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A Legal Analysis of Kafka's the Trial and Kafkaesque in India

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Franz Kafka, a German-language writer, through his novels introduced the idea of Kafkaesque, a bizarre world having nightmarishly complex and oppressive characteristics. In his book, The Trial, Kafka talks about the judiciary, which despite its reach alienates the citizens. Joseph K., the protagonist of the novel, eventually is killed by the law for a crime that he did not even commit. This paper analyses the portrayal of the judiciary by Kafka in The Trial as a machine of bureaucracy that violates the rights of the citizens and the reaction of individuals stuck in an endless cycle of bureaucracy. Despite Kafka's world is fictional, it appears prophetic. India's democracy ensures its citizens' fundamental rights that protect them from exploitation and the Indian Judiciary is the guardian and custodian of these rights. This paper also studies the Kafkaesque tendencies in modern India by analyzing instances of violations of human rights in India. The study will also look into whether the constitutional guarantees provided to Indian citizens 75 years ago have protected them from state brutality.

Keywords: trial, kafka, constitution.

INTRODUCTION

Kafkaesque is a term that characterizes the bizarre world created by Franz Kafka through his works, indicating the nightmarish and oppressive qualities of the bureaucracy that lies in the capitalistic, judicial, and administrative systems that an individual has no clear grasp on. It does not just describe unclear and complex processes but also the reactions of individuals who get

caught up in the arbitrary system because they are unable to comprehend and control their situations. The central theme of Franz Kafka's writing and style appears to be the confrontation with the absurd; a conflict in which an individual's actions, logic, and perception of reality are opposed by the inevitable limits of ridiculousness. Although the first use of the term was recorded in 1946, the definition of the term remains shrouded in the mystery of interpretation. Frederick Karl, Kafka's biographer, provided The New York Times with a condensed but still quite simple explanation in 1991:

*"What's Kafkaesque [...] is when you enter a surreal world in which all your control patterns, all your plans, the whole way in which you have configured your own behavior, begins to fall to pieces [...] What you do is a struggle against this with all of your equipment, with whatever you have. But of course, you don't stand a chance. That's Kafkaesque."*¹

What distinguishes our society from the surreal world of Kafka is the established principle of due process of law. Due process of law refers to "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case."² Due process of law is a fundamental and constitutional guarantee that all legal procedures be treated fairly, and every individual is given a chance to be heard before their life, liberty, or property is taken away. It also ensures that a law shall not be unreasonable and arbitrary. Due process of law is a crucial component in a democratic system. It is a measure through which individuals can be heard and their rights are protected.

Contrary to the Constitution of the United States of America, the Constitution of India, 1950, has no explicit reference to the well-known constitutional phrase "due process of law" anywhere in the document. The US Constitution now includes a due process clause thanks to the Fourth and Fifteenth Amendments. Unquestionably, this idea has given the American court broad and ambiguous control over the acts of the federal and state governments. Despite its purposeful

¹ Ivana Edwards, 'The Essence of Kafkaesque' (*The New York Times*, 29 December 1991) <<https://www.nytimes.com/1991/12/29/nyregion/the-essence-of-kafkaesque.html?pagewanted=all>> accessed 15 July 2022

² 7th Edition, Black Law Dictionary, 'due process' (St. Paul Minn. West Publishing Co. 1968) 516

exclusion by the Indian Constitution's authors, the Supreme Court of India attempts to read due process into the Indian Constitution through the interpretation of two Constitutional Articles, namely Articles 14 and 21³. A society devoid of due process of law is a system in which the court is transformed into an instrument utilized by governments to carry out their selfish goals. Citizens lose their ability to exercise their rights and will be reduced to pawns in the state's machinery. Such is the society portrayed by Franz Kafka in his book, *The Trial*. *The Trial* is a chilling allegory that examines a classic issue in modern society- the clash between individuals and society. The novel starts with the protagonist, Joseph K being arrested by two warders on his thirtieth birthday. They return for K a year later, on the morning of his thirty-first birthday, and take him outside of town to a quarry and kill him in the name of the law.

The Trial tells the story of K.'s case, his hardships, and encounters with the untouchable Court. Kafka grew up in the Austrian-Hungarian Empire, where people's rights were easily abused. Kafka born a Bohemian Jew represented a minority within the Empire; Jews and Czechs would be detained and punished without having committed any crimes simply because of their nationality.⁴ Kafka portrays the legal system in *The Trial* as a corrupt, and unfair organization that is very likely to violate people's rights and promote the totalitarian state rather than the people.

Throughout the trial of K, he is not told what he has been arrested for. The trial does not force a story on K's acts, but rather a deafening silence. The authority that the courts symbolize is anonymous. The brutality that is involved in judicial proceedings is obscured by a courteous and persuasive bureaucracy. "The novel is a satire against the pointless, corrupt and incomprehensible law proceedings. A sudden intrusion disrupts Joseph K.'s life and brings him into a battle of life and death. Unlike usual battles, Joseph K. can neither see nor fly back against his enemies. Beginning with the arrest and ending in the execution, what judges Joseph K. is not only the invisible power but also the decaying law".⁵ This recurring theme of bureaucracy in

³ Constitution of India, 1950, art.14 and art.21

⁴ Jenifer Cushman, *Criminal Apprehensions: Prague Minorities the Habsburg Legal System in Jaroslav Hašek's The Good Soldier Švejk and Franz Kafka's The Trial* (Brill Publication 2005)

⁵ Rana, Sujata & Dhankar, Pooja, *The Law as Tyrannical Mystery in Kafka's The Trial* (Language in India 2013)

Kafka's works represents the metaphorical silence on the part of the state when attending to the needs of the people. The Trial is a frighteningly brilliant story that foreshadows the horrors of totalitarian regimes of the 20th century. The prophetic tone of the work serves as a cautionary tale that stays relevant even today in societies across the world.

KAFKAESQUE IN INDIA

Although India does not have an explicit "due process of law" clause, the citizens are provided with fundamental rights and freedoms to enjoy the true essence of democracy that the constitution makers envisioned. India practices the Doctrine of Separation of Powers and the Judiciary, the custodian of the citizens' rights, functions independently and free from the dominance or control of the legislature or executive. However, being the world's largest democracy and having the lengthiest constitution has not deterred India from creating Kafkaesque scenarios.

India after independence has observed Kafkaesque tendencies, where the complex and bureaucratic Judiciary has been used to serve the goals of an authoritarian government. The unending bureaucracy of the judiciary has also failed in protecting the legal rights of individuals. In 1979, the Bihar jail's retention of inmates awaiting trial was the subject of an article in the Indian Express newspaper. Few of these detainees awaiting trial were serving sentences that were longer than their actual detention period if any at all. The PIL that was filed as a result came to be known as the landmark case of *Hussainara Khatoon v State of Bihar*⁶. *Thousands of children, men, and women spent years confined in prisons due to not being able to "afford" speedy trials. This case highlights the flagrant violations of the rights of undertrial prisoners because the courts lacked the time and resources to either acquit them or give them the appropriate sentence. Even though some of the detainees were innocent, they were kept in jails without their will, breaching fundamental human rights. A judiciary cannot be considered fair if it is unable to deliver justice for the poor citizens of the country. Since the case, roughly 40,000 convicts who were awaiting trial were freed.*

⁶ *Hussainara Khatoon & Ors. v Home Secretary, State of Bihar* (1979, AIR 1369)

Before the Law is a parable that is told by a priest to Joseph K in the ninth chapter of *The Trial*. The parable tells the story of a man who waits his entire life for entry to the Law. Though the gate is open, the gatekeeper denies entrance to the man. At the end, as the man is dying, the gatekeeper shuts the gate stating that the gate was specially made for the man.⁷ The parable talks about the unattainable law, which even though was designed to protect the man, ended up futile. There have been multiple instances of law not being used to provide justice to individuals in the Indian context. On March 1, 1976, P. Rajan, an engineering student, was arrested by the police for a crime in which it was obvious he played no part, tortured, and executed after that. In the case of *K. Karunakaran v T. V. Eachara Warriar*,⁸ Eachara Warriar, Rajan's father filed a *habeas corpus* petition to uncover the truth of his missing son. Despite the High Court's order, the police kept denying the arrest of Rajan. Rajan's body was never found. This case displays the severity of State brutality during the period of Emergency in India. Despite the unrelenting efforts of Eachara Warriar, the court couldn't give him justice for the wrongs that were committed by the State.

Another prominent case that stands testament to the control of the judiciary by the State during the Emergency period is *ADM Jabalpur v Shivkant Shukla*⁹. Commonly known as the Habeas Corpus case, we can observe how the Supreme Court of India was used by the government to oppress dissent in the country through the majority ruling of this case. Many opposition leaders were taken into custody without trial under the Maintenance of Internal Security Act (MISA) since they were considered to be political threats to the government. Multiple petitions were filed challenging the detainment of the opposition leaders, however, the Supreme Court ruled in favour of the government upholding the constitutional validity of MISA due to the immense of political pressure.

What is India's current situation? Identifying and rectifying these cases empowered the judiciary in becoming an institution free from state control and complex processes that perplex individuals. The answer is no. Stan Swamy, a Jharkhand-based social activist was arrested by the NIA under the Unlawful Activities (Prevention) Act claiming that he needed to be

⁷ Franz Kafka, *The Trial* (trans) Willa and Edwin Muir (Vintage Books 2009)

⁸ *K. Karunakaran v T. V. Eachara Warriar* (1978), AIR 290

⁹ *ADM Jabalpur v Shivkant Shukla* (1976) 2 SCC 521

interrogated for his alleged involvement in the *Elgar Parishad and Bhima Koregaon Case*. The NIA, however, never requested Stan Swamy's detention for even a single day of interrogation. He would stay in jail, refused bail, and a hearing, until he was transferred to Holy Family Hospital on May 28, 2021, where he would die on July 5, 2021. Stan Swamy's situation is very similar to the man in *Before the Law*. He also reminds the readers of the character of Block from the novel. Block's trial hasn't even started yet, despite the fact that he has spent five years defending his case and has lost his job. Block, unlike K., despite his attempts, never receives the first hearing and is instead held in a subservient position to the court and Huld. Stan Swamy's situation exemplifies the inaccessibility or impenetrability of a system that causes an individual to perish.

CONCLUSION

According to Kafka, the legal system is a complex and bureaucratically governed institution that was created to serve the state's agenda. In *The Trial*, Kafka shows how an unaccountable and inaccessible judicial framework eventually destroys society's sense of justice. The legal system is a terrifying mechanism that continues to operate regardless of how powerful one's resistance is. By having the legal system's effect visible practically everywhere K visits, Kafka emphasizes the system's broad reach. Every time K enters the courtroom, the suffocating air weakens his mental and physical determination. Rather than promoting social justice, the judicial process in *The Trial* seeks to suffocate the ordinary people's freedom. In the end, just like how K is killed for a crime he doesn't know, modern India is also observing the growth of a Kafkaesque society with the death of many individuals just like Stan Swamy.