

**'GAMING UPON LANGUAGE
AND
LANDING UPON REALITY'
IN THE LIGHT OF THE THEORY BY LUDWIG WITTGENSTEIN**

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Abstract:

Language is an essential fact of our lives. Subsistence of anything largely depends on whether that can be presented in a language or not. But as language varies, it has the potential to create different realities in different environments through language. In this context there is an enormous contribution of Ludwig Wittgenstein and an important theory comes into light is 'linguistic positivism'. This theory strongly controls the impact and existence of laws in the society. The vagueness of the structure of language in different contexts, may lead to contextual conflicts. Interpretation of facts and laws may vary. Hence for the larger good, the basic content of laws are generally universalized and agreed upon. Many philosophies around the globe support and substantiate the issues related to language.

Key words: Interpretation, Language, Law, Linguistic positivism, Ludwig Wittgenstein, Philosophy

1.1. Introduction:

To imagine a language is to imagine a form of life². Language has the power to create a belief or disbelief in the minds of the listener. But why at all language is important? Cannot we think of our lives without communication? What if we understand language as the creator of reality? Determinative rules and arguments are desirable because they restrain arbitrary power³. A definite language might create such conditions which are necessary for a desired peaceful society. To bring into this context the most significant name, that is, Ludwig Wittgenstein (1889-1951). The influence of Wittgenstein at Cambridge is accepted as having been the most important personality in the development of linguistic positivism, are now most directly influencing juristic thinking, particularly since the appointment of H.L.A Hart to the Oxford chair of Jurisprudence in 1952⁴.

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² P 8. Wittgenstein L, *Philosophical investigations*

³ Arulalantham, Breaking the Rules? Wittgenstein and Legal Realism; *The Yale Law Journal*

⁴ P.11, Paton, A Text Book of Jurisprudence, 4th Edition, *Oxford Publication*

Both Hart and Wittgenstein are considered to be anti foundationalist. H.L.A. Hart's legal positivism is overtly originated to Wittgenstein⁵.

View of positivism is that law is the rules found in the state. Law is the creation of human agents. The law as it is can be distinguished from the notions of what the law ought to be. It is found as rules declared by authorities such as legislatures and courts⁶. It certainly tries to lay down what can be known and what can't, what is in and what is out with regard to "proper" intellectual activity⁷.

If we bring linguistic positivism in the context, then it will mean that we cannot understand human actions as in isolated actions of individuals, since all actions mean something only in the context of a wider framework. We talk and use language in the path of conventions and rules. And this is how we set our society too. Because of language something attains the status of "existing" or "real". There cannot be anything which will define a particular law without a definite language.

If language leads to a particular reality, it makes something to exist, but that existence is not universal or real in every corner of the world, because rules may differ, rules of the language may differ, and understanding of a concept may differ. In this way there are different realities all over the universe. The language has different dimensions which sometimes lead to vagueness of meaning. This may create huge misunderstanding over a statement, rule, law etc. Here the major question arises, if there are varying realities then what is that situation when different realities try to cooperate with each other? In this case the language alone would not encourage the participants to come along, but something more is in the context which persuades the agreement.

In case of varying laws, will it lead to conflicts? Rather accepting the laws as they are, why the different parties want to come to harmony?

1.2. Core of the theory:

⁵ Marmor, Ripstein, Law, Language and interpretation, *The University of Toronto Law Journal*

⁶ P21, Ratnapala Suri, Jurisprudence, *Cambridge University Press*

⁷ http://people.bu.edu/wwildman/WeirdWildWeb/courses/wphil/lectures/wphil_theme21.htm

In his book *Philosophical Investigation*⁸, though he did not talk about the functionality of law, explicitly, but understanding can be made with reference to law. Law is not only a language, but a very special kind of language, for law is an attempt to structure the realities of human behavior through the use of words⁹. The language of law is important because it has the capability to transform the situations, alter the relationships, determine duties, confirm rights etc. The essence or intention of framing laws can be universal but not the contents of law are different. Methods of Linguistic Analysis pursued by the philosophers can be employed in jurisprudence to clear up many puzzles which have troubled legal theorists and to produce clearer things, generally. The way words are used determines the logic of law. Words can have multiple meanings which depend upon the context and use¹⁰. Wittgenstein's philosophy revolved around the *account of rule following*¹¹.

Resting on his theory of language, to begin with an example, if we take King in the game of chess and explain it to someone that this is called "king" in the game of chess. But the functions of it cannot be known unless somebody has been the player of the game. Even if it is explained that, this is a king, the learner will be able to make a sense out of it if he knows what a "piece" in a game is. In other words he has played some other games too¹². Hence it is important to know the concept of anything to know the name.

If a baby is been taught that her grandma's name as nanny, if the child sees any grandmother like person, will say nanny because this is the relation for the baby, unless he is made aware of the fact that the naming varies.

Hence to understand something we should know its rules, for that we need definite language. The *correspondence theory* of Wittgenstein says that the purpose of speech is to make descriptive assertions or propositions about reality. The proposition becomes, then, a picture or model of reality, with each word corresponding to or naming some real thing¹³.

Wittgenstein stresses upon, intensifying the range of language, but at the same time a question arises that, can all words be taught? A word has no meaning if nothing corresponds to it. If Mr.N dies, we say that the bearer of the name died, not that the meaning of the name died. If we say the latter, it

⁸ Supra note., 1

⁹ Stroup, Law and Language: Cardozo's Jurisprudence and Wittgenstein's Philosophy, *Valparaiso University Law Review*, Vol 18

¹⁰ Supra note 3,

¹¹ Supranote, 4,

¹² Para 31, Supra note1

¹³ Supra note. 8

will be nonsensical¹⁴. Even if Mr.N dies the name will exist. Meaning of a word is its use in Language. But then the words such as "this" "if" "that" can still exist without a bearer.

Wittgenstein in his Book, has tried to establish that basically a word has a definite connotation in one context, but it may consist of several other meanings in different contexts. If we "Think of the tools in a tool-box," Wittgenstein instructs. *"There is a hammer, pliers, a saw, a screw-driver, a rule, a gluepot, nails, and screws. The functions of words are as diverse as the functions of these objects."*¹⁵

What comes out here is that, different situations can be presented by a single word, depending upon in which way they are been presented and performed. In Law, a set of rules through language are framed so that it serves to the basic need of maintaining order in the society. But the outcome will depend on the context.

What is it to *mean* the words "That is blue" at one time as a statement about the object one is pointing to, at another as an explanation of the word "blue"? Well, in the second case one really means "That is called 'blue'". can one at one time mean the word "is" as "is called" and the word "blue" as " 'blue' ", and another time mean "is" really as "is"¹⁶?

Blue in one context may mean simply an object which is in color of blue. But in some other context, it may mean a mental state.

In a language game, there are four boxes, two boxes colored with red and blue, representing R and B respectively. What will be the situation if one starts saying B as red and R as blue. Can we call it a mistake? What will be the basis of calling it a mistake? A person who knows the rules of the box's representation can only call it a mistake.

On the one hand it is clear that every sentence in our language 'is in order as it is'. That is to say, we are not *striving after* an ideal, as if our ordinary vague sentences had not yet got a quite unexceptionable sense, and a perfect language awaited construction by us. On the other hand it seems clear that where there is sense there must be perfect order. So there must be perfect order even in the vaguest sentence¹⁷. A sentence cannot be absolutely non-sense according to Wittgenstein. Even if we call something to be absurd or equivalent, still that language must be having some orders in it. In a way or the other the sentences must be definite in whatever form they are.

¹⁴ Para 40, Supra note 1

¹⁵ P 6, Para 11 , Supra note 1

¹⁶ P 18, Para 38, Supra note 1

¹⁷ Para 98, Supra note 1

With the context of reality, meaning of a sentence cannot be made in itself, unless it makes sense to others, unless it means something to the world. Otherwise there is no point in self realizing the essence of a concept. A person in himself doesn't necessarily needs a language to realize something. Disputes may arise in case when things which can be felt in oneself, but difficult to be expressed or can vary from one explanation to another.

1.3. Importance of facts:

Words have many meanings depending upon context and use. In a naming process, the variations in use which they enjoy may prevent words, however, are used in a great variety of situations, not all of which are necessarily mutually consistent¹⁸.

It is of utmost importance that we see things in the immediate context. The language cannot be such that every past, present or future or any unanticipated events can be covered. Because this is how things are. In the absence of this fundamental ground, the way of movement will become slippery. We need friction in order to walk. Hence, with language the point of current situation becomes important to look at the things. Our grammar is lacking in this sort of perspicuity. A perspicuous representation produces just that understanding which consists in 'seeing connections'. Hence the importance of finding and inventing *intermediate cases*. The concept of a perspicuous representation is of fundamental significance for us. It earmarks the form of account we give, the way we look at things¹⁹.

"For a large class of cases-though not for all-in which we employ the term 'meaning' it can be clarified thus: the meaning of a word is its use in the language."²⁰

Why present context becomes necessary?

Wittgenstein's concept of language game does not seek for uniformity in all the games, but to give a base which should be uniform such as the essence of game should be uniform in nature. It leaves languages without any pure, uncontaminated external controls. But only on the view that such controls are essential to the workings of practices, this is a defect²¹. The language-games are rather

¹⁸ Supra note 8

¹⁹ Para 122, Supra note 1

²⁰ Wheeler III, Wittgenstein as conservative deconstructor, *The Johns Hopkins University Press*

²¹ *Id.*

set up as *objects of comparison* which are meant to throw light on the facts of our language by way not only of similarities, but also of dissimilarities²²

1.4. Complexity in interpretation:

In a country if bringing a slab (for building construction) is termed and used as "Slab1" and with this the concerned people would understand what the speaker is talking about. But a foreigner, would not be in a position to interpret it in this way, it simply might have meant 'an object for constructing a building'²³. A simple name given to an object may mean something more than an object, the moment a mark is been added after it, such as, fountain!, hungry? Etc. hence language is not a one-time process, but it is a sort of permutation combination where by fixing differently different words, may result in different meanings²⁴.

In interpretation there can be similarities as well as differences. Unlike other positivist, he does not deny the further interpretation of rule when it is ambiguous. In easy cases, anyone trying to apply a legal rule just knows how to go on. In hard cases, interpretation of the rule is required. The basic idea is that rules could only serve to guide behavior if they are perspicuous, that is, if anyone who understands the rule can state which actions are in accord with it. As stated earlier language can provide a base of anything, but such cannot be understood unless the ingredient of objects of that language or rule is not already been known or has not been made aware of even once.

"Shew the children a game." I teach them gaming with dice, and the other says "I didn't mean that sort of game." Must the exclusion of the game with dice have come before his mind when he gave me the order?²⁵

Wittgenstein's answer to his own question is clear. As with any case of an intention or a rule, one needn't have thought of everything in advance in order to intend that things go a certain way. Yet the babysitter has missed the point of the instruction if he taught the children gaming with dice²⁶.

Another example, I walk into my favorite restaurant and say to the waitress, "I'd like the roast beef with the baked potato and salad." I am not merely describing my culinary likes and dislikes, but

²² Para 130, Supra note 1

²³ P9, Supra note 1

²⁴ P14, Supra note 1

²⁵ Para 70, Supra note 1

²⁶ Supra note 4

placing an order. I tell my nephew, "I'll take you sledding when I come home for Christmas." I am not describing a future event, but making a promise. A Supreme Court justice writes, "Separate educational facilities are inherently unequal." He is not thereby merely describing a condition in American schools, but is handing down an order which will significantly alter those conditions and the relationships of the children who attend those schools²⁷.

In law, consisting of easy as well as complicated or controversial cases, to solve the controversial cases one may take help of the easy cases or basic rules as a legal reasoning, not anything more which can directly solve the problem²⁸.

Taking into account few cases in which these points can be reflected, such as *Dilbagh Rai Jarry v Union of India*²⁹ in which a clause of a welfare legislation related to employees was in question. Which was decided in favour of the employees, as the provision was not clear, but the external factor and economic sphere influenced it the judgment.

Whereas in the *Queen v Charles Arthur Hill Heaten Ellis*³⁰, the judges majorly looked upon the compliance made by the authorities in relation to the statute and gave them importance ahead of the inconvenience to the lunatic patients. It was a strict approach by the court.

Once an interpretation is set, and decided it is from the systems which are mutually dependent.

Taking for example metaphors and idioms, Metaphors or idioms, they should not be real, but their reality is bound to be connected with the meaning attached to it. Reality is wide and can be stretched whenever and in whatsoever manner it is put in. Again here the point can be brought that, metaphors are made not to understand them real the way they are, but to make sense by connecting it with the meaning from its inception attached to it.

The terms such as good faith, honesty etc are not defined anywhere with certainty. They are subjective terms. It may fall under interpreting hard cases. The floodgate of interpretation is unlocked in this situation, because parties would definitely try to give it a shape to make it favorable.

1.5. Inception of conflict:

For philosophical problems arise when language *goes on holiday*. And *here* we may indeed fancy naming to be some remarkable act of mind, as it were a baptism of an object. And we can also say the word

²⁷Supra note 8

²⁸ Supra note 4

²⁹ AIR 1974 SC 130

³⁰ (1844) 6 Q.B. 499

"this" to the object, as it were *address* the object as "this" a queer use of this word, which doubtless only occurs in doing philosophy³¹.

The basic set of language is in such a mold that multiple objects can fit into it. Uniformity of language is sought from a social view point. But once language is formed, the consistency and further creation of rules depend upon the way they have been used.

Similarly, our conception of justice which demands that like cases be treated alike would also seem to require that judges lay down and faithfully follow rules for the use of legal words, particularly words with such vague and open meanings as "due process" and "equal protection of the laws"³².

Legality and morality also differs, it all depends on how words put and convinced in the common parlance. Hence in a way or the other it all depends on language and human nature.

In **eastern philosophy** on language, the *Pramana theory*, finds its roots in *Pramana Sastra*, it states that when something is proved, then it is real, otherwise all is in dispute. It is a key claim in *Nyaya Philosophy*, that for a basic category of utterance, the output of the language faculty is a pure belief in the proposition expressed³³.

1.6. International arena and linguistic positivism of Wittgenstein:

If we are to consider the external factors, the rules and laws shall differ from every small uniform group. Starting from home, by laws of apartments, laws of one state to other, one nation with another nation, laws and rules differ. According to the Rival Theories, great philosophical systems of Plato, Aristotle and Kant, which set out supposedly objective standards of value for human lives and societies to aspire to, "the real nature of man is the totality of social relations," wrote Karl Marx³⁴. Different conceptions of Human nature led to different views about what we ought to do and, how can we do it. An existentialist philosophy like Sartre's may seem unlikely to have social implications; but one way of justifying modern liberal democracy is by the philosophical view that there are no objective values for human living, only subjective individual choices³⁵.

According to the *Brihad Aranyaka Upanishad*, essential self of a human being is radically connected to all beings. There are theories based on the idea that people would consent to the government

³¹ Supra note 1

³² Supra note 8

³³ P.73, Ganeri J., *Artha Meaning*, Oxford India Publications

³⁴ P 3, Stevenson, Haberman, Ten theories of Human Nature,

³⁵ Supra, note 4

under some kind of idealized circumstances, such as if people were perfectly rational³⁶. These theories argue that government should be organized based on principles inherent in the structure of government, human nature, or the world. Thus, all three kinds of theory rely on rules, arising from a source external to any particular government, to make that government legitimate. Aristotle claimed that all human beings seek happiness³⁷.

Undisputed fact is that, rules and framework of language will differ from a tiny unit to a large organization. Till the activities are confined in that unit, harmony will be implied, but to fulfill the basic needs one cannot stay confined. This leads to the bargaining of convenient rules, followed by the parties. This may result in conflicts. Hence the human beings will strive to set a balance between all the legal systems, to achieve the pursuit of peace and happiness.

One such instance is, the formation of United Nations Organisation. The purpose of the United Nations, is prominent in the Article 1 of Charter of United Nations³⁸,

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Taking the analogy of the discussed principles, it is clear that, though the realities will vary, but it is not impossible to create an uniform reality for a specific purpose. Likewise the bilateral agreements are the similar examples of larger unification of rules, for establishing maximum happiness.

In the emerging global concern over environmental degradation, not every environmental change will lead to a massive redefinition of legal terms, but, in general, the social, political and world view will encourage the positive changes for the human good³⁹.

³⁶ Arulanantham, Breaking the Rules?: Wittgenstein and Legal, *The Yale Law Journal*

³⁷ Morris, *Philosophy for Dummies*

³⁸ <http://www.un.org/en/documents/charter/chapter1.shtml>

³⁹ *Supra note 4*

The ICJ's position in the advisory opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*⁴⁰ with the *Nuclear Weapons* case, there was an international law community consensus about genocide as a crime in the former case, whereas there is no similar consensus about the merits, legal or otherwise, of the threat or use of nuclear weapons. To put it in the words of Wittgenstein who would say that each language game, viz community, rests on what it regards as self-evident. To ask for proof is to play another language game⁴¹.

1.7. Conclusion:

Wittgenstein demands that we must not look for the meanings of words in fixed definitions. Instead, he suggests, "let the use *teach*". It becomes impossible for a judge to render a decision without advancing or retarding some political, economic, or social interest. He does not deny the external factors, but states that even to consider the external factors and use them in deciding the cases one needs language. The peripheral issues are subject to consideration with the condition that they are potentially been presented through language.

Judges may decide a case according to the rules set, but at the same time may stretch the ambit to look into the situation in relation to socio, political, economic events, and may create modified laws. This does not mean that the existing laws were redundant and non functional. They might have worked as the basis to understand the situation or provided the basic logic. Existence of which led to the understanding that, the law needs modification or the case can be decided with the existing rules, without interpreting them.

If we can say that, language varies from society to society, then the concept of rules, customs and convention too differ. A rule is correct and justified from the view of the society which follows it, likewise the other rules for other societies. But the moment one society steps out of its ambit, it needs to harmonize with the rest of the communities, so that the basic human nature can be satisfied. Even if there are metaphysical points behind jurisprudence, but at the end the understanding revolves around the language in which it is used.

⁴⁰ [1951] ICJ Rep 15, 21.

⁴¹ Language games of international law: Koskenniemi as the discipline's Wittgenstein, *Melbourne Law Journal*

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