

LITERARY REFERENCING IN INDIAN COURTS: THE
INSTANCE OF CHARLES DICKENS

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Abstract

Victorian novelist Charles Dickens penned numerous works that saw immense popularity in their day. Simultaneously, his writings highlighted several social issues and problems, leading to concrete social reform. Not only do his works continue to be read and admired across the world, courts in many countries have referred to his books in their judgments. This includes Indian courts, with the Supreme Court and several high courts having quoted or referenced a number of his works (among them *The Pickwick Papers*, *Nicholas Nickleby*, *Bleak House*, and *Oliver Twist*) in various judgments. The present paper seeks to consider the judgments of Indian courts which have cited the works of Dickens and look into the issues on which, and the purposes for which such reference has been made. The paper further enquires into the reasons why an English novelist, whose works are over a 150 years old, continues to remain relevant in the present context and for the courts.

I Introduction

CHARLES JOHN Huffam Dickens (1812–1870), considered one of the greatest, if not the greatest, English writers of the Victorian age,¹ not only wrote numerous memorable works and created several unforgettable characters, his works also played another important role. Besides entertaining his readers, his novels (and indeed his non-fiction) highlighted many ills plaguing society, and contributed towards social change. As Cunningham observes, '[m]any have credited him with creating the climate

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1 See for instance, "Charles Dickens", in *Encyclopaedia Britannica*, available at: <https://www.britannica.com/biography/Charles-Dickens-British-novelist> (last visited on Aug. 17, 2023). American literary critic and professor of humanities Harold Bloom includes Charles Dickens among the 26 writers he sees as an essential part of the "Western canon". Harold Bloom, *The Western Canon: The Books and School of the Ages* (New York, Riverhead Books, 1994).

of opinion that facilitated the reforms in education, public health, and criminal law, that helped to make Britain a safer and less strife-ridden society.²

Consider the case of the brutal boarding schools in Yorkshire, grossly neglecting pupils (fleas in beds, improper meals of broth which was no more than pot skimmings, and full of maggots) so much so that in a harrowing instance in one school, Bowes Academy, eight students were rendered blind due to negligence.³ Portraying the school and its horrors as the fictional Dotheboys Academy, Dickens' *Nicholas Nickleby* (1838–1839) is seen as “instrumental in destroying the Yorkshire school industry” with Bowes Academy and like institutions being put out of business by 1840.⁴ Likewise, he highlighted the problems of judicial delays in *Bleak House* (1852–1853), the inadequacies of the education system in *Hard Times* (1854), the workhouse system in *Oliver Twist* (1837–1839) as also through the depiction of characters (Betty Higden) willing to die in poverty rather than be taken to a workhouse in *Our Mutual Friend* (1864–1865) and the lamentable state of nursing through the character of Sairey Gamp in *Martin Chuzzlewit* (1842–1843; at a time before Florence Nightingale had set the course for professional nursing).

While much time may have passed since the publication of these works, and society be it in England or other parts of the world has undergone groundbreaking industrial and scientific progress and witnessed significant economic and social change, a number of the problems that Dickens called attention to in his works continue to afflict present-day society in both the so-called “developed” and “developing” worlds. This and his sympathetic portrayal of characters suffering as a consequence of such problems is

2 Hugh Cunningham, “Dickens as a Reformer” in David Paroissien (ed.), *A Companion to Charles Dickens* 159 (Oxford and Malden, MA, Wiley Blackwell, 2011). Yet for Cunningham, it becomes “less and less easy to see [Dickens] straightforwardly as a reformer”, on a closer and case-by-case examination, in that “his responses to particular issues were shaped by his abiding concern for humanity, and not by any coherent doctrine of the proper role of the state”. *Id.* at 159. Wertheim similarly is of the view that Dickens was more concerned with castigating social institutions than reform. Larry M. Wertheim, “Law, Literature and Morality in the Novels of Charles Dickens” 20(1) *William Mitchell Law Review* 111, 117 (1994). On the other hand, William Walter Crotch, sees Dickens as being “at heart and by conviction a reformer” who found around him corruption, neglect of the poor in education, housing and sanitation, and disregard for issues of “child life”, which he sought to remedy both through the characters he created and “a constant endeavour in other directions to awaken the social consciousness to clamant evils and imperious needs”. William Walter Crotch, *Charles Dickens—Social Reformer: The Social Teachings of England's Greatest Novelist* (Loschberg, Jazzybee Verlag, 2020).

3 See the discussion in John Sutherland, “Nicholas Nickleby and the Yorkshire Schools”, (15 May 2014), available at: <https://www.bl.uk/romantics-and-victorians/articles/nicholas-nickleby-and-the-yorkshire-schools> (last visited on 20 Aug, 2023).

4 *Id.* This is also described as “perhaps the most direct change caused by the writing of Charles Dickens”. “How Charles Dickens Changed History: The Influence of Charles Dickens”, available at <https://howcharlesdickenschangedhistory.weebly.com/the-influence-of-charles-dickens.html> last visited on (Aug. 4, 2023).

perhaps one reason courts in different parts of the world even today refer to his works in their judgments. This practice is not in order to “decide any claim or defense” but because such references “resonate with readers.”⁵ However, literature may also have greater influence on court opinions, as another commenter points out observing, “American judges have occasionally sifted through lines of Dante or Eliot, finding in literature the seeds for new doctrines.”⁶ Also relevant as concerns reference to Dickens is that he is seen as having “dr[awn] upon lawyers and the law as characters in and substance for his novels” more than any other writer in the English-speaking world, his work as a law clerk and parliamentary reporter allowing him “to depict lawyers and legal matters with deftness and assurance.”⁷

Such practice of reference by courts to literary works can be seen as part of what has been described as the “literature in law phenomenon”, a sub theme of “Law and Literature”,⁸ and “a logical evolution of the common law system.”⁹ It can be an important tool “to clarify the factual or legal meaning of a decision.”¹⁰ “[R]eferences to fictional accounts, especially when they are, like Shakespeare’s works, so integral to

5 Douglas E. Abrams, “Charles Dickens in the Courts”⁷⁸ *Journal of Missouri Bar* 29 (Jan–Feb 2022).

6 John M. DeStefano III, “On Literature as Legal Authority” 49 *Arizona Law Review* 521, 521–522 (2007).

7 Wertheim, *supra* note 2 at 115. On Dickens and law, also see, Sir William Searle Holdsworth, *Charles Dickens as a Legal Historian* (Union, New Jersey, The Lawbook Exchange Ltd, 1995), who argues, *inter alia*, that “the treatment by Dickens of various aspects of the law and the lawyers of his day, is a very valuable addition to our authorities, not only for that period but for earlier periods in our legal history” (at 1); R. Coles, “Charles Dickens and the Law”, 59(4) *The Virginia Quarterly Review* 564–586 (1983); Jan-Melissa Schramm, “Dickens and the Law” in David Paoissien, *A Companion to Charles Dickens* 277–293 (Oxford and Malden, MA, Wiley Blackwell, 2011); Maureen E. Markey, “Charles Dickens’ Bleak House: Tulkington as a Successful Literary Lawyer”, 14 *St Thomas Law Review* 689 (2001–2002); Michael K. McChrystal, ‘At the Foot of the Master: What Charles Dickens Got Right About What Lawyers Do Wrong’, 78 *Orlando Law Review* 393 (1999).

8 On Law and Literature see, Richard A. Posner, *Law & Literature* (3rd Ed. Cambridge, MA, Harvard University Press, 2009); Richard A. Posner, “Law and Literature: A Relation Reargued”, 72(8) *Virginia Law Review* 1351 (1986); Robin West, “Reflections on the Law and Literature Movement” 1 *Yale Journal of Law and the Humanities* 129 (1988); Ian Ward, *Law and Literature: Possibilities and Perspectives* (Cambridge: Cambridge University Press, 1995); Maria Aristodemou, *Law and Literature: Journeys From Her to Eternity* (Oxford, Oxford University Press, 2000); K. Dolin, *A Critical Introduction to Law and Literature* (Cambridge. Cambridge University Press, 2007). Thomas Morawetz, “Law and Literature”, in Dennis Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory* 446–456 (Oxford: Wiley-Blackwell, 2010). The law and literature movement is said to be founded by John Wigmore and Justice Benjamin Nathan Cardozo. Chanima Wijebandara, “Fiction and Poetry in Judgments”, 1 *JSALaw Journal* (2013).

9 Géraldine Gadbon George, “To Quote or Not to Quote: ‘Literature in Law’ in European Court Decisions and Legal English Teaching” 64 *Le Revue Geras: ASP* 75 (2013).

10 *Ibid.*

human experience”, also have a role as” a powerful tool of persuasion.”¹¹ Moreover, literary works are seen as appealing to “both the emotions and the intellect”, and “create meaning and emotional response in ways unachievable by other citations”.¹² Besides its emotional value, literature “can be a necessary rhetorical shortcut for negotiating the complexities of human existence” and “fill voids of argument where history, philosophy and economics come up short.”¹³ A further function is that it testifies to the general acceptance of a point.¹⁴ Well established in common law countries,¹⁵ the phenomenon of citing literary works in court judgments is now also being seen in European courts.¹⁶

The present paper seeks to look at how Indian courts, particularly, the Supreme Court and high courts, have over the years referred to numerous works by Charles Dickens,¹⁷ either in the context of a comparable social problem or situation or even a character whose plight evokes that of a party before it. The part that follows provides an overview of judgments which have cited different works by Charles Dickens discussed by the theme or issue in the context of which the reference was made. The next section attempts to analyse these decisions to consider both the range of issues on which Dickens’ works have been seen as relevant by courts, as well as the purposes for which they have been so cited. In light of the wide range of issues on which numerous decisions of Indian courts have cited the writings of Dickens, the fourth part considers his relevance to the current context. The concluding section identifies some issues for further research on the citation of Dickens and on literary references by Indian courts, more broadly.

II Citing Dickens: An overview of judgments of the Supreme Court and high courts

The works of Charles Dickens have been referred to by both the Supreme Court of India and various high courts¹⁸ on a range of issues from long incarceration of prisoners

11 M. Todd Henderson, “Citing Fiction” 11(2) *The Green Bag* 171, 171 (2008).

12 Wijebandara, *supra* note 8. At the same time as Wijebandara notes, it may also be seen as undermining the gravity of the issue.

13 DeStefano *supra* note 6 at 524.

14 *Id.* at 529.

15 As DeStefano notes, “The common law’s affection for literature is not new.” *Id.* at 522.

16 Gadbon George, *supra* note 9.

17 Charles Dickens is of course, not the only author who has been thus cited. Others include for example Munshi Premchand (see *Association of Dead People v. State of UP* (2000) 1 AWC 663); Shakespeare (*Shri Sushil Kumar v. Deputy Commissioner of Police, Central Administrative Tribunal, Principal Bench*, OA 1968/2009, decided 10 August 2010); Sharat Chandra Chattopadhyaya (*Budhadev Karmaskar v. State of West Bengal*, Criminal Appeal 135/2010, decided on Aug. 2, 2011, Supreme Court of India), and so on.

18 It may be noted here that the present paper has not looked into district court judgments (if any) that have cited the works of Charles Dickens.

to judicial delays to issues of breakdown of marriage and even financial fraud. Discussed below are some such decisions arranged by theme or issue.

Imprisonment: Long confinement and solitary confinement

While the system of administration of justice is put in place to ensure effective and prompt resolution of disputes or trial of accused persons, its many shortcomings imply that this is not always the case. One such instance is that of incarceration for long and at times, disproportionate periods of time. Dickens' 1859 novel *A Tale of Two Cities*, set amidst the French revolution, tells the story among others of Alexandre Manette, a French physician who has spent 18 years in the Bastille despite being innocent of any crime, and as a result is driven into a state of such desolation that he takes refuge in shoemaking, the only thing allowed to him in prison, with no memory of his name or work.

The plight of Manette was referred to in *Som Mittal v. State of Karnataka*,¹⁹ where Markandey Katju J in his concurring judgment emphasized the value of the right to liberty, a hard-won right which should not be lightly interfered with. In this context, the situation of the innocent Manette, incarcerated for 18 years simply on the whims of an aristocrat, is discussed.²⁰ In *Som Mittal*, the appellant was the managing director of a company, a female employee of which was murdered when travelling from her home to the workplace; the responsibility for ensuring safe transport for female employees at night had been that of the employer.

Once again Katju, J looked to the distress suffered by Manette in *State of Kerala v. Raneef*,²¹ a matter involving, *inter alia*, the Unlawful Activities Prevention Act, where the respondent was accused of providing medical aid to one of the persons accused of a brutal assault on one Professor Jacob, as also of being a member of a particular organization. Allowing grant of bail to the doctor, incarcerated for a period of over two months, the court took note *inter alia*, that he merely provided medical aid as required by the hippocratic oath, that the organization he was a member of had not been proved to be a terrorist organization, and that given the time taken for disposal of proceedings in the country, if not released he may end up like Manette, "forgetting his profession and even his name".²²

19 (2008) 3 SCC 753.

20 *Id.* at para 25.

21 (2011) 1 SCC 754.

22 *Id.* at para 13. These observations from *Raneef* were cited in *Dr. Vinod Bhandari v. State of M.P.*, Criminal Appeal 220/2015 decided on Feb. 4, 2015, Supreme Court of India; and *Sanjay Chandra v. C. B. I.*, (2012) 1 SCC 40, among others. It may be mentioned here that the decision in *Raneef* has recently been overruled (March 2023; *Arup Bhuyan v. State of Assam*, Criminal Appeal no. 889/2007, decided on Mar. 24, 2023, Supreme Court of India). However, this is not relevant for the purposes of the present paper.

Besides the case of the period spent in prison, the nature of confinement, specifically solitary confinement and its impact on the prisoner is another aspect on which a work by Dickens came to be cited by the Supreme Court. In the landmark *Sunil Batra v. Delhi Administration*,²³ issues of human rights within the prison setting were raised, including that of a prisoner under death sentence being placed in solitary confinement. Krishna Iyer, J, bringing up the question of whether it is “legal or legicidal to inflict awesome loneliness on a living person” went on to refer to *American Notes and Pictures from Italy* (1846) by Charles Dickens, where based on his observation of the Pennsylvania Penitentiary and solitary confinement therein, Dickens wrote, *inter alia*,

I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment prolonged for years, inflicts upon the sufferers ... its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the Flesh; because its wounds are not upon the surface and it extorts few cries that human ears can hear ...

The court²⁴ found the punishment of solitary confinement to be “revolting” and “out of tune with modern thinking.” However, while it noted that such confinement is not sanctioned for prisoners under sentence of death, it found that it was legal within the provisions to separate such persons from other prisoners when they are locked in.

Court proceedings and witnesses

The law is a subject in several Dickens novels, often taking a critical look at the shortcomings and absurdities of the legal system and the people forming part of it, with some instances also involving an element of humour. For instance, chapter 24 of his *Sketches by Boz* (1836) gives the reader a look at Old Bailey, while *Bleak House* (1852–1853) follows a case in Chancery and in *The Pickwick Papers* (1836–1837), we see the action of *Bardell v. Pickwick* where Bardell, landlady to Pickwick prosecutes him for breach of promise to marry (or what she mistakenly understood as being such a promise). In *A Tale of Two Cities* (1859), we find in Sydney Carton a lawyer with many flaws but who goes on to help another character Charles Darnay, both by defending him in court and outside, while *Our Mutual Friend* (1864–1865), features the insolent and not very successful Eugene Wrayburn, also a barrister; Mr Jaggery is a bullying attorney in *Great Expectations* and Mr Tulkinghorn is a solicitor in *Bleak House*, legal adviser to Sir Leichestor Deadlock. In *David Copperfield* (1849–1850), the antagonist Uriah Heep is a law clerk. This is thus expectedly an area in the context of which the writings of Dickens have come to be cited by courts.

23 AIR 1978 SC 1675.

24 Judgment of Chandrachud, CJ, Fazal Ali, Shingal and Desai, JJ.

Ayesha Bi v. Peerkehan Sahab,²⁵ was a case involving charges of illegitimate children and adultery, in which one of the issues before the court pertained to “defamation” committed through the mouth of the *vakil* due to imputations made by a party. In this background, the duties of lawyers in the course of their profession were considered, with the court taking note that at times, cross-examination is allowed to be carried on to an extent that can only be described as “scandalous”. Besides taking note of the satirization of offensive cross examination in chapter 24 of *The Pickwick Papers*, the court went on to refer at more length to *Great Expectations*, which portrays a bullying lawyer, Jaggers who while examining a lady:²⁶

was striking her and the bench and everybody present, with awe. If anybody of whatsoever degree said a word that he did not approve of, he instantly required to have it “taken down”. If anybody wouldn’t make an admission he said, “I’ll have it out of you” and if anybody made an admission he said “Now I have got you”. The Magistrates shivered under a single bite of his finger. Thieves and thief-takers hung in dread rapture on his words, and shrank when a hair of his eyebrows turned in their direction.

Again, in the context of a witness statement, in fact to contrast what in a Dickens novel was described by the judge (wrongly in the court’s view) as hearsay, the court in *Kashinath Tukaram Jadhav v. State of Maharashtra*,²⁷ referred to the statement in court by Sam Weller, a character in the book *The Pickwick Papers* (who is hired as attendant to Mr Pickwick). When Weller describes his service under Mr Pickwick as “a very good service”, the Prosecutor asks him “Little to do, and plenty to get, I suppose?” To this Weller replies “Oh, quite enough to get, sir, as the soldier said when they ordered him three hundred lashes.” The judge in the book tells him “You must not tell us what the soldier, or any other man, said, sir, it is not evidence.” Distinguishing this instance, Vaze, J was of the view that there was a fallacy in what the judge said, as Weller’s statement was primary evidence and not hearsay as he was describing his service by making a comparison or drawing an analogy.

Defamation versus social critique

As is the case with works of fiction, other media such as films have on occasion critiqued the legal and justice delivery system. In some instances, such attempts have faced allegations of “defamation”, particularly by advocates. Some such cases have seen courts making a comparison of the critique with that made by Dickens in his novels.

25 AIR 1954 Mad 741.

26 *Id.* at para 22 (quote has been compared against original and typographical errors amended).

27 (1984) 1 Bom CR 563.

A case at the High Court of Rajasthan, *Shah Rukh Khan v. State of Rajasthan*,²⁸ pertained to a Hindi film, *Ram Jaane*, specifically a dialogue in a courtroom scene in the same, in which the character alleges that lawyers sell their morals for money (being prepared to defend the character even when knowing him to have committed murder), and that by selling the law, people's lives have become a misery. Here the Rajasthan High Court, while noting that the legal profession was neither the main concern nor centrepiece of the film, drew a parallel observing that its critique was similar to that in *Bleak House* of lawyers arguing the case for generations till all the inheritance had gone to the barristers and none was left for the parties. The court saw the critique in *Bleak House* as being that of the British social system rather than of the Chancery, as such.

Alleged critique of advocates through the medium of a film had come before the court in a much earlier instance as well in *Asha Parekh v. State of Bihar*.²⁹ In this case, the petitioners were accused of "aiding and abetting" the production of a film (*Nadan*) which was seen as defamatory of advocates as a class, leading to a criminal complaint. Similar to the case of *Shah Rukh Khan*, the court saw the portrayal of advocates in the film as a criticism of some such persons who are "black sheep". In support of this view, *The Pickwick Papers* was referred to where Dickens portrayed an advocate's office with two porters outside as touts who would procure marriage licences, with the attorney himself issuing marriage licences without a marriage having taken place.³⁰

Inordinate delays in the delivery of justice

Long pending suits which linger for years, with the original parties at times predeceasing the judgment in the matter, is an issue that has plagued many a country, and continues to do so. This was the subject of Dickens' *Bleak House* (1852–1853), wherein a civil suit *Jarndyce v. Jarndyce* stretches on for many years, with many parties dying, children being born, growing up and made party to the matter, and the case itself becoming so complicated that none can tell what it means. This state of affairs described in the book was quoted by the Supreme Court in *RajinderaSingh (Dead) by LRs v. Prem Mai*.³¹

Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores

28 RLW (2008) 1 Raj 809.

29 (1977) CrLJ 21.

30 See Chapter X, *The Pickwick Papers*.

31 (2007) 11 SCC 11.

of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why; whole families have inherited legendary hatreds with the suit. The little plaintiff or defendant, who was promised a new rocking-horse when Jarndyce and Jarndyce should be settled, has grown up, possessed himself of a real horse, and trotted away into the other world. Fair wards of court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out; the legion of bills in the suit have been transformed into mere bills of mortality; there are not three Jarndyces left upon the earth perhaps, since old Tom Jarndyce in despair blew his brains out at a coffee house in Chancery Lane; but Jarndyce and Jarndyce still drags its dreary length before the court, perennially hopeless.³²

In the court's view, this was also descriptive of the situation prevalent in India today, where people are "fast losing faith in the judiciary because of the inordinate delay in disposal of cases".³³

The issue of judicial delays was also considered by the Calcutta High Court in *Indu Bhusan Jana v. The Union of India*.³⁴ Here discussing how the "grim picture of judicial delay" has been sketched by history and literature, the court once again referred to *Bleak House* which spoke of Chancery where "solicitors are mistily engaged in one of the ten thousand stages of an endless cause, tripping one another up on slippery precedents, groping knee-deep in technicalities and making a pretence of equity with serious faces". The court went on to observe that it is this picture from *Bleak House* that has stuck with people and many regard the court as a place "which exhausts finances, patience, courage and hope, overthrows the brain and breaks the heart". Likewise, the High Court of Gauhati in *Assam Leather Industry v. Union of India*,³⁵ cited *Bleak House* comparing the cases dragging on for years before courts to that of *Jarndyce v. Jarndyce*. It cited an example of a case of the High Court of Karnataka begun when the litigant was a bachelor but who had by the current time become a grandfather of 10, some of whom would possibly have to continue the matter after his death.

32 *Id.* at para 10 (quoting from *Bleak House*, Ch. 1).

33 *Id.* at para 11. It may be mentioned here that albeit not as long a delay as in *Rajindera Singh* (in which the original suit appears to have been filed in 1957) but the United States Supreme Court also had occasion to refer to *Bleak House* in *Stern v. Marshall*, 564 US 462 (2011), where a probate suit was filed in 1996 followed by several related actions, claims and counterclaims, finally settled by the US Supreme Court in 2011, by which time both the original parties Vickie Lynn Marshall and her stepson, Pierce Marshall had died. Discussed in Abrams, *supra* note 5 at 29–30.

34 FMA 613/2008, decided on Sep. 19, 2008.

35 (2001) 104 Comp Cas 115 Gauhati.

Responsiveness of the law and courts

Dickens has also been referred to by courts at various times when emphasizing the necessity for the law or the courts themselves to be responsive to the needs of people, and in this regard, not getting tangled in or diverted by technicalities. Dickens' well-known quote, spoken through the mouth of the character Mr Bumble, a beadle, in *Oliver Twist*, "The law is a ass—a idiot" was cited in *Madhuker G. E. Pankakar v. Jaswant Chobbildas Rajani*,³⁶ a case concerned with the Maharashtra Municipalities Act and the issue of holding an office of profit, which is a disqualification for candidates contesting elections. The court in the judgment of Krishna Iyer, J. questioned whether the destiny of the case would be dependent on "murky semantics as to what is an office—filling columns of law lexicons and dictionaries" or whether the question turned on a "contract of service or contract for service", lamenting why the law could not be made plainer in the area of mass-participatory elections. Krishna Iyer, J. went on to note that "Dickens is still valid to our modern Legislations, unresponsive to the common man's need of comprehensible law and unmindful of the court's consequential wrestling with etheric differences!"³⁷

*Swaraj Garg v. K.M. Garg*³⁸ involved a matrimonial dispute relating to a set of circumstances where the couple were employed in different towns, and a conflict arose as to various points including where the matrimonial home should be. The husband's position was likened by the court to the character Stephen Blackpool in Dickens' *Hard Times* (1854) who sought legal advice to end his unhappy marriage, but was told that there was no remedy available for him. The court relied on this instance to observe that where irretrievable breakdown of marriage occurs, divorce ought to be available under law, and in such a situation fault was immaterial.³⁹

Occasion to remark on the need for the law to be free of legalistics which can frustrate the process of justice also arose before the High Court of Delhi in *Jindal Steel and Power Limited v N. S. Atwal*,⁴⁰ where Endlaw, J. referring to the same quote from *Oliver Twist*, "the law is a ass—a idiot", observed that "It is the duty of every court to prevent its machinery from being made a sham, thereby running down the rule of law itself as an object of public ridicule".⁴¹

36 (1977) 1 SCC 70.

37 *Id.* at para 30.

38 AIR 1978 Delhi 296

39 On grant of divorce on ground of irretrievable breakdown of marriage vide exercise of powers under article 142 of the Constitution, see the recent decision of a Constitution Bench of the Supreme Court in *Shilpa Sailesh v. Varun Sreenivasan*, Transfer Petition 1118/2014, decided 1 May 2023, 2023 SCC Online SC 544.

40 C.S. (O.S.) 713/2010 decided on July 4, 2013, Delhi High Court, para 14.

41 See also *Prof Ram Prakash v. M/s Bengali Sweet Centre*, LPA 768/2011, Dec. 22, 2011, Delhi High Court, where again the court taking note of Mr Bumble in *Oliver Twist* took the view that if owing to shackles, the court cannot grant the relief that is due to the appellant, it would be doing a disservice rather than service. (para 17)

One of the best known and most poignant incidents from the novel *Oliver Twist* where the little Oliver Twist dares to ask for a second helping of gruel, only to be refused (in fact resulting in Oliver being delivered a blow by the master) has been referred to by courts in more than one instance, distinguishing the same from their own role in delivering justice to petitioners. *Narendra Singh and Others v. State and Others*⁴² was a matter related to persons appointed as Laboratory Assistants challenging the fact that no avenues for promotion in their jobs were available to them. In the context of a second petition moved by these persons as the state was simply sitting on the prior representations without taking action, the court observed:

After all, the Court cannot act as the orphanage keeper in Charles Dicken's novel *Oliver Twist*, who rebuked Oliver Twist for having asked for a second helping of soup. This court, in its writ jurisdiction, is bestowed with the role of an archangel, which has to safeguard the interests and the rights of the people.

In a more recent judgment of the Supreme Court, *Jithendran v. New India Assurance Co.*,⁴³ where the motor accident claim of a person who had suffered severe injuries in an accident and as a consequence became disabled, was being considered, this instance in *Oliver Twist* was once again brought up, the court observing,

The very fact that a healthy person turns into an invalid, being deprived of normal companionship, and incapable of leading a productive life, makes one suffer the loss of self-dignity. Such a Claimant must not be viewed as a modern day Oliver Twist, having to make entreaties as the boy in the orphanage in Charles Dickens's classic, "Please Sir, I want some more". The efforts must be to substantially ameliorate the misery of the claimant and recognize his actual needs by accounting for the ground realities.

The education system

The ills of the education system in England, whether in the form of exploitative or negligent schools or inadequate curricula were raised in various works by Dickens including *Nicholas Nickleby*, *David Copperfield*, and *Hard Times*. In *Ramji Tiwari v. District Inspector of Schools*,⁴⁴ in a petition raising the matter of salaries of teachers going unpaid, the court had occasion to look into the development of education over the years, taking note of the position in England prior to the government stepping into the field. Such "neglect" by the state, it noted, led to the poor shape of education in that

42 S.B. Civil Writ Petition 3347/1996, decided on Sep. 30, 2009, High Court of Rajasthan.

43 Civil Appeal No 6494/2021 decided on Oct. 27, 2021, Supreme Court of India.

44 (1997) UPLBEC 690.

country as demonstrated in schools such as the fictional Salem House, Dotheboys Hall, and the School in *David Copperfield*, *Nicholas Nickleby* and *Hard Times*, respectively.

The reference to his school as “the shop” by the character Wackford Squeers, proprietor of Dotheboys Hall in *Nicholas Nickleby* and securing Nicholas “cheap” as a teacher in the establishment were taken note of in the much earlier *Bangalore Water Supply and Sewerage Board v. R. Rajappa*⁴⁵ in the context of education (among others) having taken the colour of an industry, complete with unions.

The quality and role of teachers was an issue considered by the Patna High Court in a recent decision *Mahajabeen Khatoon v. Union of India*,⁴⁶ where a quote from Dickens in *Hard Times*, “What I want is facts. Teach these Boys and girls nothing but facts. Facts alone are wanted in life. Plant nothing else and root out everything else” was cited. However, it is unclear from the preceding or following paras whether Dickens’ critique of such a system suppressing creativity was also taken in account in this decision.

Plight of vulnerable groups

Social problems, whether the predicament of the poor forced into deplorable conditions in workhouses, or children left to fend for themselves, or even women forced into sex work were raised by Dickens in his many novels, and some of these instances have been relied on in judgments to compare or demonstrate the plight of persons in like situations in real life.

In *A Srirama Babu v. The Chief Secretary*,⁴⁷ a public interest litigation was filed in the context of underprivileged children left to fend for themselves, who as a consequence, have to face exploitation and deprivation of basic needs as also constitutional and statutory safeguards. Among several sources including a report by Human Rights Watch, V. M. Kumar J also referred to *Nicholas Nickleby*, for the following description of the conditions in which children had to work for exploitative employers:

At this early hour many sickly girls whose business like that of the poor worm is to produce with patient toil, the finery that bedecks the thoughtless and luxurious, traverse our streets, making towards the scene of their daily labour and catching as if by stealth in their hurried walk, the only gasp of wholesome air and glimpse of sunlight which cheers this monotonous existence during the long train of hours that makes a working day. As she drew nigh to the more fashionable quarter of the town, Kate marked many of this class as they passed by hurrying like herself to their painful occupation and saw in their unhealthy looks and

45 AIR 1978 SC 548.

46 Civil Writ Jurisdiction Case 161214/2019 decided on Oct. 19, 2022, High Court of Patna.

47 (1998) 1 Karnataka Law Journal 191.

feeble gait but too clear an evidence that her misgivings were not groundless.

The case of *Budhadev Karmaskar v. State of West Bengal* was one that arose in the background of the brutal murder of a sex worker, wherein the court through a public interest litigation considered the problems faced by this group. Noting how sex workers adopt this line of work for sheer survival, the court referred to the character Nancy from *Oliver Twist* who speaks the words, “you adapt or you die” to demonstrate their situation. In the story Nancy goes on to sacrifice her life to save Oliver Twist.⁴⁸

Ponzi schemes and other financial matters

Investment frauds ostensibly involving legitimate investments named after Italian businessman Charles Ponzi are traced back to the 1860s, and have been portrayed in not one but two Dickens novels, *Martin Chuzzlewit* and *Little Dorrit*.⁴⁹ In *K.K. Baskaran v. State, Represented by its Secretary, Tamil Nadu and Others*,⁵⁰ the latter of these was referred to in noting that financial swindling of this variety is not unique to India. The judgment opens with the example of Merdle’s ponzi scheme in the book which led to huge losses suffered by both the Dorrit family and another character, Arthur Clenham.

*Geo Tech Construction Company Pvt Ltd v. Hindustan Steel Works*⁵¹ was a case concerned with Bank guarantees, and in considering the sanctity of bank guarantees, Mohammed J of the High Court of Kerala referred to the definition of Wilkins Micawber in *David Copperfield* that “A guarantee is where one man who can’t pay gets another man who can’t pay to say he will”, while observing that the same though cynical, was thought provoking.

III. Brief Analysis

It is apparent from the discussion and examples in the preceding section that the works of Charles Dickens have been widely referred to by Indian courts in a plethora of judgments, across a range of issues, and indeed over the years as well. While this paper has not attempted to make any exhaustive survey of the judgments of high

48 *Supra* note 17.

49 On such schemes in *Martin Chuzzlewit* and *Little Dorrit*, Mary Pat Campbell, “Dickens and Business Fraud”, 53 *The Stepping Stone* 11 (2014).

50 Civil Appeal 2341/2011 decided on Mar. 4, 2011, Supreme Court of India. Monroe, Carvajal and Potiloe, writing on the “Perils of Ponzis” in a 2010 issue of *Finance & Development* open their article noting that even a century and a half after Dickens wrote of investors succumbing to such schemes in *Little Dorrit*, “trusting victims are still tempted by such get-rich-quick swindles”. See Hunter Monroe, Ana Carvajal and Catherine Pattilo, “Perils of Ponzis” 47(1) *Finance and Development* 37 (2010).

51 AIR 1999 Ker 72.

courts and the Supreme Court which have referenced the works of Dickens, the various examples cited in themselves testify to the extensiveness of such practice.⁵²

It is interesting to note from the judgments discussed in this paper, that 10 of the 14 completed novels⁵³ that Charles Dickens published in his lifetime,⁵⁴ as well as one volume of his travel writings have been referenced by Indian courts in various decisions.⁵⁵

As mentioned above, Dickens' experiences training as a lawyer's clerk and with parliamentary reporting among others brought him into close contact with the law and this reflected in his writings through portrayals and critique of lawyers and the legal system. And these as seen in the discussion in the preceding section are issues on which he has come to be cited numerous times, whether in the context of long confinement or solitary confinement of prisoners (for example, *Raneef, Sunil Batra*), delays in the justice delivery system (for example, *Rajinder Singh; Assam Leather Industry*), critique of lawyers (whether for malpractices or bullying; for example, *Shah Rukh Khan*), cross-examination and treatment of witnesses (for example, *Ayesha Bee*) or to call for the law to be responsive to the needs of people and of courts to ensure justice to those seeking it (for example, *Jindal Steel and Power Ltd; Jithendran*).

Besides matters concerning the law specifically, the novels of Dickens also raised a number of social issues and problems, be it in the context of education, the poor law and workhouses, or the plight of vulnerable persons. As apparent in the decisions of *Ramji Tiwari, Srirama Babu, and Budhadev Karmaskar*, such issues too have seen reference

52 It may be clarified here that in using the word "extensiveness", the intention is to refer to the number of cases which have cited or mentioned Dickens (this paper refers to about 25 such cases though there are various others as well directly or indirectly referencing him). However, in terms of percentage or proportion, this may not account for any significant number. No attempt has been made to make any such calculation. In the American context, Henderson *supra*note11 undertakes such an analysis with regard to literature cited in judicial opinions and the frequency of such occurrences.

53 The novels cited in the judgments mentioned in this paper include *The Pickwick Papers, Oliver Twist, Nicholas Nickleby, The Old Curiosity Shop, David Copperfield, Bleak House, Hard Times, Little Dorrit, A Tale of Two Cities, and Great Expectations*.

54 Between 1837 and 1870 (the year of his death) Charles Dickens published 14 completed novels, while a 15th *The Mystery of Edwin Drood* remained unfinished. Besides the novels, he also published travel writings, short stories, Christmas stories and numerous essays and articles including on several social issues. See E.D.H. Johnson, "Dickens: Chronology of Novels", available at: <https://victorianweb.org/authors/dickens/edh/chronology.html> (last visited on July 30, 2023); see also "Charles Dickens Bibliography", available at: https://en.wikipedia.org/wiki/Charles_Dickens_bibliography (last visited on Aug. 6, 2023).

55 Additionally, indirect reference through citation of a commentary on Dickens is also seen, for example, in *V. K. Thomas alias Toms v. Malayala Manorama Company*, AIR 1988 Ker 291, Dickens is cited through observations in a book by William Searle Holdsworth, *Charles Dickens as a Legal Historian* (1928). Holdsworth, *supra* note 7.

to his works either to draw parallels or describe the plight of affected persons. Additionally, his works have also been taken note of in the context of varied other questions including breakdown of marriage (for example, *Swaraj Garg*) and financial matters such asponzi schemes (*K.K. Baskaran*).

Considering broadly the manner in which or purposes for which Dickens' works have been cited or referenced by courts, these include analogous situations or social problems (for instance, judicial delays in *Rajindera Singh* or *Indra Bhusan Jana*; non-availability of adequate remedies for breakdown of marriage in *Swaraj Garg*); describing the plight of particular persons or groups which have parallels in Dickens' characters (child workers in *A Srirama Babuas* against that of Kate Nickleby; those placed in solitary confinement in *Sunil Batra* compared to Dickens' observations of prisoners in Pennsylvania Penitentiary; the impact of long confinement on prisoners in *Raneef* similar to the predicament of Dr Alexandre Manette); the role of Dickens' novels as a piece of social commentary or critique (for instance in *Shah Rukh Khan* or *Asha Parekh*); or in taking note of historical developments (for instance, on the state's role in the education system in England in historical times in *Ramji Tiwari*). There are also instances where the reference is used as a foil to or to contrast the issue before the court or what the court seeks to do (for instance, refusal of a second helping of gruel to Oliver Twist versus the court not refusing a second petition by aggrieved persons in *Narendra Singh*; or the statement of Sam Weller not in reality being hearsay as pronounced by the judge in *Pickwick Papers* as clarified in *Kashinath Tukaram Jadban*),⁵⁶ or even to highlight a cynical, yet relevant observation (for instance, *Geo Tech Construction Company*).

Additionally, there are instances of decisions where a quote from Dickens' work has simply been used to enrich the judgment, as it resonates with the values or sentiments being expressed or situation discussed. For example, the decision in *Anuradha Bhasin v. Union of India*,⁵⁷ pertaining to internet shutdown in Kashmir opened with the introductory paragraph of Dickens' *A Tale of Two Cities*.

It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way- in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.

56 In the American context, on this, see Hendersen, *supra* note 11 at 183.

57 *Anuradha Bhasin v. Union of India* and *Ghulam Nabi Azad v. Union of India*, Writ Petition (Civil) 1031/2019 decided on Jan. 10, 2020, Supreme Court of India.

In *C.B. Dhall v. State Bank of India*,⁵⁸ where provisions which enabled the bank to forfeit or postpone the pension of employees as a measure to prevent fraudulent dealings (particularly by those close to superannuation) were being considered, the court while observing that guarantee funds and provisions in the rules for making good losses sustained due to dishonesty of employees were in place and forfeiture of pensions was not the answer, quoted Dickens stating, “If there were no bad people’, wrote Charles Dickens, ‘there would be no good lawyers’. With this comforting assurance from *The Old Curiosity Shop*, I will leave this subject for wiser heads to pursue.”⁵⁹

In *Ashwin Prafulla Pimpalwar v. State of Maharashtra*,⁶⁰ in the context of the concept of legitimate expectations, the court observed that

Those who evolved the concept [of legitimate expectation] were cautious enough to contain it within controllable limits. ... Some may have Great Expectations, as demonstrated by the title of the fiction by that great literary man, learned in law as well—Charles Dickens. The collocation of “legitimate expectation” is pregnant with meaning. Expectation therefore should be legitimate.

Thus, works by Dickens have been referenced or mentioned by courts in various ways from describing like problems to evoking sympathy for persons involved, from contrasting a situation to enriching a judgment. However, as far as the examples cited in this paper are concerned, the reference has not impacted on the legal aspects of any matter or arguments themselves.

IV Relevance of dickens across time and space

The extensive and (quite) frequent citing of works by a nineteenth-century Victorian author in twentieth and twenty-first century India, a very different time and spatial context, naturally gives rise to the question of why and in what way an author like Dickens is relevant in the current day.

A “literary superstar” of his day, his works have consistently remained in print and been adapted for other media like the large and small screen and stage, and translated into 150 languages.⁶¹ One reason to which his enduring popularity is attributable, as noted by Dickens scholar Natalie McKnight, is perhaps the human factor, that is his ability to move people and to “capture distorted perceptions of people in altered

58 (1984) ILLJ 537 Delhi.

59 *Id.* at para 46.

60 AIR 1992 Bom 233.

61 John O'Rourke, “Charles Dickens: A Novelist for Our Times”, *BU (Boston University) Today*, 9 June 2020, available at <https://www.bu.edu/articles/2020/charles-dickens-novelist-for-our-times/> (last visited on July 30, 2023).

states of mind”, his psychological realism, and his warnings of the dangers of the divides between the rich and poor in society.⁶² “[H]is perception and investigation of the human psyche” is seen as “deep, precise and illuminating”.⁶³ The predicament of Manette, incarcerated for 18 years in isolation or of child workers deprived of fresh air and light for long hours, or even a person unable to find a remedy in the law for a broken marriage that he describes in his works captures that of people in similar situations even in the present day and even in an entirely different cultural context.

Another important factor in this regard is that his novels “were often impassioned social and political critiques”.⁶⁴ Dickens is in fact described as “one of the most important social commentators who used fiction effectively to criticize economic, social and moral abuses in the Victorian era” and “contributed to several important social reforms”;⁶⁵ “a leader, whose writing and deep-seated hatred of oppressors bettered the lives of the poor and would and will even today inspire others to do something to help those suffering in oppression and poverty”.⁶⁶ As Hallawas points out, American society faces similar problems in the present as those Dickens has depicted in his works,⁶⁷ including for instance, prolonged proceedings in courts and solitary incarceration, contexts in which American courts too have cited his works.⁶⁸

This is the case in India as well, as can be seen from the various decisions in which his works have been cited whether it is in the case of long or solitary confinement of prisoners, or vulnerabilities of certain groups. Even more so, the problems he drew attention to in the context of the law, including long drawn-out legal proceedings which bring misery not only to the persons instituting them but several generations following them or law perhaps not providing for or being unresponsive to the needs of the people it is intended for, or taking into account the “human element”, the issues that may arise due to unscrupulous or less-than-ideal legal practitioners, are ones that are not necessarily confined to any time or space. And thus, those sentiments continue to remain relevant even with the flow of time. The fact that some of these

62 *Ibid.*

63 Jon Michael Varese, “Why Are We Still Reading Dickens?”, *The Guardian*, 4 September 2009, available at: <https://www.theguardian.com/books/booksblog/2009/sep/04/why-reading-dickens> (accessed 31 July 2023).

64 John Hallawas, “The Relevance for Today of Novelist Charles Dickens”, *The McDonough County Voice*, 4 Dec., 2020, available at: <https://www.mcdonoughvoice.com/story/opinion/columns/2020/12/04/relevance-today-novelist-charles-dickens/3823317001/> (last visited on July 29, 2023)

65 Andrzej Diniejko, “Charles Dickens as Social Commentator and Critic”, available at: <https://victorianweb.org/authors/dickens/diniejko.html> (last visited on July 31, 2023).

66 “How Charles Dickens Changed History”, *supra* note 4.

67 Hallawas, *supra* note 64.

68 Abrams, *supra* note 5.

issues persist today also leads to the question of why this is so, despite the passage of over a century and a half.

Much beyond their historical and entertainment value and other contributions, the social issues, shortcomings of and neglect by institutions, plight of the vulnerable, and aspects of human nature highlighted by the fiction and non-fiction of Charles Dickens not only resonate with people but also capture a sense of similar aspects and problems in the present-day world. This timeless quality makes them continually relevant in the social and legal context. It is thus rightly that a commentator has described his life and works as “a testament to the power of literature to influence society and drive progress”.⁶⁹

V Conclusion

While the use of literary materials, be they literature or poetry, in judicial pronouncements is a matter of debate,⁷⁰ courts over the years in common law jurisdictions as well as more recently also on the continent,⁷¹ have referenced the works of literary greats in their decisions. Among these are the many works of Charles Dickens which have engaged with, *inter alia*, the law and legal system as well as numerous social issues which remain relevant to the present day.

Dickens’ works have been cited in judgments in various countries, and this is the case in India as well, as explored in the present paper. Numerous decisions of the Indian Supreme Court and high courts have referred to his works on several issues and for various purposes, whether comparable problems or scenarios or the value of the observation itself. This practice shows both the agelessness of the works of Dickens as well as persistence of social problems and human despair over the centuries.

The citing of Dickens by Indian courts and the examples studied in this paper also point to other questions that may be looked into in the context of the referencing of literature in court decisions. These include the frequency of citation of Dickens in Indian court judgments or more broadly of reference to literature; who are the other authors that are cited by courts in India and the contexts in which they are cited; and the value that these bring to the decisions, among others. These present interesting areas for further research.

69 Danny Ballan, “Charles Dickens and His Impact on Victorian Society: Understanding the Power of Literature”, 25 May 2023, *available at*: <https://englishpluspodcast.com/charles-dickens-and-his-impact-on-victorian-society-understanding-the-power-of-literature/> (last visited on Aug. 4, 2023).

70 Wijebandara, *supra* note 8; Posner, *supra* note 8.

71 Gadbon George, *supra* note 9.