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**THE NATURE OF THE JUDICIAL PROCESS: BOOK BY BENJAMIN
N. CARDOZO**- Adarsh M G¹**ABSTRACT**

Courts engage in statutory interpretation to decipher the true intent of the legislation. While lawmakers create laws, judges interpret them to give meaning to the words used. However, there can be a conflict between the intent of the legislator and that of the judiciary, raising questions about the extent of the judiciary's freedom to interpret. Sir Benjamin Cardozo recognised this conflict early on and discussed it in lectures at Yale University, two of which were published as books: "The Nature of the Judicial Process" and "The Growth of the Law." In these works, he explained that judges may need to fill gaps in legislation to apply it to different situations, which can lead to new laws through interpretation. However, this is done "interstitially." This highlights the importance of judicial interpretation of statutes in uncovering their meaning and filling gaps. This paper aims to identify the principles defined by Cardozo and interpret the role of judges through various approaches to interpretation, using relevant case law and examples from both Indian and international contexts.

INTRODUCTION

Benjamin Cardozo served as a judge at the New York Court of Appeals and later as an Associate Justice of the Supreme Court in America. He dedicated himself to developing American common law and delivered several landmark judgments during his tenure. His book, 'The Nature of the Judicial Process', has had a lasting impact on interpretation principles. In the book, he explores the process judges go through when deciding a case and how conscious and subconscious codes play a crucial role. Cardozo believes that the judge's role in interpretation is secondary if the statute has a precise bearing. He reveals the mentality and mindset of judges when looking at a case and interpreting the applicable laws in his book

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'The Nature of Judicial Process'. He discusses four judicial methods or processes relating to the interpretation and believes that courts view the law as authoritative rather than normative when making decisions.

Review of Cardozo's "The nature of the judicial process"

The judiciary plays a crucial role in interpreting and implementing statutes in cases. These statutes are laws or rules created by legislative bodies to uphold law and order and promote justice in the community. Black's Law Dictionary defines interpretation as "The art or process of discovering and expounding the meaning of a statute, will, contract, or other written document."²Judges consider logical consistency, custom, precedent, social welfare, morals and justice when making decisions. Judge-made laws are considered one of life's realities by Cardozo. Although there are governing principles, not all jurists follow the same principle, and each judge may apply a different direction in each case - consciously or subconsciously. According to Cardozo, the first question is where the Judge finds the law for their judgement. Sometimes the source is obvious, such as the Constitution or statute, but not always. It's important to note that the Constitution overrides the statute, and judge-made laws are secondary to laws made by the Legislature. Although the law may be present in the code or statute, a judge's work cannot be called mechanical as gaps, ambiguities, or wrongs may be cleared. Interpretation means understanding the Legislature's mind. Difficulties arise when the Legislature does not discuss the question when making the legislation, so the Judge must guess what the Legislature would have thought. When the Constitution and statute are silent, the Judge must look into the common law to find the rule that fits the case. The Judge's first step is to compare the case with precedents. If the precedent matches the case, it can be applied like a statute. However, no new law will evolve in such a case. The most knowledgeable judge has the best card index of topics. When there is no clear precedent or the colours don't match, the judge must create new law for the case. Each judgment has the power to set a precedent for future cases. A sentence can be based on one of many principles in law and becomes a new source for future principles or norms. However, not all codes survive and are considered void if they cannot prove their worth. Case law principles are continuously tested and modified over time. If a rule is found to cause injustice, it is gradually reworked and reformulated. Judges must extract the underlying principle, or ratio

²⁴, Henry Campbell Black, M. A.,954 (ST. PAUL, MINN. West Publishing CO 1968)

decidendi, from a precedent and determine how it should develop. This can be difficult as the irrelevant aspects must be removed from the decision.

Cardozo some principles that influence the decision-making process and extract four methods of interpretation which are:

1. Method of Logic or Philosophy
2. Method of History or Evolution
3. Method of Custom or Tradition
4. Method of sociology

1. Method of Logic or Philosophy

One method that Cardozo mentions is the rule of analogy, also known as the method of philosophy or logic. This approach requires judges to follow a logical progression and interpret statutes to preserve legal and logical consistency. Cardozo believes this method should only be used if there is a compelling reason not to. Philosophy and logic are often used interchangeably under this approach, as he views philosophy as simply using one's senses. Using logic and philosophy in decision-making provides stability and consistency, although Cardozo acknowledges that logical consistency is not the ultimate goal. Instead, it ensures that the same case or question is decided in the same manner across different subjects. While the principle may initially seem vague, Cardozo only intended to provide a broad outline for choosing a method. Choosing the correct method requires practice and is more of an art than a science, making it challenging to create a precise catalogue. In *Riggs v. Palmer*³, The testator had made a will to favour the legatee. However, it was later revealed that the legatee was responsible for the testator's murder. The court had to decide whether the will should still be valid. Using logical reasoning, the court determined that it is unfair for someone to benefit from their wrongdoing. Therefore, the legatee was denied the right to the will. The court's verdict was based on the belief that the severity of the crime committed by the legatee outweighed their legal right to the choice.

2. Method of History or Evolution

The use of land law and contract law concepts by Cardozo demonstrates the influence of history on legal growth and the need for history to shape it. When it is unclear which method to use, the judge decides which path to take. Cardozo refers to an example given by Pound to

³Riggs v. Palmer, 115 N.Y. 506

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explain this. The example concerns whether transferring movable property between living individuals is effective without delivery. Judges have used various methods to decide such cases, including the analogy of Roman law, the history of conveyance forms, and the analysis of fundamental concepts and logical conclusions. These methods may also complement each other at times. The choice of technique may depend on the case. According to Cardozo, the process of history and evolution examines the origins of statutes, while the method of philosophy employs logic. However, it is essential to note that these methods are not always opposing and can be used together for a better outcome. The process of history has limitations and only serves to clarify legal problems and lead to better logic. Cardozo believed that by illuminating the past, history also sheds light on the present and future. For instance, the record played a significant role in developing actual property laws and supplies and creating a system of feudal tenures. This highlights the importance of history and evolution in interpreting statutes, as specific laws and their conceptions come from external sources.

3. Method of Custom or Tradition

By Cardozo, judges can utilise the custom or traditional method for interpretation. Earlier jurists like Coke and Blackstone believed that custom would reign supreme over all other laws, but Cardozo's perspective is more contemporary. He believes that custom or tradition should only be used to test the application of established rules rather than to create new ones. Cardozo asserts that businesses cannot start new regulations, and legislation must be passed to be recognised as positive human law.

5. Method of sociology

Sometimes, to prioritise society's needs, logic, history, and customs may need to be bent. However, exercising control over this method of pursuing social needs is essential. Judges are often called upon to fill gaps, but their discretion must be limited. Cardozo is concerned not with how much a judge fills a hole but with their method. The principle of sociology is comprehensive and encompasses many aspects of social welfare, including public policy, morals, religion, and ethics. Cardozo placed great importance on the concept of morality about social justice.

CONCLUSION

Regarding the judicial process, Cardozo suggests that the standards of proper conduct are based on logic, history, custom, and utility. These standards can be used alone or in combination to shape the development of the law. The dominance of each bar will depend on the social interests at stake. One of the most critical social interests is uniformity and impartiality in the law. Arbitrary actions should be avoided, and the law should be systematically developed in line with history and customs when applicable. However, uniformity should not come at the cost of oppression. The importance of symmetry of sovereignty must be balanced against equity, fairness, and other elements of social welfare. The judge must decide based on their experience, study, and reflection to determine which social interest outweighs the other. The work of the judge and legislator intersect, as each legislates within their competence limits. However, the judge's limit is narrower, as they only legislate to fill gaps in the law. Therefore, the law is being created rather than discovered. The judgements and phrasing of Justice Cardozo are exceptional, resembling a work of art. He was an enlightening and remarkable judicial officer and the author of *The Nature of the Judicial Process*. Cardozo differentiated between the conscious and sub-conscious forces that can influence a judge's decision-making or interpretation of a statute. Although some judges may ignore these sub-conscious forces and avoid discussing them, Cardozo believed that acknowledging them would not necessarily limit a judge's capacity. Cardozo created four methods of interpretation that remain useful and applicable today. In the paper, these methods are explained and critically analysed. The judiciary's interpretation of a statute is an essential function, even though sometimes the bench overrides its power and becomes the lawmaker, creating a conflict with the legislature. However, this is done to ensure justice. Jurists like Cardozo help to specify the role and make interpretations definitive.