

The Law-Equity Antithesis and *The Merchant of Venice*

Suraj Kumar Saw¹

I. Introduction:

The Law and Literature movement is now a flourishing field of comparative learning. In the 1960s and 1970s, the ideas of John Wigmore and Benjamin Cardozo laid the foundation of the modern Law and Literature movement. This is an interdisciplinary study that examines the relationship between the domains of *law* and *literature*, with each borrowing insights and methods of analysis from the other. During the 1990s the scholarly journals addressed the subject in their entirety. From the mid-1980s to the mid-1990s, the bar associations around the world, especially the western part of the world, sponsored several theatrical re-creations of legal questions posed by the classic works of literature, including those written by William Shakespeare and Charles Dickens. Within this comparative field of law and literature, which includes both scholars in the field of English literature and scholars in the field of comparative law, the research concentrates on a particular theme, that is, the concept of *Equity*.

Equity is a system of natural justice allowing a fair judgement in a situation which is not covered by the existing laws. Judgement in terms of equity has been practised for at least two thousand years. It has been discussed at least since Aristotle's *Nicomachean Ethics*. In civil law countries the law-equity divide focuses on the way judges should decide, with procedural repercussions but within the same jurisdiction. Law's defenders hold that individuals must stick to fixed, reliable rules in order to attain the right decision; equity's defenders argue that rigid rules can hardly account for the diversity of social situations, specific historical contexts and perceived justice.

This theme, it is noticeable, is re-echoed in English literature; and Law and Literature movement's contributions to scholarship and teaching in literature have paid attention to several well-worked "legalistic" stories. And a similar methodology has been applied to Shakespeare's works as well. Aimed at the refinement of human dream and deed, literary texts often obtain the tenets of natural law- that is morality and equity- which normally finds its reflection in the constructs of law. Seen in this light, works of literature and law present a reciprocal association which throws light on our understanding and appreciation of both law and literature. This paper intends to present such an analysis of William Shakespeare's play *The Merchant of Venice* (1600). It is worthy to note in this context that *The Merchant of Venice* "has spawned more commentary by lawyers than any other Shakespeare play" [Kornstein, 66].

¹ M.A. in English, Lecturer in English, Dept. of Law, University of North Bengal, Darjeeling.

The Merchant of Venice overtly deals with a multiple of legal issues and concerns, which may be of particular interest to a law scholar. While the essential theme and action of the play is focused on the law of contract, the conflict between natural laws and strict construct of the state laws, wills and contracts; the question of equity and fairness in the construct of law, the consequence of inflexible adherence to the law, the significance of legal interpretations in jurisprudence are some of the noticeable topics addressed by Shakespeare in the apparently playful comedy.

II. The Plaintiff – Shylock:

The linchpin of the play is a *contract* - a bond-formed between a Jewish moneylender, Shylock, and the merchant of the city of Venice (in Italy), Antonio. Antonio agrees to be the guarantor of the loan for his friend Bassanio, a young Venetian of noble rank who has squandered his estate. Bassanio wishes to travel to Belmont to woo the beautiful and wealthy heiress, Portia. He approaches his friend Antonio for three thousand ducats, needed to bear the travelling expenditure as a suitor, for three months. Since Antonio is cash-poor for his ships and merchandise are busy at sea, he agrees to cover the bond. Shylock hates Antonio, both because he is a Christian and because he had insulted and spat on Shylock for being a Jew. Also, Antonio undermines Shylock's moneylending business by lending money at low interest ("usance") [Act-I]. Shylock proposes a condition for the loan: if Antonio fails to repay it at the specified date and place, he may take a pound of Antonio's flesh. Later, at Venice, Antonio's ships are reported lost at sea. This results in the forfeiture of the bond. This provides Shylock an appropriate opportunity to bring Antonio to the court of justice and take his vengeance.

The climax of the play comes in the court of the Duke of Venice in Act-IV. Shylock refuses Bassanio's offer of 6,000 ducats, twice of the amount of the loan, and later thrice of the amount. He demands his pound of flesh from Antonio strictly adhering to law. He says to the Duke when asked for mercy by him:

"The pound of flesh which I demand of him
Is dearly bought, 'tis mine, and I will have it.
If you deny me, fie upon your law!
There is no force in the decrees of Venice.
I stand for judgement.

- - -
I stand here for law." (Act-IV, Sc.-I, 99-103)

The Duke, wishing to save Antonio but unwilling to set a dangerous legal precedent of nullifying a contract, refers the case to a visitor who introduces himself as Balthasar, a male "Doctor of Laws", bearing a letter of recommendation from the learned lawyer Bellario. The "doctor" is actually Portia, the rich heiress, in disguise who has arrived to save her spouse's bosom friend's life.

III. Law v. Equity:

Equity, in the legal sense, is justice according to principles of fairness and not strictly according to formulated law. But this posits a problem of opposition—whether justice can be done according to fairness or according to formulated law. And if law is not *fair*, if there is need for a concept of equity, how can the law be said to be fulfilling its purpose? And if “fairness” is not to be found within the confines of formulated law, from where does it come? This is an ongoing debate. It is this dichotomy that arouses many to question the theories and practices upon which our system of law and justice has been built. Some would claim, for example, that rape is a crime no less horrendous than that of murder, and thus calls for the execution of the convicted rapists. Yet no state allows such execution for conviction of rape alone although it destroys the life of the victim.

Now, the terms of forfeiture of the bond sealed between Shylock and Antonio, fell under the purview of the Courts of Common Law of the 16th Century. These courts relied heavily upon strict construction; that is to say, a literal reading of applicable law and the tools made to employ such law. Thus, the contract in the play was fully enforceable by law. This means that any penalty set down in the bond would be automatically incurred on its forfeiture. It is this notion that leads Portia to proclaim that

“. . . lawfully by this (contract) the Jew may claim
A pound of flesh, to be by him cut off
Nearest the merchant’s heart.” (Act-IV, Sc.-I, 231-33)

Shylock seeks a justice based upon vengeance, not “fairness”. He “craves the law” (Act-IV. I. 206) and comes armed with a contract strictly enforceable and is adamant to seek justice with the most literal interpretation possible of the law. When Portia pleads with him to have a doctor stand by to save Antonio’s life while he cuts off the pound of flesh, Shylock obstinately refuses on the grounds that “Is it so nominated in the bond?”(iv.i.259). Thus, Shylock’s stance goes against the concept of equity.

In contrast to Shylock’s unwavering compliance with codified law, Portia urges the consideration of principles of equity. She delivers a passionate speech on the need for considering humanity in the administration of law. Portia says:

“Though justice be thy plea, consider this —
That, in the course of justice, none of us
Should see salvation. We do pray for mercy,
And that same prayer doth teach us all to render
The deeds of mercy.” (Act-IV, Sc.-I, 198-202)

Mercy or the perpetration of basic aspects of fairness lies at the core of equity. Portia’s plea is mercy, not revenge. She elevates the attributes of mercy and argues that this virtue should ‘season’ justice. As she says:

“The quality of mercy is not strained

It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest —
It blesseth him that gives, and him that takes.
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice." (Act-IV, Sc.-I, 186-198)

Portia, however, does not deny justice but articulates the fundamental conflict between law and equity-while justice can be found in each separately, there is a better form of justice to be obtained when mercy and fairness become factors in the administration of the law.

Shylock soon learns, of course, that stringent conformity to law is a double-edged sword, a boomerang. When her appeal to equity fails against the force of Shylock's lust for vengeance, Portia has to advance to the battlefield of law, and here the moneylender is undone. Shylock's defeat on a legal technicality makes for good drama. Though the legalities are, in a way, based on a false proposition, yet the effects of equity in consideration of law can be seen. Shylock is awarded his pound of flesh, but is debarred from taking any accompanying blood. Since he cannot take the one without spilling the other as the bond only allows to take "a pound of flesh" but "no jot of blood", Shylock is forced to abjure the forfeiture. Defeated, the Jewish moneylender concedes to accepting Bassanio's offer of money for the defaulted bond, but Portia prevents him from taking the money on the ground that he has already refused it. She then cites a law under which Shylock, as a Jew and therefore an 'alien', having attempted to take the life of a Venetian citizen, has forfeited his property-half to the government and half to Antonio-leaving his life at the mercy of the Duke. However, the Duke without hesitation reprieves Shylock. Antonio asks for his share 'in use' until Shylock's death after which the property will be handed over to Jessica, the Jew's daughter, and her husband, Lorenzo. At Antonio's request, the Duke grants remission of the state's half of forfeiture, but in return Shylock is forced to convert to Christianity and to make a will (or "deed of gift") bequeathing his entire estate to Lorenzo and Jessica. Thus, this suit and the tactful interpretation of the bond by Portia show that it is virtually inconceivable that any codification of law could possibly cover all contingencies; and here the principle of equity becomes significant.

Hence, it can be said that in *The Merchant of Venice* there is a deft handling of the tension between law and equity. And if we imagine Shylock entering the courtroom carrying a balance, we can understand the conflict better. Of course, the explicit inference would be that he would use the scales to weigh out his forfeiture, a pound of flesh. What is noticeable is that the scales have long been a symbol of justice and what is more important to note is that if we view the two scales as representing law on one side and fairness on the other, the point at which they balance is Equity. When strict adherence to the law outweighs basic

principles of fairness, there can be no justice.

IV. Conclusion:

To sum up, it can be said that this historical separation between law and equity has often led to consider judgement according to equity as conceived and implemented in conflict with judgement according to law, exacerbating a law-equity antithesis. This theme, as mentioned before, reverberates in English literature and the literary field both reflects and stimulates juridical culture, acting as a mirror of the juridical issues and discourses of the times represented. And the issues raised by *The Merchant of Venice* about equity and fairness in legal constructs continue to be applicable to the modern societal laws and call for a deeper contemplation and appropriate intervention by law makers and lawyers of the modern society.

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