

REPRESENTATIONS OF THE INDIAN EMERGENCY IN POPULAR FICTION*

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*In the domain of legal education, there is a compelling case for using popular novels as supplements to the perceptively 'dry' contents of standardized textbooks and legal materials. Their utility lies in their potential for meaningfully engaging the attention of students and to effectively highlight the wider social context behind notable legal developments. While the interface between literature and the law seems to have found a stable place in the curriculum of many law schools in Western countries, such pedagogic innovations have not become part of the mainstream curriculum in legal education in India. Even though elective courses dealing with 'Law and Literature' have been offered at some of the autonomous law universities established in recent years there is clearly a good case for introducing regular courses devoted to this approach as well as the use of fictional works as supplemental texts for the study of several substantive areas. The scheme of this paper is to examine the possible use of three fictional works - namely *Midnight's Children* (Salman Rushdie, 1981), *The Great Indian Novel* (Shashi Tharoor, 1989) and *A Fine Balance* (Rohinton Mistry, 1995) as representative samples of such a methodology. Such efforts are likely to encounter a fair amount of resistance by those who would argue that such fictional works have no place in legal education and that the same should be confined to the study of statutes, judicial precedents and commentaries. The nascent move towards recognising 'Law and Literature' as an autonomous discipline in India will perhaps gain more acceptance if a start is made with novels that engage with India's socio-political existence rather than those of Western nations.*

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Introduction: The Wider Canvas of Fiction

The imposition of national emergency between June 1975 and March 1977 by the Indira Gandhi-led Congress government of the time finds a prominent place in most authoritative accounts of India's post-independence period. It has undoubtedly become a pivotal focus for scholarship in diverse disciplines such as political science, sociology and contemporary history among others. For the purpose of legal studies, the existing discourse concentrates on the much-discussed decisions in *Indira Gandhi v. Raj Narain*¹ and *A.D.M. Jabalpur v. Shiv Kant Shukla*² as well as the arbitrary use of legislations that included provisions

¹ In 1975, a single judge of the Allahabad High Court found that Prime Minister Indira Gandhi had violated election law by using the services of government officials during campaigning in the 1971 Lok Sabha elections. On appeal, the Supreme Court passed an interim order that barred her from voting or speaking on the floor of the Lok Sabha until the matter was conclusively decided. This decision gave an additional spark to the vocal opposition of the time – the latter having been consolidated around Jayaprakash Narayan's call for 'Total Revolution' against the perceived corruption and unresponsiveness of the Indira Gandhi regime. It is widely speculated that the unanticipated imposition of emergency on June 26, 1975 was perhaps a knee-jerk response to the increasing clamour for Indira Gandhi's resignation. The ultimate decision of the Supreme Court was reported as *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

² *Additional District Magistrate, Jabalpur v. Shivakant Shukla (Habeas Corpus case)*, AIR 1976 SC 1207. Here, the detention of hundreds of individuals (mostly opposition leaders, party-workers, trade unionists and student leaders) under legislations such as the Maintenance of Internal Security Act, No. 26 of 1971 (MISA) had been challenged before several High Courts. The government defended the legislative provisions, which enabled prolonged detentions without the framing of charges and access to

for 'preventive detention' and had been immunised against 'judicial review'.³ The mainstream commentaries on Indian constitutional law clearly focus on the excesses of the period such as arbitrary arrests, custodial abuses and the several constitutional amendments which led to a temporary collapse of the idea of separation of powers. However, the ambit of these materials is bound by a disciplinary focus that often fails to reflect on the social history of the emergency period. The most insightful discussions on the misuse of executive powers are usually confined to an audience of those involved in government, journalism, law or higher academia.

At this juncture, the events of the above-mentioned period are within living memory and are hence proximate enough to be recounted through oral means such as conversational anecdotes. The more recent the event is – the more likely it is that highly opinionated and polarized accounts of the same may be in

judicial remedies. It was reasoned that they could not be questioned against the threshold of the fundamental rights (including Articles 20 and 21) enumerated in the Constitution of India since the latter were under suspension during the imposition of emergency. The majority opinion delivered by the Supreme Court agreed with the government's stand but the case has come to be remembered for Justice H.R. Khanna's dissenting opinion wherein he held that citizens were entitled to certain natural rights that existed outside the enumerated fundamental rights in the constitution and those could not be taken away by the government even in times of emergency. Justice Khanna appealed to the idea of 'rule of law' as one whose ambit extended beyond the constitutional text and required the observance of procedure for placing restrictions on personal liberty. It must be remembered that at the time of this decision, the notion of 'substantive due process' had not been read into the Article. The judge in question was superceded for the purpose of elevation to the position of Chief Justice of India, presumably on account of his anti-government stand.

³ In the years leading up to the emergency-era as well as during the same, legislations such as the MISA and the Conservation of Foreign Exchange and Prevention of Smuggling Act, No. 52 of 1974 (COFEPOSA), which had provisions for preventive detention were placed in the Ninth Schedule of the Constitution, thereby placing them beyond the scope of scrutiny by constitutional courts. During the emergency period the government used its overwhelming legislative majority to pass several amendments that not only sought to strengthen the executive vis-à-vis the other wings of government but were also clearly geared towards protecting the position of the incumbent Prime Minister. However, most of the changes effected by the highly controversial 39th and 42nd amendments were reversed by the 44th amendment which was passed by the subsequent Janata Party regime that came to power after the 1977 elections.

circulation. However, oral narratives by themselves cannot serve as effective archives in the long-run. Even among written accounts, legal commentaries cannot capture the experiences accumulated from different vantage points in society or the popular perceptions linked to the experience of authoritarianism. It is clear that the mainstream legal texts lack both the inclusive depth as well as the easy accessibility needed to reach out to a wider readership. The limited accessibility of such materials can be attributed to several factors – including those such as styles of writing that are often difficult to comprehend for persons without legal training as well as prohibitive costs of access to commentaries and the texts of judicial precedents. In this respect an alternative medium for recording and transmitting the memories of a particular period in a relatively more accessible and inclusive manner is that of popular fiction. The phrase ‘popular fiction’ is of course being used as a heterogeneous category that includes media such as novels, poems and short stories among other genres of writing.

In this paper I have examined references to the emergency period that lasted between June 1975 and March 1977 in three fictional works, – namely *Midnight's Children*⁴ (Salman Rushdie, 1981), *The Great Indian Novel*⁵ (Shashi Tharoor, 1989) and *A Fine Balance*⁶ (Rohinton Mistry, 1995). There are of course many other fictional works in several languages whose narratives touch on the events of the period,⁷ but I chose these three works in particular, primarily because they were easily accessible and answer to the description of ‘popular fiction’ in

⁴ SALMAN RUSHDIE, *MIDNIGHT'S CHILDREN* (1981).

⁵ SHASHI THAROOR, *THE GREAT INDIAN NOVEL*. (1989).

⁶ ROHINTON MISTRY, *A FINE BALANCE* (1995).

⁷ Amongst English language fiction I came across references to titles such as O.V. VIJAYAN, *THE SAGA OF DHARMAPURI* (1988); O.V. VIJAYAN, *AFTER THE HANGING AND OTHER STORIES* (1989); NAYANTARA SEHGAL, *RICH LIKE US* (1985); RAJ GILL, *THE TORCH BEARER* (1983); MANOHAR MALGONKAR, *THE GARLAND KEEPERS* (1980); ARUN JOSHI, *THE CITY AND THE RIVER* (1990); BALWANT GARGI, *THE NAKED TRIANGLE* (1989); RAJIT LAL, *THE CROW CHRONICLES* (1996). In vernacular fiction I came across: KAMESHWAR, *KAALI AANDHI* (1989); NIRMAL VERMA, *RAAT KA REPORTER* (1989); YADAVENDRA SHARMA CHANDRA, *PRAJA RAM*; RAHI MASOOM RAZA, *KATRA BI ARZOO* (1978) and Amrit Nahata's film-script titled *Kissa Kursi Ka* (1977). It may be useful to survey these works to produce a much more comprehensive and meaningful study of the theme touched upon in this paper.

addition to being representative works in distinctive styles of writing, I would also like to pre-empt a very obvious flaw with the choice of these three novels – namely that they are in the English language and hence their reach will be confined to a limited segment of the population. Furthermore, none of these works claim to be accurate histories of the period and the allusions to the emergency-era are not based on the individual experiences of the authors in question.

Salman Rushdie's *Midnight's Children* (1981) uses the style of 'magical realism' made popular by writers such as Gabriel Garcia Marquez among others. The life of the narrator-protagonist Saleem Sinai is played out as having clear 'modes of connection' to the twists and turns in the life of the independent Indian nation. In the text of the novel itself, these 'modes of connection' between the protagonist and the country as a whole are described as 'active' (where Saleem Sinai participates in actions that contribute to crucial socio-political events) as well as 'metaphorical' (where the events shaping Saleem's life and involving his immediate family mirror the state of the nation). The novel progresses through the life of the narrator-protagonist and casts it as an imaginative re-telling of the first thirty-one years of independent India.

Shashi Tharoor's *The Great Indian Novel* (1989) is an even more fanciful attempt at re-telling modern Indian history. The novel interweaves some of the major political occurrences in 20th century India with the storyline of the epic *Mahabharata*. The actions and lives of several leaders of the freedom struggle as well as post-independence India are identified with those of mythical characters in the epic. The author exhibits a considerable degree of 'creative license' in playing around with the actual chronology of events so as to ensure some correlation with the plot of the epic. An allegory is drawn between the events surrounding the imposition of emergency and the 'Battle of Kurukshetra' in the Mahabharata. The novel serves the function of being both a parable and a satirical work in so far as it takes liberties in suggesting the causation behind some of the occurrences in the lives of prominent individuals.

In comparison, Rohinton Mistry's *A Fine Balance* (1995) can be described as a relatively more conventional novel since it attempts a realistic description

of the lives of ordinary people during the emergency. In the initial half, the novel repeatedly goes into flashback mode to relate the occurrences in the lives of the main characters and then proceeds to a contemporaneous narrative. The emphasis seems to be on how the central characters come to terms with the heightened anxieties of everyday life at the time. Accordingly, most of the dreaded events associated with the emergency – i.e. slum-clearance, forced labour camps, sterilization, stage-managed political rallies, arbitrary arrests and abuses by police and government officials – find a place in the storyline.

Before engaging with relevant instances from the plots of these fictional works, it would be appropriate to begin with a rudimentary discussion on the place of emergency powers in the Indian Constitution. The inquiry is limited to a brief overview of the justifications offered for permitting a temporary period of authoritarianism in what is otherwise supposed to be a liberal constitutional order. With this conceptual background, I will proceed to the substantive part of this paper, which looks at how the above-mentioned fictional narratives portray ordinary people's experiences and opinions about the imposition of emergency between June 1975 and March 1977. The subsequent section points to some of the 'metaphorical modes of connection' (to use Salman Rushdie's language) that can be identified between the experiences of the main characters in these novels and the larger socio-political existence of the nation.

While such fictional works could be viewed as part of an emerging narrative which memorializes the emergency period in a far more interesting and engaging manner than government records or legal commentaries, there are problems with over-emphasizing the role of such fiction. Since the stringent censorship during the time of the emergency itself curbed the publication and circulation of works which criticised or satirized governmental acts, it is widely sensed that there is inadequate availability of historical, sociological and anthropological material relating to the period. The lack of empirical material could have instead triggered creative instincts that have been translated into material to compensate for the same – with one form being fiction.

Emma Tarlo observes in her non-fictional work on the emergency that this growing body of the 'literature of the emergency' should be read with skepticism

since there is an observed tendency to demonize the authority figures associated with the period and exaggerate the experiences of governmental excesses.⁸ Such an observation is made about the book by Jaya Nandita Kasibathla (in a PhD thesis submitted to Duke University in 2005) in the following words:

“In her ethnography of the urban poor who were displaced during emergency, Emma Tarlo cautions her readers against embracing fictional accounts of the period that cast state officials as ruthless tyrants and slum dwellers as their hapless victims. She cites *Midnight’s Children* and *A Fine Balance*, as part of the emergency-backlash industry, which consists of autobiographies, works of poetry, fiction and histories in which the facts are lamentably distorted. According to Tarlo, the emergency has only been fictionalized, and is in dire need of historical, sociological and political analysis to be understood objectively. Since the mythology of emergency obscures the agency of individuals during the period, Tarlo responds by telling the stories of individuals, who were able to barter with local officials, challenging the assumption that during this period, state force was entirely absolute and rigid”.⁹

Despite the perceived distortions in the fictional accounts, the objective of this paper is to demonstrate the role of fiction as a more accessible, imaginative and readily understood medium for describing how laws actually operate in a complex society. In the domain of legal education, there is a compelling case for using popular novels as supplements to the perceptively ‘dry’ contents of standardized textbooks and legal materials. Their utility lies in their potential for meaningfully engaging the attention of students and to effectively highlight the wider social context behind notable legal developments. While the interface

⁸ EMMA TARLO, *UNSETTLING MEMORIES: NARRATIVES OF INDIA’S EMERGENCY* (2003).

⁹ Jaya Nandita Kasibathla, *Constituting the Exception: Law, literature and the State of Emergency in Postcolonial India*, at 169-170 (Aug. 2005) (unpublished PhD. Thesis, Duke University) (Electronic copy of the thesis procured from Alternative Law Forum, Bangalore).

between literature and the law seems to have found a stable place in the curriculum of many law schools in Western countries,¹⁰ such pedagogic innovations have not become part of the mainstream curriculum in legal education in India. The field of 'Law and Literature' can be broadly divided into two sub-categories, namely that of 'Law-in-Literature' and 'Law-as-Literature'. While the expression 'Law-in-Literature' covers the depictions of legal processes and their consequences in the narrative of literary texts, the sub-field of 'Law-as-Literature' contemplates the examination of legal materials with literary devices.¹¹ For the purpose of this paper, I have chosen to focus on the potential use of the above-mentioned works for promoting the 'Law-in-Literature' approach.

Even though elective courses dealing with 'Law and Literature' have been offered at some of the autonomous law universities established in India in recent years, there is a good case for introducing regular courses devoted to this approach as well as the use of fictional works as supplemental texts for the study of several substantive areas. The scheme of this paper is to examine the possible use of the three fictional works mentioned above as representative samples of such a methodology. Such efforts are likely to encounter a fair amount of resistance by those who would argue that such fictional works have no place in legal education and that the same should be confined to the study of statutes, judicial precedents and commentaries. The nascent move towards recognising

¹⁰ A few leading works dealing with the 'Law and Literature' approach are as follows: JAMES BOYD WHITE, *THE LEGAL IMAGINATION* (1973); RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (2nd ed., 1998); *LAW AND LITERATURE: CURRENT LEGAL ISSUES* (Michael Freeman & Andrew Lewis eds., 1999).

See also Robin L. West, *Communities, Texts, and Law: Reflections on the Law and Literature Movement*, 1 *YALE J.L. & HUMAN.* 129 (1988); Gary Minda, *Law and Literature at Century's End*, 9 *CARDOZO STUD. IN LAW & LITT.* 245 (1997); Milner Ball, *The Future of Law and Literature: Convocations and Conversations*, 10 *CARDOZO STUD. IN LAW & LITT.* 107 (1998); Daniel J. Kornstein, *A Practicing Lawyer Looks Back on Law and Literature*, 10 *CARDOZO STUD. IN LAW & LITT.* 117 (1998); Sanford Levinson, *Some (Brief) Reflections About Law and Literature*, 10 *CARDOZO STUD. IN LAW & LITT.* 121 (1998); Jane B. Baron, *Law, Literature, and the problems of interdisciplinarity*, 108 *Yale L.J.* 1059 (1999).

¹¹ *See* Sanford Levinson, *Law as Literature*, 60 *TEX. L. REV.* 373 (1982); Ronald Dworkin, *How Law is like Literature?* in *A MATTER OF PRINCIPLE*, at 146-166 (1985) (for an overview of the 'Law-as-literature' approach).

'Law and Literature' as an autonomous discipline will perhaps gain more acceptance if a start is made with novels that engage with India's socio-political existence rather than those of Western nations.¹²

The Place of Emergency Powers in the Constitutional Scheme

During the framing of the Indian Constitution, there were substantive disagreements on the inclusion of emergency powers with some members of the Constituent Assembly reasoning that there was no place for them in the prospective liberal constitutional order. The apprehensions about the executive assuming wide-ranging powers under stated circumstances were directly likened to the excesses associated with the frequent imposition of 'martial rule' under the colonial government. However, the majority view which prevailed at the time was informed by the collective interest in curtailing individual liberties under exceptional circumstances such as armed conflict and breakdown of law and order. Granville Austin has argued that this position was strengthened by the contemporaneous experiences of the partition-related communal violence, armed-conflict in Kashmir and fears of Communist-led secession in several parts of the country.¹³ In short, the constitutional provisions that formally enabled centralization of executive powers under certain exceptional circumstances were not only a continuity from the colonial regime but also a response to the traumatic events that were unfolding at the same time as the framing of the constitution.¹⁴

¹² Yet another conceptual approach for examining the interface between law and literature is that of studying instances where literary works become embroiled in legal controversies. This largely falls in the domain of the law of 'free speech' with respect to areas such as censorship, defamation, libel, obscenity and copyright infringement among others. It should be worth mentioning here that Salman Rushdie's *Midnight's Children* (1981) was itself the subject of a defamation suit. The grievance was raised in respect of some lines which suggested that Indira Gandhi could not check her son's (Sanjay Gandhi) rash political decisions on account of some latent guilt associated with her husband's death.

¹³ See generally GRANVILLE AUSTIN, *THE CORNERSTONE OF A NATION: THE FRAMING OF INDIA'S CONSTITUTION* (1966).

¹⁴ See Anil Kalhan, Gerald C. Conroy, Mamta Kaushal & Sam Scott Miller, *Colonial Continuities: Human Rights, Terrorism and Security Laws in India*, 20 COLUM.J.ASIAN L. (2006) at 93-231 (For a recent contribution that traces structural continuities between colonial and post-independence legislations in the domain of criminal justice and anti-terrorism measures).

The idea that authoritarianism has a justifiable place in a constitutional democracy was not a novel one proposed during the Constituent Assembly debates. The United States Constitution recognised the prerogatives of the federal government in times of conflict and imminent dangers to the state. In fact much of the discussion on the floor of the house likened the partition-era violence to the American civil war, thereby emphasizing the need for temporary centralization of powers. The debates also touched on the emergency provisions in the Weimar Constitution, but many pointed out that the same was unable to tackle the emergence of political forces such as the Nazi party which was akin to an imminent danger posed to the state. On a conceptual level the idea of a 'constitutional dictatorship' has benevolent objectives – namely that of providing a safeguard against aggression and political instability. From that prism a 'constitutional dictatorship' is seen as a means of preserving the existing constitutional order, which is different from a 'revolutionary dictatorship' that seeks to overthrow and change the existing order.

Since the creation and adoption of a Constitution involves the paradoxical element of 'precommitment', one can adopt different views about the underlying justifications for emergency powers. The enactment of a Constitution not only signifies the acceptance of a 'social contract' by the people at the time of such enactment but also binds future generations.¹⁵ In some ways the concerns and anxieties that were prominently voiced at the time of the framing of the Constitution obviously gained a certain exalted status in the form of the provisions that address them. This would apply especially in contexts like those of independent India where the framing of the constitutional text was not only

¹⁵ See generally Stephen Holmes, *Precommitment and the Paradox of Democracy* in CONSTITUTIONALISM AND DEMOCRACY: TRANSITIONS IN THE CONTEMPORARY WORLD 195-240 (Douglas Greenberg et al eds., 1993). (The dissonance between the majoritarian will of the present (embodied in an executive with popular support or a legislative majority) and constitutional principles laid down by an older generation is a foundational issue in the study of modern constitutional law. The place of the idea of 'precommitment' and the permissible scope for changes to the constitutional scheme are recurring themes. Since the judiciary is often regarded as the guardian of constitutional provisions, the debate about precommitment to constitutional values has a clear overlap with those about the proper scope of 'judicial review' and the limits of legislative power).

a normative exercise but also a constitutive one in so far as it was an essential element of the nation-building project.¹⁶

Through the inclusion of emergency powers, the constitutional imagination of the nation evidently gave a prominent place to fears of war, secession and by logical extension other forms of political instability. Even though the invocation of emergency powers in a liberal constitutional order is ordinarily described as a 'state of exception', it could be argued that the motives for same are embedded in the foundational character of the Indian constitution. As Jaya Nandita Kasibhatla argues – if the 'state of exception' is easily identifiable with the foundational moment of the constitutional order then it is perhaps feasible to instead think of this 'state of exception' as a norm. She argues that the partition-related violence can be viewed as the 'foundational emergency' which informed the inclusion of provisions in the constitution that were largely modelled on erstwhile colonial legislations designed for the imposition of martial law among other kinds of police powers.¹⁷ The larger question of course is whether the present generation should respect the precommitment made to the possibility of invoking emergency powers, especially when the experience of their abuse is within living memory.

The Indian Constitution contemplates different kinds of emergencies – i.e. national emergency, imposition of central rule in the states (President's Rule) and financial emergency.¹⁸ While the last of these categories relates to measures for ensuring fiscal prudence in dire times (Article 360) the provision for President's Rule (Article 356 and 357) in the states is a bit of a misnomer. The arbitrary use of Article 356 has been keenly contested in the domain of Centre-State relations. In short, the said article allows the Union Government to take over the administration of a state on account of political instability, which may arise from anything ranging from a fractured electoral mandate to law and order problems that meet the highly subjective criterion of the 'breakdown of

¹⁶ See S.P. Sathe, *Judicial Activism: The Indian Experience*, 6 WASH. U J.L. & POL'Y 29-107 (2001).

¹⁷ See Jaya Nandita Kasibhatla, *supra* note 9, at 53-54.

¹⁸ See Gopal Subramaniam, *Emergency provisions under the Indian Constitution*, in SUPREME BUT NOT INFALIBLE – ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 134-158 (B.N. Kirpal et al eds., 2000) (for a brief overview of emergency powers in the Indian constitution).

constitutional machinery' in the said State.¹⁹ However, it is the provision for the declaration of national emergency (Article 352 read with Article 353, 354, 358 and 359), which most resembles the idea of a well-intentioned 'constitutional dictatorship'. The grounds for resorting to the same are war, external aggression and armed rebellion. The proclamation of emergency in 1975-1977 was however made on the ground of 'internal disturbance' – an open textured expression that allowed the Indira Gandhi government to invoke the above-mentioned provision in the wake of the opposition's persistent calls for her resignation. This ground of 'internal disturbance' was later replaced by the words 'armed rebellion' by way of the 44th amendment that was enacted by the subsequent Janata Party regime.

The declaration of 'national emergency' on June 26, 1975 was not the first instance of reliance on Article 352 by the Central Government. The first instance of its use was occasioned by the Indo-China conflict of 1962 following which the state of emergency was formally maintained for a few years stretching long enough to cover the Indo-Pakistan conflict of 1965. The declaration was not renewed in 1967, but a fresh cause for using Article 352 came in the form of the Bangladesh war of 1971. However, all of these instances were seemingly legitimate responses to external aggression and are not identified with the kind of centralization of authority that was to come in the 1975-77 period. The imposition of the latter was of course not an event that occurred in isolation. By most accounts the Indira Gandhi government faced intense pressure in the wake of the 'Total Revolution' led by Jayaprakash Narayan and the decision in the Raj Narain case triggered widespread demands for Indira Gandhi's resignation.²⁰

¹⁹ See judgment in *S.R. Bommai v. Union of India*, (1994) 3 SCC 1. The numerous instances of the misuse of Article 356 by Union Governments to dismiss State governments being run by opposition parties were the subject matter of discussion by the Supreme Court in this case. The judges sought to lay down limits on the use of this provision by laying down that the ordinary basis for dismissing a State government was the result of a 'floor-test' in the concerned legislative assembly.

²⁰ See RAMACHANDRA GUHA, *Autumn of the Matriarch*, in *INDIA AFTER GANDHI - THE HISTORY OF THE WORLD'S LARGEST DEMOCRACY*, at 493-521 (2007) (for a functional account of the events of the time). For contemporaneous accounts see also Ramesh C. Thakur, *The Fate of India's Parliamentary Democracy*, 49(2) PAC. AFF. 263-293 (1976); Richard L. Park, *Political crisis in India – 1975*, 15(11) ASIAN SURV. 996-1013 (1975); Norman D. Palmer, *India in 1976: The Politics of Depoliticisation*, 17(2) ASIAN SURV. 160-180 (1977).

The language of Article 352 was invoked to assert that the vocal and sizeable political opposition was contributing to 'internal disturbances', thereby justifying the assumption of authoritarian powers by the Union Government. The government proceeded to unleash a propaganda campaign that further justified the imposition of 'public discipline' by citing the need to tackle corruption and inefficiency in society for advancing the avowed objectives of distributive justice and development. In retrospect, the declaration of the 1975-1977 Emergency did not correspond to the idea of a 'constitutional dictatorship' whose intent was the preservation of the existing political order. The government of the day rushed through a series of constitutional amendments that were designed to protect the interests of the incumbents at the cost of key principles enshrined in the text.

A Fine Balance: Recounting Ordinary People's Experiences During an Extraordinary Period

As mentioned in the introductory segment, the objective of this paper is not to give an overview of the constitutional upheaval associated with the Emergency-era but to instead map out an alternative narrative that can be filtered out from some fictional works. While questions like the suspension of fundamental rights and the collapse of the separation of powers at the time will continue to attract the attention of legal scholars, novels can in some way provide a reconstructed 'history from below' for the same period. Rohinton Mistry's *A Fine Balance* (1995) is a work which perhaps fits this description. The approach is markedly different from an account like that of Shashi Tharoor's *The Great Indian Novel* (1989) where the satirical narrative is largely confined to the acts of prominent personalities and generalized opinions on the allegorical 'state of siege'. *A Fine Balance* has been compared to the Victorian-era novels of Charles Dickens. This comparison has perhaps been made since the novel portrays the struggles of ordinary people who are not active participants in the tumultuous politics of the time but instead suffer the consequences of top-level political decisions.

The contemporaneous narrative in the novel is set in the 'City by the Sea' (presumably Bombay) in 1975-76. The central location is a frugally maintained

flat owned by Dina Dalal, a forty-two year-old Parsi widow who in time comes to share it with Maneck Kohlah (a paying guest who is the son of one of her childhood friends) and two tailors Ishvar - and his nephew Omprakash, whom she employs for piecemeal work and subsequently gives shelter to. Dina Dalal faces recurring anxieties in her routine life that range from the need to earn a livelihood, her domineering brother's pressure to re-marry as well as persistent threats of eviction from her flat. Her young paying guest Maneck has also had troubles of his own after having been sent away from his idyllic hill-station hometown by his parents to get an education. He moves into Dina's flat after undergoing a humiliating 'ragging' session at his college-hostel. However, the most intense story is that of the two tailors – Ishvar and Omprakash. They migrate from a small town in their native region to the big city in search of better paying jobs. Their initial few months in the city are like those of most low-wage migrants from rural areas, with descriptions of them seeking shelter on railway platforms and subsequently with an unwilling acquaintance. After struggling to find regular employment for some time, the same acquaintance leads them to the arrangement for piece-meal work with Dina. In time they seem to find some semblance of stability and find shelter in a slum-colony.

The first notable comment on how the political climate of the time affected the tailors' lives comes when they are denied ration-cards on account of their status as illegal residents in a slum-colony but are instead offered the same benefit if they would give their consent to undergo vasectomies. The same is obviously a direct reference to the Sanjay Gandhi-led initiative for population control where governmental officials and doctors were given statistical targets for conducting 'sterilisation operations'. While this policy was designed to be implemented through the distribution of incentives such as free radio transistors and monetary benefits, the pressure from the top also resulted in thousands of cases of forcible vasectomies and tubectomies.

The next prominent episode is when the residents of the tailors' slum-colony are both induced and pressurised by local police officials to attend a mass-political rally addressed by Indira Gandhi. The artificially created celebratory setting is described in great detail and even Sanjay Gandhi makes an appearance

in an air-balloon. However, the tailors' real troubles start when their slum-colony is subsequently demolished as part of a 'city-beautification' drive. Later when they are compelled to find shelter on a pavement next to a chemist's shop, they are unexpectedly rounded up by the police and sent to a labour camp for an irrigation project – ostensibly a manifestation of the government's intent of promoting 'discipline' among the people.²¹ After a few weeks of forced labour, they manage to buy their way out of the camp through the influence of the 'Beggarmaster' - a local mafia-don like figure who bribes the government officials in charge of the camp and in return starts collecting 'protection money' from the tailors. This is a particularly interesting plot device that highlights how the arbitrary exercise of governmental power can also create conditions for collusion between state officials and organised criminals. The tailors' prolonged absence creates obvious anxieties for Dina and on their return she is prodded on by Maneck to give them shelter in her flat. Meanwhile, the imposition of the state of emergency visibly increases the discretion vested with local government officials and correspondingly the scope for the abuse of their powers. The most imminent uncertainty that affects the main characters is the constant threat of eviction from the flat.

Besides documenting the hardships faced by the characters, the storyline seems to make the point that the imposition of emergency not only heightened the anxieties faced by ordinary people in their interaction with governmental authority but also exacerbated the consequences of deep-rooted social prejudices and differences. The most devastating example of this comes towards the end of the novel. Earlier in the novel, there is a 'flashback section' that provides the background to the tailors' story.

It is established that they belong to one of the untouchable castes and that their family was traditionally involved with tanning leather. The pervasive caste-based oppression in their native village had motivated Ishvar's father to send him and his brother Narayan to work as apprentices under a tailor named Ashraf

²¹ See in particular, Rohinton Mistry, *Beautification*, in *A FINE BALANCE* 315-342 (1995).

- an acquaintance in the nearby town. The brothers learnt the trade and in time Ishvar continues as an employee under Ashraf while Narayan returns to his native village and gains respect in his community for his tailoring skills. The prominence accorded to an untouchable is of course highly resented by the upper castes and the villain of the plot is Thakur Dharamsi – a local landlord from the dominant caste.²²

As the years progress, Narayan who has a distinctive sense of self-respect insists on casting his own vote at a certain point – an act which prompts the upper-castes to torture and kill him, followed by burning most of his family members alive. The surviving members i.e. Ishvar and Narayan's son Omprakash (who is also sent to learn tailoring) are at the receiving end of police apathy when they approach the local police. With the low-caste tailors subsequently migrating to the city, this horrendous atrocity moves to the background in the story but the theme of casteist oppression re-emerges at several points.

In the contemporaneous narrative Ishvar takes Om back to his native region in search of a bride for the latter. It is revealed that the reviled landlord Thakur Dharamsi has gained substantial influence with the Congress Party and now manages the much feared 'family planning' programme in the district. A few days later the tailors are part of a crowd which is forcefully rounded-up by the police and taken to a make-shift sterilization camp. Despite Ishvar's pleas to the staff to spare his young nephew, both of them are sterilised. Thakur Dharamsi who happens to visit the recovery camp, recognizes them and instructs the medical staff to remove Om's testicles. Ishvar's misery on account of his teen-aged nephew's castration is compounded by an infection that develops in his own legs and subsequently the older man has to get his legs amputated.²³ These acts of amputation and castration can perhaps be viewed as symbols of the unrestrained attack on personal liberties during the period. The operation of 'formal authoritarianism' at the centre combined with local prejudices to create the gruesome consequences suffered by the characters.

²² The landlord regularly uses his muscle-power to distort electoral voting in the area with practices like 'booth-capturing' and proxy voting.

²³ This part of the story unfolds in Rohinton Mistry, *XV- Family Planning*, in *A FINE BALANCE* 505-534 (1995).

The depictions of 'slum-clearance' and 'forced sterilization' also tend to re-inforce the idea that some sections of society face 'emergency-like' situations in perpetuity. The poor and marginalized sections of society are always more vulnerable to exploitation and abuse in the exercise of discretionary powers by the state. The narrative also touches on the most well known excesses associated with authoritarian rule i.e. arbitrary arrests and disappearances. One such victim in the story is Nawaz - the tailors' acquaintance in the big city who reluctantly gives them shelter and later arranges for their employment with Dina. Some time after the tailors' have settled into their piecemeal work arrangement, they come to find out that Nawaz had been arrested for smuggling activities.²⁴ The interesting aspect that is revealed is that the arrest had most probably been orchestrated by a government official with whom Nawaz was involved in a dispute over allegedly defective clothes. This sub-plot is a comment on the possibility of government officials settling personal scores by way of using draconian legislations that provided for preventive detention. Another tragic development in the plot is when Avinash – an inspirational student leader at Maneck's college is arrested (presumably under MISA) and several months later his body is found near a railway track – indicating torture.²⁵ The sense of loss is further heightened when Maneck finds out many years later that Avinash's sisters had subsequently committed suicide on account of the prospective burden of dowry on their parents.

²⁴ This is obviously a reference to the much-touted crackdown on 'smuggling, black-marketing and hoarding' activities which was described as one of the 'disciplinary' objectives for the imposition of emergency. See Ram Jethmalani, *Detention without Trial*, in SUPREME BUT NOT INFALLIBLE – ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 321-334 (B.N. Kirpal et al eds., 2000) (for a legal commentary on some instances of detention without trial in cases under legislations such as the COFEPOSA).

²⁵ The sub-plot involving Avinash's death on account of custodial torture is perhaps a reference to a real incident involving the detention and untimely death of Rajan – an engineering student in Kerala, a case which prompted the resignation of the then Chief Minister of the state. This incident was also touched upon in the *Habeas Corpus case*. See Gopal Subramaniam, *Emergency provisions under the Indian Constitution*, in SUPREME BUT NOT INFALLIBLE – ESSAYS IN HONOUR OF THE SUPREME COURT OF INDIA 142-143 (B.N. Kirpal et al eds., 2000).

Apart from the fictionalized accounts of the suffering of ordinary people, the narrative also portrays the sharp polarization in public attitudes towards the justifications for the imposition of emergency. There are characters like Nusswan Shroff and Mrs. Gupta (Dina Dalal's brother and employer respectively) who actively voice their support for the imposition of emergency since it appeared to be creating conditions that were conducive for business. Their opinions also seem to reflect a 'class-angle' in so far as the imposition of authoritarianism seemingly had an adverse affect on the routine lives of poorer sections while the upper classes were considered to be relatively unaffected by the same. It is often argued that the elite sections were largely indifferent to the imposition of emergency and in many pockets there was support for the objectives of discipline and efficiency which was reflected in everyday observations such as the 'city-beautification drives', 'trains running on time' and 'employees being punctual for work'. However, it would be erroneous to characterise the governmental excesses of the emergency-era as entirely 'pro-rich' and 'anti-poor'.

Many of the persons detained under the Maintenance of Internal Security Act (MISA) belonged to opposition parties, trade unions, the press as well as academics and students. In short anyone who actively criticised the government or was suspected or associated with such activities ran the risk of police harassment, arrest or abuse. One could possibly reason that the intensifying pattern of arbitrary arrests, censorship of the press as well as visible excesses such as 'forced sterilization' and 'slum-demolitions' would have contributed to a substantial shift in public opinion amongst all sections. However, this assumption of widespread criticism of the emergency should also be tempered with the argument that the resentment against the same was largely an urban phenomenon in Northern India. This call for closer scrutiny draws strength from the observation that the top-level politics of the time had a negligible effect in the rural areas and in many of the Southern states.²⁶

²⁶ A paper that seems to make this point is Lee L. Schlesinger, *The Emergency in an Indian Village*, 17(7) *ASIAN SURVEY* 627-47 (1977); See also Ramachandra Guha, *The Dictator's Defence: Indira Gandhi and the Indian Emergency*, in *AN ANTHROPOLOGIST AMONG THE MARXISTS AND OTHER ESSAYS* 182-194 (2001).

Midnight's Children and The Great Indian Novel: Metaphors for the 'Assault' on Democracy

While 'A Fine Balance' can be described as a partly realistic and at times melodramatic account of how the authoritarian impulses of the day affected ordinary people, the narrative in Salman Rushdie's *Midnight's Children* (1981) repeatedly crosses the line between history and fantasy by stressing upon the metaphorical 'modes of connection' between the life of the protagonist Saleem Sinai and the state of the nation.²⁷ The symbolism is obvious since Saleem is born at the stroke of midnight on August 15, 1947 presumably around the same time that Jawaharlal Nehru delivered the famous 'tryst with destiny' speech. Saleem Sinai narrates his personal story in flashback mode with the contemporaneous narrative set in 1978. The initial segments of the novel are devoted to the recent history of Saleem Sinai's family. As it turns out he is not really his parent's child since soon after his birth, he was switched with their actual child by the family *ayah*.²⁸ The child with whom he is switched grows up to become Major Shiva – who is portrayed as Saleem Sinai's nemesis.

A considerable part of the story progresses through Saleem Sinai's childhood years in Bombay and subsequently his adolescent years after his family moves to Karachi. At several junctures, he unwittingly contributes to events that come to hold a larger significance. One such instance is when he coins a slogan that comes to be used by pro-Maharashtra agitationists during the disturbances over whether Bombay should go to the prospective states of

²⁷ One of the direct consequences of the prominence gained by *Midnight's Children* since its publication is the wide range of scholarly attention that it has received. Some interesting scholarly contributions on the themes and devices used in the novel are as follows: M. Keith Booker, *Beauty and the Beast: Dualism as despotism in the fiction of Salman Rushdie*, 57(4) *ELH* 977-97 (1990); Jean M. Kane, *The migrant intellectual and the body of history: Salman Rushdie's Midnight's Children*, 37(1) *CONTEMPORARY LITERATURE* 94-118 (1996); John J. Su, *Epic of failure: Disappointment as Utopian fantasy in Midnight's Children*, 47(4) *TWENTIETH CENTURY LITERATURE* 545-68 (2001).

²⁸ Saleem is in fact the son of Vanitha, the wife of a street performer named Wee Willie Winkie. His biological father in turn is William Methwold, the previous English owner of the estate in Mumbai, which the Sinai family moves into just a few weeks before independence. The switch at the time of birth means that the biological son of Ahmed and Amina Sinai – grows up as the poor street performer's son.

Gujarat or Maharashtra.²⁹ Another such active 'mode of connection' comes during his time in Pakistan when General Ayub Khan plans a military coup using pepperpots on the dinner-table of Saleem's uncle Zulfiqar.³⁰ Later in the story, as part of a tracking and intelligence unit of the Pakistan Army he is directly involved in the arrest of Sheikh Mujibur Rehman, the leader of the Awami League who later went on to serve as the first Prime Minister of Bangladesh.

However, the unmistakable connection between Saleem and the fate of the nation is revealed through the medium of some extraordinary powers. Through a series of minor accidents the young Saleem Sinai discovers that he has some special powers – one being a keen sense of smell and a related ability to sense impending danger, and secondly, an other-worldly skill of reading other people's minds as well as establishing telepathic connections with a large number of people. It is further revealed that the people with whom Saleem networks through telepathic means are all those who were born in India between midnight and 1 AM on August 15, 1947.

All the Midnight's Children have extraordinary skills ranging from invisibility, time-travel, voluntary gender-transition and a numerous other fantastic powers. Saleem being the eldest of these children is gifted with the special skill of telepathy which he regularly uses to convene the Midnight's Children's Conference (M.C.C.). The story establishes that while there were 1,001 children to begin with, about 420 perish on account of causes like infant-mortality and disease.³¹ Hence the

²⁹ At another point Saleem anonymously informs one of his neighbours (Commander Sabarmati) about his wife's adulterous relationship with another neighbour (a film producer), an act which leads to a sensational homicide. This episode is clearly based on the actual Nanavati case where a naval officer had shot his wife's paramour and surrendered to the police. Much like the real-life case the fictional Commander Sabarmati also benefits from a wave of public sympathy with calls for a lesser sentence for him. See Salman Rushdie, *Commander Sabarmati's Baton*, in MIDNIGHT'S CHILDREN 350-370 (1981).

³⁰ See Salman Rushdie, *Movements Performed by Pepperpots*, in MIDNIGHT'S CHILDREN 392-408 (1981).

³¹ These numbers of course allude to references external to the plot. For instance 1,001 is quite possibly a reference to the number of stories in *The Arabian Nights*. While 581 is an allusion to the designated strength of the Lok Sabha at the time this novel is written, 420 seems to refer to Section 420 of the Indian Penal Code which defines the offence of 'fraud'.

remaining strength of the M.C.C. i.e. 581 members is a direct allusion to the number of seats in the Indian parliament. In some ways the diversity amongst the 'Midnight's Children' can be viewed as symbolic of the possibilities of democratic pluralism in independent India. While the Midnight's Children go through intermittent phases of agreement and discord among themselves, Saleem grows increasingly wary of Shiva – the person with whom he had been switched at birth.

However, Saleem loses his extraordinary powers as well as his telepathic connection with the other 'Midnight's Children' when his family moves to Pakistan. After most of his family dies in air-raids during the 1965 war, Saleem's sister (who is by now a popular singer) leaves him in the care of the Pakistani army. After suffering serious injuries during one such raid that destroyed his house in Karachi, Saleem forgets his own name and is not in the know of the demise of most of his immediate and extended family. On coming to know of the same several years later, he retrospectively views the 1965 war as a conspiracy to eliminate his family. This identification of larger events with personal circumstances is part of the recurrent theme of metaphorical 'modes of connection' between the existence of the nation and Saleem Sinai's life.

On account of his keen sense of smell he is put into service in a unit for tracking and intelligence in the army and he is soon despatched to East Pakistan. Later he consciously leads his group deep into the Sunderbans and they spend several weeks in hardship and delusion before returning to civilization. By this time, the 1971 war for the liberation of Bangladesh is almost complete and Salim's comrades die one by one at the same time as the Indian troops march on Dhaka. However, instead of being taken prisoner-of-war Saleem is luckily identified by Parvathi – one of the Midnight's Children who is part of the group of entertainers and magicians brought to Dhaka as part of the victory procession. Parvathi uses her magical powers to bring Saleem to Delhi undetected on an armed forces flight. On his return to India, Saleem starts living in the magician's ghetto (supposedly in Old Delhi) and discovers that he has regained his special telepathic powers. The correlation between his presence in India and his extraordinary powers is yet another metaphorical 'mode of connection' between the nation and the protagonist.

This is the point at which references to the politics preceding the emergency-era start appearing in the novel. In the hope of finding secure employment, Saleem

finds shelter with his only surviving maternal uncle – Mustafa (who is a bureaucrat) but faces resentment from the latter's wife. An intriguing instance of the plot comes when Saleem sees a person resembling Sanjay Gandhi making regular visits to his uncle while carrying a folder titled 'Project M.C.C.'. On account of persistent tensions at his uncle's house, Saleem returns to the magician's ghetto.

At this point Shiva makes a re-appearance in the storyline. In a clear counterpoint to Saleem's privileged existence as a child, Shiva has undergone a rough childhood growing up as an orphan on the streets of Bombay and by the time of his re-appearance - Major Shiva is a hero of the Bangladesh war who is especially known for his ability to strangle people with his knees. It is also revealed that Shiva is a womanizer and has been using his celebrity status to bed the wives of rich businessmen. When he appears at the magician's ghetto he makes contact with the now lonely Parvathi and takes her away. He soon impregnates her and abandons her, leaving an initially hesitant Saleem no choice but to marry Parvathi. Saleem's putative son (much in the same manner he was not the biological child of the parents who brought him up) Aadam is born after a difficult and prolonged labour-period for the mother on June 26, 1975 – the day of the declaration of emergency. The symbolism is obvious with Saleem Sinai's birth coinciding with the creation of a new country and his son's birth coinciding with the beginning of a period of intense turmoil for the nation.

The distinctive excesses of the emergency-era find a place in the story as the magician's ghetto also comes to be part of the slum-clearance drive. Not only is this a routine demolition exercise which displaces poor people by force, but Major Shiva leads the same with the particular intention of finding Saleem Sinai – who is the eldest of the *Midnight's Children* and with his telepathic powers is also the key for locating the others.³² Saleem is then arrested and sent

³² The character of Shiva is identified as Saleem's nemesis as well as an alter-ego. The relationship between these two characters can be considered as a metaphor for the relationship between India and Pakistan, which were separated at birth. The theme of 'dualism' also seems to take off on the 'Dr. Jekyll and Mr. Hyde' device which stresses on mutually contradictory characteristics among the two characters. While Saleem is the leader of the *Midnight's Children's Conference* that represents the possibilities for democratic pluralism in independent India, Major Shiva acts as an agent of the authoritarian state which seeks to subjugate these possibilities. See M. Keith Booker, *Beauty and the Beast: Dualism as Despotism in the Fiction of Salman Rushdie*, 57(4) *ELH* 977-997 (1990).

off to a detention centre described as the 'widow's hostel'. The 'widow' who is repeatedly mentioned in the narrative is of course a reference to Indira Gandhi. At this location Saleem is coerced into divulging the whereabouts of the other Midnight's Children. The members of the M.C.C. are then apprehended and detained in the same facility. All of them are subsequently sterilised and this has the effect of depriving them not only of their reproductive abilities but also takes away their special abilities.

In the contemporaneous narrative, Saleem conceives of the declaration of emergency by the 'widow' as a conspiracy that especially targeted the Midnight's Children. He makes the correlation with 'Project M.C.C.' and offers the view that the government had a vested interest in subjugating the Midnight's Children and had planned for the same. This explanation of course has no link to actual events but does constitute an obvious metaphor. If the Midnight's Children's Conference was in some ways representative of the pluralist democracy contemplated by the constitutional scheme then the imposition of authoritarianism sought to subdue this diversity by force. Hence the planned incapacitation of the 'Midnight's Children' in this story can be seen as a metaphor for the actual suspension of fundamental rights and the consequent frustration of democratic ideals.

A similar metaphor between the treatment of the main characters and the erosion of constitutional rights can also be found in the narrative of *A Fine Balance*. As described earlier, the two tailors are forcibly sterilised on a visit back to their native region and their bodily fate is worsened with Om being castrated at the instance of an upper caste landlord and Ishvar having to undergo an amputation on account of an infection. Their employer Dina loses her income and is also eventually evicted from her flat – hence being compelled to go back to a life of dependence on her brother. Maneck returns after working abroad for eight years only to find the two tailors earning their livelihood as beggars in the city. His own ultimate fate can be read as an individual example of the disappointment and disorientation felt by the younger generation.

The Great Indian Novel – Employing Metaphors of Narration

In *The Great Indian Novel* (1989) the events of the time have been alluded to in a chapter titled 'The drop of honey – A parable'.³³ As mentioned earlier, this work does not attempt a 'narrative from below' and instead weaves a story about individuals who were active participants in the politics of the period. The schism between the Indira Gandhi-led Congress and the opposition has been likened to the mythological feud between the Kauravas and their cousin Pandavas. The theme of internecine conflict finds resonance since many of the opposition leaders were former Congress politicians who had been manoeuvred into insignificance in the late 1960's.³⁴ So while Priya Duryodhani (a play on Indira Gandhi's middle name with a direct allusion to Duryodhana, the eldest Kaurava brother who deeply resents his cousins) is the despot of the piece who leads the Kaurava Party (R), her rival Yudhishtir (the eldest of the Pandavas) is modeled on Morarji Desai. However, the author deviates from the narrative of the Mahabharata with respect to the character of Jayaprakash Drona (clearly an amalgam of Dronacharya and Jayaprakash Narayan) who is at the forefront of the 'People's uprising' (a reference to the call for 'Total Revolution') against the incumbent. It may be mentioned here that in the Mahabharata, Dronacharya – who had been the teacher of both the Kauravas and the Pandavas in their childhood, fights for the Kaurava side at the 'Battle of Kurukshetra' despite being more attached to the Pandavas on a personal level.

The novel of course does not describe a physical battle between the Kaurava Party and the opposition, but draws sufficient parallels between the mythical conflict and the widespread mobilization against the government which prompts the declaration of a 'state of siege'. The most direct comparison is made between the apocalyptic 'Battle of Kurukshetra' and the elections of 1977 where the

³³ See Shashi Tharoor, *The Seventeenth Book: The Drop of Honey – A parable*, in *THE GREAT INDIAN NOVEL* 359-85 (1989).

³⁴ The previous chapter in the novel titled 'The bungle book – or, the reign of error' alludes to the political developments during the years leading up to the emergency such as the split in the Congress party and Indira Gandhi's self-styled 'socialist' turn with controversial measures such as the abolition of privy purses and the nationalisation of banks.

Janata regime wrested power from the Indira Gandhi-led Congress. This comparison could be viewed as depicting the imposition of emergency as a clash between those for and against democracy. The story further incorporates a direct metaphor by drawing a supernatural connection between the authoritarian measures of Priya Duryodhani's government and the health of Draupadi Mokراسي ('D. Mokراسي' in short), who is also the common wife of the Pandavas.³⁵ At the same time, Shashi Tharoor does not reduce the clash of political configurations to a polarized fight between good and evil.

Much in the same manner as the Pandavas had their shades of grey - those opposing Indira Gandhi could not be uniformly described as virtuous upholders of democracy. Tharoor seems to be making this point when he creates a fictional situation where Yudhishtir indirectly contributes to the death of his mentor Jayaprakash Drona. Drona's son Ashwathama is a rival claimant for power in the new regime and Yudhishtir is anxious that his position as prime minister may be in jeopardy if the ailing Drona supports his own son's claims. Hence he kills an insect conveniently named 'Ashwathama' and likewise maintains his well-known adherence to truth while telling Drona that 'Ashwathama is dead'. It is suggested that this news accelerates the death of the already seriously ill Jayaprakash Drona. Though this instance is in no way suggestive of the causes behind the actual death of Jayaprakash Narayan, it does correspond to the episode from the epic which relates to Dronacharya's death.³⁶ This part of *The Great Indian Novel* points to the internal contradictions within the Janata coalition that were seemingly based on the personal ambitions and insecurities of the leaders of its' various constituents rather than any principled positions.

³⁵ In the storyline Draupadi is the illegitimate daughter of Dhritarashtra (The blind Kaurava king likened to Nehru) and Georgina Drewpad (based on Edwina Mountbatten) who grows up to be a confident and outspoken woman. The fictional narrative mentions how the young Miss Draupadi Mokراسي was once described by her teacher Professor Jennings. This is clearly a reference to an actual commentary on the Indian constitution authored by Ivor Jennings.

³⁶ In the narrative of the epic Mahabharata, the Pandavas used a similar stratagem to get rid of Dronacharya who was an efficient marshal for the Kaurava forces on the battlefield. A rumour about the death of his son (Ashwathama) was created and Yudhishtir told Dronacharya that 'Ashwathama is dead' even though it was actually an elephant by that name which had been killed at that stage. The grief-stricken Dronacharya then became an easy target on the battlefield.

Conclusion: Fiction in legal education?

It is often felt that there has not been enough scholarly attention given to the emergency period as yet. Even though the dramatic events of the time were played out a little more than three decades ago, there aren't enough references to them in mainstream media or even education. While the numerous constitutional amendments that were rushed through in and around the period and their subsequent reversal finds due mention in political and legal studies, those domains are accessible only to an insignificant portion of the general populace. The phenomenon is perhaps best explained with an analogy used by Saleem Sinai in the narrative of *Midnight's Children*. The narrator observes that the transmission of family histories can be likened to 'halal' meat. While the juicy and intriguing elements of the same are drained out and excised, the sanitized versions are passed on to the future generations. It can be safely said that official histories and by extension mainstream educational content also tends to be shaped in a similar manner.

However the intent behind writing this paper has been to highlight the utility of an alternative medium of accumulating public memories. Fiction is one category of such archives of public memories – besides other means like oral histories, folk traditions and performing arts. Fictional works unquestionably serve a wider social function that goes beyond personal reading pleasure and contribute to the creation of socio-political and historical awareness. The role of literature assumes added importance especially when it touches on themes that have been suppressed or not adequately touched upon by mainstream journalism and history-writing. In this respect works such as the ones surveyed in this paper are significant because they can function as 'popular histories' of the emergency period – not only because they can reach out to a wider cross-section of readers but also because they can offer a more nuanced explanation of the contemporaneous political climate and the localised consequences of governmental excesses. While all three novels examined in this paper have been bestsellers at different periods, Salman Rushdie's *Midnight's Children* has gone through multiple reprints since its first publication and is likely to be read even more in the years to come. Even though fictional works can provide colourful

and engaging accounts of actual events, they can also create and subsequently re-inforce opinions about a particular event from the past.

In the introductory segment I hinted at the merits of giving more space to literary works in legal education. In this paper, I have not touched on the practical questions related to the inclusion of fictional works in the curriculum and have instead confined myself to the possible use of the three novels surveyed in the preceding sections. As may be evident by now, there are references spread over the texts that can be used as effective teaching tools in several subjects. For instance even a basic inquiry into the interface between constitutional law and the criminal justice system requires an understanding of the many ways in which police powers can be abused. Legal prescriptions for regulating arrest and detention as well as the prevention of custodial abuses and redress for the same are important themes in the study of substantive as well as procedural laws. References to these aspects in fictional works can serve as interesting materials for classroom discussions. The depictions of harassment of marginalized sections, especially those of the urban poor in a novel such as *A Fine Balance* can be an effective device for examining the contours of how the law treats poverty. The problems faced by slum-dwellers, hawkers and vendors in their routine lives can perhaps be better communicated through this medium. An accurate or even dramatized depiction of persistent social evils such as the reliance on forced labour and child labour could trigger a lively discussion about the justifications for the existing constitutional protections against the same that are also enforceable against private parties.

A preliminary hurdle to the mainstreaming of the 'Law and Literature' approach in Indian legal education would be the assertion that the same deviates from the larger scheme of preparing individuals for their prospective professional pursuits. The existential question of whether university education is a means to an end or an end in itself is one which will crop up again in this context. Fictional accounts are presumed to have characteristics such as those of appealing to the emotive instincts of readers and resorting to undue exaggeration at times. Both of these characteristics have been traditionally frowned upon in legal education

where primacy is supposed to be given to the capacity for reasoning and a sense of proportion. My response to such skepticism is that our understanding and examination of the law should not only transcend the narrow boundaries of scholarly disciplines but should also look past the self-imposed boundaries of legal concepts that often compartmentalize social situations to a point of breeding insensitivity. While the preparation of legal briefs and presentation of arguments should undoubtedly reflect rigorous reasoning and a sense of proportion, there is no reason why the people who are being trained to prepare and argue the same should not draw insights and inspiration from literature which engages with social realities.