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EDITORS

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राष्ट्रीय विधि संस्थान विश्वविद्यालय
NATIONAL LAW INSTITUTE UNIVERSITY

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M.L., Ph.D.
Vice Chancellor

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Date:....09/12/2024

Foreword

I am delighted to see the publication of Interface of Law and Literature, an edited volume in an area of research that has yet to be touched upon by legal scholars in India. The pursuit of understanding law through the prism of literature is as profound as it is enlightening. Literature and law, while distinct disciplines, intersect fundamentally in the human experience. Both fields engage deeply with the complexities of morality, justice, and the societal structures shaping human lives.

This volume signifies the valuable insights and opportunities that emerge from interdisciplinary collaboration. The research papers included draw from a diverse array of sources—mythology, legal principles, cinematic narratives, and literary masterpieces—to demonstrate that law is not merely a system of rules but a dynamic force influenced by cultural, historical, and philosophical currents. These papers reflect an intellectual effort to bridge gaps, foster dialogue, and explore the intricate ways legal systems and literary narratives influence and critique one another.

This volume goes beyond simple academic analysis; it offers a thorough understanding of the narrative and humanistic aspects of law. By exploring themes that span both centuries and continents, the research papers encourage readers to reflect on the evolving dynamics of justice, equity, and social progress.

I extend my sincere gratitude to Justice S.R. Bannurmath, the former Chairman of the Law Commission of Karnataka, former Chief Justice of Kerala, and former Chairperson of Maharashtra State Human Rights Commission.

I also congratulate the editors, Prof. Mukesh Srivastava and Dr. Narasinga Rao Barnikana, and the contributors of this remarkable collection. I hope this work will serve as a valuable resource, inspiring scholars, practitioners, and students to explore new dimensions of the rich interplay of law and literature.

(S. Surya Prakash)

Preface

This edited volume explores the multifaceted intersection of law, literature, and society, examining how legal principles are constructed, challenged, and reimagined in diverse cultural and historical contexts. The contributing authors, hailing from various disciplines, offer insightful analyses of legal themes as they manifest in literary works, mythological narratives, and contemporary legal systems. From the complexities of legal language in India to the philosophical underpinnings of justice in Hindu mythology, the chapters delve into the complexity of legal systems, whereby unraveling the social and political forces that shape our understanding of law and its application. While engaging with literary masterpieces like Albert Camus's *The Stranger* and Theodore Dreiser's *An American Tragedy*, the authors in this volume illuminate the enduring tensions and contradictions between individual experiences of truth and the arbitrary nature of legal judgments. Ultimately, this collection seeks to foster a deeper understanding of the dynamic interplay between law, narrativity, and the on-going pursuit of justice in a complex world.

In his inaugural address at the National Conference on the Interface of Law and Literature, Justice S.R. Bannurmath, Chairman of the Law Commission of Karnataka, emphasized the deep and often overlooked connection between the disciplines of law and literature. He highlighted how both fields rely on the power of language, with literature exploring the richness of human emotions and law striving for precision in interpreting justice. Justice Bannurmath encouraged law students to appreciate the literary dimensions within judicial writing and judgments, advocating for a holistic approach to legal studies that includes the study of classic literature to better understand human nature and societal conflicts.

The research article titled *"Hermeneutics of Censorship"* by Mukesh Srivastava provides a comprehensive exploration of literary censorship in India, tracing its roots to colonial regulations and its continuing influence in the post-colonial period. The article examines censorship as a cultural, legal, and political phenomenon, not only visible in state actions but embedded in societal norms. By analyzing landmark cases such as those involving *Lady Chatterley's Lover* and *The Satanic Verses*, the paper highlights how censorship functions as a tool of social control, balancing free speech with community sensitivities. It encourages a critical examination of how censorship shapes public discourse, creative freedom, and national identity.

In "Trials and Literature - Captivating Scenarios and Crescendos in English Literature and

Regional Chronicles of India," Dr. I.S.V. Manjula explores the rich intersection of law and literature, highlighting the fascination with legal themes across diverse literary traditions. Drawing on examples from English literature, such as Shakespeare's Portia, and regional Indian literature, including characters like Maryada Ramanna and Vikram Betala, Manjula examines how trials and mediation have been portrayed as compelling narrative devices. By analyzing these literary representations, the paper illuminates the timeless relevance of legal concepts and their capacity to captivate audiences across time and cultures.

In "Humanitarian Grounds against Law in the Trial Scene in *The Ponder Heart of Eudora Welty*, Demudu Naidu Jureddi analyzes the tension between human compassion and legal judgment in Eudora Welty's novel. Focusing on the trial scene and the ambiguous verdict against Daniel Ponder, he argues that Welty highlights the limitations of the legal system in addressing the complexities of human nature and morality. The paper examines how the judge's personal perspective on Ponder's character, particularly his relationship with money and values, influences the final decision, suggesting that humanitarian considerations might sometimes stand in contrast to strict legal interpretations.

In "Role of Legal Language in Growth & Development of Legal System in India," Praveen and Rohith tackle the complex issue of legal language accessibility in India. They argue that the highly technical jargon prevalent in Indian courts hinders the growth and development of a truly effective legal system, particularly for those outside the legal profession. Through empirical research, the authors analyzed the impact of this complex language on legal education and practice. Ultimately, the paper aims to offer practical solutions and suggestions for simplifying legal language, promoting greater transparency and accessibility within the Indian legal system.

M. Thriveni's paper explores the intersection of law and literature through an analysis of Shakespeare's *The Merchant of Venice*. She argues that the play provides a valuable lens through which to examine legal systems and their impact on society. By exploring themes of justice, mercy, and social prejudice within the play's narrative, the chapter highlights the power of literature to illuminate the complexities of law and its application across different social groups.

Alvina Rais Khan and Filza Zaki Khan's chapter analyzes the portrayal of Julian Assange's legal battles in the documentary "Ithaka." By focusing on the film's narrative structure brought focus through the eyes of Assange's father, the authors provide a nuanced examination of key legal concepts such as extradition, diplomatic asylum, and freedom of the press. (The Prosecution of Julian Assange and the Threat to Freedom of the Press and Human Rights, 2021) Through their analysis, Alvina Rais and Filza Zaki explore the intersection of law, cinema, and public opinion, ultimately highlighting how "Ithaka" contributes to the on-going discourse surrounding Assange's case and its implications for international law and freedomof information.

The paper co-authored by Md Sabeeh Ahmad and Tuhel Ahmed, titled *The Trial of Chicago 7: Narrativity, Performativity of Principles of Justice, et al.*, examines the portrayal of law and protest in the film "The Trial of the Chicago 7." By analyzing the film's narrative techniques, courtroom drama, and legal themes, the authors argue for an interdisciplinary approach that recognizes the powerful intersection of cinema and law. Their work explores how the film utilizes cinematic language to highlight the complexities of justice, dissent, and the right to protest, ultimately prompting a broader discussion on the role of film in shaping legal discourse.

L. Ashish Kumar and D. Vasanthi explore the profound influence of the Bhagavad Gita on the Indian legal system. They posit that the *Bhagavad Gita*, the holy book of Hindu Dharma, is not merely a religious scripture, but a comprehensive guide to life, encompassing principles of morality, ethics, and law. The scripture, an outcome of the Mahabharata, consists of 18 Chapters (Adhyayas) with almost 700 verses that enumerate Ishvara, Jiva, Prakruti, Kala, Karma, etc. It is hard to deny that the Indian legal system is heavily influenced by the common law principles and positivist approach. But it should be borne in mind that the Indian Constitution, though derived from various sources, still reflects the dharmic concepts in the preamble like equality, fraternity, liberty of thought and expression etc., and many more which have been dealt with ages ago in Bhagavad-Gita. This paper is an effort to relate the principles of *Bhagavad Gita* to the existing modern legal system.

In The Social Construction of Law through the Lens of Camus's *The Stranger*, Ramyani Bhattacharya dissects the inherent subjectivity of legal systems by analyzing the trial of Meursault, the protagonist of Camus's seminal work. Bhattacharya argues that despite the ideal of impartiality, legal systems, including Indian identical interpretation are inevitably shaped by social prejudices and political contexts. Drawing upon the discipline of Critical Legal Studies, the paper deconstructs the notion of law as objective and neutral,

highlighting the disparity between lived experiences and legal interpretations. Through Meursault's fate, Bhattacharya underscores the responsibility of legal actors to acknowledge and address the inherent "politics" embedded in the constitution of law as an intellectual discipline.

In "Fact and Fiction: The Perpetual Ambiguity of Justice in Theodore Dreiser's *An American Tragedy*," Usha SK Raghupathula dissects the intricate relationship between truth, justice, and narrative ambiguity in Dreiser's sprawling masterpiece. Focusing on the deliberate omission of the novel's central crime—the murder of Grace Brown—Raghupathula argues that Dreiser intentionally mirrors the ambiguities of the real-life case that inspired the novel. By meticulously detailingthe protagonist's journey through the American justice system, Dreiser critiques a system seemingly more concerned with individual victory than objective truth.Raghupathula posits that this emphasis on winning ultimately results in a deeply unsettling sense of injustice, leaving the reader to grapple with the elusive nature of truth and the often-arbitrary execution of justice.

In Legal Principles in Hindu Mythology, Sai Datta Majji and Vaishnavi Yadav explore the historical and philosophical underpinnings of the "Rule of Law" through the lens of Hindu mythology. They argue that while legal systems may vary across cultures and time periods, the fundamental principles of justice, equity, and good conscience remain universal. Drawing upon the wisdom embedded within ancient Hindu texts, the authors posit that these narratives offer valuable insights into the development of legal thought and the enduring human desire for a just and ordered society. By examining the concept of Dharma, a central tenet of Hindu philosophy, Sai Datta and Vaishnavi illuminate the interconnectedness of cultural values, ethical principles, and the evolution of legal systems.

Dhruv Kaushik's paper, "Marx, Kafka, Khosla, and Justice of an Elite State," examines the intersection of law, literature, and social critique through the lens of Franz Kafka's *The Trial* and the Bollywood film *Khosla Ka Ghosla*. Kaushik argues that Kafka's parable *Before the Law*, embedded within *The Trial*, exposes the illusory nature of justice within systems of power. He connects this to the struggles of the protagonist in *Khosla Ka Ghosla*, who, despite being legallyin the right, must resort to extralegal means to achieve justice. By juxtaposing these narratives, Kaushik highlights the systemic barriers and power imbalances thatobstruct access to justice for ordinary individuals, drawing parallels between Kafka's literary critique and the realities depicted in contemporary Indian cinema.

Akshata Das's study examines the linguistic landscape of Indian courts, focusing on the persistent use of English as the dominant language in legal proceedings. The paper investigates the historical and socio-political factors contributing to this phenomenon, analyzing the impact of language barriers on access to justice and the effectiveness of alternate dispute resolution mechanisms. Additionally, Das explores relevant legal statutes, including Article 343 and The Official Languages Act of 1963, to shed light on the complexities of standardizing legal language within the diverse linguistic context of India.

We would like to express our sincere gratitude to Prof. S. Surya Prakash, currently Vice-Chancellor of National Law Institute University, Bhopal, and formerly Vice-Chancellor of Damodaram Sanjivayya National Law University, Visakhapatnam, for his invaluable support and encouragement in organizing this conference. His vision and guidance were instrumental in the success of this event.

We also extend our thanks to the faculty, staff, members of the Centre for Law, Language and Literature, and the student volunteers, whose commitment ensured the seamless execution of the conference. The opportunity for researchers, scholars, and students to engage in meaningful discussions and present their work was made possible through their dedicated efforts.

This collection of conference research papers represents the breadth of knowledge and innovative ideas shared during the event. We are proud to present these papers as a reflection of the fruitful collaborations and academic advancements that this conference has inspired.

Once again, we express our sincere thanks to Damodaram Sanjivayya National Law University, Visakhapatnam, for its exceptional contribution to the success of this event.

Editors

Inaugural address

Justice S.R. Bannurmath

Chairman, Law Commission of Karnataka &

Former Chief Justice of Kerala and Former Chairperson of Maharashtra State Human Rights Commission

Ladies & Gentlemen

Respected Vice Chancellor Prof. Surya Prakash, Damodaran Sanjivayya National Law University. Prof Madhusudhan Rao, Registrar. All the faculty members, all the participants, Invitees & More Importantly the future of this great nation, future Advocates may be corporate or litigation, may be judges, may be politicians may be entrepreneurs or academicians.

Ladies & Gentlemen

I feel privileged and honoured for being invited as Chief Guest at the National Conference on "interface of law & literature" organized by the prestigious Damodaram Sanjivayya National Law University.

This is the second time the university has invited me and as such my special thanks to Dr. Surya Pakash the Vice Chancellor and the institution for the invitation.

The subject of this conference is a novel initiative to introduce law students to look into the interface and relationship between law and literature with various sub-topics and I congratulate Dr. Surya Prakash and his team for the same.

FRIENDS

Law and literature are different branches of study; however their interaction with each other has attracted many researchers across the world to find out the exact relationship between them. Though they are separate branches of social sciences, they share closer proximity and come together in objectives.

Literature tends towards creativity, variety in description, and law on the other hand tends towards clarity and logical legal interpretations.

When I started thinking about the law and literature and the impact of each other as the subject for this speech, I found that the two disciplines have complex and interesting relationships.

“The legal imagination” written in 1973 by James Boyd White is often credited with initiating the law and literature movement. John Wigmore’s list compiled over 30 years helped to generate the modern embodiment of law and literature.

Justice Benjamin Cardozo’s paper “Law and Literature” analyses the literary style of judicial opinions.

Indian author Dr. Shakuntala Bharvani has contributed to the study of Law & literature in her book “The Law & literature”.

Today there are a good number of books, research papers available on this subject. The close relationship between Law & Literature is apparent in that they both implement the use of word and composition.

As Justice Sikri in one of his speeches said:

“Words are simple, they are like musical notes making up a music, it is the arrangement of music notes that lead to a novel complexity and symphony. The arrangement of words that makes a piece of literature and the arrangement of words in legal terms that composes a law and judgment.”

Friends

Now I would like to make efforts to find out various facets of the relationship between the law and literature.

To find out the connection between the law and literature, we have to see it in three ways: (1) Law - AS -Literature; and (2) Law -IN - Literature. (3) Law- ON -Literature

But today I am confining myself to first two. Viz Law -AS - Literature and Law - IN - Literature

Law is a set of rules that are created and enforceable by social or state institutions to regulate human behaviour.

It has been described as a science and art of doing justice.

The object of law is to restrict human behaviour from doing things which are not moral or proper in the society and make an orderly society. This object of implementing and enforcing law is achieved through judgments of the courts.

Basically, law is perceived as a dry subject and judgments authored are not pieces of interest as a literature for a litigant or a common man.

With my experience as an advocate and a judge, I can boldly say that when a judgement is delivered, the litigant is interested only in the last line– whether he has succeeded or not in the case. He is not interested in how the judge uses flowery language or intellectual level of the judge or how many judgments you have quoted. But for a student of law the way a judgement is written, the wordings the judge has interpreted and used, the quotes he has mentioned, makes law students understand how the judge has analysed the facts and the law, what material he has relied upon to come to emphasize his view to come to a particular conclusion.

The Greek philosopher Plato recognized a relationship between law and literature more than two thousand years ago. He said “A society’s law book should, in right and reasons, prove when we open it, far the best and finest work of its whole literature."

Scholars such as White and Ronald Dworkin considered law as literature because it maintains the meaning of legal texts, such as written law, and like any other genre of literature, can only be discovered through interpretations.

The only difference between law and literature is that human emotions are absent in law or Statutes whereas in literature emphasis is more on human emotions. However, I may add that many of the judicial opinions or the judgements have been regarded as classics and literary masterpieces. The judges do express emotional feelings also.

I am tempted to quote some of the passages from judgements which are regarded as literary masterpieces. Late Justice Krishna Iyer was one such judge who was also known for his inimitable style and his knowledge and command over the English which was something phenomenal. Apart from being a judge he was a prolific writer having authored various books articles and delivered many prestigious lectures.

His use of words and construction of lengthy sentences were astonishing. Many times, he used to coin new words which we do not find normally in any dictionaries also.

In the lighter sense I may mention that whenever a judgement of justice Krishna Iyer was quoted or I came across, I used to ask my court master to keep a good dictionary by my side because he was using some of the words which normally, we do not come across unless you are a classic literature loving person? Even opening of the judgement was with beautiful sentence or paragraph.

While reading his judgments, I always felt like reading some story or part of classic literature.

Take for example a criminal case judgement which opens like this "Not for dramatic effect but to sting social conscience, we set out the tragic story of this case which is typical of the spreading disease of immoral traffic, to remedy which the Suppression of Immoral Traffic in Women and Girls Act, 1956 (for short, the Act) was enacted by Parliament in a mood of high morality but with such drafting inefficiency that it has pathetically failed to produce any decline in the malady."

On the facts of the case the judge says: "The scene is the Isias Bar, 15, Free School Street, Calcutta. A hall of enchantment extends nocturnal invitation to have a nice time with svelte sylphs. The entrance fee is but a paltry Rs. 15/- per man and inside is served animating liquor. Scantily clad female flesh of sweet seventeen or thereabouts flirt about or sit on laps, to the heady tune of band music. They solicit carnal custom, and the willing male victims pay Rs. 30/-, choose whom they fancy, drink together and, taking leave of decencies, indulge in promiscuous sex exercise legally described as operation prostitution. The stage is busy with many men and girls moving into rooms, lavatories and chambers. The curtain rises and a raiding party of police and excise officers surprise this erotic company drowned in drink and damsels."

What the hon'ble judge wanted to say in simple language is that this case arises under Suppression of Immoral Traffic in Woman and Child Act. The police conduct a raid on a dance bar cum prostitution house where young girls are engaged in prostitution and where men were provided with liquor.

In another famous judgement on Erotic display of female body and censorship, in Raj Kapoor's movie ''Satyam Shivam Sundaram' case Justice Krishna Iyer opens his judgement thus "It is deplorable that a power for good like the cinema, by a subtle process, and these days, by a ribald display, vulgarizes the public palate, pruriently infiltrates adolescent minds, commercially panders to the lascivious appetite of rendy crowds and inflames the lecherous craze of the people who succumb to the seduction of sex and resort, in actual life, to 'horror' crimes of venereal violence. The need to banish cinematographic pornos and the societal strategy in that behalf had led to the Cinematograph Act" This para in simple words is to convey the object of Cinematograph Act.

In a case of alleged illegal detention of a person by police he says "The petitioner, undergoing inhibitive incarceration in West Bengal, seeks this Court's writ to be liberated on grounds of substantive innocence and processor injustice. Judicial vigilance is the price of liberty and freedom of the person is a founding faith of our Republic. So, it behooves us to examine the legal circumstances of the detention in the light of the constitutional constraints under Art.22 and the procedural safeguards of the Act (the Maintenance of Internal Security Act, 1971). A brief calendar bearing on the landmark events, giving the core facts relevant to the legality of the detention, is necessary right at the beginning.

Former Chief justice Y. V. Chandrachud (father of Present CJI Dhananjaya Chandrachud) also had a penchant for language and literature.

In Minerva Mills Case while considering amendment to Constitution and basic structure he wrote "Amend as may even the solemn document which the founding fathers committed to your care, for you know best the need of your generation. But the Constitution is a precious heritage; therefore, you cannot destroy its identity.

Friends,

There are many such examples of judges writing judgements in classic literature style like Justice Benjamin Cordozo, Lord Denning, and many more. It is also to be noted apart from writing judgements in literary style, many judges make use of quotes or passages from classic literatures in their judgements.

Please note that use of quotes from classic literature or even poems or ancient texts is used only to emphasise the point which the judge wants to convey.

Justice Sikri has explained this beautifully “When the judge, is confronted with a case composing of such elements it is essential for him to bring the passions of the courtroom, the emotions of the parties and the sentiments of the witnesses to his pronouncement, for then only will the end result be a true culmination of the proceedings that occurred, one that is able to reflect empathy and one that is able to mirror the events with such accurateness instilling confidence in the public, by bringing about a sense of transparency.”

He further says “Apart from literary and flowery language many times judges frequently refer to Shakespearean quotes from his dramas, or quotations from famous literary pieces, prose or poems or even couplets revealing moral significance. This is only to be emphatic and not mechanical, to be ardent and not halfhearted, it is essential at times to take the help of the literature, that brings out these elements rather seamlessly, for the judge aspires to express the exact thing, it's simply that literature conveys it better.”

Few examples of use of literature in judgements are:

In Budhadev Karmaskar v. State of West Bengal while upholding the conviction and the sentence of life imprisonment imposed on the accused for the murder of a sex worker, the court referred to a number of literary works like novels and stories of Sharatachandra Chattopadhyay’s like “Devdas”, Dostoyevsky’s “Crime & Punishment” to convey the message of human dignity of sex workers enshrined in Article 21 of the Constitution which extends to all humans, regardless of what they chose as a profession.

In Supreme Court Advocates on Record Association and Another v. Union of India, while upholding the Primacy of the Chief Justice of India, the Court cautioned against the misuse of his power and the judgement began with this conception by quoting Shakespeare in ‘Measure for Measure’ “We begin with a note of caution, thus: O, it is excellent To have a giant's strength; but it is tyrannous To use it like a giant.” In Nallapati Sivaiah v. Sub-Divisional Officer, Guntur, A.P., the Supreme Court was

concerned with the evidentiary value of dying declaration and regarding the same relied on literary text.

“There is a historical and a literary basis for recognition of dying declaration as an exception to the Hearsay Rule. Some authorities suggest the rule is of Shakespearian origin. In The Life and Death of King John”, Shakespeare has Lord Melun utter what a “hideous death within my view, retaining but a quantity of life, which bleeds away,lost the use of all deceit” and asked, “Why should I then be false, since it is true that I must die here and live hence by truth?” As we all know ‘Euthanasia’ has been the subject of debate whether it's in the space of philosophy, literature, politics and law. It has moral and ethical considerations that touch the very core of the issue.

In Aruna Ramchandra Shanbaug v. Union of India & Ors, Justice Katju dealt with the issue of plight of people in vegetative state like Aruna Shanbag with a couplet of Mirza Ghalib

“ मरतेहैआरजुमेमरनेकी

मौत आती हैपर नही आती”

[I am dying (wishing) for death, but despite death hovering around, it is elusive or not coming.]

Another path breaking judgement consisting of 495 pages delivered by five judge Constitution Bench headed by then chief justice Deepak Mishra quoted extensively from classic quotes while considering Sec. 377 IPC criminalizing consensual same sex or homosexuality.

The introduction started with quote from the poem “love in all guises” by great German thinker and poet Goethe “I am what I am, so take me as I am” emphasizing individuality of every person, we find ample uses from literatures like “No one can escape from their individuality “by Arthur Schopenhauer.

Another quote from Stuart Hall’s essay “On liberty” it is stated “But society has now fairly got the better of individuality, and the danger which threatens human nature is not excess, but the deficiency of personal impulses and preferences”.

Justice Mishra wanted to highlight that society is a composition of both acceptance and denial and we should not keep away the people (LGBTQ) but understand their perception and accept it.

Friends, there are abundant quotes in this judgement from Shakespeare, Alfred Douglas, and many more literary greats. Even the conclusion "Let us move from darkness to light, from bigotry to tolerance and from winter of mere survival to the spring of life as the herald of New India to a more inclusive society" is an excellent classic message to the society.

I feel everyone especially all the law students should read the judgements not only from point of view as a student of law but even as a literary piece.

These are many such examples of judges using literature as law. You can also look into famous literary pieces of judgements by Lord Denning in the case of Miller Vs Jackson and Lord Hailsham in Smelly's limited Vs Breed or many judgements of Lord Atkin.

Ladies & Gentlemen

Without disrespect to the great judges, who have written judgements in classic ways, my personal view on this point is that while citing literary texts or writing in very flowery language, it may appeal to the readers interested in literature but I feel that the main purpose of a Judgement is to decide a case and give justice to the aggrieved in simple language for the understanding of litigant, a common man.

As I said earlier Common man or litigant is only interested in the last line of the judgement i.e., Case allowed or dismissed or convicted or acquitted.

No doubt every judge has his own style of writing a judgement, maybe in simple words or as a beautiful piece of literature, but I feel it should not create confusion with legal jargons.

Ladies & gentlemen

Now let us go to the next category

Law - IN- literature

Literature contains a surprising amount of legal subject matters.

When we look for law in literature there is abundant material available. The very first name that comes to my mind is the great William Shakespeare. His ideas of justice, mercy and how Venetian and English law worked. In the famous drama “Merchant of Venice” there is a trial scene where Shylock demands a pound of flesh for a forfeited loan and Portia as advocate interpret the law of contract.

This entire act shows how human society revolves around those laws seeking justice and equity. Similarly, the drama “Justice” by John Galsworthy deals with issues of crime and punishment criticizing the Judicial system of the Victorian era, where rich always go scoot free while poor men suffer in prison.

The next literary piece dealing with law is the famous novel “Crime and Punishment” by Fyodor Dostoyevsky in which the Author tries to convey the psyche of a criminal and how he reforms. Yet another famous literature connected with law is the novel “Der Process” (The Trial) by Czech novelist Franz Kafka.

Friends

These are a few examples of great literary works which deal with legal situations in different ways. In modern days many stories, dramas and even movies or T V serials are seen making the law or true legal proceedings as the base for the story.

I must mention here that when I just entered law collage, the novels of Earl Stanley Gardener with a central character Perry Mason, a criminal lawyer and his antics in criminal trials attracted me to Criminal justice system.

In recent years many authors like John Grisham, Scott Turrow, Harper Lee, Michale Conelly have given us the best legal thrillers bringing Court dramas.

I must mention here Henry Cecil, a British County Judge, authored many fictional novels with law and courts as the central theme. Though law and court proceedings are boring to common man, Henry Cecil made use of loopholes in law in his books in a comic way with unpredictable twists of plot highlighting some of the absurd contradictions of the British legal systems in a very satirical and comical way.

There is a beautiful story by Reginald Rose titled “12 Angry Men” on which in 1957 the movie of the same name was produced. This story exposed the human nature of 12 common men sitting as juries deciding a murder case.

Even many movies and TV shows are made based on true cases. The best examples are the famous story of Aarushi murder case (Talwar), Nanavati case (Rustom), O.J. Simpson case (The people Vs O J Simpson). There is a famous Marathi drama शांतता कोर्ट सुरु आहे (silence, court is in session) again exposing human way of thinking and behaviour.

Ladies & Gentlemen

We find though law & literature are holding different fields, and study of literature has little contribution to the interpretation of statutes or deciding any case, I feel literature contributes a great deal in understanding and improvement of judicial opinions.

As Edward Harris Says “Some writers studied work of literature from jurisprudential perspective; others have applied the tool of literary analysis to legal texts such as Statutes, and judicial opinions which raise the question of interpretation similar to those posed by fiction.”

To conclude I am of the view that though law & literature are two different subjects ultimately can join together to answer various problems that arise out of human conflicts. Literature can increase the ability to perceive a text and thus improve interpretation and composition of legal texts.

The students of law reading classic literature will learn to understand the sensitivity of the human being and his relation with the society. As such I appeal to the law students whenever possible, instead of aimless chatting on WhatsApp, or any social media, please find some time to read classic literature to improve the quality of your English language and in understanding law.

Once again thank the Vice Chancellor, and all faculties of the University for giving me this opportunity and thanks to you all for patient listening.

Thank you & God bless you all.

Literary Censorship in India and its Discontents

Mukesh Srivastava

Promiscuous reading is necessary to the constituting of human nature. The attempt to keep out the evil doctrine by licensing is like the exploit of that gallant man who thought to keep out the crows by shutting his park gate… Lords and Commons of England, consider what nation it is whereof ye are: a nation not slow and dull, but of a quick, ingenious and piercing spirit. It must not be shackled or restricted. Give me the liberty to know, to utter and to argue freely according to conscience, above all liberties. (John Milton: Areopagitica, 1644)

Abstract

The phenomenon of Censorship in India offers a cultural critic the opportunity to study and unravel not only the realm of contemporary cultural politics which can be said to be arguably both visible and invisible in shaping the contours of real politic, but also at the same time, opens up a new space of thinking about the historical limits and possibilities of regulating citizenship in relation to formations of gender, caste and religious identities. Thus, for instance, when we closely examine some legal cases relating to obscenity and blasphemy or what is popularly called in India 'hurting religious sentiments' we may discover a subterranean structure of epistemological shift, even epistemological violence, that was first created by British colonial regime, but later inflected and recreated by the urgencies of nationalism and nationalist cultural politics.

Keywords: censorship, colonialism, hermeneutic, literary theory, jurisprudence, adjudication

Introduction

In this paper we set out to examine Censorship as a cultural phenomenon mainly in relation to published texts in India. First of all, let us turn our brief attention to the term 'censorship'.[1] The etymological roots of the word censorship lie in the

Latin 'cense' which means to estimate, rate, assess, judge or reckon. The censor was one of the two magistrates in ancient Rome who was in charge of census-taking, taxation and control of public events like sports and festive occasions. Thus, Censor comes across to us as a supervisor of the limits of public behaviour or as a regulator of the limits of the acceptable in the arts. In a totalitarian society censorship is clearly visible and recognizable even though it may be most oppressive and frustrating to writers and artists who wish to explore the world freely and creatively in modes of perception that are often contrarian to the official views or ideology of the state. This kind of forced or coercive silence may compel an artist to run away in exile so as to express oneself as freely as possible. The case of a Boris Pasternak in Russia, a Milan Kundera in Chekoslavakia or a Khalil Gibran in Lebanon are a few examples of expatriate artists among many in totalitarian regimes. However, in liberal democracies censorship might acquire a wide variety of regulations or controls that vary from coercion to gentle monitoring or from persuasion and wilful self –censorship to benevolent guidance into a new area of 'thinking' thus eroding the wall between the controller and the controlled, the silencer and the silenced. Here the state does not directly 'crush' an individual voice but rather it structures or creates a field of action and self- expression to which an individual may be voluntarily and spontaneously integrated. Also, democracies seem to offer the illusion of a wide variety of voices as individual choice. However, on a close examination, this apparent diversity of voices can also result into silence for an artist whose singular tone may be lost in the level playing field of equally competing voices. And in extreme cases of iconoclastic self – expression democracies too may punish an artist through the rule of the mob, as in the case of M.F. Hussain who died in exile in Qatar, James Laine whose book on Shivaji led to a mob going on rampage and Joseph Lelyveld who became controversial for his biography of Gandhi. Therefore, with respect to liberal democratic societies the theoretical complexity of the term must be duly acknowledged[2]…However, for the purposes of this essay we proceed with the legal and 'traditional' meaning of the term censorship as a rubric that subsumes various repressive measures, governmental as well as a wide variety of non-governmental measures, that includes bans that come after publication of a book. This may also include understanding coercive tactics

exercised by a group of people to withdraw a book, or suppression of a book on other grounds.

Traditions of (In) tolerance

Did India have a long tradition of tolerance of dissenting opinions and free expression? On the surface it may seem so mainly because it could be generally argued that in the Indian literary traditions, varied and rich as they are, there are no parallels to the obvious cases of censorship like the banishment of Ovid, the infamous book-burnings of the medieval Inquisition, or the Roman Catholic Church's list of forbidden books. However, on closer examination we might discover in the Indian tradition a qualitatively different kind of censorship in operation, a more regulative subterranean kind of structure, where the writers or authors and the State are not always in an antagonistic or contrarian relationship, thus not allowing censorship to emerge as an external force which seeks to control and regulate his or her thought, even when exercised by the writer herself. [3]

We need to re-think of censorship, especially in the pre-modern Indian contexts, as a range of varying factors, existing in a continuum rather than discrete and disparate powers which can be identified and compartmentalized. It is thus possible to argue that in India we have historical periods where censorship is embedded as a part of protocols of legitimate and conventional forms of writing in definitive genres and we have to 'prise it out' with careful attention while in other historical periods it may become externalised. This is so because in pre-modern India the norms of social control or constitutive censorship ensured the rigidity of the norms of acceptable in contemporary society.[4]

Obviously, a hierarchical society of India did not allow space to the writer as a free thinker or as a public intellectual who would be able to re-produce the larger epistemological framework or cognitive schema for his or her compositions. Therefore, it would be out of place to think of censorship as an external inhibitive force when it is both structurally embedded and constitutively inscribed in the public domain of what is prescribed and acceptable. In such a scheme of things, the work of resistance or rebellion against the norms of the acceptable, as expressed sometimes in the folk, bhakti or Tantrik traditions had to be retrieved from their anonymity, often in

the form of practices of critical reading against the grain, while reading the texts of the mainstream themselves.[5] In the words of Mini Chandran:

> The mores of a deeply hierarchical society ensured that artists do not overstep boundaries. Hence the censoring force must have come from within the artist, not without. This form of silencing dissent is an embedded form of censorship which we need to coerce out of the historical and literary data which are available to us today. This is obviously not suppression of free speech but regulation of speech even before it is articulated. (Emphasis mine.)[6]

Censorship and Cultural Colonisation

The continuity of the colonial project with nationalist ambitions of governance is perhaps most visible in the forms of censorship practiced in India. Colonial roots of most of our laws demonstrate the continuity between the British Empire and Indian Nationalism in the enunciation of principles of governance and regulation of free speech. The colonial strategies of regulation, control and proscription of free speech have been 'inherited 'by Independent India, which is "best symbolised by the fact that India has a Ministry of Information and Broadcasting. Which dictator could ask for more?" wrote Rajiv Dhavan.[7]

Censorship in late nineteenth and early twentieth century India clearly works through landmark cases and judgements. These would have to include the controversies and ban surrounding the circulation of D.H.Lawrence's *Lady Chatterley's Lover* and the Indian Supreme Court Judgement on the book namely, Ranjit Udeshi ; the Rajiv Gandhi Government's decision to ban the entry of Salman Rushdie's *The Satanic Verses* under the Indian Custom's Act even before the book was published in India; the public outcry and eventual withdrawal of *Shivaji: Hindu King in Islamic India*; the persecution and eventual exile of Maqbool Fida Hussain and the Delhi High Court Judgement on his paintings; not to mention the highly provocative and stimulating incidence involving the publication and pulping of Wendy Doniger's *The Hindus: An Alternative History* among several others.

Ranjit Udeshi (1965) involving D.H. Lawrence's Lady Chatterley's Lover may be read as an allegory of cultural colonisation in relation to the understanding of

phenomenon of obscenity, and obscenity law in particular. This case arose out of an appeal to the Supreme Court against the conviction of a bookseller and his partners by the Bombay High Court for being in possession of a book containing 'obscene' material, *Lady Chatterley's Lover*. In arriving at the judgement, while upholding conviction, Justice Hidayatullah, who was a Master of English Literature from Cambridge University, and was known to be a 'progressive' thinker, applied Hicklin Test to determine obscene content. The Hicklin Test betrays clearly the Victorian English morality with respect to sexual conduct and its repression in society. Its object was also to contrast the native 'Hindu' manners and morals with the lofty ascetic Protestant ethic of British ideals. So, Judge Cockburn laid down the test as follows:

> I think the test of obscenity is this: whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall… it is quite certain that it would suggest to the minds of the young of either sex… thoughts of a most impure and libidinous character.[8]{R Vs. Hicklin,1868, LR3 QB 360}

While the Hicklin Test is no doubt outdated, its effects on the general minds and the judicial minds in India in particular, continue to linger as we witness in the successive judgements of the Indian higher courts.[9] Little wonder that the nationalist imagination and cultural politics woven around it in many discoveries of the great Indian past, have also fallen prey to such Victorian arguments about racial and sexual purity as demanded by the call for moral and religious superiority of the Raj.[10]

Cognate with the desire to censor 'impure' material is also the desire to curb free speech in relation to new or dangerous interpretations of fictional religious texts. The amazing, though relatively less known case of Jawaharlal Nehru showing an 'intolerant 'face to free speech even as he tried to 'appease' his political opponents, comes to mind. The book in question was Rama Retold: A Secular Retelling of the Ramayana, written by Aubrey Menen in 1956. Nehru was a writer himself with some claim to critical understanding of history and indeed of colonial laws. He also appreciated the value of literature, history and liberal arts, and being a democrat, he was of course not averse to listening to contrarian views and dissenting opinions. Yet,

as the chief administrator of the country, the Prime Minister, Nehru did resort to, on more than one occasion, acts of 'suppressive order' and forcible exclusions, to keep out from discussion what was supposedly dangerous, subversive, or 'fissiparous'[11]

The incidence of banning A Secular Retelling of the Ramayana, locating the epic in the tradition of other retellings like Kamba's or Pampa's Ramayanas, is the first link in the chain of religious censorships that seems to continue unabated till date. Other examples may include A. K. Ramanujan's celebrated and controversial essay, *Three Hundred Ramayanas,* the Jain version of the Ramayana and *Pauma Cariya* of Vimalasuri; E.V. Ramaswami Naicker's Tamil version of Ramayana; Salman Rushdie's The Satanic Verses; Gopal Godse's Gandhi *Hatya Ani Mee (Gandhi Assassination and I) among several others.*

It may be pertinent to cite at this place Milan Kundera to emphasise the critical point that all religious myths, regardless of geographical locations, cultures, and time periods, need to be explored and interpreted and subjected to a psychological and literary scrutiny to enlarge the equipment of human understanding. No matter however 'sacred' be the canonical text; no matter how 'pure' the faith it may inspire among its followers, all religious texts have human imprints on them and therefore deserve to be read as "texts". In the words of Milan Kundera:

> The historical and psychological exploration of myths, of sacred texts, means rendering them profane, profaning them. 'Profane 'comes from the Latin profanum: the place in front of the temple, outside the temple. Profanation is thus the removal of the sacred out of the temple, to a sphere outside religion. Insofar as laughter invisibly pervades the air of the novel, profanation by novel is the worst there is. For religion and humour are incompatible.[12]

Both Rushdie and Menen, in their characteristic styles, and in very different ways, pick up religious mythologies and render them as objects of multiple inquiry by profaning them, as it were.

We do not have to agree entirely with the approach of Kundera and Rushdie who would insist on 'profaning' a religious text, to the point of biting satire, mockery and outright ridicule, but to subject them to absolute censorship, on the other hand, is

difficult to accept. Legal scholars and the Supreme Court do not have an absolutely flawless or transcendental set of laws to guide them on this matter, and it would be relatively safe to say that obscenity or blasphemy laws are open to interpretations with evolving patterns of social and cultural norms all over the world. Therefore, blasphemy per se may be *encouraged* as a form of academic inquiry into matters that form the substance of religious myths and fables, and that may well be the part of critique of society and religious and moral order. However, to extend critical inquiry into wilful and biting satire and turning religious faith into a deliberate butt of jokes is an altogether different matter. Rushdie's greater 'sin' was mockery, and that partly explains the virulence and outrage caused by *The Satanic Verses.*

The irreverent approach of Rushdie to Islam and the Prophet in a bid to demystify both of them, and to render them amenable to critical scrutiny -- much like the stance of Wendy Doniger on *Brahmanical* Hinduism, or that of Menen on Sita and Ram – raise several issues about the conditions of the possibilities of the emergence of religious discourse in an ideological or political vacumn. As Michel Foucault's tryst with, and open support for, the infamous Iranian Revolution in general, and Ayatolla Khomeni, the iconic religious leader, in particular would indicate, critical theory may misconstrue the complex issues of faith and religious belief.[13] Religious discourses and mythologies in India have a great deal of diversity as to their conditions of production and distribution. Whether all of that may be analysed, opened up for critical scrutiny through the all too singular and familiar left-wing lens of caste and tribe and distribution of relations of power, including relations of property, remains an area of concern that, understandably, falls outside the domain of this essay. Suffice it to say, however, that critical thinking is *sine qua non* under all conditions even when we realise the limits of thought and conceptualisations in understanding the enormity of life with its vastness.

Vernacular Press

We now turn briefly to 'fights' in the vernacular press and the case of censorship in regional languages in India. It begins with the description of one of the earliest cases of obscenity litigation in India, namely Chandrakanta K. Kakodkar v. State of Maharashtra. The allegation of obscenity was made against a short story

'Shama' written by Chandrakanta Kakodkar and published in the Marathi magazine Rambha in 1962.This matter eventually reached the Supreme Court which was heard by a bench presided by Justice Jagan Mohan Reddy. What is most interesting in this case is that, while interpreting Sec. 292 of the I.P.C., which attempts to define obscenity, the bench made the following observations:

> What we have to see is that whether a class, not an isolated case, into whose hands the book, article or story falls, suffer in their moral outlook or become depraved by reading or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, therefore, be judged from this aspect.[14]

Of course, the final judgement was that the story in question was not obscene. What is most interesting as well as intriguing here is the reasoning applied by the Supreme Court. Its only when a whole class of people, not an individual, gets morally depraved and have lecherous thoughts aroused in their minds that a work of art can be said to be obscene not otherwise. The larger issue here is not only how the court is going to determine whether or not a whole class is morally affected. Rather, the judgement brings to mind the technology of production of colonial subject by the ideological state apparatus, which in this case is Law, working through the act of judicial interpretation. What is on display here is a classic example of how habits of thinking and reading, including production of desire in the act of reading, are to be regulated, and by extension, framed.[15]

In the next case to be considered we discover a fine distinction made by the Supreme Court which is generally elided by most legal practitioner dealing with obscenity law. In Samresh Bose v. Amal Mitra (1985) the court distinguished between obscenity and vulgarity and emphasised the 'creative' use of language in literature whereby certain characters may be drawn from 'real life', as it were, speaking the language of the riff raff which may be shocking to the taste of a man of 'average morality' and sensibility; but on the basis of 'shock value' of language use, argued the Supreme Court, a work of art cannot be held to be obscene. Thus, an author, thankfully, does have the artistic license to be 'realistic' provided such a depiction does not lead to the production of a depraved mind nurturing lascivious thoughts!

There are then a few 'sensational' cases that were in the media for quite some time. Gopal Godse's personal account of the assassination of Gandhi in a book titled, *Gandhi Hatya Ani Mee* (Gandhi Assassination and I) that was banned by the Delhi administration in 1968; and the fate of Bangladeshi writer Taslima Nasrin, who became the bête noire of her countrymen with the publication of her novel Lajja, and even as she migrated to India, her autobiography, *Dwikhandita*, was banned by the Communist Government of West Bengal in 2003. Justice Chandrachud of the Bombay High Court heard the petition of Godse, seeking to annul the order of forfeiture passed by the Delhi administration and later by the state of Maharashtra. After a series of discussions, claims and counter-claims that were involved in verifying and testing the position of the prosecution that the said book of Godse contained certain passages that were dangerous and detrimental to the communal harmony of the country, the court finally arrived at the conclusion that the book was 'not harmful', nor could the author be accused of 'distorting history'. So, the prosecution's claim that the major theme of the book was that 'Muslims are essentially aliens and Hindus should arm themselves to deal with them' was unfounded. The court observed that the theme was 'more than one':

> The central conception which animates the book, and perhaps dominates it, is that Gandhiji's murder was not the act of a mad man, that it was a political assassination and that the genesis of the murder was the policy persistently pursued by Gandhiji that Muslims must be appeased at all costs.... The theme in other words is that Gandhiji's life is the price which was paid for the decision that the country be partitioned and the subsequent decision to pay the cash balances to Pakistan in the face of its aggression on Kashmir. (Emphasis mine)[16]

In the reasoning of the court the objective of the book was to:

> Emphasise that Gandhiji wrongly pursued the policy of appeasing the Muslims, that it was in pursuance of that policy that he compelled the Government of India to revoke its decision to withhold the payment of cash-balances to Pakistan and that this policy of appeasement was

> responsible for the incalculable miseries which the partition brought in its wake.[17]

Another allegedly offensive portion of the book was the seventh chapter describing in detail the last wishes of Nathuram and Apte to throw their ashes into the river Indus, after Indus became a part of India again. The advocate General argued that this chapter could promote feelings of enmity between Hindus and Muslims but once again the Court disagreed and observed:

> The chapter contains, if anything, an exhortation that what once belonged to India, and had become a part of Pakistan, should be won back by India. The Muslims who are citizens of India are not likely to feel aggrieved by any such exhortation, because such a problem arising out of attempted resurrection of lost territory is political, not communal. (Emphasis mine.)[18]

The most interesting hermeneutic turn taken by the court here is a clear separation of the domain of the communal from that of the political for the prevention of application of censorship, and to uphold that the book could not be forfeited under the Section 99A of the CrPC as it did not promote feelings of enmity between Hindus and Muslims.

While this case is regarded generally as a benchmark case for literary censorship in India, from the viewpoint of a cultural critic, it has far reaching implications.

In a similar vein Taslima Nasrin's case draws our attention to the mutually opposite and contradictory stance adopted by political parties in India when dealing with the protection of free speech. In general, the Left parties in India would like to be seen as progressive and 'liberal' who have confronted the culture of 'intolerance' promoted by the Hindu fundamentalists, particularly when the Right-Wing fundamentalists attacked M.F. Husain and his paintings of the Hindu Goddesses. However, the same C.P.M., which tried to 'protect' Husain from being driven out of India, did not show a liberal understanding and tolerance in case of Taslima Nasrin, and further, became in a way instrumental in her persecution and exile from India. Instances like these can be multiplied with more examples and they go on to

emphasise the axiomatic point that literary censorship in India is anything but literary, and that it is determined by considerations which are deeply political.

As far as constitutional protection of free speech is concerned, it is available, or ought to be available, not only to those who are politically correct, but especially to those who may radically disagree with the larger state policy. And in this context, one may face peculiar kinds of conundrums, where it may not be easy to take sides, and where one would like to avoid legal or governmental binary opposites, such as freedom vs. dictatorship; liberal West vs. despotic East; secular modernity vs. traditional religious belief and so on. So, it has been extremely difficult for genuine intellectuals not to be misunderstood as they would certainly bypass the known sterilities of the binaries usually propagated by the mainstream media, and try to pose the problematic afresh, or simply change the terms of the way the discourse of censorship or communalism is constituted. Salman Rushdie affair --- which was revived in a way by P. Chidambaram, by stating in the media that the Rajiv Gandhi Government should not have banned The Satanic Verses ---- would be an excellent example of this tendency. Supporting 'free speech' in this case would tantamount to aligning yourself with the 'Eurocentric arrogance' that claimed a monopoly over democratic systems, and thus attested to a 'simplistic faith' in the writer at the cost of recognizing the complex patterns of the social and cultural discourse that have created a pluralistic society in India. On the other hand, if you did not support 'free speech' in this case, you are likely to be seen in the company of religious obscurantists, fundamentalists and so on. To come clean on such issues, a writer must be on her or his guards against open and clear ideological partisanship. Otherwise, those who opposed the removal of A.K. Ramanujan's essay from the syllabus of Delhi University should have also opposed the ban on the propagation of a Christian version of the Quran; and the people who rightfully condemned the Hindu fundamentalist attack on M. F. Hussain, should have equally deplored the Muslim Fundamentalist's hounding of Taslima Nasreen. The Indian Supreme Court, therefore, lays down clearly the principle of protection of free speech as the norm, and unless there is a grave threat, or in the phraseology of the American Supreme Court, 'clear and present danger' to the life of the people, or a clear violation of law involving 'reasonable

restrictions', free speech must prevail. Justice Shetty has explained how a situation can be construed as dangerous in the Indian context:

> Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark' in a 'powder keg'.[19]

The problem, however, ---despite the laborious and cautious intervention by the Supreme Court in this case ---- still remains intact because the interpretation of what will cause 'spark in a powder keg' will vary from one situation to another, and thus the limits of 'acceptable speech 'may keep shifting, not only with the world-view, or ideological preferences of the Bench, but also with different pressure groups from the realm of 'the social'.

The number of cases presented here for censorship display a curious mixing and tossing about of genres such as literature, history and autobiography in a manner where 'truth value' of each is seemingly juxtaposed with another so as to elicit the claim made for and against censorship. Of course the courts are not generally expected to go into the scholarly concerns of representation of reality, or truth claim in fiction and history, or to determine through investigations in literary theory and historiography about the qualitative differences between fictional, autobiographical, and historical discourses.[20] But what is interesting, nonetheless, is that the Supreme Court is *required* on a mandatory basis to intervene on deeply philosophical matters such as what may lead to distortion of historical truth, thus leading to the possibilities of communal violence, and what may be the value of literature with respect to its capacity to 'deprave and corrupt' the minds of people, thus evaluating the nature of objective reality and formation of subject positions by application of rules and procedures of Law, or simply Legal Discourse.

The Status of the Reader

There are clearly pragmatic concerns about the lack of government regulation in the areas of free speech where the function of censorship has been taken over by the mob, as it were. The Government remains, or chooses to remain, either a mute spectator, or simply bows down to public demands for censorship of a wide variety of books, or in some cases public exhibitions of paintings, or theatre --- in deference to the wishes of the people! A set of immediate policy issues and concerns arise here in relation to the contemporary debates on censorship and 'intolerance'. First of all, who are those people as 'Reader' or 'Viewer' who would voluntarily demand the abeyance of constitutional rights and civil liberties while enforcing censorship without trial or the right to be heard? If there is indeed an ascendancy of 'mobocracy', how has that come into existence? Is this phenomenon entirely novel or is there a political history available to us for the understanding of socio-political contours of mobocracy in India? What is the process of social and ideological engineering that manufactures the 'consent' of the public? How we indeed to understand the arrival of new imaginary are called 'the public' which will determine the limits of what is speak able? Is this phenomenon of control limited to a 'fringe group' of the Right Wing alone? How do we choose to respond to the accusation leveled against the intelligentsia in India, of being 'selective' in expressing their dissent and rage, in cases of several violations of civil liberties and free speech? Finally, a fundamental question about category mistake that is often ignored by the censoring authorities: What is the discursive domain of free speech with regard to the principles of its classification? Under the prevailing norms, all texts ranging from the epics to the television advertisements, from popular domestic serials to academic debates are covered by the gaze of censorship. Considering that the 'truth value' of each of these categories must be ascertained on a differentiated scale, and not on a common leveling ground, how does the policy making body of censorship in India continue to be in a state of limbo and accept a common criterion of evaluation and judgement for very diverse field of textual formations?

These are questions to which there aren't easy solutions, or direct answers, as they arise directly from deliberations on the way the field of censorship is constituted.

However, it is equally significant not to seek quick and 'actionable' responses from the government or the judiciary immediately, if we wish to intervene comprehensively on the matter of censorship in the larger realm of 'the social'.

Conclusion

Censorship in our times of increasingly messy politics --- more particularly cultural politics of caste, gender and religion--- has gained new dimensions of regulation and control, far beyond the simple binary of the state versus the people. The higher judiciary of India no doubt plays a vital role in opening up a new space for thinking about censorship through acts of judicial interpretations of the domain of the social and cultural. However, such acts of interpretations, including the hermeneutical turns cited earlier, need not always be termed 'progressive' or 'reactionary', shaped as they often are, barring a few notable exceptions, by the constitutive limits of the terms of discourse, or simply by life and signs of our times.

Notes and References

1 I thank Prof. Surya Prakash for inviting me to the conference in Visakhapatnam.

2 Censorship takes on a complex overtone in the post-modern era where the conceptual categorization of intent, including criminal intent has become problematic. The usually coercive meanings associated with censorship are further stretched to include self-induced, even benign and gentle forms of 'guidance' into a new domain of expression previously unthought-of. See for elaboration of this point Ammu Joseph (2006) "The Censor Within" in Gender and Censorship, ed. by Brinda Bose: Women Unlimited, New Delhi.

3 Mini Chandran (2017) The Writer, the Reader and the State: Literary Censorship in India. Sage, New Delhi.

4 Ibid.

5 Susie Tharu and K. Lalita (1992) Women Writing in India. Introduction to Vol.1.

6 Mini Chandran, pp.31-36.

7 Rajeev Dhavan (2008). Publish and be damned: Censorship and Intolerance in India. Tulika Books, New Delhi, pp.22-30.

8 R v. Hicklin,1868, LR3 QB 360

9 Several modern-day judgements of the Indian Supreme Court have referred directly or indirectly to the *Hicklin Test.* The most notable of this genre would *be K.A. Abbas v. Union of India (1970) 2 SCC 780.*

10 The 'White Man's Burden' in Kipling's phraseology fired the British colonial imagination to contrast impure and immoral native behaviour, as expressed in their arts and sculpture, with the lofty ascetic purity of the British civil servant of the Raj. See Ashis Nandy, The Intimate Enemy (1983) Oxford Univ.Press, Delhi.

11 Stung by two court decisions in 1950 that upheld the right to free speech from the far left and the far right of the political spectrum, Nehru asked his cabinet to amend the article 19 1 (a). The two cases that prompted Nehru to pass "restrictive orders" through constitutional amendments were Romesh Thapar v State of Madras and Brij Bhushan v State of Bihar. In the first case, the Madras Government, after declaring the communist party illegal, banned the left leaning magazine, Crossroads, as it was very critical of the Nehru Government. The court held that banning a publication just because it seemed to pose a threat to public order was not supported by the constitutional scheme. In order to legally justify a ban on any publication, there must be a clear and visible danger to the security of the state. The second case related to an order passed by the Chief Commissioner, Delhi, asking the R.S.S. mouthpiece, Organiser to submit all written material about Pakistan to Government scrutiny. Nehru was wary of the kind of judicial activism that would, according to his mind, become an impediment to his vision of national progress, which was to be driven, almost entirely, by the State. Nehru, therefore, decided to curb free speech in favour of progress by bringing in the First Amendment and inserting new terms "public order "and "relations with friendly states" into article 19(2). See for details Upendra Baxi (1992) "The Recovery of Fire: Nehru and Legitimation of Power in India" in *Nehru and the Constitution*. Edited by Rajeev Dhavan and Thomas Paul, N. M.Tripathi Books Pvt. Ltd., Bombay.

12 Milan Kundera (1995). *Testaments Betrayed: An Essay in Nine Parts*, Trans. By Linda Asher. Faber Publications, London.pp. 94-96.

13 Michel Foucault, in the course of his trenchant critique of modernity and its attendant institutions of social relations and liberal democracy, ended up valorising

the Islamic Fundamentalist forces during the Iranian revolution in 1979. This is indeed a curious case of critical theory turning on its head, while seeking possibilities of 'release' from a Kafkaesque institutional power structure of modernity, into traditional order of religion, in this case, Islam. See James Miller, *The Passion of Michel Foucault*. (1998) London: Verso. Similarly, a typical leftist and post-modernist critique of Gandhi and the Hindu/*Brahmanical* traditions occludes from understanding the mediation of colonial frameworks and methods of interpretations into the area of Indian mythologies and fables. See S.N.Bal Gangadhara and Sarika Rao(2021) *What Does it Mean to be 'Indian'?* Chennai: Indic Academy and Notion Press; Bal Gangadhara (1994) "*The Heathen in his Blindness …" Asia, the West and the Dynamic of Religion*, Leiden: E.J.Brill.

14 Chandrakanta K. Kakodkar v. The State of Maharashtra& Others, 1969

15 Susie Tharu and K. Lalita have argued how women suppressed and unheard voices and writings could be retrieved from mainstream and dominant male narratives by reading them against the grain as it were. See Susie Tharu and K Lalita, (1993). "Empire, Nation and the Literary Text" in *Interrogating Modernity.* Edited by T.Niranjana, P. Sudhir and V. Dhareshwar. Seagull Books, Calcutta.

16 Gopal Vinayak Godse V. The Union of India& Others,1969.

17 Ibid.

18 Ibid.

19 S.Rangarajan V. P. Jagjivan Ram,1989 SCC.

20. Hayden White, *Tropics of Discourse,* Baltimore: John Hopkins University Press, 1988.

Trials and Literature- Captivating Scenarios and Crescendos in English Literature and Regional Chronicles of India

I.S.V.Manjula

Abstract

Law and Literature have come a long way in terms of history right from the ancient times to the present digital era. There are innumerable instances of law in Literature in various forms and formats. Law and Literature is a heady combination of thought, culture, system, discipline and many more facets of higher order thinking. Elements of Law and legal applications make a strong thematic crux in various genres of literature. Legal investigation and the scene of crime have made impactful substance in several works of literature. If there are protagonists of law, there are also antagonists of law. If there are dramatists who penned dialogues for their characters in law, there are novelists who unraveled mysteries of law. If there are authors who are lawyers themselves, there is vocabulary that evolves from and evokes law. Thus, Literature is a storehouse of legal issues, procedures, rhetoric, and brilliant solutions, not to forget the pulsating denouement of courtroom dramas[1].This paper sets out to present such authors, situations, characters, and methods particularly from English Literature like Shakespeare's Portia and the regional Literature of India like Maryada Ramanna and Vikram Betala where scenarios of trials churn captivating crescendos in the process of meting out justice. The paper also focuses on how trials and intelligent mediation is effectively relevant right from ancient times to the present digital world.

Keywords: literature, impactful, protagonists, mysteries

Introduction

I would like to begin with reference to a recent announcement from the world of Vocabulary. Delving into the vocabulary in Literature that has overtones of law and legal implications it is very interesting to know that the word of the Year is from the legal purview. The famous Merriam Webster dictionary has chosen the word "gaslighting" as its word of the Year. The meaning of gaslighting is to manipulate someone psychologically into doubting their own sanity. This leads to undermining the confidence of the

individual and allows easy control over the person.

Webster Dictionary explains why this word has become the word of the year. This is a period when misplaced information, miscommunication, searching between lines, misinterpretation both deliberately and unwittingly is witnesses across the globe and is very evident on social media platforms, in particular. “Fake news” has also taken a toll on the psyche of people. In this context “gaslighting” is a feel, an emotion,and a concept fast emerging.

Creating disorientation and uncertainty, gaslighting is “the act or practice of grossly misleading someone especially for one’s own advantage.” The year 2022 saw a “1740% increase in lookups for gaslighting, with high interest throughout the year”. The origin of the word is very interesting and intriguing. The term is derived from the title of a 1938 play and the movie based on that play. The plot of the play involves a man trying to make his wife believe that she is losing her senses. His secretive activities in the loft of the house cause the house’s gas lights to dim. However, he insists to his wife that the lights are not dimming and that she cannot trust her own perceptions and thoughts. When gaslighting was initially used as a word in context, in the mid-20th century it referred to a kind of deception like that in the movie where one is led to not trust oneself. Webster defines such use as:

> “psychological manipulation of a person usually over an extended period of time that causes the victim to question the validity of their own thoughts, perception of reality, or memories and typically leads to confusion, loss of confidence and self-esteem, uncertainty of one's emotional or mental stability, and a dependency on the perpetrator.”

Eventually meaning of gaslighting started referring also to a simpler and broader act of deceit: “the act or practice of grossly misleading someone, especially for a personal advantage.” In this way, “gas lighting refers to modern forms of “deception and manipulation, such as fake news and

deepfake," all related to the purview of crime and law. Gas lighting has reached vast areas of usage encompassingindividuals, organizations, political and social contexts.

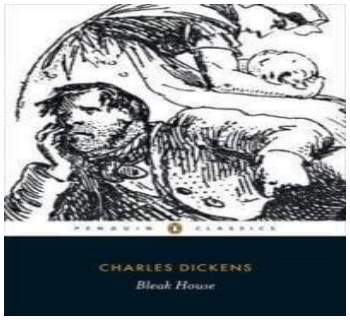
"Patients who have felt that their symptoms were inappropriately dismissed as minor or primarily psychological by doctors are using the term "medical gaslighting" to describe their experiences and sharing their stories", The New York Times, 28 March2022.

"English has plenty of ways to say "lie," from neutral terms like falsehood and untruth to the straightforward deceitfulness and the formally euphemistic prevarication and dissemble, to the innocuous-sounding fib. And the Cold War brought us the espionage-tinged disinformation.

In recent years, with the vast increase in channels and technologies used to mislead, gaslighting has become the favoured word for the perception of deception. This is why (trust us!) it has earned its place as our Word of the Year." https://www.merriam-webster.com/words-at- play/word-of-the-year (last visited 14 August 2023)

Vocabulary related to law such as evict, convict, guilty, not guilty, case, notice, summons, warrant; are all learnt from literature or media by the common man. If there are authors who are lawyers themselves, there is vocabulary that evolves from and evokes law.

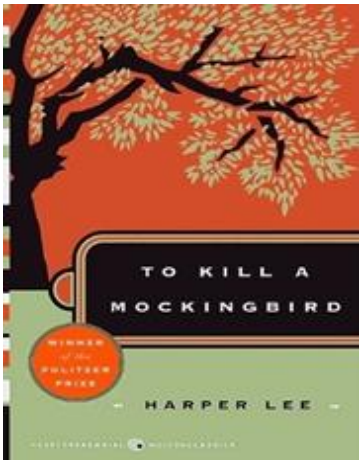
Moving on to Classical and popular fiction based on law and courtroom drama, it is noted that Charles Dickens, John Grisham, Harper Lee, Michael Connelly, John Grisham, Agatha Christe, Erle Stanley Gardner's Perry Mason are just few names that have ruled different ages in Literature with captivating suspense and denouement.



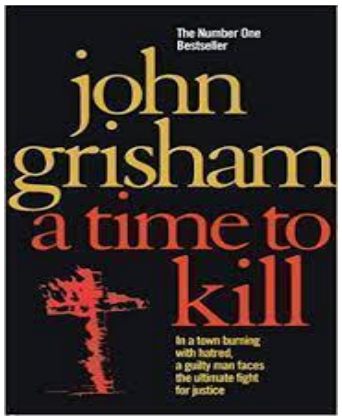
Looking at a few of the gems, the novel *Bleak House* cited as one of the best works of Charles Dickens revolves around a court case. The plot concerns a variety of wills, and most of the plot

thickens in the legal portals of London. Apart frombeing one of the greatest books ever written, it has immense worth to Law students because it gives an insight into the nuances of the legal profession.

Harper Lee's *To Kill a Mockingbird* is a landmark in American Fiction. Building the plot in the 1930s America, the novel is a social drama that unfolds the tribulations of racism in society. Like Bleak House, it is a classic that has set many a mind thinking and feeling. Atticus Finch, the central character is a lawyer tasked with defending a man spurned by society due to racial bias. In the course of the plot, Finch strongly portrays the ideals of equality and how equality has a huge role to play in justice. The novel has inspired many and has brought immense attention to the Rights of all sections of society. Legal heroes, even fictional ones, remind us about how integral law is in society and how every human has a right to Law and Justice.



A Time to Kill by John Grisham turned out to be a number one best seller for its gripping story line. These lines stand as some of the very intense ones from the novel. "A lawyer has to be himself in the courtroom, and if he was afraid, so be it. The jurors were afraid too. Make friends with fear, Lucien always said, because it will not go away, and it will destroy you if left uncontrolled."



A Time to kill, is a 1988 legal thriller that narrates a story that takes place in the fictional town of Clanton, Mississippi. This novel too sets it plot in the period when racial tensions ran high in America. "The story is inspired by a case at the De Soto County Courthouse in 1984, where Grisham witnessed the distressing testimony of a twelve-year-old rape survivor. Inspired by the case, Grisham set out to write his first book, though unlike the depiction made in the book, the victim in real life was white and her assailant was black." Vignesh Ganesh, 10 Must-Read Books (Fiction) for Law Students and Lawyers, (2018) https://www.lexquest.in/10-must-read-books-fiction-law-students-lawyers/ (last visited August 06, 2023).

The plot is about a devastated father, Carl Lee Hailey who resolves to take the law into his own hands. He avenges his daughter's brutal rape by shooting dead the criminals responsible for the crime. A lawyer, yet to prove himself, Jake Brigance takes up the case to defend him and ultimately gets him acquitted.

The popular quote from the novel is still famous in literary circles, "The one thing that doesn't abide by majority rule is a person's conscience."

> To select a few more *A Tale of Two Cities* by Charles Dickens, *Witness for the Prosecution* by Agatha Christie, *Strong Poison* by Dorothy L. Sayers, *Presumed Innocent* by Scott Turow, *A Time to Kill* by John Grisham, *The Lincoln Lawyer* by Michael Connelly, *Thirteen* by Steve Cavanagh, *Nineteen Minutes* by Jodi Picoult, *Pleasantville* by Attica Locke, *Apple Tree Yard* by Louise Doughty, *Anatomy of a Scandal* by Sarah Vaughan.

Hovering above all these, remains the quintessential requirement of the entire legal process, which is establishing peace and meting out justice? If this can be achieved through Mediation, instead of placing the entire onus on the

courtroom and the legal system, resolutions would be possible before things totally precipitate.

This part of the paper sets out to present such authors, situations, characters, and methods particularly from English Literature like Shakespeare's Portia and the regional Literature of India like Maryada Ramanna where examples of Mediation have saved many a person from falling into an abyss of no return and correcting oneself well in time, in the process duly supporting the judiciary. Mediation is a tool that is effectively relevant right from ancient times to the present digital world.

The famous speech of Portia in Shakespeare's Merchant of Venice, Act 4,Scene 1, is beautifully crafted monologue of mediation:

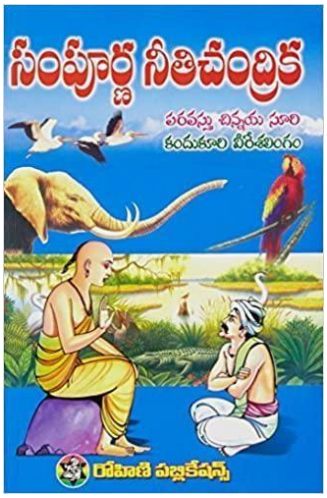
"The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blest;
It blesseth him that gives and him that takes:
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown;
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptred sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice."

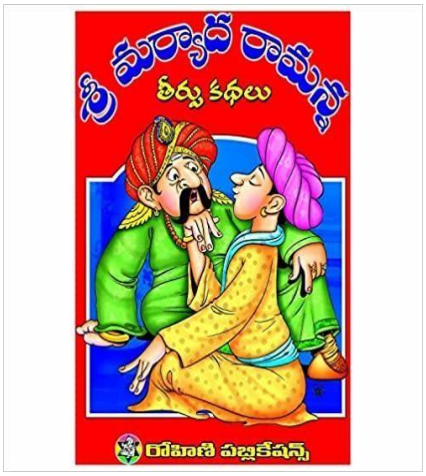
Shakespeare, William. *Merchant of Venice,*

https://shakespeare.mit.edu/merchant/full.html (last visited 14 Aug 2023)

Looking at our own turf, Vishnu Sharma's Panchatantra, Kautilya's Chanakya Niti, Maryada Ramanna Theerpulu, Batti Vikramarkha kadhalu, Vikrama betala prashnalu samadhanalu are gems from the Indian lore that

establish the ways of establishing law and justice as per the context and society. Whether written in the ancient Sanskrit language or regional tongue of various parts of India, they all reflect the ethos of justice with simple stories and great principles. Chinnayasuri translated Mitra Labham and Mitra Bhedam from the Sanskrit Panchatantra as Neeti Chandrika.





There are several Lawyers who have turned authors and provided a platform of intense thinking and righteous doing in the readers. Mahatma Gandhiji's "My Experiments with Truth", Pandit Jawaharlal Nehru's "Discovery of India" and Babasaheb Ambedkar's treatises on societal systems are just a few examples of stalwart contribution in nonfiction genre of Literature.

The various inclusions of law in Literature both in English and the regional forms cannot be overruled. As seen in the course of the paper, the presence of law in Literature can be found in various ways whether it be classical literature or popular fiction of the present time. Evidence of law and legal applications make a strong purview in varied literary genre too. Vocabulary and concepts related to law is also an indicator of the presence of law in Literature. Now, digital existence of Law and Literature is also prevalent,

"The day you see a camera come into our courtroom, it's going to roll

over my dead body." said David Souter, an American lawyer and jurist who served as an associate justice of the U.S. Supreme Court from 1990 until his retirement in 2009, last visited14 August 2023). On the contrary, the court has come into the camera eyes of many an author and their avid readers. If Literature is a reflection of society, Law that rules the land is definitely enraptured and reflected in dramatized versions in varied genresof Literature.

"Silence! The Court is in Session" by Vijay Tendulkar has run to packed houses for its emotional connects with society. In conclusion, one can only say, objection overruled for the poetic license that authors indulge in and appreciate the various narratives based on Law that many great writers have brought to the common man.

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Humanitarian Grounds against Law in the Trial Scene in *The Ponder Heart* by Eudora Welty

Demudu Naidu Jureddi

Abstract

Man is different and the notions are also so on in the value system. It is an individual perspective to make it universal acceptance. After his adventures, man defined and formed law to drive himself in his journey of life. Sometimes law and life differ in the value system and in judging the fact. Though law is made by man, it teaches him that he is wrong in his way at some situations. In the present novel, Welty creates the surprise in the judgement against Daniel Ponder in the case of mysterious death of Bonnie Dee. It is decided that Ponder will be punished for the death but it is ambiguous in the announcement. But it is based on the perspective of the judge on the character of Ponder against money and values. Hence, we find the interrelation of Law and Literature in their role as understanding and communication to estimate man his inner notions. So, the present paper is to distinguish these two aspects in the novel with their scope.

Keywords: literature, human, fragrances, law, perspective, judgement, communication

Introduction

As a comparative study course in many academic settings, the law and literature curriculum was developed by members of academia and the legal profession who hoped to make law a more humanistic enterprise. Law and literature is now a burgeoning field of comparative learning. During the 1990s entire scholarly journals were dedicated to the subject. From the mid-1980s to the mid-1990s, state and national bar associations sponsored many theatrical re-creations of legal questions presented in classic works of literature, including those written by William Shakespeare and Charles Dickens.

In the novel, *The Ponder Heart* (1967), the American author Eudora Welty, follows Daniel Ponder who is publicly accused of murdering his wife. The story is

narrated by Daniel's niece, Edna Earle Ponder, who addresses readers personally as if they were visiting the hotel she runs in town. Like Welty's other works, the novel focuses on themes of personal difference, the suspension of truth, and the ways in which money and other transactional Societies can ruin relations.

The novel begins with a description of Uncle Daniel. A rich but unintelligent man, he is a bachelor and dresses neatly. Edna associates his immaturity, which borders on innocence, to his coddled upbringing. He has gifted Edna an entire hotel, which she operates during the events of the story. "He has the nicest, politest manners---he's good as gold." (307) Edna relates that Daniel is known for giving things away, which often includes things he actually needs. In Edna's opinion, Uncle Daniel is so giving because he is incredibly lonely. Grandpa Ponder, annoyed by his habit, sets Daniel up with Miss Teacake Magee, a widow who has nothing in common with him. Within months, the marriage fizzles out, sending Daniel straight back into his old routine. "I said, "Grandpa, you're burning your bridges before you get to them, I think." (309)

When Grandpa Ponder dies, Edna is effectively charged with watching out for Uncle Daniel. She does not tell him what he is allowed to give away, since he clearly does not care about maintaining a certain standard of wealth. She frequently discusses his funny stories with people who come in and out of the hotel. This goes on until one day when Uncle Daniel disappears and gets married to a salesgirl at a local store before Edna can figure out what happened. Edna is sceptical about this new marriage given the fact that Daniel was unable to nurture his last one. Nevertheless, Daniel assures her that this marriage is merely "on trial." Well, he *did* have a surprise; he just had to get to it. Do you know it turned out that she'd just married Uncle Daniel on *trial*? (327)

Uncle Daniel and his new wife, Bonnie Dee Peacock Ponder, remain married for five years before she vanishes. Edna eventually confides in her listener that she is self-conscious about her own social status as operator and caretaker, and jealous of Uncle Daniel's easy life. She also reveals that she resents the Peacock family, but is unable to reject them, since Uncle Daniel married into it. The ensuing narrative

follows the search for Bonnie Dee, who eventually returns and manages to oust Uncle Daniel out of his own home, stealing much of his wealth. She proceeds to purchase a number of useless objects, including an electric washing machine rendered unusable by the house's lack of a power grid. Later, Bonnie Dee dies mysteriously.

Only once he is about to go to trial does Uncle Daniel finally realize the role that his wealth has played in the relationships that have come and gone in his life. On the day the trial is scheduled, he goes to the bank and withdraws all of his money, putting it in his pockets before going to the courthouse. The strangeness of the trial causes most of the town to convene, as well as the entirety of Bonnie Dee's family, who arrive from abroad. Edna Earle and her attorney try to prevent Uncle Daniel from defending himself by exploiting his track record of deference. However, the gravity of the trial finally brings out his voice: after listening carefully to his opponents' case, he begins to throw his money around the courtroom, giving it to the listeners. Even Bonnie Dee's family backs down, realizing his good nature. "Uncle Daniel heard the commotion of them coming in and worked back that way and let fly a great big handful over their heads." (403)

Despite Uncle Daniel's victory in court, the novel's conclusion is nevertheless sad and isolating. Having nothing left to give the world or with which to elicit its greed or attention, Uncle Daniel is lonelier than ever. Edna relates that no one ever truly understood Uncle Daniel, except, perhaps, in the spare moments when he used his voice. *The Ponder Heart* thus suggests that a purely virtuous life is alienating and unintelligible at the level of community, framing it as morally lopsided and tragic.

The novel mainly revolves around a couple of centralized characters, introducing their way of life, family, and living standards. The story is told in a first-person narrative, with the narrator often referring to themselves as their full name rather than 'I'. The narrator is a woman named Edna Earle.

The novel begins with the narrator, Edna Earle introducing to the readers her Uncle, known as "Uncle Daniel". Edna Earle decides to describe the significance of her uncle, introducing him in a sense of light and innocence, displaying him as a kind and generous man with a big heart. 'Uncle Daniel' is seen as a wonderful man full of

kindness in his heart for Edna Earle, but his father (Edna Earle's Grandfather) sees this as a problem and an indication that his son might be strange or mentally ill.

In the beginning, the reader might seem confused as to the storyline, unable to grasp the context except for the fact that the narrator's uncle is extremely wealthy and generous. Edna Earle proceeds to re-tell her uncle's life story revolving her grandpa and his marriage life. The narrator continues to speak of Uncle Daniel and his troubles with controlling his sense of generosity. Uncle Daniel soon marries a singer named Miss Teacake due to Edna Earle and her grandfather's search for a suitable bride.

No less than a couple of months, Miss Teacake divorces Uncle Daniel and he is back to his old habits of giving too much. Edna Earle's Grandfather had even tried to lock Uncle Daniel in an asylum, hoping to change or cure his eagerness and willingness to give. Soon Uncle Daniel escapes from the asylum, and as Edna Earle puts it, "Turns the tables" on his own father trapping him in the asylum.

When Edna Earle's Grandfather finally returns to Clay from the asylum, he has a heart attack when discovering Uncle Daniel had re-married another girl of seventeen named Bonnie Dee. The title 'Ponder Heart' is strangely ironic because 'Ponder' is the family's last name and the deaths that occur in the storyline are mostly heart attacks or heart failures.

Welty decided to name the title the 'Ponder Heart' perhaps because of Uncle Daniel and his massive heart full of love. The 'Ponder Heart' refers to Daniel Ponder's heart. The title also represents the types of love and how relationships don't always work out. Bonnie Dee is a weak young white girl, who only married Daniel Ponder due to his wealth. He had promised her they would live in his father's mansion and he would provide her with luxuries. Bonnie decided to marry him on trial which shows she clearly didn't marry for love but rather the luxuries and riches that came with it. By marrying on trial, Bonnie could leave uncle Danie whenever she wanted.

Uncle Daniel's heart was so full of love he saw past Bonnie's true motives, often calling her '*pretty as a doll*' and complimenting her looks. He was extremely

depressed and mournful when Bonnie Dee had left him to Memphis and moped all day until Edna Earle had to put out advertisements convincing her to return and even bribing her.

The climax of the story is when Bonnie Dee dies of what doctors believe is a 'heart attack' and uncle Daniel is blamed and charged guilty for murder. The citizens and friends of Uncle Daniel don't believe he could've murdered his wife due to his attitude towards people, always sharing his wealth and spreading kindness. Bonnie Dee's family, the peacocks, however, blames Daniel Ponder for the murder.

Welty chose a unique surname for Bonnie Dee's family, the 'Peacocks' which symbolizes proud creatures. When Edna Earle described the Peacock family, they were often seen as greedy egoistic people, especially when Uncle Daniel was handing out money they grabbed as much as they could. They appeared to not even be mourning their family member, Bonnie Dee's death.

Towards the end of the book, the readers discover that the true cause of Bonnie Dee's death wasn't shock and dying of fear, but rather of laughter. The significance that she died of laughter even though she never smiled seems entirely unexpected as one would not think one could die of laughter. But in the last chapter, Edna Earle helps Uncle Daniel to confess the entire story in truths and states that Uncle Daniel was tickling Bonnie Dee in attempts to cheer her up from crying. Instead, she collapses and dies from laughing.

This strange ending tells us that though Uncle Daniel is pure of heart, he was accidentally guilty of murder. Despite all the good deeds he had done, to some people he was still seen as a bad person, which describes the way of the world. People will always judge and see what they choose to see, it is up to us to decide to be good human beings like Uncle Daniel.

Conclusion

The story takes a turn and goes to show no matter what Edna Earle or her grandfather does, Uncle Daniel will not stop his habits. After all the troubles, and marrying women, to accidental murder, in the end, Uncle Daniel gave away every last

penny he had. Thus, the novel ends with an unexpected judgement in trial against Uncle Daniel. Bonnie Dee's family also realizes that Daniel has nothing for himself and cannot offer then what they expected, hence, he is suspended from the crime for his generous character to give away his wealth the public.

So, by the piece of work, the paper elucidates the interrelation between law and literature in their perspective and role play in the direction on human life. Literature as a globe of malty aspects, it introduces law in many works to make men conscious about the importance of law in our life. It is known that literature touches different aspects but it is less in connection with law. We can assure that the flavour of literature guides us indirectly meet the happening in the world but it is be conscious about the consequences both in positive and negative. Thus, my article makes sure that law is a part of literature to drive man on the prepared path.

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Role of Legal Language in growth and development of Legal System in India

Praveen Kumar & U. Rohith

Abstract

Legal language in India is sometimes beyond understanding, coupled with jargons which pave way for further technicalities and complexities for a common man that proves to be one of the biggest hurdles in the growth and development of legal system in India. The researchers intend to analyze the pros and cons of highly technical and complex legal language prevalent in Indian courts since independence. Researchers are willing to tabulate the responses by empirical method to conclude the study to check the effectiveness of legal language used in the legal education and legal profession in India. The researchers plan to conclude the study with feasible outcomes and key suggestions in order to explore and establish new dimensions of legal language as a pivotal instrument to develop legal system in India. Lastly, this paper will be proved as an innovative tool to counter contemporary challenges in front of Indian Legal System.

Keywords: legal language, Indian legal system, complex language, legal education, judicial reform

Introduction

In the 21st Century it would not be appropriate to embark upon the importance of language in the growth and development of a discipline. Since the beginning language itself is one of the primary subject, which is evolving, so that concepts could be understood by the generations across the globe. On account of absence of means of communication and transport, scholars across the globe worked in isolation to develop the language to communicate. As a result, we got several languages across the globe. Focusing about legal profession especially, which was primarily introduced by Mughal period in Urdu language followed by Britisher's in English Language still mixed with other local languages has created a web of languages and made a

significant trouble to law students and judges and society as a whole to understand and implement the policies across India.

The legal language is used to draft related documents like contracts, licenses, indictments or subpoenas, briefs It is high time that the law school curriculum is revised which focuses more on practiced multidisciplinary, legal language should be known to every person in the country not matter as a right like a responsibility. We have to make a curriculum for the students to learn effective legal language. It is sad to known that 80 % of the people in our country didn't know about basic rights introspection must be done by all of us. In India the problem of Indian legal language persists because it is felt to adapt a single language to be the Indian legal language. This is one of the most sensitive issues which could not be solved by the Constituent Assembly. The Law Commission of India in its 14nth report has said the legal system which has been applied in India since two centuries though originated from the British system but it evolved and developed in the Indian situation and now it has settled its roots in India. To think about fundamental change now at this stage, it could be devastating and disastrous for our future. In the following words of Socrates, the researches conduct the research to suggest feasible solution of the problem:

> "Four things belong to a Judge; to hear courteously, to proceed wisely, to consider soberly and to decide impartially."-Socrates

Onus to bring the revolutionary change is not only on the judges but equally on the lawyers, law students and society as a whole.

Defining legal language

Legal language is formalized language based on logic rules which differ from the ordinary natural language in vocabulary, morphology, syntax, and semantics, as well other linguistic features, aimed to achieve consistency, validity, completeness, and soundness, while keeping the benefits of a human like language such as intuitive execution, complete meaning, and open upgrade.

Statutory Excerpts of Legal language in India

Article 348 (1) of the Constitution of India provides that all proceedings in the Supreme Court and in every High Court shall be in English language until parliament law otherwise provides.

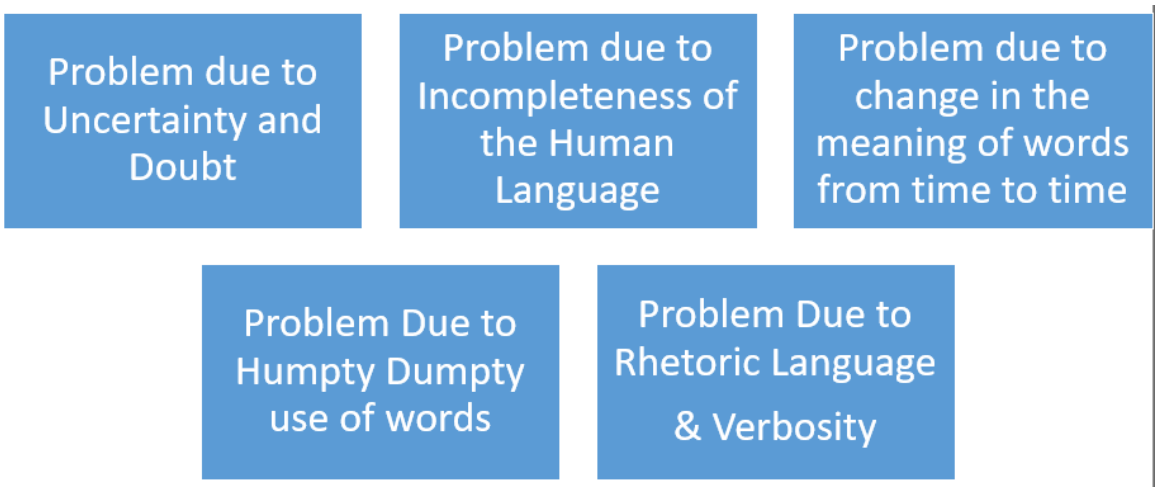
Article 348 (2) provides that the Governor of the State may, with the previous consent of the President, authorize the use of the Hindi language or any other language used for any official purpose of the State, in the proceedings of the High Court having its principal seat in that State provided that decrees, judgments or orders passed by such High Courts shall be in English. The Official Language Act, 1963 reiterates this and provides under Section 7 that the use of Hindi or official language of a State in addition to the English language may be authorized, with the consent of the President of India, by the Governor of the State for the purpose of judgments, decrees etc. made by the High Court for that State. No law has been made in this regard by the Parliament so far. Therefore, English continues to be the language for all the proceedings of the Supreme Court.

The 18th Law Commission of India in its 216th Report on Non-Feasibility of Introduction of Hindi as Compulsory Language in the Supreme Court of India (2008) has, after detailed discussions with all stake-holders, inter-alia, recommended that the higher judiciary should not be subjected to any kind of even persuasive change in the present societal context. The Government has accepted the stand of the Commission.

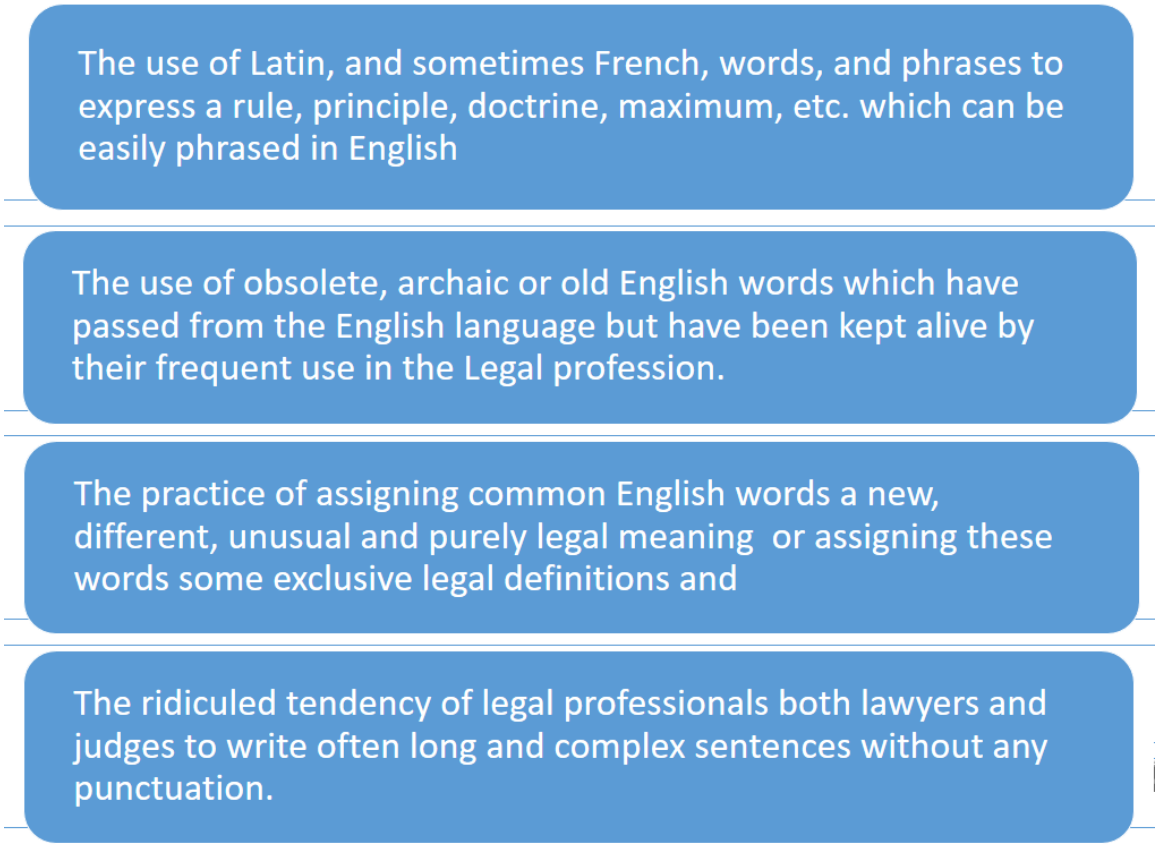
In this competitive world, the legal professionals and the litigants expect that their concerns are communicated and conveyed through effective ideas and expressions before a Court of law in a legal language in India that fulfills the duality of communication and clarity of understanding. The genius of any human expression emanates from the spark that is ignited by ideas, whatever be the language employed to communicate the same.

Genesis of the Problems of Legal Language in India

There are many problems relating to the legal language, these are as depicted in the chart below:



The complexity of a legal language arises because of four reasons:



Comparative analysis between simple English and complex English language in Indian Legal System

It is pertinent to mention here that legislators and hon'ble courts have expedited the importance of simple legal language, however due to influence of western legal system over Indian legal system, almost at every stage; complex English language was used to draft legislations and to write judgments too. For instance, the preamble of Indian Constitution reads as under:

> "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
>
> JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship;
>
> EQUALITY of status and of opportunity;
>
> and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
>
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION"

Whereas in other words of a poem written by a great author Guru Rabindranath Tagore in his book titled "Gitanjali" in 1913 reiterated as under:

> "Where the mind is without fear and the head is held high
>
> Where knowledge is free
>
> Where the world has not been broken up into fragments
>
> By narrow domestic walls
>
> Where words come out from the depth of truth
>
> Where tireless striving stretches its arms towards perfection
>
> Where the clear stream of reason has not lost its way
>
> Into the dreary desert sand of dead habit

Where the mind is led forward by thee

Into ever-widening thought and action

Into that heaven of freedom, my Father, let my country awake."

After analyzing both the Preamble and the poem written by the eminent members of constituent assembly of Indian Constitution in the year 1949 and by Rabindranath Tagore in the year 1913 respectively, it can be easily concluded that the poem is narrated in simplest words depicting a clear aim and objective which can be easily understood by every citizen of the country. Whereas language used in the Preamble is highly complex and the same was further interpreted by the hon'ble courts since independence in several landmark judgments including Kesavananda Bharti v. State of Kerala.

Hence, complex language used in the legal system creates several problems for future and the same would be interpreted by the hon'ble courts to settle the questions whereas simple legal language is self-explanatory and eliminates the risk of arbitrariness and vagueness in future.

Recommendations and suggestions

English language applied in Indian Legal system is full of jargons and maxims. In a series of cases decided by the courts in India, judges have shown their dissent to accept such excerpts. For instance, consider this paragraph from the M. N. Samarth v Marotrao and another's judgment:

"A tricky issue of statutory construction, beset with semantic ambiguity and pervasive possibility, and a prickly provision which, if interpreted literally, leads to absurdity and if construed liberally, leads to rationality, confront the court in these dual appeals by special leave spinning around the eligibility for candidature of an employee under the Life Insurance Corporation and the declaration of his rival, 1st respondent, as duly returned in a City Corporation election. A tremendous trifle in one sense, since almost the whole term has run out."

The above Para was written to analyses the rationality behind appointment of a candidate in LIC but cited with too much complex words and lengthy phrases, which makes the interpretation highly difficult for the court. Moreover, Judgments are not necessarily meant only for other judges and advocates. After all, a court's public interest and public reasoning function mandate that it should be intelligible and understandable to the general public. Every judgement is highly important and beneficial for the understanding of the general public and it must convey the direction to the authorities with full clarity and feasibility.

In another instance the Apex Court terming a judgment of a division bench of Himachal Pradesh HC "incomprehensible" and "difficult to navigate through" even for the SC judges who have spent more than two decades as constitutional court judges, the bench said, "A litigant for whom the judgment is primarily meant would be placed in an even more difficult position. Untrained in the law, the litigant is confronted with language which is not heard, written or spoken in contemporary expression."

Tussle over the selection of national language in India has become a question of National Importance. Constitution of India has clearly established that Hindi is national language of India but the apex court of India is still empowered to retain English as the only language. Whereas in all the High Courts, English is used as official language. If we examine the local courts across India, documents are written in local languages and scripts. Hence, local courts are using different languages in the court proceedings. During the Mughal period, Urdu language was used in the legal system and still several Urdu words are used in the court rooms by especially by the Police Dept. while writing FIR, Charge-sheets, Statements of the witness etc. After reviewing the complete picture from domestic to national level in the Indian Legal System, it can be concluded that Indian Legal System has become one of the complex system across the world due to use of several languages. In addition to that, English language is a week language which is made too complex and over complicated by the lawyers and judges.

Lawyers are the pillars of the Legal System in India. Lawyers are highly responsible for complex writing of plaints, affidavits, written statements etc. Every lawyer must understand that endless writing of a document will result in to lingering of the issue without an end. Lawyers use complex English language to persuade the court and to impress the clients. The researchers like to quote the words of sir Albert Einstein:

> "If you can't explain it simply, it means that you have not understood it well enough"

Or in other words, lawyers and judges must realize that legal profession is a noble profession and because of complex language only, it is out of bound for the poor and needy litigants. In absence of ethical code of conduct for lawyers and judges for use of English language. The situation is becoming more worst day by day.

A bench including Justice D.Y. Chandrachud and Justice M.R. Shah at Supreme Court of India observed that judges must use simple language to write the judgments. They have quoted the instance in the following para:

> "Provisions whereof, unveils, qua the afore provision, making an explicit statutory expression, where through, the award, of, the Tribunal concerned, is, made amenable for execution, alike the execution, of, a decree, of, a Civil Court, or explicit statutory expression(s), become(s) borne therein, for, an award, of, the Tribunal concerned…"

If the above para is further expanded in the next 10-15 pages with the same language skill set, we can assume that it further results in to hardships to not only judges but also to the authorities and to the general public. Five hundred years back King Edward VI is quoted to have said, "I would wish that the superfluous and tedious statutes were brought into one sum together and made plainer and shorter so that men might better understand them".

Jonathan Swift, in Gulliver's Travels (1726), wrote of a society of lawyers who spoke in "peculiar cant and jargon of their own, that no other mortal can understand." Thomas Jefferson complained in the late 18th century that "in drafting

statutes my fellow lawyers have the habit of making every other word a 'said' or 'aforesaid' and saying everything over two or three times, so that nobody but we of the craft can untwist the diction and find out what it means…"

Legal Language and Judgment Writing

Trial in a court begins with filing of a plaint. Plaint must be filed in simple language with simple words and facts. Thereafter Written statement should be filed in simple sentences for the proper conduct of the trial. Henceforth, statement of the witnesses, arguments advanced by the lawyers must be kept as simple as it can be. At the end, the prime and foremost duty of the judge begins to write the judgement. Judgment comprises of two objectives. First is Ratio Decidendi, that must be written by the judges in simple language and secondly, Obiter Dictum shall also be dictated by the judges in the same line. Use of simple language must be added in the ethical code of judges and lawyers. In the words of Chief Justice Sabyasachi Mukharji, "The supreme requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment."

In the case of Joint Commissioner of Income Tax, Surat v. Saheli Leasing and Industries Ltd, the Supreme Court of India has laid out the following guidelines essentials to write a judgement;

a) It was made that these guidelines are directory in nature and not mandatory.
b) Judgement must be crisp, clear, and complete and there shall be no repetition of the facts. Judges must avoid citing irrelevant judgments.
c) Draft must be carefully reviewed by the judges after writing the judgements and they must remove jargons, complex terms, maxims, irrelevant instances etc.
d) Judgments must be continuous in some chronological order so that anyone can understand it to the full extent. Judgment must not part midway to decide the issues inter-se.

e) Judges must avoid citing historical background of the subject matter, philosophical ideas, evolutionary evidences, comparative analysis etc. while writing the judgement. They must not overload the judgment with their legal knowledge and must focus on clarity and not on confusion.
f) Language must be kept simple and effective to convey the message loud and clear.
g) Once arguments are completed, judges must not take more than 90 days to pronounce the judgments because eventually unreasonable delay is caused in justice delivery due to writing lengthy and glamourous judgments causing trouble to the public at large.
h) At last Judges must not write several other incidents or stories to prove or disprove any contentions. It's the primary duty of the judge to be concise and precise in writing the judgment.

In other words of hon'ble Justice R.V. Raveendran while writing other judgments, "The duty of a Judge is thus, to render justice and not to win popularity. The temptation to gain easy popularity by being liberal in granting admission and interim orders will ultimately damage the credibility of the judiciary as an institution, apart from causing undue hardship and loss to those who are unnecessarily drawn into the litigation or unjustly subjected to the interim order."

Hence to conclude, both Bar and Bench is responsible to carefully adapt to simple legal language to run the effective legal system because legal system must be highly efficient to impart the speedy justice. Complex legal language is indirectly hindering the timely delivery of justice in India since independence. Eventually, this has made justice system inaccessible to the needy and poor litigants.

Conclusion

It is noteworthy to mention here that a developing country like India, which has borrowed its legal system from west in English language, it would be impossible to change the language either to Hindi or Sanskrit. Language is a medium to convey the principles of learning and understanding. Language is highly important to educate people of India about their rights and duties. India since its inception has developed several

unique languages and scripts from states to provinces. Hence, to conclude, the author suggests that at first, India must choose a single language for all purposes as a national language under the principle of one nation-one language.

Secondly, by the time, we have to focus on development of English language in Indian Legal System, which is possible by significant changes in the legal education. Syllabi of the course English-Law and language, which is being taught to law students, shall be drafted by the Bar Council of India. It should be enriched with uniform practices aiming at establishing a transparent and accountable legal system free from lingual dynamics and hardships.

Lastly, eminent jurists and judges must accept the dire need of writing the judgements in simple words avoiding legal jargons, pro-verbs, legal maxims and other complex words and sentences. Judgments must be outcome based, written in simple words, signifying direct impressions, focusing on feasibility and free from absurdness and vagueness.

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An Interpretation of Law from Shakespeare's *The Merchant of Venice*

M. Thriveni

Abstract

The Merchant of Venice is a very important play written by Shakespeare in the late 1500s. Studying The Merchant of Venice is essential for the legal community. The play can be seen in a different legal way and can help us understand how it relates to important legal problems of the 16th and 17th centuries. If you read the play and think about the references of 'flesh and blood', one can understand the way people spoke and it seem like separating the two was seen as a danger to the society of Venice and the Christian patriarchy. The play shows how the Law is unfair. The suggested analysis of the text connects the perspectives of humanism and storytelling in relation to Law and Literature. This examination shows how the Law affects various socio-economic groups differently and teaches Lawyers an important lesson.

Keywords: law, literature, interpretation, environment, humanist, society

Introduction

In the 1970s, people started to study Law and Literature together. It had important effects on how Law is practiced and started as a movement in the mid-1980s. The Law and Literature movement examines how Law and Literature are connected. This movement wants to combine the fields of Law and Literature to improve the Law by adding Literary theories. A study looks at how Law and Literature are connected, and how they learn from each other. Studying the Law from a literary perspective shows that it uses specific Language to favor one group more than others. By analyzing Literature and how it uses phrases, Lawyers can understand how the Law can separate some people while still benefiting others. There are some

books or writings in Literature that talk about and explain Laws, and these works have had a powerful effect on people's thinking that lasts a long time.

History of Law and Literature

James Boyd White's book, *The Legal Imagination*, is known for starting the Law and Literature movement. Supporters of the "Law-in-Literature" theory, like Richard Weisberg and Robert Weisberg, think that Literary works, particularly stories focused on a Legal disagreement, give Lawyers and Judges an understanding of the "essence of Law". This view looks at and explains Legal writings using the methods of literary experts. Scholars like White and Ronald believe that Law is like Literature, because they think that the meaning of Legal texts, such as written Laws, can only be found by interpreting them.

In the 1990s, there were entire academic magazines that focused on this topic. From the mid-1980s to the mid-1990s, State and National Bar associations held performances, where they acted out Legal issues from famous books like the ones written by William Shakespeare and Charles Dickens. The Greek philosopher Plato understood that there is a connection between Law and Literature over two thousand years ago. He believed that a society's Law book should be the best and most important piece of Literature that they have. In the United States, Plato's works were studied along with other Classic Literary works during the 18th and 19th centuries as part of education for professionals. After the U. S During the Civil War from 1861 to 1865, the perception of law shifted. It was no longer viewed primarily as a reflection of human values, but rather as a scientific discipline. As a result, the influential works of Western Literature became less important in the education of people studying Law.

In 1908, the famous Legal expert John H. took a fresh look at the relationship between Law and Literature. Wigmore noticed that a lot of well-known novels often have trials and Legal themes. Court famously described pre-existing duty as a "well-established rule". This rule states that if a party is already obligated to perform a certain act, that party does not provide valid consideration in a contract by agreeing to perform that same act again. In simpler terms, if someone is already legally required to do something, they cannot use that same duty as a new promise in a contract. The

highest court, called the Supreme Court, recently wrote a very important article in a Law Journal called the *Yale Law Review*. This article looked at how Judges write their opinions, specifically focusing on their writing style. This article was considered to be very innovative and unique. In the 1960s and 1970s, Wigmore and Cardozo's ideas helped create the Law and Literature movement. During this time, many people saw law as a job that focused too much on following strict rules and didn't show enough care or understanding for others. Many Law students, Lawyers, and Judges started to feel unsatisfied with the narrow view of their job and began looking into different subjects to gain knowledge. At the same time, many teachers and students from high schools, colleges, and graduate programs started moving from studying humanities to working in the Legal field because they wanted jobs that were more practical. Even though there are people who criticize it, Law and Literature is becoming a growing field of study.

Development of Law and Literature

This field comes from two things that happened in the Academic History of Law. In many schools, the Law and Literature curriculum is offered as a course that compares different subjects. It was created by people in academia and the legal profession who wanted to make Law more focused on people and their feelings. Working in the field involves two different perspectives: understanding issues as they are portrayed in literary texts, and understanding Legal texts by interpreting, analyzing, and critiquing them with skills commonly used in literary studies.

Law and Literature studies are divided into three sections. The first section is about how Law is represented in Literature. This area is about the Legal topics shown in novels and other writings. These made-up stories are used as a lens to understand real events happening in the United States. People closely watch and examine courtrooms. The second part includes the study of Law as Literature. This field of study looks at how real Legal trials involving issues like race relations and the role of Law enforcement in a free society affect education. This second area of study also looks at how Judges use words and Language to explain their Legal arguments and conclusions in their written opinions. The third area concentrates on the study of Law

and Literature. This compares and looks at the different methods each subject uses to understand a specific piece of writing, whether it's a Constitution, a Law, a court case, or a piece of Literature.

Background of Shakespeare's Play

William Shakespeare, who was a very significant writer in English Literature, was born in 1564 in Stratford-upon-Avon, England. After Shakespeare died, his plays were gathered and published in different versions during the next hundred years. By the early 18th century, everyone agreed that he was the greatest poet to ever write in English.

Shakespeare wrote 37 plays and 154 sonnets. This collection of work had an enormous impact. Some of Shakespeare's plays are so good that they have had an immense impact on Western Literature and Culture for a long time. Shakespeare, a writer who understood human nature and the flaws of the Legal system, probably had doubts when he started writing a play for the Globe Theater. The play *The Merchant of Venice* by Shakespeare is believed to have been written between 1596 and 1599 but was first performed in 1605. A printed version of the play was made in 1600 from Shakespeare's original manuscript or a copy of it.

Shakespeare's Merchant of Venice

The Merchant of Venice is an important play in Elizabethan Literature. It was written during the late 1500s and is a significant piece of Literature from that time period. A merchant in Venice named Antonio cannot repay a big loan from a Jewish money lender named Shylock. The main focus of the play is the connection between a Jewish moneylender, Shylock, and a Christian merchant, Antonio. He provides credit so his friend Bassanio can borrow money from Shylock. If the loan is not paid back, Shylock can make the merchant give him a pound of his flesh. When the merchant can't fulfill these requests, Shylock wants the money owed to him. Antonio goes to court, but the judges cannot free him because of the Law. Even though the Duke of Venice tells Shylock not to take the pound of flesh, Shylock doesn't listen and refuses to give up. At this part of the play, Portia, who is Bassanio's love and a rich woman,

comes to court dressed as a male Lawyer. She stops Shylock from cutting Antonio's flesh. She tells Shylock that he can only take a pound of flesh according to their agreement, and not even a drop of extra blood.

When it becomes clear that Shylock cannot physically get his bond, he tries to collect the money Antonio's friend offered to repay the loan, which is six thousand ducats. Portia stops him from repaying by reminding him that he has already declined that amount and it is no longer possible to get it. Furthermore, she accuses Shylock of planning to kill Antonio. The only way he can avoid punishment is by giving half of his belongings to the Government and the other half to Antonio. Antonio asks Shylock to become a Christian, and the Duke orders it to happen. At the end of the trial, Shylock feels like he lost and leaves the court feeling sad and beaten.

Interpretation of Law

Studying *The Merchant of Venice* carefully helps the entire Legal community. The complexity of Literature helps readers see that Law is more than just rules and punishments and that it has a great impact on society. However, the reader should not take the play too literally. It is argued that the unfair treatment and unequal systems shown in the play can be compared to how the play's outcome is celebrated as a victory for Justice. The writer disagrees with the idea that having a strong female Lawyer brings Justice to the innocent merchant. Instead, they believe that the play unfairly criticizes a certain group and promotes discrimination in the name of the Law. This perspective becomes clear when reading the play with this critical viewpoint.

The play *The Merchant of Venice* relies a lot on Laws and Rules. These are the Laws of the State of Venice and the rules stated in contracts and wills. The same thing happens with Venetian Law. Until Portia comes, Shylock follows the Law very strictly, and it looks like the city's commitment to agreements will cause something bad to happen. However, when Portia comes and cleverly uses the law, it leads to the happiest ending for an Elizabethan audience. Antonio is saved and Shylock is forced to give up his religion. The trial highlights how the Law can be misused or used for terrible things, without proper guidance.

By reading the play, we can understand how the rhetoric created a situation where separating flesh and blood was seen as a threat to Venice's society and Christian patriarchy. Perhaps, the play aims to shed light on how powerful people manipulate the Law, and this theme is evident during Antonio's trial. This idea is supported by the fact that the play was used to spread hatred towards Jewish people, and shows how Literature can impact the Law directly. So, telling a Lawyer about the risks of specific messages and how they might be understood.

In simpler terms, the events that happen during Shylock's trial and the pretend court that Portia sets up at Belmont show how the Law can impact the lives of minority groups in important ways. While Shylock talks about the unfair things the powerful group does, Portia has her own court to show the unfair treatment women face.

The Merchant of Venice has three main ideas about fairness that are important in the story. These ideas are shown in different parts of the play. The Law doesn't always give fairness, fairness is really important for society and fairness usually helps the winners, not the losers. The play focuses on Contract Law, but it also brings up topics like standing, moiety, precedent, and conveyance. The trial scene in Act IV shows the disagreement between fairness and following the Law exactly. *The Merchant of Venice* looks at the tension between rules and fairness in a smart way.

The Merchant of Venice effectively shows empathy and passion, which were not commonly seen in the Legal system of sixteenth century Europe. The story shows how Shylock and Portia are oppressed, but also how they stand up against this oppression. Shakespeare wrote a story that encourages readers to explore the deeper meaning and complexities of Law.

Conclusion

This text shows how the Law can be unfair and unjust, and how it is hard to live under strict moral rules. This play shows how it reveals the unfairness of the Law. Lawyers and others in the Legal profession might leave the play thinking about the

unfairness in the Legal system instead of feeling sorry for Shylock. But there was a persistent feeling that fairness was not achieved.

Shakespeare's plays include a lot of information about Contract Law, particularly regarding how to make Legal agreements and what happens in court. In *The Merchant of Venice*, the play clearly shows Legal problems that were common in England during the olden times. One can see the play from a different perspective, where there are many different and conflicting Laws about trade, citizenship, rights, and civil and criminal procedures. The Play can be seen from a clear Legal perspective and therefore demonstrates how it relates to important Legal matters of the sixteenth and seventeenth centuries. Clearly, the suggested way of understanding the text connects the humanist and narrative aspects of the Law and Literature theory to show how different social and economic groups are affected in different ways by the Law. This teaches Lawyers an important lesson.

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Press Freedom, Espionage and The Saga of Extradition: A Case Study of Julian Assange and 'ITHAKA'

Alvina Rais Khan & Filza Zaki Khan

Abstract

Cinematic motion, an extended family of literature, has its own way of depicting reality and nurturing it, creating lasting impressions in the minds of the viewers. The empathetic dialogue delivery, close-up shots, and engaging plots, all contribute in creating an amalgamation that is both coherent and immersive. Hence taking the plunge, it also advocates narratives, featuring perspectives. The movie 'ITHAKA' directed by Ben Lawrence, explores the story of the world's most famous political prisoner 'Julian Assange' through the narrative point of view of his Father 'John Shipton'. For some Julian Assange remains behind the bars of Belmarsh Prison as an anti-establishment hero upholding the dying hope for journalism all over the world but, for the U.S. government he continues to be a spy, a subject to extradition. This analytical account attempts to systematically dissect the legality and the purpose of concepts revolving around International Law, such as Extradition and Diplomatic Asylum while carefully studying other major elements of law and their portrayal in 'Ithaka'. It will also focus on exploring questions regarding the Freedom of the Press guaranteed under the First Amendment Rights, the authenticity of charges made by the United States under the Espionage Act, of 1917, the validity of 175 years of probable imprisonment, and the future prospects for Assange under the aegis of the European Centre for Constitutional and Human Rights (ECCHR). Lastly, there would be attempts to shed light on the various themes circumferencing the accessible nature of the cinematic framework that allowed Shipton to create a narrative for the viewers, presently functioning as a tool to seek justice for Assange.

Keywords: Julian Aasange, Ithaka, press freedom, espionage, extradition, justice

Introduction

Assange, a 51-year-old computer programmer of Australian descent, established WikiLeaks in Iceland in 2006. In a short span of time, it gathered a lot of attention for the conviction with which they pursued the hidden secrets and served for the public interest.

Assange released a 238-page US Army manual from 2003 detailing "standard operating procedures" or "treatment" for the Camp Delta prison in Guantanamo Bay, Cuba, in November 2007. In 2010, Wikileaks published a series of documents regarding the military logs of the US government in Iraq and Afghanistan. They published a 39-minute "Collateral Murder" film showing a US Apache helicopter shooting and killing 12 Iraqis, two of whom were reporters for Reuters. The footage was gruesomely terrifying as it captured US army soldiers involved in killing people as if they were playing any shooting video game.

Wikileaks later published more than 90,000 US military documents pertaining to the Afghanistan War in July in collaboration with other media organisations, including the New York Times. A few months later, it again released 391,832 Iraq War-related documents. The Cablegate affair, best known as the publication of US diplomatic cables by WikiLeaks, in November 2010, revealed information from more than 270 US embassies and consulates throughout the world.

Chelsea Manning, a former member of the US military, is thought to have given the information to Assange. Either way, the activities undertaken by Wikileaks had serious consequences on its founder who is currently detained in Belmarsh prison facing 17 counts under US Espionage Act, 1917 and one count for computer intrusion imposed by the US government coupled with 175 years of incarceration.

In June 2021, the British Home Secretary Priti Patel signed a judicial extradition order. However, Assange has one more chance to appeal the judicial order, but if his request is denied, he will be extradited to the United States sincerely in four weeks of approval.

Timeline

Year	Month	Events
2010	April	Wikileaks disseminates classified information about US military operations in Iraq and Afghanistan.
2011	August	Swedish police investigate Assange about two independent rape and molestation charges, both of which he denies.
	November	Sweden issues a warrant for Assange's international arrest and extradition.
	December	Assange surrenders to London police and is allowed conditional bail.
2012	May	The Supreme Court of the United Kingdom rules that Assange should indeed be extradited to Sweden.
	June	Assange goes to the embassy of Ecuador in London to seek political asylum.
2013	August	Ecuador granted Assange political asylum.
2015	May	Assange was arbitrarily detained at the Ecuadorian embassy.
	July	Wikileaks publishes private emails from the Democratic National Committee as well as the Clinton campaign.
2017	May	Swedish authorities dropped all investigations into Assange, but a UK warrant for failure to appear in court

		remains outstanding.
	December	Ecuador granted Assange citizenship, while the US indicted him under seal for military leaks.
2018	February	A Westminster magistrate upheld Assange's arrest warrant for failing to appear for bail.
2019	April	Assange is arrested at the Ecuadorian embassy on behalf of US authorities for failing to appear in court.
2020	September	Assange appears after the judge, facing new indictments on 18 counts; hearings end on October 1.
2021	January	The district court gives a decision in favour of Assange, denying extradition appeal of the US due to his fragile mental health.
	July	Ecuador strips Assange of his citizenship.
	October	The appeal hearing for the extradition ruling begins on October 27.
	December	The High Court overrules that decision, ruling that Assange may be extradited.
2022	June	The Supreme Court confirms that Assange will be denied permission to appeal the High Court's decision to extradite him to the United States in December 2021.
	Dec	Julian Assange's legal team filed an appeal with the European Court of Human Rights (ECHR).

Interface of Law and Literature: The Case of Julian Assange

Despite being distinct branches, literature and law share some similarities and objectives. Law is primarily intended to regulate human behaviour and respect for human rights, claims, and dignity of fellow beings, and to foster a harmonious relationship between an individual and a community. Literature, too, deals with the subject by explaining human behaviour, contextual behaviour, and the moral and sociocultural psyche that underpins that behaviour. It aids in comprehending the maze that is the human psyche and subsequent behaviour, whether situational or otherwise (Vaishnav, 2014). Hence it becomes a necessity to call for an interdisciplinary approach for an in-depth understanding of any study. It then urges the society to bring a reform by establishing laws to safeguard the interest of the people. Finally the laws are created on the basis of which justice is served. The literature also helps in bringing varied interpretations on the basis of which the laws are formulated, reformed and expelled.

The case of Julian Assange becomes an important one in explaining the interface of Law and Literature because:

- He's one of the most famous prisoners of the world.
- Assange's Wikileaks published documents regarding illegal activities carried out by the most powerful democracy of the world (USA).
- He's charged with 17 counts of US Espionage Act. 1917 and 175 years of incarceration, if extradited.
- The US is desperately seeking his extradition.
- He is the first publisher to be detained under the Espionage law in the history of the US.
- Several movies and books have developed with reference to this case like - Underground (2012), The Fifth Estate (2013), We Steal Secrets(2013), Mediastan (2013), Risk (2016), Hacking Justice (2017), XY Chelsea (2019), Ithaka (2021) and so forth. Book written by Nils Melzer (UN Special Rapporteur on Torture) -

'The Trial of Julian Assange : A Story of Persecution' Julian Aassange: The unauthorised autobiography, and so on'.

Methodology

Instruments of Data Collection

The methodology used in this paper is qualitative study where the subject (A documentary style film: Ithaka) is systematically dissected and analysed to understand the literary and legal perspectives. In a qualitative research focused on collecting data which is descriptive rather than focused on numbers. This form of methodology is opted to get better insights and in-depth understanding of the subject and its relevance. The paper also aims on bringing two separate entities of the world of education together to support the idea of interdisciplinary studies.

Selection of the Subject

The Film 'Ithaka' was chosen for study because of its paramount presence in both Literature and Law which makes it an interesting subject to work on. Apart from it being based on the world's most famous prisoner, the fact that it was created as a tool for justice also makes it unique.

Investigating 'Ithaka'

'Ithaka', written and directed by Ben Lawrence, is one such film that follows the story of Julian Assange (world's most famous prisoner) through the narration of his father 'John Shipton' and wife 'Stella Moris'. The film was made under his family's home production, aimed at seeking freedom and justice for Assange by highlighting many important events and circumstances (both legal and Political). It covers approximately two years of campaign (between 2019 to 2021) through the narrative point of view of his father and wife. The film created in a documentary style majorly focussed, on arousing ethos and pathos backed by strong logos.

Major Themes and their Legal Analysis

1. The Saga of Extradition:

This film follows a narrative to support Julian Assange and oppose the charges made in the indictment by the United States government. Julian's father, John Shipton

states, *"You know, over the last 10 years, journalists, for some reason or the other have seen fit to service the government's attack on Julian at the collapse of their own self-interest and the s…their stature. After so many years of smearing and lobbying this is…a good sign that the newspapers realise that the extradition of Julian Assange and the destruction of Wikileaks is the collapse of their power"*. Shipton holding a newspaper while quoting the preceding statement acts as a major prop in the scene, amplifying its significance.

The reasons behind the request to extradite Mr. Assange are quite evident. Eighteen counts related to his acquisition and disclosure of defence and national security information (largely in 2009 and 2010) but also to some extent thereafter were brought against him in the USA. The following is a summary of the allegations made against Mr. Assange by the USA about his alleged actions:

"His complicity in illegal acts to obtain or receive voluminous databases of classified information; his agreement and attempt to obtain classified information through computer hacking; and

Assange published certain classified documents that contained the unredacted names of innocent people who risked their safety and freedom to provide information to the United States and its allies, including local Afghans and Iraqis, journalists, religious leaders, human rights advocates, and political dissidents from repressive regimes." (*USA v. Julian Paul Assange, 2021*)

The USA requested that Assange be extradited in response to a comparable demand made by Sweden in December 2010 for alleged sex crimes. Julian filed an appeal in opposition to Sweden's request, but the Supreme Court rejected the appeal for violating the extradition order in a ruling dated May 30th, 2012.

USA was hopeful of the fact that its request would get approved as well, but after an elongated period of hearings back and forth in the Westminster Magistrates' Court, The District Judge all but one of the issues were determined in the USA's favour. She determined that "Mr. Assange's mental state was such that extraditing him would be

oppressive given the severe conditions he would probably be held in". The District Judge, Vanessa Baraitser decided in favour of discharge. (*USA v. Julian Paul Assange, 2021*)

Against that judgement, the USA filed an appeal. On October 27 and 28, 2021, a Divisional Court composed of Lord Burnett of Maldon, the Lord Chief Justice, and Lord Justice Holroyde heard the case. The judge set out the many issues which had been raised before her in a detailed judgement. One of those issues was that extradition was challenged pursuant to section 91 (Extradition Act, 2003) on the ground that it would be oppressive. (*USA v. Julian Paul Assange, 2021*)

Section 91 of the Extradition Act, 2003 clearly provides: That if the condition is such that it would be unjust or oppressive to extradite him, the judge must order the person's discharge. (*Extradition Act, 2003*)

Moreover, adding to the same, reference was made to Lord Diplock in (*Kakis v. Cyprus, 1978*) the term "oppressive" in this case refers to suffering to the required person brought on by his physical or mental state in the context of facing criminal proceedings and their repercussions in another nation. No argument has been made that Mr. Assange's extradition would be unfair.

The judgement considered the details of Mr. Assange's anticipated incarceration conditions because they were crucial to the suicidality. The parties concurred that Mr. Assange would most likely be held at Alexandria, Virginia's "ADC," (an adult detention facility), while awaiting trial. General population, administrative segregation ("ADSEG"), disciplinary segregation and pre-hearing isolation, medical segregation, protective custody, and the critical care mental health unit were the seven various types of confinement at the ADC that the judge highlighted. The judge determined that there was a real chance Mr. Assange would be subject to restricted special administrative measures (SAMs), both before and after the trial. She came to the conclusion that "Mr. Assange might actually be held in Florence's Administrative Maximum Security prison (commonly known as "the ADX") on the charge of being proven guilty". (*USA v. Julian Paul Assange, 2021*)

The debate about "real risk" is based on the standard used to determine whether detention circumstances would fall short of what is required by article 3 of the European Convention on Human Rights. The judge found against Mr Assange on other grounds due to which he had resisted extradition. Although, there is a major consensus that political offences shall not be the rendered as the base of extradition (European Convention on Extradition,1957)

Moreover, it is against the law to extradite someone to a country where there is a good chance they would be subjected to torture in accordance with the principle of non-refoulement. This principle is codified in Article 33(1) of the 1951 UN Convention Relating to the Status of Refugees. Both Article 2 of the 1967 Council of Europe Committee of Ministers Resolution on Asylum to Persons in Danger of Persecution and Article 3(1) of the 1967 UN Declaration on Territorial Asylum are germane. The absolute necessity of the non-refoulement principle, which assumes the shape of a dogmatic norm of customary international law, comes from the outlawry of torture. (UNHCR,1977)

In a diplomatic note dated 5th February 2021, the USA provided various guarantees. Despite the fact that the guarantees were only made available after the District Judge had made her decision, the court determined that it had the authority to accept and take them into account.

The court was satisfied with the assurances that are given hereunder:

- Prevent Mr. Assange from ever being placed under "special administrative measures" or being held in Florence, Colorado, USA's "ADX" facility (a maximum-security jail), either before or after any conviction, barring any subsequent activities that would subject him to such detention terms;
- Commit that while Mr. Assange is being held in custody in the USA, he will receive the appropriate clinical and psychological care as recommended by a licensed treating clinician at the prison where he is being held.
- Commit that, in the event of a conviction, the USA will approve Mr. Assange's request to be sent to Australia to serve his sentence.

2. Freedom

‘It's not just the freedom of Assange but the Freedom of the Press that is at stake’.

Ithaka was an island in Greek mythology from where the king ‘Ulysses’ belonged. Alfred Lord Tennyson’s poem ‘Ulysses’ truly explains the heroic and free spirited nature of ‘Ithaca's king Ulysses’. The title explains how this film is an ode to Assange just like ‘Ulysses’.

“I cannot rest from travel: I will drink

Life to the lees: All times I have enjoy’d

Greatly, have suffer’d greatly, both with those

That loved me, and alone, on shore, and when

Thro’ scudding drifts the rainy Hyades

Vext the dim sea: I am become a name;

For always roaming with a hungry heart” ~ Ulysses by Alfred Lord Tennyson

The title of the movie ‘Ithaka’ named after the island to which the great king ‘Ulysses’ belonged was a creatively apt choice. The resemblance between both seems to be connected with the idea of being free. Both Julian and Ulysses are recounted for fighting the bravest battles with a free spirit. He did not rest and worked endlessly, even though he suffered greatly. He wasn’t afraid of the world’s most powerful nation and was ready to put himself forth by exposing hidden secrets. The excerpt above explains very well the personality of Julian, a name that has become famous all over the world. However, is the act of being free always justifiable? As we draw a legal parallel, the question that arises here is whether the acts of Wikileaks are protected under the First Amendment Rights of the United States?

The First Amendment provides that, “Congress can make no law respecting an establishment of religion or prohibiting its free exercise. It protects freedom of speech, the press, assembly, and the right to petition the Government for a redress of grievances.” (Constitution of the United States)

According to the International Bar Association's Human Rights Institute (IBAHRI), extraditing Assange from the UK to the US would violate Article 4(1) of

the Extradition Treaty between the UK and the US, be against his constitutional right to free speech, set a bad example for restricting press freedom in the UK, the US, and other nations, and possibly subject him to an unfair trial in the US. The very fact that the US government has only twice before filed charges under the Espionage Act against non-governmental third parties of the allegations presented against Assange, strikes at the roots of this case. (Reporters Committee for Freedom of the Press' analysis)

Concern was expressed over the fact that three of the charges were solely for publishing government secrets. This is something that should worry journalists who publish classified information as their daily bread and butter.

It is the first mention ever of the "World War I-era Espionage Act" to be subjected against a journalist. This step has prompted criticism from journalists all across the world who claim that this might jeopardise press freedoms and undermine First Amendment protections.

The film heavily emphasised on the legal aspects with Julian's lawyer pointing how, "*This is an outrageous affront on journalistic protections. That's what this case represents and that's why it's so important*." Further she added, "*The seriousness of this indictment in terms of criminalization of news-gathering activities, was abundantly clear once the United States government slapped a hundred and seventy-five years and 17 potential charges in relation to those publications*."

Moreover, the European Court of Human Rights has repeatedly stated that Article 10 of the European Convention on Human Rights provides, "protection not only the content and substance of information and ideas, but also the means of transmission" (European Convention on Human Rights, 1950).

The fundamental duty of a free press in a democracy is to hold governments accountable. One essential component of journalists' everyday work is gathering and, when appropriate, disseminating sensitive material for the benefit of the public. Our public conversation and democracy would be substantially weakened if those efforts were rendered illegal. This desperate act of the government is also violative of

international laws, and is casting a bad shadow on the notion of press freedom all over the world.

All in all, “Publishing is not a crime” and “this indictment sets a dangerous precedent, and threatens to undermine America’s First Amendment and the freedom of the press, as Julian was only rendering his duties as a journalist” (First Amendment Watch, 2022). The very fact that journalistic freedom is boldly depicted in the documentary urges other governments to act, as it affects their press regime.

3. Individual vs State

The case of Julian Assange urges us to look back at George Orwell’s finest work ‘1984’ and the torture that Winston went through by opposing the state’s will. The relevance of this novel is monumental and explains how the consequences aren't good when an individual goes against the state. Assange’s case is the real-life example of how a person gets 175 years of incarceration for publishing documents that risks the state’s honour. Ben Wizner in his opening statement at the Belmarsh Tribunal held at Washington DC quoted, “Now, in this case, the government characterises that collaboration between a courageous source and a courageous publisher as a conspiracy. Of course, it was a conspiracy. Good investigative journalism is always a conspiracy. It’s a conspiracy to end the monopoly on information that governments control and to give people the seat at the table that they must have in order for us to be able to judge powerful people and hold them accountable” (Democracy Now, 2023).

The documents released by WikiLeaks shook the entire state and created a panic-stricken atmosphere. The wrath of it ultimately came down to its owner, hence the film exposes the struggles that Assange goes through from being charged with sexual and rape assaults (which were eventually taken back) to his stay at the Ecuador embassy that stretched to 7 years, impacting his psychological well-being drastically. The US did everything in its power by requesting for his extradition to stooping low and conspiring against him and his family.

According to the film, the place where he was staying was all bugged and the footage was sent to the US every fifteen days. This claim was legally rectified, when two unnamed witnesses who worked for a Spanish company with a security contract at the

embassy came forward and claimed in written testimony that the WikiLeaks founder was the target of a growing bugging operation started in 2017.

Furthermore, according to Yahoo News, negotiations about capturing or killing Assange took place in 2017, when the wanted Australian activist was beginning his fifth year of safety in the Ecuadorian embassy. When "Vault 7," a collection of CIA hacking tools, was published by WikiLeaks, the then-director of the CIA, Mike Pompeo, and his senior officers were incensed. The agency considered this breach to be the largest data loss in its history. According to a former Trump national security official quoted by Yahoo, Pompeo and the CIA leadership "were absolutely removed from reality because they were so ashamed over Vault 7". "They were seeing blood"(The Guardian, 2021).

A recent news report by exclusive reports revealed how “the CIA had been spying illegally on Julian, his lawyers, and some members of this very tribunal”. She continued, “Assange's case is the first time in history that a publisher has been indicted under the Espionage Act. The CIA even plotted his assassination at the Ecuadorian Embassy under [former U.S. President] Donald Trump.” (Newman,2023).

This majorly points out how such a powerful country got so flustered by the actions of an individual that it had to resort to such illegal methods to shut his mouth.

4. Survival

The whole film acts as reminder of the atrocities and the torture that Assange went through and is still facing. The sacrifices he made - his family being the most important one and perhaps the only hope, due to which he is surviving, cannot be neglected. In the closing scene of the film, Julian’s father is seen saying, “*We're here and this has only come about because we have a problem you know. We have a child on the ship and we wanna get him out.*” This statement not only depicts the survival of Julian, but also gives a ray of hope that is keeping his family together in these tough times. The use of ‘*We*’ symbolises ‘*Collectivity*’, emphasizing the fact that there are people out there joining the struggle, fighting for Assange’s survival and freedom.

His prolonged stay of seven years at the Ecuador embassy was no more than an incarceration as the conditions there were barely livable. After a while, the UK

government, in its defence through its Foreign Office, informed Ecuador that the Diplomatic and Consular Premises Act of 1987 gave it the authority to remove the embassy's diplomatic status. Parliament passed this law three years before the Libyan embassy crisis, when PC Yvonne Fletcher was fatally shot from inside the embassy. The government also went ahead and stressed on the fact that the 1961 convention emphasises the need for missions to follow local laws and refrain from meddling in the internal affairs of the host country. If Assange ventured outside the embassy, the Metropolitan Police claimed that it had the authority and right to detain him for violating his bail. Additionally, they delivered a letter to the embassy requesting Assange's self-deportation. By enabling other governments to justify entering embassies to arrest dissidents claiming diplomatic shelter, such a move was successful in creating a hazardous precedent.

Furthermore, since 2019, Julian Assange has been held at the UK's most stringent detention facility, London's high-security Belmarsh Prison. Wikileaks' founder has long since served his initial 50-week sentence for bail evasion in 2012. However, he has indeed been held in custody ever since, essentially in detention till the deportation, under incredibly harsh conditions.

Julian’s stay at the embassy and post 2019 detainment in the Belmarsh Prison has severely scarred the publisher’s psychological well-being. His struggle throughout the journey has been quite intense. The feelings of being heard and constantly being under surveillance is what impacted the publisher’s psyche so deeply that during his stay in the embassy he used to converse with his visitors in the ladies restroom. He was constantly being subjected to the fear of being watched, as if he was a deadly criminal.

On the gloomy side, the journalist is still going through psychological torture, but on the brighter end, the documentary very significantly portrays that the struggle is constantly going on and fuelling the fight for justice all over the world.

5. Cinema as a tool to seek justice

Cinema possesses unique elements which enhances its impact and sets it apart from the other mediums. The various techniques used during the production of the film become paramount in creating an impact among the viewers. This film created in a documentary style also used various techniques and elements to appeal to the audience

emotionally. The extreme close-up shot of Julian's wife and children metaphorically signifies the pain of the separation and the longing to meet him again. The moving shots from behind of Julian's father going from place to place, always dressed in formals, showcases the dedication of the father willing to do anything in order to rescue his son. The zoomed in still shots of the poster with 'Free Julian Assange' and the wide-angle shots of the people protesting and marching. The film, divided in two parts 1 & 2 with a total running time of 117 minutes, approximately visited the war footage from Iraq twice with an approximate screen time of 37 seconds. The definite aim behind the disturbing footage was to create an impact on the viewer's psyche and to make them question the law of humanity.

The constant visit to the war crimes footage, interviews of Jennifer Robinson (Julian's Lawyer), Nils Melzer (United Nations Special Rapporteur on Torture), Edward Snowden (Whistleblower), Stella Moris (Julian's wife) and his father John Shipton, archives of the news channels, footage of Julian's stay at the embassy compiled together with swift editing, account for a compelling piece of work. Adding to this, the narrative music used in it is edgy and furthers this cause. The persuasive writing of this film caters to the importance of this cause, by making the viewers understand that Julian's curtailed rights stand as abduction from being a free journalist and a free man. It explains how 'if Julian goes down, so will journalism' backed with scenes of protests happening outside the Belmarsh prison.

Findings

Literature not only contextualizes but it induces the society with strong perspectives alongside aiding the reimagination of reality. "Films as a cultural medium both reflect dominant attitudes in society and also play a pivotal role in the shaping of our perceptions and ideas" (Welsh et al., 2011). Hence the film 'Ithaka' also aimed at creating and shaping perception regarding the case of Julian Assange. The major findings of the film were -

- The film created a narrative that declared Julian an innocent man in the eyes of the society even before the actual acquittal.

- The themes and cinematic elements used, empowered the film's motive of seeking justice for Assange.
- It showcased Mr. Assange as a "Prisoner of Process" and Ithaka as a "literature of witness".

- If we compare Ithaka with the other documentaries, we can certainly draw a very clear conclusion that there were certain negative comments and observations that were purposely concealed. In other accounts, we can see a more factual representation rather than the spotlight being placed at the emotional aspect. However, this is justified because it is a cause driven film following a certain narrative.

- As far as the legal validity of the documentary, the work done is quite impressive. The selection of interviewees is very accurate as per the requirement. A key notice is that the director has not tried to undermine the legal issues just to cater to the mass emotional appeal.
- The amount of legal facts portrayed in the film are very accurate and do not overwhelm the viewer with technicalities. This in turn, makes the literary device more accessible and impactful.

Way forward

1. Legal remedies in the United Kingdom would be finished, if the High Court decides that the first-instance procedures shouldn't be renewed. The next legal recourse for Assange shall be knocking the doors of European Courts of Human Rights, which has already been instituted by the legal team of Assange. Although this is an optimistic way of seeing things, one legal point should not be missed that the individual complaint that may be submitted to the ECtHR will not have a suspensive effect. Neither the real extradition order of the administration nor the decision of the national court is suspended by it. The issue is clear: the ECtHR would be faced with a "fait accompli" meaning thereby "predetermined outcome". A successful application for the adoption of interim remedies before the ECtHR is the only remedy that would provide an alternative to this situation (Article 39 of

the ECtHR's Rules of Procedure). A similar approach would enable the Court to temporarily halt the extradition to the United States in order to ensure that the defendant receives adequate legal protection during the main proceedings.

2. The next step for Assange can be presidential pardon, and the initiatives for the same are being undertaken. The Belmarsh Tribunal, so named after the jail where Julian Assange has been confined indefinitely seeks justice for imprisoned or persecuted journalists, as well as publishers and whistleblowers who dare to expose the crimes of our governments. On January 20, 2023, The Wau Holland Foundation and the Progressive International jointly arranged the tribunal gathering a variety of expert witnesses, including constitutional attorneys, well-known journalists, and human rights defenders. The Pentagon Papers leaker Daniel Ellsberg, renowned linguist and dissident Noam Chomsky, and former British Labour leader Jeremy Corbyn also joined others in urging President Biden to drop charges against Julian Assange.
3. The film 'Ithaka' available at the website 'Ithaka.movie' allows an option to host a screening by providing equipment, making it reach directly to the audience. However, the film is confined to only four countries: USA, Europe, Germany and Australia as of now. The film, recognised and awarded at many film festivals like Soho London Independent Film Festival (2022), Sydney Film Festival (2021), Human Rights Film Festival, Berlin, etc. can be partnered with OTT giants like Netflix, Amazon. This would be a feasible option as it would garner a wider audience from all over the world.

Conclusion

"I had hoped that today would be the day that Julian would come home. Today is not that day. But that day will come soon. We are extremely concerned that the US government has decided to appeal this decision. It continues to want to punish Julian. We will never accept that journalism is a crime in this country or any other. I ask you all to shout louder and lobby harder until he's free. Free Julian. Free the Press. Free us all." - Stella Moris (00:22:40).

Cinema as a form of literature truly encapsulates the essence of Julian's story, loudening the emotional appeal for justice. This documentary exposes viewers to the real dynamics of the case and educates them as well. The case was dealt with extreme caution depicting legal scenarios which were authentic as well. However, it did glorify certain aspects to portray Julian as an innocent man in the eyes of the public even before the actual judgement. This might lead to others taking undue advantage of cinema and interpreting facts on the basis of what is depicted in any film, especially a documentary.

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The Trial of Chicago 7: Narrativity, Performativity of Principles of Justice, et al.

Md Sabeeh Ahmad & Tuhel Ahmed

Abstract

As society progressed, cinema made significant strides to create an impact unimaginable on the human psyche. Identity, language, resistance, are no longer restricted or isolated but in fact reaching the masses through many modes, the most significant, however, of all is through cinema. The Trial of Chicago 7 is a similar attempt. Like Shakespeare once portrayed Elizabethan society, its constituents, the flaws prevailing, and to a certain extent human rights, movies like The Trial of Chicago 7 have done the same. More importantly the message that has been thrown for the viewers, the right to protest against the State for a matter of such importance like the Vietnam War. The chaos that ensues thereafter in the courtroom, resulting in the mistrial of the sole black defendant, and the important elements of law and justice: the role of an impartial jury, contempt in a court and so much more. As much as the law is involved (the anti-riots provision of the Civil Rights Act used to prosecute), the language, narrative, style and montage in the film plays a decisive role in upholding the notions of protest, dissent, resistance, as well as the principles of natural justice. The objective of this paper is to present and explore the correlation of cinema with law in the light of the movie "The Trail of Chicago 7". The paper will look at the legal point of view in the movie "The Trial of the Chicago 7" (originally 8), the key elements that build up to such a drama in the courtroom and the elements of the film that succeed in delivering the intended message with the intention of bringing 'cinema and law' as an interdisciplinary approach for legal discourse in academic fields.

***Keywords*:** cinema, law, narrativity, performativity, sound, camera, trial, courtroom, justice, protest.

Introduction

Cinema is a compelling and profound art form. Art historian and critic Erwin Panofsky wrote: “If all the serious lyric poets, composers, painters and sculptors were forced by law to stop their activities, a rather small fraction of the general public would seriously regret it. If the same thing were to happen with the movies the social consequences would be catastrophic” (Corgi, 2021). Thus, cinema in theatres, televisions or video cassettes not only plays the role of entertainment but also has emerged as the mode through which human society narrates and creates itself. The fact that movies amuse viewers is not the only way films gain social, cultural, and historical relevance. It's because they can connect with a broad audience and a particular aspect of the public's conscious or unconscious experience. Films like ‘The Godfather’, parts I and II (1972 and 1974) and Nashville (1975) vividly presented some of the cultural and societal tensions of the time in America. In 1989, there were movies like ‘Field of Dreams’, which imagined the Chicago Black Sox of 1919 playing on a spotless and idyllic baseball field to create a mythical American past. These movies not only contributed to the longing for a bygone America but also helped society to form itself out of the righteous elements in these movies (Corgi, 2021). First among the postmodern historians, Robert Rosenstone says “ the visual media have become arguably the chief carrier of historical messages in our culture” (Weinstein, 2019). Similarly, American historian and social critic Arthur M Schlesinger Jr. has said: “The fact that film has been the most potent vehicle for the American imagination suggests all the more strongly that movies have something to tell us not just about the surfaces but the mysteries of American life” (O’Connor and Jackson x). Thus, American historical movies play a prominent role in reflecting American society.

The courtroom drama, sometimes known as the “trial picture” or “trial film” emerged as one of the first American film genres, only a decade after the invention of cinema, in 1907 (Silbey, 2017; Kamir, 2005). With the emergence of technology and science, the prevalence of cameras, the dominance of images in our culture, and the way that information is transmitted today, narration and discourse of legal stories both

fiction and non-fiction has become largely accessible to the audience. Law, right from the formation of human society has been a non-dispatchable entity. Law could be traced playing a major role in cinematic narratives through courtroom scenes, custodial scenes and so on. Viewers not only get amused by the scenes in the movie but they also put themselves in judicial as well as scholarly decision making position of the scenes related to trial, with the help of the relation that gets induced in them through storytelling mechanisms—special effects, flashbacks, multiple points of view, montage, sound and dialogues in the movie or film as we shall trace these entities in the historical courtroom drama 'The Trial of Chicago 7'. The objective of this paper is to present and explore the correlation of cinema with law. The paper will look at the legal point of view in the movie "The Trial of the Chicago 7" (originally 8), the key elements that build up to such a drama in the courtroom and the elements of the film that succeed in delivering the intended message with the intention of bringing 'cinema and law' as an interdisciplinary approach for legal discourse in academic fields.

Cinema and Law: An interdisciplinary approach

Cinema and law, the two paramount socio-cultural constitutions and in recent times it has emerged as an interdisciplinary field of scholarship. In the late 1980s and into the 1990s, pioneering academic publications embarked on a project to combine the study of legal themes with that of film, cinematic storytelling and popular visual imagery (Machura & Robson, 2001, pp. 3 –8). The study and discussion on 'cinema and law' is rapidly increasing in the contemporary period and it can be traced in various platforms such as in lectures, law school course titles and pop culture Websites. The study, discussion and discourse on 'cinema and law' has got less audience and academic platforms, as we compare it to other interdisciplinary arenas such as 'law-and-society' or 'law-and-literature'. The journal, 'Why 'Law-and-Film' and What Does it Actually Mean? A Perspective' states "In 1999, in his annual presidential address to the Law and Society Association (USA), Professor Austin Sarat presented a legal critical analysis of the film The Sweet Hereafter. He invited scholars to join in the formation of the innovative and virtually uncharted territory of law-and-film (Sarat, 2000a, 2000b). Five years later, at the 2004 annual meeting of the

new Law, Culture and the Humanities Association (USA), film's relationship to law was the subject matter of many panels, and referenced in many more." (Kamir, 2019). Nevertheless, this interconnection of cinema and law as an academic discussion comes in contact with various questions such as, what is actually 'law-and-film or cinema and law'? What does law-and-cinema study try to gain, and how does it go about pursuing its goals? What types of connections or similarities between law and cinema validate an integrated, interdisciplinary look at both disciplines? Can cinema offer significant, worthy jurisprudential insights? Why should we bother to read cinema as jurisprudential texts? etc. (Kamir, 2005)

In the contemporary period cinema and law has emerged as the mode through which human society narrates and creates itself. Both cinema and film, as socio-cultural formations, conceive and develop human beings and social groups, by means of storytelling, performance, and ritualistic patterning. These notions of commonality are presented by scholars at different levels. For instance, in his introduction to Legal Reelism: Movies as Legal Texts, an early edited collection of law-and-film articles, John Denvir announces that "we can learn a great deal about law from watching movies" (Denvir, 1996; Kamir, 2005). Viewing certain films as jurisprudential texts he notes:

> *"[W]e can study movies as 'legal texts. [...] Frank Capra's film, it's a Wonderful Life, provides an important complement, or perhaps antidote, to Chief Justice William Rehnquist's legal discussion of the reciprocal duties we owe each other as citizens. Not only do both 'texts' treat the difficult legal issue of the claims of community, Capra's treatment brings out an emotional ambivalence toward community that Rehnquist's legal prose ignores." (Denvir, 1996; Kamir, 2005)*

The scholars of cinema and law are particularly aligned on how law and legal procedures are portrayed in movies, which might be inferred to "law-in-film" scholars (Haltom, 2007; Denvir, 1996). By analysing how law operates in the film, we can explore the boundaries of law and legal issues in a way that is similar to more common jurisprudential discussions about how law should or shouldn't govern and

order our environments (Kamir, 2005). Some of these legal and film scholars pay close attention to how legal discourse is embodied visually in culture through film, emphasising the technology of the moving image (as opposed to the written word) as a particularly potent medium for telling stories and establishing specific types of social relations (Black, 1999). These theories, which can be roughly compared to a film-as-law theory, compare film and law as epistemic systems, powerful social practises that, when combined, are incredibly effective at defining what viewers believe they know, believe they should expect, and what they hope for in a society that guarantees ordered liberty (Silbey, 2017).

Law in the movie - *The Trial of Chicago 7*

"Audi alteram partem".

The initial courtroom drama forces the viewers (and more so if they are legal viewers), to revisit the aforesaid maxim. A strong pillar of the principle of natural justice, the right to be heard, or in this context the right to be represented. The movie showcases how this basic right is violated for Bobby Seal who is denied a lawyer representative in violation of the sixth amendment. What more? Consequently, Seal is denied a chance to represent himself, something that the sixth amendment also guarantees. The Trial of Chicago Seven is not only a lesson on rights and the amendments, it is more importantly a lesson on the conduct of a trial. The judges purview, and the judicious exercise of the immense power that the judge has in possession, the impact it creates, all of them clubbed together ensure whether a trial has been fair or is another attempt at an "unfair trial" in disguise. In the case of Bobby Seal, the initiation of contempt proceedings in court when he tries to defend his own case interrupting the proceedings which ultimately lead to an unfortunate gagging of Seal in open court is a blatant abuse of the powers of a judge, especially in contentious cases, where the judge is specifically expected to be sensitive. The prejudicial nature of Judge Hoffman, especially against Seal and also against other defendants, raises eyebrows on the treatment of Afro Americans and the treatment of others who are accused of conspiring against the state. This also leads us to a potential argument on the collusive nature of the judicial system and the state, wherein the state may attempt

to instate judges who declare in the state's favour, another unfortunate reality that still exists in the judicial systems across the world. Seal's trial, however, meets an unusual fate of being declared a "mistrial".

Another baffling detail in the outcome of the case is the total count of criminal contempt for the defendants. The defendants and their lawyers were convicted for a mind whopping total of 169 counts of criminal contempt. But why the contempt, if any? The defendants seemed to know that they would not be eventually acquitted. They were aware that a larger force was at play and they would be eventually convicted. How was it possible to seek justice in the midst of an unfair trial? By calling attention to the issue at hand, i.e., unfair trial. It is important to note that at the conclusion it was this intervention (s) that made the difference and brought sufficient attention, eventually being portrayed in the movie.

The defendants were indicted under Title X: Anti-Riot Act infamously used to suppress the freedom of speech. Another important dimension of the movie and the trial is the suppression of speech and the right to dissent, a right guaranteed under the First Amendment. A look back in history of the exercising of the First Amendment combined with freedom of speech, right to assemble, and right to protest throw up some landmark case laws.

One of the first landmark opinions was that of Justice Louis D. Brandeis in *Whitney v. California.* In this concurring opinion he stated that the founders desired that the people be free in their ability to comment on government policies, and that the free exchange of ideas is the only way to prevent the "dissemination of noxious doctrine" and to create a resolution of supposed grievances by proposed remedies. Free speech, Brandeis argued, is essential to democracy because citizens are obliged to participate in government and they can do so without fear only if their right to criticise government is protected. He stated that any abridgement of free speech would eventually strangle democracy.

Following this, Justice Roberts in *Hague v. Committee for Industrial Organization (1939)* wrote in favour of public assembly that the privilege of a citizen of the United States to use the streets and parks for communication of views on

national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied. (Emphasis supplied).

One of the first cases related to peaceful assembly was *Edwards v. South Carolina* wherein Afro-American students marched against segregation and were given 15 minutes by the police to disperse. Failing which, hundreds of students were arrested and 187 of them convicted of breach of peace. Writing the majority opinion Justice Potter Stewart wrote that the students' actions "reflect an exercise of these basic constitutional rights [to speech, assembly, and petition] in their most pristine and classic form." Stewart emphasised that the students acted peaceably and never threatened violence or harm. He concluded that the First and 14th Amendments do not "permit a State to make criminal the peaceful expression of unpopular views."

Reiterating similar views in *Cox v. Louisiana,* the Court found unconvincing the state's claim that although the demonstration was not violent, it was "inherently dangerous" and therefore qualified as breach of the peace. Such a definition, Goldberg wrote, "would allow persons to be punished merely for peacefully expressing unpopular views" and thereby defeat the entire rationale of the First Amendment guarantee, which is based on the very notion that "[s]peech is often provocative and challenging" and may have "profound unsettling effects."

A more relevant observation would, however, be of the court in *Bachellar v. Maryland,* which was related to Anti-Vietnam war protests. The Court reversed the judgement of the Maryland Court of Special Appeals because, it reasoned, the jury may have convicted the protesters simply because it found the viewpoint of the protester's offensive. Or as Brennan wrote, "[T]he petitioners may have been found guilty ... simply because they advocated unpopular ideas." The Court "held that where it was impossible to determine if convictions for disorderly conduct in blocking a public sidewalk as part of an anti-Vietnam war demonstration were based on grounds contrary to the First Amendment, the case must be reversed."

The First Amendment, throughout history, even before the trial of the Chicago 7 protected several rights of peaceful protesters, freedom of speech, right to assemble, to name a few. It also highlighted the reasoning of the jury when they believed defendants had contrasting views to that of them and were hence convicted. How then, is this connected to the movie? The movie is different from other courtroom dramas which narrate a story of a good lawyer who is fighting for justice. In the Trial of Chicago 7, the lawyers are far from being protagonists. In reality, the movie emphasises on a singular question through scenes of peaceful protests and eventual police violence, conspiracy of the state, the biassed judicial approach, attempt to withhold witness (testimony of the former Attorney General) and several others, the movie attempts to acquit the defendants even before the court did and necessitated a question for the viewers: Was this trial even needed? Through a systematic view of the absurdity involved the movie attempts to dissect the trial and criticises the trial as a whole. It shows the blatant role of the State in suppressing views against an unpopular war. It allows the viewers to analyse how the state, on each occasion, finds a tribe of guilty individuals, who are obviously against the idea of war, and attempt to destroy the idea of dissent.

The Trial of Chicago 7 **: Trial narrativity, performativity of justice et al.**

The visual presentations of courtroom dramas, trial films or trial movies in America are long familiar, recognizable and pursuant. Trial movies frequently begin with a setting shot of the courthouse, complete with cupola, wide steps, and columns. Occasionally, the opening of the movie in America features patriotic icons (Lady Liberty, George Washington, and Abraham Lincoln etc), which serve to remind the audience of the values that shape the legal system. The poster of the movie “The Trial of Chicago 7” is one such example which has a courthouse, police, a character at the entrance of the court and a patriotic icon that is the flag of the US that gives exposure to the viewers of courtroom drama in cinema.

Sound, narration and cinematography in courtroom dramas are some of the key elements that not only help in building dramatic effect in viewers but also adds into the success of delivering the intended message; justice in this movie. The Trial of

Chicago 7 starts with a portrayal of a documentary (short video) based on historical and political events leading to war in Vietnam War (1954–1975). Basically, the documentary is monochromatic and the background sound is multilayered which refers to the intensity of the historical event and its effect on the viewers and so on the society. The narration of the short monochrome documentary initiates voice and resistance in the characters that ultimately leads to the exposure of the movie. Sound plays a very vital role in the movie, the very first public gathering is one such example where the dialogues are subsequently aligned with high metallic sound that lets the viewer's put themselves in the boots of the chaotic situation in the movie. WB Sound managed and gave sound in the movie The Trial of Chicago 7 and supervising sound editor Renee Tondelli in an interview with Jennifer Walden said: "In terms of sound, the courtroom represents the controlling, authoritarian hand of the Federal government. Through reverbs, EQs, and sound effects, we worked on creating the feeling of an environment in which individual voices seem small in a cavernous space, except for Judge Julius Hoffman's voice and his gavel, which are magnified and enhanced. We used both Judge Hoffman's plant mic and boom to give his voice a resonance that is different from everyone else. We used his gavel like a shotgun. For every shot and scene, we needed to establish the presence of the crowd and jury and follow the emotional twists and turns of the trial. We needed to create the sensation of sitting in the courtroom as these historical events unfolded. Every shift, creak, off-screen page turn, and off-screen vocal was meticulously placed. By contrast, everything outside of the courtroom – especially the riot scenes — reflects the point of view of "the people." We developed the sound design as increasingly unstable chaos, with multiple points of view told with layered aural elements" (Walden). Meanwhile, Julian Slater, two-time Oscar nominated re-recording mixer Julian Slater in the same interview with Jennifer Walden stressed on the notion of emotion that comes into force due to the background sound in the movie. He argued: "Aaron was very particular about wanting to get this film out to as many people as possible, before the election, because it was partly a reflection of what is happening in the States today. I feel there's probably a lot of younger Americans who don't necessarily know about this and what happened. And so, I was very much led by Renee in wanting to get the

emotion and the power of what was happening, because it was a big thing. And it's a big thing that's obviously reoccurring today. It's all about getting that emotion across. We worked hard to get that raw emotion of what was happening across to the audience" (Walden, 2021). These arguments proposed by the two sound providers in the movie highlights both the importance of sound (dialogues) in a courtroom drama as well the role that it plays in dispatching the historical event and the curtailed narratives to the audiences.

Camera angles in these movies play a vital role in bringing up situations related to the story and in most cases, in the opening scene camera moves up from a street perspective, looking at the steps, to the courthouse or statue from a street perspective, portraying the viewer as an eventual entrance and citizen in the house of law. These angles are vividly presented in the movie right from the poster to the moving pictures in the movie. The courthouse scenes that follow are typically more frantic, driven by the commotion of individuals going about their daily business, congested hallways, and the hum of human voice, shoes and boots, paper and keyboards as we find a mix of shots of a typewriter in the movie. These cinematic angles largely contribute to the narrativity of trial cinema and performativity of justice et al.

The disorder that needs to be fixed in the house of law is foreshadowed by the anarchy. Sometimes, these additional scenes—laughter and conversation, hugs, and worried faces—infuse humanity into the otherwise inanimateness of stone and metal, signaling a realization that the promise of justice necessitates human involvement. Eventually, the viewer arrives at the courtroom, which may be symmetrically framed down the centre with a focus on the judge or the flag, representing the promise of impending order; alternatively, it may be framed ask ally with a focus on the audience members in the gallery or a specific lawyer, implying that there is still work to be done in order to arrive at a just verdict.

The film's central theme centres on changing viewpoints on a specific disagreement between people on historical events. Right from the beginning the movie revolves around disagreement on the topic of human rights, justice et al.

The camera angle in the movie accomplishes various perspectives in the courtroom drama such as, the camera prompts the reveal of covert truths or relations from or between movie actors, facts and relations that, if exposed by the court system, enable a fair verdict as we find these elements in the movie 'The Trial of Chicago 7'. The camera reveals psychic relationships between the thoughts, lives, and situations of the featured persons by framing the character of the film in a single headshot, for instance, and cutting quickly from one character to another. This technique encourages the viewer to understand the connections as relevant for the current trial. Films frequently use this type of relational composition as a suturing mechanism, but in trial movies, these technical instruments stand in stark contrast to the lifeless and inhuman origins of law (buildings, statues, and flags). The camera also serves as a perspective lens, panning, rotating, and zooming in and out to give the courtroom a sense of unity and omniscience and the ability to perceive the situation from various angles. The camera here represents the ideal of justice, providing distance for objectivity, close-ups for intimacy and emotion, and zoom shots for sharp commentary—in order to analyses the case from all available angles and to put the situation in an objective light (Pilkington et al., 2015). The cinematographer of The Trial of Chicago 7, Phedon Papamichael speaks on the usage of lens and camera that made visuals in the movie more eye catching and addressing. He quoted "I played two parts of the trial with hard light and direct beams. One on the opening day, because there's a sense of hope at this Academy Awards of trials. One character even says, 'I'm just happy to be nominated.' Then the second was at the end of the trial, before sentencing. The Hayden character, which is already in his prison outfit, stands up and reads the names of those who had fallen in Vietnam. I felt he should be bathed in light, engulfed in this heroic, angelic light, to convey a sense of truth and show there was freedom in his being able to express what mattered to them all so much" (Meier, 2020).

The Trial of Chicago 7 production designer Shane Valentino in an interview with Motion Pictures Association emphasized on the importance of production of such narrative through visuals and said "It's easy to see parallels between what happened then and what's happening now. These issues have never been resolved so it was

really important to Aaron that we weren't making a documentary. We were making a film that takes place during that time but is really a lens onto what's going on in our current culture" (Hart, 2020).

Conclusion

Cinema academics consider the history of film production, distribution, and reception to be essential to deciphering film texts and comprehending the social significance of film. In order to interpret a specific text and its place in a body of comparable film, the study of a film's formal aspects (properties of representation and production) would pay attention to the narrative structure, casting decisions, visual patterns, and camera techniques (film genre). As was previously discussed in relation to the American trial film, the analysis of film as a cultural object, especially when about legal procedure and justice, aids in explaining how a film's audience and community (a feature of reception) participate in and sustain specific ideas and ideologies about law; in this case, we see justice and human rights as the two prominent components of law.

As powerful a tool for political mobilization as any work of political literature or art from the past, courtroom plays and other popular legal fiction are even today. We are positioned in culture and communities by stories. A good tale accomplishes more by involving its audience and guiding them toward—even embracing—its resolution. As said- "Literature is, like law, an arena of strategic conflict" (Binder & Weisberg, 2000, p. 19).

Although, "The Trial of the Chicago 7" dramatizes and condenses historical events just a little bit, the film's resonance is strong in the aftermath of demonstrations for George Floyd and Black Lives Matter. Occasionally, it may seem as though the only difference between then and now is the police, who in the past chased after nonviolent protesters while wearing shirtsleeves rather than full cosplay combat attire. "The timeliness of this film was something we didn't anticipate to the extent that is happening," film's editor, Alan Baumgarten says. "We were still finishing the film, so it was quite shocking for all of us, and chilling, to be working on a project which we had tried to make work on its own terms and in its own way, with tear gas, rioting, and

police beating up on protestors, and then seeing the same thing happening on the news." Despite the fact that the film may stand on its own, viewers could forgive them for thinking they were witnessing a carefully crafted, instructional prelude to the current events (Edelbaum, 2020). Leslie Combemale, an author for Motion Picture Association while interviewing Aaron Sorkin, the writer and director of the historical courtroom drama, The Trial of Chicago 7, questioned, "Given the current state of affairs, anyone who feels called to activism could see themselves in one of the Chicago 7?" Aaron Sorkin responded "I hope you're right. I hope that people who are activists, or people who have the heart of an activist, but maybe their body hasn't gotten caught up yet, will see in this film that this is a tribute to them. I hope they'll see themselves honoured, and feel inspired by the end of the film with Hayden's final act of defiance, knowing these guys won't be beaten." (Combemale, 2020).

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Bhagavad Gita and Indian Legal System: A Hidden Motivation

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Abstract

Bhagavad Gita, the holy book of Hindu Dharma is not to be treated as a mere religious scripture but as a document that lays down the principles of life, moral righteousness, and ethico-legal aspects. The scripture which is the greatest outcome of Mahabharata consists of 18 Chapters (Adhyayas) with almost 700 verses that enumerate about Ishvara, Jiva, Prakruti, Kala, Karma, etc. It is hard to deny that the Indian legal system is heavily influenced by the common law principles and positivist approach. But it should be borne that the Indian Constitution though derived from various sources still reflects the dharmic concepts in the preamble like equality, fraternity, liberty of thought and expression etc., and many more which have been dealt with ages ago in Bhagavad-Gita. This paper is an effort to relate the principles of Bhagavad Gita to the existing modern legal system.

Keywords: Bhagavad Gita, Indian legal system, dharma, constitutional law, legal philosophy

Introduction

श्रेयान्स्वधर्मो विगुणः परधर्मात्स्वनुष्ठितात्।
स्वभावनियतं कर्म कुर्वन्नाप्नोति किल्बिषम्॥

Translation

It is better to do one's own dharma, even though imperfectly, than to do another's dharma, even though perfectly. By doing one's innate duties, a person does not incur sin.

-18th Adhyaya, 47th Shloka, Bhagavad-gita

Dharma is inherent within oneself. The external and internal influence of a person signifies the consequence which could be considered as dharma or adharma. It is always suggested by our scriptures that one should perform his dharmic responsibilities imperfectly than to perform others perfectly. It's not a sin to perform his dharma and uphold the divinity in the acts.

In contrast to western legal philosophy, the Indian understanding of law derives from Rta, the cosmic order, and Dharma, the rule of law and life, to protect and perpetuate. It is the belief that a man must develop into a complete human being by adhering to community-acceptable ethical and moral standards. This theory regarding the significance of Rta and dharma is the fundamental source of all rules. Rta is a concept in the Rigveda. The oldest record of intellectual achievement is the Rigveda. The Srutis (what is revealed or heard) and Smritis (what is written) (what is retold remembered and written) The Dharma Sutras and Dharma Shastras constitute the basic source of law and are divine in nature. They are ageless, eternal, and unchanging. It is stipulated that wherever there is a contradiction between Shruti and Smrti literature, Shruti takes precedence. According to Indian legal theorists, dharma transcends the law, and the process of establishing what is good is more self-directed than coercive. During the vedic age, the evolution of the concept of law occurred in three distinct phases. The early vedic period is associated with the notion of Rta, the middle and later vedic periods are associated with the concept of Satya, and the post-vedic period is associated with the concept of Dharma.

Dharma comes from the root 'Dhri', which means to hold. It is said that Dharma maintains, upholds, supports, sustains, keeps, conserves, preserves, observes, and promotes human welfare, human happiness, and human dignity, as well as developing the relationship between law and morality and law and nature. Thus, dharma should be seen as having a universal nature, since it seeks the human good, human happiness, human dignity, and human flourishing. Dharma is seen as righteous behaviour in all aspect of human endeavour. Dharma is distinct from religion. It is appropriate regardless of religion. In contrast to religion, which separates people, the purity of dharma lies in the fact that it unites humanity. Dharma is preventative in nature; it establishes a code of virtuous behaviour that stops an individual from

breaching the rules (dharma) in order to promote the peace and happiness of people and the human society.

Justice M. Ramjois summarises the diverse manifestations of Dharma. According to him, "the term Dharma has such a broad meaning that it encompasses laws pertaining to all subjects, including spiritual, moral, and personal law, as well as civil, criminal, and constitutional law; its specific meaning depends on the context in which it is employed." When the term Dharma is used to represent the giving of one's fortune for a social good, it means charity; when it is referred to the giving of dharma to a beggar, it means the giving of alms; when it is stated that in a given instance Dharma is in advantage of the plaintiff, it means law or justice is in his favour; when it refers that it is the dharma of the sons to care for their elderly parents, it means duty; Similar manner, when the term Dharma is applied in the realm of civil rights (civil law), it tends to mean that is enforceable by the state; when it is mentioned in the context of criminal offence (in criminal Law), it means a violation of duty that is subject to punishment by the state; and when it occurs in the context of the duties and powers of the King, it refers to Constitutional law (Rajdharma). Similarly, while it is stated that Dharmarajya is important for the peace and prosperity of the population and the establishment of an equal society, Dharma in the context of Rajya merely means law, and Dharmarajya means rule of Law and not rule of Religion or a theocratic State. The notion of Dharma has individual, social, and planetary significance from an Indian standpoint. Dharma's universality manifests as Dharma as law (Vidhi) and punishment (Danda)"

Bhagavad-Gita Overview

The Bhagavad Gita translated as "Song of God" or "Song of the Lord" is one of the most important and well-known Hindu holy books. Originally a part of the great Indian epic Mahabharata, it is often referred to as the Gita. The Gita is a conversation between the warrior-prince Arjuna and the god Krishna, who is serving as his charioteer during the Battle of Kurukshetra, which was fought between Arjuna's clan and allies (the Pandavas) and those belonging to prince Duryodhana and his clan (the Kauravas) and their allies. This discourse is spoken by the Kauravan advisor Sanjaya to his blind monarch Dhritarashtra, as Krishna had granted Sanjaya supernatural sight

so that he can observe the war and report on it to the king. The Kauravas and the Pandavas are related, and there are relatives and friends on both sides vying for dominance of authority. When Arjuna sees all his old allies and friends on the other side, he loses heart and refuses to participate in a war that would result in their deaths as well as those of several others. The remainder of the poem consists of a conversation between the prince and the god on what characterizes appropriate action, correct perception, and, eventually, the meaning of life and the essence of the Divine.

The scripture which is the greatest outcome of Mahabharata consists of 18 Chapters (Adhyayas) with almost 700 verses.

Chapter 1 is titled *Arjuna Vishadayoga*. The scenario depicts the beginning of the war. Arjuna sees relatives and acquaintances on the other side. He is in distress and grief. The question is, "Is killing morally acceptable?" He questions the ethics of warfare. He ponders whether or not it is honorable to renounce and flee before the violence begins, or whether he should fight and why.

Chapter 2 is titled *Sankhyayoga*. Arjuna was really uncertain as to whether or not he should fight in the war. In such a circumstance, he bowed to the supreme god Krishna. He acknowledged Krishna as his Guru and sought his counsel. Now that God has assumed the role of Arjuna's guru, he addresses Arjuna as a teacher would address a student. This chapter provides an overview of the entire Gita. Moreover, he provides a comprehensive description of the soul.

Chapter 3 is titled *Karmayoga*. "Law of Karma" is central to this chapter. In this chapter, the Lord explains Karma. Krishna emphasizes that there is absolutely no way to escape action (karma) because even refraining from work is an action (karma). Krishna explains to Arjuna that he must comprehend and carry out his duty (dharma) since everything is interconnected by the rule of cause and effect.

Chapter 4 is titled *Gyana Karma Sanyasayoga* meaning the Religion of Knowledge, Wisdom in Action, or The Yoga of Renunciation of Action through Knowledge. In this chapter, he discusses the relevance, history, and importance of the Gita. He describes the succession of this wisdom through him. First, he shared this knowledge with the Sun God. The Sun God then imparts this knowledge to his son Manu. Manu imparts this knowledge to his son, the king Ikshvaku. The Supreme God

himself imparted knowledge to Arjuna. He asserts that birth and death are natural occurrences.

Chapter 5 is titled *Karma Sanyasayoga* meaning Religion by Renouncing Fruits of Works, Renounce and Rejoice, or The Yoga of Renunciation. Lord Krishna says that devotion to God appears to be more challenging than asceticism. In actuality, however, the Lord's Devotion is the simplest path to moksha. He explains that in order to practice asceticism, we must abandon our material possessions.

Chapter 6 is titled *Dhyanayoga (Aatmasamyamyoga)* meaning Religion by Self-Restraint, The Practice of Meditation, or The Yoga of Meditation. Lord Krishna describes the benefits of meditation. He describes the process of meditating.

Chapter 7 is titled Gyana Vigyanayoga meaning Religion by Discernment, Wisdom from Realization, or The Yoga of Knowledge and Judgment. Now, the Supreme god reveals himself. He claims to be everything. He is supreme and exists in all individuals. The chapter asserts that evil is the result of ignorance and attachment to the elusive Maya, which is ephemeral. It asserts that Self-consciousness and unification to Purusha (Krishna) are the ultimate aspiration of all spiritual endeavors.

Chapter 8 is titled *Akshara Brahmayoga* meaning Religion by Devotion to the One Supreme God, The Eternal Godhead, or The Yoga of the Imperishable Brahman. This chapter examines cosmology, as well as the nature of death and rebirth. In this chapter, Arjuna inquires about death and the afterlife to the Lord. Shri Krishna discusses death and the afterlife to Arjuna. Lord Krishna states that for a living being, death is dreadful, and he does not desire to die. When the live entity dies, however, he finds that he was living in an illusion.

Chapter 9 is titled *Raja Vidya Raja Guhyayoga* meaning Religion by the Kingly Knowledge and the Kingly Mystery, The Royal Path, or The Yoga of Sovereign Science and Sovereign Secret. Lord Krishna begins by imparting his most secret information. He explains that Isvara is everything. He asserts that enlightened individuals recognise him and perform his devotion without expecting benefits. While fools worship demigods and receive the finest of the best boons and fulfil their wishes, the wise acquire the greatest of the greatest boons and fulfil their desires. The only

way to attain emancipation from this world is to perform Lord-worship without expecting benefits.

Chapter 10 is titled *Vibhutiyoga* meaning Religion by the Heavenly Perfections, Divine Splendor, or The Yoga of Divine Manifestations. This chapter imparts knowledge of Lord Krishna's abilities. The Supreme Lord explains to Arjuna his capacities, manifestations, and other attributes.

Chapter 11 is titled *Vishvarupa Darshanayoga* meaning The Manifesting of the One and Manifold, The Cosmic Vision, or The Yoga of the Vision of the Cosmic Form. Now, realizing that Arjuna has acquired divine wisdom and realized the supreme being, Lord Krishna reveals his true cosmic form to Arjuna.

Chapter 12 is titled *Bhaktiyoga* meaning the Religion of Faith, The Way of Love, or The Yoga of Devotion. In this chapter, Lord Krishna outlines the path of devotion to Arjuna. He asserts that even an ordinary individual can practise God's devotion and gain celestial traits.

Chapter 13 is titled *Kshetra Kshetragya Vibhagayoga* meaning Religion by Separation of Matter and Spirit, The Field and the Knower, or The Yoga of Difference between the Field and Field-Knower. Lord Krishna contrasts the impermanent, perishable bodily body (kshetra) with the unchanging, eternal Self (kshetrajna).

Chapter 14 is titled *Gunatraya Vibhagayoga* meaning Religion by Separation from the Qualities, The Forces of Evolution, or The Yoga of the Division of Three Gunas. Lord Krishna describes the three qualities of the world to Arjuna. These are Sattva (goodness), Rajas (attraction), and Tamas (ignorance). He explains to Arjuna the significance of these traits, their effect on us, and their bearing on our lives and conduct.

Chapter 15 is titled *Purushottamayoga* meaning Religion by Attaining the Supreme Krishna, The Supreme Self, or The Yoga of the Supreme Purusha. In the Vaishnava Bhakti tradition of Hinduism, this chapter discusses Krishna's theology. Krishna discusses the essence of God, wherein Krishna transcends not only the ephemeral body (matter), but also the atman (Self) in every creature.

Chapter 16 is titled *Daivasura Sampad Vibhagayoga* meaning The Separateness of the Divine and Undivine, Two Paths, or The Yoga of the Division

between the Divine and the Demonic. In this chapter, Lord Krishna describes the two forms of nature: divine and demonic. As the Divine God describes the evil and the good, this is a highly essential chapter.

Chapter 17 is titled *Shraddhatraya Vibhagayoga* meaning Religion by the Threefold Kinds of Faith, The Power of Faith, or The Yoga of the Threefold Faith. According to the three modes, Krishna classifies the three divisions of faith, thoughts, deeds, and even eating habits (gunas).

Chapter 18 is titled *Moksha Sanyasayoga* meaning Religion by Deliverance and Renunciation, Freedom and Renunciation, or The Yoga of Liberation and Renunciation. Lord Krishna responds that Yagya, penance, and charity are indispensable and should never be abandoned.

Dharma and Bhagavad-Gita Reference

" धर्मक्षेत्रे कुरुक्षेत्रे समवेता युयुत्सवः।
मामकाः पाण्डवाश्चैव किमकुर्वत सञ्जय।।"

-1st Adhyaya, 1st Shloka, Bhagavad-gita

Dharma is the first word in the Bhagavad-gita. The great work begins when the blind old king Dhritarashtra asks his secretary, Sanjaya, about the battle that was to take place at "the field of dharma" (dharma-kshetra).

श्रेयान्स्वधर्मोविगुणः परधर्मात्स्वनुष्ठितात्
स्वधर्मे निधनं श्रेयः परधर्मो भयावहः ||

-3rd Adhyaya, 35th Shloka, Bhagavad-gita

It is far better to perform one's natural prescribed duty, though tinged with faults, than to perform another's prescribed duty, though perfectly. In fact, it is preferable to die in the discharge of one's duty, than to follow the path of another, which is fraught with danger.

कुलक्षये प्रणश्यन्ति कुलधर्माः सनातनाः |
धर्मे नष्टे कुलं कृत्स्नमधर्मोऽभिभवत्युत ||

-1st Adhyaya, 40th Shloka, Bhagavad-gita

When a dynasty is destroyed, its traditions get vanquished, and the rest of the family becomes involved in irreligion.

परित्राणाय साधूनाम् विनाशाय च दुष्कृताम्।
धर्मसंस्थापनार्थाय सम्भवामि युगे-युगे॥

-4th Adhyaya, 8th Shloka, Bhagavad-gita

To protect the righteous, to annihilate the wicked, and to reestablish the principles of dharma I appear on this earth, age after age.

सर्वधर्मान्परित्यज्य मामेकं शरणं व्रज।
अहं त्वां सर्वपापेभ्यो मोक्षयिष्यामि मा शुचः॥

-18th Adhyaya, 66th Shloka, Bhagavad-gita

Abandon all varieties of dharmas and simply surrender unto me alone. I shall liberate you from all sinful reactions; do not fear.

This way dharma has been referred numerous times in Bhagavad-gita. This shows the essence of Bhagavad-gita with reference to the upholding of karma and dharma for the betterment of an individual and society.

Bhagavad-Gita and Indian Constitution

There are a lot of similarities between the Indian Constitution and Gita. Both seek to create a society that is equal and just where human beings can lead diplomatic lives and follow their goals in life. Equality, justice, and people's welfare are central themes of both the Indian Constitution under article 14 and also the most important principle of Gita. The law aims at providing a just society where the rights of individuals can be realized. One of the most important functions of the state is to evolve a legal system that can ensure justice. Holiness aims at realizing the godly potential of all human beings and inculcating the feelings of coherence and universal brotherhood. The message of oneness and universal brotherhood has the possible to provide a just society where people can live their lives peacefully.

The law is a man-made set of rules that rule the relations between our several physical bodies and serve as a means of deciding conflicts between them. Law aims at providing a just society where rights of the people can be realized. Spirituality refers to that which is common and unites all of humanity, despite our separate physical bodies and circumstances. It can also be called "transcendental unity." As a result, law and spirituality are fundamentally entangled. Although the law emphases on our separate bodies and spirituality emphases on the unseen that unites us, they are

collaborating and mutually dependent constructs because the human experience is paradoxically both of being separate and together. Therefore, peace and happiness tend to curl where spirituality is upheld by law and where law, though wisely well-defined to protect the individual, is filled with an awareness of the connected spirituality of the individual. On the other hand, we tend to find conflicts and wars where the law denies or comes into conflict with spirituality, or where spirituality has vanished its legal support.

Right to equality is one of the basic features of law and spirituality also considers that everyone is equal under law under article 14. Law deliberates everyone equal before the eyes of the law and spirituality considers everyone equal before the God. Our Constitution delivers fundamental right to equality. Our Constitution provides that everyone shall be treated equally before the law irrespective of his gender, economic status or any other considerations. Spirituality also provides that everyone is finally one reality in the highest analysis and everyone is equal regardless of their gender, age, nationality etc. and subsequently everyone should be treated equally with empathy. The basic spiritual values and fundamental principles of the law protected in our Constitution are the same, but the law is being enhanced and advanced towards more socially suitable guidelines for the advantage of society as a whole and in this process spirituality has much to contribute.

The Bhagavad Gita advocates a composed philosophy of life. There are two pathways in human life— Pravritti, the path of action and progress, and Nivritti, the path of spiritual perfection. Through Pravritti, a welfare society is well-known by enlightening the economy and political systems. Progress in society compulsorily implies the united efforts of its people. Cooperation, togetherness, and mutual love and understanding are the hallmarks of Pravritti, leading to a state called Abhyudaya. Through Nivritti, a value-oriented life is achieved, which is based on the inner spiritual proportions of mortality. The hallmarks of Nivritti are a change in attitude towards one's own self, towards life and situations, towards other people, work, and the attentiveness and purification of the mind. Both external actions and internal peace are equally mandatory for establishment of a happy society. Material prosperity

without moral way of life is not justifiable and material prosperity ignored totally is bound to lead to inaction. This balanced method has been emphasized in Gita.

Both the Indian Constitution and Gita aim at establishing an egalitarian society. We live in an age that treasures equality of opportunity for all and rejoices the breaking down of barriers such as race. Intriguingly, a similar egalitarian spirit is preserved in the Bhagavad-Gita, written eras ago. The Gita boldly announces that all people, whatever their social position, can take housing from God and attain the supreme destination. Social liberalism as an ideology recognizes the market economy but at the same time widens the role of government in dropping social inequalities on the basis of the principles of social justice for the proper operational of capitalism. Therefore, the principles of justice, equality and freedom, as well as secularism, constitute the central elements of the constitutional ideology of social liberalism in India and they are seen in the Preamble of Indian Constitution. The founding fathers of our constitution proposed an egalitarian society based on such ideal principles.

There are a lot of likenesses between the Indian Constitution and Gita. Both pursue to establish a society that is equal and just where human beings can lead peaceful lives and chase their goals in life. Equality, justice, and people's welfare are central themes of both the Indian Constitution and Gita. Both Gita and the Indian constitution seek to safeguard justice and lead to a society that is equal. Both Gita and the Constitution advocate a sensible philosophy of life.

References to Bhagavad-Gita (judgments, judges quotes etc.)

1. Justice N. Srivastava of Allahabad High Court had bought up a difficult situation by ruling that Muslims are not a minority and has mentioned that it is the duty of every citizen of India under Article 51A of the Indian constitution, irrespective of caste creed and religion has to follow dharma put forward by Bhagavad Gita.

Giving this ruling on a writ petition by SR Mukherjee, Justice Srivastava mentioned that the Bhagavad Gita is the Dharma Shastra of India. It is also said that now it is the responsibility of the state to recognize Bhagavad Gita as 'Rastriya Dharma Shastra'. He also mentioned that Gita has played a major role in inspiring the national struggle for freedom and walks of life!

The judge gave a ruling that the properties attached with temples, including religious institutions, cannot be alienated without any prior permission of the concerned district judges. Further the court elaborated that India has recognized national flag, national anthem and Bhagavad Gita too, may be considered as a Dharma Shastra.

2. A Delhi court, while discharging a trademark infringement suit, quoted American poets and verses from the Bhagavad Gita to explain why it was "showing an exit door to litigation without following the entire ritual of trial". District Judge (Commercial Court) Man Mohan Singh passed the order on December 1, after TTK, known for manufacturing kitchen appliances, pulled an online retail platform to court for selling its products deprived of permission.

Explaining why it was deciding the suit in favour of Hiveloop Technology Private, the defendant in the case, without ordering a trial, the court observed that it was the "duty of the court to show an exit door to a litigation without following the entire ritual of trial, if the same can be done within four corners of the law".

Quoting a verse from the Bhagavad Gita, it said that while the task of seeing a case or a claim for Summary Judgment, "logic for an action must be known, so also the logic for inaction and that the logic for a prohibited action must also be known, therefore the practice of 'karma' is profound".

3. The judgment in the Right to Privacy dispute laid *dharma*, righteousness, and destructs *dharma*, the evil action on behalf of the universal principle 'I' mentioned in the Bhagavad Gita.

After going through the orders of Justices Dr D Y Chandrachud and Rohinton F Nariman and on the right to privacy issue, Justice Sanjay Kishan Kaul gave a different but a concurring 47-page judgment as part of the nine-judge Constitution Bench of the Supreme Court.

Considerably, Justice Sanjay Kishan Kaul arised the question of *dharma* (justice) and *adharma* (injustice) in his judgment. He authored: 'It is wrong to consider that the concept of the supervening spirit of justice manifesting in different forms to cure the evils of a new age is unknown to Indian history.'

He referred the Sanskrit verse of Chapter 4 of the Bhagavad Gita to underline that 'the meaning of this profound statement, when viewed after a thousand generations is this*:* That each age and each generation brings with it the challenges and tribulations of the times.'

'But that supreme spirit of justice manifests itself in different eras, in different continents and in different social situations, as different values to ensure that there always exists the protection and preservation of certain eternally cherished rights and ideals.'

'It is a reflection of this divine 'brooding spirit of the law', 'the collective conscience', 'the intelligence of a future day' that has found mention in the ideals enshrined in inter alia, Article 14 and 21, which together serve as the heart stones of the Constitution.'

The significance of the Bhagavad Gita verse which Justice Kaul cited in his order becomes more evident if it is read with its preceding, very famous, verse: '*Yada Yada hi dharmasya, glanirbhavati bharata; abhyutthanam adharmasya, tadaatmanam srujamyaham*.'

The subsequent verse referred is: '*Paritranaaya sadunaam, vinashayacha dushkritaam; dharmasansthaapanarthaya sambhavami yuge yuge*.'

Together they mean: 'Whenever righteousness declines and unrighteousness is rampant, I manifest myself. I manifest myself from age to age to defend the pious, destroy the wicked, and strengthen righteousness.'

Significantly, Justice Sanjay Kishan Kaul unearths the origin of Articles 14 (right to equality before law) and 21 (right to protection of life and liberty) of the Indian Constitution in the Bhagavad Gita. It is manifest that his observations refer to the position of the Government on the right to privacy in the scheme of CIDR of Aadhaar numbers as *adharma,* or evil. He factors in the existing and ancient context of human identification and profiling.

The verdict in this case is momentous and of universal importance because it finds *dharma,* and righteousness, and destroys *adharma,* the evil acting on behalf of the universal principal 'I' mentioned in the Bhagavad Gita. He observes, 'It cannot be said that a person should be profiled to the nth extent for all and sundry to know', something which is being done under the Aadhaar scheme. He cited the European

Union Regulation, 2016, on data privacy that deals with the protection of natural persons with regard to the processing of personal data and the free movement of such data.

Conclusion

"यदा यदा हि धर्मस्य ग्लानिर्भवति भारत।
अभ्युत्थानमधर्मस्य तदात्मानं सृजाम्यहम् ॥"

Mahabharata is not just a mere epic; it consists of whole literature in itself, containing a code of life, a philosophy of social and ethical relations, and speculative thought on human problems that is hard to rival, but above all the revival have to be done in order to reestablish dharma. And the outcome of this process is the Bhagavad Gita which gave us a rock foundation for all the laws that exist today. All the ancient laws have taken its shape from this divine book. The deadliest war Kurukshetra shows how a man must be unbiased and punish those who commit crimes, and the same has been followed in our legal system. It can be observed from IPC where punishments are given to those who commit crimes irrespective of who they are. And the sloka mentioned above can be an indirect way of saying that law should be evolved with respect to changing society and time. The Bhagavad Gita is exhibited before us as a historic structure of the universal principles and law that functions everywhere, and if people can adopt and abide by the divine principles, it shall ultimately safeguard us as the protection that is expected from the Constitutional Governance, and our little laws are subsumed under it. Such is the beauty of this message and hidden motivation for Indian legal system, the "Bhagavad-Gita".

"परित्राणाय साधूनां विनाशाय च दुष्कृताम् ।
धर्मसंस्थापनार्थाय सम्भवामि युगे युगे ॥"

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The social construction of law through the lens of Camus's *The Stranger*

Ramyani Bhattacharya

Abstract

That law is socially constructed is an age-old claim, and as seen over time, it cannot be resolved in mere black and white. The answer lies in the grey. The social biases and political atmosphere of a country has always been an important player in our legal system. The Indian Legal System, which places great emphasis on judicial interpretation, considering it canonical in constitutional law, also faces the brunt of its inherent biases. This paper attempts to explore the reflection of such social construction through Camus's Mersault in 'The Stranger'. The depiction of Mersault's trial brings out the conscious and subconscious pretensions of law regarding objectivity and neutrality. In order to do that, the paper builds on the ideas put forward by the scholars of Critical Legal Studies, a conference-based movement in the late-1960s. Further, it puts forward the judicial construction of law in India, the discord between the existential reality and the reality that law makes and the responsibility that law and legal players have to bear on account of that. "Law is Politics", thus rings loud and clear.

Keywords: critical legal studies, indeterminacy, social construction, The Stranger

Introduction

Social Constructivist approaches have long influenced the legal tradition around the world and provided a new perspective in understanding law. Although it originated with phenomenology and sociology, it took up a cross-disciplinary personality with time, influencing thought and work in, for example, psychology,

anthropology and law. A clear genealogy is, however, impossible to trace and fit into this very brief examination.

The social construction of law can be charted from established literature on social construction of reality and power structures that not only repress but reproduce social institutions and practices. There has been a shift towards a hermeneutic understanding of law, that is, as a mode of giving meaning to particular things in particular places, and not just as machinery.

Additionally, the social constructivist approach to law was helped by the Critical Legal Studies movement in the late 1960s. The movement was initiated as a series of annual conferences by Marxist-inspired theorists and students. In the late 1960s, a group of junior faculty members and the students of Yale came together, and soon became a Conference on Critical Legal Studies in 1977. This movement, with a committed Left political stance, has been welcomed and proved to be quite significant through the years. Broadly, Critical Legal Studies examines the nature of relationship between law and society, the social institutions, the value systems and the consequent actions. The scope of this paper does not permit an in depth exploration of the movement which is abundantly available by various scholars, however, it shall borrow some of the concepts.

So far, social constructivism has kept itself busy with social construction of various legal concepts such as crime, and very few legal scholars have attempted to examine law itself, as a social construction and its normative implications. Similarly, Indian legal tradition has not concerned itself much with the social constructivist approach.

Hereinafter, I take this opportunity to question the normative significance of the social construction of law in India and contextualise the main postulates of Critical Legal Studies in Mersault's society.

The paper starts with a depiction of Mersault's trial from Albert Camus's famous, 'The Stranger' and offers some reflections regarding the nature of the same. The second part of the paper explains the social constructivist approach. The third part

places Critical Legal Studies in the Indian context, showing the various players in the legal field, who are engaged in the creation and reproduction of law. I examine the responsibility brought by the social constructivist nature of law on the legal players, especially the Indian Judiciary in the fourth part and conclude by harping on conscious lawmaking and accountability.

Retrying Mersault

"Maman died today. Or yesterday maybe, I don't know."

Albert Camus, The Stranger

Albert Camus is an influential name. He is perhaps one of the most prominent existential writers and philosophers in the modern era. Along with humanity and the absurdity of existence, his works are infused with themes of law and justice. Unsurprisingly hence, Camus remains a central figure in the law and literature canon, in an attempt to gauge the pretensions of law.

The Stranger , or L'Étranger was published in 1942. The opening sentence, quoted above, perhaps one of the most known and talked about sentences in literature, captures the mood of the main character as well as the book.

It narrates a period in the life of Mersault, a man completely detached and disconnected from his reality. He doesn't feel anything when his mother dies or when Marie, his co-worker professes her love to him. Mersault, for apparently no reason shoots at a person and is arrested. The court, more than the crime, judges his moral character and calls him a monster owing to the outright lack of any kind of emotion in him. He is sentenced to death. At first, he faces difficulty in accepting it. Eventually however, he comes to terms with his belief in a meaningless and purely physical world. He understands that freedom comes from choice, the choice that no one has the right to meddle with. He accepts his indifference which makes him happy.

Now, we shall go into the details of the trial that takes place and see how law operates in that setting. Mersault had killed a man that is a fact abundantly clears in the book. At one hand, the trial would seem extremely simple, objectively supporting

established laws and punishing an offender. A man murdered another, he could not defend himself and was, thus punished. This would be, however, a very superficial and conventional perception. Here, the nuances of the trial go unnoticed.

Since the day he is arrested, the examining magistrate, the prosecutor, the jury and the judge are trying to gauge Mersault's moral character. Inevitably, the incident of his mother's death becomes the central concern. Witnesses are called. That Mersault was calm at his mother's funeral, that he smoked and had a cup of coffee, that he left without paying his last respects, that he had put his mother in an old-age home in the first place and that he went to swimming, the movies and started a liaison with Marie on the same day established him as a deviant. Mersault being an atheist also worked against him. The trial seemed to be deciding on his conformity with social norms, his transgression from dominant value system and not the crime that he had committed. Camus depicted the trial as a mere farce. Mersault is condemned because "he doesn't play the game". And this game essentially, refers to the game of judgement that Mersault is exposed to.

Lincoln, while analyzing Camus's depiction of law and justice, has placed Mersault outside of both law and justice, wherein the approach is methodological, removed from legitimisation/condemnation. This approach perhaps, is most appropriate to understand Camus and law, since in contrast to an investigation on the basis of principles and values, to which Mersault was so unapologetically indifferent, it is based on description and analysis, providing us with a 'removed' understanding, if not objective.

Where law in the broader sense can be considered as prescriptive discourses manifesting in different forms, a criminal is anyone who transgresses the norm. Law, in this scene operates as a tool of the powerful. It reinforces the social norms held sacred in that society and perpetuates that. Subjectivity has no place in law, in a sense that it can be considered equal in its operations with the criminal act.

Lincoln also, however, warns us against seeing Mersault as a 'hero', or rather the 'quintessential Camusian anti-hero' who defends the marginalized, reinforces his authentic self and revolts against the 'unjust'. Mersault is no hero. He has no inherent

sense of justice. Why would he, otherwise, help Raymond Sintes, his neighbour acquit himself of charges of a rape that he committed? A better and personal evaluation would be the murder itself. Mersault had killed an Arab man in Algeria, a French colony, which depicts Camus's own complex political ideas about colonialism. Whether or not it was a ploy to carve out Mersault as not only philosophically but politically complicated, or a mere glimpse of his own political ideas, is perhaps a question we can never answer, rather, we must not go into.

In the light of Lincoln's 'removed' methodology, any attempt at evaluating Mersault morally shall bring us to an impasse. The post-modern conception of law has thus, called into question the 'objectivity' of the law as it operates. This paper is an attempt on similar lines, to describe 'how it is', to show the inner wirings.

The Social Construction of Law

Social construction essentially negates fixed or natural character of categories. Therefore, if we are to consider that an institution or practice is socially constructed, it cannot have a natural or inevitable existence. Generally, this approach applies to institutions that are popularly considered natural or inevitable, like marriage and heterosexuality. "The claim of social construction, then, is supposed to jolt our pre-theoretical commitments by taking something that we previously thought to be natural/universal/inflexible and instead showing it to be constructed/local/DE constructible".

The example of crime, criminality or deviance is very popular among scholars of social constructivism to explain the latter. It has been established that certain behaviours become deviant or criminal due to the laws terming them as such and that illegality of behaviours vary from one country or culture to another. However, this raises the larger question of whether law itself is constructed socially, whether law is essentially cultural. Thus, social construction argues in favour of a deeper, entrenched connection between law and society and negates the dichotomy that exists in some traditions of jurisprudence. As Patricia Ewick and Susan S. Silbey point out, to understand the law, one should expand the range of material that constitute law. They essentially depict the congruence of law and society, that law emerges out of and is

constituted of the social relations and practices, even “historically specific situations”. Legal consciousness thus refers to the study of how the ordinary people engage, avoid and resist the law. As Posner puts it, one can also term law as the tool of the government. Litowitz further continues that law is not separate or outside society, but it is operative within, and reproduces social relations.

This congruence can be best understood through an example. If we take crime and the treatment of it, if we consider that the present criminal justice system can be traced from that of ancient India. In a general sense, law is already operating in the society before being codified by different cultures. Further, if we look at the taxation system in India, both direct and indirect taxes are levied and collected by the different levels of government. The law levying such taxes has been operating since time immemorial, before formal codification.

Litowitz also talks about the creative power of law, the power to create new persons, like corporations and idols, rights and obligations etc. This creation, though, does not take place on a blank canvas. The lawmakers are simultaneously encouraged and limited by the social relations and legal precedents. The result that emerges out does not appear oppressive to the ordinary people, because of a certain legal consciousness as Ewick and Silbey put it, because of which, the law is obeyed.

Critical Legal Studies in India

What flows from the social construction of law, are legal indeterminacy and anti-formalism of Critical Legal Studies. To capture its main ideas, it is essential to briefly point out the ideas of Legal Realism, the prominent legal tradition which is inevitably linked to the critical legal theorists.

According to Vago and Barkan, Legal Realism argued against the idea of the rule of law and the idea that, certain legal rules made certain decisions inevitable. Instead of being a mechanical application of legal rules and precedents, Legal Realism argued that judicial decisions were dependent largely on the judge, making law inseparable from politics, economics and culture. Critical legal theory found a common ground on the critique of liberal legalism, and contended that the claim that

the conflict between individual and social interests can be resolved through the mechanism of "objective rules within a framework of procedural justice" is inherently flawed. Unger, a leading voice in the movement presents an alternative, "superliberalism" which transcends liberalism, pushes its boundaries to the point where social life merges into and largely resembles politics.

Scholars of Critical Legal Studies believe that law is not above the society, that is, they argue against a specific "legal order". In this sense, law is not neutral but reflects the values present in the society, rather the 'dominant' values in the society, maintaining the status quo. Law acts as a weapon of the powerful than protection against them. This argument can be better understood as the concept of "legal consciousness" which Trubek considers as "the central tenet of the Critical Legal Studies creed". Broadly, legal consciousness refers to the form of consciousness held in the society widely and justifies its social institutions. It is the way, the society gives meaning to the social order. Further, it can also be said that the relation between historical evolution and social life, and between social and legal forms is indeterminate. By that it does not mean that the socio-political circumstances does not matter from a legal point of view, it simply means that a direct cause-and-effect relationship cannot be established.

Continuing with Trubek's argument against a "legal order", he mentions that Critical Legal Studies both continues and challenges an older tradition of legal studies, the critique of legal order. This criticism of any legal order in a society is based upon four principles- indeterminacy, anti-formalism, contradiction and marginality.

Legal indeterminacy, a recurring concept in Critical Legal Studies refers to the notion that although a body of law or a legal doctrine exists in any society, it is neither a system nor a comprehensive collection of all possible situations. Legal indeterminacy is one of the most important theorizations of Critical Legal Studies which has given birth too many more. Indeterminacy is based on the inconsistencies of rules, especially when the rule is applied to a case, the gaps, the expansive exceptions and contradictions as well, according to Garimella. For an example, in the Indian Contract Law, 1972, a contract is enforceable only if consent to enter into it is

free. This is a rule, but it also depends upon standards. Moreover, in standard form contracts, defined by the fine prints, consent is not that free with little bargaining power available to one of the parties, but these contracts are enforceable. Further, legal indeterminacy also relates to contradictions between what the law was meant to achieve and what the law actually achieves. The author has delineated how the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 is indeterminate and fails to prevent caste violence. Due to its structural incapacities and inconsistent implementation, it sustains existing inequalities.

The second principle, anti-formalism rejects any understanding of a neutral law or legal reasoning which judges or legal specialists apply in concrete situations. Anti-formalism refers to the idea that there is no concrete set of legal principles that judges can apply while deciding cases. The opposite of the idea is legal formalism. Apart from being determinate and mechanical, legal formalism argues that laws should be applied in a predictable manner. Arguing against legal formalism, Critical Legal Studies attempts to show how a single case can have different interpretations. Matczak has also proved how formalism is inconsistent with the principle of rule of law. Since formalism argues against using the contextual history of a certain case or society, it goes against rule of law which inevitably includes the legislative history of that community. Interpretation of rule of law, which is linguistic in nature, is essentially influenced by the historical, comparative and legal literature. Moreover, judge-made law completely disproved legal formalism. If there were legal principles and rules which were determinate enough for the cases, judges would not have needed to interpret the ambiguities and gaps in the legislation.

The third principle, contradiction again rejects the idea that there is a single, comprehensive view of human relations. It considers law as reflecting two or more competing views of the society or ideals.

Marginality involves the notion that even if a consensus can be formed regarding the law applied in the society, law cannot be said to affect or influence social behaviour.

Yablon explains that the central idea of Critical Legal Studies deals with the argument that the relationship between statutes, cases and decision-makers is always indeterminate. A legal doctrine cannot in any way produce determinate results in concrete cases. While analysing this situation, Yablon also considers a possible inconsistency in the above argument. He mentions that lawyers often can determine how a case would turn, that is, cases are often "predictable" which has established the concept of bargaining, on the basis of the predictability of a certain legal result. He clarifies that an understanding based on Critical Legal Studies need not deny the causal relationship between legal doctrine and legal results. A judicial decision may be predictable indeed, however, a legal doctrine can never be an adequate "explanation" of a legal result. Hence, a legal result may as well be predicted but cannot be concretely said to be resulted from the legal doctrine.

Judicial processes play a significant role in structuring and managing global issues as well as issues that have a personal impact on the lives of the people, through a process which has come to be known as "judicialization". Ironically, this culture of legality has received a significant momentum due to rapid globalization and neo-liberal capitalism. The former, because of its demand for new institutions of regulation and resolution of disputes, and the latter, because its contractarian conception of human relations, the processes which has aided the reproduction of already entrenched disparities.

The Indian Legal System places substantial reliance on judicial interpretation. It is best fitted to explain the dynamic nature of law, to bare it of its pretensions of determinacy and formalism. Upendra Baxi calls this, the "crisis of the Indian Legal System", the incapacity of the judicial structure to effect any significant change. According to him, the orientation of the major institutions is largely towards maintenance of the status quo and that most change oriented law has limited efficacy. Baxi mainly underlines that a lot, even a restructuring needs to be done to the Indian Legal System.

In the case of *Shyam Narayan Chouksey v. Union of India,* the Supreme Court held that the cinema halls have to play the national anthem before screening of films

and the viewers would have to stand for the same. This decision has significant political colour to it, reflecting the nationalist sentiments.

When the first petition was filed seeking the ban on entry of women inside the Sabarimala temple, in the case of *S. Mahendran v. The Secretary, Travancore Devaswom Board, Tiruvanathpuram and others,* in 1991, the Kerala High Court ruled in favour of the ban. Further down the years, in 2018 the Supreme Court struck down the ban in the Indian *Young Lawyers Association & Ors v. The State of Kerala & Ors.* An issue interpreted in different ways to reach at different conclusions prove the fact that a single case can be argued and interpreted in more than one way. It also proves the point that the 1991 decision was perhaps made keeping in mind the religious and political circumstances of the point in time. Borrowing heavily from legal realism, it can be argued that the particular outcomes of the cases depend largely on the interpretive elements used by the judges while analyzing a fact situation.

Series of cases delineate the political colour to many judicial decisions, like the *A.K. Gopalan v. State of Madras* and *ADM Jabalpur v. Shiv Kant Shukla* which were decisions against the due process of law and unlawful detention. It is plain that the political climate of that time was very different from what it is now. The ADM Jabalpur case, specially was made in the wake of the Emergency (1975-1977) which is evident from the decision to lean towards the government. Before that, when the *Kesavananda Bharati v State of Kerala* was decided and the doctrine of Basic Structure was established, the court was divided and ruled in favour of the doctrine by a majority of one judge. Further, when the cases of *Indira Nehru Gandhi vs. Raj Narian* and *Maneka Gandhi v. Union of India,* were decided, the political climate had changed and the decisions reflect the distrust of the government and the need for protecting against its excesses.

Law, as essentially emerging out of the social circumstances can be best exemplified by the striking down of Section 377 of the Indian Penal Code, 1860 in *Navtej Singh Johar v UOI* decriminalizing homosexual relations and of Section 497 in *Joseph Shine v Union of India,* decriminalizing adultery, while keeping it as a ground

of divorce. These show that the Judiciary is actively attempting to gauge the society and duly declaring various laws as out-dated and regressive.

Responsibility for Social Construction of Law

Going back to Litowitz, who has heavily influenced this section of the paper, he explains that Reification, or "the mistaken collapse of the social into the natural world" must be unlearned. Due to law being presented as a coherent, complete and clear set of doctrines and rules, we do not see it as falling short of answers, or actually participating in the society. While it is possible to stay on the surface and not worry about the larger question of law in general, the significance of the latter cannot be ignored.

There can be three reactions to the responsibility imposed by the awareness of social construction of law- foundationalism, the denial that law can create by arguing that law is actually a discovery of existing social relations and practices; internalism, restricting oneself to a perception of existing legal world and commodification, over embracing social construction for private ends. For an illustration, it is true that law can be traced from the ancient times and the modern era has only codified it. However, law also has creative power. Tribunals were formally established in India with the Constitution (Forty-Second Amendment) Act, 1976. While the concept of tribunals had been in existence, law deals in nuances.

The responsibility leads to the inevitable causal question: Who will be responsible for social construction and to what extent? The responsibility, according to Litowitz, depends upon who has created, perpetuated, resisted or tolerated the law. He examines how each one, from the legislative bodies, executive departments and the courts which create the law, to the lawyers who practice and perpetuate the law and the common citizens who resist or tolerate with indifference, can be held responsible for social construction. Holding everyone accountable is, however, impossible. Dewey associated responsibility to consequences, as a possible way to determine the extent of the former. Hence, wherein a contract that has been entered into by private parties affects only them, the responsibility lies with them. However, on the other hand, if that contract has effects on the common people, the government

must have a role to play, to ensure regulation. In that case, the responsibility lies with the government as well.

Conclusion

"For Camus there is no possible justification of a system of judgement based on universal values". In Mersault's trial, the law that is imposed upon him is the law created and sustained in that society, reflecting the existing dominant value system. Law is indeterminate, to the extent of its inconsistent application in the trial. The judge and the jury do not apply any set legal principles to convict Mersault, on the other hand, judgement of his moral character typically draws on the social values present in the society. Justice, in Camus's society and, as well as in ours, is linked to power. The judge bases his decision on arbitrary criteria and not on universal values of justice. This essentially reflects the justice system as attempting to legitimise its own authority and sustain its power.

More than trying to encourage a new system of judgement, Camus is attempting to examine the underlying mechanisms in all systems of judgement. Camus has no interest in making value-loaded, normative judgements; instead, he examines the functionality of law and justice. Where Mersault became a victim of the dominant sentiments of the society, the Indian Judiciary faces the repercussions of its inevitable bias in favour of popular sentiments and political or cultural circumstances. For Critical Legal Studies, the "law" itself is the problem. Rather than a tool for resolving conflicts, it is seen as a significant constituent in the process which reproduces the social conditions, of human subordination and domination.

Law is constantly in creation, by the Legislature, the Executive and the Judiciary. Law, at any given time, reflects the social fabric. It emerges out of, and sustains social relations. Due to different, often contradictory ideas of how the law should be, especially because of India's diversity, law seems to be chaotic. However, it is impossible to dig law out of its location and time, to view it objectively. The scope of this paper to evaluate the Indian Legal System is very limited. It barely

scratched the surface. The important step is perhaps to acknowledge the significance of social construction and aim towards responsibility and accountability in our legal system.

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Fact and Fiction: The Perpetual Ambiguity of Justice in Theodore Dreiser's *An American Tragedy*

Usha SK Raghupathula

Abstract

An American Tragedy, Theodore Dreiser's 1925 novel about Chester Gillett's murder of Grace Brown, is one of the most intriguing works in modern literature. In a novel that spans over 3,50,000 words recounting the protagonist's journey from a bellboy to a death row inmate in excruciating detail, Dreiser consciously omits the exact scene of the crime, which is vaguely written by intent. The novel's ambiguity creates a case where the truth is ambiguous, mirroring and duplicating the real-life case's essential conundrum. Dreiser attempts a clinical study on the structure of American Judiciary and arrives at the assertion that it focuses more on individual winning rather than finding objective facts. This creates for a sense of ambiguity in the process of which the protagonist falls victim to what he terms as "sanctioned slaughter". This paper proposes to examine the perpetual ambiguity of law and justice in Dreiser's work by contrasting what is considered moral with the objective absolute.

Keywords: fact and fiction, crime fiction, interdisciplinary, literary adaptation.

Introduction

The relationship between the aspect of justice and the legal system to that of American literature has a vast history. There have been many complex and dynamic themes of law and Justice being the custodians of order and discipline in the American society which have been explored from time to time by many writers throughout the history of the United States. From the early colonial period, where the Justice system of the settler colonies was mostly puritan in nature to that of the present day, American literature has often been concerned with the ways in which law and legal systems shape and reflect the values and beliefs of American society. Theodore Dreiser's *An American Tragedy* is a decidedly exhaustive nine hundred and thirty page novel based entirely on the famous Chester Gillett - Grace Brown murderer trail

that was a sensation in the early twentieth century American Newspapers and Magazines.

Dreiser as a Novelist

Dreiser, considered by most to be one of the seminal American writers of the modern era, has a unique penchant for writing realist fiction that transcends the scope of a book as his characters permeate the mind of the reader to create an impact that extends its presence much after the book has been put back in the shelf. Despite all the critical acclaim and extensive readership, his works have not reached the ubiquitous status of some of his contemporary authors such as Ernest Hemmingway, F. Scott Fitzgerald, Sinclair Lewis, Ray Bradbury, William Faulkner and Kurt Vonnegut to name a few. This can be attributed to the peculiar nature of his novels. David Denby from the New Yorker Magazine speaks about this concern with Dreiser's relevance in the twenty first century.

> My suspicion is that Dreiser's books (with the exception of 'Sister Carrie') are now considered too long for high school students, too earnest for college literature classes, and too odd for many common readers. (Denby, 2022)

However, what makes Dreiser's work an important body of literature worth studying in the history of the American novel, is the fact that his realist fiction presents a picture of the contemporary world in such excruciating and exhaustive detail, that his writings work as a comprehensive medium through which the reader can observe the society he depicts and make a judgement for himself/herself. Denby goes on to point out:

> Dreiser is widely regarded as the strongest of the novelists who have written about America as a business civilization. No one else confronted so directly the sheer intractability of American social life and institutions or dramatized with such solicitousness and compassion the difficulty of breaking free from social law. Dreiser had a genius for factuality: he re-created the inner workings of a factory, a stock exchange, a luxury hotel; he was definitive on such things

> as fraudulent business dealings and the bitterness of a futile job hunt. (Denby, 2022)

Apart from his exceedingly realist depictions of the world around him, Dreiser is also known for his deep insights into the human condition. His study of the human psyche provides for characters who are quite real. Winfried Fluck, speaks about these particular 'instincts' within Dreiser's characters in his paper entitled *Crime, Guilt, and Subjectivity in Dreiser, Mead, and Lacan* expounds on the aspect of desire in the writer's novels:

> Desire in Dreiser's novels has two dimensions. On the one hand, it refers to a biological instinct that can drive human behavior because man's will, and rational abilities are not strong enough to control it. On the other hand, it is also a vague longing for a person or object that could help to overcome a feeling of lack. The weakness of identity in an intermediate stage explains the central role of this second form of desire in the lives of Dreiser's characters, because the intermediate stage within which they are forced to struggle produces a permanent sense of inadequacy.

Law and Fiction

'Social law' or the element of law as a system of thoughts, ideas and beliefs that have the end goal of making a society function, is one of the elements that Dreiser pays a significant amount of attention to, in the novel. The contention that *An American Tragedy* is an exceedingly interesting subject for a study of law in literature can be attributed to Dreiser's ability to frame a narrative in which, the truth remains ambiguous. The novel presents a world in which the law is not always able to provide clear answers to questions of morality and justice, and where the meaning of law is constantly open to interpretation.

In what can be called as a banal, and rather tamed down recollection of the narrative that happened in real life, Dreiser strips of all the theatricality and melodrama that newspaper coverage of the real-life incident in 1906 had. He strips down the story to its most unseeming parts and presents a somewhat fictional, yet

honest to nature account of the societal conditions in which Clyde Griffith, the fictional version of Chester Gillett, was placed in. Clyde is a young man who finds himself caught between the forces of society and his own desires. On one hand, he is driven by his ambition and his desire for a better life, and on the other hand, he is held back by the strict moral codes and expectations of society. In the novel, Clyde finds himself in a situation where he is forced to make a difficult choice between his own desires and the law. When he becomes involved in a love affair with a young woman named Roberta Alden, Clyde finds himself facing a moral dilemma. On one hand, he is torn between his love for Roberta and his desire to pursue a better life, and on the other hand, he is faced with the knowledge that his actions could have serious consequences under the law.

The novel showcases what can be called as a mockery of the discourse of the 'American Dream'. Although there is no desire whatsoever to justify the actions of Clyde, Dreiser provides the reader with a case that skimps on no detail. The novel on a whole works as a commentary on the American society, where the class divide is such a large issue that the actions, lives and thoughts of the people are impacted more by their economic status than by any other factor. Throughout the novel, Dreiser shows that the law is often used as a tool of power and control, rather than a means of justice. For example, Clyde's trial for the murder of Roberta is portrayed as a sham, with the outcome predetermined by the power and influence of the wealthy and influential members of society.

At the risk of being reductionist, one could definitely consider the assumption that the story presented here is a case presented at face value. The reader is the judge and is expected to formulate his/her own option on the subject. The fact that such a detailed and painstakingly crafted novel omits the exact scene of the crime, where Dreiser intentionally chooses to be vague about the key moments that make or break the case, is an indication of this idea of the reader being the Judge.

Dreiser comments on the Justice system as one that denies the autonomy of the individual. Gregory Phipps in his *One Crime, Two Pragmatisms: The Philosophical*

Context of Theodore Dreiser's "An American Tragedy." Speaks about the importance of individuality and the idea of 'mass control':

Dreiser's depiction of the tension between the increasing cultural importance of individuality and the pervasive threat of "mass control" reflects one of his primary philosophical precepts, the notion of "equation." Dreiser's theory of equation centers on the idea that, in the larger scope of the universe, "the prime impulse apparently is to achieve endless variety in homogeneity, and vice versa. This theory intersects with ideas of individuality, for he argues that an intrinsic and "chemic" instinct towards individuality vies constantly with the search for the realization of ideals such as justice, truth, and social harmony. (Phipps, 2013)

The extensive trails in the novel provide for a panoramic view of the American Judicial system. Considered to be one of the oldest judicial systems with its own illustrious history and idiosyncrasies like the Salem Witch trials, the American Judiciary plays an important role in the novel. As a passive agent for the delivery of punishment for sins and a custodian of order and discipline of the society, the Judiciary is one that does not work on emotions and perceptions. It is clinical, logical and unforgiving. While the novel provides for an extensive understanding of the case in the perspective of the victim, it does to create a sense of empathy that tends to cross the realm of absurdity at some point.

Furthermore, the novel also explores the idea that the meaning of the law is open to interpretation, and that different people have different interpretations of what the law means and how it should be applied. For example, Clyde's lawyer presents the argument that Clyde's actions were not premeditated and that he should therefore be found guilty of manslaughter, rather than murder. However, the prosecution argues that Clyde's actions were premeditated and that he should be found guilty of murder.

> Donald Pizer, in his *Crime and Punishment in Dreiser's "An American Tragedy": The Legal Debate* speaks about the different contexts in which the work has been seen in the legal system. He posits the idea that, Using a variety of recently derived interpretive tools, they find that Dreiser's representation of the American legal system in operation in An American Tragedy is

> characterized by ambivalences, ambiguities, and indeterminacies -that, in short, clear meaning was probably not his intent and certainly not his effect. (Pizer, 2009)

This inherent ambiguity in the legal system has marred the idea of logic and order being the tenets on which law is devised. This creates a district contrast between justice and law, one of the facts through which one can understand the plight of the American society.

However, not everything that Dreiser talks about that Justice system is ambiguous. Dreiser is strictly against the death penalty and uses the ending of the novel as an indictment against the practice that has been relevant in the American Justice system very strongly. Sally Day Trigg in her *Theodore Dreiser and the Criminal Justice System in 'An American Tragedy'* exposits how the ending is designed to showcase the absurdity and the sheer cruelty of death penalty as a discourse.

> As McMillan staggers from the death chamber, Dreiser's indictment of the American criminal justice system is complete. The trial he describes is a travesty. The men who direct the proceedings are adversaries focused more on victory and political prizes than on truth. The jury, primed by sensational press accounts, is the epitome of partiality, basing their judgments on biases, emotions, and public opinion. And the defendant is a mechanism, constructed by the forces of society and by his own nature, and lacking the free will assumed by the law. He cowers in the face of the crowd that craves his death because they despise his immorality and his association with wealth. And finally, Dreiser damns the cruelty and inhumanity of Death Row, the condemned man's last stop before society slaughters him. (Trigg, 1990)

In the world of the novel, matters such as the social condition of the victim and friends. The nature of obsession and rage that reside within Clyde as a representation of the state of a poor individual that is trying to get into the upper-class lifestyle. The nature of moralities and human instincts and desires both affected by, and unaffected by society. All these are explored in the novel not as a set of defenses to justify the

crime or perhaps to make a distanced comment on the nature of the society within the scope of the novel, but as a means to add information to the reader to provide for a comprehensive platform of information, perspectives and ambiguities that are eerily similar to that of the real-life counterpart Chester Gillett - Grace Brown case.

The Ambiguity of Justice and Morality

While considering *An American Tragedy* as a critique on how a codified justice system can never arrive at the actual truth, we tend to come across questioning the very etymology of the word 'truth' and a discourse of what defines 'truth' follows this inquiry. Much of the philosophical musings on what is just and acceptable in a set society are defined by various context-based parameters that are naturally formed in that said society. What might be a criminal offence in one state, could be an ordinary state of affairs in another.

The idea of what is 'true' and 'false' is said to be dependent on the context, and more particularity the temporal, etymological, and logical boundaries within which the question is posed. F. C. N. Schiller, in his infamous *The Ambiguity of Truth,* published over one hundred years ago, speaks about this particular faucet of the philosophical question:

> It being taken as established that the sphere of logic is that of the antithetical valuations 'true' and 'false,' we observe in the first place that in every science the truth or falsehood of an answer depends on its relevance to the question raised in that science. An irrelevant answer is justly treated as non-existent for that science, i.e., as, strictly, neither 'true' nor 'false'. We observe, secondly, that every science has a definitely circumscribed subject-matter, a de- finite method of treating it, and a definitely articulated body of interpretations. (Schiller, 1906)

What Schiller says is the 'non-existent' truth, is what is employed by Dressier in the construction of the narrative of this novel. With no clear indication of whether or not Clyde has committed the crime, intentionally blurring and hurrying the specific part of the narrative in what is, an otherwise painstakingly slow and detailed narrative,

Dreiser creates this ambiguity of truth, letting the reader muse on the Justice system and the American ethos towards crime, and how it is portrayed in the media, while leaving the actual truth of the crime committed behind a frosted glass.

This intentional blurring of the crime by Dreiser makes *An American Tragedy* not a recounting of a crime and its consequences, but a rather philosophical treatise on the American Justice system, while at the same time, serving as a detailed account of the psyche of a convict, whose status of being a criminal, remains ambiguous, not because it is unknown, but because it wasn't the intention of the author in the first place.

Conclusion

Looking at it as a singular entity, one could Cleary consider the idea that Theodore Dreiser's *An American Tragedy* is a novel that explores the ambiguity of law and the relationship between law and justice as it provides us with a case much like the real-life counterpart, making the central action vague so that the discourse becomes centralized on the philosophical question of Justice, Law and capital punishment. Through the character of Clyde Griffiths and the portrayal of the legal system, Dreiser raises questions about the nature of law and the difficulties that arise when the law is used as a tool of power and control, rather than a means of justice. Dreiser makes overt comments on the judicial system and the practice of the death penalty, which he calls 'sanctioned slaughter'. The novel, in all its convoluted depictions of perspectives, highlights the idea that the meaning of the law is open to interpretation and that different people have different interpretations of what the law means and how it should be applied.

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Legal Principles in Hindu Mythology

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Abstract

"Yato Dharma Tato Jaya", a verse from Srimad Bhagavad Gita means, "where there is Dharma, there is victory". Before diving deep into the realm of Dharma, one needs to understand its current relevancy.

Introduction

Mr. Vivian Bose, former Judge of the Hon'ble Supreme Court of India and former President of the International Commission of Jurists opined that the "Rule of Law" is neither of the East nor of the West and it is to be found everywhere. He further added that "It is the heritage of all mankind…why are we advocating it? Because it is right. Because we believe in human worth and dignity…Because it is the only sane way to live at peace and amity in an ordered society, with our neighbours". He is unquestionably correct. Every branch of law that is tested by time and space has to survive the standards of the Rule of Law. For example, "Mother" is not just a word. It connotes an emotion. But the word differs with the language. "Mãma, Madre, Maa, Amma, Tayi, Eomeoni, Okaasan" are some terms for the word "mother" in various languages. The emotion is pure and the same in all the words but the pronunciation and syllables differ with place and time. The same is with the Rule of Law.

The Rule of Law is universal because its foundation is in the willingness of the people to accept it and it becoming a part of their way of life. Its foundation is built on the traditions and cultures that are deeply rooted in one's own History. Though fashioned differently in different lands, it cannot be evaded. Respect for the Rule of Law stems from one's belief in the capacity of the law to deliver justice backed by equity and good conscience.

One of the earliest writings of man can be traced back to 3400 B.C. Till then, knowledge would be transmitted to the next generations through oral recitals. Elders have always crafted a unique way to get their work done. Literature is one of the

modes predominantly relied on by them to pass the message to the newer generations. The author can create fictional characters, add traits to them and convey messages in the form of stories. These works are of great persuasive value and help Historians to understand the knowledge and awareness the people had during those times.

The classification of the evolution of law into various stages as propounded by Sir Henry Maine is absolutely flawless. The four stages identified by him are: (i) Command, flowing from divine inspiration and implemented by the King; (ii) commands crystallising into customs; (iii) Laws interpreted by the knowledgeable few, who mastered the art of learning; and (iv) law made by codification. Even if the date of the Hindu epics is rebutted, it can be no later than the first millennium after Christ. It is pertinent to note that both Hindu epics claim that they are inscribed due to divine intervention only. Though the divinity of no literary work can be empirical, it fortifies the fact that people embrace the values enshrined in it. In due course of time, Dharma has gone through a sea change. Also, the Indian subcontinent was subjected to a series of invasions and foreign rule, thereby losing its primacy in regulating order in Indian society.

In the context of the present research paper, we shall try to understand the advancement of the jurisprudential thoughts contained in the ancient Hindu mythological literature. There are two literary works in Sanskrit that form the core tenets of Hinduism. First, Ramayana, which is traditionally thought to be inscribed around the fifth century B.C. by Maharshi Valmiki. It contains 24,000 verses. It was once again recorded by Tulasi Das in another literature titled “Ramacharitamanas” in 1576. Second, Mahabharata, the longest mythological epic ever written, consists of over 1,00,000 verses and is authored by Vedavyasa. It is presumed to be compiled about the third century B.C.

Dharma and Rule of Law

When one claims about the richness of Hindu mythology, it is backed by profound and justified reasons. Hindu mythologies are a depository of numerous principles which find their place in various jurisprudential works. The debate on the authenticity of the plot narrated in the mythological epics is never-ending. Rather, it is not a concern for the law fraternity. That aspect of the subject matter is better left to

the studies of Anthropology and History. Nonetheless, the jurisprudential value of Hindu mythology stems from the essence of the intricate principles observed in them and the enlivening depiction of the characters, and the justification the authors give to the readers.

The United States and the United Kingdom are regarded as the pioneers of the study of the "Rule of Law" and "Due process of Law" respectively. The amalgam of both gives rise to the vibrant "Rule of Law" enshrined in Article 14 of the Constitution of India. For almost two centuries, the concept of the "Rule of law" has occupied the spotlight of budding domestic laws as well as the core of Public International Law. Due to spatio-temporal variations, there could be changes in the nomenclature but not the essence.

Centuries ago, there was something identical to the Rule of Law in the Indian subcontinent, known as "Dharma". The concept of "Dharma" has been elucidated by Justice M. Rama Jois in one of his works and the same has been accepted by the Hon'ble Supreme Court of India in *A. S. Narayana Deekshitulu v. State of Andhra Pradesh*. Grandman Bhishma explains "Dharma" to Yudhishthira in the following words:

> *"Tadrishoayamanu Prashno yatra, Dharmah Sudurlabhah Duskarah, Pratisamkhyatum Jatkenatra Vyavasyati, Prabhavarthai Bhutanam Dharmapravachanam Kritam.*
>
> *Yah Syatpravabe Sanyuktah sa Dharma Iti Nishchayah. Dharnatdharmamityahur Dharman Vidhritah Prajah. Yah syatdharma sanyuktah Sa dharma Iti Nishchayah."*

A conspectus of the above would be that it is difficult to define "Dharma" in crisp and precise words. It helps in the upliftment and ensures the welfare of living beings. We come across similar difficulties in defining the "Rule of Law". It is organic and changes with the changing circumstances. A verse of Taittiriya Samhita reads as follows:

> *"Dharma Vishwasya Jagatah Pratistha, Loke Dharmistham Praja upsarpanti.*
>
> *Dharman Papamapnudati Dharme Sarban Pratisthitam, Jasmad Dharman Param Badanti."*

"Dharma" is considered the foundation of all activities. Dharma strikes against sinful thoughts and actions. It is considered supreme. Like the Rule of law which would strike at any arbitrary action of the State, Dharma would similarly strike at any arbitrary action of the State as well as the individual. Nevertheless, of the two, Dharma stands on a higher footing since the law can be wrong but Dharma can never be wrong. Dharma can be revered as the fountainhead of justice and equity. It is multifaceted and has deep-rooted classifications. While the principles of divine reasoning are the roots of the tree, the Dharma is the trunk of the tree, and the sub-classifications are the branches of the tree.

There are numerous Dharmas that an individual is expected to follow. A person, as a King, has his Dharma toward his Kingdom and the subjects; at the same time, he has Dharma toward his family as a son, brother, father, and husband; similarly, his Dharma as a friend towards his friends; his Dharma as a member of the community or guild; and his Dharma as a member of the society. In today's world, an individual's life is governed by various laws which are similar to various Dharmas of ancient times.

Mahabharata- Dharma and War

In Mahabharata, the plot can be summarized as a conflict among brothers for a Kingdom; the peculiar feature is the relevance of many principles observed in this work. The work remains a beacon of customary laws of war.

Karna and Duryodhana- The Principle of Hors de Combat

On day 17th of the Battle of Kurukshetra, the Generalissimo of Kauravas, King Karna, was killed by King Arjuna. The manner in which the former was erased by the latter is highly debated. According to the myth, one of the wheels of Karna's chariot got stuck in the ground during the battle. The car became immovable and all the weapons in hand were either broken or exhausted. The General had to get down onto the ground to free the wheel. Only then, Partha, under the guidance of Lord Krishna, attempts to kill Karna. The grounded combatant persuades the mounted one to deter from the course. However, he was killed despite being unarmed and pleading to observe the Yudha Dharma.

Again, on the 18th day of the battle, King Duryodhana escapes to a nearby lake for meditation. Upon being surrounded by his enemies, he promises to forfeit the Kingdom and retire to vanaprastha. However, he is drawn to a mace duel in which he is viciously attacked on his thigh region and mortally wounded. Duryodhana decries that such an attack below the waist is unjust and against the rules of combat but this fell on deaf ears. After the battle, he succumbs to death.

This takes us to the Manusmriti, in which, in bits and pieces, we get a glimpse of the customary practices of those days. Adhyayan VII contains the regulations to be followed by the King during and after the war. Firstly, Verse 91 reads as follows:

"na ca hanyāt sthalārūḍhaṃ na klībaṃ na kṛtāñjalim | na muktakeśaṃ nāsīnaṃ na tavāsmīti vādinam"

In clear terms, it states that a King must not strike one who is grounded, escaping from the battlefield, sitting or surrendering. Secondly, Verse 92 reads as follows:

"na suptaṃ na visaṃnāhaṃ na nagnaṃ na nirāyudham | nāyudhyamānaṃ paśyantaṃ na pareṇa samāgatam"

It can be deciphered as combatants whose armour is broken must not be attacked. Again, Verse 93 of the aforementioned reads as follows:

"nāyudhavyasanaprāptaṃ nārtaṃ nātiparikṣatam | na bhītaṃ na parāvṛttaṃ satāṃ dharmamanusmaran"

It specifies that when the combatant is grievously wounded or his weapons are broken, he shall not be harmed. Lastly, in Verse 98 the following is contained:

"eṣo'nupaskṛtaḥ prokto yodhadharmaḥ sanātanaḥ | asmād dharmānna cyaveta kṣatriyo ghnan raṇe ripūn"

Through it certain restrictions upon the conduct of an honourable warrior are laid down. According to it, the combatant must fight only according to Dharma. These verses reflect the *Jus in Bello* of the time.

An astonishing similarity can be seen in present International Humanitarian Laws, which are highly codified, and the Jus in Bello in Mahabharata. A comparison between the two only elucidates the claim that international law has its origin in

customary practices. A *Hors de Combat* is someone who is out of combat due to any reason.

In the epic Mahabharata, there was no third party or organisation to provide humanitarian services to the *Hors de Combat*, like the present-day Red Cross, when two high parties were at war. Instead, the onus was on the King to respect the lives of the *Hors de Combat* and to provide medical facilities to them. The International Court in many cases has described the need for a 'delicate balance' between military necessity and humanitarian considerations. Interestingly, the character of Karna is such that, under normal circumstances, he is a mortifier of his adversaries. According to the plot, if he is not removed then, later on, he would vandalise the army of Pandavas and create havoc. Hence, Lord Krishna advises Arjuna to seize the opportunity and eliminate the enemy.

In the previous chapters of the epic, a young and dynamic character called Abhimanyu, son of Arjuna is ambushed by seven warriors and killed by Karna from behind. The attack from behind is treated as a violation of the code of Kshatriyas (Dharma). The method incorporated in the execution of Abhimanyu is violative of the laws of war of that time. It is to be understood that, here, there are two grounds for not displaying any clemency towards Karna. First, by executing Abhimanyu in such an unethical fashion, Karna himself waived his right to the laws of war. Second, Karna's death is a military necessity for the Pandavas. The King has Dharma towards his army which essentially constitutes his subjects. Another day of Karna's wrath would have cast a heap of countless debris at the adversary's camp. Under such extreme situations, such military necessity is justified.

Article 3 of all the four Geneva Conventions of the Red Cross only reiterates the fillings of Manusmriti and prohibits attacks on *Hors de Combat*. However, the principle of proportionality must be heeded while observing military necessity. Furthermore, it is forbidden to harm an enemy who surrenders.

Another remotely but enthralling fact is the sport of mace duel. It is one of the widely accepted combat sports in the epic. There are numerous instances where the duel has the patronage of the royals. The nature of the combat is such that there will be only two opponents in the arena, facing each other, with no third-party

intervention. Mace is the only equipment allowed in this sport. Due to the nature of the equipment, attacks below waist level are strictly prohibited and a true Kshatriya (warrior) is supposed to abide by this code. It is interesting to note that such regulations also find a place in today's combat sports where a strike below the belt is considered unjust and against sportsmanship. This only establishes the reasonable claim made by Duryodhana. However, as per the plot, the strikes were fatal resulting in his death.

When Duryodhana bemoaned his intentions to surrender, he was a *Hors de Combat*. As per the Dharma, he was not to be harmed. At best, he could be taken as a prisoner of war. But he was coerced to take part in a vicious duel. This is in direct contradiction to the principles of the laws of war. The author very magnificently elucidates the consequences of defying Dharma. In fact, King Duryodhana has been brutal and tyrannical to his cousins all his life. During his reign as the crown prince, he subjected his adversaries to inhumane treatment and grave insults. Karna could have stopped his friend from committing such atrocities, but he preferred to remain a mute spectator, which was equally wrong. Hence, both Karna and Duryodhana are punished by fate, according to the author. Adhyayan IV, Verse 240 reads as follows:

"*ékaḥ prajāyaté janturéka éva pralīyaté | éko'nubhuṅkté sukṛitaméka éva cha duṣhkṛitam*"

It means one is born alone as well as dies alone and will reap the fruits of his good and bad deeds, himself. What is amusing is the fate met by the Pandavas at the end of the epic. Even they are subjected to ordeals on their way to salvation. Despite them being the protagonists of the plot, they committed their own set of wrongs, very meager when compared to their contemporaries. Thus, the author tries to emancipate the importance of a life of righteousness. He reiterated that no one is above Dharma. In today's world, it can be read as "no one is above the law".

Ashwatthama- The perpetrator of War Crimes

Wars are a source of menace. There is always a need to check against mass violence by the perpetrators where there is no practical necessity for one. The world witnessed much heinous violence during both the World Wars which shocked the conscience of the human race. The Tokyo trial and the Nuremberg trial connote that

individuals can also be held responsible for war crimes committed by them. War crimes can be broadly defined as violations of customary and treaty rules of warfare. Article 8 (b) of the Rome Statute of the International Criminal Court defines War crimes. Clause (xi) of Article 8 (b) deals with treacherously "killing and wounding" individuals belonging to a hostile nation.

One shall explore the rich literature of Mahabharata where the author depicts a dramatic scene post the defeat of the Kaurava King. At the end of day 18, after Duryodhana is reduced to his final breath, Ashwatthama is appointed as the Commander-in-Chief of the Kaurava army. He, along with the surviving members of the elite group i.e., Kripacharya and Kritvarma, vouched to take vengeance. The following night, under the leadership of their Commander, a well-sketched butchery of all the survivors at the camp of the Pandavas is executed. The act is very horrendous considering the fact that all the victims were in a deep state of sleep while they were soundlessly annihilated.

The plan was to wipe out the core Pandavas only. The lucky Pandavas were absent from the camp that night. Not knowing this, the Kauravas mass murdered Dhrishtadyumna and the Upapandavas. When confronted and vandalised by the Pandavas, Arjuna clements the defeated son of Drona. However, for the unforgivable crimes committed by Ashwatthama, he is cursed by Lord Krishna with immortality coupled with leprosy and oozing fuss. When compared to leprosy and fuss, immortality is much more painstaking for a warrior who craves a warrior's death. This is how Ashwatthama was punished and justice was served.

It is to be understood that when a combatant is soundly asleep, he is not capable of taking part in the war until once again he regains his senses. On scientific lines, there are deeply rooted circadian rhythms interlinked with the sleep cycle. An individual's cognitive reasoning goes dormant and the person becomes harmless. In modern times, scientists have associated disturbed sleep with an impaired state of brain functioning. Similarly, the person is neither in a position to attack nor to defend. Thus, it is sensible to bring a sleeping combatant within the blanket of Hors de Combat. At the same time, the right to sleep is a fundamental right that is sacrosanct for the very existence of human beings.

Moreover, the Hon'ble Supreme Court of India in the Ramlila Maidan Incident observed that the right to sound sleep is recognized by international law as a fundamental right and if any State authority disturbs one's sleep in the night without any proper justification, the actions are subjected to judicial scrutiny. This in itself epitomizes the significance of sleep in a human's life.

Satrajit- Inference of motive and Natural Justice

As per the tales in Puranas, there was a prince in the Yadava clan who was also a profound devotee of Lord Surya, named Satrajit. Pleased by his devotion, Lord Surya himself appeared before Satrajit and gifted him a magnificent gem 'Syamantaka'. The gem had mysterious powers yielding glory and wealth to the yielder.

One day, in the court of Ugrasena, the King of Yadavas, Lord Krishna made a request to Prince Satrajit to proffer the gem to him. The prince blatantly refused to consider the request. After a brief lapse of time, he gave the gem to his brother, Prasanjit, who went out hunting, donning a necklace containing the Syamantaka gem. Soon, the bitter news of Prasanjit's demise reached Satrajit. The bereaved prince unequivocally accused Krishna of the death of his brother. An assemblage of the people of Dwarka openly held him responsible for the death of Prasanjit. Not wanting to be beholden to the murder, Krishna wanted to prove his innocence. He was allowed to stage his cause. A prostrated Krishna embarked on a journey and started his trial from the woods; eventually, he found the gem and also the murderer.

The author conveys two interesting underlying principles here. During Dwapara Yuga, there was no courtroom setup. The communities or the guilds would listen to the matter openly and decide it. In this case, the fact that Krishna asked Satrajit for the gem is of great significance. Even in the present setup, the fact would be relevant as the existence of motive under Section 8 of the Indian Evidence Act, 1872. It can be clearly seen that the people of Dwarka relied on this when they accused Krishna of the death of Prasanjit. Furthermore, the people also provided Krishna an opportunity to present his case.

The people conferred an opportunity to Krishna, which can be equated to abiding by the values enshrined in the principles of Natural Justice. Equally important

is the fact that Krishna, the chief protagonist, is subjected to humiliation and accusations. Until proven innocent, he could not elude himself from the burden of murder. He was not given any special treatment. This is the ethos of the Rule of Law. Through this, the author indirectly shows that no one is above the law. Even Lord Krishna is not absolved of his responsibilities. He is subjected to the same treatment that is given to a common man. Such essential and intricate principles of law are very delicately touched upon by the author.

Ramayana- The tale of Dharma

The epic Ramayana stands tall as one of the most revered mythologies in Asia as well as in other parts of the world. The epic's conspectus is rescuing the righteous King's wife from the clutches of a demon. The protagonist is Rama, the crown prince and later the King of Ayodhya. The antagonist is the demon Ravana, the King of Lanka and also the abductor of Sita, the wife of Rama. The story revolves around the celestial character of Rama and his heroics in rescuing his wife.

Vibhishana- The refugee

The younger brother of the Lanka King, Vibhishana, a demonic brahmin by birth, is portrayed as someone of pure heart and virtuous nature. When the demon King abducted lady Sita, Vibhishana was one of the persons to vehemently protest against his brother.

There are many instances in the plot where the younger brother persuades the elder brother to follow Sanatana Dharma. The demon turned deaf ear to all the appeals of his brother until finally, bad blood started oozing off the two. After one last futile attempt in convincing his elder brother, Vibhishana leaves to meet Rama and render his services there.

Upon his first sight near the camp of Rama, Sugriva, the King of Vanara and also the most trusted adviser of Rama, alerted his army about the approaching enemy. Monkey army instantly arms itself, all ready to strike the foe. Much to everyone’s amazement, Vibhishana announces his arrival by decrying and denigrating the actions of his elder brother and his intention to take refuge with Rama. Upon his arrival at Rama’s camp, all the members of the council of Rama except Hanuman express their apprehensions about accepting him. Hanuman vocally advocates for the cause of

Vibhishana. Upon listening to all, King Rama finally opines to give refuge to Vibhishana. From the conversation that took place in the camp, we can infer that had not Hanuman interfered and backed Vibhishana, he would not be conferred with refugee status and would have had to leave the camp immediately.

According to the mythology, Ravana was the most powerful character of his time and except for Rama and his companions, no one ever survived the enmity with Ravana. When Sugriva, points out that Vibhishana abandoned his elder brother during times of peril and they might meet similar treatment from him, Rama accepts that such is a peculiar happening which is very common with the Kings during adversarial times. Sugriva insists that the visitor be taken captive. Rama in reply makes his stand clear that even an enemy seeking shelter must not be killed or harmed when he seeks refuge. At the end of the conversation, Sugriva announces that Vibhishana is equal among them. Finally, Rama receives Vibhishana and gives him protection.

This clearly shows that the practice of giving refuge is of ancient origin. Even today, conferring refugee status is considered a basic humanitarian obligation of the State. When an individual is threatened with execution because of his political opposition to a draconian Government, when his mere existence is in peril of being wiped off because of his freedom of expression, he has no other option but to seek refuge in a State which respects his freedom. The same was done by Vibhishana.

King Dashrath– Principle of Promissory Estoppel

The principle of promissory estoppel is envisaged as an instrument to curtail fraud or injuries caused when a promise is made to induce action by a party. The promissory estoppel is set up by the acting party against the promising party. As has been enunciated by the Hon'ble Supreme Court that before the principle can be invoked, the following must be proved: (a) a representation or promise is made regarding something to be done in the future, (b) the representation or promise is intended to affect the legal relations between the parties and to be acted upon accordingly, and (c) that it is one upon which the other side has acted to its prejudice. Clause (b) has no application in the case of Dashrath due to the absence of courtroom-like institution in those days. In light of this fact, one shall peep into the sacred text.

One of the focal points of the epic is the coronation of Lord Ram. Of the four sons, the eldest i.e. Rama was the favourite of the father. Back when King Dashrath was to wed Princess Kaikeyi, the daughter of Ashvapati, the King of Kekeya, the former assured the bride's father that when the right time comes, her son would inherit the throne of Ayodhya. Long before King Dashrath begot his sons, during a celestial battle with the demon Sambasura, he was saved by his wife cum charioteer Kaikeyi. After the battle, as a reward for her timely service and bravery, she was offered a couple of boons by the King.

Right after the announcement of the intention to coronate the crown prince Rama, Manthara, the maid of Kaikeyi, with her agreeable deceitful words reminded the Queen about the boons promised by the King and convinces her to ask the King to declare her son Bharata as the King. As her first boon, she requests the King to declare her son as the King. As her second boon, she requests the King to banish his eldest son to dwell in the forest for fourteen years. She unapologetically demands and tries to get what she believes is rightfully hers. For years, she expected to encash the boon for a pompous future for her son. Her first boon can be justified as coveted by any mother, but her second boon is shoddy and can be justified by no means.

"*Dharama dhuramdhara dhira dhari nayana ughare raya, siru dhuni linhi usasa asi maresi mohi kuthay"* reads Verse 30 of Ayodhya Kand. The King, being heartbroken and sickened by the brutality of his wife, pleads with his wife to amend her quest. Her being adamant, with no alternative, ultimately, he heeds her wishes. No parent can bear the sight of their offspring savouring the perils of the woods. He banishes his soul i.e. his eldest son to the jungle along with his newly wedded bride. Cringed with guilt for wronging his son, the King passes away.

The author very lucidly depicts the values enshrined in Dharma. The king has a two-fold Dharma in the instant case. His Dharma as a father and as a husband. The principle of promissory estoppel finds its place in the grand scheme. Both the conditions stipulated in the case are fulfilled in this incident. Upon the assurance made by Dashrath, his marriage with Kaikeyi was solemnised. Once again, a couple of boons were offered to her. She fuses both to solidify her claim. For the application of

this principle, there is no need for the promisee to suffer any detriment. The basic requirement is the change in the position of the promisee based on the promise.

Had the King deviated from the promise, no mortal force could have compelled him to fall in line with his commitment. But the King surrendered his very soul to the promise he once made. As a sovereign he could have flouted the promise and crowned his eldest son but he did not. It is the dharmic duty of the promisor to fulfil his word. Even the King is not above the law. No matter how difficult the decision is, he must comply with his noble duty. This firmly establishes that traces of the principle of promissory estoppel can be observed in the epic. Thus, the principle is not recent as claimed by many. We witness the principle at a rudimentary and nascent stage. The author conveys to the reader the greatness in resorting to Dharma over personal gratification.

Conclusion

While some of the episodes discussed above might seem to be redundant, the fact remains that they were in force for more than a millennium. Tracing such magnificence is possible only through literature that has survived the ages. Customs go through a sea change in due course of time. Though some of the customary practices have evolved they still remain true to their original conceptions. This enunciates the relevancy of the literature in the evolution of law. August Comte has rightly pointed out that to make the law, one must know the soil, geography, cultural, political, and economic history of the State. Literature falls largely under the cultural domain and is a manifestation of the organic past of the State. A quick perusal of the literature shows the advancement of society and the role played by the literature during the rudimentary stage of the formation of law and the former's role in shaping the latter. The fragments of the two epics discussed in the paper are just the tip of the iceberg. The ancient Hindu mythological literature still awaits the reader to explore the uncharted terrain for jurisprudential analysis.

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Marx, Kafka, Khosla and Justice of an Elite State

Dhruv Kaushik

Abstract

This paper examines the intersection of Marxist thought, Kafka's The Trial*, and legal scholar Madhav Khosla's views to explore the justice system within elite states, particularly in modern capitalist societies. Kafka's parable "Before the Law," narrated in* The Trial*, portrays the struggle between authority and the powerless. The "man from the country," akin to the working class in Marxist theory, waits endlessly before the gate of law, denied entry by the gatekeeper. This symbolizes the socio-economic divide upheld by the elite, perpetuating an illusion of access to justice. In India, this divide manifests between the "Haves" and "Have Nots," where caste, class, and wealth determine access to law and state mechanisms. C. Wright Mills' elite theory highlights how a small ruling class maintains power by obstructing justice for the masses. Films like* Khosla Ka Ghosla *offer a contemporary depiction of this dynamic, illustrating how the legal system fails the common man, forcing him to navigate corruption and inequality. Kafka, Marx, and Khosla thus converge in critiquing the failures of justice within capitalist states ruled by elite interests.*

Keywords: Kafkaesque justice, elite theory, capitalist state, socio-economic divide, access to law

"The best art is political, and you ought to be able to make it unquestionably political and irrevocably beautiful at the same time." **— Toni Morrison**

I. 'BEFORE THE LAW' IN THE TRIAL BY FRANZ KAFKA

The Trial is one of the most revered pieces of literature among Lawyers who gaze into the largely untapped field of Law and Literature. The story of Josef is as Kafkaesque as anything can get from a lawyer's perspective. Josef simply wakes up one day and is told that he has been put up on trial and he has no idea what he is charged for. He is never told why he is put up on trial and that remains the case till the end of the novel. Most of the plot is lined with absurdity and makes us feel confused and frustrated just like Josef. Everything begins to make sense once we reach the part in the novel where Josef is at a Cathedral, and he meets a priest, who somehow also works in the Court. The priest narrates a parable which is titled 'Before the Law'. The parable puts into perspective the situation Josef is in. It also foreshadows, or let's say, gives a spoiler to, the novel's climax. In this paper, we are most concerned about this parable which gives us a window into the nature of most modern Capitalist States. This is perhaps the reason why Derrida and other scholars associated with Critical Legal Studies were fascinated by Kafka's genius painted in the form of a meager one-page-long parable.

In order for us to fully appreciate the nuance of this parable I must at the very least go over the gist of what the Priest narrates and cull out our impression of the story and its most important bits. The parable starts and introduces the protagonist as a 'man from the country' who seeks entry 'before the law'. This description of the protagonist may be interpreted as an indication of him being as part of the feudal class or later, the working class as per Marx's theory of historical materialism. But before the law sits a gatekeeper, a guard of sorts. He has an intimidating figure, according to the protagonist. When he asks to be let inside, the gatekeeper says, *"It is possible, but not now."* The protagonist is curious and tries to look at what is beyond the grandeur of the gate he stood before. Noticing this the guard said, *"If it tempts you so much, try going inside in spite of my prohibition. But take note. I am powerful. And I am only*

the most lowly gatekeeper. But from room to room stand gatekeepers, each more powerful than the other. I cannot endure even one glimpse of the third."

The protagonist is dejected but agrees to wait till the gatekeeper allows him to go in. He kept waiting for years, but every time he asked for entry, he received the same answer as the first time. He tried to bribe the guard with whatever possessions he had and the guard would accept them saying, *"I am taking this only so that you do not think you have failed to do anything."* Time marches on and the years pass by as the protagonist waits near the gate, growing old. He is now nearing his death, and in his measly state, he musters all his courage to ask just one question to the guard. I quote Johnston's translation of the last few lines of the parable here:

"'Everyone strives after the law,' says the man, *'so how is it that in these many years no one except me has requested entry?'* The gatekeeper sees that the man is already dying and, in order to reach his diminishing sense of hearing, he shouts at him, *'Here no one else can gain entry, since this entrance was assigned only to you. I'm going now to close it.'"*

II. LOCATING THE ELITE STATE

The parable 'Before the Law' as narrated by the priest, is a depiction of struggles between figures of authority and their subjects. This struggle is constant and apparent because the former is continuously using various tools at its disposal in order to keep the latter suppressed and thus far away from the doors *Before the Law*, the strongest one being the subjects' fear to struggle and fighting authority itself. Even though there is an illusion in the minds of the subjects that they have access to what is behind the doors, the truth is far from it. I find several easter eggs pointing towards Kafka's own socialistic leanings, such as the obvious use of the words 'man from the country', which directly speak to a Marxist scholar. There are also elements of existentialism in the parable, which remain consistent with the tone and themes of the novel.

One theme which deserves mention is that of religion. I think Kafka is questioning the religious authoritarian regimes. The culmination of the novel and its most important part takes place in a cathedral with a priest narrating this parable

which exposes the corruption, deceit, and oppression of the justice system. Kafka's style of writing, the narration by a priest, the description of the guard, and the parable itself being labeled as almost ancient with countless interpretations are indicative of the same. This parable can be a depiction of conflicts between authority and subjects of authority, under different schools of thought. From a Marxist perspective, the bourgeoisie takes the role of the oppressor, and the proletariat would be the oppressed. In the context of the Reformation movement, the Catholic Church would be pitted against its Christian subjects. In this paper, I am concerned with how this parable is a depiction of the modern capitalist Indian State.

In India there exists, this huge divide between, what Branko Milanovic would call the 'Haves' and the 'Have Nots'. The definition in the Indian context is very wide and aside from economic factors, would also include caste, gender, and class as crucial determinants of where a particular community lies on the spectrum of 'Haves' and 'Have Nots' in India. In this parable, the 'Man' is one of the 'Have Nots' of Indian society. He obviously belongs to the part of the population, that is economically weak, socially backward, and generally mistreated as a subject. He wants access to the 'Law' but is denied by the guard and I understand this situation in two different manners.

First would be 'Law' as a representation of the state structure itself, which includes the legislature, executive, judiciary, and aristocracy. It is like what is described as the 'Elite State' by C. Wright Mills. Ham and Hill explain Mill's understanding of the modern American elite and say: *"Modern elite theory is well represented by C. Wright Mills (1956)".*

In a study of the USA in the 1950s, Mills draws attention to institutional position as a source of power and suggests that the American political system is dominated by power elite occupying key positions in government, business corporations, and the military. The overlap and connection between the leaders of these institutions help to create relatively coherent power elite. The nature of the elite class in Mills' mind is such that, they only constitute a small population of a country. The class may include wealthy businessmen, aristocrats, judges, lawyers, politicians, and others who have a substantially important role to play in the decision-making of

the state. The most important feature of this theory is that the elites actively use different tools of the state at their disposal to prevent the common man from accessing justice or having any say in the state's functioning.

The guard in the parable is representative of the socio-economic divide between this elite minority and the majority population of the state. This divide can be seen as both, one which denies the common man a say in matters which concern them and as denying them an equal opportunity to become a stakeholder. It is in the best interest of the elites to maintain this status quo because they depend on each other heavily for tactical benefits and thus make policies that best suit their interests and suppresses any progress of the ostracized subjects of the state. There exists a setup of dependent decision-making as described by Claus Offe. It fits perfectly in the context of the Indian capitalist state since, even when India as a country experienced a boom in economic growth, the levels of inequality continued to rise. Vamsi Vakulabharanam singles out one such divide which is constantly increasing, i.e., the urban and rural class. Vamsi stresses the skewed nature of growth of one part of the population, says:

> *"The urban sector has grown more rapidly than the rural sector during this period with the growth path skewed in favour of the organised services sector ... The main beneficiaries of this set of policies (they can also be termed policies towards globalization) have been the upper end of formal workers (professionals) employed in these industries as well as the capitalist and managerial cadres."*

I attribute this directly to the lack of intent on the part of the state to bridge the gulf between the 'Haves' and the 'Have Nots'. The wealthiest continue wield all the influence over state decision making, as a crucial part of the 'elite state' themselves and make sure that the status quo does not change, which is complete contravention of what an ideal state in my opinion should be like, i.e., a welfare state. In defining the welfare state, Anderson says:

> *"The welfare state modifies the impact of the market, by providing some sort of minimum guarantee (mitigating poverty); covering a range of social risks (security), and providing certain services (health care, child and elder care,*

etc.) – at the best standards available. Welfare states differ as regards the level of ambition and the mix between these aspects: Coverage may include a broad or a narrow range of risks and services, and minima may alleviate poverty or aim at providing equality."

The Elites live in harmony, working to keep all power for themselves through the towering figure, i.e., the guard who is not for every common man to defeat. In fact, as time passes the guards get bigger and stronger, almost as if to say that it's impossible for the 'Have Nots' to bridge the gulf between them and the elites.

Another interpretation of the word 'Law' in the parable is where it is used interchangeably with judicial justice. This interpretation is most common since, it is in line with the story of the novel itself. I understand this scenario, simply, as a common man coming before the law or court seeking justice. The guard in this case represents the state machinery of civil servants, police, clerks etc. who are highly corrupt, and part of this rigid superstructure designed to delay or deny justice to the common man. This guard is cunning, greedy, corrupted, bigoted, and programmed to systematically prevent access to justice.

The end of the parable is the worst part as it puts everything into perspective for me. The modern sovereign, socialist, secular, democratic republic of India gives the common man the illusion that justice is one doorstep away and that we can bridge the socio-economic divides which plagues the country through sheer physical and mental drudgery, by way of passing the guard. The guards get bigger and stronger with time and that just goes to show that we are still living with an illusion, but the truth is far from it.

An important literary theme deserves mention here, i.e., Kafka imbibes in this parable is the illusion of access to the law, which I have talked about in the essay. This theme is synonymous to a duality shared by the protagonists in Kafka's novels. Kafka's protagonists are faced with absurd struggles which do not make a lot of sense and they are perfectly aware of that, yet they do not really question them. They stay true to their dutiful self and just obey. Overcoming our own existential dread is part of the struggle for the man in the parable. He is almost oblivious of a rigged structure in front of him and just obeys the instructions given to him. This is the beauty of the

beast that is the modern state, which has rigged the entire system to its favour without the sufferers even knowing it. The sass of the state machinery is such that while the man has been clearly defeated by the system, they mock him by saying, "well the door was just for you." And all the man can do is die, as Kafka would say, like a dog.

III. JUXTAPOSING KHOSLA AND KAFKA

In the final portion of this paper, I will attempt to point to the morally corrupt and selfish nature of the legal system. I find that, even though the law, in theory, gives us access to the tenets of Justice, Equity and Good Conscience, the reality is far from it. This is evidenced through the struggles of Mr. Khosla in the Bollywood comedy, 'Khosla ka Ghosla'. In this movie, a middle-class working man buys a plot of land, but it is illegally captured by a goon named Khurana. Even though legally, the plot belongs to Khosla, the legal system fails him. He does not get justice from the law, but instead has to use illegal means to take what is rightfully his. Unlike Kafka's *'man from the country'*, Khosla takes up a fight with the gatekeeper and all other guards of the elites and gets access to the law and justice is taken, not delivered.

In this portion we will argue about the importance of individual interests and morality within the legal system which has plagued the legal system. The greed of elites in a highly capitalist world has resulted in constant suffering for the common man. Instead of furthering these arguments by quoting scholars' books or papers, I shall juxtapose Khosla's adventure with Franz Kafka's work which encapsulates my arguments. This is because, more often than not, a piece of literature is more capable of capturing the truths of society than any number of papers and data analysis could achieve.

The debate about nepotism in Bollywood is eternal, but more often than not, we forget that this is how the world works. It is not just Bollywood which classifies people into 'Elites' and 'The Rest'. This is what society has been like since time immemorial. It should not come as a surprise that Franz Kafka epitomised this class divide in the parable 'Before the Law'. When we study this parable, we understand how the law and the legal system serve as the obstacle which separates the *'men from the countryside'* from the elites. Law treats both very differently, while the latter live

in this mystical land of the law where their issues result in Justice based on Equity and Good Conscience, the same is not true for the former. Kafka was always known for depicting real world problems especially the frustration of the common man with the legal system. If one Bollywood gem is to be tagged as Kafkaesque, it would be Khosla ka Ghosla. There are many instances, where the imagery of Kafka's parable is visible in the screenplay, like when Mr. Khosla is confronted outside his plot by a tall *chowkidar*. Just like, the plot belongs to Khosla alone, the protagonist was the only person meant to enter the gate before the law. But, there is an intimidating guard who prevents them from accessing what is rightfully theirs. The guard is only there, to protect the interest of the elites like Khurana.

The essence of this parable lies in the fact that the protagonist has access to '*the law*', in fact the door is meant only for him. But, in reality he cannot have access to law; the system (the guard/gatekeeper) prevents him from getting what he wants. The same is true for Mr. Khosla, who is told by Khurana that the plot belongs to him and so he should simply take it. The policeman who assures Khosla that he will get justice because they both are alike as middle-class men. But then he asks for commission which also captures the conundrum Kafka penned. There are many other parallels between Kafka's protagonist and Mr. Khosla, captured in the montage of lawyers and politicians doing exactly what the policeman did. Both our protagonists spend their life savings stuck in this paradoxical situation, just to have access to something which was rightfully theirs.

While there are many parallels between these two works of art, there is one theme in the movie that stands out and gives way to our pointed discussion on Property Law. The movie successfully shows the very basic aspiration of a common man to have a nice house for his family, like the American dream promises, which we will also discuss later. But for now, Mr. Khosla is like every middle-class man struggling to establish his right over his legally acquired property simply because the elites and their *dalals and chowkidars* have become part of a rotten system which only exists to serve the interests of the oppressors and seeks to deprive the common man of his right to live a dignified life. There is an intimate link between ownership of property with a middle-class man's dignity. Owning a house is a basic desire of every

human, but the system is rigged in a cruel manner. So much so, that even the right to shelter is denied to millions, to feed to greed and wealth of the elites. The contrast between Khurana's wealthy estate and Khosla's humble house encapsulates this point.

There is an important theme in this movie that goes unappreciated. This Mr. Khosla's dynamic with his son Cherry which involves a palpable tension in every scene they share. This is because Cherry decided to move to USA to move forward with his career and personal life. This goes against Khosla's plans to build a new house at the plot he bought with his life savings. Khosla thinks that his emancipation lies in serving the best interests of his family, while Cherry is mostly concerned about his personal well-being. Another reason why Cherry fascinates me is that, he is not ignorant of how the odds are stacked against him in this duel between the system and its subjects. He wants to climb the social ladder and become a part of the elite. He does that by getting a good education and then working for a multinational tech company. He then wishes to move to the United States of America to move further into the circle of the elites. He does not resign to his fate, like Kafka's protagonist in Before the Law. He decided to take charge of the situation instead of being handed justice.

Cherry's motivations change as the movie progresses, he goes from not wanting to get involved in the property dispute, to executing the perfect heist. Cherry here recognises that he has a greater responsibility to his family which perhaps surpasses his own selfish interests. Initially, he shows us instincts similar to that of the elites who put their selfish interest over everyone else around them. But his morality prevails, and he does not turn to the dark side. In many ways, this is an indication of the fact that one cannot become a gatekeeper or even part of the elites without a barter of one's moral conscience. The movie ends on a positive note, but I am inclined to argue that this was just to pander to the audience, who do not go to the cinema to get a reality check about the cruelties of the society. The truth of the matter is that the legal system is crooked simply because of a pyramid of individuals who are concerned with their selfish interests. The montage of lawyers, policemen and politicians depicts the reality of the legal system and not the climax of this movie. Even though the

Jurisprudence of Property Law is based in the principles of Justice, Equity and Good Conscience, the reality is that it is only the written rules. The legal system is more dependent on the conscience of the individuals running it than that of the statute. This is why, perhaps, a property dispute had to be resolved using crooked means by a common man instead of begging the guards of justice and law, like Kafka's protagonist did.

The climax of Kafka's parable is more real than the movie. Here, the protagonist feels defeated by the system and simply accepts his fate and dies waiting for justice. This is also how 'The Big Short' depicts the 2008 financial crisis. The real estate market was always programmed to favour the rich bankers, investors and every individual who wanted to misuse the system to earn more money. In the mess created by the legal system and corrupted individuals, the real people who suffered turned out to be the working middle class which shared the common motivations with Mr. Khosla, i.e., to have a decent house and provide for their families. This movie goes to great lengths in order to show the grim reality of how atrocious the system has become just because of the selfish motivations of individuals at every level in the system. The end of the meeting between Michael Baum and the CDO manager, Mr. Chau epitomizes this argument. Chau tries to redeem himself by comparing his worth with Michael. He is not bothered by the potential collapse of the economy or the millions of jobs that will be lost as a result of the greed of the parasitic system that he is a part of. The climax of this movie parodies the utopian ideas of justice, equity and good conscience when discussing the legal implications on the 'elites' who were culprits of the greatest economic collapse of the century.

This detour to the 2008 economic collapse is made to separate fiction from reality and take stock of how real-life conflicts between the elites and the non-elites end. The truth is that all *"tragedies"* are man-made and there is no poetic justice in real life, the only constant is the eternal struggle of a Khosla playing a Khurana's game in which he will never win.

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Legal Proceedings and Language Barriers

Akshata Das

Abstract

This study aims to analyse "lingua franca" in Indian courts and why English is the most used language in most legal proceedings. It also aims to focus on how language barriers may affect alternate dispute resolution and the statutes put in place for assigning the language of a court. The paper will explore linguistic superiority of English over legal proceedings and why maxims are left in Latin if the current most used lingua franca is English. Moreover, the study will also analyse the struggles in standardising legal language in India and look at the list of lingua franca in courts of India. It will also delve into the struggles of language barriers in notifying court judgements and the duration of the trial. Alternate dispute resolution like Lok Adalat, mediation, arbitration, and conciliation will also be discussed, especially the effect of translation and language barriers on the same. It will also analyse statutes; namely Article 343 with aspects of 348(1)(a) and 348(2), and The Official Languages Act, 1963.

Keywords: lingua franca, language(s), legal, courts, English, Hindi, regional

Linguistic Superiority of English

English was introduced in India because of colonization. The East India Company first introduced English into India in 1611 through the court of Emperor Jahangir. The Company was first an English private company owned by stockholders, formed to conduct trade with the East Indies (maritime South-East Asia). While the beginning was a trade institution, the Company eventually formed a de facto government.

In 1757, the Company began military expansion. During this time, the official language of the Company was English, and the education system put in place by the

Company also taught in English. By 1784, the British government took direct control of the company.

After the Sepoy Mutiny of 1857 was quashed, the British government, liquidated the Company's assets and took full control, initiating the beginning of British Raj. English became the language of the ruling elite, both Indian and British. This custom continued after the independence of India.

When the Constitution of India was adopted in 1949, two copies were made, one in Hindi and one in English. The Hindi version was meant to be the actual Constitution while the English one would have acted as a transitional document for 15 years. However, due to the disagreements from governments in southern states and western states, the Hindi Constitution was never adopted officially. The basis of this argument was that Dravidian languages do not share any features with Hindi, which is an Indo-Aryan language.

English has remained the lingua franca in India ever since, employed by politicians like Shashi Tharoor and Subramaniam Swamy, who grew up away from their native places and never socialized with their native languages, to connect with the public and voters.

Standardization of Legal Language

Standardizing legal language in India is a problem that persists till date. According to natural justice (which is followed and protected by Article 14 and 21 of the Constitution), the law must be communicated before it is applied. However, the communication of law in itself creates many problems.

The first issue is that legal English in India is very different from layman's English, making notifications, judgements, and orders very difficult to understand for those who may not be familiar with the elite's English. As seen in the PIL filed in Subhash Vijayran v Union of India, the petitioner begins his petition by stating that "The writing of most lawyers is: (1) wordy, (2) unclear, (3) pompous and (4) dull." This PIL focused on urging the executive and the legislature to use commonplace English when drafting law, requesting the Bar Council of India to introduce plain

English into the law curricula and to allow the Supreme Court to only write precise and concise pleadings.

But if legal jargon is completely nixed, we come across another problem, that is polysemy. The use of commonplace phrases like “good faith” will have different connotations in different regions. Translating these phrases into local languages only furthers the confusion. There is a lack of neutral terminology between civil and common law countries that can be used in universal declarations and treaties that would not be construed into different meanings when interpreted in different countries or when translated to local languages of those countries. In India, the biggest issue would be reconciling legal jargon in regional languages since there are so many. For example, the English lexicon has roughly 1 million words, and is incredibly flexible are legal English tends to borrow words from Latin, French and German. However, Hindi (most spoken language in India) has only around 180,000 general use words and 600,000 technical terms. This issue has been so contentious world-wide that some have even suggested creating an entirely new language as opposed to trying to standardise the use of one language and legal terminology in multiple regions.

Lastly, standardising legal language in India is challenging because majority of the population are non-English speakers. The most spoken languages in India (in descending order) are Hindi, Bengali, Telugu, Marathi, Tamil, Urdu, Gujarati, and Punjabi. Despite Hindi being the top-most spoken language in India, only a little above 40% of the population speaks it. This gives us an idea of how vast the language systems in India are.

The lingua franca in all high courts of India is English. A division bench of the Gujarat High Court declared in 2022 that English is to be used in high courts and only in district courts can other languages be used. However, to increase accessibility, Article 348 has a provision where with the permission of the President of India, the Governor can authorize the use of the official language of the state of the high court. Similarly, Section 7 of the Official Languages Act, 1963 also has a similar provision where the Governor (with the previous consent of the President) can authorize the use

of Hindi or the official language of the state. This also includes any judgements, decrees or orders passed to be translated too.

In Uttar Pradesh, Bihar, Rajasthan, and Madhya Pradesh have already authorized the use of Hindi in high courts and Tamil Nadu is currently working on authorizing Tamil in high courts.

The 22 official languages in India are:

- Assamese
- Bengali
- Gujarati
- Hindi
- Kashmiri
- Kannada
- Malayalam
- Marathi
- Odia
- Punjabi
- Sanskrit
- Tamil
- Telugu
- Urdu
- Sindhi
- Konkani
- Manipuri
- Nepali
- Bodo
- Dogri
- Maithili
- Santhali

Language is such a small and simple part of life that it is often not even seen as a discriminating factor. But it is often a matter of life or death for many people. For example, the involvement of women in Panchayati Raj system. Since Panchayati Raj has been implemented in 1959, the political participation of women has been abysmal. The rate of education in tribal women stands at 54.4% while the rate of education in tribal men stands at 71.7%. After Panchayati Raj was announced, women's 'participation' in grass-roots politics increased due to reservation for women in Panchayat positions. But this was also just a façade. This reservation was abused by men forcing women to stand in elections on their behalf. This is the sarpanch-pati culture. In this phenomenon, men do the administrative work in place of their wives or daughters-in-law who are elected to office. Here, women are not educated about politics or the administrative work. Moreover, due to many women not being able to converse outside of their regional language, aren't given scope to attempt to understand official documents. Here, we can see how language barriers have omitted one half of the population in many regions, simply because they never had the chance to understand and interpret government notifications.

Moreover, language barriers can also discourage litigants from approaching the court for help. With a lack of translation services in the legal system, people are discouraged from approaching courts or may never even know how to approach the court.

Statutory Authority over Language in Courts and Its Analysis

In 1963, the Official Languages Act was written, meant to come into force on the 26th day of January 1965. Section 4 of the Act mentions the constitution of a Committee of Official Language, 10 years after the adoption of the Act. As agreed, in 1976, the Committee of Official Language released a list of recommendations. The committee persevered to categorize the states in India into 3 categories:

- Category A: Hindi is the official language;
- Category B: more than 65% of the population uses Hindi but it is not the official language;
- Category C: less than 65% of the population uses Hindi.

In Category A states, Hindi should be the official language of communication while other states can use regional language. High courts of non-Hindi speaking state must provide Hindi translations of judgements. Kerala and Tamil Nadu were exempt from the Act. Sections 6 and 7 of the Act did not apply to Jammu and Kashmir. In 2022, a PIL by Jagdev Singh was filed to make Hindi an official language in Jammu and Kashmir as well. However, this PIL was struck down.

Here we see one main issue. With the provision only requiring non-Hindi speaking high courts to provide a Hindi translation of judgements and not vice versa, we exclude a large part of the population from the law. While the English versions of judgements from Hindi-speaking high courts are accessible, only 0.2% of the population speaks English as a first language. English also is a rich, urban phenomenon. In a Lok Foundation survey, only 3% of the rural respondents spoke English while 12% of the urban respondents spoke English. Moreover, 41% of the rich participants spoke English and only 2% of the poor participants spoke English. English, by default, has become the legal language of non-Hindi speaking states, cutting off the poor and rural parts of their population.

Conclusion

Standardizing legal language has been a long-standing contentious issue and will continue to be. On one hand, continuing the use of English would mean bowing to the crushing weight of colonization. On the other hand, the diversity of Indian languages doesn't leave much room for reconciliation of the languages. Translations of English legal language often don't have regional vocabulary, despite the speakers of their languages needing these lexicons the most.

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