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**LAW AND LITERATURE: AN UNAVOIDABLE RELATIONSHIP**- Uzairulla Khan<sup>1</sup>**ABSTRACT**

Literary works not only enriches layman's life, it broadens our views but also makes us more sensitive to the nature of human as well as the reality of society. Thus, a critical analysis of literature becomes an invaluable tool for the study of law. By examining law through the lens of literature, we can understand the timing of law and its value to society. Through my analysis of John Grisham's 'The Associate', I have raised certain issues pertaining to rape laws that are still prevalent in our society.

This article highlights the connection between the literature and the present laws in order to analyze, examine and critique the existing laws regarding rape. The article also aims to identify and discuss the different instances through which the author John Grisham connotes the presence of incoherent laws in our legal system.

**INTRODUCTION**

Though the notions of law and literature are independent of each other, they fill up a void in the other, complement the other and they are interlinked thereby deriving a rather distinctive value from one another. After being autonomous discipline for centuries, the field of law is demanding an insight from the social sciences and humanities to enrich our understanding of the legal system.<sup>2</sup> This demanded correlation has little to do with interpretation of statutes and constitutions but, perhaps a greater deal, to contribute to our understanding of the law through literary works of previous generations.<sup>3</sup>

Law on one hand defines our rights, punishes our misdeeds, rewards us damages but literature on the other; creates characters and presents us with legal situations using protagonist's journey while making us live vicariously.<sup>4</sup> Literary works though fictional contain characteristics of

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<sup>2</sup> Richard A. Posner, 'Law and Literature: A Relation Reargued' (1986) 72(8), pp. 1351-1392 Virginia Law Review < [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2882&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2882&context=journal_articles)> accessed 15 February 2022

<sup>3</sup> ibid

<sup>4</sup> AK Sikri, 'The inexplicable yet unavoidable relationship between Law and Literature [Part II]' (Bar and Bench, For general queries or to submit your research for publication, kindly email us at [editorial@ijalr.in](mailto:editorial@ijalr.in))

law in some form or the other, like in John Grisham's 'The Associate'. The protagonist in 'The Associate', Kyle McAvoy who is one of the outstanding legal students of his generation is faced with a secret from his past which threatens to destroy his career and, possibly, his entire life. One night the secret catches up with him in the form of some bad men who blackmail him to do their dirty work, or he would have to face unpleasant consequences.<sup>5</sup>

John Grisham introduces the legal elements to his story by placing the protagonist and his friends in a situation where they are alleged for raping a girl, whereas they believed that it was consensual. This is one of the themes that John focusses on in his book. There are other themes as well like: out of court civil settlements, enforcing rape laws and repercussions of statute of limitations for rape. The main story of this book is out of the scope of this article, so instead I will be discussing the above-mentioned themes in detail along with its real-life implications.

### **THE DIMINISHING LINE BETWEEN CONSENSUAL INTERCOURSE AND RAPE**

Literature is the medium of conveying not only good aspects of law but also expose the loopholes and weaknesses of law. Literature, at times brings about the issues of law and morality in a story form stating how strict applicability of law proved to be unethical or was against the conscience of the society. Literature not only questions the existing law, but it also critically examines the ethical behavior of individuals or morals of the society as a whole. Literature can also be used as a medium to exhibit the dire consequences of fake allegations.

John Grisham explores the unexplored area of rape allegations from the perspective of not the alleged victim, instead the alleged attacker. In this book, he places the protagonist Kyle and his friends in a situation where both the parties have a different view of the situation.

Elaine Keenan, a co-ed from the law school and Kyle's classmate was a close friend of Kyle's fraternity, Beta. According to the members of the fraternity, Elaine was a kind of person who would spend more time in the Beta house than in her own dorm room and enjoyed doing drugs and partied every single night. In their final year of law school, Elaine attended a party, woke up several hours later, and had vague recollection of being raped. She panics and leaves the house and doesn't mention about any of this to anybody for four days. She later reports the incident to the police. The police were at first suspicious of her story but after investigation they found out that Elaine had been having sexual relationship with literally everybody in that fraternity. On the night of the party, Baxter Tate and Joey Bernardo had sexual intercourse with

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24 May 2020) < <https://www.barandbench.com/columns/the-inexplicable-yet-unavoidable-relationship-between-law-and-literature-2>> accessed 15 February 2022

<sup>5</sup> John Grisham, *The Associate* (Doubleday 2009)

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her but they alleged that it was consensual. Due to inconclusive evidence the case was closed, and Elaine left the college and disappeared forever.

After five years, a video appeared out of nowhere which clearly showed Elaine lying unconscious on the sofa due to intoxication and Baxter was forcing himself on her. Later, Joey also joins him and forces himself on her while Kyle and his other friends watched from one corner of the room. Due to this incident Elaine had become frail, weak, vulnerable and at times she was subject to some very dark moods. This was the result of depression and she had been struggling ever since.

On the contrary, Kyle and his friends had been arguing that they had not raped anyone. They said that all of it began as consensual intercourse at her suggestion and it had been transformed into something far different, at least in her mind. They alleged that Elaine though intoxicated was conscious and knew what was happening but unfortunately the video camera did not record it.

Kyle also alleged that about a month before the alleged rape, he had been in his own bed, sound asleep, when Elaine crawled under the sheets and quickly got what she wanted. If Elaine's party incident was not a consensual incident and it was rape, then Kyle's incident should also be considered as rape even though they were in a relationship.

Using this situation as an example, John Grisham raised certain important questions such as, if a person consents to sexual intercourse, can they change their mind once things are underway? Or if they consent to intercourse and then black out halfway through the act, how can they later claim that they had changed their mind? If they were in a relationship for some time, then how can he turn around and file a complaint that she sexually exploited him? Did he not enjoy it when they had physical relationship?

Answering all of these questions using our previous laws would have been impossible because our laws were not as comprehensive as they are now. The laws passed by any legislation should offer an answer to these questions to avoid any future misunderstandings of the laws or false interpretations because the line separating consensual intercourse and rape is thin. A small misinterpretation of the situation might lead to irreversible consequences.

After the publication of this novel in 2009, the Indian legislation in 2013 amended a few sections in the Indian Penal Code regarding rape. Though this novel might not have directly influenced this amendment, it would be safe to assume that it might have had a minor role to play. The legislation amended sections of IPC 375 and 376, as to what qualifies as rape. It says that a man commits rape if he has sexual relationship with a woman incapable of giving

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consent, if the accused is in a position of control or dominance over a woman, and if the woman suffers from mental or physical disability.<sup>6</sup> This amendment led to the inclusion of intoxication and thereby comprehensively answered all the questions raised by John Grisham in his novel.

In this way, literature plays an important role in bringing law reforms. While it is believed by many that from reading and understanding works of literature one can learn a lot of jurisprudence, it is also believed by others that literature only presents a distorted picture of the law. Nonetheless, literature teaches us to understand the nature of law better and it enables us to reduce the number of poorly written and executed laws.

### **ENFORCING LAWS REGARDING RAPE**

A famous syndicated columnist, Debra J. Saunders in her paper "*Uneven Scales Tilt the Crime Bill*", criticized the government's tolerance of civil settlements that lead to dropped criminal charges. She critiqued such settlements and said that "Either a guilty man buys his way out of a trial, or an innocent man is wrongly accused in a successful extortion attempt".<sup>7</sup>

A defendant in a criminal rape prosecution faces the prospect of a civil action brought by the complainant. Sometimes, the defendant will offer to settle the potential civil case with the complainant while the prosecution is still pending.<sup>8</sup> Following settlement, the complainant may request that the charges be dropped or refuse to cooperate with the prosecution. Because a rape prosecution always relies on complainant's testimony, if the complainant is no longer interested in pursuing the case, then there is no choice but to drop the charges.<sup>9</sup> Due to this practice very few rape prosecutions actually go forward. Therefore, testimony of the victim can undermine the enforcement of rape law.<sup>10</sup>

John Grisham highlights this aspect of law by introducing the readers to two new incidents in his novel. The first incident was about an associate named Gavin Meade and the second incident was about Elaine.

In the first incident, as a backstory to another incident, John Grisham introduces Gavin Meade. Mr. Meade doesn't rape women; instead, he beats them. In his college days, he had beaten his

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<sup>6</sup> Anjana George, 'Is the line between consensual sex and rape all that thin?' (The Times of India, 29 July 2017) <<https://timesofindia.indiatimes.com/city/kochi/is-the-line-between-consensual-sex-and-rape-all-that-thin/articleshow/59810370.cms>> accessed 15 February 2022

<sup>7</sup> Debra Saunders, 'Uneven Scales Tilt the Crime Bill' (1994) Times-Picayune

<sup>8</sup> William Hubbard, 'Civil Settlement During Rape Prosecutions' (1999) 66(4), pp. 1231-1260 The University of Chicago Law Review

<[https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5730&context=journal\\_articles](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5730&context=journal_articles)> accessed 15 February 2022

<sup>9</sup> *ibid*

<sup>10</sup> *ibid*

girlfriend so badly that she had to spend two weeks in the hospital. After things unraveled, Mr. Meade was finally arrested, jailed, formally charged and faced trial. Mr. Meade offered to settle this case outside the court and offered a large sum of money. Because the girl wanted no part in the trial, she accepted the offer and dropped all the charges against him.

In the second incident, Kyle also offered a large sum of money to Elaine to drop all the charges against him and his friends. Kyle's lawyer was successfully able to convince Elaine's lawyer that they had no chance in winning the case if they go to trial, so it would be better if they settle the case outside the court. Elaine and her lawyer entertained the idea for financial settlement due to this reason. Kyle offered to pay an upfront amount of \$25,000 and additional \$10,000 after seven years. The second payment was after seven years because that was when the statute of limitations would expire on rape charges. After negotiations, Kyle agreed to pay \$75,000 upfront instead of \$25,000 and Elaine dropped all charges against him.

This is the next instance in which John Grisham highlights another loophole in our existing legal system through his work of literature.

### **REPERCUSSIONS OF STATUTE OF LIMITATIONS FOR RAPE**

A statute of limitations is a time limit in which a person has to file a claim. If the time limit expires, the individual who wishes to bring forth a claim is barred from doing so. In a criminal context, a statute of limitations is the time limit in which the prosecutor must file charges. Statutes establish statutes of limitations for different reasons. For example, a statute may exist because it would be difficult to prosecute a case after a certain period of time passes. Witnesses may move or die. Evidence maybe lost or degraded. Philosophically, states establish statutes of limitations so that an offender does not live in purgatory for the rest of his or her life. At some point, the defendant can get past the point in time which he or she would be required to legally atone for his or her crimes. Most of the states in US have a statute of limitations for rape, for some period between three to thirteen years.<sup>11</sup>

John Grisham highlights this feature of the legal system in his novel to show the real-life implications of such statutes. Even though Elaine had seven more years to compile evidence against Kyle and his friends, she instead chose to settle for an upfront payment of \$75,000 and a final payment of \$10,000 after the termination of the statute. Though John Grisham's stance on this limitation is unclear from his novel, we can consider this to be an example of literature

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<sup>11</sup> HG Legal Resources, 'What is the Statute of Limitations of Rape?' < <https://www.hg.org/legal-articles/what-is-the-statute-of-limitations-for-rape-34338>> accessed 15 February 2022

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playing an integral part of laws in our modern society and conveying its insinuations through literature.

### **CONCLUSION**

The relationship between literature and law is rich and complex. Though these belong to separate branches of social sciences, they share good amount of proximity in dealing with human predicament, situation, development of civilization and societal reforms. Literature helps us in understanding the law in a better way because it teaches us to think in a way that is creative, deals with ambiguity and is ambivalence. Literature also provides us the opportunity to enter new dimensions of thoughts pertaining to law and to examine it from humanistic and philosophical perspectives.<sup>12</sup>

Literature also emphasizes on the rhetorical techniques and opportunities that can be used as a way of critiquing social institutions and legal norms. Through my analysis of John Grisham's 'The Associate', I have identified certain issues and loopholes raised in the novel that are still prevalent in our society.

One of the biggest issue among others is that of rape being disguised as consensual intercourse. The protagonist and his friends disguise rape as consensual sex and try to argue that the act they committed was not rape. There were a lot of unanswered questions raised due to this situation which questioned the validity of existing laws regarding rapes. After a few years, the legislations started passing more comprehensive laws that had no scope for misinterpretation and thereby created a clear distinction between consensual intercourse and rape.

Therefore, this is an example of literature critiquing the legal norms that are incomprehensive in our society and highlighting the need for more coherent laws.

The next biggest hurdle faced by countries in bringing the guilty to justice is that of civil settlements. John Grisham exposed another loophole used by the people to get away with a gruesome crime like rape. This is an example of using literature as a medium to expose the existing unfair practices in our legal system.

The writer uses such hypothetical situations in his novel to examine, critique and expose ordinary train of human events of the modern state of society.

Hence by examining laws through the lens of the literature, we can get a better understanding of the laws and enrich our knowledge about the legal system and bring in the necessary reforms.

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<sup>12</sup> Dr. HarmikVaishnav, 'Literature and Law: Mirrors Facing Each Other' International Journal of Law and Legal Jurisprudence Studies < <http://ijlljs.in/wp-content/uploads/2014/06/LITERATURE-AND-LAW.pdf>> accessed 15 February 2022

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