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## The Confounding Language of Lawyers: An Analysis of the Anomaly and its Solutions

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*The true gem of a lawyer's work is his words. As lawyers, they make their living via the use of words every day, yet this fact may drive us to think too little about how we use them. Taking due consideration of the work in the legal field, it could be said that they have to develop the knack of racing through a lot of material. However, it may cause some repercussions to the tone in which the draft is made. Justice Nariman has recently praised the need for attorneys to have a solid command of the English language because the majority of common law papers are written in English. While a subset of lawyers believe that simple English should be used instead of jargon.*

**Keywords:** *lawyer, attorney, legal jargon.*

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### INTRODUCTION: LITERATURE REVIEW

Literature research was conducted on the subject in order to have a better knowledge of the challenges to be addressed. The law and lawyers deserve a high status since they create and spread concepts that the world would be "lost" without. The scope of research in this area is vast and a serious observation needs to be made regarding the use of early and medieval English and its relevance to the modern way of writing and reading.

## RESEARCH PROBLEM

It is true that we may not see the world the same our colleagues may do. The lawyer may not understand the language of a doctor and vice versa. It is the professional and jargon barrier that costs the litigant the extra penny. The research is conducted to solve the problem that every layman or a budding lawyer faces when they enter the court of law. They have to deal with jargon, archaic words, and different style of composition. A very old man who approached us outside the legal aid clinic where we were interns, seeking legal assistance inquired as to why the lawyers write in such an unusual manner. "Witness whereof, I have set my hand hereto..." and words like that astounded him. He inquired whether there were any equivalent terms for this, thereof, and other tough words he couldn't comprehend. Then he wondered why, under a contract, a "party of the first part" did something or other to someone known as a "party of the second part." What is it about legalese that makes it so tough to understand? Language is an essential component of human interaction.

Although many creatures communicate in their own ways, humans are the only ones who have achieved cognitive language communication. Language enables us to communicate our ideas, emotions, and feelings to others. Lawyers devote a significant amount of time preparing, formulating, and presenting speeches composed of words. The elderly man, whom I met that day is not alone in his struggle to comprehend the complexities of legal jargon. Over the years, the "language of the law" has been criticized for being difficult to grasp by ordinary people. According to Charles Alan Wright, a distinguished legal-scientist on legal procedures and practical applications of law: *"The only tool of the lawyer is words. Whether we are trying a case, writing a brief, drafting a contract, or negotiating with an adversary, words are the only things we have to work with."*

Certain linguistic features employed in legal works are referred to when the topic of the language of law being too difficult is raised. The English language and the common law system are Britain's two most important exports. English is the most widely spoken language on the planet. In nations that were once British colonies, common law is the most common basic law. The language of the law is distinct in terms of vocabulary, grammar, and semantics.

Because Latin was the language of administration and law in England, and French was the language of the Court, the terminology employed in legal texts is significantly influenced by Latin and French. The current legal nomenclature was adopted by British-educated codifiers in India who authored the statutes and legal forms. The language qualities that make interpretation of legal papers difficult include archaism, the use of borrowed words, jargon, and the use of common terms with odd meaning, as well as doublets and triplets. The language of the law is archaic mainly because of its complicated sentence constructions. This is the primary reason why the majority of people struggle to comprehend it. It even fascinates some of society's educated members sometimes.

To say that deciphering the language of lawyers is more difficult than that of doctors is an understatement to make. Only a doctor or a skilled and experienced pharmacist has the capacity to understand what sort of medication the doctor has prescribed on paper. Similarly, understanding the terms of legislation, the aims, and techniques indicated in the preamble, or the constraints imposed by a specific act is not everyone's cup of tea. Legal language encompasses not just specific words, phrases, and expressions, but also the method in which they are composed. Together, they make up the "language of the law," which has become synonymous with the practice of law, the courts, and the legal profession. Will Rogers, a well-known stage and Hollywood picture actor, comedian, and newspaper columnist in the United States during the 1920s and 1930s, put it up best—ironically—in his speech to the American Bar Association in Los Angeles in July 1935: *"The minute you read something and you can't understand it you can almost be sure that it was drawn up by a lawyer. Then if you give it to another lawyer to read and he doesn't know just what it means, why then you can be sure it was drawn up by a lawyer. If it's in a few words and is plain and understandable only one way, it was written by a non-lawyer. Every time a lawyer writes something, he is not writing for posterity, he is writing so that endless others of his craft can make a living out of trying to figure out what he said...."*<sup>1</sup>

The Indian legal system does not have a very different story. In India, English in legal papers is so distinct that it has its own nomenclature: legal parlance, legal English, legalese, and so on.

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<sup>1</sup> Jyoti Sagar, 'Language and Law: The Incomprehensible Lawyer - Part I' (*Bar and Bench*, 1 May 2018) <<https://www.barandbench.com/columns/incomprehensible-lawyer-part>> accessed 18 November 2021

Courts, legal papers, regulations, bye-laws, judgments, Bills, Acts, and amendments all employ this kind of terminology. A lawyer must read it and interpret it so that a layperson may understand it. The question that when legal language does becomes disconnected from everyday speech and what is it about legal terminology that makes it so tough to understand forms the subject matter of this short piece of writing.

## CHARACTERISTICS OF THE LANGUAGE OF LAW

There are traits and ways of composing legal language that interacts to generate this unique language used by lawyers.<sup>2</sup>

### Use of Legal Jargon:

Jargons are terms that are only used in a professional and a specific field. These are terms that are specific to a particular topic. A term might have several meanings in general. However, in law, these jargons have a single, unmistakable meaning. For example, the term "citation" refers to "citing an already decided decision," while "negotiable instrument" refers to "any right that may be transferred merely by delivery," such as goods. These terms have become accepted as part of the legal vocabulary. Terms having strange meanings are common words with peculiar connotations that are employed in legal expressions. These terms have a different meaning in everyday life than they do in law. The term 'access' refers to a parent's right to visit his or her kid. Similarly, a 'conveyance' is a document that transfers a freehold interest in a property following a sale, a 'hearing in camera' is a secret hearing, a 'keeping a disorderly house' is an infraction of operating a brothel, and a 'sleeping partner' is a partner who accepts no responsibility for running a firm. Synonyms in doublets and triplets are often overused. This feature is included to ensure that everyone understands what it implies. 'Offer, proposal, and motion,' 'destroy, damage, and defile,' and 'signed, sealed, and delivered,' are just a few examples of numerous synonyms being used for emphasis. Lawyers justify the use of synonyms by claiming that they are driven by a desire to be exact. Critics, on the other hand,

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<sup>2</sup> George D. Gorpen, 'The State of Legal Writing: Res Ipsa Loquitur' (1987) 86 (2) Michigan Law Review, 333-380 <https://www.jstor.org/stable/1288923>> accessed 18 November 2021

ascribe this to old legal practitioners who were paid according to the length of the documents they produced.

### **Words of Antiquity:**

Many terms in English have been imported from other languages. A large proportion of them is Latin. Many Latin terms have become commonplace like Affidavit; alias; alibi; bona fide; mala fide; quorum; proviso, etc. However, there are numerous additional Latin terms that are unique to legal language. For instance, ab initio; ex parte; et cetera; ex post facto; de minimis; in pari materia; in personam; in rem; innuendo; mutatis mutandis; pari passu; res judicata; quasi; quid pro quo; sui generis; vis major; etc. The legal dictionary incorporates loan terms acquired from other languages and used in English. French, like Latin, has supplied numerous terms to English. Many of these terms are related to the area of law, although they have also grown commonplace through time. For example: action; appeal; arson; conditions; contract; court; covenant; crime; declaration; defendant; debt; damage; devise; easement; evidence; guarantee; heir; indictment; judgment; justice; larceny; partner; parties; plaintiff; pleadings; pledge; possession; servant; slander; suit; tort; treason; verdict. These lexical traits do not, on their own, make a piece of writing difficult to understand. Legal papers have mind-bogglingly intricate grammar. This grammatical complexity is a distinguishing feature of legal papers. The statement has an infinite number of embedded clauses and modifiers. The never-ending length of a sentence, however, is not the only factor that contributes to the complexity of legal sentence construction. Multiple efforts were made to minimize the syntax's complexity. One of them was the use of punctuation marks. The Greek method of denoting pauses with punctuation marks was not adopted when legislation was written or codified in Latin in England.

### **Use of Archaic English:**

Archaism is the usage of obsolete terminology. Words from Old and Middle English that are still used in Theology and Law have been phased out of Modern English. The use of such terms makes it more difficult to grasp a piece of writing. Words such as previously, hereafter,

whereas, aforementioned, and notwithstanding are examples of archaic idioms used in legal writing. The era 500 AD to 1100 AD is covered by Old English (OE) (Norman Conquest). ME Middle English refers to the time between 1100 and 1500 AD. English as we know it now goes back to 1500 AD. Much of OE and ME can be observed in modern English. Many terminologies, meanings, and expressions from OE and ME that were no longer in common use years ago are still used in the legal language. These old terms are frequently used by lawyers, although they are rarely used by non-lawyers.

### **Terms of the Art:**

A term of art is a technical phrase with a determined meaning. Each profession has its own regulatory regime that must be followed. Many terminologies are used in the legal language to communicate in shorthand. Some of them are: agency; bail; contributory negligence; defendant; dictum; ex parte; felony; garnishment; injunction; landlord and tenant; negotiable instrument; master and servant; lessee; lessor; letters patent; life tenant; novation; prayer; plaintiff; principal; surety.

### **Extreme Precision in Attempting words:**

Lawyers claim that legal language is "precise" - that it is similar to a technical language with terminology that is particular to legal notions. If we didn't use "our" terminology, it would be "unprofessional." We feel that lawyers cannot take the risk of introducing new terms and expressions that have never been used before since these new words may not have the same "precise" and "well established" meaning that the legal language has known for a long time. The following absolutes are frequently used: all; none; never; irreversible; forthright; wherever; whoever; whatever; and whatever. Restricting the restricted: and no other reason; shall not constitute a waiver; shall not be considered consent; shall not be a part. Making the wide broader: including but not limited to; or other similar or different reasons; shall not be regarded to limit, and nothing stated herein shall be interpreted to limit.

### **Style of Composition:**

The peculiarity of the legal language is further enhanced by the composing style.

### USE OF TOO MANY WORDS

Lawyers utilize an excessive number of words. They expend an excessive amount of time delivering to the point. Repetition; word duplication; extraneous words with no actual meaning; employing three or four words when one would suffice. For instance: "In the event that" instead of "If," "at this point in time" instead of "now," "written document" instead of "document," and "completely null and invalid" instead of "void." In place of writing "The Parties agree," the lawyers extrapolate it by writing "Now, therefore, in consideration of the premises, the representations, warranties, covenants, and undertakings of the parties hereinafter set forth, and for other good and valuable consideration, the parties agree among themselves as follows." The legal community in India, including a number of known senior advocates, were outraged by a careless piece in the Times of India in June of 2016. A strange letter from a bogus plaintiff to the Chief Justice of India (CJI) was published, throwing severe doubts on Justice Gita Mittal, a respected Delhi high court judge. The letter purported to suggest, among other things, that her decisions were far too brief; she supposedly wrote just "63" pages in the whole month of January.<sup>3</sup> This claim was based on the premise that judges should draught excessively long rulings in order to display judicial excellence, which is a questionable assumption.

In the year 2017, the two-judge bench of the Supreme Court had set aside the complicated judgment given by a Himachal Pradesh High Court Judge in a landlord v tenant case. The wording of the judge went like- "(The)...tenant in the demised premises stands aggrieved by the pronouncement made by the learned Executing Court upon his objections constituted therebefore...where within the opposite unfoldment's qua his resistance to the execution of the decree stood discountenanced by the learned Executing Court". According to a report in the Hindustan Times, the bench stated, "We will have to put it aside since one cannot understand

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<sup>3</sup> Shamnad Basheer, 'Judging Judges by the Length of their Judgments is a Bad Idea' (*The Wire*, 16 June 2016) <<https://thewire.in/law/judging-judges-by-the-length-of-their-judgment-is-a-bad-idea>> accessed 18 November 2021

this," however this was not included in the formal ruling remanding the case to the high court judge for re-drafting his decision.<sup>4</sup>

### **Pomposity in writing:**

Pomposity lends the message a sense of significance that is out of proportion to its content. It is abundant in legal language. When used by a Hon'ble Judge, it is intended to express the "majesty" of the law; when used by a skilled lawyer, it is intended to show strong belief in the validity of her position, as well as equal disdain for the opponent's case. For instance: in my considered opinion; solemn duty; disposes of the reasoning advanced; obviously correct; clearly justified; clearly pointed out; overwhelmingly corroborated; it must follow; utterly absurd; unconscionable; patently fraudulent; unsound on the face of it.

### **GETTING TO THE BOTTOM OF THIS ENDEMIC SNAG**

The language of law appears to be laborious and cumbersome. The reader is forced to seek legal advice in order to decipher the syntactic maze. There is a pressing need to make legal jargon understandable to the general public. A few of the principles listed below may help us attain this goal:

### **Use of Plain English:**

A push for simple English is especially appropriate in India, where English is not even the original language and other competing official languages exist. Investigating the problem of legal language and the causes behind it, evaluating the experience of the plain-English movement in other countries, and identifying these tactics may be useful in the implementation of plain English usage in India. The proposal for the adoption of plain language is not a new one. Criticisms of legal pomposity abound. Even well-known personalities from the past (such as King Edward VI, Thomas Jefferson, and Jeremy Bentham).

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<sup>4</sup> Bhadra Sinha, 'One cannot understand this': Why SC set aside order in landlord vs tenant case' (*The Hindustan Times*, 18 April 2017) <<https://www.hindustantimes.com/india-news/apposite-unfoldments-sc-sets-aside-convoluted-order-saying-one-cannot-understand-this/story-00OTJcknAhRYxHIEoEdQpL.html>> accessed 19 November 2021

Judges have already said that poor draughtsmanship frequently causes issues. In *Trafalgar House Construction v General Surety*<sup>5</sup>, the English Court of Appeal stated that "they would save much time and money if in future they... set out their bargain in plain modern English without resorting to ancient forms which were doubtless designed for legal reasons which no longer exist." Lord Justice Stoughton, another renowned English judge, noted in *Stayline v Tyne Ship Repair*<sup>6</sup> that the contractual terms are "in such small print that one can scarcely read them [and] secondly the draughtsmanship is so complicated and prolix that one nearly needs an LLB to grasp them." Unfortunately, the early steps towards adopting plain English are not always simple. Because its adoption necessitates an overhaul of the administrative apparatus, there will be start-up costs: Not only must old forms and agreements be discarded, but a new mentality must be instilled at all levels of the organization. Before taking such a risk, the company (or even the person) should do a feasibility study and be completely convinced of the potential rewards. Recently, the Chief Justice of India (CJI) counseled that Judges should employ a single language while writing judgments since their decisions have a huge impact and need to be understood by laypeople.<sup>7</sup>

## PLAIN ENGLISH TOOLKIT

So, while drafting documents, how do we use simple English? It should be stated right away that simple English is not drab English, but rather clear and understandable English. The main idea is to intentionally use a reader-friendly approach (i.e., writing with the reader in mind) by using a manner of language that the intended readers can readily read and understand. The same approach is ought to be applied by the judges in judgment writing. Some of the primary factors that plain-English proponents have highlighted for making a document easy to understand are listed below:

- Avoid using long complicated phrases with a lot of embedded clauses.

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<sup>5</sup> *Trafalgar House Construction v General Surety* [1995] 3 All ER 737

<sup>6</sup> *Stayline v Tyne Ship Repair* [1984] 2 Lloyd's Rep 211

<sup>7</sup> Debayan Roy, 'Judges should write judgments in simple language: Chief Justice of India NV Ramana' (*Bar and Bench*, 14 November 2021) <<https://www.barandbench.com/news/litigation/judges-should-write-judgments-in-simple-language-chief-justice-of-india-nv-ramanad>> accessed 16 November 2021

- Obliterate any clumsy and needless statements.
- Use the active voice whenever possible.
- Positive words to be preferred over negative words.
- Put the thoughts and components in a logical order.
- Omit any information that isn't absolutely required.
- Get rid of antique phrases like 'hereby' and 'whereby,' as well as Latin words like 'fortiori' and 'ab Initio' (but some technical terms like 'writ of habeas corpus must be kept).
- Use a user-friendly style and layout with larger print sizes.

The main issue with legalese, which linguists regard to be lawyers' own language, is that it hinders communication and is typically unintelligible to laypeople. Legalese, in contrast to simple English, has been criticized by many professionals as being disorganized and hopeless. Because legal writing cannot be taught in the abstract, all other members of the legal fraternity must collaborate in order for educators to succeed in teaching the nation's future lawyers to write in clear English. Legislative, judicial, and other academic works must be considered because they make up the majority of law students' reading resources. Unfortunately, most of what law students see in these resources are still written in the conventional style, and the outdated jargon and complicated sentences that are meant to be disproved may be inadvertently ingested.

## **TRANSLATING JUDGEMENTS IN COMMON LANGUAGES**

It is necessary to make legal terminology understandable to the general public. Comprehension aids such as dubbed and translated versions can assist individuals to grasp the papers, but they cannot be utilized for legal interpretation in a court of law. Technically, all legal document translations are not regarded as authorized texts. There are several instances where legal document translation presents linguistic challenges. The work of translation might be perplexing at times. Instead of using a single language, we may utilize three or four languages that a group of friends is familiar with and put the words together. That is most likely how the legal usage of English evolved.

## CONCLUSIVE REMARKS

When the language is brought up, the public voice that has been raised in support of eradicating the colonial remnant that has been deluged in the legal sector may become weak. It may also be a concern for those who earn their living by flattering legal jargon on their client, and also for those who bluff for being a part of this system. It is rightly pointed out by John Mason Brown that the great writers in the law "like their blood-relations the great word men in literature have lighted up the world for us by using language as a beacon". In order to reignite that flame, the officeholders and the state must look upon this issue carefully. The feasibility and demand of the public have to be the greater cause than the colonial remnant.