

THE PRINCIPLE OF LITERARY IMAGINATION IN THE FIELD OF LAW AND ITS APPLICABILITY, EXAMINED THROUGH HELLER'S CATCH-22

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Abstract

The purpose of this paper is to understand the relation between law and literature. The concept of interpreting legal texts through the methods of literary criticism and the concept of 'judicious spectator and judicial rhetoric will be examined. In order to substantiate any conclusions that are drawn, a literary classic will be used as a working model and a reference. For this purpose, the Joseph Heller's *Catch-22* has been chosen. Each chapter in this paper will be treated as a separate entity and the relevance of said chapters will merge in the conclusion of the paper and will provide an apt understanding of law and literature. This shall be compared to the contributions of Richard Posner and Martha Nussbaum in the field of law of law and literature.

I. Introduction to *Catch-22*

Joseph Heller's *Catch-22*¹ is an American literary classic that is set during the closing months of World War II. *Catch-22* is a satire on bureaucracy in war. It is extremely important to understand that the novel possess its own rationale and sense of character. The protagonist, John Yossarian is an Army Corps Captain who flies missions for America during the war. The extremely distasteful conditions of his army base and the severe physical and mental trauma that he faces by flying missions at the risk of losing his life drives him to the state of paranoia. Yossarian finds himself constantly torn between the militants of other armies who are trying to kill him and his superior officers who deploy him for various missions repeatedly. He finally concludes that there are no sides to be taken and that everyone wants to kill him. A series of

¹ Joseph Heller, *Catch-22*, (1961)

bizarre experiences follows suit as Yossarian attempts to avoid combat missions and is always outdone by a circle of bureaucratic principles which always brings him back to the beginning.

‘Catch-22’ is a paradoxical situation that a person cannot escape because of contradictory rules. An excerpt from the book will provide an apt example:

“You’re wasting your time”, Doc Daneeka was force to tell him

“Can’t you ground someone who’s crazy?”

“Oh sure I have to. There’s a rule saying I have to ground anyone who’s crazy.”

“Then why don’t you ground me? I’m crazy. Ask Clevinger.”

“Clevinger? Where is Clevinger? You find Clevinger and I’ll ask him.”

“Then ask any of the others. They’ll tell you how crazy I am.”

“They’re crazy.”

“Then why don’t you ground them?”

“Why don’t they ask me to ground them?”

“Because they’re crazy, that’s why.”

“Of course they’re crazy,” Doc Daneeka replied. “I just told you they’re crazy, didn’t I? And you can’t let crazy people decide whether you’re crazy or not, can you?”

Yossarian looked at him soberly nd tried another approach, “Is Orr crazy?”

“He sure is”, Doc Daneeka said.

“Can you ground him?”

“I sure can. But first he has to ask me to. That’s part of the rule.”

“Then why doesn’t he ask you to?”

“Because he’s crazy,” Doc Daneeka said, “He has to be crazy to keep flying combat missions after all the close calls he’s had. Sure I can ground Orr. But first he has to ask me to.”

“That’s all he has to do to be grounded?”

“That’s all. Let him ask me.”

“And then you can ground him?” Yossarian asked.

“No. Then I can’t ground him”

“You mean there’s a catch?”

“Sure there’s a catch,” Doc Daneeka explained. “Catch-22. Anyone who wants to get out of combat duty isn’t really crazy.”

There was only one catch and that was Catch-22, which specified that a concern for one’s safety in the face of dangers that were real and immediate was the process of a rational mind. Orr was crazy and could be grounded. All he had to do was ask; and as soon as he did, he would no longer be crazy and would have to fly more missions. Orr would be crazy to fly more missions and sane if he didn’t, but if he was sane he had to fly them. If he flew them he was crazy and didn’t have to; but if he didn’t want to he was sane and had to. Yossarian was moved very deeply by the absolute simplicity of this clause of Catch-22 and let out a respectful whistle.²

The aforementioned explanation of the concept of Catch-22 aptly explains the vicious circle of manufactured principles that engulfs society. The novel is filled with such instances and situations of Catch-22. In order to understand this concept better, certain excerpts from the novel itself is recommended. Namely, Yossarian’s proposal to Luciana³ and the Great Loyalty Oath⁴. An example in layman’s terms can be provided to explain Catch-22. Imagine a

² Heller, supra,1

³ Heller, supra,1

⁴ Heller, supra,1

hypothetical situation where every firm is willing to employ someone only if they have a certain level of working experience. A man who graduated from a college recently might ask himself how he or she can procure experience if no one is willing to employ him in the first place due to his lack of experience.

II. The case of Tej Bahadur Yadav

On 8th January 2017, Tej Bahadur Yadav, a soldier who was posted at Poonch in Jammu and Kashmir posted a series of videos on Facebook, which involved Yadav describing the pathetic conditions of soldiers serving at the border. He emphasised on the below-par quality of the food that was served to them and the hardships that the soldiers had to face. He accused the government of procuring the essentials required by the soldiers and selling them off illegally. Subsequently, the videos became viral and was received by the entire nation with vehement rage against the Border Security Force (BSF). The BSF was widely criticized for its negligence, lack of transparency and failure to perform what was reasonably expected of them, i.e., providing soldiers with necessities of a reasonable standard⁵. Subsequently, Yadav was dismissed from service by the Summary Security Force Court (SSFC) for four counts of breach of discipline, making false accusations against the BSF, carrying two mobile phones (which is against protocol). Moreover, Yadav was denied his entitlement for pension for his 20 years of service. His VRS application was also rejected.

On being unable to trace her husband's location and making adequate enquiries about his whereabouts, Ms. Sharmila Yadav filed a writ of *habeas corpus* in the Delhi High Court, contending that her husband, Tej Bahadur Yadav was being illegally detained by the BSF. A judicial bench headed by Justice G.S. Sistani questioned the Centre as to why it would not allow Ms. Yadav to meet her husband so that such apprehensions that she may have, whether small or big, can be put to rest. Solicitor General Sanjay Jain produced telephonic records that showed that the man and his wife had been in contact merely a couple of days back. The Centre also added that Yadav was not illegally detained. He had only been shifted from the 29th

⁵ Special Correspondent, *BSF jawan who complained of bad food sacked*, The Hindu, April 19th, 2017
<http://www.thehindu.com/news/national/bsf-jawan-who-took-to-social-media-complaining-of-bad-food-sacked/article18137589.ece>

battalion to the 80th battalion. The Centre was condemned for its lack of sensitivity and was asked to allow Yadav to meet his wife.⁶

It is pertinent to note that the Court refrained from addressing the controversy behind the video that was posted by Yadav. The Court stated that it would not dwell upon the aspect of the video as there are many things related to human conduct under pressure.

III. Concept of Catch-22 in the field of law (2nd Amendment of the American Constitution)

When the concept of Catch-22 is compared to statutes, constitutions and legislations, the most applicable comparison is the 2nd Amendment Rights of the United States of America. The 2nd Amendment provides that:

*A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed*⁷

The basic aim of the 2nd Amendment is to entitle everyone with the right to possess firearms in order to protect themselves and their property if a situation that threatens the right to life or destruction of property ever arises. The inherent problem that arises is that the official recognition of the right to possess firearms for self-defence provides the perfect gateway and access to firearms that causes havoc and violence that was trying to be prevented in the first place.

This problem is evident up and till the extent wherein federal governments are confused about their own stance on firearm possession. D.C. gun control law is a prime example. It has been understood by commentators that D.C exercises a complete ban on handguns.⁸ Furthermore, the District of Columbia only prohibited possession of handguns that weren't registered⁹. This might lead one to infer that D.C allows a person to possess a handgun, provided that a license

⁶ Akanksha Jain, *Wife of BSF jawan, who posted video on food, allowed to meet him*, The Hindu, 10th February 2017, <http://www.thehindu.com/news/national/Wife-of-BSF-jawan-who-posted-video-on-food-allowed-to-meet-him/article17283382.ece>

⁷ The Constitution of the United States of America

⁸ David Nakamura & Robert Barnes, *D.C's ban on Handguns in Homes Is Thrown Out*, WASH. Post, Mar 10, 2007

⁹ D.C. CODE ANN. 7-2502.02(a)(LexisNexis 2008)

is acquired. Interestingly, D.C does not issue licenses¹⁰. The District of Columbia justifies its stance on handguns by saying that it does not prevent the possession of long guns, shot guns and rifles. It is true that shot guns and rifles could be registered. But, the usage of such guns within the District is prohibited. They had to be maintained, disassembled and secured under a triggered lock¹¹. According to a D.C Court decision, a gun owner is not permitted to unlock or assemble his long gun to use in self-defence, even if a burglar or rapist was climbing in the through the window¹². One could use long guns only for recreational purposes and hunting. Interestingly, there is only one shooting range in the District of Columbia, belonging to the Metropolitan Police. It is neither open to the public nor does it permit the firing of long guns. The National Rifle Association's comprehensive directory of firing ranges lists this as the only firing range in the District. There is no place where one can hunt or use the guns lawfully. Essentially, it is a situation of Catch-22; A person is allowed to use his or her long gun for recreational purposes and hunting, provided that such purposes are conducted lawfully. But, there is no lawful place for such activity to be conducted in the District of Columbia, and thus, the entire purpose of recognizing and providing rights to bear arms becomes moot. Moreover, it is the perfect way to provide the illusion that the Second Amendment rights of the citizens are protected. Although in reality, there is no way to exercise such guaranteed rights.

IV. CULMINATION OF CHAPTERS

James Boyd White's famous quote , "Every text is at once, an ethical and cultural performance." is most applicable to this chapter. Now, after examination of chapters I, II and III, there exists a chance formation of a 'mind map' of sorts. Richard Posner, in his article, *Law and Literature: A Relation Reargued*¹³, attempts to establish that law can gain from sympathetic engagement with literature. Synonymously, Martha Nussbaum's article, *Poets as Judges: Judicial Rhetoric and the Literary Imagination*¹⁴ stresses upon the concept of judicious spectator. Despite having contradictory general opinions about the law and literature, the concept of sympathetic engagement and judicious spectator follow similar principles. The

¹⁰ Bsharah v. United States, 646 A.2d 993, 996 n.12 (D.C. 1994)

¹¹ *Id.* 8

¹² McInstosh v. Washington, 395 A.2d 744, 755-56 (D.C. 1978)

¹³ Richard Posner, *Law and Literature: A Relation Reargued*, 72BA. L. REV. 1351,(1986)

¹⁴ Martha Nussbaum, *Poets as Judges: Judicial Rhetoric and the Literary Imagination*, University of Chicago Law Review: Vol. 62 : Iss. 4 , Article 12

concepts entail using literary works to understand any scenario, its background and the consequences of it. In the case of Tej Bahadur Yadav, one cannot simply understand the circumstances of a soldier's life and the importance that basic necessities mean to him without placing himself in the soldier's shoes. Nussbaum's article provides the characteristics of a judicious spectator which shall be listed as:

- The ability to stand ground and not succumb to the demands of various sections of the society that have a direct or indirect stake in the judgements of the judicious spectator
- The ability to remain impartial at all times and not provide special indulgence to any party to increase his or her personal benefit.
- A judicious spectator does not gush with irrelevant sentiment.
- At the same time, he or she must to remain aloof to social inequalities and economic injustices.

As a judicial spectator, one develops and hones his or her abilities to emote at the appropriate level in order to dispense justice viably. Although, it seems slightly far-fetched, the extreme detail provided in the various accounts of Yossarian's experience in *Catch-22* can throw some light upon Bahadur Yadav's conditions in the BSF. Although citing *Catch-22* in the court of law will have little to no value as it has no legal backing whatsoever, it not only provides perspective, but can be used to provide persuasive value at certain points as well. Judicious spectatorship or sympathetic engagement with a novel cannot sway judgement by itself, but it helps a deciding committee understand why a certain man committed certain actions.

One of the major similarities between literature and law is the concept of survival. A literary classic gains such stature only because it can survive the test of time and remain relevant for centuries to come. Similarly, amongst few institutions that have survived from primitive communism to feudalism to the concept of governments is the social construct of law. Richard Posner rightly points in his article that out that specific doctrines and procedures may change over time but the broad features of the law

remains the same¹⁵. Thus, it brings about the explanation as to how many legal subjects are form integral parts of literature.

The aforementioned statements of Posner and his concept of sympathetic engagement is what ultimately contradicts his own stance on law and literature. Posner is of the opinion that literature cannot change the way we interpret legal statutes and constitutions. Now, examine the Second Amendment of U.S.A and Catch-22 as a novel. There is no direct relation between the two. As one begins to read and understand the novel and attempt to employ its logic into a statute, it would be clearly noticeable that a simple example of contradictory rules (the example of seeking employment as a graduate when every employer seeks working experience) is simply inadequate. Catch-22 not only explains the nature of such rules, but also the consequences and results of employing such rules in order to monopolise public behaviour. With educated understanding gained from this novel, the examination of D.C's gun laws it can be clearly established as to how any State or organisation can create the ultimate utopia of providing rights while maintaining ultimate control of a person's actions. One can even say that the examples provided above renders Posner's statements as a situation of Catch-22 itself. In order to cement this logic, an example of George Orwell's 1984 can be taken. The government of Oceania in the novel advocates the following motto¹⁶:

War is Peace

Freedom is Slavery

Ignorance is Strength

This motto or slogan is constantly used by the government to justify any of its actions. If each of the three lines is examined, it can be seen that the public is satisfied because it guarantees peace and also allows the government to wage war at the same time. In the context of the Second Amendment, it is clearly visible that such amendments is only taken for its word on paper.

Posner's important distinction between literary form and literary meaning holds true to Heller's Catch-22¹⁷. In the case of statutes, wills, policies and petitions, literary form and style has little to nothing to do contribute to. But, in the case of judicial opinions,

¹⁵ Posner, supra, 13

¹⁶ George Orwell, 1984, (1949)

¹⁷ Posner, supra, 13

literary style plays an important role. If the pattern of narration of *Catch-22* is examined, one can notice that the progress of the plot line seems extremely erratic. The train of thought of Heller, (seemingly intentionally) bounces from one topic to another. Moreover, events that would be generally regarded to have a bizarre nature by reasonable men of common prudence are treated as completely normal behaviour by the characters of the book. Heller does not only provide various storylines in the army, but also communicates the way a soldier emotes in this particular environment. Depression and post-traumatic stress disorder (PTSD) are common mental problems that are faced by numerous military veterans. Hyper vigilance, exaggerated startled response, lack of apathy and sleep disturbances are common symptoms of PTSD. A reader of *Catch-22* would not only bear witness to such problems, but also understand the nature of it due to its erratic narrative and sense of rationale (to Heller's credit) . With such knowledge in perspective, a judge could provide a comprehensive judgement in a case where such logic is applicable, like the *Tej Bahadur Case* (this opinion does not mean that the existing judgement is being scrutinized or disputed). This falls along the lines of Martha Nussbaum's path-breaking example of Richard Posner's judicial opinion in the *Carr v. Allison Car Turbine* case¹⁸.

V. CONCLUSION

The relation between law and literature that is being attempted to be established is in the spirit of both Richard Posner's and Martha Nussbaum's findings. It is an effort to show that literary criticism can be used in legal interpretation. It also agrees with the concept of judicious spectatorship, sympathetic engagement with literature and the importance of judicial rhetoric. The reason behind introducing *Tej Bahadur Yadav's* situation and the second amendment of the American Constitution is to show how a novel like *Catch-22* can be useful to any individual beyond the benefits of reading for leisure.

¹⁸ Nussbaum, *supra*, 14