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FRANZ KAFKA'S "IN THE PENAL COLONY" AS A CRITIQUE OF LAW

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ABSTRACT

Law is commonly understood as a set of rules made for common good and smooth functioning of the administration. Both the common people and those involved in governing and making laws must obey the same. The understanding of legal system as a co-operative effort to promote the common good implies a moral relation between those who govern and those who are governed. However, law in a colonized land is a different one. Since, in a colony the judicial system is mostly in the hands of the colonizers, therefore, there is full possibility of the same to be bias or unequal. Law in literature has now become an established discipline for it gives a picture of what is happening in a society. This paper makes an attempt to study law and its portrayal in the literature by bringing in Franz Kafka's short story "In the Penal Colony" into the context. Kafka's short story can be studied as a depiction of a colonial state and its people being deprived of a proper judicial system and thus are facing injustice and inequality.

Keywords: Law, authority, literature, Franz Kafka's literary works.

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Law in its general sense is a set of rules recognised by a country or community for governing the actions of its members. It may be defined as a system of rules and regulations or guidelines to govern behaviour, to shape politics, economics and society in numerous ways and serves as a social mediator of relation between people. Both the common people and those involved in governing and making laws must obey the same. It protects the people from various crime and oppressions. The government or the state cannot intervene its functions as it is an independent mechanism which is instrumental in creating a crime-free society. Laws are made for common good and the benefit of the citizen of a state. The understanding of legal system as a co-operative effort to promote the common good implies a moral relation between those who govern and those who are governed. The

governed bear obligation to obey the law provided that the law aims at common good, whereas those who govern possess authority only to the extent that they undertake to promote the common good. However, law in a colonized land is a different one. Since, in a colony the judicial system is mostly in the hands of the colonizers, therefore, there is full possibility of the same to be bias or unequal.

Law in literature has now become an established discipline for it gives a picture of what is happening in a society. This paper is an attempt to read Franz Kafka's short story "In the Penal Colony" as a critique of law. The paper highlights on the issues related to law and its functions in a colonized state which in no respect reflects the ideal functions of the same as mentioned above. Much of Franz Kafka's literary works use the law as a backdrop or thematic concern. He explores the

interconnectedness of law, justice, power and authority. It must be acknowledged that Kafka's experiences of the world has influenced his writings to a great extent. However, law is inevitably present in his literature. The key literary works that reveal Kafka's attempt to highlight the law and the authority and the interconnectedness between the two, include the novel *The Trial*, short story "In the Penal Colony" and "The Problem of our Laws".

To understand Kafka's literary works, a brief introduction to his personal life would be helpful for one's perceptions are to a great extent shaped by one's personal experiences. A great German- language writer, Franz Kafka born on 3rd July 1883 in Prague, is regarded as one of the most influential novelist and short story writer during the 20th century. He belonged to Czech Republic and was a Jew and could speak Czech and German although he used to write only in German. The period in which he grew up was during the 1880s and 90s, which witnessed a lot of problems in the state. During that period, Prague was a part of the Austro-Hungarian Empire, created in 1867. An ethnic tension was prevalent there basically due to the refusal of the Czechs to acknowledge the Empire as well as the German people's higher positions in the state. Although German made up only 35% of the population, everything powerful in the society were under the German which led to a power struggle between the Germans and the Czechs as well as other ethnic groups. The system of government was not satisfactory to the Czechs that includes the law and order procedures. Criminal procedures in the Austro- Hungarian, was held in two stages: preliminary examination followed by a trial which were commenced with an accusation often unknown to the accused. He may remained unaware of his own trial until his guilt was ascertained. This is similar to what the protagonist of *The Trial* experienced. From a brief study of the biography of this popular writer of the 20th century, it can be inferred that his works are to a great extent reflections of what he had experienced in his life. Moreover, the reference to the penal colony in the story also shows his concern for the colonized people and the law and order system executed there by the colonizer.

Most of Kafka's works reflect the inequality in terms of law where there are always two sections of people – those who govern and thus are privileged and those who are governed and are thus deprived. Kafka's works thus are reflections of power of law. It has therefore been said:

"Kafka's is a world in which we seek desperately to know the natural law that is sovereign in human affairs but find the knowledge of the law is withheld from us"
(David Luban. et al.:2348)

This particular story "In the Penal Colony" has as its setting a penal colony which remains unnamed throughout the story. The only hints given by the writer are that it is a French speaking colony and is located in some tropical region. Before moving on to the discussion, it should be made clear about what a 'penal colony' means. A penal colony is a settlement in a remote location like an island or distant colonial territory, where exile prisoners are sent in order to separate them from the rest of the population in a state or country. The British used colonial North America as a penal colony. Similarly, France sent their criminals to tropical colonies including Louisiana in the early 18th century. Penal colony also existed in domestic areas and were not necessarily part of foreign domination. Siberia in Russia and Devils' Island in France were examples of such colonies. However, hints are provided in this story that suggest a difference in race and culture between the military regime (officer) and the prisoner. For example, the physical feature of the prisoner as described as being a "stupid-looking, open-mouthed" creature (Kafka: pp. 42) which was widely used as a racial stereotype for the non- western people. The fact that the prisoner does not understand the language used by the officer also shows their linguistic difference which reveals that they belong to different cultural groups.

In the story "In the Penal Colony" written in 1914 and published in 1919, Kafka gives an astonishingly perceptive portrayal of colonialism and violence. The story however "lends itself to many interpretations" (Steinberg: pp.492) and law and order is one of them. "The story explores the interface between justice and punishment" (Harwood: pp.23). Kafka's writings is

also steamed with the socio-political condition of Europe of that time. It is not erroneous to say that Kafka incorporated the human condition of modern age perhaps better than any other novelist of his age. It is worth mentioning that Kafka, the writer was also a lawyer and his own involvement with law and the political and social condition of Europe that moulded him proved to be instrumental in imbuing his writings with thought-provoking political ideas regarding state and individual's life in the state. Kafka's fictions encapsulate within them the human conditions of modern Europe. The Europe in which Kafka grew up was a chaotic one torn apart and devastated by World War 1. The excessive authoritarian controls and implementation of laws in every sphere of life have resulted in conditioning of human life in accordance with the state authority. This restrictive environment led Kafka to highlight the bureaucratic system in the society and the relationships between authority and man that was tending to become mechanical and dehumanized, through his writings.

Published at the beginning of the twentieth century, "In the Penal Colony" can be considered as illustrative of the ideas concerning the state and individual's life in the state and law. The story reflects the power of law. In fact, through it Kafka tries to criticize the so-called law of that time in the colonies which makes the authority or the colonizers the sole powerful body and the individual life of no value. The story begins with a scene of a desert area or tropical area with four characters: a traveller, an officer, a soldier and a prisoner. The traveller has been invited to witness the execution machine. The story centres round the elaborate description of an apparatus or torture machine by the officer who is in charge of execution process. Condemned prisoners of the colony are executed in the torture machine that has needles which slowly inscribe the law the prisoners have violated on their bodies during a twelve hours period which ends with the painful death of the prisoners.

Set in a French speaking colony, it begins with an officer showing a sophisticated execution machine or apparatus which epitomizes the centrality of the authority of the state. It is central to the disciplinary measures of the penal colony during

the regime of Old Commandant. Here, the officer, the follower of the old commandant, seems to be very strict in following the laws propounded by the Old Commandant which can be seen in his way of describing the apparatus. He begins, "It is a strange piece of equipment" (Kafka: pp. 1). The apparatus is interesting in the way it is described and also for its sheer violence. It is designed so as to enable the rulers to assert their power as their motive is to generate fear in the minds of the rebellious natives. The apparatus is one of the insidious aspects of the colonial power.

The officer is so obsessed with his duty that the lives of the individuals in the colony have become meaningless. The lack of the rule of law seems to have of no issue for the officer due to his obsession with the perfection of the apparatus. The officer is blind in the appreciation of its logical working to such an extent that he has completely ignored the life of the condemned human beings who should have the right to justify himself as well as the legal procedure. The unexpected reversal of punishment from the condemned prisoner to that of the officer himself shows the officer's fanatical belief in the workings of the apparatus as well as the execution process. This act highlights the extreme extent of one's obsession to a law which is in no way beneficial to the people. Even those who possess power within a system cannot understand its flaw and thus conform to the same blindly. Here what is more important to the officer is the efficient working of the apparatus rather than the law and order.

"Efficiency is valued above just process, with the officer viewing protestations of innocence from prisoners as an irritating disruption in an inevitable course of action"

(Harwood: pp. 24)

A person being punished does not know the reason for his punishment which is also the case with Joseph K. in the novel *The Trial* by Kafka. Everything about the court in the novel is unknown including the identity of the judges. No petitions are read by the court and no legal documents can be accessed. Moreover, the defendants are not present in the proceedings of the court. K is asked to confess

which is the only thing that he can do is. "All you can do is to confess"(Kafka:pp.85)

"*The Trial* is Kafka's greatest elaboration of this theme. Joseph K. is arrested for a crime but he cannot discover what his crime is." (David Luban et al: pp. 2348)

The prisoner in this story for instance, is going to be punished for a very minor offence of not saluting the officer and arguing with the same in order to justify himself. In fact, he will come to know about his crime when the needles will inscribe the same on his body. According to the officer, "It would be pointless to tell him. He will feel it on his flesh" (Kafka: pp. 79). When enquired by the traveller about any kind of defence or justification on the part of the prisoner, the officer replies, "Only confusion would arise if I had summoned the man and interrogated him first. He would have lied, and if I had succeeded in refuting his lies, he would have replaced them with fresh lies, and so on" (Kafka: pp. 80). Thus, the prisoner in that penal colony is not given any chance to justify himself for the fundamental decision of the officer is: "Guilt is always beyond question"(Kafka: pp.80).

Another very peculiar phenomenon that can be noticed in the story is the lack of understanding between the administrator as represented by the officer and the condemned man as well as the soldier. They do not even understand the language spoken by the officer to describe the workings of the execution machine. This linguistic gap is a prime factor that is responsible for the inequality in the colony. The prisoner has been described as a "stupid-looking, wide-mouthed creature" and the soldier who guards him is "not paying attention to anything" (Kafka:pp.142). They cannot understand what the officer is explaining to the traveller. This detachment on the part of the prisoner and the soldier shows that they do not have any knowledge about the judicial process about to be started. Punishing a person who does not even understand the process as well as the crime is in itself a flawed law that the administration of that penal colony is executing. Without the awareness of the condemned person, there cannot be justice.

Law here is also shown as an instrument used by the colonizers or those having power to frighten the public so that they do not rebel against the former for the fear of such a brutal punishment and therefore there were public executions. Earlier punishments in many countries were a public spectacle. In the story, punishment proceedings during the time of the Old Commandant, as said by the officer, were used to be organised as a kind of ceremony with a crowd of spectators. The apparatus worked both on the body of the prisoner as well as the minds of the spectators which facilitated the ruling of the colonizers. The natives also became aware of the consequences of disobedience towards the state or authority. The public execution thus was the outward show of the power of the colonizers with the use of modern technology. However, it seems to be a good sign in the present time as the execution is no longer a public spectacle when the traveller has come to the colony to witness the same. Kafka's use of the apparatus is the reflection of the power in the name of law which is used by colonizers to dominate a foreign land. It has been said in the story that the Old Commandant had invented the apparatus not only to provide "justice for the island"(Kafka:pp.92) but also "Enlightenment" even "to the most dull-witted"(Kafka:p.p. 104) which used to be the so-called objectives of the colonizers who used it to justify their act of colonisation. It is however ironic that the apparatus meant for justice and enlightenment is actually an apparatus of fear and oppression. Kafka tries to highlight on the anarchist bureaucracy which demands total subordination of the individual. The law and order in this case is in the hands of the authority and the common people are deprived of justice. Kafka through this short story tries not only to highlight the judicial system but also reveals the pathetic and almost absurd condition of life of the colonized people.

Thus in the name of law, the authority does everything according to its interest. Kafka describes the condition of a colony and the law and order situation of the same. We can say that colonialism stands at the very centre of Kafka's text. The story highlights on a state where an individual does not have any right to even justify himself. He or she

seems to have no meaning .It shows the absurdity of life. The state authority has complete control over the law and order of the colony. The lives of the individual here bring to the fore the oppressive legal system in a state. The subjectivity of an individual depends on the order invested by an authority. That is why, the story can be interpreted as a critique of law where unlike the beneficiary function of law meant for common good and smooth functioning of the state, it appears to be oppressive and tyrannical. Instead of giving justice, authority here involves more in generating a sense of fear among common people which is believed to be necessary for the maintenance of law and order in the society.

Bibliography and Reference:

- [1]. Anders, Gunther. *Franz Kafka*, trans. A. Steer and A.K. Thornby. London: Bowes and Bowes, 1960.
- [2]. Brod, Max. *Franz Kafka: A Biography*, trans. G.H. Roberts and R. Winston. New York: Schocken Books Inc., 1963
- [3]. Gray, Ronald. *Kafka: Collection of Critical Essays*. USA: Prentice Hall, 1962.
- [4]. Harwood, Catherine. *Franz Kafka's Literature and the Law*. Victoria University of Wellington, 2007
- [5]. Jelavich, Barbara. *Modern Austria Empire and Republic, 1815-1986*. Cambridge: Cambridge University Press, 1987.
- [6]. Kafka, Franz. *In The Penal Colony: Stories and Short Pieces*, trans. Michael Hofman. London: Penguin Books, 1948.
- [7]. Kafka, Franz. *Selected Stories of Franz Kafka*, trans. Willa and Edwin Muir. London: Random House, 1952.
- [8]. Kafka, Franz. *The Trial*, trans. Willa and Muir. Harmondsworth: Penguin Books, 1953.
- [9]. Kundera, Milan. "Kafka's World" *The Wilson Quarterly*, Vol- 12, No. 5(Winter 1988), p. p 88-89.
- [10]. Luban, David.et al. "Moral Responsibility in the Age of Bureaucracy" *The Michigan Law Review*, Vol-90, No. 8(August 1992) p.p. 2348-2392.
- [11]. Robertson, Ritchie. *Kafka: A very Short Introduction*. New York: OUP, 2004.
- [12]. Steinberg, R. Elwin. "The Judgement in Kafka's *In the Penal Colony*" *Journal of Modern Literature* vol-5, no. 3(September 1976),p.p. 492-514.