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LEGAL IMAGINATION AND FICTIONS

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Abstract:
The article shall discuss the concept of legal fiction. It centers itself around defining what legal fiction is and also provides a critique of why over-dependence on legal fiction should not be the usual case in legal reasoning unless they are dynamic enough to meet the changes happening throughout the legal world. The article goes into rebutting some commonly known legal axioms such as the impersonal nature of a judge presiding over a case and how he uses fiction in a way to justify his reasoning. This article aims to highlight that despite the immense value these fictions carry, it is important to consider real social considerations in writing a judgment and how the use of legal fiction can hamper the deliverance of justice by creating much ambiguity in their interpretations.

Introduction

Legal **fiction** is a concept in law where something is assumed to be true, even though it is not factually accurate, to achieve a specific purpose. It can be utilized by courts or established through legislation.[2] The use of fiction in a world of legal practicality has always been a spot of peculiar interest. It highlights the significance of imagination in allowing judges to circumvent the complexity of day-to-day fact situations by engaging in a thought process that assists them in harmonizing conceptual ideas and realities. In Fuller's words, fiction have generally been regarded as something of which the law ought to be ashamed, and yet without it the law cannot as yet,

[1] Müller, *The Science of Language*, Second Series (1864) 355.

[2] Black's Law Dictionary, 804 (5th ed. 1979).

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dispense.[3] It attempts to bridge the gap between "what ought to" and "what actually is" and this "ought to be" remains an abstract construction bereft of any foundational basis. According to Fuller fiction can be aptly defined as a false construct, the judge can be either completely unaware of its falsity or partially conscious of it. A question is raised here that can we not simply refer to these fictions as "false assumptions"? The answer to this is that since these fictions serve some utility they shouldn't be regarded as false assumptions. But the same can be said of erroneous reasonings or false assumptions as they may serve some utility in achieving the ends of delivering justice. Legal Fiction can also be studied in terms of language. Since interpreting fiction boils down to the use of appropriate terms that can be said to have a connection with reality. The use or change in such usage may warrant the death of a fiction as well. It is in a constant state of evolution where words initially in fiction become more concretely in consonance with reality. Let us now deal with a popular legal fiction used throughout every state, and every court and find its mention in numerous statutes.

Analyzing Fictions

one of the most widely known legal fiction is of the "reasonable man" which first saw its implementation in Vaughan's case and was invented to establish objective criteria for deciding whether the conduct of the defendant was negligent or not.[4] Being embellished as an objective test, the conduct of this fictitious person hinges upon the factual situation and what the judge's conclusion is regarding the case. The judges try to find out whether the defendant's act was at least similar to what a reasonable and prudent man would've done in his place. In tracing this abstract idea we are thrown back in time to Roman law, where *bonus pater familias* acted as a predecessor to the prudent person and used as a measure of standard care. This concept of a reasonable man stems from the existence of a legal duty and how a reasonable man would fulfill such a duty. To be concise, legal duty is nothing but a prophecy that if you do or omit to do something then you'll be punished in one way or another.[5] To say the least, the reasonable man is a fleeting idea. There's no established basis for How he ought to behave, and they are used as an efficient tool for corroborating the judge's line of reasoning.

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[3] L Fuller, *Legal Fictions* (Stanford University Press 1967).

[4] *Vaughan v Menlove* (1837) 132 ER 490 (CP).

[5] Felix S. Cohen, *Transcendental Nonsense and the Functional Approach* (1935) 35 Columbia L. Rev. 809.

The value of these fictions is immense in providing a spine to the judicial decisions, for a judge may resort to such artificial means of reasoning to prove that his decisions are well founded. However, falling back on his imagination and employing it in a real-life situation shows how deeply entrenched the use of such reasoning is in the legal world. As Blackstone once mentioned, Our ancestors were compelled to resort to awkward shifts, intricate distinctions, and strange reasoning. While we may commend the end, we cannot admire the means they employed.[6] There is always a sense of supernaturalism in certain judicial decisions, especially in cases of torts which keep other real considerations far detached from the judicial process.

"*When the vivid fictions and metaphors of traditional jurisprudence are thought of as reasons for decisions, rather than poetical or mnemonic devices for formulating decisions reached on other grounds, then the author, as well as the reader, of the opinion or argument, is apt to forget the social forces which mold the law and the social ideals by which the law is to be judged* ".[7]

Take an example of the classic Rylands v Fletcher case[8] where Justice Blackburn propounded the strict liability rule through establishing a fiction of an escape. Instead of venturing into the technicalities of the situation such as questioning the liability of the independent contractor involved to which he had hardly paid any heed in his judgment, he went on to give a general fiction that involved the requirement of "non-natural" use of land where a thing "likely to do mischief" subsequently escapes and causes damage to the plaintiff. The "non-natural" use of land and "likely to do mischief" are terms often shrouded in ambiguity and lacking in any basis. The theoretical extraction of legal concepts severed from any foundational basis opens up space for further litigation revolving around how these terms are to be interpreted and yet the use of such abstraction is so widely approved and endorsed that no question is raised regarding the validity of the thing itself. Efforts are made to dig into a hollow shell and annex to it the meaning each judge attaches to it.

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[6] L Fuller, *legal fictions* (Stanford University Press 1967) 19.

[7] Felix S. Cohen, *Transcendental Nonsense and the Functional Approach* (1935) 35 Columbia L. Rev. 809.

[8] *Rylands v Fletcher* (1868) LR 3 HL 330.

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The end achieved may be laudable but as Blackstone said we shouldn't admire the means through which they are achieved. "*It is better to state the law in terms of reality because misapprehension is sure to be caused by fiction*".[9]

The Role of Judges

This brings us to an important juncture of this article, which is the influence of the judge over a case. During candid conversations, judges have disclosed that in most cases, they have already decided on the conclusion, and fiction is then used as an effective device to explain why they have arrived at such a conclusion.[10] The human element plays an important role in the application of these fictions. The judge already presupposes the existence of some postulates and sets forth his reasoning accordingly. Jerome Frank has called this '*wish postulates'* and these must be distinguished from '*is postulates'* or what actually is.[11] What I mean by wish postulates is that what the judge would like to see happen in the future while '*is postulate'* is basically 'what is now happening'.[12] The judge in framing his decision takes the path of a deductive approach and far detaches himself from real facts. He tries to fit the factual matrix of the case within a specific fiction. We will explore this idea in the later parts of the article.

Another general misconception is that a judge merely applies the rule of law to a particular case and thus prevents any rupture that might allow his prejudices to have a bearing on the particular matter. A judge is required to set forth publicly the reasons for his decision in terms of *legal rules*. However, a judge is a human and to repress those human elements is nearly impossible. Judicial decisions, including court judgments, orders, and decrees, are shaped by a range of factors, one of which is legal rules. These rules can exert significant influence in some instances while having minimal impact in others. The extent of their influence is unpredictable, potentially unknowable, and depends on both the individual judge and the specific circumstances of each case.[13]

[9] Samuel Williston, *Williston on Contracts* (1st edn, 1920) vol II, 1576–77.

[10] Jerome frank, *Mr. Justice Holmes and Non-Euclidean Legal Thinking* (1932) 17 Cornell L. R. 568.

[11] *Ibid.*

[12] *Ibid.*

[13] *Ibid.*

Traditionally, decision making is considered to be an impersonal process but in believing this we confuse between what is desired and what in reality actually happens. Fiction is used as a veil to the judge's own prejudices. It paints his opinion in legal terms and that so without any rebuttal. It is long overdue for us to let go of such beliefs that cannot be empirically observed because reality says otherwise. In Fact this human approach to decision making can be beneficial in many ways.

D.Y Chandrachud before ascending to the post of chief justice of India stressed the importance of bringing the play of human element into judicial decisions. He says Judges must rely on their human judgment to determine what is right and may need to disregard a previous decision they find potentially unacceptable.[14] What I necessarily mean is that the decision is already made irrespective of the legal prerequisites, from then on it achieves its validation through fiction.

Utility of Fictions

Blackstone, despite his criticism for fiction, was also highly optimistic about their use and considered them "highly beneficial and useful".[15] Undoubtedly fictions help in procuring justice but they can only do so when these fictions are dynamic in their approach and can be thus molded accordingly with the growing and ever-changing world. A fiction is dynamic when it can be constantly manipulated so that it can be blended in to fit the results. A dynamic fiction finds its utility in its malleability to adapt to the pertinent factual matrix. One may question that their dynamism leaves them susceptible to constant subjectivity in their application, but being dynamic makes them much more useful in their practical application. Dynamic fictions are never created 'accidentally' or 'habitually,' as their application is always accompanied by an awareness of the consequences in each specific case.[16] Judges are aware of the degree to which these fictions should be applied and are aware of when to not apply such fictions. Problems arise when these fictions turn into hard law and are fixed. Again we can use the Reasonable man as an example to illustrate how fiction can become static. Previously these fictions were applied to provide a basis to the judge's decision. In other words, conclusions have already been made, and fiction is applied as a

[14] Ajoy Karpuram, *'Justice Chandrachud's Approach to Judging'* (SCO Observer, 22 October 2022) https://www.scobserver.in/journal/justice-chandrachuds-approach-to-judging/ accessed on 6 december 2024.

[15] William Blackstone, *Commentaries on the Laws of England* (Lewis ed, 1897) vol 3, 43.

[16] Fuller, n 2.

succeeding step in establishing an opinion but when these fictions become static, they are haphazardly applied as a way to arrive at the conclusion itself. A precedent may set a standard that has to be followed to come within the ambit of how a reasonable man would have behaved, falling short of it may entitle the plaintiff to damages. As the use of juries tends to decrease in modern civil cases there is a possible apprehension that judges focus much more on laying down detailed rules of law.[17] A rule is now set, what was once a convenient instrument, a creation of one's imagination, a valuable conception functioning as a pillar to your honor's edict is now transfigured into a set of abstract criteria applied indiscriminately and at the cost of reasoning based on real facts.

Conclusion

In the concluding paragraph, the author suggests that despite having its own downsides legal fiction is an effective way of adjudicating matters. However, they must be precariously used or else an indiscriminate exploitation will further open up rounds of litigation for their interpretation and construction. One can say that language being an intrinsic part of law necessarily implies the use of fiction in judgments and statutes. Also, it is technically impossible for the law to lay down concrete rules related to every factual situation thus a deductive approach seems viable.

The possible solution is a balanced approach to decision-making where multiple elements must be inquired first before a decision is delivered. Moreover, a judge's decision must always be grounded in social and ethical values, and they should not shy away from explicitly mentioning them in their opinions.

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[17] *Qualcast (Wolverhampton) Ltd v Harper* [1959] AC 743, 757–758 (HL) per Somervell LJ; 759–761 per Lord Denning (condemning the tendency to regard findings of fact as findings of law).

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