

The Portrayal Of Law In Literature And Literature In Law

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For, according to our old saying, the three learned professions live by roguery on the three parts of a man. The doctor mauls our bodies; the parson starves our souls, but the lawyer must be the adroit knave, for he has to ensnare our minds.

~ Lorna Doone by R. D. Blackmore.

These words of the renowned Victorian English writer Blackmore, are most appropriate in the context of depicting the views of the common man about the legal profession. The beautiful use of words to portray these professions makes the reader want to know more and read on.

Law and Literature have the same purpose. They both deal with the relationship between “humans and society.”

Literature also provides a chance of venturing into new dimensions of thoughts, relevant to law and justice. It also becomes the seriatum leading to justice or injustice by the courts in particular cases. Literature has often been used as an effectual tool for the administration of justice and drafting judgments and pleas. Many judges and lawyers quote from literature for driving home the point.

Law, justice and the legal profession often play a part in Shakespeare's works. A lot of his plays take law for a theme, and feature a trial (*The Merchant of Venice*), conflicting jurisprudential theories (*King Lear*), the relation of law to vengeance (*Hamlet*) Shakespeare may not have been fond of lawyers (his character Dick the Butcher was advised to “kill all the lawyers”) but he knew about fairness. He is even believed to have educated as a lawyer (Senter 1903). The Law Society, which is the certified body of solicitors of England and Wales, deliberated over that question:

Was Shakespeare a lawyer? A bright erudite young man seeking his destiny in 16th century London would have been quite likely to obtain some sort of work in the courts, perhaps as an attorney's trainee. Shakespeare was however, more than happy to substitute the demanding profession of a lawyer, for the carefree life of the theatre. (The Bard and the Bench 1987)

According to Shakespeare specialist and English barrister William Lowes Rushton, whether William Shakespeare was or was not a member of the legal profession, he had acquired the wisdom of the period, the stronghold of freedom, of civil liberty, the wisest, the noblest, the most fair and equitable system of jurisprudence.

This relationship of law and literature isn't a new one and can be traced back to the time where the sole purpose of the central character in plays was to seek revenge and this is considered by Richard Posner, to be the reason why we have a legal framework. The Shakespearean courts also dealt with issues encompassing certain legal tones. The storyline regarding the pound of flesh in Merchant of Venice, is often thought by many to be an example of 'specific performance'.

Legal questions have surfaced in momentous plays, and have been of great social significance. Portia, the great lawyer in the play, "The Merchant of Venice," wins a most difficult case by stating :

"A pound of that same merchant's flesh is thine: The court awards it, and the law doth give it.

Tarry a little, there is something else. This bond doth give thee here no jot of blood; The words expressly are "a pound of flesh."

" Take thou thy pound of flesh,

Not an ounce more or less,

But in the cutting it, if thou dost shed one drop of Christian blood, *thy lands and goods are by the law of Venice, confiscate unto the State of Venice.*"

Further ,

"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"

Such vivid prose among many in this drama to have resonated through centuries of legal debate. It makes us ponder whether rules should be bent in order to procure justice, and Lord Denning himself has quoted lines from the play several times in his legal works.

The central assertion in 'King Lear' is the conflict between 'man's law' and 'natural law', the natural law is regarded as being corresponding to morality; a conflict that prevails in legal systems, even today around the world. People are familiar with Dostoevsky's memorable 'Crime and Punishment'

which has received world-wide acclamation, though it is not a book that deals with the law in the way Kafka's 'The Trial' does, yet as the title of the book suggests, the book provides a veneer of criminal law, though the central character's conviction was a result of his consciousness rather than the law.

One of the aims of this article is to determine when, how and for what reasons literature, and more specifically Shakespeare, is used by European court judges. Literature can be a way to make court decisions easier to understand and the judicial process more user-friendly. On the contrary, an out of place or superfluous use of literature can make it more complex to understand a court decision. It may even delude the litigant.

Literature is the transmission of power and many a slip of the pen have lead to colossal errors in shaping the history of nations. The love of literature can lead the lawgivers and law finders, out of the deep dark abyss of legal quagmires, and lead to refined and evolved judgments.

Rhetoric, candor, and paradoxes in equity, all play a vital role in legal analysis. It is the literary art and ethics that is required in the drafting of complex judgments and the eloquence that makes it brilliant, and immemorial. Literary style has always played a very important role in the crafting of judicial opinions. In this way, **literature** plays important **role** in bringing about **law** reforms.

In this way, literature plays important role in bringing law reforms. While it is believed by many that from reading and understanding works of literature one can learn a lot of jurisprudence.

Linguistic ingenuity is fundamental to any law. In my opinion legal education is incomplete without an engagement in literature. The absorption and raptness provided by articulate use of words, can be suitably used by legal eagles to direct and interpret the law to his advantage. Different literary genres, and styles, like narrative, metaphor, criticism, satire, romanticism, mimetic, ironic, futuristic, fantasy, tragedy, biographical, autobiographical, melodrama, protagonist, surreal, Gothic horror, etc., have infiltrated legal texts since antiquity, and provided impetus to legal expertise in achieving success in legal conflicts.

Literature is one of the most interesting and significant expressions of humanity. let me give you an example :The line from the classic writings of Charles Dickens's "*Oliver Twist*" states, "The law is a ass, a idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is, that his eye may be opened by experience, and by experience alone.." The classic vividly depicts the misery and abuse heaped on orphans in England during that time.

As aptly stated by Robert Louis Stevenson, “The difficulty of literature is not to write, but to write what you mean.” To give literature its due in influencing law we can never overlook the colossal literary classics, namely the Ramayana and Mahabharata, the Bible, the Quran, the Bhagwad Gita, Vedic texts, the Manusmriti that have shaped our laws, on the basis of the customs and beliefs embodied in them. All over the world ancient epics of Homer, Plato, Sappho, Horace and Sigmund Freud provide the benchmarks for legal principles.

The poetic eulogies of Keats, Yeats, Tennyson, William Blake, Oscar Wilde, the sonnets of William Shakespeare, writings of John Stuart Mill, Aristotle, Leo Tolstoy, and the more contemporary writers like Ayn Rand, and Mario Puzo’s Godfather, H.G.Wells, George Bernard Shaw, Rudyard Kipling, and Mark Twain are rich fountains that have quenched many a legal mind. These literary works are portrayals of thinking patterns and social norms of societies at a period of time. Law too has always been based on these social norms and codes of human conduct required to regulate society.

Legal regulation of acts like theft, murder, rape and defamation, obscenity all have deep rooted theological origins; and the inseparable bond between law and morality has been much immortalized by legal and artistic minds alike, and fully accepted in all civilized legal systems. The realm of morality has always been the main premise of religions and volumes of literature devoted to it has shaped the laws of nations.

How can we forget the controversy that arose, trying to resolve the fine line between fine literature and obscenity with the publication of “Lady Chatterley’s Lover?”

Moreover eternity will not allow us to forget the great literary works of the emancipators of institutions of slavery and bondage of humans and nations alike. The literary treatises and critiques on racial discrimination and slavery by Abraham Lincoln and Thomas Jefferson have paved the way for the bastions of democracy and civil rights. One cannot forget the eloquently worded *Declaration of Independence* drafted in 1776, and the drafting of the *Miranda Rights*, all sanctuaries for our Fundamental Rights.

The enthused writings of Mahatma Gandhi and Veer Damodar Savarkar, are exemplary pieces of literature. Inspiring entire populations, through elaborate imagery of values of liberty, rationalism, utilitarianism, humanism, pragmatism and realism, all of which are woven into the modern laws of nations.

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A stream of such charming unstructured anthology of humorous legal anecdote over the world, have ultimately crystallized the law. Some include instances of judicial severity like that of Lord Justice Holmes's sentencing an old man from a farming community to 15 years. The convict cried for mercy saying that he would not live to finish the sentence. "Well," said the judge, "try to do as much of it as you can!"

"To Kill a Mockingbird" by Harper Lee depicts a terse and exquisitely told story about racial discrimination and profound class divides in the Deep South of America, in the 1930's. Told through the eyes of a child, at the heart of the story is Finch, an heroic lawyer who fights back with the bitter racism around him. The drama features a case of a black man charged with the rape of a white girl, and the tormenting precariousness of its outcome. It is observed that "The first thing you learn when you are in a lawyers family, is that there ain't any definite answers to anything."

In yet another masterpiece, "Cannibalism and the Common Law," the author A.W.B.Simpson, superbly recounts the vivid account of the events, their background and the legal and philosophical reasoning that came to bear on analyzing human behavior. In 1884, Captain Thomas Dudley and Edwin Stephens were convicted of the murder of a cabin boy, Richard Parker. After the capsizing of their yacht 'Mignonette' the boy was killed on a dinghy thousands of miles away from the nearest coast, after twenty days adrift without food and water. They ate his liver and drank his blood to survive and were rescued four days later. Their stance of "necessity" was rejected, although their death sentences were later commuted to prison sentences with hard labor. The psychological condition that made them resort to the act of cannibalism could not have been more aptly described and lay down strong legal principles without recourse to the strength of literature.

American realism has been enriched with scholars like Benjamin Cardozo, who was the proponent of law as literature. The success of this legal scholar's books was due to their distinction as literature. Convinced that style cannot be separated from legal substance, Cardozo brought the Judicial Process to life in lucid, articulate prose sprinkled with humor, chronicles and practical allusions.

The eminent jurist Ronald Dworkin supports the argument in favour of the use of literature to improve legal understanding. In his article, "*Law as Interpretation*," Dworkin stated, "I propose that we can improve our understanding of law by comparing legal interpretation in other fields of knowledge, particularly literature."

Professor Melanie Williams' book "Empty Justice : One Hundred Years of Law, Literature, and Philosophy," explores in particular feminist and existential questions, leading to the dramatic evolution of gender based laws.

Contemporary literature too is enriched on the other hand with legal fiction. We may recall works like the popular legal characters of Perry Mason, by Erle Stanley Gardner, Sherlock Holmes and Watson created by Arthur Conan Doyle, and writing like the monumental saga of generations of slavery, namely, Roots by Alex Haley, Thomas Hardy, Aldous Huxley, Gone with the Wind by Margaret Mitchell and many more.

Legal fiction has always been a very enticing subject for writers like John Grisham, Robin Cook, Richard North Patterson, Steve Martini, William Coughlin, Scot Turow, who enthrall readers with their courtroom drama and complex cases. “Rumpoles Works,” by John Mortimer, have been based on actual court experiences and engage the reader with utmost fascination for the courtroom.

The plethora of illustrations have literature can enrich the lawyer, goes on and on, and particularly in times when legal rights and values of free speech and expression is sought to be curbed due to fanatic ideology, like in the case of writings of Salman Rushdie and Taslima Nasreen, dishearten the avid readers when deprived of exposure to knowledge, and for widening the boundaries of their intellect.

Johann Wolfgang von Goethe, has rightly said, “Decline of literature indicates the decline of a nation,” and hence let us hope that the love for literature reflected in their professional spheres, will flourish in the minds of law students to bring the nation to its rightful glory.

Development of a “Literature in Law” movement

The development of the “Literature in Law” phenomenon is undeniable. The only solution against an unsuitable or confusing use of literature in court opinions would be to give a better place to interdisciplinary studies in law universities and law schools.

Judges in the United Kingdom have often quoted Dickens, Stevenson or Shakespeare, in their court decisions, amongst many authors.

This interdisciplinary movement now seems to be taking a new turn with the use of literature by European court judges trained in civil law countries. All law students need to value how literature can be used appropriately in a legal context.

Former United States Supreme Court Justice Benjamin Nathan Cardozo was amongst the first people who, in the 1930s, brought the words law and literature together. For Cardozo, judges should be inspired by the ways in which ideas are expressed by a novelist or a playwright: “in matters of literary style the sovereign virtue for the judge is clearness” (1931: 7).

The birth of the “Law and Literature” movement, is usually credited to an American Law professor James Boyd White. From 1973, he emphasized that law was entwined with literature and other sciences. Thereafter a classification to this popular movement in common law countries emerged: “Law in Literature” and “Law as Literature”.

In common law countries, of which India is one, the use of literature in legal briefs, opinions or decisions is not recent. Shakespeare was first quoted by the United States Supreme Court in 1893 in *Magone v. Heller* (Skilton 1991: 4). Lindsley Armstrong Smith indicates that Shakespeare has been “quoted by American courts more often than any other literary figure or dramatist”. More precisely all of Shakespeare’s 37 plays have been quoted in more than 800 judicial opinions by American courts (Peterson 1999: 789).

Common law being born in England, United Kingdom and Irish judges have of course quoted Shakespeare on a regular basis.

The first ever reference to the famous series of children’s fantasy literature by J.K. Rowling, was made just before the Supreme Court Justices took over from them in 2008, the former Law Lords handed down their decision in *Majorstake v. Curtis*. Interpreting section 47(2)(b) of the Leasehold Reform, Housing and Urban Development Act 1993, Lord Scott held:

Harry Potter, we are told, received letters addressed to him at “The Cupboard under the Stairs, 4 Privet Drive, Little Winging”. “The Cupboard under the Stairs” might have constituted “premises” for the purpose of letters from Hogwarts but for the purposes of construction of the 1993 Act a normal use of the English language must be assumed. This is evidence of the judges’ willingness to try to make themselves more accessible to people

Conclusion

Law and literature are interdisciplinary in the context of teaching. Literature in law has proved to be a great judicial tool to clarify the factual or legal meaning of a decision. Literature can thus infuse life and blood in the dry bones of judgments and make them more palatable to the common man. The average man may connect to the descriptions and apt use of literary context, to be at ease with the law rather than be in awe of and fear it. Literature becomes the mode of transmission of not only positive features of law but can also depict the ambiguity and weaknesses of law. It also becomes the narrative of justice as well as injustice by the courts in particular cases. Literature brings about the

concerns of law and morality in a narrative form stating how austere applicability of law may prove to be unethical or is against the conscience of the society.

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