

Law in Literature: Juveniles' Minds and Perspectives

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Abstract

Expressions of language verbalize the inner thinking of authors, leading to the connection of law and literature. In this paper, the authors try to visualize the relationship between the two. Along with the western relation between law and literature, the authors try to capture and articulate this intricate relationship from Bangla Literature as well. This article outlines the complex yet interdisciplinary nexus between the law and the literature which has been developed over hundreds of years and tries to envisage the nexus between the two. Accordingly, it also seeks to understand how the two influence each other.

Keywords : Literature, Law, Juvenile, Justice, Language.

I. Introduction

Law comes from the norms of society. Law changes due to the necessity of society and with the flow of time. Sometimes, various loopholes can be identified; however, it is a matter of sorrow that the law does not mention those. The necessities of society are expressed in writings and skillful writers articulate their thoughts in literary forms. Consequently, these literary works made their place in society with foremost importance. The influence of those literary works had a profound impact on the laws, rules, and regulations of the society with the flow of time, both law and society keep changing. Therefore, a pen, mightier than the sword, can essentially revolutionize the outlook of society. The link between the law and literature forms when literature alters the law or the law mesmerizes the authors into writing fiction. The index of literature is full of stories of society and its people. Law comes from the need of the people and these needs are filed in the books of literature. Literary works influence people to create laws for the establishment of rights. Law and legal system are linked in the literature to represent the perspective of an individual or other times, the thoughts of the people. Law is not just a paper with strict guidelines; rather, it is alive and subject to change. The relation of literature and law is rather complex, but it has always existed

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throughout history. This paper will embark on a journey to find out how law and literature are connected, from the minds and perspectives of juvenile learners.

II. Law and Theories

At the outset, law carves out a normative order that is coercive in nature.¹ Many inks have been spilled trying to define law. The definition of law, however, is respective and therefore the view of law varies from person to person. John Austin founded a definition of law which maintains that the law is nothing but the command of the sovereign.² Among other definitions of law, because of its clear definition, it is considered as the most acceptable definition that defines the law to some scholars.³

Conferring to Ronald Dworkin, law is a communal practice providing for justified uses of 'collective power against individual citizens or groups.'⁴ Moreover, what makes the coercion through law 'justified' depends on one's legal philosophy. In comprehensive terms, the arguments regarding the justification of law at stake turn around the divergence between 'justice according to law' and 'justice beyond the law.' To envisage the situation, a famous case decided long ago called *Riggs v. Palmer* can shed some light.⁵ The facts of the case arose when a young man, knew that his grandfather had written a will leaving the young man all the grandfather's property. After learning that his grandfather was about to marry again and make a new will, he murdered his grandfather to stop him from doing so. The young man was subsequently sent to jail.⁶

But then the question arose, 'was the young man still entitled to inherit the property of the man he had murdered?' There was no disagreement about the facts. Everyone agreed that the young man had murdered his grandfather. Everyone agreed to deal with the situation according to Law.⁷ However, the statute said nothing about murderers or it did not say that if the heir murders the testator, the heir is disqualified from inheritance. Nonetheless, the disagreement between lawyers and the judges arose regarding the answer to the situation. Two judges said that murderers may not inherit, and the dissenting judge stated that it was wrong.⁸

A non-legal example can be given to explain the dilemma. The question is 'whether X is a rich country or not.' The answer can be given in two ways, one is 'epistemological'⁹ and

¹ Ronald Dworkin, 'Law, Philosophy and Interpretation', *ARSP: Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy* p. 463, volume 80:4, 1994, pp. 463-475.

² Bix B.H, 'John Austin and Constructing Theories of Law' in Freeman M., Mindus P. (eds), *The Legacy of John Austin's Jurisprudence*, Springer, Netherlands, 1st edition, 2013, pp. 5-8.

³ Ibid.

⁴ Dworkin (n 1), pp. 463-475.

⁵ *Riggs v. Palmer*, Court of Appeals of New York, United States of America, 1889, 115 NY 506.

⁶ Rodger Beehler, 'Legal Positivism, Social Rules, and *Riggs v. Palmer*', *Law and Philosophy* p. 285, volume 9:3, 1990, pp. 285-293, available at www.jstor.org/stable/3504804, accessed on 11 May 2021.

⁷ Ibid.

⁸ Ibid.

⁹ The branch of philosophy that investigates the origin, nature, methods and limits of human knowledge.

another is ‘ontological’¹⁰. Some people might be perplexed about the epistemological issue regarding how people find the right answer to such a question.¹¹ Another group of people might be puzzled regarding the ontological issue concerning the kind of evidence which could be helpful in deciding whether a country is rich or not.¹² No people would think that the proposal that ‘X is a rich nation is true because X is a person with a lot of money in their pocket’. Hence, the questions come to the mind and therefore instigate to ask that what kinds of fact constitutes a nation rich, i.e., is it the facts considering the actual wealth of the nation or the individual financial situation of that nation?

Similarly, epistemological and ontological considerations are fleshed out when lawyers and judges disagree on the matters of a case. The first answer of legal reasoning according to Ronald Dworkin would be, ‘what counts as a good argument that a murderer is not allowed, in law, to inherit from his victim?’¹³

From the bird’s eye view, the concept of legal theories arises from a debate of what the law is and how it functions.’ Over many years, several legal scholars have tried to define the law, together with its function and nature.. Hence, due to the difference of opinion, different legal theories have emerged. For naturalists, murder is murder since it goes against morality. According to this school of thought, a rule is a law if commonly validated by morality. Thus, the law gets its validity from morality. If any rule is made as law, that must be validated by morality. It can be constituted that higher norms were morality; lower norms were legal rules. Saint Thomas Augustine, who is a modern naturalist, said that an unjust law is not a law at all. Those are known as *Malum in se* which means something wrong in itself. The phrase addresses any conduct assessed as sinful or fundamentally wrong by nature.. For instance, murder. However, if it is murder for self-defense with no other option, then it becomes a different scenario and at that stage because of the factual situation, although murder against self-defense does not pass the morality test, the act of murder for self-defense does not seem to be fundamentally wrong or evil. From the illustration and discussions, the law has a strong connection with morality. Sometimes, laws are enacted according to the morality of a society. The social morality and sociological perspective are dazzled by the art of penmanship of literature.¹⁴ In the end, the law establishes a deep connection with literature from various dimensions. In the next segment, the paper will illuminate the beginning of law and literature and how literature influenced law, how the law is embedded in the literature, and how literary works promoted rights.

¹⁰ The branch of metaphysics that studies the nature of existence. In other words, the branch of philosophy that treats of first principles of Aristotle which is the relation of universe to particulars and the teleological doctrine of causation.

¹¹ Jerzy Wroblewski, ‘Problems of Ontological Complexity of Law’, *Theoria: An International Journal for Theory, History and Foundations of Science* p. 641, volume 1:3, 1986, pp. 641-654, available at www.jstor.org/stable/23912518, accessed on 15 May 2021.

¹² Ibid.

¹³ Dworkin (n1), pp. 463-475.

¹⁴ Milton C. Albrecht, ‘The Relationship of Literature and Society’, *American Journal of Sociology* p. 641, volume 59:5, 1954, pp. 425-436.

III. Law and Literature

The likelihood development of Law and Literature can be outlined in the 17th Century. ‘*Typographia*’ is the oldest evidence.¹⁵ James Boyd White’s ‘The Legal Imagination: Studies in the Nature of Legal Thought and Expression’ (1973) is considered to have provided the foundation for modern law and literature.¹⁶ Referring to French sociologist Pierre Bourdieu, law is a magic that works in real life. Law and legal terms are mostly expressed in words. Without words, a lawyer is nothing. For example, the most common task in law is playing with words. A lawyer must be able to understand and comprehend a text, connect it with reality, and, in some cases, transform it into action.¹⁷ Accordingly, only then he or she will be able to work with a text. Basic provisions of the law are conveyed through a text. The route leading from words, or said social magic, to the narration, is noticeably short. Indeed, the law is not merely a text but is also connected with reality.¹⁸

IV. Literature enchants Law

Literature contains an astonishing number of legal subject-matters. Atrial provides the climax of the ‘Oresteia, The Merchant of Venice, Billy Budd.’ Similarly, the focus of attention in ‘Bleak House’ and James Gould Cozzens’ fine novel, ‘The Just and the Unjust,’ the title of Kafka’s most famous novels ‘The Judgment, The Penal Colony, and ‘Before the Law’ serve as some other examples.¹⁹ Even Shakespeare’s plays contain various incidental references to law such as ‘The Merchant of Venice’.²⁰ Furthermore, ‘Alice in Wonderland’ ends in a trial—a trial notable for the depiction of the jury system. Major writings by Kafka, T.S. Eliot, Joyce, and Mann, as well as Hemingway and Gide and their work, created the connection between law and literature.²¹ There are several literary works where literature instigates the rights and from those concepts of rights later played an important role to enact laws.

Literature does not oblige anyone to create law, rather it exhibits the thoughts of society and inspires the society to apprehend the rights that are missing. If society is hostile to a particular group or gender, that implies enacting sufficient law to assist the unfortunates to uphold their rights and dignity.

¹⁵ Jeannine Marie DeLombard, ‘Law and Literature’ in Sally E. Hadden, Alfred L. Brophy (eds), *Companion to American Legal History* p. 461, Wiley Blackwell Publishing Ltd, United States, 1st edition, 2013, pp. 461-483.

¹⁶ Brook Thomas, ‘American Literature and Law’ in Caroline F. Levander, Robert S. Levine (eds), *A Companion to American Literary Studies* p. 406, Blackwell Publishing Ltd, United States, 1st edition, 2011, pp. 406-421.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Richard A. Posner, ‘Law and Literature: A Relation Reargued’, *Virginia Law Review* p. 1351, volume 72:8, 1986, p. 1354.

²⁰ Ibid.

²¹ Ibid.

V. Writings create Rights

Sometimes literary works envisage circumstances which are true to society. Rights that come from law, are also advocated in the instruments of literature. Women have fought for their rights and their place in society for a long time. In the world of men, the voice of women has been stifled for far too long. Susan Glaspell's 'A Jury of Her Peers' (1917) showed the investigative power and intelligence of women.²² In the story, two women, the neighbors of a lonely housewife accused of killing her husband, survey the couple's kitchen and detect evidence which explains the motive for the committing a crime that previously went uncovered because of the pragmatic worldview held by both the sheriff and the district attorney.²³ The story ends with the woman being acquitted by a 'jury of her peers,' as her neighbors decided to keep this crucial evidence to themselves.²⁴ Feminist scholars similarly emphasize how works of literature sensationalize the legal status of women and how an understanding of their legal status gives us an insight into various works of literature.²⁵

Similarly, literary works such as Mary Wilkins Freeman's 'The Revolt of 'Mother' (1890), Charlotte Perkins Gilman's 'The Yellow Wallpaper' (1892), and Kate Chopin's 'The Awakening' (1899) illustrate the situation of women and their desires in the literature.²⁶ Those literary works not only illustrate the inequality towards women but also sowed a seed of revolt for women's rights.²⁷ Due to literature, society is always changing but, moral standards and values are progressing over time. Thus, the law is in a state of flux. For example: before 1920, women did not have voting rights in the United States. On August 18, 1920, however, the 19th Amendment to the American Constitution allowed women to vote for the first time.²⁸

Additionally, during the time of the British regime in the Indian sub-continent, writers took wrote against the oppression by the British rule. Literary works in Bangladesh during the time of independence as well as language movements inspired people and created the concept of having an independent state where the rights of citizens were ensured, and no one would be discriminated based on race, religion, sex, or ethnicity. Thus, the literary works of authors fought against oppression. Hence, literature emphasized the untold story of situations where lawlessness destroyed societies and at the same time, educated the next generation to enact just laws that aligned with morality.

²² Patricia L. Bryan, 'Stories in Fiction and in Fact: Susan Glaspell's "A Jury of Her Peers" and the 1901 Murder Trial of Margaret Hossack', *Stanford Law Review* p. 1293, volume 49:6, 1997, pp. 1293-1312.

²³ Ibid.

²⁴ Ibid.

²⁵ Thomas (n 16), pp. 406-421.

²⁶ Rula Quawas, 'A New Woman's Journey into Insanity: Descent and Return in The Yellow Wallpaper', *Journal of the Australasian Universities Language and Literature Association* p. 35, volume 2006:105, 2006, pp. 35-53.

²⁷ Emma Jones, 'Kate Chopin's The Awakening', *The London School of Journalism*, 2003, available at <https://www.lsj.org/literature/essays/chopin>, accessed on 13 May 2021.

²⁸ Louis H. Pollak, 'Voting Rights', in Leonard W. Levy and Kenneth L. Karst (eds), *Encyclopaedia of the American Constitution* p. 2804, Macmillan Inc, United States, 2nd edition, 2000, pp. 2804-2811.

VI. Law & Literature in Bangladesh

Similar to American law and literature, in Bangladesh, poets and writers have expressed their feelings and thoughts through their literary works. Among them, the most notable are the works of Rabindranath Tagore and Kazi Nazrul Islam. The works of Tagore such as ‘Sentence’ or ‘The Judge’ and ‘Naari (Women)’ of Kazi Nazrul Islam embedded law in Bangla Literature.²⁹ Noble Prize winner, Rabindranath Tagore, expressed his thoughts about the law and legal system in the Indian sub-continent in his writings.³⁰ Tagore mentioned judges, punishment, and an overview of the British regime in his writings.³¹ During the British regime, police abused their power and mishandled innocent people.³² It is to be mentioned that, in Bangladesh abuse by police personnel is still commonplace even at this age. This can be attributed to the lack of proper reformation and loopholes in the law. Tagore envisioned the reformation of the police system in Bangladesh, which was part of the British Indian rule at that time.³³ Tagore intimated that punishment is not revenge but reformation.³⁴ He connected law with the humanities. From the juveniles’ perspective in this regard is between Law and Literature that a writer can see the demons of Law whereas the legislature or the people connected with the legal system can disregard the matter.

As discussed earlier in the paper, the law is for the betterment of society according to naturalists. Law should be consistent with morality and humanities. On the other hand, Kazi Nazrul Islam is known as a rebellious poet, and he envisaged human dignity and equality in his writings.³⁵ Some of his work showed the injustice perpetuated by the British in Bangladesh.³⁶ His literary works regarding women were the first step for women’s rights in Bangladesh. Tagore also found a huge lacuna in the legal system and inked the situation of the period very profoundly whereas Nazrul brought equality and justice through his works. As mentioned previously, Susan Glaspell portrayed women as the main protagonist in her literary works, and later on, her works inspired women and contributed to the field of American drama³⁷ Similarly, Begum Rokeya was the

²⁹ Rabindranath Tagore, ‘Shasti’, *Parabass*, 2016, available at https://www.parabaas.com/rabindranath/articles/gCarolyn_shasti.html, accessed on 15 May 2021; Rabindranath Tagore, ‘The Judge’, *Parabass*, 2010, available at https://www.parabaas.com/rabindranath/articles/gSaurav_judge.html, accessed on 15 May 2021.

³⁰ S Mary Immaculate, ‘Social Justice in the Writings of Rabindranath Tagore’, *Smart Moves Journal IJELLH* p. 207, volume 6:3, 2018, pp. 207-214.

³¹ Mohammad Habibur Rahman, *Legal thoughts in Rabindra's Writings*, The University Press Ltd., Dhaka, , 2nd edition, 2002, pp. 126-127.

³² Ibid, p.25,44.

³³ Rahman (n 31), p. 44.

³⁴ J.G.R. Penton, ‘How Rabindranath Tagore’s Worldview is expressed in “Punishment”’, *Medium*, California, 1 Nov 2017, available at <https://medium.com/literary-analyses/how-rabindranath-tagores-worldview-is-expressed-in-punishment-44c3c99d147e>, accessed on 15 May 2021.

³⁵ Mahmudul Hasan Hemal, ‘Nazrul’s humanist vision’ *Dhaka Courier*, Dhaka, 28 May 2015, available at <http://www.dhakacourier.com.bd/nazruls-humanist-vision/>, accessed on 15 May 2021.

³⁶ Ahmed Tahsin Shams, ‘The rebel icon of Bengal: Kazi Nazrul Islam’, *Bangladesh Post*, Bangladesh, 24 May 2018, available at <http://www.thebangladeshpost.com/national/29149>, accessed on 15 May 2021.

³⁷ Bárbara Ozieblo Rajkowska, ‘The first lady of American drama: Susan Glaspell’, *Bells: Barcelona English language and literature studies*, 1989, pp. 149-159, available at <https://raco.cat/index.php/Bells/article/>

pioneer of women's rights in Bangladesh.³⁸ Like Susan Glaspell's '*A Jury of Her Peers*', Begum Rokeya's literary work '*Sultana's Dream*' illustrated women's empowerment and her works influenced the law of Bangladesh after the 1971 liberation.³⁹ Additionally, the literary works of Begum Sufia Kamal promoted women's empowerment, rights, and equality which has contributed a great deal in the culture as well as society of Bangladesh to create gender equality.⁴⁰

VII. Analysis and Conclusion.

Law can be found at the point of intersection among several dimensions. From among these dimensions, the normative one plays a vital role. The law belongs to the sphere of norms such as rules of human behavior. Another marked dimension, which ultimately forms the design of the law, is the dimension of ethics. As previously mentioned, the concept of rights was born through literary works. While higher norms were morality, lower norms were thought to be legal rules. Saint Thomas Augustine, who is a modern naturalist, said that an unjust law is not a law at all. Legal rules include moral contents, values, or ideas which society considers correct. Law would make no sense without values. However, the law is also affected by aesthetics. Emotions must necessarily influence law. According to the Historical School of thought, we cannot understand law without analyzing it from a historical perspective. In other words, "Law is the reflection of people's spirit." The cardinal principle is '*Volkegeist*' (people's spirit).⁴¹ The historical school does not separate law from another material catalyst. The history, as well as other aspects of history such as ethics, customs, morality, are taken into consideration. According to historical school, the law has a direct connection with the community, and law transforms and evolves like language.⁴² The reasoning is an inherent part of the legal argument. Therefore, law signifies a force that also has a figurative dimension, and its ultimate character should be formed accordingly.⁴³ This ability of literature is pointed out by Jeanne Gaakeer, who claims that the original mission of the law and literature movement was quite simple--to achieve intellectual and aesthetic goals, to improve the ability to interpret and to see things from someone else's perspective.⁴⁴

Throughout history, law and literature have inner connections. Law comes from people.

download/98183/148938, accessed on 26 August 2021.

³⁸ Rula Quawas (n 26); Rubaiyat Hossain, 'Begum Rokeya: The Pioneer Feminist of Bangladesh' *Star Weekend Magazine*, volume 4:56, 29 July 2005, available at <https://rubaiyat-hossain.com/2011/05/26/begum-rokeya-the-pioneer-feminist-of-bangladesh/>, accessed on 16 May 2021.

³⁹ Upashana Salam, 'Rokeya's unrealized Dream' *The Daily Star*, Bangladesh, 12 Dec 2015, available at <https://www.thedailystar.net/in-focus/rokeyas-unrealised-dream-185908>, accessed on 16 May 2021.

⁴⁰ Zeenat Rezwana Chowdhury, 'Begum Sufia Kamal, as I knew her', *The Daily Star*, Bangladesh, 20 June 2019, available at <https://www.thedailystar.net/opinion/tribute/news/begum-sufia-kamalas-i-knew-her-1759429>, accessed on 26 August 2021.

⁴¹ G.W. Paton, *A textbook of Jurisprudence*, Oxford University Press, UK, 4th Edition, 2004, p.18.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Jeanne Gaakeer, 'The Future of Literary-Legal Jurisprudence: Mere Theory or Just Practice?', *Law and Humanities* p. 185, volume 5:1, 2011, p. 186.

The concept of law and social order is originated from the human mind. Language is a way to express what the human mind desires to tell. The words from the mouth are coming from the same mind where the law is created. The link between law and literature is always there in the writing, expression, mind of people. Without language, nothing comes from the human mind. A lawyer is not a lawyer if he does not know the art of expression. A lawyer's tool is his/her language even though plaint and the written statement are submitted, a lawyer must seek relief or defend his/her client before the honorable Court. A language is a form of human behavior or rather, language is the most important thing to express the thoughts and the conscience of a human being, and the authors expressed their thoughts regarding the legal provisions. The writings are like a mirror to lawyers as far as socio-legal and political developments and values are concerned and show the path from the bird's eye view and sometimes assist to find the lacking or the demons of the legal provisions. Literary works of the writers, novelists, poets are always drawing social phenomena in their canvass. The canvass shows the grass root of the human situation where the law applies. A good law can be ineffective if there are no social norms. All these are picked in the writings of literature. Literature picks every little detail of the picture. Thus, from the writings, the concept of law comes to people in times of need. Every era is canvassed in the work of literature and in every era law change.

The connection of law and literature envisage the connection of the human mind, law, and their perspective. From the mind of juvenile learners, law and literature come from the same human mind and thereby, have been influencing each other for hundreds of years.