

DEMYSTIFYING FIGURATIVE LANGUAGE IN COURT VERDICTS

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Abstract: *A modern state governed by the rule of law, like all others, is founded on written law. In this respect, the court verdicts are seen to be loaded with literary references and quotations in the process of delivery of justice. The form of expression changes the interpretation of a particular text and using figures of speech is not only a way of beautifying language but also of changing the way it is perceived. There are many positive and negative effects of the same on court verdicts. To summarize, figurative language in judgement is a diverse technique that, while it has its drawbacks, when used sparingly and with care, may enhance a decision. The examples in this paper give adequate evidence to support the claim that literary and figurative language may be employed as a strong tool in judgement writing to infuse empathy and creativity to otherwise tedious legal jargon that may turn off a lay reader.*

Keywords: *Court Verdicts, Figurative language, Indian Judiciary, Law and Language.*

I. INTRODUCTION

Law and literature are not new fields. Shakespeare, Dickens, and other prominent writers' representations of the legal system influenced nineteenth-century English attorneys. Wigmore believed that great writers should be studied by lawyers in order to understand about human nature. A modern state governed by the rule of law, like all others, is founded on written law. As a result, it is critical for a lawyer to be able to analyze and interpret a document, connect it with reality, and, in certain situations, translate it into action. That he be able to work well with text. The fundamental contents of the legislation are communicated through writing. In this respect, the court verdicts are seen to be loaded with literary references and quotations in the process of delivery of justice. As literature is a beautiful means to express the emotions and feelings of the general public, its role cannot be neglected in the field of social sciences and essentially law. This study itself aims to study such citations in judgements and analyze them to find the effects they have on the acceptability of the judgements in the general public.

II. INTERDISCIPLINARY NATURE OF LAW AND LANGUAGE

For both institutional and substantive grounds, the discipline of law and literature has flourished in recent years. Law can be found at the junction of numerous planes. The normative plane (or dimension) is the most important of these planes (or dimensions).

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law is a type of norm — a set of rules that govern human behavior. The dimension of ethics is another notable component that eventually shapes the construction of legislation. Moral contents, values, or ideals that society thinks proper are included in legal standards. Law would be meaningless without values. Aesthetics, on the other hand, have an impact on the law. Emotions must invariably have an impact on the law, as they allow the inclusion of humanistic angle to the studies, which is as related to the human beings at a psychological level as any field could be.

A. Relationship Between Law and Language

We will not, of course, assert that law cannot exist without literature; rather, we will attempt to demonstrate how literature may aid, or at the very least foster, law. Jeanne Gaakeer¹ emphasizes this ability of literature, claiming that the initial intention of the Law and Literature movement was rather simple: to attain intellectual and aesthetic goals, to develop the ability to understand and perceive things from someone else's perspective. None of the foregoing is an inherent component of the law. Nonetheless, these features can assist the law in establishing a stronger connection with the culture in which it is represented. The idea that law may be seen as a sort of language serves as the backdrop against which the relationship between law and literary approach will be set.

Ferdinand de Saussure, a Swiss linguist, saw law as a social product tied to the ability to talk.² He saw it as a collection of social rules that civilization had established in order to truly actualize this capacity. Language, on the other hand, may be thought of as a traditional system of signs that expresses specific ideas. Law, too, may be viewed as a traditional system that reflects values and ideas, as well as the resulting standards of appropriate behavior. It accomplishes this by employing a specified collection of components that have established mutual relationships.³

The relationship between law and language has been analyzed and highlighted in many different publications. For example, in *"Law and Literature" by Cardozo, 1988*⁴, Cardozo examined the literary style of court rulings and studied how the various writing styles affected

¹Jeanne Gaakeer, *The Future of Literary-Legal Jurisprudence: Mere Theory or Just Practice*, 5 Law and Humanities, 1 (2011).

²Ferdinand De Saussure, *Course in General Linguistics*, transl. Wade Baskin, Philosophical Library, New York (1959).

³Martin Škop, *Law and Literature – A Meaningful Connection*, Filozofia Publiczna I Edukacja Demokratyczna (2015).

⁴Cardozo, *Law and Literature*, Journal for Law and Literature Movement (1988).

the impact of rulings and judgements. Furthermore, in the book, *“The Legal Imagination”* by James Boyd White, 1973⁵, James Boyd White questioned: has a unique, self-conscious legal and literary area emerged, where the interdisciplinary nature of law and literature is more prominent?

Some other prominent examples include *“Law and Literature: A Relation Reargued”* by Richard A. Posner, 1986⁶, where Richard A. Posner questioned the growing attachment to the field of literature and its appreciation by legal practitioners, and argued that literature is only one of the interdisciplinary areas and not the most significant one. In addition to the previous publication, *“Law and Literature – a Meaningful Connection”* by Martin Škop, 2015⁷, provides an overview of the classical techniques that connect law and literature, as well as the reasons for this relationship, such as the development of law and attorneys, the enhancement of judicial decisions, or the advancement of legal interpretation. Some of the outcomes of the law-literature collaboration can be put into practise and transcend beyond "mere" theory.

B. Law and Literature Movement

The law and literature movement are concerned with the intersections between law and literature. This field's origins may be traced back to two milestones in the intellectual history of law. First, there is rising skepticism about whether legislation, on its own, can provide value and purpose, or if it must be embedded in a larger cultural, philosophical, or social-science framework to do so. Second, there is a rising emphasis on the mutability of meaning in all works, literary or legal. Work in the field entails two opposing viewpoints.

- **Law in Literature:** Understanding concerns as they are explored in literary writings is the focus of law in literature.
- **Law as literature:** It is concerned with interpreting, analysing, and criticizing legal writings via literary interpretation, analysis, and critique.

C. Criticism of the Interdisciplinary Study of Law and Language

Richard A. Posner, an eminent jurist and judge is a major critique of the interdisciplinary movement of Law and Language. In his work, *Law and Literature; A Misunderstood Relation*,

⁵ James Boyd White, *The New Imagination*, University of Oxford Publication (1973).

⁶ *Supra* note 1.

⁷ Martin Škop, *Law and Literature – A Meaningful Connection*, Filozofia Publiczna I Edukacja Demokratyczna (2015).

he says that literature is taken too seriously and is given an unnecessary level of relevance in the advancement of law, legal knowledge, and legal or philosophical arguments. Further, in his work, *Law and Literature: A Relation Reargued*, he says that literature has nothing to add to law but the interpretation of statutes and constitution.

However, he argues that literature has the ability to contribute enormously to the way we perceive and improve judicial opinions. He says literature may indeed assist in the understanding of judicial opinions and urges readers to note the source of such analysis. He further states that as most judgements are by a newly graduated student with minimal knowledge of literature, they are not strong literary analysis.

III. HISTORY OF LITERATURE IN COURTS: ANCIENT GREECE AND RHETORIC

A. Introduction to Rhetoric

Rhetoric is the study of the tactics used by speakers or virtually any human being possible, to inform, persuade, or motivate certain audiences in specific situations. It is the ancient kind of persuasion and one of the three ancient arts of speech, alongside logic and grammar. Aristotle's three persuasive public appeals: logos, pathos, and ethos, are examples of rhetorical heuristics for comprehending, discovering, and formulating arguments for specific circumstances. Classical Rome developed the five canons of rhetoric, or aspects of crafting a compelling speech: invention, organization, style, memory, and delivery.

B. The Role of Ancient Greece in the Origin of Rhetoric

Traditional rhetoric is restricted to the insights and terms developed by rhetors, or rhetoricians, in the Classical times of ancient Greece, around the 5th century BC, to educate the skill of speaking in public to their fellow countrymen in Greek republics and, subsequently, to the offspring of the privileged under the Roman Empire. For over 2,000 years, public performance was regarded as the highest form of education, and rhetoric was fundamental to the learning system in Western Europe.

It has been common practise since Plato's day to assert a correlative, if not causative, link between rhetoric and democracy. Plato traced the origins of rhetoric to the 5th century BC establishment of democracy at Syracuse. Exiles returning to Syracuse filed a lawsuit to reclaim their lands, which had been taken from them by the deposed dictatorial regime. Claims were

decided in a freshly established democratic judicial system in the absence of written records. Certain lecturers began to give something resembling systematic rhetorical coaching to help litigants enhance their persuasiveness.

Aristotle is often recognized for developing the fundamentals of the rhetorical system, which "subsequently functioned as its touchstone," influencing the development of rhetorical thought from ancient to modern times. Most rhetoricians consider *The Rhetoric* to be "*the most significant single treatise on persuasion ever published.*"

C. Shift in the Nature of Court Proceedings

Rhetoric was originally intended to be used in court to present arguments, as its origin in Greece is a clear indication of the same. The law that required all the citizens to be their own advocates meant that law was a part of general knowledge and the court proceedings were not as professional as they seem in the present. However, with the shift from legal proceedings being layman-friendly to them becoming more professional, rhetoric became more isolated from the law. Rhetoric being an art of language and communication, its separation ultimately meant the separation of law and language. Thus, law and language have evolved in different directions altogether- as literature became more synonymous and increasingly concerned about the emotional aspects of human life and feelings and law became a tool for social order, with strict boundaries. This led to law being objective, as compared to rhetoric being subjective and hence, the art of rhetoric somehow died.

However, it is still a skill for persuasion that is majorly seen in today's court proceedings as well, although the court intends to entirely depend upon the facts and the legislature in place.

IV. EFFECTIVENESS OF FIGURATIVE LANGUAGE IN SPEECH AND EXPRESSION

Figurative Language



A. Introduction to Figurative Language

Figurative language is the expression of a nuanced meaning, colourful writing, precision, or emotional contrast via the use of words in a manner that departs from their usual sequencing and meaning.

It uses a common language to allude to something without outright expressing it. Fiction authors employ figurative language to engage their readers in a more imaginative tone that stimulates thought and, at times, comedy.

It adds more excitement and drama to fiction writing than literal language, which employs terms to allude to claims of reality.⁸ In 1769, Frances Brooke's novel *The History of Emily Montague* was cited in the first Oxford English Dictionary citation for the figurative sense of literally; the sentence from the novel used was, "*He is a fortunate man to be introduced to such a party of fine women at his arrival; it is literally to feed among the lilies.*"⁹

B. Role of Figurative Language in Speech and Expression

We usually believe that it is easier for us to grasp the simple language, that is the reason figurative language is taught mostly at higher levels of study than the simple form of language. However, this is not always true. If we come to think of it, the basic motivation being using figurative language is not to make the text complex, but to simplify it. Writers and poets often employ this form of language to convey ideas that cannot be understood had they been said in the simple form.

Thus, the primary purpose of figurative language is to convey the writer's point as clearly as possible. That might be done by translating a foreign topic into simple language that a reader or listener can understand, or by providing vivid and emotional images. Some varieties of figurative language are also used for purposes other than producing picture. Writers, for example, utilize alliteration, consonance, and assonance in addition to rhyme to give text rhythm and musicality.

V. FIGURATIVE LANGUAGE AND LEGAL DISCOURSE

A. Introduction to Legal Discourse

Legal discourse, simply speaking, refers to the language used in the legal field, i.e., the law. In legal language, the meaning is defined by justice and fairness. This is because the primary role of the law is to govern human conduct and maintain social order.¹⁰ Furthermore, the ideational meaning of the legislation is added to the language's 'common-core meaning.' The significance

⁸ James L. Hookie, *Figurative Language and its Introduction*, (2015) <https://corporatefinanceinstitute.com/resources/knowledge/other/figurative-language.html>

⁹ Frances Brooke, *The History of Emily Montague*, Book Jungle (1769).

¹⁰ Wang Zhenhua, *Legal Discourse: An Introduction*, Routledge Handbook of Forensic Linguistics. London and New York (2009).

of legal discourse is also tied to the individuals who write the law, those who execute the law, those who read the law, and those who alter the law. People engage in these activities, thus their language skill, professional level, values, views, position, viewpoint, aim, and so on are represented in the legal discourse. These elements provide interpersonal meaning to the 'common-core meaning' of legal language.

B. Role of Figurative language in Legal Discourse¹¹

In legal discourse and contexts, figurative language is vital. Such phrases can be found not just in traffic signs or other symbols with a direct normative significance, but also in more subtle, established behavior and terminology of attorneys, which are frequently utilized without much ado or consideration. In this sense, metaphors play an important role, as evidenced by legislative texts, judicial judgments, legal literature, and legal rhetoric. The effect of analogies on legal language extends beyond the inclusion and exclusion of various categories of subjects via personification. Metaphors also influence our perceptions of law and legal procedures. Prominent law and philosophy researchers, notably Thomas Hobbes, Jeremy Bentham, Axel Hägerström, and Lon Fullers, have attempted to demystify the law for instance, by uncovering fictions or metaphorical components.

C. Analysis of the use of Literary elements in legal proceedings and discourse

Advantages	Disadvantages
Fresh, persuasive metaphors can offer a new meaning to a problem and a new interpretation of our experience Metaphors also contribute to the validity and legitimacy of court decisions, legal institutions and the legal system as a whole, making them even more essential.	Metaphors can help us see and comprehend the world but they can also mislead us and lead us astray. They cause us to form good or negative associations and accept comparisons without further contemplation or critical thinking Metaphors are excellent rhetorical techniques because they stress certain features of an idea while disguising others. Having a metaphor accepted may influence the outcome of a negotiation, a judicial proceeding or an academic legal discussion

¹¹ Jonas Ebbesson, *Law, Power and Language: Beware of Metaphors*, Scandinavian Studies in Law (2008).

VI. USE OF FIGURATIVE LANGUAGE IN COURT VERDICTS

Reason why understanding literature is vital, according to Benjamin Cardozo¹², is the intended persuasiveness of a choice. A decision's logic must be compelling and symbolic in order to be effective. In their decisions, judges cite a wide range of reference documents, including dictionaries, legal textbooks, historical narratives, and popular literary works. Popular literature may be the most contentious of these resources. Though the use of popular literature is uncommon, some Judges have been observed to use it to achieve various aims such as the interpretation of a specific phrase or idea or to elicit an emotional response in the mind of the reader.¹³

VII. FIGURATIVE LANGUAGE IN INDIAN COURT VERDICTS AND ITS EFFECTS

There is a plethora of judgements where literature, particularly poetry, is utilized to clarify facts or highlight the legal quandary that a judge is facing.

A. Instances of the use of figurative languages in Court verdicts

In *Gopal Dass through Brother Anand v. Union of India*, a case involving an Indian government employee detained by the Pakistani Border Security Force while entering Pakistan, Justice Markandey Katju began his decision by invoking Faiz Ahmed Faiz. “*Qafas udaas hai yaaron sabaa se kuch to kaho Kaheen to beher-e-khuda aaj zikr-e-yaar chale*” wonderfully highlighted the intricacies of human feeling and the capacity of Urdu poetry to convey them.”¹⁴ Justice V.R. Krishna Iyer is a judicial eminence whose name must be addressed while discussing literary flare. “A procession of 'life convicts' well over two thousand strong, with more joining the march even as the arguments were on, has vicariously mobbed this court, through the learned counsel, carrying constitutional missiles in hand and demanding liberty beyond the bars,” he wrote in his famous judgement on the issue of remission of life convicts in *Maru Ram v. Union of India*.¹⁵¹⁶ Their anguish is best portrayed in Oscar Wilde's harsh lines: “*I know not whether Laws be right, or Laws be wrong, All that we know who lie in goal, Is that*

¹² *Supra* note 6.

¹³ Chanima Wijebandaran, *Fiction and Poetry in Judgments*, JSA Law Journal, Volume 1 A (2013).

¹⁴ Jogan Singh, *The Symbiotic Association Between Law and Literature*, (2019) (last visited Oct. 21, 2023). <https://www.theweek.in/news/india/2020/01/12/opinion-the-symbiotic-association-between-law-and-literature.html>

¹⁵ *Maru Ram v. Union of India*, (1980) AIR SC 2147.

¹⁶ A. P. Shah, *The Links Between Law and Literature*, *THE HINDU*, (Oct. 31, 2017), (last visited Oct. 21, 2023). <https://www.thehindu.com/opinion/op-ed/the-links-between-law-and-literature/article19951335.ece.html>

*the wall is strong; And that each day is like a year, A year whose days are long.*¹⁷ Another landmark case in which literature can be found is *Navtej Singh Johar and Ors v. Union of India*¹⁸, which decriminalized consensual sex between consenting adults of the same gender—the then Chief Justice Deepak Misra quoted German thinker Johann Wolfgang von Goethe, who said, “I am what I am, so take me as I am”. This decision cited Arthur Schopenhauer’s statement, “*No one can escape from their individuality,*” as well as John Stuart Mill’s statement, “*But society has now fairly gotten the better of individuality; and the danger which threatens human nature is not excess, but deficiency of personal impulses and preferences.*”¹⁹ Judges have frequently referenced passages from literature, whether Urdu poetry or song lyrics, to bring their decisions to life.

*Babu pleading for his bail;
State opposing tooth and nail.
Summers bygone, winters have arrived;
But crime you did, and Rahul cried.
I am not the one, I am not the one;
Too grave the charge, don't pretend.
Whom did I attack, where is he;
Oh! That we know, in the trial we will see.
You say I have said & I deny from the first blush;
Rahul may be gone yet Satish said.
Didn't we say; don't rush;
Let me go, let me go, even Imran is on bail.
Even then, even then;
it wouldn't be a smooth sail.
Stop! Stop! Stop! Stop;
I have heard, heard a lot.
Mind is clear, with claims tall;
Its my time to take a call.
Babu has a sordid past;
proof is scant, which may not last.
His omnipotence can't be assumed;
Peril to vanished Rahul, is legally fumed.*

However, in the recent case of *State vs. Babu*²⁰, Justice Amitabh Rawat of Delhi's Karkardooma Court wrote a lengthy poem on the facts before him and his rationale. “The current application has virtues,” he remarked, “to put it another way.”

On June 6, 2021, another Delhi judge, Ajay Goel, was hearing a case in which a remark by Chief of the Indian Medical Association (IMA) Johnrose Austin Jayalal was brought to the Court's attention through a petition. Jayalal was accused of offending Hindu religious sensitivities with his statement. The edict emphasized the renowned words of poet Muhammad Iqbal, who remarked,

*“Apas Mein Bair Rakhna Mazhab Nahi
Sikhata...Watan Hai Hindustan Humara... Hindi
Hai Hum Watan Hai Hindustan Humara...”*

(Religion does not encourage us to harbour grudges against one another. We are from Hind, and our

motherland is Hindustan... Our Hindustan is better than the entire globe.)

¹⁷ State v. Babu, Case no. Bail Application No.1623 of 2020.

¹⁸ Navtej Singh Johar v. Union of India, (2018) AIR SC 4321.

¹⁹ J. W. Parker and Son, Stuart Mill, *On Liberty*, (1859).

²⁰ State v. Babu, Bail Application No.1623 of 2020.

B. Effects of citation of figurative language and literary examples in judgements

Bharat Chugh, former judge and attorney, was complimented for penning a poem at the Delhi Judicial Academy after working as a Railway Magistrate during Justice Muralidhar's speech at a public meeting in 2018. Chugh explained²¹ that the legislation just provided a framework for judges to draught judgements, and that judges were not prohibited from using literary allusions in their decisions.

"How you write it is entirely up to you. There is nothing in the law that prevents you from referencing a couplet, a historical background, philosophy, or literature. You can do it all as long as you make those points", he said. Chugh contended that the fundamental goal of poetry was to be abstract and to conceal rather than disclose facts. "That won't work in a court of law because you have to be precise. "However, while analysing a case, he said that he didn't mind employing a metaphor or symbolism to make a point and to have the verdict "come out alive."

"That is sufficient. However, there is a narrow line that some individuals cross. I don't think it's ethical to write the entire verdict in verse, for example. Despite the fact that judges from across the world have done it successfully."

VIII. ANALYSIS OF THE IMPACT OF FIGURATIVE LANGUAGE IN COURT VERDICTS

The impact of the use of figurative language cannot be negated. The form of expression changes the interpretation of a particular text and using figures of speech is not only a way of beautifying language but also of changing the way it is perceived. There are many positive and negative effects of the same on court verdicts.

A. Positive aspects of using figurative language in court verdicts

1. Inclusion of Humane aspect

The use of figurative, especially with respect to poetry, appeals to the emotional side of the brain. A poetic verse is much better at comprehending the depth and range of the emotions that occur in the human mind. It is difficult to even come close to expressing such emotions using simple language. Furthermore, inclusion of such emotional aspects guarantees a humane aspect to the otherwise objective verdicts that the court gives. Since the judgements are ultimately in

²¹Harendra Chowdary, *Poetic Justice When Judges Referred To Literary Works*, (2020) (last visited Oct. 21, 2023). <https://www.barandbench.com/columns/poetic-justice-when-judges-referred-to-literary-works-and-famous-quotes-in-their-verdicts.html>

the process of delivery of justice, they should consider all the aspects related to the issue and not just the prima facie facts of the case. Thereby, use of figurative language will make the judgement delivery more effective and useful.

2. Language made easy to understand

Also, the use of figurative language will provide an easier understanding for the general public as to the complexities involved in a particular case. For example, the use of metaphors may allow the comparison of a complex legal process to an easier counterpart and thus, make the language of the judgements easier to understand. The legal language is filled with such metaphors and similes, the most common example being the consideration where the public organization and/or companies are regarded as an individual.

B. Negative aspects of using figurative language in court verdicts

1. Ambiguity

However, the use of figurative language may raise many concerns about ambiguity. Just like any other literary work enriched with figurative elements of the language, the judgement of the court in any particular case also falls prey to numerous interpretations, which might even be divisive. The works of poetry are often symbolic in nature and might refer to more than one interpretation at a time. However, if that happens in court verdicts, the result would not be favorable to the general interest of the public.

2. Language being difficult to comprehend

Although the use of figurative language may make the judgement and complex legal concepts easier to understand, it also confuses a layman. If figurative elements and pompous language is used in courts, something that can often be said with minimal words is made to go on for pages and pages. This leads to difficulty in the comprehension of such judgements, as happened with the judgements of several judgements of the Uttarakhand High Court.

IX. CONCLUSION

Literature may improve one's capacity to perceive a text and, as a result, improve the understanding and writing of legal materials. The reader's role, or the public's role in general, actualism, originalism, and narrative mechanisms are only a handful of the methods researched extensively by literary critics and found in law. Literature may help defend against

misinterpretation. According to Robert F. Blomquist,²² overinterpretation is produced by the large number of criteria developed by courts to analyse each individual thought employed in a legal regulation and assign it a meaning that is significantly different from customary and typical interpretation.” Creative Literature has long been regarded as an essential, albeit atypical, source that may be employed in court judgement in the same way that legal texts, dictionaries, and other official reports are. According to studies, literature has a significantly greater power than traditional media to create meaning and emotional reactions. Despite the controversy surrounding this practise, judges in many nations have effectively used popular fiction and poetry for a number of objectives.

²² Robert F. Blomquist, *Overinterpreting Law*, Valparaiso University Legal Studies Research Paper (2011).