



Judicial Iconography and Access to Justice in the Bombay High Court

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Introduction

The Bombay High Court building, completed in 1878, has been constructed in the neo-gothic architectural style. The building has several components to it, of which the judicial iconography will be the central part of the following analysis and interpretation. Created by the British when India was under colonial rule, this high court merged into the Indian legal system post-independence and after the promulgation of the Constitution of India, 1950.

First of all, it will be argued that certain aspects of the judicial iconography of the Bombay High Court and its practices hinder access to justice. The idea of access to justice that will be referred to, is the physical accessibility of the court building which is read through Franz Kafka's parable on *Before the Law*. Further, the article focuses on the public interest litigation (PIL) that has been filed in the Bombay High Court for the creation of a new high court building. Along with this, the paper looks at the restrictions through the visual in the form of the dress worn by judges and lawyers and the ban on photography in court premises. In conclusion, the paper discusses the idea of law as heritage and how the Bombay High Court deals with its iconography in

relation to its heritage and eventually, how they affect the process of access to justice.

Research comprises of my ethnographic work that was documented while in the field. Court proceedings were observed on a regular basis in the Bombay High Court and followed this through interviews with judges, lawyers and court staff. Therefore, the data comprises of the oral narration of the court personnel as collected while in the field.

The Bombay High Court building

The Bombay High Court is a neo-gothic structure designed by Lieutenant-Colonel John Augustus Fuller (Mehrotra & Dwivedi 2004). When viewed from its front facade, the high court building has the exterior manifestation of a large, daunting structure. The monumentalisation of law through awe inspiring court buildings is a feature prominent in most courts across the world wherein a large structure plays a symbolic role and signifies a motif of the ornate nature of the law (see Goodrich 1990; Haldar 1994; Mulcahy 2011). As Piyel Haldar writes, "[A]ll courts exist in their architectural representations" and therefore the first view of a court building is an important signifier of the legitimacy rules and ideas that the court is setting out for the people who enter its premises (1994: 200). An overarching structure plays the role of a dominant figure that indirectly has the power to control the subjects that enter its precincts.¹

The predominant central tower of the Bombay High Court is flanked on both sides with neo-gothic styled components to the building. The roof of the central tower is the highest, with some portions covered in glass that allow for a flow of natural light inside the court. Architecturally, the roof of the high court is two-thirds of its height and it extends on either side like two projecting wings along with two grand roofs. In sync with the neo-gothic style of architecture, there are gothic arches and columns on each floor. Fuller had incorporated these in order to accommodate the sea breezes (as at that point the high court building was facing the Arabian Sea) and for enhanced ventilation of the building (Mehrotra & Dwivedi 2004). The basalt stone that was used in the construction is visible across the court building and was sourced locally.²

The central courtroom

The courtroom right below the central tower of the high court is the central courtroom, courtroom number 46, which is the largest and most magnificent courtroom in the Bombay High Court. The central courtroom stands as a symbol of iconography within the high court and creates a visual imagery that has a representational meaning for various allegories that this courtroom brings to the fore. The central courtroom was originally built as a criminal courtroom to serve the criminal jurisdiction that was held by the high court (ibid.). This is the same courtroom where the trial of Lokmanya Tilak was held by the British in 1897 and 1908 holding him guilty of sedition. Both these trials were held in the central courtroom of the Bombay High Court. The case of the first trial of Tilak was when two British officers were shot dead by some Brahmin youths and it was pointed out that this was due to the direct incitement created through Tilak's various speeches and articles against the British rule (High Court of Bombay n.d.).³ Tilak was prosecuted for sedition under Section 124-A of The Indian Penal Code, 1860. The jury in the trial found Tilak guilty of sedition and sentenced him to eighteen months of imprisonment.

In the second trial, Tilak was once again tried for sedition under the same law, for some articles he had published in a Marathi newspaper called *Kesari* in May and June, 1908. During the trial Tilak defended himself before the jury stating that the people who had interpreted his writings did not speak Marathi and what was being projected were not his original words but those from translations. The jurors were not Marathi speaking people and had little knowledge of the distribution and readership of the newspaper *Kesari* (Tahmankar 1956). The jury held Tilak guilty of sedition by a majority of 7:2. The judge sentenced Tilak to six years' transportation and a fine of Rs. 2,000. It is the mystification of Tilak and his trial at the Bombay High Court's central courtroom which turned the place into a sanctuary of the struggle for India's independence.

The significance of the central courtroom is evident through the different judges, lawyers and court staff that I interviewed who have a mixed view of the use that the central courtroom should be put to. Some believe that this courtroom must be used on a daily basis as its grandeur compliments the overall awe of the Bombay High Court building. Some interviewees were of the opinion that the court should only be used when there are important matters of public interest or PILs being argued in court as it is the largest courtroom so it can

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accommodate the maximum number of people thereby reaching out to a larger section of society. Other persons were of the view that the court should be used as a symbolic representation of justice and therefore only be utilised for important events. Being a historic courtroom, courtroom number 46 has always been the representation of the Bombay High Court to the outside world. Therefore, events of importance are often conducted in this courtroom. It is legal folklore that after the trial of Lokmanya Tilak, no Indian judge has used this courtroom as the Chief Justice's courtroom.⁴

The Bombay High Court Exhibition on the occasion of 150 years of the high court in 2012 had wisely selected the central courtroom as its venue as it was a reflection of all the information that it wished to convey to the visitors of the exhibition. A former Chief Justice of the Bombay High Court, Justice Swatanter Kumar, often used the central courtroom when he heard PILs. A court staff mentioned to me that in 2007, Justice Kumar had the central courtroom repainted and restored and hoped to use it as the 'Chief's Court.' However, this plan was opposed by different judges and therefore the Chief Justice was able to use the central courtroom only to hear PILs once or twice a week.⁵

As the issue of the use of the central courtroom is contested, one of the Judges I interviewed was taken aback by my question on whether the central courtroom should be used on a daily basis or not be used at all. The Judge chose not to answer this question as according to the Judge it was a controversial question. Another Judge that I interviewed reacted similarly, but indicated that there had been a debate amongst judges as to the usage of the central courtroom and the opinion had been divided. In February 2016, a new chief justice was appointed to the Bombay High Court. The Chief Justice was interested in using the central courtroom for judicial work during some days of the week. In April 2016, there was a discussion as to when the Chief Justice might start using the central courtroom on a regular basis. The extent of debate on how the central courtroom ought to be used indicated that the central courtroom has become iconic to the history of the Bombay High Court through its representation of the despotism of colonial law during the Tilak trial (see Kolsky 2010; Mukherjee 2009; Singha 2000). It seems that over time this courtroom transformed into a space that dramatised the representation of history of the Bombay High Court along with a distinct nationalist history. The politics of memorialisation is clear from the Bombay High Court website⁶ where the use of the central courtroom finds contestation illustrating the

internal debate within the court about how to represent, monumentalise and memorialise its own history.

Public Interest Litigation for a new High Court building

Since its creation, the Bombay High Court has been dealing with the issue of lack of space (Times of India 1879). A high court extension building was added in 1983, however, this has also proved insufficient leading to the PIL filed which eventually asked for a new high court building altogether.

Critique for the building in 1879

On completion in 1878, the Bombay High Court building met with stinging criticism in the colonial press. On 21 March 1879, the *Times of India* carried an editorial piece that extensively critiqued the architecture of the Bombay High Court – both externally and internally. Fuller was reproached for the, "discomfort he had so ingeniously contrived to entail upon many generations of the legal profession in India" through the construction of an unfeasible high court building (Times of India 1879). The editorial berates the extravagant expenditure on constructing the court building adding that public money had never been spent on a hindrance for people in a manner worse than that displayed in these court premises. The editorial critiqued the very design of the building and its interior plan. The editorial mentions that Fuller was, "looking only after outside effect" and therefore, "seems to have planned the shell of the building first, and then to have thrust in his courts and chambers and staircases where he could" (Times of India 1897). The architect was criticised for his focus on the external majesty of the building while ignoring practical requirements of the profession thus:

On the highest platform, almost out of sight and hearing, sits the judge on a carved teak throne; below him the court officials. The senior counsel are only allowed five chairs in front of a short table on the lowest platform of all...the junior counsel are banished to the edge of another raised platform at the back, utterly away from their seniors; and their chairs are placed so as to be in constant peril of a sheer drop of five feet. For this reason, most of them stand, clutching on to something. No kind of accommodation is provided for the solicitors or their clerks, so that it is impossible for either to hold any communication with the gentlemen they are instructing, while the junior counsel are completely cut off from the seniors with whom they are acting.

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The result is simple. Not one fifth of the bar practising in Bombay can ever find seats at all. The judge cannot hear the counsel; the counsel cannot hear the witnesses; and the reporters, who are seated on the tiles among the public below, can see neither the one nor the other, while to anyone who ventures into the gallery, the whole thing is dumb-show. (Times of India 1897)

The editorial even suggests that, "pending a report, all work inside the building should be at once suspended" (Times of India 1897). It continues to write that, "The Government have had their own way throughout the erection of this inconvenient building; in the interests of the general public the judges should now interfere, and bring a little practical common sense to bear upon the interior arrangements" (ibid.).

Fuller was fully decimated for constructing a building that resembled an imperial building but did not meet the requirements of a growing legal profession or depict the minimal understanding of the needs of this imperial legal profession. Schmitthener (1968-69) traces how the number of solicitors, barristers and clerks increased from the first East India Company courts to the Supreme Courts in the presidency towns and the trend continued in the high courts that were formally started in 1862. This accompanied a demand for new court buildings where the colonising rule of law could seat itself in imperial splendence. However, the imagination of the interior of the courtroom as if it were an empty space that simply had to be filled up with platforms, thrones, benches, stairs and corridors suggests a specific imagination of how colonial law was monumentalised within. The placement of these artefacts within the courtroom was used to divide up space separating the colonial judge from the masses.

However, the systemic lack of attention to whether or not lawyers, solicitors and clerks had enough space to communicate with each other and the Bench created what Pat Carlen (1976) calls auditory autism between these legal actors. Fuller's imagination of the Bombay High Court ridiculed through the images of wigged and robbed colonial judges perched precariously on high seats of colonial law, is also indicative of the lack of concern with the needs of the emergent Bar, sometimes at odds with the colonial rule. As the legal profession grew and consolidated itself (Mendelsohn 2005), it offered several challenges to colonial law from within (Sharafi 2015). The story of the contradictions within colonial law was written in these foundational moments of the opening of the Bombay High Court—a story that was repressed and manifests⁷ in different ways as the Bombay High Court

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moved into independent India to interpret the Constitution of India in ways that made history. In many ways, Fuller's inability to monumentalise law by imagining the way judicial hierarchy would evolve and the importance of architectural design to keep judicial elites apart yet in communication haunts the Bombay High Court even today.

The Public Interest Litigation of 2012

The disparity in the spatial requirements versus the increasing number of lawyers is seen through the documentation available by Schmitthener (1968-69) wherein he traces the increasing number of lawyers that joined the legal profession which was at one instance also associated with the increasing number of courts that were instituted by the British. Therefore, the legal profession continued to flourish, and the load on the Bombay High Court continuously increased leading to an ongoing debate on the need for more space in the high court.

The demand eventually came before the Bombay High Court itself in the form of a PIL. The PIL was filed in the year 2012 as *Ahmad M. Abdi v. The State of Maharashtra and Others*.⁸ Beginning with its first order on 10 September 2014, the PIL has been heard on a regular basis before different division benches of the high court. As of 3 February 2017, the last order passed by the high court with respect to the PIL was on 7 December 2016. Abdi appeared as the petitioner-in-person in this PIL which has had several respondents added to it as it has progressed. Over the course of the hearing, the respondents have been the Union of India, the state of Maharashtra, the Brihanmumbai Municipal Corporation (BMC), the Heritage Committee of the Bombay High Court, the High Court Administration, the Bar Council of Maharashtra and Goa, the Bombay Bar Association (BBA), the Advocates' Association of Western India (AAWI) and the Bombay Incorporated Law Society (BILS), amongst others.

The PIL noted that the current high court does not have sufficient space for the increased number of judges, lawyers and litigants that utilise the high court in its current time as opposed to the time of its construction. The difficulties faced by the litigants and the members of the bar were also identified. Initially, the PIL suggested using nearby buildings including the Gokuldas Tejpal Hospital (GT Hospital) that is already being used by some administrative departments of the high court; and the Central Telegraph Office (CTO) building that is adjacent to the Bombay High Court building. It also suggested an alternative in the form of constructing a completely new and modern building for the

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high court and proposed modelling it on newer court buildings like the Delhi High Court.⁹ By the third Order dated 10 October 2014, the high court acknowledged the position that the current premises of the Bombay High Court are "grossly inadequate" to cater to the needs of the judges, lawyers, litigants and court staff.

At the same time, the order refers to the land offered by the state government in Sewri in Mumbai and how it was inadequate for the needs of the high court. Another suggestion was to ask the University of Mumbai, which is also adjacent to the Bombay High Court, to move to its main campus in Kalina, Mumbai and use the space made available for the expansion of the high court. Alternatively, the vacant land in the University of Mumbai main campus in Kalina itself was also considered as an option. However, when none of these options were viable for different reasons (Shah 2015)¹⁰, and over the course of several deliberations, the High Court Administration suggested the shifting of the court to a centrally located part of the city in Bandra Kurla Complex, Mumbai.¹¹

The overall requirement for land space for a new high court was stated as fifty acres and the high court in its Order dated 15 October 2015, said that no justification was required from the high court to the state government as to why this amount of land was asked for. In the allotment of land, the high court also asked the BBA, AAWI and BILS to submit their requirements for lawyers' chambers and other facilities for members of the bar.¹² The figure of fifty acres included the requests of all concerned respondents.

An important order in the course of this case was the order passed by the court on 9 August 2016. In this order, the high court clarified that the design of the new high court building would be as per the directions of the High Court Administration and that the consultants appointed by the state government in this regard would have no say in this matter. For the first time, this order listed the variety of objections it received in opposing the moving of the high court premises. Two of the main issues raised related to the inconvenience it would cause to judges and members of the bar due to the change in location in comparison to the present high court building. The second concern was related to the heritage status of the Bombay High Court building and the maintenance of the historical importance of the building. The issue of the heritage importance of the high court was raised by an intervening application¹³ filed by the lawyer Rajan Jaykar.¹⁴ Jaykar argued that the reputation of the high court does not only come from

its renowned judges and lawyers but also from the grandeur of its building. He compared the moving out of the colonial high court building to the equivalent of discarding the traditional lawyers' dress of black gown and white bands (Plumber 2016).¹⁵

However, the judges on the division bench held that these issues, including that of the heritage status of the high court building, were "completely irrelevant" and that even if the high court was shifted, the heritage status would be maintained and retained.¹⁶ The judges placed the welfare of the litigants as the most important criteria to be considered. A former judge and chief justice of the Bombay High Court, Justice Sujata Manohar, while not intervening in the case at hand, expressed her views on the issue through an article in *The Hindu* (Manohar 2016).¹⁷ Justice Manohar wrote in astonishment, that during the course of the hearing, the heritage of the high court was taking a backseat. She was categorical in her view when she stated, "It would not just [be] short-sighted but also foolish to throw away centuries of priceless traditions in search of square footage" (Manohar 2016).

While this matter is being debated, the idea of moving the high court to a new location which is at a significant distance from the present high court building, has been accepted as the solution to the present problem of inconvenience faced within the court. Interestingly, the debate about a solution for the inconvenience faced by litigants has been between authorities associated with the court from within—therefore, the perspective continues to remain as that of the system from within for the persons from outside. The PIL which was first heard in 2014 has been progressing because the court decided to respond to the issues addressed therein. This authority that the court maintains, by deciding the inconvenience of litigants, general public, lay persons and non-experts without accounting for their viewpoint is evident in the list of respondents that are part of the PIL—all being experts in the form of internal court or government authorities.

Further, the conversation within the PIL also turned towards the 'heritage' of the Bombay High Court. The Chamber Summons filed by Jaykar talks of the 150 year old heritage of the high court while the judges countered his claim by stating that looking at the issue through the lens of heritage spoke of a limited perspective in understanding the problems at hand (Plumber 2016). In her article, Justice Manohar stressed on the need to creatively combine heritage and modern day requirements of the high court. For Justice Manohar, the only conclusion is to point out that several years back, "the then-Chief

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Justice constituted a heritage committee to preserve and plan for the future of this building; it is time to revive this committee" (Manohar 2016).

This idea of looking at law as heritage is specific in the context of the PIL filed to shift the location of the 1862 mandated high court. The argument for considering the Bombay High Court as a heritage structure is different from other monuments that are deemed as ancient and protected monuments in terms of the Archaeological Survey of India (ASI) and based on *The Ancient Monuments and Archaeological Sites and Remains Act, 1958*.¹⁸ The Bombay High Court building, being over 139 years old, could be considered an 'ancient monument' as per the definition set-out in section 2 (a)¹⁹ of the Act, as it largely requires a structure to be "not less than one hundred years." However, the high court stands apart from most ancient and protected monuments as it is still in active use by persons on a daily basis.

In its current form, the Bombay High Court is a living and thinking body and therefore it does not need to be conserved in the same way. While there is a need to monumentalise the importance of the high court building, it is also possible that it is further monumentalised as a museum or an inactive building. Therefore, the way these decisions are made, based on heritage and the need for conservation, also question whether the issue is only about heritage or also about maintaining a certain space based on the internal ideas and memories associated with it. Importantly, newness also forms part of tradition; and when a certain newness is introduced, it therefore also becomes a tradition. When Justice Manohar (2016) argues that modern day needs can be accommodated within the same high court without destroying its heritage, it indicates the possibility of tradition being secured through newness.

A case at point here is the recent allocation of land for the lawyers' chambers near the Supreme Court of India. In this situation, the Supreme Court of India needed more space for developing an annex building for the court for the purposes of creating lawyers' chambers, a library, conference halls, facilities for litigants and parking space (Hindustan Times 2010).²⁰ The land allotted for the same was the location of the popular amusement park of Delhi—Appu Ghar. Appu Ghar had been at this location since 1984 and had formed a landmark in the memory of the citizens of Delhi (United News of India 2008).²¹ The space now hosts the new lawyers' chambers complex. Therefore, when compared to the situation of the consideration of the 'litigants'

convenience in the Bombay High Court and in the Supreme Court of India, it is actually an outcome of the convenience of the court at first instance. The same litigants that form a part of the citizens of the city were not consulted in whether a 'convenience' based expansion of the Supreme Court complex was agreeable in exchange for the closing down of an iconic landmark in their city. Therefore, the courts as institutions do not look towards the litigants and/or citizens in all instances²², indicating that the decision by the Bombay High Court in the PIL is also not primarily based on the inconvenience caused to litigants. The notion of public interest then may vary according to jurisdiction and history.

While the orders regarding the PIL are ongoing, the issues it has raised resonate through the historicity of the Bombay High Court at several levels. From the colonial character of the court to the heritage symbol it stands for, the proliferated identities of the court were questioned through the course of this debate. With the decision to move the court being currently sealed, it remains to be seen if the legitimacy that the court derives from its nineteenth century architectural presence continues through the grandeur of a twenty-first century construction.

Restrictions through the visual

In this section, I briefly look at how the visual is important to the court and its processes and how this further hinders access to justice. I observe this through two modes: the dress worn by judges and lawyers and the ban on photography in courts. The conclusions I draw are based on the interviews I conducted while observing court proceedings in the Bombay High Court.

Dress

The dress worn by judges and lawyers is an important aspect that separates them from the 'others', essentially those who are not permitted to follow the dress code. I talk about the dress code in terms of the black gown and white band primarily worn by judges and lawyers in the course of their practice in the courts.²³ The dress is important, as it identifies the persons who belong to the court in a way different from the litigants and the general public. All persons associated with the court reiterate that sartorial preference and distinction was necessary to preserve the independent image of the

judiciary. Within the court actors also, there are slight differences in the dress worn by judges, senior lawyers and lawyers. Thus, the hierarchy manifests itself in two ways—one that lies outside the system, the other which is entrenched within the system. Goodrich writes about the importance of the dress and its impact on court proceedings. The dress is the first visual encounter in the judicial space; the stark black and white dress code is a visual metaphor that Goodrich recognises as the "symbolic presence of law as a façade" (1990: 188).

During the course of my fieldwork, I asked the question about the dress code to judges, lawyers and court staff. One of my questions was, if the person thought that this uniform was a necessity. Further, I also asked, if one were to see another lawyer not dressed as per the norm, then how would one react to this situation. As I observed, the dress was an important aspect of the lives of the actors of the court. They attached significant importance to the dress code and identified themselves as being separate from the general public and the litigants due to this. The dress provided a sense of entitlement and therefore became important in terms of the legitimacy it bestowed upon the persons wearing it. The dress thus becomes one of the foremost and primary images that are created when observing the visual field of the law. The law manifests itself in the ocular in the most dramatic way through the dress code of the court.

Therefore, along with playing on the ocular, the dress code creates a distinct identity for persons who belong to the court and the 'outsiders' who are marked as different. These 'outsiders' are often the persons who come to court seeking justice and therefore the role of the dress creates a separation for them from the court and restricts their access to justice instead of enhancing it. The ocular of the dress thus creates an iconophobia of the court and its rules. The policing of the image of court actors creates a semiotic association with the dress code of the court and defines the ambivalent relationship that the law shares with its image.

Ban on photography

The ocular manifests itself best in the images of the court. In terms of what the court physically appears to be, one is often only restricted to the exterior view of court buildings. A common mode of restriction visible is the ban on photography of the high court's interior. While the rule is implemented strictly, it is unclear as to why the rule is followed.

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In most cases, persons follow it because that is what they have known the rule to be. The ban on photographing an image of the interiors of courts thus becomes a tool whereby which the court controls its visual narrative and maintains the aura of awe and dignity around itself. Implementing a ban on the ocular creates a divide between the court and the persons visiting it and thereby restricting access to justice by shrouding the internal working of the court in secrecy.

Questions during fieldwork interviews revolved around asking the court actors whether they thought photography of the court, courtroom and court proceedings should be permitted. I also asked if they knew why there was a ban on photography in court. The responses based on these questions was evidence of the relationship that the court shared with the way it is visualised and the inherent violence in the law that allows for such banishment of the ocular.

Most of the persons in court agreed with the rule on prohibition of photography in court. Most felt that photography of courts was not required. Some of the reasoning for the ban was given as, "the judiciary should not be in the limelight" and that it was part of the discipline of the court and was thus required. One court staff was clearly opposed to photography in court because according to the staff if one was to take pictures, then the judges would be exposed to the public which is not good as litigants should not know who the judges are.

A bulk of the lawyers that I spoke to in the Bombay High Court agreed with the ban on photography. In most instances, the lawyers were unaware of the reasons behind the ban but were still in agreement with it. Some lawyers reasoned that the court was a public space so any person could come and view the proceedings, therefore photography was not required. Some persons also thought that photography would hamper the remittance of justice as the court needed to be, "free from all factors to function".

In the Bombay High Court, a Judge agreed with the ban on photography as, "the court was not a public space where you come and take photos". Another Judge, who was also opposed to photography in court, stated that allowing photography would distract the proceedings of the court and would force everyone to be on guard. The freedom that the court had would be curtailed, as it would not be comfortable to be watched by someone who was not connected to the performance of the act.

Access to justice

The control that the court prefers to hold over its own image becomes one of the causes that eventually restrict access to justice. A modification in these basic practices would then better the process of approaching the court. Access to justice can be interpreted in a multitude of ways. This paper looks at the concept of access of justice in terms of how the law physically restricts the outsider along with how the law theoretically also creates an image of constraint that limits the access of the law. Reading Kafka specifically in his parable *Before the Law* contextualises this restriction on the access of justice for persons both within and outside the law.²⁴ The ideas enumerated in the text *Before the Law* by Kafka in 1915 (2015) translate into the legal problems of today.²⁵ On reading the parable narrated to Joseph K. the text asks many questions. An important question is why the text is referred to as being 'before' the law. Is it possible that before the law there is lawlessness or that there is no law at all? What then is the position of a person coming towards the law or approaching the law? The narration of the story leads you to ask what the parable stands for.

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The relevant understanding of this story that directly relates to this paper is that when law exists or one is made to stand before the law, then the law auto creates restrictions and obstructions. The feeling of alienation is brought forward and a process of normalisation sets in. As a part of this 'normalisation' one begins to accept and believe that the law is meant to be guarded by a gatekeeper and therefore the onus of crossing the barrier created before the law is on the person approaching the law and not the person dispensing the law. A blockade before something also symbolises that within this space some people are always out and some people are always in. The distinction becomes categorical.

The access to justice argument fits into this narrative. The man from the country in Kafka's parable seeks his right to a day in court. However, there is a blockade to his access to the court. The blockade is set into motion by the gatekeeper while the "gate to the law stands open, as always". The Bombay High Court structure that provides literature to this paper is a building that has an open and welcoming front façade. However, when one attempts to enter the court from its main entrance, they are made to realise that this entrance is restricted and strictly for the honourable judges of the high court only. The entrance for those seeking to assist the law or access the law is from

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another side. Even when entering there are restrictions based on whether one is a lawyer, a litigant or the general public. The entrance thus becomes the first symbol of visual control exercised by the court. As Kafka's narrative continues, the gatekeeper makes clear his position to the man from the country. He defines himself to be powerful but notes that even with this power he is the "lowliest gatekeeper" and that "from room to room stand gatekeepers, each more powerful than the last."

The restrictions on access to justice for litigants is illustrated in the case of *Sajid Ali v. State and Others*²⁶ in the Delhi High Court. As referenced in the judgment, the litigant was not permitted to enter the court premises as he did not have a photo identity card. Due to this, the litigant was not given a gate pass and therefore denied access into the high court. The judgment further refers to an earlier Order of the Delhi High Court in the same case that states: "The present case is one in a series of cases where it has been brought to our notice the difficulty being faced by the litigants in accessing the court system in the current gate pass regime." The Order acknowledges that only for a want of a photo identity, the litigant who had travelled from far, was unable to enter the court premises and neither appear before the court in the said matter. In its present judgment, dated 3 May 2013, the high court notes similar difficulties in accessing the courtrooms in several other cases too. The judgment deliberates over judgments of the Supreme Court of India that mandate that any impediment to accessing the courtroom is an "impediment to the fundamental and human right of access to justice." The judgment reiterates that the judiciary in India follows the open court principle which creates transparency and reinforces confidence in the court system.

The court also clarifies that the right to witness court proceedings is not only restricted to litigants or parties listed in a case. It is open to third parties who wish to observe court proceedings also. At paragraph 29, the court asks, "is it permissible to put in place a security regime that could have the effect of keeping members of the general public (including bona fide litigants) without identification documentation from accessing the courtroom?" The judgment concludes with directions to form a committee with representatives from the different high court and government departments to create a regime that ensures persons can access court without compromising security concerns. In this case, as is the case of the man from the country, a blockade is set into motion by the presence of the 'gate pass' and even though the person is a litigant in his own case, he is denied access to

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enter the court. Further, the court's reflection on the 'blockade' indicates how justice is blockaded by the architecture of the court, or as Kafka would put it, by the lowliest gatekeepers.

Courts are structured in a didactic format as noted by Goodrich (1990) and the hierarchy perpetrated by the court creates the second ocular register of superiority of the law over everything that comes before it. Courts are built in a particular hierarchical format and the structures of courts and courtrooms allow for the theoretical and physical hierarchy to be preserved and carried forward. Often, the largest courtroom is assigned to the chief justice of the court, who is at the top of the hierarchy. In the case of the Bombay High Court, it is the courtroom with the largest chamber that perpetuates the hierarchy with an ongoing debate on the apt use of the largest courtroom in the high court. The internal structure of the courtroom propagates this hierarchy with the judges seated at an elevated didactic position. The hierarchy continues in the way the lawyers are positioned ahead of the litigants in the limited space of the court. Litigants and the general public usually find themselves towards the bottom hierarchy of this internal courtroom structure (Mulcahy 2011).

Within the lawyers there is another internal grading system. Senior lawyers are always in the front and junior lawyers are behind. Further, if a senior lawyer enters the courtroom, the junior gets up and gives the seat to the senior lawyer. This is done without being asked of the same. It is more like an automatic response and a given that a 'junior' in the system acts in this manner. The hierarchy is therefore well internalised and the accepted normal. The power structure that Kafka (2015) writes about therefore manifests itself at many modes and in several spaces in the court structure. In this example, it is seen through the architectural structure of the court and its effect on the minds of the persons who function through these structures. The court has a multitude of gatekeepers, and they include the security officers who frisk persons entering the court building to the court staff and security personnel positioned outside certain courtrooms that restrict entry based on different defining limits. The gatekeepers also exist in forms of the persons who correct the dress code of lawyers and sometimes litigants in courtrooms; along with the persons who deny information to those who ask questions about the court. Access to the courts of law therefore is restricted in the physical sense by these gatekeepers.

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The thought about law being accessible does cross the mind of the man from the country in Kafka's parable. He wonders that "the law should always be accessible for everyone" but the description and the image of the gatekeeper makes him decide not to question the lack of access to the law. The court uses these self-created images to create a sense of awe and distance. The image is so strong that a person approaching the court will think several times before entering the premises. Several persons from the general public who attended the exhibition on the occasion of 150 years of the Bombay High Court expressed the view that they did not know that the court was open to the public and they thought that this was a temporary measure for the purposes of the exhibition. Numerous persons, not from the field of law, were extremely pleased to have gotten the opportunity to enter the high court and see the court from inside. They were completely oblivious to the fact that the court is a public space and every person is allowed to walk in and attend on-going court proceedings.

There is thus a categorical image of the court and the law and the feeling is constant that one is always 'before the law' and must follow the restrictions placed either by gatekeepers or by the visual perceptions of the law. Since the law is hidden in this sense from the outside, often one does not know how the court functions from within. The idea of the internal functioning of the court is thus influenced by external perceptions, literature, journalistic reports about the cases in court, Bollywood and regional cinema and a continuation of the idea of the law as being superior and therefore unknown.

The fact that judges, lawyers and court staff in the high court are not in favour of photography of court proceedings is indicative of how the law still wants to maintain a secrecy over its internal functioning and imagery. These modes of the ocular are not permitted in the court space thereby restricting the internal image of the court from being externalised. The external is therefore subject to alternative means of visualising the law creating an ambiguity in the perception of the nature of the law. The law works towards maintaining this ambiguity as it allows for it to control the image of its self. Therefore, when one is faced with the situation of mandatorily having to access law, they approach it in awe and bewilderment as they are unaware of what lies 'ahead of the law'.

Kafka's narration ends with the man of the country nearing his death when the gatekeeper informs him that this particular entrance to the law was "assigned only to you" and that he was "going now to

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close it". The text can be interpreted to note that while the man from the country has aged, the gatekeeper has not aged in the same manner. The difference in the way the man seeking the law perishes as opposed to the manner of the person guarding the law, further questions the access to justice versus the modes of reaching it. While persons seeking to use the law might perish amidst the complicated use of legal language and court procedures, and get covered behind the dress code of the black gowns and white bands, the law only grows to be bigger and more majestic at every step. The way the court is structured, in its physical form along with its rules and traditions, contribute to this feeling of awe towards the law and the courts.

The judicial iconography that exists in the Bombay High Court provides certain symbolic images of the law and they play a role in how the court is perceived. Being large structures, there is already a mixed feeling of awe and fear when one walks into the court for the first time. Many persons I spoke with during my fieldwork, from judges to lawyers and court staff, noted that they did have a sense of admiration before they entered the court. Often this was felt by persons who had no prior interaction with the court. For persons who had been to court before either through their parents or otherwise, or had been associated with the law before the high court became their work place, felt the admiration but not necessarily the fear as the initial blockade had been crossed and they had moved to the other side.

The constant debate and difference of opinion on the use of the central courtroom in the Bombay High Court allows for the courtroom to remain unused for most of the time. While there is a continuous discussion on the lack of space in the Bombay High Court, along with cases being filed in the court to resolve the issue, the largest courtroom, the central courtroom which can accommodate the most number of people compared to the other courtrooms in the Bombay High Court, remains unused. Having more space in the courtrooms, even if it is one courtroom, would ease the process of accessing the law. Most courtrooms in the high court were found to be crowded at particular times; in the mornings when additional matters had to be heard or when there was an important case before the bench. When I asked persons in court if the space in the courtrooms were sufficient, most felt that at certain times it was inadequate depending on the matter to be heard.

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Kafka's parable is important because it shows us how certain aspects of the legal process have been normalised to the extent that they are not questioned and as Günter Frankenberg writes, it is an "(adequately tragic) story of normalization" (2016: 218). As he points out, that even though the man from the country comes to access the law, he decides to wait to gain access based on the story by the gatekeeper. Therefore, the man from the country, although he waits for his whole life, never actually sees the law "with his own eyes" (ibid.: 222). What he knows of and about the law is only hearsay. Since he has had no direct interaction with the law the only aspects of the working and processes of the law that he knows are through the conversations with the gatekeeper. It is from the same gatekeeper that he learns that the gate where he stood was made only for him and would be closed upon his death. However, as Frankenberg rightly states, there have been persons who have had a certain amount of access, and have managed to cross the gatekeeper and enter into the gates of the law but these persons too feel an alienation. Only the mode changes and once inside, the process of alienation continues. "They watch, mystified and intimidated, rather like fairly ignorant bystanders, the automatic functioning of a well-oiled, complex legal machinery" that is functioning for them but of which they are not a part (ibid.).

In the same vein, the Bombay High Court is a large structure with a specific and unique judicial iconography that relates to its particular architectural constructions and colonial requirements. It is a colonial built court that has carried forward and merged into the Indian judicial system with the promulgation of The Constitution of India, 1950. The court has certain rules and traditions that coupled with its iconography create a system of a semiotics of law. The existence of these signs and symbols of law create a particular and unique visual culture for this court that portrays the ambivalent relationship that the law shares with the image. While the iconography, symbolism and traditions are a part of the image of the court through which it gains legitimacy, they are also a tool by which the court keeps itself at a distance. The two ideas therefore conflict with each other and create an alienation towards the law in a similar vein to the kind faced by the man from the country.

Conclusion

The presence of these visual restrictions plays the role of depicting the law and its forces in a particular way. The large and daunting architectural structure of the Bombay High Court contributes to the majesty and dignity with which the court is viewed and from this the court derives its legitimacy. As Haldar explains, "The elegance of legal architecture provides the background against which justice is seen to be done" and this principle is well exemplified in the Bombay High Court (1999: 135). The judicial pronouncement, that not only must justice be done, but also be seen to be done raises questions on how the Bombay High Court images itself. The occurrence of this set of iconophobia towards the court is generated through different registers, beginning with the architectural structure of the building, along with different signs and motifs that are present in the daily functioning of the court. This includes and is not restricted to, the dress worn by persons in court and the ban on photography. When all these iconographical aspects are looked at as a whole, the jurispatic tendency of law is brought to the forefront wherein law dominates the narrative destroying its interpretive quality (Cover 1995).

The PIL filed in the Bombay High Court debates the lack of space in the current court building and makes an argument that the court should be moved out of its current location and rebuilt in another part of the city. The PIL suggests that the new structure should have several facilities and amenities to meet the demand of space constraints on the court today. Here I argue that the importance and significance of the Bombay High Court building is also significant to the relocation debate. Haldar clarifies that, "The architectural detail converts the power of justice into the force of justice" and it is through this daunting structure that the law gains its legitimacy and force (1994: 197). The court space is therefore not neutral and is influenced by its surroundings and visual imagery.

In addition, rather than thinking of the legal regulation of heritage, we may think of law as heritage. While conversations on law as heritage have not been at the forefront, law manifests in terms of its heritage. In the Bombay High Court, the PIL and ensuing debate on the establishment of a new building for the high court raises several notions of law as heritage. The arguments that conserve the heritage of the high court building seek to monumentalise law in the space of the court. Protecting the heritage of the Bombay High Court then becomes something that also seeks to maintain the internal histories of the court. The question manifests itself in the debate on whether the

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1878 constructed Bombay High Court building will maintain its heritage by continuing to function from the same space or by monumentalising itself through becoming a museum and/or an ancient archaeological site. In the new building to be constructed for the high court, it is not a guarantee then that along with the laws, rules and regulations, the heritage will also transfer in the same way.

The conservation of these practices, designs and architectural structures maps one kind of relationship between law and heritage where the conservation of a 'lived law' provides for symbolic value without much utility. The everyday experience of the inheritance of law as heritage, be this through the insistence on the court uniform or the preservation of the central courtroom, is constitutive of the way law is monumentalised in specific cultural, historical and political contexts.

On the issue of space, the Bombay High Court has one of the largest courtrooms in the form of the central courtroom number 46. Here the court contradicts itself as due to the historicity attached to this court there is a conflict in what use the courtroom should be put to. Being a court so large in size, it could cater to one aspect of the space constraints that the court faces. The courtroom could be utilised for daily court proceedings providing space for all persons to attend court and witness the high court as it functions. However, the historical setting and the association with the Tilak trial prevents this court from being used on a regular basis. In the same vein, the high court building itself is also a historically relevant building which has several semiotic associations linked to it. The Bombay High Court therefore needs to consider its relationship with its own visual culture when deciding on the future course of the high court building.

Endnotes

¹ This is seen in structures of all the three presidency town high courts of Bombay, Madras and Calcutta along with the post-independence construction of the Supreme Court of India, amongst other courts in India.

² While the basalt stone is a very hard stone it does not have any carvings in it; all the carvings in the Bombay High Court are done in the limestone as that is an easier stone to carve in.

³ n.d. "Historical Cases." *High Court of Bombay*.
http://bombayhighcourt.nic.in/libweb/historicalcases/cases/Second_Tilak_Trial_-1909.html, [retrieved 05.07.2016].

⁴ This point has been disputed by some staff of the high court wherein they state that courtroom number 52 has always been used as the Chief Justice's court because it has the biggest judge's chamber attached to it.

⁵ This is as narrated by the court staff. It is possible that some judges of the high court opposed this proposal as the use of the central courtroom has been a contentious issue. This was evident from my conversations with different judges in the high court, where they chose not to answer questions related to the use of the central courtroom, terming it as a controversial issue.

⁶ See "Historical Cases." *High Court of Bombay.*, http://bombayhighcourt.nic.in/libweb/historicalcases/cases/Second_Tilak_Trial_-1909.html [retrieved 05.07.2016].

⁷ Today, with a sanctioned strength of seventy-five judges (which has further been raised to ninety-four since 2015, as noted in the Order of the Bombay High Court in *Ahmad M. Abdi v. The State of Maharashtra and Others*, dated 15 October 2015), and a work-load that is immeasurably larger, the court suffers from the same problems of space and convenience internally (not all seventy-five judges are expected to sit in the main building of the Bombay High Court. They are divided into the Benches at Nagpur, Aurangabad and Goa).

⁸ Public Interest Litigation No. 57 of 2012 (Ordinary Original Civil Jurisdiction) in the High Court of Judicature at Bombay.

⁹ *Ahmad M. Abdi v. The State of Maharashtra and Others*, Order dated 10 September 2014.

¹⁰ Shah, Hemali Chhapiya. Judges on land hunt for high court expansion. *The Times of India*, 25 August 2015, <http://timesofindia.indiatimes.com/city/mumbai/Judges-on-land-hunt-for-high-court-expansion/articleshow/48660198.cms> [retrieved 03.02.2017].

¹¹ *Ahmad M. Abdi v. The State of Maharashtra and Others*, Order dated 15 October 2015.

¹² *Ahmad M. Abdi v. The State of Maharashtra and Others*, Order dated 29 January 2016.

¹³ In the Bombay High Court an intervention application (IA) is referred to as a Chamber Summons.

¹⁴ *Ahmad M. Abdi v. The State of Maharashtra and Others*, Order dated 5 May 2016.

¹⁵ Plumber, Mustafa. Man, who built Bombay High Court museum, does not want court to be shifted to suburbs. *DNA: Daily News and Analysis*, 17 June 2016, <http://www.dnaindia.com/mumbai/report-man-who-built-bombay-high-court-museum-does-not-want-court-to-be-shifted-to-suburbs-2224590> [retrieved 03.02.2017].

¹⁶ *Ahmad M. Abdi v. The State of Maharashtra and Others*, Order dated 9 August 2016.

¹⁷ Manohar, Sujata. Doing justice to Bombay High Court. *The Hindu*, 14 July 2016, <http://www.thehindu.com/news/cities/mumbai/news/doing-justice-to-bombay-high-court/article8847019.ece> [retrieved 13.08.2016].

¹⁸ Act No. 24 of 1958.

¹⁹ Section 2 (a): "Ancient Monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith which is of historical, archaeological or artistic interest and which has been in existence for not less than 100 years and includes:

(i) remains of an ancient monument,

(ii) site of an ancient monument,

(iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and

(iv) the means of access to, and convenient inspection of, an ancient monument.

²⁰ HT Correspondent. New SC annexe at Appu Ghar. *Hindustan Times*, 25 April 2010, <http://www.hindustantimes.com/delhi/new-sc-annexe-at-appu-ghar/story-ia0P4ANdVwia1pOpaaHZcl.html>, [04.02.2017].

²¹ United News of India. 2008. People bid farewell to Appu Ghar. *DNA: Daily News and Analysis*, 17 February 2008.

<http://www.dnaindia.com/india/report-people-bid-farewell-to-appu-ghar-1151348>, [retrieved 04.02.2017].

²² See also the cases of protests by lawyers of the Pune District and Sessions Court, Maharashtra against the Pune metro rail using what they claimed to be their land for expansion of the court (Chavan 2016), see Chavan, Vijay. Court-ing controversy: lawyers say Metro Stn falls on their land. *Pune Mirror*, 21 Dec. 2016,

<http://punemirror.indiatimes.com/pune/civic/Court-ing-controversy-Lawyers-say-metro-stn-falls-on-their-land/articleshow/56091189.cms>, [retrieved 04.02.2017]. And protests by lawyers in six district courts of Delhi against the re-allocation of family courts outside of the Karkardooma court complex, Delhi (Times News Network 2014). These examples further elucidate how judicial institutions, through judges and lawyers, manage to allocate a space for themselves based on their own concerns, Times News Network. Lawyers protest shifting of family courts. *The Times of India*, 11 February 2014, <http://timesofindia.indiatimes.com/city/delhi/Lawyers-protest-shifting-of-family-courts/articleshow/30181589.cms> [retrieved 04.02.2017].

²³ The *Bar Council of India Rules* provide for the 'Form of Dresses or Robes to be Worn by Advocates' under Part VI, Chapter IV.

²⁴ For the interpretation and discussion on this text I would like to thank Prof. Dr. Günter Frankenberg through his course at the Institute for Global Law and Policy Workshop, 2016.

²⁵ Kafka, Franz. 2015. Before the law. In: Franz Kafka. *The trial*, trans. by Ian Johnston, <https://records.viu.ca/~Johnstoi/kafka/beforethelaw.htm>, [retrieved 08.08.2016].

²⁶ 2013 VII AD (Delhi) 670.

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