
CAN LITERATURE/POETRY ENHANCE ANTI-DISCRIMINATION LAW?

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ABSTRACT

Law and literature form two very different spheres of the society. However, both these realms often intersect as well as facilitate each other. In fact literature often helps bring out and highlights the flaws of the existing legal structures. When it comes to the intersection of law and literature, one of the lesser explored question is that of whether poetry and literature can enhance anti-discrimination law. Law is often restricted and reserved for the dominant ideology in any society, thereby excluding the marginalised. This results in the voices of the marginalised communities being shunned and their contribution to the legal systems thus essentially remains next to nothing. The law therefore in turn favours the dominant ideologies and what flows from the same is the ostracizing of the marginalised communities from the legal realm. Literature can however help in raising the voices of the disempowered sections of the society. This paper aims to delve into how literature can form a bridge between the marginalised communities and their voices being included in the existing and even upcoming legal fabric that essentially runs the society.

Law and consequently the notion of justice is essentially representative of the dominant ideology governing the society. Law is tainted with the flaw of maintaining hierarchies in the society since it is largely the product of the experiences of the people in power, thereby ignoring the experiences of oppressed groups in the society. Alan Hunt, in “Law, State and Class Struggle”, rightly argues that law maintains the conditions for exploitative social relations in addition to possessing an ideological concept of hegemony. Anti-discrimination law is similarly not protected from this flaw. This is particularly detrimental to the interests of the marginalized sections of the society as anti-discrimination law specifically is drafted to uphold the interests of such groups and mitigate at least to some extent the discrimination met out to them on a daily basis. Literature (including poetry) is a medium henceforth which allows the marginalized groups in the society to voice out and sheds a light on their lived experiences of discrimination. Speaking of the ways in which law and literature converge, Carolyn Heilbrun writes, “both ‘law’ and ‘literature’ share the activity of generating narratives that illuminate, create, and reflect normative worlds, that bring experiences that might otherwise be invisible and silent into the public view.”¹

A new and different approach to law, named the “ethical” study of law and literature has been propounded by Wai Chee Dimock in his book titled *‘Residues of Justice: Literature, Law, Philosophy’*. In this work, heavily influenced by the scholarship of James Boyd White, we find an assertion that literature can and should supplement legal studies since it offers an alternative to the law’s over-reliance on rationality.² According to Dimock, however, law is more rational than literature, but literature has the power to bring forth the relation of justice and human lives as it possesses the requisite vocabulary to do so. For Dimock, literature’s “vivid demonstrations” of justice in human lives constitute better history, and if justice is to be served, literature has to be included in legal discussions.³

In addition to this, in their article titled, *‘Challenging Caste Discrimination in Britain with*

¹ Nancy L. Cook, 'Outside the Tradition: Literature as Legal Scholarship' (1994) 63 U Cin L Rev 95
<https://heinonline.org/HOL/Page?collection=usjournals&handle=hein.journals/ucinlr63&id=107&men_tab=srchresults> accessed 1 October 2022.

² Florence Dore, 'Law's Literature, Law's Body: The Aversion to Linguistic Ambiguity in Law and Literature' (2006) 2 Law, Culture & Human 17
<<https://heinonline.org/HOL/Page?handle=hein.journals/lculh2&collection=usjournals&id=17&startid=17&end=28>> accessed 3 October 2022.

³ *ibid* 23.

Literature and Law: An Interdisciplinary Study of British Dalit Writing', authors Annapurna Waughray and Nicole Weickgenannt Thiara bring forth the connection between Dalit Literature and legal assertion in raising a voice against the practice of caste discrimination in Britain. The first argument that is advanced is that Dalits started expressing themselves through literature because they remain one of the marginalized groups in the society due to them being the victims of caste discrimination at various levels despite the abolition of untouchability on grounds of caste in relation to access to use of certain public spaces and facilities by Article 15 of the Constitution of India. Dalit literature 'is not simply literature', wrote Dangle; it is 'associated with movement to bring about change'.⁴ The authors also delve into the "interplay between Dalit cultural production and political assertion and activism in the UK?"⁵ The authors analyze this question through a play titled 'The Fifth Cup' by Annobil and Jaisiah and conclude that the play serves as a means of highlighting the atrocities that the marginalized communities, in this case, Dalits are met out with while also empowering them at the same time. Through such writings, the marginalized communities are presented with a chance to raise their voice against the discrimination and oppression they have been subject to and this in turn calls attention to their plight which can ultimately lead to legal changes in their favor. The authors also rightly state that even though the playwrights consider the spheres of law and literature as sperate and distinct, it could be argued that indirectly the very existence of the play, because of the issues it raises, feeds into legal activism and legal change.⁶

The article further examines the poetry of Dalijit Khankhana and how it contributes to anti-discrimination law. Khankhana's poems that condemn discrimination against Dalits in India appear to plead implicitly for a rule of law that protects Dalit's lives, bodies and property effectively.⁷ The authors argue that through his poems, Khankhana highlights the need for the proper enforcement of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. In one of his poems titled 'Why is Law?', Khankhana throws light on the notion that even though law, specifically, anti-discrimination legislation is key for ensuring individual and collective well-

⁴ Annapurna Waughray and Nicole Weickgenannt Thiara, "Challenging Caste Discrimination in Britain with Literature and Law: An Interdisciplinary Study of British Dalit Writing" (2013) 21(2) Contemporary South Asia < <https://www.tandfonline.com/doi/full/10.1080/09584935.2013.773290> > accessed 3 October 2022.

⁵ ibid 5.

⁶ ibid 12-13.

⁷ ibid 16.

being and tackle such discriminatory practices, but it is not sufficient alone. In addition to formal (legal) equality something else is required in order to secure the human rights and dignity of the downtrodden, the poor and the disadvantaged.⁸ It can thus be inferred that invoking and highlighting caste discrimination in literature consequently leads to such issues being incorporated in legislation as well. In addition to this it can also be argued that writers who produce Dalit literature, do so with the aim of influencing a change in the existing anti-discrimination law legislation and its enforcement. They are aware of the dilemma of aiming at the eradication of caste (or at least caste discrimination) while invoking caste in literature and legislature and thereby inadvertently strengthening it.⁹

Another important article which delves into the relationship between law and literature is titled, *'Outside the Tradition: Literature as Legal Scholarship'*, by Nancy L. Cook. In this, the author substantiates the relationship between law and literature and how literature helps oppressed voices to be heard by legal scholars as well as judiciary. The author rightly states that during and post the law and literature movement, literary texts now form an important part of most law school's curriculum, in addition to the fact that many legal scholars and even judges are currently relying on literary theory. This, thus, shows that literature has a significant role to play in the realm of law. A major example that the author relies on is that of the feminist legal narrative. Citing the work of Minow, she states that, "The hope is that these writings "can be used to persuade people... who have sufficient power to make a difference actually to do so.""¹⁰ Besides, it is also deduced that literary works, whether fictional or non-fictional, are essentially expressions of freedom and hence they too qualify as scholarship in the sense that these too involve analysis. Such works therefore do possess the power to influence legislation. Regardless of where they place their emphasis, all legal scholars engage in the "examination of experience... as a source of understanding and the 'continual reconstruction of knowledge in the light of new experience.'"¹¹ The paper also explores the similarities between legal and literary scholarship. In terms of their objectives, both legal and

⁸ ibid 17.

⁹ ibid 20.

¹⁰ Cook (n 1) 115.

¹¹ ibid 119.

literary scholarship possess “the capacity to disseminate knowledge and, in the process, to create and transmit insight”.¹²

A brief review of the fiction and poetry that has been published in the law journals during the last few years illuminate the number of previously hidden perspectives that have received attention by writers in that genre.¹³ Given the tendency to express through stories what is inexpressible through traditional academic discourse, it is little wonder that “many... who have been telling legal stories are members of what could be loosely described as outgroups, groups whose marginality define the boundaries of the mainstream, whose voice and perspective- whose consciousness- has been suppressed, devalued and abnormalized.”¹⁴ Legal theory alone fails to take into consideration the emotional and physical experiences of the oppressed in the society and thus literature benefits law by providing such accounts which are essential to stop discrimination against such marginalized groups in the society. The author also relies on Martha Minow’s argument and states that literature is less hierarchical and thus can be easily resonated with by the oppressed groups. She calls the languages used by lawyers as “remotely clinical” as compared to the language used by people in their everyday lives. Jerome Culp, provides with an example in this regard:

*“The black arguments that led to the success in Brown [v. Board of Education] and its progeny contain a kind of language spoken by black lawyers to white judges. It is a language like other black dialects spoken to whites, that is different from the language spoken at home by other blacks. It is a language that does not articulate many of the feelings that underlie the view of blacks in the legal process.”*¹⁵

The author then discusses the benefits of writing fiction and poetry and how can the same enhance law. Firstly, she rightly states that literature helps fill in the gaps of the legal discourse in the sense that literature can disrupt the logical standards that the legal discourse is essentially based on. Literature exposes unnoticed inferences and problems in logical premises and creates opportunities for revision.¹⁶ Secondly, it is rightly argued that literary scholarship helps include the voices of

¹² ibid 125.

¹³ ibid 132.

¹⁴ ibid 102.

¹⁵ ibid 138.

¹⁶ ibid 141.

the excluded, essentially the marginalized and discriminated groups in the society. It does this by broadening the reader's capacity to sympathize with others' experiences, by thereby endowing outsider groups with credibility, and by familiarizing the reader with the different ways of conceptualizing and describing the normative world.¹⁷ The author then also further states that even though adoption of literature as legal scholarship has been highly criticized because of its connection with human emotions, legal discourse if considered alone, is based on logic and thus leads to detachment from emotions, thereby ignoring the experiences of the marginalized. Literature is one way of recognizing the value of emotion and of establishing it as the significant element in law that it in fact is.¹⁸

The author also advances the criticism of the process of incorporating law into literature. Among the criticisms that may be leveled at literary legal scholarship are its apparent lack or inadequacy of basic scholarly attributes, the fragmentation and disintegration of theory resulting from too much context, and the dangers of immersion in overly subjective, individualistic waters.¹⁹ However, despite such critique, the author concludes the article by expressing the need to take into consideration literature while drafting legal theory. This should be done so as to incorporate the experiences of the marginalized sections of the society into law, specifically anti-discrimination law.

In summation thus, placing reliance on the above cited papers and scholars the conclusion that can be drawn is that anti-discrimination law alone would lead to objectivity whereas literature helps in avoiding this as it provides with the personalized accounts of people's actual lived experiences of discrimination. If we remain preoccupied with too many adroit conclusions dressed in theoretical language and engage exclusively in the perfection of that scholarly form, we may find ourselves limiting our understandings of the people just inside outside the doorway to the academy and, as Robert Coles tells us, "Missing a great opportunity."²⁰ Literature has the potential to bring about change in the legal system thus and the same should be initiated to render law, especially anti-discrimination law more efficacious, thereby achieving its true purpose.

¹⁷ *ibid* 142.

¹⁸ *ibid* 146.

¹⁹ *ibid* 154.

²⁰ *ibid* 164.

