

## LITERATURE IN LAW

By

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*“Man is measure of all things of those which exist and of those which have no existence” — by Protagoras, the Greek Philosopher.*

I venture to write this article by taking inspiration from the Book “The Law and Literature” edited by Dr. Sakunthala Bharvani who narrated legal passages from some of the great writers. It is only one side of the coin. But here I like to have a glimpse of some of the Judges of the Supreme Court only who utilized literature in enriching their judgments. It is left for a competent man to writ an Anthology on this fascinating topic about the Judges of various High Courts. In the words of Dr. Johnson “*Law is the last result of human wisdom acting upon human experience for the benefit of humanity*”. Law and literature have been intermingled in the history of the world, law as a balancing force regulating human society and literature which beautifies, enlightens and ennobles human life. Law like language must eat to live. It is said that a great writer may rarely quote. But a good Judge must necessarily quote either legal authority or literary authority. We have inherited most of our laws from Anglo-Saxon Jurisprudence. Even our personal laws are mostly Judges made. It is apposite to quote from Scott’s waverly novel “*A Lawyer without history of literature is a mechanic, a mere working mason. If he possess some knowledge of these, he may venture to call himself an Architect*”. Lord Mac-Millan, Chief Justice, U.S. Supreme Court while addressing the American Bar Association remarked “*it is essential that the lawyer to attain efficiency in his calling should be steeped in literature and keep his mind constantly refreshed and renewed by contact with great thinkers of the past*”. The profession of law has been from the beginning of time called as a learned

profession and the Judges as well as Lawyers have been styled learned as a matter of immemorial convention. The Great Judge of England Justice Hand speaking of Academic qualification of a Constitution Judge observed “*I venture to believe that it is important to a Judge to pass on a question of constitutional law to have at least a bowing acquaintance with Action and Maitland, with Thucydides, Gibbon, Carlyle, Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne, Rabelias, with Plato, Bacon, Hume and Kant, as with the books which have been written on the subject, for in such matters in which he approaches the question before him*”. In the Indian context one may say in similar vein that a Judge shall have a bowing acquaintance with our Vedas, Upanishads, and Epics like Maha Bharatha, Ramayana and the teachings of Buddha and Vivekananda etc., to understand the ethos and culture of our country. The Traditional view is that the primary duty of a Court of Justice is to dispense justice to litigants by means of an exposition of relevant law. But a Constitutional Judge can not be confined and cribbed within the four corners of law.

In the earlier years of the establishment of Supreme Court, most of our eminent Judges were grappling with Constitutional questions having no mind to digress into other subjects. There are some other eminent Judges who had legal instinct on legal mind, but are not interested in many other matters besides law. After advent of judicial activism, Judges became more eloquent and the judgments are flavoured with literary grace readable even to layman. Nowadays the Judges and Lawyers lost aptitude towards literature and are running after time to deliver their goods.

Now I would like to quote some of the landmark judgments of the Apex Court in which some of the Judges exhibited their literary talent to enrich their judgments.

In AIR 1957 SC P.699, Chief Justice S.R. Das while dealing with betting and gambling observed "From ancient times seers and law givers of India looked upon gambling as a sinful and pernicious vice and deprecated the practice" and he quoted a hymn of Rigveda ".....play not with dice, no, cultivate thy corn land, enjoy the gain and deem that wealth sufficient. They are thy cattle, there thy wife, O Gambler, so this good Savitar himself hath told me". He also observed that Mahabharatha deprecated gambling by depicting the woeful conditions of the Pandavas who have gambled away from their kingdom.

In AIR 1958 SC P. 265 Justice T.L. Venkatramaiah referring to Religious freedom under Article 26 of the Constitution quotes a passage from Taittiriya Upanishad "That from which all beings are formed, by which they live and into which they enter and merge".

In AIR 1966 SC P.1119, Chief Justice P.B. Gajendra Gadkar, while defining Hindu Religion quotes from Mundaka Upanishad which speaks of Brahma Vidya or the science of the eternal as the basis of all the sciences. According to Kautilya "Philosophy is a lamp of all the sciences, the means of performing all the works and the support of all the duties."

In AIR 1967 SC P. 1643 (*Golaknath* case) Chief Justice Bachawath considering the amending power of the Constitution refers to a passage from Thomas Paine's 'Rights of Man' "The vanity and presumption of governing beyond the grave is most ridiculous and insolent of all tyrannies. Man has no property in man, neither has any generation a property in the generation which are to follow".

In AIR 1973 SC P.1976 (*Kesavananda Bharathi* case) Justice M.H. Beg cites passages

from Manu and Parasara and held "the fundamental laws differ from age to age. They are different in Krita, Dwapara, Kali". In support of his view he says that our ancient juries recognized the principle that one generation has no right to tie down future generation to its own views or laws even on fundamentals.

AIR 1977 SC P. 202, Justice V.R. Krishna Ayer while discussing about an order under Section 99(A) Cr.P.C. quotes Voltaire "I disapprove of what you say, but I will defend to the death, your right to say it". He also quotes from *Swamy Vivekananda* "Our religion is in the kitchen, our God is in the cooking pot, and our religion is 'Do not touch me, I am holy'". He also observed that "From Galileo and Darwin and Thoreau and Ruskin, Karl Marx and H.G. Wells, Bernard Shaw and Bertrand Russel and many great thinkers have been objected to by their thoughts and statements.

AIR 1977 SC P.1944 (*Thulisamma's* case) Justice Fazal Ali dealing with woman's rights to property quotes from Maha Bharatha "Where females are honoured, there the deities are pleased, but when they are unhonoured their all religious acts become fruitless."

AIR 1977 SC P.1525 Justice V.R. Krishna Ayer while considering the bequests under a Will as to whether the dedication was absolute or partial starts with a Biblical injunction of Jesus Christ "Render to Caesar things that are Caesar's and to God the things that are God's". The learned Judge while deciding the core content of the Will executed by an enlightened Hindu observed that Hindusim worships all creation and quotes a poem from Coleridge from 'Ancient Mariner'

"He prayeth best who loveth best  
All things both great and small;  
For the dear God who loveth us,  
He made and loveth all"

AIR 1977 SC P.949 Justice V.R. Krishna Ayer considering a review petition on death

sentence poses a basic issue 'what is death?' and refers to *Shakespeare* who with poetic pragmatism expressed "that undiscovered country from whose bourn no traveller returns". But the learned Judge does not rule out life after death in his opinion, but takes the pragmatic approach.

AIR 1977 SC P.2328 a case dealing with transfer of Judges during emergency, Justice *V.R. Krishna Ayer* emphasizing the independence of Judiciary quotes from *Geethanjali*

"Put off thy holy mantle,  
come out of thy meditations –  
meet him and stand by him  
in toil and in sweat of thy brow."

AIR 1979 SC P.916 Justice *V.R. Krishna Ayer* while dealing with sentence of death penalty quotes a poem from *Oscar Wilde*

"The vilest deeds like poison weeds  
Bloom well in prison air  
It is only what is good in man,  
That wastes and withers there".

AIR 1980 SC P.898 - The majority judgment was delivered by Justice *R.S. Sivariva* confirming death penalty as constitutional in rarest of rare cases. But Justice *P.N. Bhagavathi* rendered his solitary dissent holding that death penalty is unconstitutional under Articles 14 and 21 reported in AIR 1982 SC P.1325 even differing with Justice *V.R. Krishna Ayer's* view in AIR 1979 SC P.916 relied by the majority judges quotes legal and non-legal authorities and lastly from *Brahma Suktha* of *Adharva Veda* where a sage exclaims "In deed these killers are Brahman; these servants (or slaves) are Brahman; these cheats and rogues are also manifestation of one and the same Brahman itself."

AIR 1981 SC P.298 Justice *Chinnappa Reddy* dealing with reservations in promotions

observed 'All that a scheduled caste parents could do was to lament'

"Hush, my child;  
Don't cry, my treasure;  
Weeping is in vain;  
For the enemy will never  
Understand our pain,  
For the ocean has its limit;  
Prisons have their walls around;  
But our suffering and our torment  
Have no limit and no bound"

AIR 1981 SC P.178 Justice *T.L. Venkataramaiah* dealing with status of 'Putrika Putra' refers to various Hindu Sastras and Rig-Veda and cites a sloka from *Kalidasa's* *Sakunthalam* "Many daughters of Royal sages are heard to have been married by the ceremony called Gandharva and their fathers have approved them". But such a form of marriage has now become obsolete.

AIR 1984 SC P.802 (*Bonded Labour* case) Justice *P.N. Bhagavathi* quotes from 'Man with a hoe' with reference to the neglected and forlorn species of Indian humanity;

"Bowed by the weight of centuries he  
leans;  
Upon his hoe and gazes on the ground,  
The emptiness of ages on his face,  
And on his back the burden of the world".

AIR 1985 SC P.1495 the case dealing with Reservations Justice *A.P. Sen* quotes from *Veni Samhara* by *Bhatta Narayana* where *Karna* the tragic Hero of *Maha Bharatha* says

"I may be a Charioteer or Charioteer's  
son;  
I may be anybody, what does it matter ?  
Being born in a caste, is God's will,  
But valour belongs to me".

In AIR 1978 SC P.597 (*Maneka Gandhi's* case) Justice *M.H. Beg* refers to a case in *Cooper v. Wardsworth*, wherein Justice *Byles* observed the Laws of God and man both give the party an opportunity to make his defence. I remember to have heard it by a learned man that even God himself did not pass sentence upon Adam before he was called upon to make his defence.

“Adam (says God) where art thou, hast thou, not eaten of the tree whereof I have commended thee that thou should not eat”. The same question was also put to Eve.

AIR 1985 SC P.1416 Interpreting Article 311 of the Constitution Justice *D.P. Madon* in his leading judgment dealing with Principles of Natural Justice observed the requirement of hearing both sides before arriving at a decision was Part of the judicial oath in Athens. It also formed the subject-matter of a proverb which was often referred or quoted by Greek playwright Aristophanes in his comedy ‘Wasps’ and Uripides in his tragedies ‘Heracleibae’ and ‘Andromache’ and among Romans Seneca in his tragedy Medea referred to the injustice of coming to a decision without a full hearing.

AIR 1994 SC P.268 A case dealing with appointment of Judges, Justice *J.S. Varma* Upholding the Principle of primacy of opinion of Chief Justice in appointment of Judges

began with a note of caution by quoting *Shakespeare's* comedy ‘Measure for measure’

“O, it is excellent,  
To have a giant's strength,  
But it is tyrannous  
To use it like a giant.”

In the same judgment Justice *S. Ratna Velu Pandian* began with a prologue quoting the Biblical apologue in the Old Testament as coined by *Frances Bacon* “Solomon's throne was supported by lions on both sides, let them be lions, but yet lions under the throne; Being circumspect that they do not check or oppose any points of sovereignty.”

AIR 1995 SC P.605 Justice *J.S. Varma* dealing with Religious Freedom begins his leading judgment with a quote from Jonathan Swift “We have just enough religion to make us hate, but not enough to make us love one another”.

He also quotes a Rigvedic Hymn “Ekam Manushi Jathi = All human beings are of one race.”

I propose to end this endless subject with a quote from George Bernard Shaw from his preface to his play ‘Apple Cart’ “*It is most easier to write a good play than to make a good law*”.

## HUMAN ORGANS TRANSPLANTATION

By

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There are 3 types of countries in respect of Human Trafficking. 1. Origin 2. Transit 3. Destiny. Basically socio economic backwardness of citizens driving to opt and be vulnerable to trafficking which is a known phenomenon. The menace of exploitation

of children, women and scheduled caste and scheduled tribe people is still prevalent in our country in so many rural areas and which are not being exposed to media also due to lack of proper facility to even go there. Especially the hill top regions are also