



Literature in Law: Analysing the Role of Literature in the 377 Judgement

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ABSTRACT:

Literature and law are separate branches of social science; literature tends toward creativity, narration, and description whereas law tends towards logic, reason, and clarity, but from time to time they are collided altering and impacting each other. This interdisciplinary study will focus on the role of literature in law and their influence on each other. The focus will be on the role literature plays in helping understand human conditions and its contribution to the evolvement of law. First, literature is a representation of society, it highlights the dark side of human existence which need to be worked upon, and law through literature can comprehend the real problem areas and make the required alterations. Second, literature can be a platform for a better understanding of judicial concepts, and regulations. Third, literature offers a model of rhetorical excellence for legal practice. The second section of the paper will discuss the judgment of section 377, legalising homosexuality, and giving identity to the LGBTQ community. The judgement was embellished by literary quotes emphasising the emotions, feelings, and struggles of the LGBTQ people. The literature in judgement made it more appealing and persuasive, triggering its emotional aspects of it. In this section, the focus will be on the help the literature provides in connecting law to society with emotions and not just rational courtroom jargon.

KEYWORDS: Law, Legal, LGBTQ, Literature, and Society.

INTRODUCTION:

Literature and Law being separate branches of social studies collide with one another from time to time. Literature, commonly known as mirror society, focuses on creativity; narration and description whereas law is abide by rationality, clarity, and implementation. It is in recent times that both the dynamic terms are associated and got serious attention from the world, resulting in lawyers being encouraged to read literature to better comprehend the human psyche, society, and everyday_experience. On common grounds both the fields work on human development, literature serves to humanize people, whereas law abides people under regulation to be a better humans. In this paper, my concern is to comprehend the role literature plays in understanding the human psyche, and society; the contribution of literature to the evolvement of law, and facilitating the smooth functioning of the law.

Society is a common ground of convergence, literature breeds on societal human experience, reflecting everyday experiences, culture, prevalent ideologies, and many more, though it might differ from author to author depending on subjective experiences. Literature depending on its genre can be reforming, progressive, challenging or establishing norms, promoting revolution, or accepting the government, but it provides a deeper penetrated picture of the society in comparison to the law. Literature helps to provide a different vision beyond the chamber of the court, it helps to highlight the grey areas usually ignored or overshadowed by legal institutions. A good acquaintance with books can make a person more enlightened and emotional towards others. Literature is about fiction, and imaginative characters living in an unidentified society, but the concerns raised are about the present era. It not only portrays a problem but rather provides a solution as well. The hypothetical world of the book can provide answers to the present questions. Law works to regulate human behaviour, protect and respect human rights, and maintain a cordial relationship among individuals; literature too works for that but with the additional understanding of behind the curtain behaviour. Literature helps to understand the maze of the human psyche, a true backstage human consciousness working behind the mirage. Along with society, literature helps to get hold of vocabulary as well, as the law is a profession of words. It helps with metaphors, syntax, and even quoting phrases to make the argument more subtle and relevant. The relationship between literature and law is at multiple levels as said by Edward Harris:

Some writers studied works of literature from a jurisprudential perspective; others have applied the tools of literary analysis to legal texts such as statues, contracts, and judicial opinions which raise the question of interpretation similar to those posed by works of fiction. A few have gone so far as to argue that works of imaginative literature should be precedence over legal analysis. (7)

Literature is not only about the representation of society, rather it impacts society in its way. If the legal department can comprehend society through literature to work for betterment it can as well use the literature as a tool to promote certain legal regulations. Literature is about story-telling, which for ages has been considered the most efficient method to inspire and promote certain ideas. Through the fictional world of the work, the readers are abode to see the political and social situation they might be in future;

the representation of the law in the work will not bind the reader to follow the rules, but the consequences can inspire the reader for the more reliable options in life. “Literature, we take the utilitarian aspect, can facilitate as the change agent to law both by helping the law to reform itself and by helping the aspects of law to percolate till the grassroots and common man” (Vaishnav 7).

The relationship between law and literature can be divided into two parts i.e. ‘law in literature’ and ‘literature in law’. Both literature and law focus on the common ground of interaction of society and culture overlaps each other in certain aspects. As for law in literature, we can study the different writing focusing on the courtroom drama, legal activities, the struggle of a convict, and so on. This has been discussed in classical to modern writing. Few examples are William Shakespeare’s *Measure for Measure* (1623) and *Merchant of Venice* (1600), Stendhal’s *The Red and the Black* (1830), Charles Dickens’s *Bleak House* (1853), Victor Hugo’s *Les Miserables* (1862), Fyodor Dostoevsky’s *Crime and Punishment* (1866) and *Brother Karamazov* (1880), and Franz Kafka’s *The Trial* (1914). All of the above-mentioned writings deal with the legal situation in different ways. Literature in law refers to the use of literary phrases, quotes, or expressions to either provide weightage to the argument or in order give a clearer picture of the judgement. This has happened multiple times in the courtroom that the judge or lawyer recited famous quotes from literature to make an influential impact on the listeners. In the next section, I would be discussing one of the judgement given on section 377, filled with references from the literature.

Section 377 Judgement:

Section 377 according to the Indian Penal Code criminalises the people who belong to or are the part of LGBTQ (lesbian, gay, bisexual, transgender, and queer) community. Under this section, sexual intercourse between same-sex people was considered an 'unnatural offence' against the natural social order and was liable to be punished for ten years of imprisonment. It was on 6th September 2018, under the case of Navtej Singh Johar v Union of India; a judgement was passed to decriminalise section 377. It was after 158 years that the Indian judiciary acted against section passes under British colonial rule.

This judgement made a drastic change in Indian society, removing the long prevailed stereotype, and giving legal identity to millions of people hiding their individuality in the darkness under the fear of punishment. This path-breaking judgement was delivered embellished by multiple quotes from literature. This judgement through the quotes attempted to express emotions, feelings, and love of homosexual people contrary to cold rational argumentative judgements delivered in past. It was through the lens of literature that judges tried to connect people on this issue, emphasising the emotions, feelings, and individuality, to accept homosexuality as natural, and accept the LGBTQ community for who they are. The panel consists of four judges, headed by Chief Justice Deepak Mishra, known for his love for literature.

The 495 pages of judgement use the words of Shakespeare, Goethe, Oscar Wilde, Leonard Cohen, and many more to break free the LGBTQ community from the handcuffs of social and legal norms. In this judgement every judge has been inspired by literature and even quoted their inspiration in the judgement. The introduction to judgement started with Chief Justice Deepak Mishra quoting “not for nothing” from the poem *Love in all Guises* by great German thinker Johann Wolfgang von Goethe “I am what I am, so take me as I am”(qtd. in 3). This poem is based on love, and the lines are beginning of the last stanza, where the poet is emphasising his individuality and asking the lover to accept him for who he is, to cherish his individuality rather than alter it. These lines when delivered in the court made people very clear that judgement was in the favour of LGBTQ. Though the poem was written in 1817, its meaning and impact still prevail in the context of the LGBTQ community, it is about acceptance by individuals and society as a whole. This question and acceptance of being you is the theme of the whole judgement. It is about expressing individuality and being unique as the quote starts with "not for nothing", stating that one should not be punished for who he/she is. Denying your identity as Deepak Mishra states is a self-expression of death.

Discussing further the question of the expression of identity he quotes "No one can escape from their individuality" (qtd. in 3) by Arthur Schopenhauer expressing the irresistibility of being you. Identity is important for human existence; it defines you and at the same time states you as an individual entity different from others. And from this, the LGBTQ community has been denied for years. He also asserts that expressing oneself in terms of sexuality should be freely given to everyone because it is their natural self, and punishing someone for being natural and accepting their natural sexual self is offence. Even section 19 of the Indian Constitution states sexual orientation as a natural corollary to sexual identity. It is through the constitution that the rights and liberties of the people are protected and preserved. So the expression of sexual identity is one's right and denying it would destroy the individual values of freedom of speech and expression, privacy, choice, and liberty. On this he even quotes Shakespeare's famous line from *Romeo and Juliet* “what’s in a name? That which we call a rose; by any other name would smell as sweet”(qtd. in 4). In the play, Juliet is persuaded to stay away from Romeo as he was Montague, and these lines were her answer that a person is beyond the name, a person is known for his/her individual traits. This is what the judgement tries to implement in a modern context, a person can deny being homosexual but this will not change who he/she is in the core identity. And being called homosexual would not change his individuality.

Another important quote from Stuart Hall’s essay *On Liberty* says "But society has now fairly got the better of individuality, and the danger which threatens human nature is not the excess, but the deficiency of personal impulses and preferences”(qtd. in 3). Mishra's intention for quoting these lines was to equally give representation to people who do not accept the concept of homosexuality. He wants to highlight that society is a composition of both acceptance and denial; people who are not ready for this change should not be set apart, rather their perceptions should be understood and worked upon for the establishment of a brighter world.

Another famous quote “the love that dare not speak its name”(qtd. in 168) from Alfred Douglas's "Two Poems" is often used as euphuism for homosexuality was as well used in Oscar Wilde's trial, accused of homosexuality and sentenced for two years of imprisonment. Justice Nariman used this quote for both its historical and future reference. These lines though denied by Oscar Wilde talk about homosexuality as a form of love that people confine to darkness and dare not accept its existence.

Chief Justice Deepak Mishra asserts that now is the time to move the head to create a more inclusive society, he concludes his judgement with his lines "Let us move from darkness to light, from bigotry to tolerance, and from the winter of mere survival to the spring of life as the herald of a New India to a more inclusive society" (154). Poetry is about emotions, feeling, and human experiences beyond the chaos, it is churned out of the experience of people making it more relatable to its reader. The structure of poetry (tone, rhyme, meter) and use of language make it appealing and soothing both on an intellectual and emotional level. Deepak Mishra reciting his lines of poetry represents the emotions and feeling connected to the judgement and aided people to comprehend, accept and implement it through this poetic and personal touch. As rightly said by Lycurgus:

The laws because of brevity do not teach but merely order what one should do; the poets on the other hand by representing human life and selecting the noblest deeds persuade men by using both reason and clear examples. (109)

Conclusion:

The case was controversial in nature, challenging long prevalent norms of society. The judgement was consciously delivered by keeping in mind the existing Indian society, and the deliberate use of literature in the judgement was to make it more appealing and connected to emotions. Other than literature nothing could have been apt for the portrayal of the suffering and traumas of LGBTQ people. The writing skill of judgement decided its impact on society, and if literature and law work in collaboration it has the power to influence, change results, generate results, and prompt people for certain actions, making society more acceptable and inclusive.

Human conditions are entangled and difficult to comprehend, to sort them out we need intricate and delicate hands. Literary writers play this role very well; through literature, they enable readers to comprehend emotions, feelings, and psyche. Literature is a representation of society, it highlights the dark side of human existence which need to be worked upon. Law through literature can comprehend the real problem areas and make the required alterations. “At the centre of his humanist vision was the notion that literature could somehow bring the real to law” (Stone).

Literature and law have always worked for a common objective i.e. human betterment emphasising civilizational developments and social reforms. Both are working to make the world a better place to live in; one through the imaginative and abstract settings and the other through concrete legal structures. The relationship between law and literature is at multiple levels; first literature portrays a society in different colours which will be helpful for lawmakers; second, through literature, the lawyer and judge can work on their vocabulary as the law is a profession of words; third literature from century has represented the law in their writing; fourth law quote literature to make their judgement emotional and creativity rather than rational and plain. Fifth if the law wants it can use literature to alter human perception relating to certain areas, as a tool to influence people.

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