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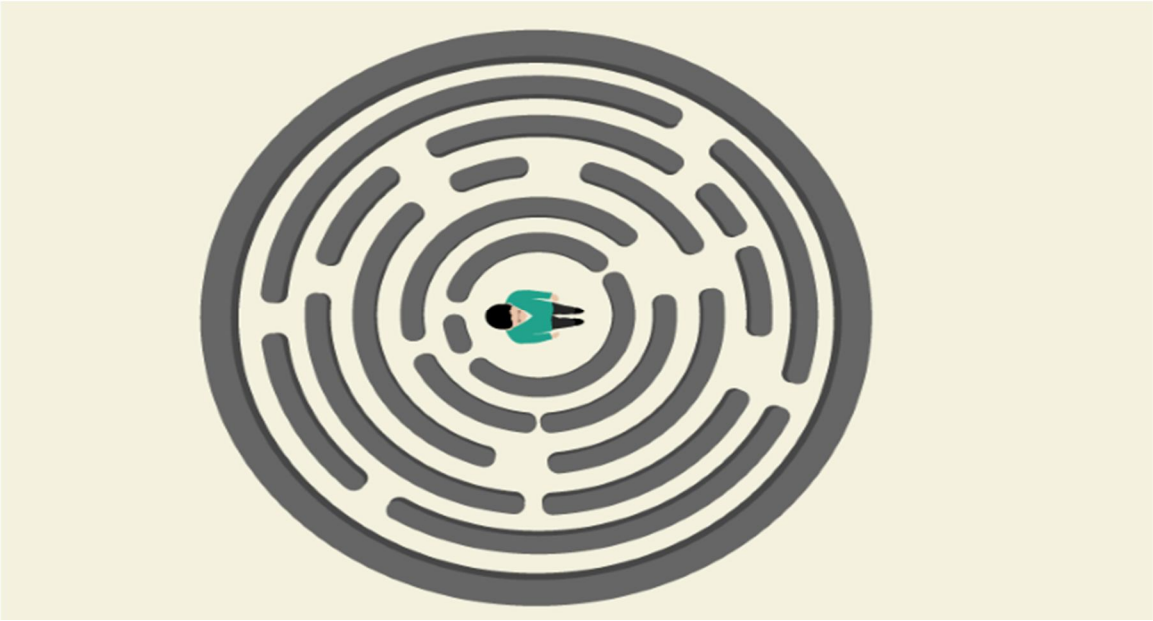
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Literature as a Source of Law - A Case Study of Franz Kafka's Trial

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Abstract: ***The following paper studies the legal systems of today's times and their striking similarity with Kafka's book The Trial and its characters;***
Franz Kafka was a writer from Prague in the previous century who gained prominence in the literary sphere after his death. One of his incomplete masterpieces, The Trial, contains a socio-legal theme to be discovered.
As with all of his stories, we find the protagonist in an absurd situation. Joseph K, a banker is handed over an arrest without any explanation whatsoever and the more he tries to discover the reason and get out, the more he finds himself trapped in a bureaucratic scheme. In this book, apart from Joseph K, there are other important characters that need to be listed down for further reference, and in no particular order, they are- The judge, The landlady Frau Grubach, Fraulein Burstner, a girl who lives in the same house as Joseph, the woman in the court, the usher, the two policemen Franz and Willem, Joseph's uncle Karl, the lawyer, Huld whom Uncle Karl wants to be hired for the trial. The following paper also explores literature as a potential source for laws around the globe, with special reference to Indian laws. The paper aims to establish a connection between popular literature and its themes as the foresight for possible legal reforms to be made in Indian society.

I. KAFKAESQUE WORLD



By definition, Kafkaesque means situations that are too complex, nightmarish, nauseating, and bureaucratic in nature, inducing paranoia, fear, and anxiety. These situations or settings could be anything ranging from a diplomatic office where politics are deeply rooted or an oppressive regime like that of today's Middle East or North Korea or even China where one fears to even voice out their opinion.
In almost all the writings of Franz Kafka, we see a world where characters suddenly find themselves involved in a scheme that is in itself so absurd or complex that one would want to throw up in disgust and nausea before one even endeavors to solve it.
Kafka’s world always carries a certain sense of mysticism, an unraveling, a sort of revelation at hand.

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II. JOSEPH K.

The victim of this complex web of bureaucracy wherein he is made to feel guilty for a reason that is not told to him, Joseph K is at the center of everything happening in the book. Joseph K finds himself entangled in a ploy one day while returning from his office, he is being arrested without being informed why he is being arrested. He is then led to believe that he is indeed guilty of an offense through a series of pre-planned events that make the book and its characters seem plausible.

Indeed, at times, “The Trial” seems like a narrative of an actual litigation case rather than a fictional story because of the realism found there in Kafka's literary style. The characters and their reaction to situations all feel too real. What makes "The Trial" a really interesting account of a farce in the legal system is how Joseph K takes it, i.e. how he goes along with the plot, in his attempt to understand it, as he loses himself more and more in it, and still never losing his intrigue and curiosity about it.

1. In the introduction of the book itself, we are informed of his arrest as Joseph learns about it when he gets home one day and finds the prosecutor and three of his colleagues in the room of the landlady, disturbing the ecosystem. As much of a shock it is for Joseph to find himself convicted, he is left to wonder why his colleagues had come there with the prosecutor.

2. His soliloquy at the court when he goes there for the first hearing seems to be a pleading more than an appeal for justice. He comes to realize that even the judge along with the people in the court are involved in it.

"It is not just me against whom such false allegations and false arrest warrants are issued but like me, there are many who are convicted without any offense committed and that is the reason for me to come here and explain myself because I want to fight for justice for all, not just for me.." (Kafka, 1995, 24)

"As the prosecutor was strolling in the landlady's room, I returned and when I asked him the purpose of his visit as well as his identity, what do you think or suppose he had answered? He had answered nothing and this was not the worst part even. He had misplaced things in the landlady's room on purpose so that she would know someone had come into her room, and I would have to explain what exactly happened and in my opinion, he brought along my colleagues from the bank with this purpose in mind also that he would spread this news of my arrest to them and in return they would spread it everywhere, just to malign me in my workplace, where I live and everywhere so that there is no place left on the face of earth where I can escape this madness ." (Kafka, 1995, #)Joseph observes at the court some of the subtle signals and signs that make him think something even more sinister is going on than what appears. He sees the judge using his eyes to signal to the crowd when he is giving his speech and he calls him out on it saying that it must mean that someone at even a higher rank than the judge must be giving them orders for this play that they are conducting to trap him completely and he says that they are all free to signal for whatever they want, booing or clapping, that it doesn't matter to him one bit.

He further goes on to say that as per his observations, it must be the job of some big organization, not just an individual, an organization that can buy the policemen, supervisors, judges, and anybody who needs to be bought to get the job done. He says that this very court must be bought by the organization to get him indicted. "This organization even maintains a high-level judiciary along with its train of countless servants, scribes, policemen and all the other assistance that it needs, perhaps even executioners and torturers" (Kafka, 1995)

As Joseph begins to leave, he takes one last look at everyone and he sees that each one of them is wearing a badge, and not just a badge, but, badges of various sizes, and colors, wearing them on their coats, and this made him realize that everyone in that court, even the audience were part of some gang like organization, and as he turns to leave, he is being seized by the examining judge who himself is wearing the badge on his collar, and he bursts saying that he now understands how he is being duped and gets a little violent and in his attempt to get free from the grip of the examining judge, he frees his hands from examining judge's lap.

"Dark, little eyes flickered here and there, cheeks drooped down like, on drunken men, their long beards were thin and stiff, if they took hold of them it was more like they were making their hands into claws, not as if they were taking hold of their beards. But underneath those beards—and this was the real discovery made by K.—there were badges of various sizes and colors shining on the collars of their coats. As far as he could see, every one of them was wearing one of these badges. All of them belonged to the same group, even though they seemed to be divided to the right and the left of him, and when he suddenly turned round he saw the same badge on the collar of the examining judge who calmly looked down at him with his hands in his lap. "So," called out K., throwing his arms in the air as if this sudden realization needed more room, "all of you are working for this organization, I see now that you are all the very bunch of cheats and liars I've just been speaking about, you've all pressed yourselves in here in order to listen in and snoop on me, you gave the impression of having formed into factions, one of you even applauded me to test me out, and you wanted to learn how to trap an innocent man! Well, I hope you haven't come here for nothing, I hope you've either had some fun from someone who expected you to defend his innocence or else—let go of me or I'll hit you," (Kafka, 1995, #)

3. Joseph, when later comes to the court for trial, finds the courtroom empty but he finds the woman there who was there the other day, being harassed by the boy who he now finds out through this woman is working on the instructions of the judge himself and he even finds out that this woman is married and that too with the usher who works in the court itself, meaning that despite being harassed in front of her husband, they can not do anything about it, which goes on to say how deeply corrupt the system is.

As he starts to take fondness for the woman and starts flirting with her, the student arrives. In the woman's opinion, the student is soon to be a powerful man like the judge so he must be feared and they should do as he asks, which is to take the woman to the court offices for "Pleasure" purposes. Joseph fights this and he comes in to intervene but the woman refuses any help, which to Joseph seems absurd.

The woman is reluctant and submissive to a great extent because she fears she and her husband will lose their job at the court if they deny them. This makes Joseph outburst in anger. He chases them both as the student is carrying the woman to the office in one of his hands.

"The two of them had disappeared, but K. remained standing in the doorway. He had to accept that the woman had not only cheated and duped him but also that she had lied to him when she said she was being taken to the examining judge. The examining judge certainly wouldn't be sitting and waiting in the attic. The wooden stairs would explain nothing to him however long he stared at them. Then K. noticed a small piece of paper next to them, went across to it, and read, in a childish and unpractised hand, "Entrance to the Court Offices". Were the court offices here, in the attic of this tenement, then? If that was how they were accommodated it did not attract much respect, and it was some comfort for the accused to realize how little money this court had at its disposal if it had to locate its offices in a place where the tenants of the building, who were themselves among the poorest of people, would throw their unneeded junk. On the other hand, it was possible that the officials had enough money but that they squandered it on themselves rather than use it for the court's purposes. Going by K.'s experience of them so far, that even seemed probable, except that if the court were allowed to decay in that way it would not just humiliate the accused but also give him more encouragement than if the court were simply in a state of poverty. K. also now understood that the court was ashamed to summon those it accused to the attic of this building for the initial hearing, and why it preferred to impose upon them in their own homes. What a position it was that K. found himself in, compared with the judge sitting up in the attic! K., at the bank, had a big office with an ante-room, and had an enormous window through which he could look down at the activity in the square. It was true, though, that he had no secondary income from bribes and fraud, and he couldn't tell a servant to bring him a woman up to the office on his arm." (Kafka, 1995)

While he is at the office, with the usher, he finds out that many people have surrounded him and when he questions Joseph about their identity, Joseph says that these are all accused and to be indicted just like him. Then, Joseph recalls that all of them are his colleagues.

This makes him wonder how big the organization must be which could falsely trap so many people, indicting them left right, and center. "I was speaking with your wife a little while ago. She is no longer here. The student has carried her off to the examining judge." "Listen to this," said the usher, "they're always carrying her away from me. It's Sunday today, and it's not part of my job to do any work today, but they send me off with some message that isn't even necessary just to get me away from here. What they do is they send me off not too far away so that I can still hope to get back on time if I hurry up. So off I go running as fast as I can, shout the message through the crack in the door of the office I've been sent to, so out of breath they'll hardly be able to understand it, run back here again, but the student's been even faster than I have—well he's got less far to go, he's only got to run down the steps. If I wasn't so dependent on them I'd have squashed the student against the wall here a long time ago. Right here, next to the sign." (Kafka, 1995)

4. Joseph is then visited by a whip man, who is supposedly the man who is being instructed by the judge to beat the two policemen who visited Joseph at his house. The two policemen, "Franz" and "Willem" also have come along. The whipman tells Joseph that he is being instructed by the examining judge to punish these policemen who troubled him and despite Joseph's refusal to do so, the whipman beats Franz and Willem and this whole situation turns out rather funny when he starts to make fun of them too.

Looking at it this way, it's rather obtuse and absurd that first the examining judge instructed the two policemen to harass Joseph K and then he instructed the whip man to punish them for doing so.

It can be interpreted as a pretense or a farce in front of Joseph K.

" But the other two called out, "Mr. K.! We're to be beaten because you made a complaint about us to the examining judge." And now, K. finally realized that it was actually the two policemen, Franz and Willem and that the third man held a cane in his hand with which to beat them. "Well," said K., staring at them, "I didn't make any complaint, I only said what took place in my home. And your behavior was not entirely unobjectionable, after all." "Mr. K.," said Willem, while Franz clearly tried to shelter behind him as protection from the third man, "if you knew how badly we get paid you wouldn't think so badly of us." (Kafka, 1995, #)

III. KAFKAESQUE IN CINEMA-

A. *Shawshank Redemption*

"The Shawshank Redemption" is a 1994 American film directed by Frank Darabont, based on a novella by Stephen King. It tells the story of Andy Dufresne, a banker who is sentenced to life in Shawshank State Penitentiary for a crime he didn't commit. The film is known for its themes of hope, friendship, and the resilience of the human spirit. It's not typically considered a Kafkaesque work, as it focuses more on the triumph of the human spirit over adversity rather than the absurdity and bureaucracy often associated with Kafka's works.

"Kafkaesque" is a term derived from the writings of Franz Kafka, a Czech-born German-speaking writer known for his surreal and existential works. Kafkaesque refers to situations that are characterized by bizarre, illogical, and oppressive qualities, often involving complex and nonsensical bureaucracies, feelings of alienation, and a sense of helplessness. These elements are frequently found in Kafka's stories, such as "The Trial" and "The Metamorphosis."

While "The Shawshank Redemption" doesn't fit the traditional Kafkaesque mold, it does explore themes of injustice within the prison system, which can resonate with Kafkaesque elements to some extent. However, the film's overall tone and narrative are more uplifting and focused on redemption and the triumph of the human spirit, making it a different genre altogether.

The movie had many common characteristics with Kafka’s trial. Andy Dufresne, the lead protagonist of the award-winning movie from 1994 has a lot in common with Joseph K. First, that he is Banker and most importantly, that he also is convicted of an offense that he did not commit.

"The story or the plot of this movie begins when Andy Dufresne, an educated young man and deputy director of a bank, became the accused of the murder of his wife and her affair. Even though Andy explained everything according to the facts, everyone did not believe it and the prosecutor demanded that he was sentenced to double life imprisonment."(Kustantinah, 2021)

B. *The Truman Show*

"The Truman Show" is a 1998 film directed by Peter Weir, starring Jim Carrey as the main character, Truman Burbank. The film explores the life of Truman, who unknowingly lives his entire life within a massive, controlled, and televised reality show. His every move is observed by hidden cameras, and everyone around him is an actor playing a role in his life. Truman's quest to discover the truth about his world and break free from it is a central theme of the film.

The term "Kafkaesque" refers to qualities or situations reminiscent of the works of Franz Kafka, a Czech writer known for his surreal and absurd narratives that often involve themes of alienation, bureaucracy, and the individual's struggle against an oppressive and illogical system. The term is frequently used to describe situations in which individuals feel trapped or overwhelmed by faceless, bureaucratic forces, often with a sense of absurdity and powerlessness.

There is a connection between "The Truman Show" and the concept of Kafkaesque elements in literature and film. In "The Truman Show," Truman's life is controlled by an omnipotent and unseen force, much like the oppressive and irrational systems depicted in Kafka's works. Truman's gradual realization of the artificiality of his world and his struggle to break free can be seen as a Kafkaesque exploration of individual agency and the quest for authenticity in a world that seems designed to keep him in a state of ignorance and conformity.

In summary, "The Truman Show" can be considered Kafkaesque in its exploration of themes related to control, surveillance, and the individual's struggle for autonomy within a surreal and manufactured reality. It shares some thematic elements with Kafka's works, even though it takes a different narrative approach and tone.

In the United States this film kingdom which mainly deals with commercial films, "The Truman Show" was like a unique work, the expression of this film was wandering between art and commercial film, it both had art film's unique narrative method and commercial film's entertainment and leisure characteristics. It uses a postmodernist narrative technique to show daily life in an alternative form, the director tries to cover up human weaknesses and let Truman this charmingly honest but with no pursuit "ordinary person" living in the virtual "Utopia" society which was created by him, the director of the film tried to escape from the reality in the plot and confused the truth and fake. (Dong, n.d.,)”

IV. PARALLELS IN LITERATURE AND LAW

As we look for the parallels between these two, i.e. fictional narratives and the actual law, we can say that life imitates art.

There have been many litigation cases in India in the past which can be said to be in parallel with Kafka’s Trial.

1. In the case of Stan Swamy, a social activist who was arrested for alleged terrorist activities, the oldest person in India to be accused of such a crime, was just a catholic priest and as it turned out, he was a tribal activist for many decades before that.

Stan was arrested under the unlawful activities (prevention) Act for his role in the 2018 Bhima Koregaon violence and was labeled a member of CPI, short for communist party of India.

He was a patient of Parkinson's and while in jail, despite his severe illness, his bail was rejected multiple times, and because of this, he died in prison on 5 July 2021.

Later in November 2021, on the plea of JJP, Jamshedpur Jesuit Province, to clear Swami's name from the case, the Bombay High Court asked to resubmit the petition.

In a recent update in December 2022, the Washington Post, an American newspaper mentioned in their findings on the case that in actuality it was a hacker's work to plant the evidence on Swamy's computer.

2. In December 2019, the police encountered four people accused of rape and murder and there was an omission of information on the suspects. The police said the four killed in the encounter were in their 20s while they were, in reality, minors.

Later when the Supreme Court instigated a commission headed by Justice V.S. Sirpurkar for inquiry on the case, it found out that the accused were shot at with the deliberate effort to kill them.

The four were accused of raping and murdering a veterinary doctor in Telangana.

3. Similarly, in the 2002 Gujrat riot trial the victims, NGOs, and activists relied on the criminal justice system for holding the perpetrators accountable. However, the lower courts of Ahmedabad effectively immunized the criminals from prosecution. Moyukh Chatterjee terms this an impunity effect, where the interrelated techniques of documentation, temporality, and proceduralism.

4. Kamble was arrested on suspicion of abetment of suicide by Vasudev Pawar, a young manual scavenger who lived in the Sitla Devi slum area. As the trial progresses, it becomes clear that the allegations against Kamble are weak, and he is granted conditional bail with a hefty bail amount. Kamble is detained again a few days later on false allegations of sedition under Section 124A of the Indian Penal Code, 1860, and the Unlawful Activities Prevention Act, 1967

The power of state officials, policemen, and bureaucratic officials to endlessly defer access to the law while maintaining the fiction that it is open to all who seek justice is reflected in Kafka's parable.

V. DIFFERENTIATION BETWEEN LAW AND LITERATURE-:

The key difference between society at large, the real world, and the world of Kafka, his stories is that we here in the real world have the "Due process of law".

Due process of law refers to "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case." (Menon, 2022, #)

A. Literature As The Source Of Law

Literature has shaped humanity since time immemorial. Given the context, we can also say that law is not left untouched by the influence of literature.

”In Book 18 of The Iliad, Homer deliberates upon the search for justice illustrated in the city at a peace scene hammered in bas-relief on the shield Hephaestus makes to replace Achilles' captured armor. A group of men gathered in a public place to debate "over the blood price for a kinsman just murdered" and ask a judge for a verdict. This scene leads us to ask many questions. Would such a wide scope of knowledge in constructing a scene in rich metals be constructible for Mycenaean Greece? In an early warrior culture, would such a precious shield be commissioned for battle; or, does this vivid description in the Homeric text only point to a literary masterpiece from another time? An anachronism? Eric Havelock in *The Greek Concept of Justice* in his discussion of the evolution of the concept of justice from oral epic to Plato offers a valuable perspective. For him, this scene proves that, while *The Iliad* utilizes the mythos of Mycenaean kings and their war, it offers glimpses of real life in the early polis of a later time (ca. 650 B.C.E.) When the final composition of the epic took place From 900-650 B.C.E., long after the Mycenaean age when Linear B was used, the Greeks were at best semi-literate, yet at this time tribal culture developed into new social patterns concentrated in the polis." ("Reading Law as Literature, Reading Literature as Law: A Pragmatist's Approach," 2013)

This kind of text makes us twenty-first-century humans think about the justice system as a means to live a peaceful life. We can have a discourse at length about it with our colleagues, our fellow students, or even our family and can take the literature as food for thought.

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The formation of the United Nations proves it and many of its subdivisions, the umbrella organizations are working on providing justice to every individual in the world. Whether it be the International Court of Justice, the Hague Convention, The Human Rights Council, or many more. We want justice and we want peace no matter how radicalized the environment is. And in every single conflict in the history of humanity, literature has been the way to get it. “Justice is not only a significant theme in great literature from The Oresteia to Camus’ The Fall and beyond, but literary and legal scholars alike believe it offers superior insights into the nature of the law itself. (“Reading Law as Literature, Reading Litrature as Law: A Pragmatist’s Approach,” 2013)”

VI. SOURCE AND INSPIRATION OF INDIAN LAW

Most of Indian law is derived from the ancient and sacred Hindu texts such as Manusmriti, and the Four Vedas, which are the core foundation of Hinduism, even Upanishads. For example, the laws on marriage, divorce, robbery, rape, and even succession are based on these texts. Some of the most prominent and illustrative examples of this are The Hindu Succession Act of 1956, the Hindu Marriage Act of 1955, and the Hindu Adoption Maintenance Act of 1956. Apart from these, many of the laws that stand to this day are taken directly or an indirect interpretation of these ancient texts that were written supposedly by "Rishi" and "Muni" the knowledgeable among the mortals. Manusmriti-: Manusmriti, also known as the Laws of Manu is a meditation by the sage Manu on the matters of law and the code of conduct of the civil society in general; It contains 12 chapters of stanzas, which total 2,694. It was when Sir William Jones, a philologist decided to take it upon himself and translate the work in 1776 when the world outside India had the chance to get their hands upon the supposed sacred text on law, dictated right from the mouths of gods themselves. The topics under discussion in this particular text are as diverse as marriage, hospitality, funeral rites, dietary restrictions, pollution, and means of purification; the conduct of women and wives; and the law of kings.

VII. LAW IN INDIA TODAY

The law and order in India are governed by CrPc short for Criminal Procedure Code, which was enacted in 1898, IPC, short for Indian Penal Code, which is the bible for the police force to resolve civil disputes. It was brought forth by the then-British rule in 1860 and the Indian Evidence Act. Some of the laws are supposedly draconian and are always under public scrutiny and criticism.
The much-anticipated change was brought forth by the Modi government in 2023 in above mentioned laws. The Criminal Procedure Code is soon to be replaced through "Bhartiya Nagrik Suraksha Sanhita Bill, 2023” The Indian Penal Code will be replaced with “Bharatiya Nyay Sanhita Bill 2023”. The Evidence Act, of 1872 will be replaced through the "Bhartiya Sakshya Bill,2023

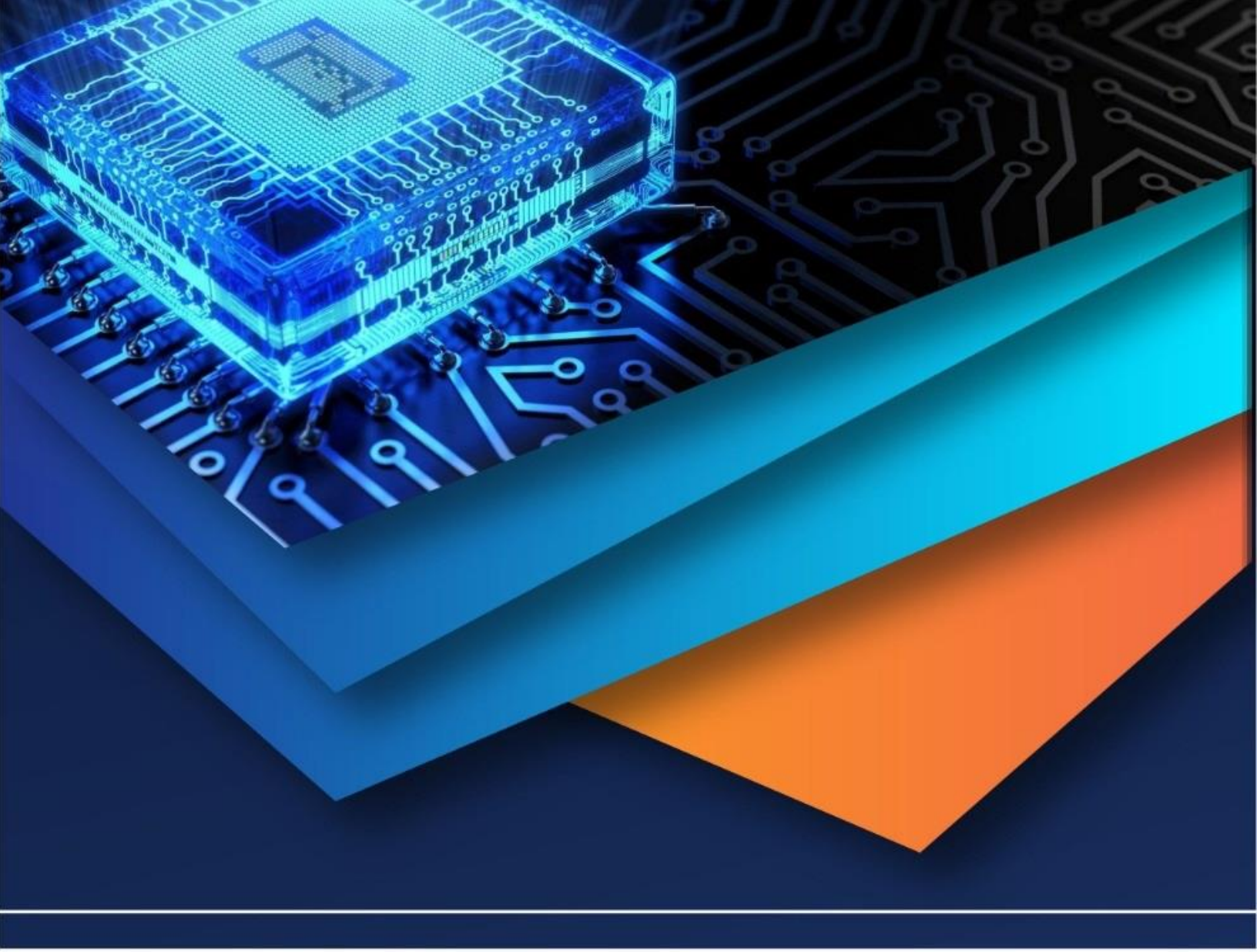
VIII. CONCLUSION

According to Kafka, the legal system is a complex and bureaucratically governed institution that was created to serve the state's agenda. While we can say that this is certainly to some extent true and relevant in today's time, we have to acknowledge the time and the zeitgeist when Kafka was still alive and writing. The sentiments of those times, the eerie looming situations, and the dystopian vision all were contributing factors influencing the writer. Kafka himself was influenced by the works of "Fyodor Dostoevsky", the Russian writer and specifically, "Crime and Punishment". These stories are, at the end of the day, just stories and we have to put our faith in our judiciary system, without which, sheer anarchy would overtake. We have to be thankful that we have a system, to keep all evil at bay and check. The criminals do fear law and order and that is only how we as members of society can go peacefully to sleep, even to work, or can leave our children to their schools without fear and anxiety constantly disturbing our regular course of life.

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