

LITERATURE AND LAW: MIRRORS FACING EACH OTHER

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ABSTRACT

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Literature and law are separate branches of social science, yet they share tremendous proximity and commonness in many aspects. The most striking is 'uniting all humans as equal'. In the eyes of law all are equal so is the case in literature. Literature is the only place where humans are treated as humans, not with their caste, creed and status. Literature, be it in any language, draws us to the universal principles of human emotions, psychology, human predicament, the aspirations, fears and so on and so forth of human beings. In literature there is a universal approach to human beings. It is where all are equal, dealt equally like humans with its myriad dimensions. A king like Lear is shown as weak and vulnerable, mighty man like Julius Caesar is defeated, simpletons like old Santiago becomes heroes.

Literature tends towards abstraction, creativity, variety in description and narration and is abundant in genres. Law on the other hand tends towards clarity, logical interpretation scope, definite pattern and style of drafting and varied in branches.

The general delineation of literature and law poses more questions for inter-disciplinary study. How can literature and law facilitate each other in development or being more varied? What can a legal professional learn from the study of literature? What can a writer learn from the study of contemporary and historical laws? How can literature help in better understanding of human psychology, human predicament and society? How can literature and law play the role of change agent of catalyst in the evolving societal norms? What is the contribution of literature in the evolution of law? How can literature facilitate the smooth functioning of law, delivery of justice and delivery of laws to the grass root level? How can literature help in connecting law to

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the society with ease and not just the nitty-gritty of jargons and corridors of courts? What is justice, and how do law and literature provide different answers to justice? What is the relationship of law to violence? How does the law regulate the individual's relationship to the community? How are moral questions addressed by the law? In what ways can it be said that literature judges the law, and what might we do with these judgments?

The above research questions inspire to deliberate more, especially between the law professionals and teacher of literature and writers. Lot of study can be done with the help of the literature already available about law, justice, public administration etc.

KEY WORDS: 'Literature', 'Law', 'Social Science', 'Humanity', 'Fiction', 'Poetry', 'Language'

INTRODUCTION

Literature and law though being separate branches of social sciences share some proximity and amalgamate in objectives. Literature tends towards abstraction, creativity, variety in description and narration and is abundant in genres. Law on the other hand tends towards clarity, logical interpretation scope, definite pattern and style of drafting and varied in branches.

“The relationship between law and literature is rich and complex. In the past three and half decades, the topic has received much attention from literary critics and legal scholars studying modern literature. Ever since the publication of James Boyd White’s *The Legal Imagination* in 1973, there have been numerous books and articles studying the role of law in the plays of Shakespeare or the novels of Dostoevsky, Melville, Kafka and Camus. Some writers have studied works of literature from jurisprudential perspective; others have applied the tools of literary analysis to legal texts such as statutes, contracts and judicial opinions which raise questions 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 required reading in law schools and that metaphor and narrative should take precedence over legal analysis.” [1]

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DISCUSSION

Law is primarily meant to regulate human behaviour and respect of human rights, claims and dignity of the fellow beings, harmonious relationship between an individual and community and vice versa. Literature too deals in the same by describing human behaviour, circumstantial behaviour, the moral and societal psyche prevailing behind that behaviour. It helps in understanding the maze around the human psyche and subsequent behaviour be it situational or otherwise. In a different light of comparison; a case matter is a story told in legal language. Literature adds the creative humane flavours of description, imaginary, psyche behind a particular episode and so and so forth. Literature also facilitates the understanding of the machinery of law and its implementation in society, in a nutshell tries to answer or should answer questions like 'why this law?' or 'how a particular law is required?' etc. These are the questions arising normally in any normal citizen of a civilized set up and literature through

various means can reach out to them and facilitate the legal machinery for awareness and acceptance at mass scale.

Story telling has been the best and time-tested method of inspiring, creating awareness and understanding and driving the mind to reach morals and interpret them. The fictional situations presented in literature can tell a great deal about political and social situations, and the individual that often find themselves before the court. The law in literature offers fertile possibilities of exploring, contemplating and debating various dimensions of human situation and co-relating it with law. Though some literature cannot instruct its readers about legal situations, they can still educate law students about the human condition.

"I propose that we can improve our understanding of law by comparing legal interpretation with interpretation in other fields of knowledge, particularly literature." [2]

For example, from a distant view the child character Oliver Twist seems to be a spoilt brat on the threshold of being a hardcore criminal who joined a gang quite early. But a detailed reading of the novel by Charles Dickens helps us to understand the predicament of the boy who was an orphan, being brought up in a badly-managed orphanage, exploited and not treated well, caught by a gang and subsequently forced into criminal acts for survival. If he is just seen as an accomplice of a criminal at this age and punished or dealt accordingly, we tag him a criminal and make him so. And if we deal with many Oliver Twists in this fashion we do not understand the pathetic doom they would lead the society and civility to and the main culprits like Mr. Bumble, Fagin or Sikes go unnoticed. Would it also not facilitate the administration of justice, justice that has the deterrence effect on the society of tomorrow and not splashing in the puddle of 'wrong precedence'?

Stories have also been used by teachers as a tool to work on comparison and critical thinking. A set of stories is given to the students and after the preliminary discussion they are asked to find out parallels and contrast among the stories. This enables them to view a situation or predicament from various angles and ultimately helps when they are dealing with legal cases or suits. It helps in representing their case in a different light and citing points from similar cases or precedents to make his case stronger and more convincing.

One of the major responsibilities of the law machinery is to ensure a positive deterrence effect on the society and its morality thus upholding the goodness. Creating this effect seems to be as difficult as crossing the Sahara without compass on foot and as simple as having a walk in the garden. The fine difference between the complexity of Sahara and a garden is the understanding of human predicament and introspection of the effect of the judgment or law to be enacted on the preceding years and trust of common man on the machinery of law in a democratic set up.

Moreover, literature helps to develop solutions using a hypothesis and fiction. The stories provide tremendous scope of human and societal wisdom and people can understand the problems and devise solutions based on fiction and fictional characters. It also helps in developing certain strong personality traits like determination, moral courage, resilience etc. and how courageous people have changed the social justice pattern for e.g. "To Kill a Mockingbird" illustrates how the just behaviour of one lawyer was able to slowly transform the lives around him. "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others." [3] [http://en.wikipedia.org/wiki/Social_justice - cite note-29](http://en.wikipedia.org/wiki/Social_justice_-_cite_note-29)

"...poetry and law have risen from the same bed." [4]

A very important genre of literature is poetry. It is also perhaps one of the most popular for readers and writers. Poems have often been quoted by management experts, trainers, lawyers and judges to drive home a point. It is also one of the tools employed in rhetoric skills to make the content more effective and reachable. Poetry is perhaps the best medium to deal with the chaos around human life or created by human life and also in dealing with the fineries of human sentiment and relations. It may be an answer to many of the chaotic conditions and if not an answer it is certainly a balm for the pains and sorrows of life. Law shares commonness with poetry especially in dealing with the chaos of life. The purpose of law is to remove the chaos in society and lead the society towards the respect of human dignity and rights of individuals. Often, lawyers and judges quote abundantly from poems to drive home the point. It would lead to more understanding of the proposition or the judgment delivered because poetry is churned out from the experience and feelings related to human life and sentiments and the language employed is more appealing both to the intellect and emotion of humans than logical or technical

language of law. Both law and poetry tend to remove the chaos in the human life and society one appealing to the fineries, sentiments and imagination and the other logical with action orientation. Poetry is more introspective in appeal and law is logical and behavioural in appeal but both aiming to bring order in the human society and peace within and without.

"... law and poetry share important relations between them and exert mutual influence on each other. We have seen that law and poetry share language as their working medium; language shapes the chaos of experience in law and poetry; and law and poetry are products of human ingenuity and imagination.... law and poetry differ from one another as well. Law tends more toward the scientific dimension of human thought; poetry tends more toward man's artistic side. Law is often an act of power; poetry makes no claim on power." [5]

The laws because of their 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. [6]

The Play, as a genre of literature, are perhaps one of the oldest genres and the most popular. Unlike other genres of literature, drama is both a literary art as well as a performing art. It is a unique combination of writing, speaking, body language, theatrical arts like lights, positioning etc. Drama provides ample of scope for learning of law and justice. Many plays are written with court room as the setting or with the theme of justice, morality, social justice etc. The court room scene of 'The Merchants of Venice' is perhaps the most popular. The scene deals with the 'quality of mercy' in imparting justice, arbitration and reconciliation and finally interpretation of the contract with critical thinking. The way in which Portia [disguised as Dr. Balthazar in the play] interpreted the contract and finally cornered the cruel and cunning Shylock is an excellent example of the magic of interpretation of text and critical thinking and the sharpness of both the qualities are highly wanted for a lawyer as well as judge. "There appear to have been special links between Elizabethan drama and the contemporary culture of the law; London audience probably included lawyers and students from the Inns of Court, and plays were performed at the Inns. Some Shakespeare's most common themes confronted the same political and philosophical issues that are also reflected in the conflicts and exuberant inventiveness which characterize the great developments in common law in Shakespeare's time." [7] Drama also has scope of

performance wherein one can master the art of body language, expressions, and gestures. It also requires the understanding of the variation of pitch, tone and inflexion. Drama provides scope of experiential learning by enacting some real life or plausible situations. Today, drama, in the form of role plays is used as pedagogical tool in many of the professional courses providing experiential learning to the students.

Drama and law many a times complement each other. Many scenes in plays have been enacted as trial scenes or scenes of crime.” A legal procedure can structure the dramatic action in an entire scene.” [8]. An imaginative play can provide ample material for critical thinking, marking the lacuna in the laws, understanding the legal procedures, the skills of communication be it body language or rhetoric, relationship between society and law, the function of various people attached with the machinery of law etc. Studying drama as a genre of literature and performing arts gives a lot of edge to students and professionals of law and litigation.

The society is the breeding ground of any forms of literature and human psychology and predicament the seeds. Society creates literature; literature can be called the mirror to contemporary society but the nature of reflection depends on the author and his experiences. This literature could be progressive or reactionary and by showing this reflection it also tends to bring about reforms, uphold the norms and feed fodder to activism as well. When we compare law and literature, the latter has more penetration in the society, has more acceptance as it is both educative and entertaining, and has wider reach. Literature too can be created in easier and simpler manner than law as it has a much wider breeding ground. Literature enables society to think and feel and law regulates thought into just behaviour or reforms it. Literature has many a times been helped law in identifying the grey areas in its field or areas where the legal system need to have deliberation time and again for reformation and amendment. Literature targets morality and law can try to follow it with its logical manner for the betterment of society.

P B Shelly, the renowned English poet, has called poets the unacknowledged legislators of mankind. In this way the great poet already touched the interrelationship of law and literature. Literature, if 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. Literature can undoubtedly do great work in sensitizing the human mind and heart for respect of law and following morality by expressing social sympathies.

“Fundamentally, our problem arises from our failure to . . . ground ourselves securely on the humanistic tradition, of which literature is a chief expression and from which the profession should draw nourishment and direction” [9]

The influence of literature on society can be seen in examples like the novels like “Uncle Tom’s Cabin” by Miss Stowe after which the anti-slavery movement started in literature and life. Writers like Charles Dickens or Thomas Hardy influenced the society by the upsurge of feeling for regulating and removing social wrongs and the loopholes in the implementation of law and public administration. Sharad Chandra’s novels tend to break conservative approach to the position of women in our society and advocates women empowerment. The stories of Munshi Premchand delineates the social life, the time tested tradition of Panchayat, its judgments based on morality and mediation by wise men for in resolving conflict for a win-win situation. His story like ‘God Lives in Panch’ stresses the importance of the objectivity of a judge and juries. Such a system prevalent in other part of the world like Africa has also been delineated by writer like Chinua Achebe wherein peace and tranquillity was always restored in the so called primitive society with the objective approach of the elderly leaders and upholding morality. Such societies perhaps, never had a written constitution or laws but they worked with moral conscience and overall goodness of the society. The stories and poems of Zaverchand Meghani, a renowned Gujarati writer, inspired the masses for social reformation and to fight against the imperial rule. His poems reached to the remotest villages of Gujarat where law could never have penetrated and inspired uprising for freedom and change in innumerable social contexts. Thus, society and literature are reflections of one another they germinate together to make, improvise on norms, thoughts and people welfare at large.

“The law is the profession of words.” [10]

Language is one more common element between literature and law. Their impact, interpretation and enjoyment in case of literature depends on the use of apt language. Both literature and law can be effective or ineffective mostly depending on the use of words and language. When we talk about language, it is not just written word or the lines read by someone; it deals with body language at large, the language of silence, use of apt vocabulary, sentence construction and punctuation, myriad of narrative techniques and imagery, the use of tone, pitch and inflexion, connotative and denotative meaning to be interpreted from words and sentence construction etc.

Language to literature and law is like colours to painting or tune to music. For law, language, however, cannot supersede the content, the facts and the logic of discussion or argument but it can surely help to present a case in much better way with ease in understanding and abundance in narrative. The language tools of literature can be applied discreetly to the draft, argument or narrative of a legal matter. Lawyers and judges have often used quotations to drive the point home and thus appealing the moral and humane aspect of any legal matter or conflict.

Reading of rich literature, any genre, facilitates a law professional in enriching vocabulary by deciphering the connotative and denotative meanings of words, understanding the complexity of syntax, employing rhetorical devices and augmenting legal writing if not embellishing. There has been abundant use of quotations from prose and poetry in the legal proceeding and judgments. These quotations enrich and embellish the rhetoric and writing as well as enable the understanding of the point or predicament in a subtle manner.

“As lawyers became advocates for a partisan viewpoint, whether before a court or jury, their success came to be determined by the skill and art of their persuasive communication. Lawyers and judges have become the “word merchants” in the best sense. The successful advocate should be able to synthesize a complex legal precedent in a few pithy sentences and articulate a point of view within the sweep of a compelling sentence.” [11]

CONCLUSION

Literature and law share good amount of proximity in dealing with human predicament, situation, development of civilization and societal reforms. As both highlight human life, striving to make it better and society a more purposeful place to live in; one heralding and creating an abstract world and the other canalizing it through concrete and well defined structure be it in the form of rules or regulations, they can be studied in the light of this proximity.

Literature helps in understanding of law and cases because it teaches a certain way of thinking; a way that is synthetic, creative, dealing with ambiguity and ambivalence. It also provides opportunity of foraying into new dimensions of thoughts pertaining to law, justice etc. and examine it from humanistic and philosophical perspective.

Human conditions and behaviour has more intricate cut than a finely crafted diamond. It requires a sharp eye to decipher the intricacies of this and bring out the myriad colours as well as the real light. Lawyers can put forth the cases and matters in a better way highlighting the hitherto untouched aspect or viewpoint about the condition. The judges can reach better results and cut through with broader and precise understanding of human condition.

Literature, be it prose fiction or poetry has intrinsic value as means of discussing legal topics as it has the ability to stimulate critical thoughts and theories, relating one to others, political and social context and ultimately facilitating learning and understanding of law to students and legal scholars.

Moreover, literature also emphasis on the rhetorical techniques and opportunities that can be used as a way of critiquing social institutions and legal norms.

“Literature, as the most human of the humane arts, could teach the law “humanistic judgment”. First, it could remind us of the rich humanity that lay behind case reports and judicial decisions, thus serving to chasten the mechanistic rigor of the law. Second, it could offer reflections—brought vividly to life through narrative—on the human meaning of concepts central to law: criminality, punishment, justice. Third, it could offer models of rhetorical excellence, reuniting legal practice with the great tradition of forensic oratory, turning law students into rhetorical artists, and promoting connoisseurship of the legal opinion as masterpiece.

At the centre of this humanist vision was the notion that literature could somehow bring the real to law.” [12]

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