live and let others live. Nonviolence teaches one to revere even the life of an enemy. The goals of nonviolence are interpersonal harmony and cooperation, similar to those of law. Principles of natural justice, just as not guilty before conviction, no bias, adequate and fair hearing, are expressions of nonviolence. Equal opportunity, safety and dignity for women; protection of the weak and oppressed; safeguards to the disadvantaged, orderliness in the society various facets of nonviolence. The concept of nonviolence believes that every offender is equal and needs reformation, needs help, and laws should primarily solve this purpose to be considered adequate.

### **Nonviolent road to Justice**

The procedural laws, just like the substantial laws, are meant to ensure a just and honest living to the people. The road to justice should be seamless. Justice should come to an individual in a timely fashion through convenient processes. Unfair procedures are violent. The procedures of availing justice need to abide by the principle of nonviolence. This implies that special care must be taken that

all are treated equally, yet special provisions are made for the deprived. Access to justice should be universal. Human dignity should not be harmed in any way. The procedural laws in India have primarily taken care that the vulnerable sections are not exploited in the name of the law. A pertinent example of this idea is the provisions related to the arrest of women under the Code of Criminal Procedure, 1973. Under the code, women cannot be arrested after sunset till sunrise, and a female officer shall make the arrest otherwise.

### **Alternate Dispute Resolution and Nonviolence**

Deutsch (1973), in his article 'Conflicts: Productive or destructive published in Journal of Social Issues' says, "Nonviolent ways of resolving the social conflict have a far greater chance than other methods – because it has a productive resolve in its within to get the conflicts settled. So, it is better than violent method/technique, which used to be destructive since it operates on a limited understanding of the psychology of disputing process and the disputing parties. It creates dire circumstances based on the balance of terror technique and thus creates a vicious cycle of chaos, crime and terror extremism, and other networks."

The alternate methods of conflict resolution were introduced to promote speedier and more acceptable forms of justice. These mechanisms, such as arbitration, mediation, negotiation, conciliation, and so on, give utmost priority to relationship building and mutual consent. They promote nonviolence in both letter and spirit.

### **Judicial Empathy**

The legislature forms law, executive implements, and the judiciary interpret. Over the years, we have witnessed how judicial interpretations can invigorate legal provisions with dynamic and virtuous meanings. The right to life and liberty under Article 21 of the Indian Constitution is a testimony to this fact. Empathy is an offshoot of nonviolence. It makes one understand the sufferings of others. The Indian judiciary understood this,



and every right, the deprivation of which would amount to violence and injustice, was incorporated into the ambit of the right to life. The principle of nonviolence is very critical to the interpretation of laws. The objectives of any legal provision and its interpretation are peace, justice, and progress. Any society devoid of nonviolence can never progress.

### **Nonviolence is the cardinal principle of Justice everywhere**

India has given to the world the ancient ethical doctrine of '*Ahimsa Paramo Dharma*'. Ahimsa means nonviolence in all its forms while dharma is an ethical concept that includes morality, righteousness, code of conduct, and the entire gamut of man's duties and responsibilities. The doctrine implies that ahimsa is the highest dharma, the highest form of self-control, wealth, friendship, happiness, truth, and above all justice. Law is a dynamic body of rules and regulations, and so is nonviolence a liberal concept of imbibing the positive side of change. Both are potent mediums of ensuring peace. Here it may be noted that peacefulness does not mean cowardice. Nonviolence promotes a spirit of manliness in its perfection. Being nonviolent in spirit and action does not mean being a passive receiver; instead, it means standing up for the right values. It means respecting other lives as your own. Nonviolence is the supreme code of conduct, the biggest deterrent force, the greatest rule of life, and the ultimate goal of any society. A nonviolent society is just to every individual. The jurisprudence of nonviolence expects laws to radiate nonviolence in words and actions.

The concept of Justice is based on ethics, rationality, equity, and fairness. It also includes the meaningful administration of law, respect for inalienable and inborn rights of all human beings without discrimination based on race, gender, sexual orientation, color, ethnicity, religion, physical disability, age, social status, wealth, etc.

As per the contemporary theories of justice, justice is overwhelmingly important. To John Rawls (2020), Justice is the first virtue of social institutions. It is

a concept of cardinal virtues. Justice is interlinked with righteousness, benevolence, good faith, charity, duty, prudence, love, mercy, kindness, generosity, and compassion. Nonviolence emphatically roots for the presence of these virtues as a beacon light in human lives. Justice, therefore can prevail in a true sense only when guided by the idea of nonviolence.

### **CONCLUSION**

Human actions are confined to the boundaries of the law. Law can grant life-sustaining liberties as well as take away life in itself via the death penalty. In human lives, the law is as powerful as God. The laws, therefore, should be framed, interpreted, and implemented, keeping the idea of nonviolence in mind. The jurisprudence of nonviolence insists that nonviolence is the ultimate law for peaceful coexistence, not just for matters relating to humans but also for those arising between man and nature. The purpose of the law is truth, so is of nonviolence. Law abjures violence and promotes cordial relationships. It aims at preventing, correcting, and compensating for wrongs. Nonviolence, thus, should be the undercurrent of any legal provision anywhere in this world.

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