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'Law in Literature', 'Literature in Law' and 'Law as Literature': Dissecting the Fabric of Literary Engagements in Law

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ABSTRACT

Literature and law might seem to be different streams in society, but the epistemology of literature can never be isolated from that of law and vice versa. Literature expresses the aspiration and spirit of society, and a judgment is nothing but the voice of social righteousness documented as per legal normativity. The application of literature in legal judgments and the application of legal knowledge in literary fictions are not unheard of. The dialectics of the intertwined double helix of law and literature have always gained the attention of both the legal world and the world of literature. Numerous literary quotes in various landmark judgments are documented proof of literature's power to convey the essence of a jury's decision, giving life to the soul of a judgment. Legal-judgment-based literary creations have been bestsellers in every generation. It would not be incorrect to say that the fabric of literary engagements in law has been knitted with the threads of 'law in literature', 'literature in law', and 'law as literature'. This article is based upon a doctrinal study in an effort to understand the interrelation of law and literature through various case laws and to capture the tapestry of natural justice woven by both law and literature through constitutional principles and debates.

Keywords: law, literature, judgment, fiction, quotes, constitutional principles

I. INTRODUCTION

...it was foreseen that the city of mirrors (or mirages) would be wiped out by the wind and exiled from the memory of men ... because races condemned to one hundred years of solitude did not have a second opportunity on earth.¹

– Gabriel García Márquez, *One Hundred Years of Solitude* (1967).²

Law in isolation doesn't make any sense until it is married to the socio-cultural potpourri to feed a million minds hungry for justice. The annals of human civilisation have remained witness to

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¹ GABRIEL GARCÍA MÁRQUEZ, *ONE HUNDRED YEARS OF SOLITUDE* (Gregory Rabassa trans., Penguin Classics 2000).

² *Id.*

the enigma of socio-cultural conflicts hosting the ghost of morality left weeping under the clout of tragedies applauded by a million silent souls in the amphitheatre of life. How and when the mirrors become mirages and conscience becomes corrupted is better depicted by the literary expressions of fictions than the harshness of dry codified laws. The apparent bareness of bare Acts becomes more socially accepted when wrapped with the fabric of socio-cultural morality and ethics, giving the praxis of jurisprudence a beacon of normativity. The guiding light of legal gnosis, as depicted by the landmark judgments, has always been decorated with the graffiti of literary illustrations throughout the narratives of legal history. The judiciary can't live isolated from the world around, neither can it stand still in an *Inferno*³ of ignorance while the universe moves a thousand light years across the galaxies of socio-cultural transformation. The bridge that connects the parochial solitude of the legal island with the aspirations of a million minds is nothing but the bridge of literature. Literature percolates through our core where rigid codified laws can't. While finding 'literature in law' or searching for 'law in literature' would draw literary debates, there is no legal debate over the matter that 'law as literature' has existed since ancient times when religious literatures themselves were held to be 'law'. The confluence of law and literature is not an interdisciplinary saga of an ecumenical ceremony but in fact is the sole tapestry of the social narratives woven by the intertwined threads of both. The 'clarity' in the literature-consciousness of a legal mind became apparent not just in the century-old essay of B.N. Cardozo,⁴ nor was the 'literary critic' born for the first time in the 'legal imaginations' of James Boyd White;⁵ rather the judicial insight into the very concept of natural justice has been moulded for centuries by the conflicts and dilemmas of social issues depicted by the classics of literature. Throughout this journey of judicature since time immemorial, when the fictions became canons and canons generated fictions remains an issue of dialectical debate in the sojourn of judgments; but for sure, the dialectics have always enriched both law and literature alike, be it in the form of 'law in literature' preached by R. Weisberg⁶ or 'law as literature' analysed by Ronald Dworkin.⁷ This relationship of 'law and literature' also remains one of the

³ DANTE ALIGHIERI, *INFERNO*, in *THE DIVINE COMEDY* (1321); see also H.W. Longfellow, *THE INFERNO: DANTE ALIGHIERI* (Barnes & Noble Classics 2003).

⁴ BENJAMIN N. CARDOZO, *LAW AND LITERATURE* (Harcourt Brace and Co. 1931); see also Richard P., *THE WORLD OF BENJAMIN CARDOZO: PERSONAL VALUES AND THE JUDICIAL PROCESS* (Harvard University Press 1997).

⁵ JAMES B. WHITE, *THE LEGAL IMAGINATION* (University of Chicago Press 1985); see also JAMES B. WHITE, *THE LEGAL IMAGINATION: STUDIES IN THE NATURE OF LEGAL THOUGHT AND EXPRESSION* (Little, Brown 1973).

⁶ Richard H. Weisberg, *Cardozo's 'Law and Literature': A Guide to His Judicial Writing Style*, 34 *TOURO LAW REVIEW* (2018); see also R.H. Weisberg, *Three Lessons from Law and Literature*, 27 *LOY. L.A. L. REV.* 285 (1993); see also R. Weisberg, *The Law-Literature Enterprise*, 1 *YALE JOURNAL OF LAW AND THE HUMANITIES* (1989); see also L.H. LaRue, *The Portrayal of Law in Literature: Weisberg's 'Failure of the Word'*, 11 *AMERICAN BAR FOUNDATION RESEARCH JOURNAL* 313 (1986); see also R.H. Weisberg, *Law in and as Literature: Self-Generated Meaning in the 'Procedural Novel'*, in *THE COMPARATIVE PERSPECTIVE ON LITERATURE: APPROACHES TO THEORY AND PRACTICE* (C. Koelb & S. Noakes eds., Cornell University Press 1988).

⁷ R.M. Dworkin, *How Law Is Like Literature*, in *LAW AND LITERATURE* (Routledge 1996).

most 'misunderstood' topics among the stalwarts of the field, with critics like Richard Posner⁸ depreciating this 'literary romanticism' as a mere provider of ornamental 'rhetorics' and 'metaphors' to decorate legal arguments and thus rejecting the importance of the literature-mediated 'humanistic approach of law' preached by P.R. Teachout.⁹ The arguments might differ, the logics might clash, the point might vary, but standing at the arcade of the digital metaverse, this phase of ontological liminality doesn't speak of the severance of literature from the parochial sphere of judicature; rather it speaks of the futility of the solitude of the judiciary from the expressed aspirations of the mass in the existential struggle of a civilisation.

II. INSTANCES WHERE LITERATURE SPOKE OF HUMAN VALUES, SOCIAL JUSTICE, AND FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION

It is in literature that the concrete outlook of humanity receives its expression.

– Alfred North Whitehead

Throughout the ages, whenever darkness loomed large in the psyche of society, literary creations brought the dawn of enlightenment to ward off social oppression, injustice, discrimination, and corruption. Perhaps one of the earliest criticisms of the bane of 'Brahminical casteism' in India was depicted in Jyotirao Phule's *Gulamgiri* back in 1873, which reinvented the discriminatory mythical narratives through the lens of 'equality'.¹⁰ The undertone of pathos depicted in *Gulamgiri* flows through numerous literary gems with equal spontaneity in other parts of the world, including *Invisible Man* by Ralph Ellison¹¹ speaking of the rights of African Americans, and *The Color Purple* by Alice Walker speaking of the 'basic rights', 'gender equality' and 'social justice' of the African American woman.¹² The voice raised for 'women's rights', including the 'right to vote' in the suffragette movement of the UK, has been wonderfully narrated in *Unshackled: The Story of How We Won the Vote* by D.C. Pankhurst.¹³ Very few have walked down the path of stalwarts like Nelson Mandela, but every other person may have gone through his saga of struggle for 'justice and equality' captured in the form of *Long Walk to Freedom*.¹⁴ The whitewashed pages of *Mein Kampf*¹⁵ as depicted in the classic *The Book Thief* by

⁸ R.A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATION (Harvard University Press 1988).

⁹ P.R. Teachout, *Worlds Beyond Theory: Toward the Expression of an Integrative Ethic for Self and Culture*, 83 MICH. L. REV. 357 (1985).

¹⁰ JYOTIRAO PHULE, GULAMGIRI (1873); see also O. Kashyap, '*Gulamgiri*': The 'Seed Text' for an Anti-Brahmanical Consciousness (Forward Press 2020).

¹¹ RALPH ELLISON, INVISIBLE MAN (Penguin Books 2014).

¹² ALICE WALKER, THE COLOR PURPLE (Washington Square Press 1982).

¹³ C. PANKHURST, UNSHACKLED: THE STORY OF HOW WE WON THE VOTE (Hutchinson 1959).

¹⁴ NELSON MANDELA, LONG WALK TO FREEDOM: THE AUTOBIOGRAPHY OF NELSON MANDELA (Little, Brown 1994).

¹⁵ ADOLF HITLER, MEIN KAMPF (Hurst & Blackett 1938).

Markus Zusak ignited the fire of 'freedom of expression' in our mind while going through an allegory created in the backdrop of Second World War dictatorship and social oppression.¹⁶ The racial 'inequality, bias and prejudices' expressed through the mellowness of satire and wit of Harper Lee in her classic *To Kill a Mockingbird*¹⁷ finds justice in the firmness and directness of Martin Luther King Jr. in his famous book *Where Do We Go from Here: Chaos or Community?*¹⁸ describing the American 'civil rights movement' for the 'right to equality',¹⁸ and perhaps also giving justice to that 'negro mother who killed his child' to end their pain of slavery and inspired another literary masterpiece in the form of *Beloved* by Toni Morrison.¹⁹ *Godan* by Munshi Premchand,²⁰ *Maresh* by Sharat Chandra Chattopadhyay,²¹ and *Dui Bigha Jomi* by Rabindranath Tagore²² all depict the exploitation of the rights of the marginalised and weaker sections of society and thus force us to think of the changes and justiciable rights needed to be brought into society for the greater benefit. *Annihilation of Caste*²³ by B.R. Ambedkar had led to a larger social discourse for the right to equality, fraternity, and equal opportunity later enshrined in the Indian Constitution. *Development as Freedom* by Amartya Sen²⁴ spoke of 'freedom of opportunity', 'political freedom' and 'freedom from poverty'. The fundamental rights provided by the Constitution of India, the 'Right to Equality' (Arts. 14–18), 'Right to Freedom' (Arts. 19–22), 'Right against Exploitation' (Arts. 23–24), 'Right to Freedom of Religion' (Arts. 25–28), 'Cultural and Educational Rights' (Arts. 29–30) and 'Right to Constitutional Remedies' (Arts. 32–35), in some way or other find a place in various forms in Indian literature in a comprehensible and more lucid way for the understanding of the common people and depict the aspirations of the common people. Literature in a way acts as the feedback mechanism for legal normativity, balanced by the amendments brought about to satisfy the contemporary spirit and aspirations of the countrymen, and thus realising the words of B.R. Ambedkar that,

Constitution is not a mere lawyers' document, it is a vehicle of Life, and its spirit is always the spirit of Age.

¹⁶ MARKUS ZUSAK, *THE BOOK THIEF* (Alfred A. Knopf 2007).

¹⁷ HARPER LEE, *TO KILL A MOCKINGBIRD* (Lippincott 1960).

¹⁸ MARTIN LUTHER KING JR., *WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?* (Harper & Row 1967).

¹⁹ TONI MORRISON, *BELOVED* (Alfred A. Knopf 1987).

²⁰ MUNSHI PREMCHAND, *GODAN* (5th edn, Sahitya Sarovar 2021).

²¹ S.C. CHATTOPADHYAY, *MAHESH* (Common Books 2023).

²² R.N. TAGORE, *DUI BIGHA JOMI* (1908).

²³ B.R. AMBEDKAR, *ANNIHILATION OF CASTE: AN UNDELIVERED SPEECH* (Arnold Publishers 1990).

²⁴ AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (Anchor Books 2000).

III. INSTANCES WHERE JUDGMENTS GOT ILLUSTRATED WITH LITERATURE

...literary theory, or particular works of literature, are contorted ... to make literature seem relevant to law, and law is contorted to make it seem continuous with literature.

– R.A. Posner, *The Decline of Law as an Autonomous Discipline*.²⁵

Perhaps two cases that saw overwhelming literary illustrations throughout the court trials and judgments were the famous cases of *Aruna Ramchandra Shanbaug v. Union of India*²⁶ and *Common Cause v. Union of India*²⁷ to determine the fate of 'euthanasia' in India. Justice Markandey Katju, in the *Aruna Shanbaug* case, to describe the distressful condition of Aruna struggling at the liminal verge of life and death, opened his landmark judgment with the words of Mirza Ghalib:

Marte hain aarzo mein marne ki Maut aati hai par nahin aati...²⁸

CJI Dr D.Y. Chandrachud, in his judgment in the *Common Cause* case, under the heading 'On Death and Dying', quotes from the Old Testament:

There is a time for everything, and a season for every activity under the heavens: a time to be born and a time to die, a time to plant, and a time to uproot, a time to kill and a time to heal, a time to wear down and a time to build, a time to weep and a time to laugh, a time to mourn and a time to dance. (– Ecclesiastes 3)²⁹

He further goes on to quote Dr Randy Pausch in relation to the treatment of terminal illness,

We cannot change the cards we are dealt, just how we play the hand.³⁰

In the case of *D.K. Basu v. State of West Bengal* (1997),³¹ 'torture' was described quoting the words of Adriana P. Bartow as, 'Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself'.³²

²⁵ Richard A. Posner, *The Decline of Law as an Autonomous Discipline: 1962–1987*, 100 HARV. L. REV. 761 (1987).

²⁶ *Aruna Ramchandra Shanbaug v. Union of India*, (2011) 4 SCC 454, AIR 2011 SC 1290.

²⁷ *Common Cause v. Union of India*, (2018) 5 SCC 1, AIR 2018 SC 1665.

²⁸ Mirza Ghalib, 'Koi Ummeed Bar Nahin Aati, Koi Soorat Nazar Nahin Aati'.

²⁹ Ecclesiastes 3 (New International Version).

³⁰ RANDY PAUSCH, THE LAST LECTURE (2008).

³¹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

³² *Id.*

Justice Bharat Chugh, regarding the use of poetry in judgments, said, 'Nothing is in the law that bars you from invoking a couplet or invoking a historical context or invoking philosophy or invoking literature. You can do all of that as long as you are making those points.'³³

In the case of *Delhi Council for Child Welfare v. Navneet Kumari* (2019),³⁴ Additional Sessions Judge Md. Farrukh quoted the words of Oprah Winfrey:

The choice to become a mother is the choice to become one of the greatest spiritual teachers there is.³⁵

He further went on to quote Hollywood star Catherine Zeta-Jones, who said,

Whether your pregnancy was meticulously planned, medically coaxed, or happened by surprise, one thing is certain, your life will never be the same.³⁶

Additional Sessions Judge Anuj Aggarwal quoted Swami Vivekananda in relation to a sedition case on account of protest against the CAA³⁷ and said:

We are what our thoughts have made us; so, take care about what you think. Words are secondary. Thoughts live; they travel far.³⁸

He also quoted the words of John Milton: 'Give me the liberty to know, to argue freely, and to utter according to conscience, above all liberties.'³⁹

In the case of *Shreya Singhal v. Union of India* (2015),⁴⁰ the bench quoted Mark Antony's speech from Shakespeare's *Julius Caesar* to illustrate the 'difference between advocacy and incitement':

...for I have neither wit, nor words, nor worth, no action, nor utterance, nor the power of speech, to stir men's blood: I only speak right on; I tell you that which you yourselves do know; Show you sweet Caesar's wounds, poor poor dumb mouths, And bid them speak for me: but were I Brutus, And Brutus Antony, there were an Antony would ruffle up your spirits and put a tongue In every wound of Caesar that should move The stones of Rome to rise and mutiny. All: We'll mutiny.

William Shakespeare, *Julius Caesar*.

³³ A. Khan, *Poetic Justice: When Judges Referred to Literary Works and Famous Quotes in Their Verdicts*, BAR AND BENCH (4 Nov. 2021).

³⁴ *Delhi Council for Child Welfare v. Navneet Kumari*, C.A. No. 27/2019.

³⁵ *Id.*

³⁶ *Id.*

³⁷ A. Khan, *[Anti-CAA Speech] Sharjeel Imam Denied Bail by Delhi Court in Sedition Case*, BAR AND BENCH (22 Oct. 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523, (2015) 5 SCC 1.

N.V. Ramana J. quoted from the novel *A Tale of Two Cities* by Charles Dickens in the Kashmir internet restriction case, which said:

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way – in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.⁴¹

Charles Dickens, *A Tale of Two Cities*.

Thus, it is clear that 'knowledge of literature is helpful both to aid the lawmaker in formulating policies for its regulation, and to provide rhetorical tricks for the trade.'⁴²

IV. JUDGMENTS AS LITERATURE

Constitution is a living document and it breathes and perceives the aspiration of a million souls through the literature reflected in landmark judgments.⁴³

– Justice Dipak Misra in *Navtej Singh Johar v. Union of India* (2018)

Judgments as literature would always remain relevant not only for students of law but for the common people to perceive the pulse of the nation. Words of landmark judgments remain forever alive as literature in the legal field. When the bench declares in *Justice K.S. Puttaswamy (Retd) v. Union of India*⁴⁴ that 'The body and the mind are inseparable elements of the human personality', that does not remain as a comment to enlighten Article 21 of the Indian Constitution in relation to the 'right to privacy', but becomes a legal dogma to be quoted a million times, becoming no less than any classic masterpiece. It would not be naïve to further quote from the judgment in the same case, which says,

The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. Privacy enables the individual to retain the autonomy of the body and

⁴¹ Revathi Krishnan, *SC Quotes Charles Dickens in Kashmir Internet Order – But It's Not the First Time*, THE PRINT (10 Jan. 2020).

⁴² J.G. Small, *Book Review: Law and Literature: A Misunderstood Relation*, OTTAWA LAW REVIEW 589 (1992).

⁴³ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321, (2018) 10 SCC 1.

⁴⁴ *Justice K.S. Puttaswamy (Retd) v. Union of India* (26 Sept. 2018), at 66.

mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life.⁴⁵

Justice K.S. Puttaswamy (Retd) v. Union of India (2018).

And beyond doubt these same words have been quoted a thousand times in legal papers, becoming literature in itself. Judgments of various other cases have been quoted in some other judgments to strengthen their viewpoints. In the *Aruna Shanbaug* case, Justice Katju had quoted literature from various judgments, including the fine literary words of Justice Sopinka of the Canadian Supreme Court, which go as follows,

Sanctity of life has been understood historically as excluding freedom of choice in the self-infliction of death, and certainly in the involvement of others in carrying out that choice. At the very least, no new consensus has emerged in society opposing the right of the State to regulate the involvement of others in exercising power over individuals ending their lives.⁴⁶

Rodriguez v. British Columbia (Attorney General) [1993].

These words are not mere quotes from a judgment but literature in itself, easily relatable by common people. Similarly, the judgment of the *Airedale* case⁴⁷ has been elaborately quoted in the same judgment. There have been instances where landmark judgments have become the essence of literary creations. *Burial Rites*⁴⁸ by Hannah Kent (2013) was based upon the famous trial of Agnes Magnúsdóttir (Iceland 1828), focusing on the last few months of her life before being executed. How the 'American Dream' got crushed between ambition and morality was depicted in *An American Tragedy*⁴⁹ by Theodore Dreiser (1925), based upon the judgment of the famous case of *People v. Gillette*⁵⁰ (New York, 1906). *Alias Grace*⁵¹ by Margaret Atwood (1996) was based on the notorious trial of Grace Marks and James McDermott⁵² (Canada 1843). The literary acumen of judges has turned some judgments into literary masterpieces documented in the annals of the judiciary. For example, the tragic realism and ethical hues in the landmark judgment of *R v. Latimer*⁵³ by the Supreme Court of Canada (2001), or the

⁴⁵ *Id.*

⁴⁶ *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519.

⁴⁷ *Airedale NHS Trust v. Bland*, [1993] 1 All ER 821.

⁴⁸ HANNAH KENT, *BURIAL RITES* (Little, Brown and Company 2013).

⁴⁹ THEODORE DREISER, *AN AMERICAN TRAGEDY* (Boni & Liveright 1925).

⁵⁰ *People v. Gillette*, 191 N.Y. 107 (1908).

⁵¹ MARGARET ATWOOD, *ALIAS GRACE* (McClelland & Stewart 1996).

⁵² *R. v. McDermott and Marks* (Toronto: Star and Transcript Office 1843).

⁵³ *R. v. Latimer*, [2001] 1 SCR 3, 2001 SCC 1.

theatrical, allegorical nature of the judgment of *Cordas v. Peerless Transportation Co.*⁵⁴ (1941). The judgment of *Whitney v. California*⁵⁵ (1927) can be taken as one of the greatest literary defences of free speech in the arena of political philosophy. Justice Anthony Kennedy's judgment in the landmark case of *Obergefell v. Hodges*⁵⁶ (2015) is nothing short of a romantic comedy on human companionship, culminating in the final words: 'They ask for equal dignity in the eyes of the law. The Constitution grants them that dignity.'⁵⁷ Similar literary acumen turning judgments into literature has been seen also in the humorous pastoral storytelling of *Miller v. Jackson*⁵⁸ (1977), or the epic description of liberty in the landmark judgment of *West Virginia State Board of Education v. Barnette*⁵⁹ (1943) by the U.S. Supreme Court, which articulated the immortal words: 'If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion...'.⁶⁰ Thus, it can be said beyond doubt that not only is literature used in judgments, but judgments themselves can be considered to be of literary value in the socio-cultural context and, of course, in the legal context for future reference.

V. CONCLUSION

Judiciary is the guardian of civilized life.

– Dr A.P.J. Abdul Kalam

Critics may differ in their views about the need to match literature with law; critics may even differ in their views regarding the utility of literature in passing judgment apart from adding ornamental metaphors; but the futility of literary content to lead to a judicial conclusion does not demean the utility of the influence of good literature to stabilise legal normativity in a social context. Literary quotes are used in judgments to make them more acceptable. Often rhetoric speaks more than dry judgments passed on the basis of codified laws. People relate more to a line of famous poetry or quotes from famous novels because of their ignorance of the codified laws but knowledge of literature. Judgments are but the reflection of the voice of social righteousness, and socio-cultural influence in the form of literature acts as the fulcrum to balance the good and evil of the human psyche and thus fix the parameters of natural justice. The search for 'literature in law' and 'law in literature' will remain an ever-lasting praxis, but the

⁵⁴ *Cordas v. Peerless Transportation Co.*, 27 N.Y.S. 2d 198 (N.Y. City Ct. 1941).

⁵⁵ *Whitney v. California*, 274 U.S. 357 (1927).

⁵⁶ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁵⁷ *Id.*

⁵⁸ *Miller v. Jackson*, [1977] QB 966.

⁵⁹ *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

⁶⁰ *Id.*

epistemology of legal gnosis can never remain immune to the socio-cultural spirit as expressed through literature, both contemporary and classic.
