

LAW AND ITS (UN)INTENTIONAL TREATMENT OF DISSENT

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ABSTRACT

Legal system's importance is not questioned simply because its operating for society and requires enforcement for betterment of society. However, in reality it also serves the interests of powerful though its selective implementation in some situations. Those who dissent or raise voice against state policies like Kamble in film 'Court' face a different side of law which would seem unintentional or just a by-product of legal system, but, is actually a facet of powers of state to shape narrative which is ideal for their sustenance. Attempt is made in this paper to argue how law treats dissent against government by looking at the story of Narayan Kamble - a protest singer and relate it to current political environment of India, where any dissent/protest against policies of ruling government is silenced by Laws designed to serve the interest of governments. For clarity, this essay would be divided in three parts, firstly this paper will look at the way law and its practice in courtrooms is ignorant of 'multiplicity of experiences'ⁱ giving a narrow meaning to justice. Second part will explore the importance of 'deconstruction'ⁱⁱ to arrive at a closer meaning of justice and whether such functioning of law in formal sense is unintentional or a way for promoting a particular narrative. Lastly this paper will analyze presence and absence of law according to certain situations to show how dissent is silenced and handled by state and the 'illusory effect of separation of power'ⁱⁱⁱ to justify state action by using instances from movie and laws like UAPA in India, which is being used to silent the dissent.

LAW AND ITS PRACTICE IN COURTROOMS

Legal system is neutral on the face of it but when we observe the small intricacies in procedure and loopholes in provisions, it becomes evident that law is not neutral for which legal education

never trains budding lawyers as argued by Duncan Kennedy.^{iv} The incongruity between theory taught to students in law schools and the practice is the gap that gives way to this difference and so called offence in a democracy where dissent is considered an important facet to progressive society. Judge Jerome Frank in “Courts on Trial” gave a common phrase describing justice as “what the judge had for breakfast”^v and one such example could be seen in film ‘Court’ where lawyers are discussing which judge they have for their cases and the effect it has on the outcome of case. Matsuda describes good lawyer would be able to know the consciousness of judge where she is advocating for ‘multiple consciousness’ to empathize for oppression or violence^{vi} which is absent in courts such that in reality personal beliefs of judge are affecting the outcome of case largely, especially when the individual in question is accused of laws like sedition just because of having a different viewpoint. An underprivileged person who is unaware of legal language has to use that language of rights through lawyers and an example can be seen in film ‘Court’ where the accused feels so out of place standing there in courtroom where his life is being decided by other stakeholders, especially when a trial is completely ignorant of the experiences of that person and just interprets law in strict sense, it is not difficult to think of trial in case of a person accused of laws like sedition, dissenting against wrong system being overlooked as just ‘extremists’ in the film ‘Court’ where a letter to take care of his mother is seen as a possible attack planned in a code language.

Peter Goodrich talks about the formalism in courtroom which creates a hierarchy, a space different from outer world which could be the reason of courts ignorance for viewing the case through the lives of individuals in question.^{vii} It feels like courtroom has no relation to real life, such that practice of law inside courtroom is different from reality. For instance, when wife of deceased Pawar is questioned, she speaks of working conditions of her deceased husband without any indifference, it points a finger against institution which has been treating the workers in such terrible way. The only worry for her was to sustain and get a job for the time she has to stay in Mumbai due to trial which makes it difficult to not notice the lack of apathy by state. A woman in film is denied the hearing in court on the basis that she is wearing a ‘sleeveless top of immodest color’, such treatment depicts clearly market out hierarchies with complete separation from outside and her experience which brought her to court.

The control over language in courtroom while questioning any witness or accused is another side of law trying to depict what lawyers or judge want to show of it.^{viii} When Kamble in film says he doesn't remember if he sang that protest song on suicide or not but he doesn't mind doing it, court infers it as he might have done it and not the opposite. The public prosecutor in film leading witness (deceased's wife) and police inspector planting a stock witness says a lot about having control over the life of an individual who is accused of a certain crime. In film, where a trial of a protest singer Kamble is depicted, we get to know how law deals with those who dissent or question the divisive policies of state. The narrative is being controlled totally and this control has many consequences which makes it worrying. Legal procedures are made so distinct from the civilians such that its non-understandable whereas simplicity would actually lead to enforcement of laws in a better way. Kamble is left in jail while trial is going on despite of his health as just an accusation under a non-bailable provision can guarantee enough of punishment without the charges being proved showing state's complete disregard. Those in favor of legal formalism argue that it is important for challenging the assumption of law being political,^{ix} however, they ignore the fact that legal formalism itself is a political concept which maintains a hierarchy in courtroom showing indifference to outside world. For the above reason 'Court' as a film has come closest to reality of courtroom functioning according to many legal journalists like Menaka Rao who feels "it captures the impact those undramatic courtrooms have on people who are unwittingly trapped in the labyrinth justice system".^x

In 2018, five activists were arrested on alleged instigation of caste violence in Bhima Koregaon and authorities changed entire course of investigations with allegations like these were planning for nationwide Maoist movement which ultimately turned to planning to assassinate Narendra Modi, the Indian Prime Minister.^{xi} While it is clarified by Supreme Court of India that right to life does not mean mere animal existence but these activists since the arrest are denied basic human rights and there is absolutely nothing court has done for questioning the arrest while the case is under trial. It seems familiar to story of Kamble, who is just a protest singer against divisive politics of state and religious, casteist, racist and nationalist jungles in which civilians are silenced to agree. Bhima Koregaon is a close example among many where dissenting individuals are paying a heavy price for exercising their civil liberty and courtroom are denying bail as they are blind to see the outside political environment created for their arrest. The further paper will look at the way legislations are designed to give such a narrow

meaning to something and how strict interpretation of these without looking at ‘multiplicity of experiences’ is against the very idea of justice.

THE IMPORTANCE OF ‘DECONSTRUCTION’

Postmodernism is an approach which favors multiplicity of thinking and rejects grand narratives which are based on objective standards. It is important in a legal setup to look at experiences beyond courtroom and not adhering to so called “grand narrative” or “coherent belief system”.^{xii} In a legal system where courts are believed to serve ‘justice’, it is important to reject the grand narrative to look at marginalized and their experience, particularly in a story like film “Court” where we see a different kind of oppression of dissent through legal machinery. One such postmodern approach is “deconstruction” which is highly associated with Derrida, a French philosopher. Deconstruction looks at relation of words, concepts etc. and underlines the hierarchy or power structure between such words.^{xiii} Social underlining phenomenon between two interrelated words is what “deconstruction” is all about, for example, the hidden negativity associated with non-veg and veg which in Indian society has caste-based connotation also.^{xiv} This approach to ‘deconstruct’ does not imply we stop using language but what it gives us is a nuanced understanding of world similarly when argument is made to deconstruct law, it does not imply we question its importance but simply acknowledge to move towards a nuanced and inclusive law which looks at multiplicity of experiences rather than just strictly applying the law.

Law should be deconstructed as it operates by language which has underlined societal hierarchies as law is a creation of human which makes it important to question the social force created by law. In the film “Court” judge was following a strict interpretation method which is done in most courtrooms around world but completely ignorant of dynamics outside like condition of manhole workers who had no gear and like Vasudev(deceased) many resort to consuming alcohol to bear the smell of gutter, he is ignorant of the state’s systemic oppression of dissent of which he is unknowingly/knowingly a part of this system. Judge gives bail on amount 1 lakh for a protest singer based on his “previous conduct” which says a lot about treatment of dissent as law needs to be aware of what is happening outside courtroom to do what it calls “justice”. The police charged activists Anand Teltumbde and Gautam Navlakha

under India's counterterrorism law, the Unlawful Activities (Prevention) Act (UAPA) as they were openly critical of government and its divisive politics. Kamble also wrote and sang against nationalist, casteist, religious and racist jungles of government and he was also in the end arrested under UAPA for mentioning his tale of oppression during trial in his book called "The humiliation of Kamble". Which is why deconstruction of law is necessary to be able to see what legislations like UAPA are doing in society and not just apply its provisions which is following what powerful stakeholders want them to do.

Jacques Derrida argues that "deconstruction is justice"^{xv}, although justice cannot be pinned down to a particular meaning and it cannot be deconstructed but law can be deconstructed. He argues that deconstruction is justice because law is made up of power hierarchies, social power and inherently plays a social function, thus, by deconstructing law can be questioned. He further says that law should be continuously deconstructed to move closer to a just outcome and finally a fair system increasing access to justice.^{xvi} Derrida also maintains that justice is not achieved by entirely breaking away from rules also which is a paradox as there is always a tension between law and justice.^{xvii} Thus, it is clear that for getting an outcome which is fair, we need to consider unique experiences and must be able to decide in individuality. It is important that stakeholders of legal system suspend yet conserve the law as judges are bound by principles, rules and precedents. Justice needs to be in language of person and the particular situation in that case seen in singularity unlike what happens in film "Court" where Kamble whose life is being decided does not understand anything happening there.

In film, it was evident in scene where judge is applying UAPA where a very broad provision is alleged, he puts the presence of some books which are banned etc. in comparison to terrorism and convicts him under UAPA. Judge is ignorant of Kamble's age, health and his profession. Law is made by powerful and in case of UAPA as C. Raj Kumar suggests that "governments tend to tinker with human rights when responding to terrorism or in the name of preserving national security"^{xviii} which is exactly the case in Bhima Koregaon arrests and in film "Court". Deconstruction of legislation like UAPA will show this facet of power exercised by governments for better justice of dissent unlike what law did with Teltumbde, Navlakha or Kamble. Anushka Singh writes that UAPA has diluted the distinction between political dissent and criminal activities by criminalizing dissent, it takes away the civil liberties and rights like right to association of those who dare to speak against ruling governments.^{xix} Law is now a

puppet of state to punish the dissenting class taking away their constitutional liberties and comparing them to terrorists to keep support from public alive. In the further paper we will analyze the manner in which law substantiates the interest of ruling governments to silent the dissent and illusions it creates for keeping belief of people alive by popular narrative.

ILLUSORY EFFECT OF SEPARATION OF POWER'

Alan Hunt describes law as a tool to maintain class divisions and maintaining a particular class's interests through complex machinery.^{xx} Critical legal studies also talks about how law is inherently biased and favoring one class which is why state machinery is used for maintaining social hierarchies and this is a feature of law. It is evident that in film "Court" the state by complex mechanisms like jurisdiction, legal formalism, laws like UAPA etc. is subjecting dissent or protests as a crime. It is interesting to note that state or powerful maintain legitimacy in masses as they project such dissent as a brand of anti-national sentiments comparing them to terrorists under UAPA. Hunt also talks about "separation of powers as a mask to protect the class-based structure of state",^{xxi} Kamble also talks about such illusion in his protest song in film where he sings "illusion by state has blinded the masses" which seems true by deconstructing the laws like UAPA. Fear to exercise a civil liberty to dissent is a subset of heinous crime like terrorism and masses are blinded to be caught in nationalist jungles, which is done by authorities in arrest of activists in relation to Bhima Koregaon violence. Lawyer Vinay Vora in film "Court" discusses how many activists are arrested on random charges facing such long trials which extend over years and our judges in courtrooms are busy in strict interpretations of rules completely ignorant of political dynamics.

Law operates by coercion and its selective silence on issue like this state regulated oppression of dissent is actually a contribution to spread a narrative wanted by ruling class. We have an ingrained acceptance for law which is why many don't question its legitimacy but actually by deconstruction of law, it becomes clear that it pretends to be equal for all but actually representing interests of a few. Hunt argues that law maintains conditions for capitalism and helps in its growth which is further also discussed by Upendra Baxi in "*Law and State regulated capitalism in India*". Baxi discusses "presence and absence of law" which essentially means that law choses to be present in some situations and is absent in other situations which

he explained by long delay in abolishing bonded labor^{xxii} and when it was passed, its enforcement proves the point of Alan Hunt that Separation of Powers is an illusion. A state which can enforce any law by coercion is not able to enforce abolition of bonded labor says a lot about intentions of state in having a selective approach in enforcement of law. In film “Court”, the fact that law has identified freedom of speech and expression as a democratic liberty is a clear example where law is showing its presence but is absent if we law at it from lens of deconstruction. Kamble says “truth has lost its voice; art has lost its voice so don’t call us artists” which is showing the treatment of dissent in legal setup. Baxi describes the “hegemonic role of law” which makes us think of it an agent of social justice, but its result is different from what it promises^{xxiii} as Kamble being asked to give one lakh rupees as bail amount even after all evidence of his innocence can never be social justice.

There is an understanding between various stakeholders of state machinery which law is ensuring by its absence and those who interpret laws i.e. judges have become a part of this understanding. Baxi talks about “the idea of illegal strikes” if its without permission goes against the entire objective behind protests and example of politician threatening a labor union leader of a fake murder case shows exactly the way powerful use law to silent dissent.^{xxiv} While discussing adjudication, Baxi mentions how labor is forced to go back to works for livelihood due to slow motion adjudication but if we look at the case of Kamble also, the long trial over months and years causing so much health issue, ignoring his age shows injustice behind the so called fair law. In case of arrests of activists regarding violence in Bhima Koregaon, when a prominent historian Romila Thapar and several others filed a petition in Supreme Court of India against irregularities in arrest of activists, Justice Chandrachud’s dissenting opinion looked at the idea of justice as beyond the technicalities of law and he held substantive justice beyond such technicalities which is the approach required but sadly he was in minority.^{xxv}

Anand Teltumbde, who is amongst the arrested activists in his book “The Persistence of Caste” writes “the contemporary state - with its apparatuses of police, judiciary, armed forces, schools - is essentially a coercive machine that seeks to conserve the monopoly of the dominating class”^{xxvi} He questions the silence of state and law in caste violence which is harming the narrative of state as a securer of social justice. When lawyer of Kamble in film “Court” says a little about repressive state practices of Goymari sect. in courtroom, he faces physical violence as a result and no law is present to curb this division of society in caste used by state to further

their interests. Law may prosecute the people who beat him up but can never guarantee him his basic freedom to talk against wrong or to dissent. Is the law really neutral then? Critiques of liberalism argue that law is made by people coming from this society which is not equal^{xxvii} thus law shows the features of exclusion as shown by society, it promotes indirectly social hierarchies and state uses it to further their narrative.

To conclude, it's necessary to question the objectives behind laws like UAPA among many and for judiciary to question the objective behind a legal system. It is not to question the importance of having law in place but to acknowledge the reality that it operates by selective implementation in some situations in accordance to social hierarchies. Dissent is considered an important part of being in a democracy but treatment of law for those who dissent against divisive state policies like Kamble in film 'Court' or activists like Teltumbde depicts an ugly side of legal system which seems unintentional but a part of state to shape narrative which is ideal for their sustenance. All of it holds contemporary relevance when we look at the condition of migrant laborers during COVID-19 crisis and state's treatment of them, which is ignored when questioned before highest judicial authority in India. Supreme Court conveniently said that this time of crisis is not for such debates but actually this is the time when it becomes important to look at law through deconstruction lens. It is thus necessary for judiciary and other stakeholders in a legal system to consider individual experiences and not generally apply principles giving a narrow meaning to justice. It is also necessary to look beyond language of provisions and underlying social hierarchies to arrive at a closer meaning of justice which is important for freeing masses from the illusions of state. As Kamble points out that all of us are blinded by religious, casteist, nationalist and racist jungles created by state for their interests to grow which needs to be acknowledged and deconstructed to move towards a fair society.

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