

**COMPILATION OF
SELECTED ARTICLES**

**FROM
ARTICLE WRITING
COMPETITION ON**

**THEME
TEACHING OF LEGAL LANGUAGE
IN INDIAN LAW SCHOOLS
NEEDS URGENT ATTENTION**



JULY 2020

ORGANISED BY



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Prof. (Dr.) Srikrishna Deva Rao
Vice-Chancellor

Date: July 23, 2020

FOREWORD

The aim and purpose of legal education is to make the students to 'think like a lawyer'. Legal profession intimately depends on articulation of thoughts and expressions and therefore, language and communication assumes greater significance in legal education. In fact, the English language is the 'road of life' for many people who aspire to be iconic lawyers in India.

The Five-year integrated programme at several National Law Universities and law colleges in India underscores the need to cultivate and nurture the reading, speaking and writing skills among the students. Generally, two courses in English were offered in many law colleges. The first course is to introduce students, the English Language and communication and another course is the law and literature. The Law and Literature course is an interdisciplinary course that connects the two disciplines of law and literature. It is an intense process of "stretching minds" closer to the different nuances of the justice system.

What is law and literature course and why do we teach? How do we teach? What do we recognize as law and literature? These are the fundamental questions that ponder over the minds of the teacher and the taught. *Gary Watt* has rightly observed that, "the core of law and literature does not reside in any text or syllabus or curriculum, but the passion to connect is itself the heart of the matter. We need to locate the will for law and literature in the heart as much as in the brain".

My colleague, *Dipanwita Mitra*, always, says that, the law and literature are symbiotic and complementary perspectives. The two approaches in law and literature, that is, *Law in literature* approach and *law as literature* supplements each other. We need to understand the enduring issues that are explored in literary texts, through *Law in literature* approach and the other one, *law as literature* is understanding the legal texts by reference to methods of literary interpretation, analysis, and critique.

Law in Literature Approach:

There are several literary texts that could be used as tools to learn the law in literature. It provides an excellent pedagogical tool to bring, history, fiction, jurisprudence and sociology together in a holistic perspective.

I will venture to give some of the best literary writings that locate the law in literature and the passion to connect with heart and brain.

Haper Lee famous Novel "*To kill the mocking bird*"(1960) is fascinating text to learn the discriminatory criminal (in)justice system in the United States, the '*secret courts of mens hearts*' against the black people in nineteen sixties. It symbolises the inbuilt cruelty in the

American criminal justice. *Tom Robinson's* death was 'senseless slaughter of song birds' by hunters and children. *Atticus*, the defense lawyer used every tool available to save *Tom*, but could not succeed in his lonely fight against the cruel and inhuman criminal justice system in America. The decision of jury convicting Tom for rape of white girl shows the ugly side of the beautiful soul of law. *Haper Lee*, observes that, "In our courts, when it is a white man's word against a black man's, the white man always wins. They are ugly, but those are the facts of life."

The large volume of prison writings in India and all over the world, provides another tool of law in literature pedagogy. Professor Miller observes that, "Prison literature, dramatizes a landscape created by policy makers and reimagined by writers; it fuses the rational and artistic poles of law and literature". *David Arnold* states that the prison figured prominently in the Indian middle class imagination and experience between the 1890s and 1940s. The prison writings emerged during the freedom struggle in India as jail diaries, autobiographies, plays, novels and poems. The India's most celebrated autobiography have emerged from Prison such as: *Jawaharlal Nehru's Autobiography* in 1936 and *Mahatma Gandhi – The Story of my experiment with Truth* begun in *Eruwada Jail* in 1920s, *Shri Rajgopalachari prison diary* wrote in vellore jail in 1920s including *M N Roy*. These prison narratives are powerful reimagination of working of the criminal justice system and how law operates at the grassroots.

Similarly, another area is the poetic discourse of torture. *Marjorie Agosin* shares her agony about 'How to speak with the Dead' and living. The clandestine prisons and the violence behind the bars remains as an 'unspeakable entity' as what happens within the custodial institutions is not open to public scrutiny. She further says: "How does one speak of the victims and the victimizers: is it possible to establish a poetic discourse about torture? It implies opening of old wounds and questioning the limits state repressions".

It may be true when we look at the recent death of father **Jayaraj** and **his son Benicks** who were arrested by police in "Sathankulam" town in Tamilnadu. They were in the police custody and later turned dead. The literal translation of the place, "Sathankulam" is "satanic pond". It is a real poetic justice that, the Sathankulam police station turned in to a "satanic pond" by loss of two lives.

The detention in police station and prison is a painful, humiliating and negative experience and it is more than just a restriction of freedom and liberty. Theses narratives of criminal law signifies the development the new criminology, the criminology from the below.

Law as Literature Approach:

The importance of words and expressions can be easily inferred from the Indian Penal Code by the manner in which, the offences were defined in one section and punishment in another section. The words '*grave and sudden provocation*' as the first exception to murder in the Indian Penal Code, convey special meaning in very precise and clear terms without any ambiguity. The interpretation of words '*grave and sudden provocation*' in the famous *Nanavati case* is another ideal tool of locating the will of law as literature. The teachers can use several land mark cases in India and abroad to demonstrate the beautiful soul and mind of law that at times overzealously safeguards the life, liberty and freedom of citizens.

The 'art of arguments' or 'cross examination' can be learnt in a memorable way with the *Shakespearean play*, '*The Merchant of Venice*' or '*Justice: A tragedy in Four Acts*', of *Galsworthy*.

The language of law has its own jargon and the legislations, the rules and the entire edifice of the legal system thrives on complexity and mystification. It is sad that it continues in spite of the plain English movement all over the world.

I congratulate my colleagues, *Dr. Kalpesh Kumar Gupta, founder of Pro Bono India* and *Ms. Dipanwita Mitra, Faculty advisor of Society of Law and Literature, NLU Odisha* for this current compilation of thirty articles on *“Teaching of Legal Language in Indian Law schools needs Urgent Attention”*.

These articles are significant addition to the existing law and literature jurisprudence. It will indeed immensely benefit the teachers, students and others interested in this area to understand the dynamics of literature and its interconnection with law. I congratulate all students who made it up to the merit list, and your research will renew interest in this area. I wish you all the best for your future endeavors.

Betrand Russel observed in his autobiography that three passions governed his life, *the search for knowledge, search for love, search for beauty and pity for suffering of human kind. Love and knowledge lead upward towards the heaven and where as pity lead him towards earth.*

Let us remember the immortal words of *Betrand Russel, while traversing the path of learning law and literature.*

“Echoes of cries of pain reverberate in my heart. Children in famine, victims tortured by oppressors, helpless old people a burden to their sons, and the whole world of loneliness, poverty, and pain make a mockery of what human life should be. I long to alleviate this evil, but I cannot, and I too suffer”.



(Srikrishna Deva Rao)

PREFACE

“Language is the roadmap of culture. It tells you where its people come from and where they are going.”

- Rita Mae Brown

Law and Literature are pieces of the same comprehensive mosaic i.e. our society. They complete each other like perfect pieces of a puzzle. Law dynamically evolves to revolutionize the eras and literature immortalizes its growth with the power of its eternal presence. The legendary Aristotle once said, “*Man is a social animal; a man cannot live alone*”. Its implication was relevant back then and shall always remain in vogue as man is incomplete without the society he lives in and the society is incomplete without its expression. Law and literature are part and parcel of the same package deal.

ProBono India is a pioneering organization in the field of legal journalism, legal activism, legal aid and research. It is growing towards every dimension to make justice more readily accessible – mainly using the two most powerful weapons i.e. the “*law*” and “*literature*”.

The Law and Literature Society of National Law University Odisha and ProBono India have collaborated in its endeavor to contribute in legal research by organizing this **Article Writing Competition** on the theme “**Teaching of Legal Language in Indian Law Schools Needs Urgent Attention**”. It is an earnest effort to establish a platform for the amalgamation of the great minds of all ages. The top thirty articles shall be rewarded and published.

To make this event a success our efficient and industrious team had worked tirelessly under the guidance of our experienced and supportive faculty members –Ms. Dipanwita Mitra and Dr. Kalpeshumar L Gupta (Founder, ProBono India). The core team consists of Atharv Kopal, Mukesh, Aayush Akar, Indrashish Majumdrar, Parul Priya Nayak, Vartika Prajapati, Samrath Kaur Kalsi, Annirudha Mukherjee, Sonarekha, Suverna Rekha, Muskan Jhunjunwala, Shubhra.

Language is the soul of law and legal language the pillar on which the edifice of law stands. Thus, the research on teaching legal language in law schools is an immediate concern to shed light on the existing lacunae in our education system. We hope you resonate with our aim as intensely as we have worked to convey it.

Team Society of Law & Literature

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1.

LANGUAGE OF THE LAW: IMPORTANCE OF LEGAL LANGUAGE, CHALLENGES FACED IN TEACHING THE LANGUAGE, AND THE POSSIBLE SOLUTION

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Force majeure, In pari delicto, Obiter dicta, Pro bono, Res judicata. You might have come across these jargons if you're in the legal field. English is the language used in legal discourse worldwide. However, English used in the legal context varies from the common plain English. Legal English refers to the specialised variety of English language used by legal professionals such as judges, advocates, paralegals, solicitors, and law professors. According to David Mellinkoff, Legal English includes "*distinctive words, meanings, phrases, and modes of expression*" (*The Language of the Law, 1963*). What makes the "Language of Law" different from plain English is the vocabulary, syntax and semantics used in it. The vocabulary used in legal documents is extensively drawn from Old English, Norman French, and Latin. This is because Latin was the language of administration and law in England, while French was the Court language. English which is used in legal documents in India goes by nomenclatures like legal English, legal parlance, and legalese. This form of language is used in Courts, Judgements, Bills, Acts, bye-laws, and amendments. Legal English is also used for writing wills, contracts, and other legal documents.¹

India is a common law country - a common law system is based on recorded judicial precedents. This system bears the influence of British colonial rule.² In India, the statutes and legal forms were drafted by Educated British codifiers who borrowed the already existing legal terminology. **Archaism** i.e. use of outdated words, **loan words** i.e. words borrowed from other languages, **jargons** i.e. special words used by a profession which are difficult for laymen to understand, **use of words with unusual meanings**, and **use of doublets and triplets** i.e. overuse of synonyms makes the comprehension of Legal Language difficult. The

¹Susheela Srinivasan & Dr. B. Shakira Jabeen, 'Why Only Lawyers Can Understand Legal Language?' (Star of Mysore, January 13, 2020), www.starofmysore.com/why-only-lawyers-can-understand-legal-language accessed on May 10, 2020

²The Bar Council of India, www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom accessed May 10, 2020

need for using loan words arose because English and French languages were regarded as vulgar and deficient in logical expressions. Latin was the language of Law in England till 1066. Thereafter a variety of Latin known as '**Low Latin**' containing Latinised English and French was used in courts till the Fourteenth Century. This explains the occurrence of Latin and French words in Indian legal documents written in English.³

The language of the law is difficult for a layman to interpret. This is because the jargons used in law have only a specific meaning that cannot be disputed. For instance, the jargon 'citation' means "quoting a decided case." Even some familiar English words may have different meanings in the legal context. For example, 'damage' in plain English means "physical or mental harm caused", but in legal English, 'damage' connotes "the amount given as compensation to a person." Originally, doublets and triplets such as 'signed, sealed and delivered' were used by ancient legal practitioners who were paid by the length of the documents but now the lawyers make use of such words to add precision to their documents. The syntax used in legal documents is complex and uses multiple modifiers in unexpected positions.⁴ All the complexity of Legal Language can only be comprehended by someone who has studied this language carefully and deeply. So as a law student, there arises a need to study the Language of Law.

Although the law curriculum covers a subject on legal language in the very first year of study in law school but the subject is not very well received by students. The Language of Law is broadly divided into Spoken and Written. Spoken Legal English is used majorly in three legal settings- Pedagogical, Professional, and Academic. Legal English used in a pedagogic setting is in lectures and moots. In an academic setting, it may be used for colleague-colleague interaction. While in a professional setting, it is used in jury instructions, lawyer-client consultation, and counsel-witness examination. Written legal English is used in Academics for writing textbooks and journals; in judicial matters for writing down cases and judgements; and in a legislative setting, for drafting contracts, agreements, and insurance policies.⁵ Hence, it is paramount for law students to have a grasp on the Legal Language.

³Susheela Srinivasan & Dr. B. Shakira Jabeen, '*Why Only Lawyers Can Understand Legal Language?*' (Star of Mysore, January 13, 2020), www.starofmysore.com/why-only-lawyers-can-understand-legal-language accessed on May 10, 2020

⁴ibid

⁵ V K Bhatia, 'Language of the Law' (1987) 20, Language Teaching 227

The subject of legal language in Indian Law Schools needs urgent attention; not only for studying law but also for practising law in future. Teaching legal English is a challenging job for teachers because students in law school come from different language training backgrounds. Their level of understanding and command over the English Language differs. Some students may easily understand the legal interpretation of jargons, some may take time. The students need to upgrade their reading, listening, speaking, and writing skills for general English first. Only after upgrading their general English skills, they will be able to develop their language abilities in the Legal context. Secondly, students find law subjects such as law of torts, contract law, constitutional law, etc. interesting while lack interest in learning highly specialised terminology in English. The job of teaching legal English requires a teacher to be updated with the changing social, economic, and, political trends so that the teacher can equip the students with necessary skills. Now, this is also a taxing job for legal English teachers. So, what could be some feasible solutions to the problem of teaching Legal Language in Indian Law Schools?

Clearly, a single course book on Legal English wouldn't solve the problem. The first step towards solving the problem would be to identify the students' lexicon needs and their level of understanding general English language. For this, a common test can be conducted in the 1st year itself. This test would help analyse four skills in a law student - speaking skills, reading skills, writing skills, and listening skills. After this test, the teacher needs to bring the students of different language skills on the same level so that they can achieve their common goal of mastering the legal language. The results of this test would help in deciding whether the students need to do a general English course or not. The students with low-level language skills should do a general English course and equip themselves with general language skills that would help them in overcoming the language barrier. Once the students have been fully equipped with speaking, reading, writing, and listening skills, the teachers need to design a course module for legal English according to the skills required for joining the legal profession and also for meeting the employers' expectations from law graduates.⁶ Legal professionals are expected to have a thorough knowledge of legal terminologies. The students should receive training in writing legal documents such as memos, letters, or case briefs and performing oral advocacy. The course should include tasks like analysing Supreme Court's and High Court's judgements, reading casebooks and law reports. By reading law reports,

⁶Nicoleta Medrea, Dana Rus, 'Challenges in Teaching ESP: Teaching resources and students' needs' *Procedia Economics and Finance*, 3 (2012), 1165-1169

students will learn how to find the *ratio decidendi* (*the reason for the decision*) of a case which is an important part of the training of a lawyer.⁷ There should be a continuous professor-student interaction in class. Questions should be asked repeatedly from the students and students should be encouraged to try and give answers. In this way, students will prepare for the class and learn more. The course should also focus on developing research skills, writing skills, and presentation skills of the students. They should be encouraged to participate in moot court competitions, present their papers in seminars, participate in Model United Nations (MUN's), publish their research papers in UGC approved journals, and also participate in debate competitions. In this way, the students can discover the applicability of their Legal English knowledge. Since the students are attracted to technology, they should be encouraged to read books on Legal English through the resources available online. The information available online is up-to-date and seems interesting to students in comparison to the textbooks. The students should be provided with a list of websites that they can use for learning Legal English Language.⁸

Lastly, the students need to realise the importance of learning the legal language and develop respect for linguistic accuracy. Since the meanings of words hold so much importance in a lawyer's career, students should focus on using them precisely. Learning the legal language will help the students to communicate effectively and efficiently.⁹

⁷Lojko, M.O., 'Teaching Legal English to English Second Language Students in the US Law Schools' *Respectus Philologicus* (2011) - N.19 (24). – C. 200-211

⁸Nicoleta Medrea, Dana Rus, 'Challenges in teaching ESP: Teaching Resources and Students' needs' *Procedia Economics and Finance*, 3 (2012) 1165-1169

⁹'Legal Languages as a Tool of Communication' (Racolb Legal, January 14, 2017) <http://racolblegal.com/legal-language-as-a-tool-of-communication> accessed May 10, 2020

2.

LEGAL LANGUAGE – TEACHING EFFECTIVE COMMUNICATION

Akilesh Menezes

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Introduction

The practice of law, at its very foundation, is an exercise in communication. The profession of law is based almost entirely on communication skill, as communication pervades every aspect of it. Lawyers practising litigation are communicating with clients when taking briefs, and with judges when arguing in court. Transactional lawyers communicate with other lawyers when negotiating terms of a contract, and with clients when advising them. Communication also plays a significant role for lawyers in other fields, like politics and diplomacy. This makes the ability to communicate effectively one of the key tools in a lawyer's toolkit.

Communication skills therefore, must be taught extensively in law schools. The subject, as it is taught today, is known as "*legal language*". The name itself suggests a difference between the language spoken by lawyers, and the language spoken by laymen. This is indicative of the way it is taught in law schools as well, with the primary focus being on understanding the opaque and impenetrable language of lawyers, rather than on effective communication.

Through this article, I will highlight some of the issues that legal language, as taught today, creates for future practitioners of the law. I will then propose solutions which can be implemented in law school curricula, to help law students develop more effective communication skills.

Current Issues

Lawyers do not use plain English. Redundancy replaces precision, verbosity replaces caution, arcane phrases replace common-sense ideas, and eight words replace what could be said in two.¹⁰ Legal Language, at its core, is obscure.¹¹ This obscurity creates hurdles in a lawyer's ability to effectively communicate to people from various backgrounds, and sometimes even with other lawyers. Law students are taught to use this complicated style of language to be

¹⁰Richard Wydick, *Plain English for Lawyers* (5th ed, *Carolina Academic Press*, 2005).

¹¹Alfred Philips, *Lawyers' Language* (*Routledge*, 2003) 38.

comprehensive with their work, but instead, it creates barriers to the actual understanding of what is being said.

The biggest victim of the complexity of legal language is the ‘draft’. The ‘draft’ here refers to any written material prepared by a lawyer, be it conveyances, contracts, pleadings, wills, affidavits, etc. Scholars have noted the various factors that influence a lawyer when drafting, such as:¹²

- Familiarity and habit
- Pressure to conform to professional norms
- Desire to avoid ambiguity
- Payment by time or length of document
- Mixture of languages (English, Latin, and French)

These factors arise as a result of the focus of legal education on understanding the complex legal vocabulary, rather than on simplification of the language. Young lawyers, when preparing drafts initially, are not equipped with the tools to draft documents with effective communication in mind. Under pressure from their seniors, they are likely to turn to older precedents and complex writing, rather than applying their mind to their draft from fresh. Succinctly put, the writing style of lawyers is wordy, unclear, pompous, and dull.¹³

The next issue arises as a result of poor drafting and legal language skills, which is its effect on client’s rights. When proper language skills are not imparted to law students at a primary stage, it can have an adverse impact on real-world cases, with severe consequences on the rights of people. In *Jai Pal Shishodia v. Poonam Rathore and Ors*,¹⁴ poor drafting of pleadings led to the trial court incorrectly inferring a fact and finding against the party. The decision had to be overturned by the High Court.

In *Amin Warehousing v. Al Freight Intl. Pvt. Ltd.*,¹⁵ the poor drafting of a complaint and affidavit of evidence for a complaint under Section 138 of the Negotiable Instruments Act, ended up creating problems for the complainant, in what was otherwise a simple case. The Magistrate initially found the complaint to be not maintainable, but the same was overturned

¹²Richard Castle & Peter Butt, *Modern Legal Drafting: A Guide to Using Clearer Language* (2nd ed., CUP, 2006) 6.

¹³Wydick (n 1).

¹⁴*Jai Pal Shishodia v. Poonam Rathore and Ors*, 191 (2012) DLT 487

¹⁵*Amin Warehousing v. Al Freight Intl. Pvt. Ltd.*, 2016 (5) MhLJ 917

by the High Court. This demonstrates how poor drafting can affect a party's rights, and lead to an eventual waste of judicial resources to correct the mistake in appeal.

Another important issue is the barriers that are created by the legal language system today, even within law schools and the legal profession. English is the dominant language in the legal profession. In India especially, where large portions of law students will be non-native English speakers, even if they are fluent in English, they may be lost for words in a legal discussion.¹⁶ Legal English is a language that uses words and terms that are totally outside the experience of a layperson. Having to read, write, and discuss legal matters entirely in English becomes a difficult task for Indian students.¹⁷

The way legal language is taught can also have widespread impact amongst various social groups and classes. It can reinforce existing power imbalances, sexism, and racism.¹⁸ Students who are unable to communicate in this language may be looked upon as '*inferior*', despite their knowledge of law and legal reasoning skills. The way legal language used can even foster or discourage greater sentiments like democracy and nationalism.¹⁹ The various social impacts of the use of legal language must also be kept in mind when developing the right syllabus for the teaching of legal language.

Proposed Curriculum

An improved curriculum for the teaching of legal language should not only teach a student how to understand the various "*legal-speak*" used by lawyers, but also teach them how to simplify it and communicate more effectively. Current syllabi generally tend to address only the former aspect. Take for example the syllabus of Mumbai University, which primarily focuses on the teaching of Latin maxims and legal concepts.²⁰ This alone is not enough to equip a law student with the skills they need to effectively communicate in all spheres of law. There is a need for more focus on the second aspect of legal language as well.

First, the quality of legal language can be improved through better teaching of drafting skill. Drafting and legal language are two subjects which go hand in hand. Drafting should form an

¹⁶Helen Gubby, *English Legal Terminology: Legal Concepts in Language*, (4th edn., *Eleven Intl Publishing* 2015) 9.

¹⁷*ibid.*

¹⁸Elizabeth Mertz, "The Language of Law School", (*OUP*, 2007) 26.

¹⁹*ibid.*

²⁰ Mumbai University, 'Syllabus for the Five Year B.L.S/LL.B (Revised) Course', <<http://hvpslawcollege.org.in/wp-content/uploads/2017/02/Law-Syllabus.pdf>> accessed on May 9, 2020.

essential part of any legal language course to help teach students how to write simply. The qualities of a good draft are brevity, plain English, and directness.²¹ Teaching students to draft with these qualities at the outset will leave a lasting positive impact on their communication skills. Drafting in plain English increases efficiency and understanding, allows for fewer errors, and improves the image of the legal profession.²²

Secondly, some attention should be given to law's relationship with language, rather than just legal language. This topic helps a student understand how his/her legal speech and writing may be interpreted, and how he/she should interpret another person's legal speech or writing. Schools of thought like the textualist, intentionalist, and pragmatic schools, all offer different approaches to the same.²³ This will expand the student's mind to the meanings of texts, and give them a deeper base of knowledge than just a bookish memorization of the meanings of legal maxims.

Thirdly, law students should be encouraged to communicate creatively. Precedent books for drafting,²⁴ while helpful as a base, often become subject to a cut-copy-paste exercise, with young lawyers failing to creatively apply themselves to their matter.²⁵ Practical drafting exercises, which encourage the student to draft within the boundaries of the law, rather than just a draft-precedent, will foster better communication habits for the next generation of lawyers.

Conclusion

Legal language, as it is today, is attacked not only for its unintelligibility, but also because it makes a claim to univocality, which it does not deliver.²⁶ Uniformity cannot come from the creation of a complex language that erects barriers to its understanding. It must come from simplicity and openness in communication, where everyone, lawyer or layperson, can understand what is being said.

²¹Sir William Blair, Sir Robin Jacob, and Sir Brian Langstaff (eds), *Bullen & Leake & Jacob's Precedents of Pleadings* (19th edn, Sweet and Maxwell 2019)[1-26].

²²Castle & Butt (n 3) 114, 118-19.

²³Robyn Carston, 'Legal Texts and Canons of Construction: A View from Current Pragmatic Theory' in Michael Freeman and Fiona Smith (eds), *Law and Language Current Legal Issues* (Vol. 15, OUP 2011)8-9.

²⁴HL Kumar, *Legal Drafting: Do it Yourself* (5thedn., Universal Law Publishing 2017);Blair et. al. (n 12).

²⁵Castle & Butt (n 3) 13.

²⁶Philips (n 2) 42.

The teaching of a better legal language curriculum in law schools has not been promoted much in recent years. Outside of Vidhi's Manual on Plain Legislative Drafting in 2017,²⁷ there hasn't been a systemic movement pushing for the inclusion of a better legal language syllabus. However, considering the increasing number of youth pursuing law as a career option, it is imperative for law schools across the country to improve the quality of this fundamental subject, which is a crucial element of the legal profession as a whole.

²⁷ Vidhi Centre for Legal Policy, Manual on Plain Language Drafting (Vidhi 2017).

3.

EFFECTIVE TOOL FOR LAW STUDENTS: LEGAL LANGUAGE

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“The Language of the Law must not be foreign to the ears of those who are to obey it”

- Learned Hand

Introduction:

Legal Language is a great tool that a lawyer possesses. The day a person chooses to enter into a legal profession his journey of understanding legal writings and thinking like a lawyer begins. Language plays a vital role in life of law student and it has a great importance. From beginning of the law school's journey, law students are exposed to heavy legal jargons, judgement readings, reading legal textbooks and many more. Students also try their hands in research as for a law student research is very important aspect from the beginning itself. Research would be effective and easy when law students are able to understand the legal language and after understanding the legal language only one can interpret its meaning and yield an effective research.

Learning a legal language is not an easy task but it is essential for a Law student. It is a brand new language for a fresh law student. So, it is of great concern that such an important part of the legal profession which is legal language should be taken care of by Law schools. Language is a base of legal profession which starts from the day one enters law school. Therefore, it is the responsibility of Law school to polish law students in such a manner so that they end up becoming an extraordinary lawyer who is capable of understanding, interpreting and writing an adorable legal text.

Legal Language : Meaning and Importance for law students

Legal Language is the language used by Legal professionals. Lawyers used it in drafting, Judges use it in writing judgements and law students use it while writing their exam papers as well as research articles. Law is a technical subject which has its own programming language i.e. legal language.

In India legal language means a language other than in English or independent of English a legal language is expected to be developed through the medium of regional language or Hindi.²⁸

Legal language is not an ordinary language. It has **extreme importance** for a law student and certain important aspects are given below-

- ❑ Legal language helps in effectively understanding of bare Acts, legal textbooks and legal articles
- ❑ It helps interpretation and hypothesis because one would not be able to interpret the meaning of a given legal text until and unless he is not able to grab the legal language,
- ❑ It helps in researching and writing legal articles as well as Research papers.
- ❑ Legal language is of great essence while mootng. In a moot court i.e. virtual court students are exposed to how lawyers present themselves. So, one who knows the legal language would be a good mooter and be able to present himself as a professional lawyer.
- ❑ Legal language helps to read judgement and catch the main intention of the Judge while giving the judgement i.e. a law student would be able to analyze a judgement accurately and form their opinions on matters.
- ❑ Legal language helps law students groom their personality as a future lawyer because using legal language in communication inculcates the habits of professionalism and develops confidence.
- ❑ Globalization has rapidly expanded and in making Indian Law students match the international standards it is necessary to make them learn effective legal language.

Imparting of Legal Language in Law schools

Everyone of us who is in a law field whether it's me or any other law student we have great aspiration and expectations from our Law schools where our journey begins and runs a long way towards emerging as a young Lawyer. It is a foremost responsibility on law schools to pay attention in teaching students the legal language as it is the major weapon of lawyer which is always accompanied by a legal professionalist. Law schools provide students a

²⁸ LRH “Legal Language”(2019)

platform to earn degree gain exposure but do they really focus upon the teaching of legal language? Yes, some do but not upto the range it is needed. It is the need of the hour to make the young lawyers bright minds so that they are master of understanding the language of their profession. Law schools should strictly pay attention towards learning of legal language as if law students are unable to understand language of their profession accurately then there is no use of reading law books and passing the exams with handsome CGPA.

Teaching of legal language in law schools needs urgent attention because most of the time it is seen that what the language of law is trying to say is misinterpreted and assumed wrong because of which the entire concept is under an ambiguity.

If I would quote here the examples of legal maxims so, it is not at all easy for a layman to catch its meaning but law students would be well aware of it if law schools pay attention on them. Indian law schools need to focus upon raising the quality of lawyer they are building and they would be able to furnish an extraordinary lawyer by providing them great legal skills and legal language is one of them. A student who is studying Law needs to be familiar with legal terminologies which are not easy so, law schools need to give emphasis on such trainings because when one is able to grab what is written or what is been said by Courts then only he or she would be able to germinate a mindset of legal background.

What should all law schools do to focus on teaching legal language?

Well what remedies I can think of as a law student are-

- Law schools should develop special training classes for imparting legal language classes.
- Regular practice of interpretation activities should take place which would help students analyze the legal text and try to understand what law actually is trying to convey. Even Professors would be able to analyze on their own while taking such activities that a student is getting familiar with legal language or not.
- Students should be encouraged to take online courses for polishing practical legal language.

- ❑ Legal language should be made as a compulsory and important subject like other major subjects of law.
- ❑ Weekly judgement analysis classes should take place because judgements helps a law student practically study the application of how a legal language is being used by the judges while delivering the judgements and how they have interprets the language of the Bare Act.
- ❑ Internal assessment should take place of legal language in which a maximum passing criteria should be fixed from the very first year of law schools,

These all are some suggestions which I found would be appropriate in imparting effective legal language exposure to the law students from initial years of law schools and would brush up their legal skills on interpreting legal language.

Conclusion:

Legal language is the soul of the legal profession and one who is in the legal profession must have a distinctive vocabulary and an impressive understanding of legal terms and legal language. Law is a wide field with daily basis application and if a lawyer interprets any provision of law indifferently which is contrary to the exact meaning then the client would suffer for justice. So, it would be of great effort if one starts analyzing and interpreting legal text from fresh years of law schools. Here, Law schools play an important should so they should mandatorily take care of their attention towards the importance of legal language for law students and they should not deviate from this because the main essence of legal profession lies in its language. Therefore, Legal language is essential of Legal profession which requires attention of Indian Law Schools.

4.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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With changing dimensions in law, there arises a need that all future lawyers be equipped with the best front in terms of language from their curriculum at law school itself. At first it might sound funny and irrelevant to have English language lectures at a law school, but legal language stands on a totally different foot when compared to the regular English language which one gets very familiar with in his life. Having law schools without including a Legal English Language course in their curriculum is just recreating the instance of sending a soldier on the battlefield on his very first day of his joining without providing requisite training and with expectation of a full-fledged result. As future lawyers one is expected to be groomed in such language and provide an edge to their clients in every transaction which involves legal expertise. In order to bridge the gap, one must mandatorily be taught legal languages in colleges with special focus on upbringing the know-how of the complex and technical legal language. The language is not the usual language which lawyers are supposed to focus upon the detrimental and complex legal languages which act as a variable in the present scenario. But it does not necessarily direct use of unheeded complex legal jargons in each and every transaction.

Introduction

Language becomes the foremost font to communicate with people. With as many as 19,500 languages as the mother tongue of people in India²⁹, it becomes quite difficult to tally with others when there arises a language barrier in between them. This is in turn solved by means of common language used throughout the Country. It represents the general perception but when it comes to legal language there lies no substitute for the same.

Lawyers as they are expected to be well versed with the language and also to be well aware of the jargons for which may benefit the masses or the client himself. As for instance

²⁹ 'India is home to more than 19,500 mother tongue', *The Hindu Business Line* (New Delhi, July 1, 2018).

recruiters while hiring expect one to be fluent in the language and prefer one with having language power.³⁰

So, what works for them is having a grasp on the language but more importantly having knowledge of the legal language.

How does it Work?

Imagine you are burdened with assignments and class room works and relatively a teacher asks you to prepare notes of a particular subject signaling the unimportance in daily life and with only exam perspective. In this case the student would gloom from happiness and will only consider this only as a passing subject and will dedicate the least amount of time in his entire period.

This is what the scenario is of today where Law Schools are not taking the directive principle of teaching legal language compulsorily through its curriculum. In many schools either these are not taught in the schools or even if it is taught then it is not taken seriously. As for instance in Dehradun the legal language learning is compulsorily taught for a period of 1 year in the 5 years Course but the same is not being taught in the 3 years Course. This disparity lies in abundance in the law colleges spread across the Country. But, still leaving the differential stance, what we need to focus is the proper teaching of legal English language to every budding future lawyer.

The need arises for it, as for instance when a new student joins the law course from a completely different background then the student interprets the teaching taught as a part of regular English and frames his thought and applies his mindset towards the simple meaning of the language. But what he misses is that there lies something more than his regular thought of plain and simple English. For example, when a teacher refers in a judgement pronounced by a 5 bench Judge, then the relative interpretation of the ordinary student might lie in referring to the bench as a bench which we use for sitting but the teacher inference lies on 5 judges collectively who pronounced a decision for a case. Adding to this, the students out of embracement don't feel to clear their doubts in this regard and continue to believe their thoughts arising from the usual course of English language which they are familiar with. Such a situation is just an example but there lie many such instances where students might

³⁰ Yasmin Ahmed, 'The Case for Foreign language as an aspiring lawyer', *The Guardian*, (July 7, 2015)

live in their own vernacular thoughts of plain and simple English. Such a picture seems to get clear with the due course of time when a student further introspects into internship or probably ends up being embarrassed in front of his peers.

This stand needs to be creatively phased out and a more relative way of educating the legal minds needs to be taken while considering the aspect that legal language forms the backbone of the legal profession and also adds to the need for focusing on the legal language from the period when one enrolls in a law school with an aspiration to become a successful lawyer.

The Way Ahead

It is a well-known fact that the vast majority of the legal professionals in India are not having English as their first language preference, considering the aspect that every State employs usage of their own local language to conduct day to day affairs of the Court in their jurisdiction.

Adding to it, the indisputable fact that Legal language forms a backbone of people associated with the legal profession and the students aspiring to be associated with it. But, with this the undeniable fact also lies in analyzing the situation as to how many students who took up law as a career do not possess any idea about the legal language and its adequate usability leading them to usage of the language in an unprecedented manner.

It also remains a decisive fact that legal documents are burdened with technical and extensive usage of legal vocabulary and phrases in their making. This makes the entire document to be difficult to be accessed and understood by a man of ordinary prudence and on the same footing makes the lawyer sometimes have difficulty in minding the exact meaning of the technicalities used.

So, what lies the way within it remains the area of concern. As has been witnessed by majority of the law students, there lies a gap in such learning, where even though courses pertaining to improvement of legal English is laid focused upon but still it loses ground due to the insincerity laid down towards the subject. The particulate way ahead may be inferred from the above as making the entire study of the legal language to law students as like other subjects which are relatively taught with more importance.

The whole idea of putting it as a plain English language needs to be changed and further the perception of taking the subject casually and with sole objective of a passing subject needs to

be changed. With the future lying on the onus of dealing with the complex legal language and jargons, one must brace himself to take the idea of learning it seriously by implying practical usage during the internships.

Conclusion and Suggestions

While considering the aspect of teaching of legal education in law schools, one disparity exists in terms of imparting legal education between the 5 years law course and 3 years law course. It could be noted that though in 5 years curriculum legal English language education is imparted but the stands totally opposite to that of curriculum of 3 years law course.

This stand has been relatively noted and forms a part of our suggestion in the whole impartation of Legal English language. Considering the relative approach, the law schools need to focus on devising a more appropriate curriculum to envisage a more focused learning to both the courses.

Moreover, the strategic learning approach as against other subjects also needs to be adapted at par with other law subjects. This will act as a great initiative in imparting knowledge of the language. Moreover, to further increase the potent understanding the industry leaders' key address on the issue needs to be held to ignite the young minds for the need of it.

Thus, while looking into the various aspects, it could be well concluded that imparting legal language as a vast way to go and still it stands on the diverse ground where the know-how of the technical language becomes a necessity for the lawyer when they are considered as the masters and curators of legal documents.

5.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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In the year 2005, an Indian think tank named National Knowledge Commission was constituted as a high level advisory body to the then Prime Minister of India Dr. Manmohan Singh. Its report as submitted for the year 2006-2009 recognized Legal Education to be a fundamental facet of the professional education.³¹ It puts up a hope for the people in the legal field to be equipped to meet new challenges of the field. The report while reviewing the status of legal education across the country recommended a bunch of guidelines to help the institutions to retain the worth of the students graduating from the institutions over time. Also, it recognizes the dire need to bolster the quality and every aspect of the legal education conferred in every law school.³²

One very important aspect of the legal education parted in plethora of law schools across the nation is the teaching of legal language. It is the very thing that creates a basis for the student for their years to come. The institutions start edifying the student from the very first year as to how to construct and comprehend the language used in a statute. But more commonly, the students miss out on the essence of the interpretation of statutes. Resultantly, Teaching of legal language becomes a mere subject to be taught in the schools and a snipe hunt for the students who just want to pass the subject. Every law student has definitely written a two paged essay on how is the correct interpretation of statutes important but it is safe to say that the legal institutions have altogether failed miserably to illuminate the students on the importance and the correct way of the appreciation of legal language.

Words are undoubtedly the most essential tool of the legal language and its misinterpretation can cause blunders for a legal professional. Lawyers should know what meaning to ascribe to different words and they should also know how to effectuate and cede their clients and that is possible only when they construe right words in the right manner.

³¹National Knowledge Commission Report to the Nation 2006-2009 <<https://www.aicte-india.org/downloads/nkc.pdf>> last accessed on May 5, 2020.

³² Report on the Legal Education in Country, Page No. 79.

Since the inception of the legal life of a student, they learn a slew of words and their meanings, which they had earlier never used. And it is essential they are taught the right comprehensions from the start. No one can get the right connotation of words like *suo-moto*, *caveat emptor*, *de facto*, *de jure*, *res judicata* or *res ipsa loquitur* on their own. It is the teachers of our law school who are at helm of our careers.

Moreover, it's not just the new words that bring a change, but when studying law, every other normal and regular word starts to render a wholly different purport.

Like the word '*consideration*' in common parlance is meant to consider something and take it into account and to acknowledge but with the blending of the law in between, it means "*When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing something, such act or abstinence or promise is called consideration for the promise*"³³

'*Sentence*' as in regular English is a complete set of words but in the legal scenario it means the penalty the court imposes on the culprit.

For a common man, *consent* means to agree to something but in the legal scenario consent is a much vexed term that stands to mean 'a free consent'. The definition of consent is varied as per different legal provisions. Section 13 of the Indian Contract act, 1872 defines consent as "*when two parties entered into the contract there should agree upon the same thing in the same manner*". However, Explanation 2 to section 375 Indian Penal Code defines consent as "*Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.*"

Similarly, the words '*shall*' and '*may*' are given a different interpretation. They are not been ignored anymore. The word '*shall*' denotes that the things is a mandatory one and that there no discretion involved. However, the word '*may*' implies discretion and choice.

A law student ought to know well, the importance of distinction between '*and*' and '*or*'. That changes the meaning of a legal provision and assures that the professional doesn't err.

One would never focus on such terms until and unless told to do so. Our law schools provide us with various opportunities to create our space in the profession; be it moot court

³³ Indian Contract Act 1872, Sec, 2 (d).

competitions, debate competitions, and arbitration or mediation competitions. Every such competition leaves a student more experienced and knowledgeable. The role these competitions play in our life can't really be abnegated. But instead of learning the basics through some competition, it would be wiser to learn the same from our institutes, where one can have his queries answered.

Being a law student myself, I can safely speak for others that time that we put in trying to cram various offences and their respective punishments and sections is way more than any of us spends trying to acknowledge and grasp the meaning of legal terms.

Ironically, our law schools do not pay the requisite attention to the '*legal*' language. The students are frequently quizzed on the sections of the acts but rarely on the basic provision. The fact that the power of a statute doesn't lie in the section but in the bare provision has been long forgotten by the legal institutes of the country.

Suggestions

The institutions can come up with the following ways to pay more heed to the legal language:

1. More elaborative and creative courses on the interpretation of statutes should be initiated.
2. Legal Maxims and other legal terms must not only be taught in classes but must be used as well.
3. Students must be encouraged to enrich their vocabulary to be distinctive.
4. In the first year of law schools students must also be taught the judgments by the apex court and other high courts and their comprehension as well.
5. The focus of the teaching should be on the meaning of the terms and not just penal part of the provision.
6. More creative competitions within the college must be organized to invigorate the students to go to the heart of each provision and not just mug up the books and statutes.

We can't really deny the importance of legal language in the life of a legal professional. If the law schools try to delve into such topics right from the beginning, it would change the future of the whole legal fraternity. Understanding the legal terminology would be a dying art, if the

students who have put their five years into this sphere, end up gulping down the meaning of the legal terms instead of deducing the real meaning of words.

The reason that the law schools need to attend more passionately towards the legal language is that these legal terms form the essence and this is what enables any legal professional to create a stand in the world that is filled up with legal barons up to the brim. But quite unfortunately, the legal language loses all its glory behind the clamour of the acclaimed provisions. And the only way, legal language can again clinch back its glory and charm is by the way of getting the attention by law schools that it deserves.

6.

A REQUIREMENT FOR REFORM: EVALUATING THE TEACHING OF LEGAL LANGUAGE IN LAW SCHOOLS

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Introduction

It can be argued that the most pivotal backbone of legal education and by extension the practice of law itself, is legal language. In large part, this is due to the propensity of the teaching of concepts in further legal education to rely on a student's clear understanding and comprehension of legal terms and associated lexical semantics taught in legal language classes, and the fact that the practice of law itself also revolves around one's ability to frame and communicate legal arguments. However, despite being a subject which must, at the least, be treated on par with other subjects in Law Schools, legal language, notwithstanding that it is taught in the first term, is often neglected in favor of other subjects deemed more important.

As a result, students must often rely on self-teaching from restrictive text-books and syllabus that focus purely on narrow, esoteric, theoretical concepts and foreign terms of legal language, thereby restricting any holistic learning of the subject. Moreover, the skills gained by students through the study of the subject are in stark contrast to the required skills, since at present, across most subjects, testing is focused merely on memorization and knowledge of bare principles with little emphasis on understanding the practical application of the concepts learnt.³⁴ It is vital therefore, for the teaching of legal language in law schools to be subject to significant reform in order to inculcate practical and useful linguistic skills in students as well as a holistic understanding of the subject to ensure that Indian legal education is brought on par or beyond international standards.

The Pedagogy Problem: Conventional Methods of Teaching Legal Language

In order to adequately contextualize the need for reforms and the suggested reforms to the teaching of Legal Language in Law Schools, it is necessary to consider the possible

³⁴Supriya Routh, "Legal Education At The Crossroads" (2009), Vol. 1 *JILS*, <<https://jils.co.in/wp-content/uploads/2019/04/supriyo-routh.pdf>> accessed April 21, 2020

shortcomings in the present handling of the subject. Arguably, the foremost and core problem which arises in legal language courses is that such courses are centered around purely theoretical and superficial learning of legal terms and grammatical rules in isolation, and based solely upon the requirements mentioned in text-books on the subject. In addition, classroom learning with respect to legal language also suffers from similar flaws prevalent across the teaching of multiple other subjects, in that the course is often taught merely through passive lectures, with little interaction between students and teachers given the lack of class participation.³⁵ However, such pedagogical methods negatively impact legal language to a greater degree, since the nature of the subject is such that it requires continuous practical application in order for a student to gain sufficient proficiency; which can only be done through classroom debates and professor-student interaction. Such a scenario therefore, poses significant problems since such students in the future would be required to interpret and ideate new laws, and would therefore require a keen understanding of legal language and its practical use.³⁶

A Reform of Process: Identifying the Required Language Skills and Providing a Structure for Their Development

One of the most significant reforms which could be brought to the Legal Language course in Law Schools is the institution of a mechanism which allows for the identification and remediation of the level of proficiency and pre-existing language skills in General and Legal English to an extent, which students possess prior to the beginning of the Legal Language course. The need for such a step stems from the fact that, the teaching of Legal language in Law School requires a student to possess a certain standard of proficiency in English so that a student would have a suitable base for understanding the subject-matter of the course.³⁷ At present, the framework employed by Law Schools is a one-size-fits-all policy, which directly begins with course content without considering the socio-economic background of different students and the resulting variance in basic English proficiency that could be present in different students, which would affect their ability to suitably understand and engage with the Legal Language course. Thus, it is necessary to firstly bring all students to the same basic

³⁵Supriya Routh, "Legal Education At The Crossroads" (2009), Vol. 1 *JILS*, 65<<https://jils.co.in/wp-content/uploads/2019/04/supriyo-routh.pdf>> accessed April 21, 2020

³⁶Timothy Endicott, *Vagueness in Law* (Oxford University Press, 2000)

³⁷Stanley A Weigel, "Legal Education and the English Language" (1986) 10 *Nova LJ* 887

level of linguistic skill, in order to ensure that engaging with the Legal Language course, in particular, the technical English, Latin and French terms, would not be difficult in the future.

To accomplish this, one might take inspiration from the framework instituted by the New York Law School in 1960, where, in order to alleviate the aforementioned problem, the University began to administer “standard English placement tests”³⁸ for all its freshman students in order to gauge their pre-existing skills in the General and Legal language. On this basis, the University also began to provide remedial classes in English to ensure that all students gained an equal footing with respect to basic linguistic skills which are required to understand the Legal Language course³⁹. Indeed, adopting a similar approach in Indian Law Schools presently, with regards to administering such tests in order to identify *lacunae* in students’ previous language skills and providing remedial language classes, would arguably significantly reduce students’ difficulty in grasping concepts of Legal Language and understanding its technical nature. This would result in students being able to more effectively use and apply legal language in future study and practice. Structurally, such proficiency tests can be taken at regular intervals, beyond course assessments, in order to make sure that students have developed and are effectively learning the requisite language skills from the subject.

‘Language for Special Purposes’: The Need for Application and Context-Based Learning

The most vital reform which is required however, is a drastic shift from the present rigid, restrictive approach to Legal Language which is characterized by passive lectures, memorization, little professor-student interaction to a course structure which encourages practical application of skills, and allows students to learn through observation and discussion. The necessity and effectiveness of such an approach can be explained through the lens of the “Language for Special Purposes Theory”⁴⁰, which postulates that languages which are taught for a specific professional purpose or context, such as Legal Language in this case, are learnt best through induction, application and practical use of such language, rather than mere rote-learning of word meanings and rules of language, as is presently being done.

³⁸Hans J. Gottlieb, “Teaching English in a Law School” [1963] *ABAJ*, 666-667

³⁹*ibid.*

⁴⁰ Halina Sierocka, *Curriculum Development for Legal English Programs* (Cambridge Scholars Publishing 2014)

Therefore, it can be argued that the most basic change required is for the course structure of Legal Language in Law Schools to be expanded or amended to ensure that students, beyond being required to simply memorize the meanings of legal terms such as “due process of law” or “adjournment” as well as the rules of legal language, are able to understand how and why such words are practically applied in the legal documents, legislation and judgments. Several steps can be taken in order to fulfill such a goal. To this end, it is suggested that to better improve the students’ learning and increase their interest, rather than merely being constrained to the classroom, students be taken on field trips to view Courtroom proceedings where legal language is continuously used; if this is not possible due to logistical issues, in the alternative students may be shown prominent legal movies/recordings of actual trials, since this would improve students’ understanding of the application of Legal Language in a practical context, which would also be helpful when such language is used in learning more advanced legal concepts. Similarly, when considering students’ difficulty in adapting to the use of Latin and French terms, it is suggested that alterations in the classroom interaction pattern and assignment criteria may alleviate some difficulty. For instance, teachers may assign students’ various foreign legal terms or legal literary texts⁴¹ to present in class, thereby stimulating active class discussion and also ensuring that through research for the presentation, the presenting student also gains an in-depth understanding of the foreign term and its usage. In addition, assignments for the Legal Language course may be changed to involve practical application of concepts, such as requiring students to write a judgment of their own on a particular set of facts and arguments, using the legal language taught to them in the course.

Conclusion

To conclude, arguably one of the most significant barriers to professional success is a lack of expertise in legal language. At present, the teaching of Legal Language in India is primarily centered on a restrictive, textbook-oriented approach to teaching the subject, which results in severe difficulty to students. There is thus a significant need for the course to shift to a more practical, application-based form of learning in order to ensure that students are able to effectively understand and retain the essentials of legal language for future use and application and the basis of their continued legal education remains steadfast.

⁴¹Bar Council of India, Report of the Curriculum Development Committee (Volume I, 2010) pg. 60

7.

THE TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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The contemporary world is evolving faster than ever. It's like a race where one needs to keep up with the pace of change in order to stay on the track of progression. The legal profession is one such race to be considered. If we view the legal profession as a system that guards every institution in the society, legal language can be considered as the programming language that operates the functionality of these institutions. The inference that can be drawn here is that the influence of legal language on contemporary legal science is gargantuan. The path to progress lies in the growth of the object and the growth can take place based on how well-equipped is the subject, where 'object' in the field of legal science and 'subject' is the legal professionals. To address the issue of stagnancy in legal language, we need to systematically dig into the problem.

The current field of legal science is a 'disorder within a growing order' because of a two-fold danger that it entails- the practice of borrowing ideas or words from a different discipline which is devoted to a different subject matter or method of study, and then skewing that data to fit into a category made for a different purpose altogether; Another danger lies in borrowing of ideas that fit into the context but data collected belongs to a different field of study altogether. The consequence of either of this approach leads to mis-observation and mis-interpretation. For instance, the concept of "configuration" as used by a psychologist is different from "field of force" as understood by a physicist and "ethos" by an ethnologist. This gives us an insight into the current crisis that the legal language is in, and the need for its immediate restructuring.⁴²

Law is a vast subject; what regulates it is the 'legal norms' that encapsulate the rules, orders, and principles, formulated in a specific language called the legal language. However, the legal system is an organized structure of collected legal norms, consisting of both written and

⁴²K. N. Llewellyn, 'The Theory of Legal Science' [1941] N.C.L.
3<<https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1543&context=nclr>> accessed April 28, 2020.

unwritten principles.⁴³ For instance, an unwritten principle could be- "no one should profit from their own wrongdoings", while a written principle could be- "Liability imposed upon certain conduct which is hazardous to nature, irrespective of the absence of negligence- Absolute liability." Considering this, various dimensions open up to be addressed in the current stagnant legal language's problem. Broadly classifying the dimensions, we get the linguistic phenomenon, legal interpretation, and types of legal mechanisms of law.

Law is often considered as a linguistic phenomenon,⁴⁴ where many legal words and expressions are imported from varied sources across the world. As language is considered symbolic, symbols are structured in a particular pattern for our understanding. There is no existing limit on the pattern system but recognized cultures have their own defined pattern. The way we perceive the world is structured on our interpretation of these symbolic languages and legal professionals have a major role in this while dealing with historical concepts of law. Now, this directs us to the legal interpretation segment. Often it is considered that legal interpretation is confined to understanding the statutes, but there is more to it; the existing practice needs to accommodate interpretation of 'extra-legal affairs', where the affairs extend to the current political, social and economic situation of the society. This would advance the scope of enabling students to understand the current socio-political scenario in order to address the growing concerns of society.

Legal mechanisms are like tools that legal language requires for enhancing its usage.⁴⁵ Presently, three distinct ways are present- natural law, legal positivism, and legal realism. Natural law is based on the principle of cognitivism, where the law is deduced from observation and analysis of natural phenomena from the nature⁴⁶; Legal positivism is a school

⁴³ Mikhailova O.V., 'Legal English' [2017] <<https://www.scribd.com/document/356572615/The-main-characteristics-of-Legal-English-Mykhailova-O-V-pdf>> accessed April 28, 2020.

⁴⁴ Annabelle Mooney, 'Language and Law' [2015] A.J.L. <<https://www.tandfonline.com/doi/abs/10.1080/07268602.2015.1078863?journalCode=cajl20>> accessed on April 28, 2020.

⁴⁵ Stefania Kolarz, Emilia Kopeć, & Ors., 'Introduction to Law and Legal Language' <https://prawo.uni.wroc.pl/sites/default/files/students-resources/Skrypt_edit_2015_10_15.pdf> accessed April 28, 2020.

⁴⁶ John M. Finnis, 'Natural Law Theory: Its Past and Its Present' [2012] J. Juris. 81 <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=2091&context=law_faculty_scholarship> accessed April 28th April 2020.

of jurisprudence that only values the expressly written principles of law⁴⁷; Legal Realism is a philosophical concept that looks for norms in judicial decisions.⁴⁸

In the theory of legal science, causation is seen as functionality of behaviour where causation determines the correlation of how one variable influences the other. In the given context, the behaviour is seen as a “function” of disorder in the present legal language that needs to be addressed.⁴⁹ To correct this ‘behaviour’ would require establishing an order in the system, and this will require the application of the principle of causation to determine the extent to which the effect can be experienced.

Navigating through the law school libraries could be a path to rescue. With technological advancements happening almost every day, new areas of concern relating to artificial intelligence, environment, privacy, nuclear proliferation, etc., are emerging. With elementary legal terminologies being served to students in packs aren’t sufficient enough to tackle these issues. Not much advancement has been made in Indian law schools with respect to research in these areas. What add to this problem are the poor facilities available for access to legal language by students during their career in law schools.

Exposure to the interpretation of statutes and intense study in legal methods in the initial years of Indian law schools is not an option but a requirement. Finding a succinct way to advance legal research for the application of theory in practical life is the need of the hour. No law school at present, except few, has a compulsory course and enough study material that is devout to making students learn the art of interpreting statutes and judicial pronouncements using the available legal methods.

It is important that every law student is accommodated to applying rules of interpretation while reading statutes⁵⁰, case law techniques to determine the ratio and obiter in judgments, and ought to be familiar with technical terms. All of this forms the base for fundamental clarity in legal approach. The very fact that we do not find sufficient material that makes it

⁴⁷Phillipe Nonet, ‘What is Positive Law?’ [1961] *Y.L.J.*

<<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7318&context=yjlj>> accessed April 28, 2020.

⁴⁸ Grant Gilmore, ‘Legal Realism: It’s the cause and cure’ [1961] *Y.L.J.*

<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3643&context=fss_papers> accessed April 28, 2020.

⁴⁹ Mirna Calderon, ‘Linguistic Phenomenon’ <<https://www.slideshare.net/marij20/linguistics-phenomenon-1-1>> accessed April 28, 2020.

⁵⁰ A.T.H. Smith & Granville Williams, “Learning the Law” (Sweet & Maxwell, 16th edn.) 127

compulsory for students to have an intense study in these areas, often students are found struggling in the latter part of their career.

Legalese⁵¹, as understood in its rudimentary form, has been the conventional way of lawyers for crafting the law. As most of the elementary concepts of law have been derived from Latin, French and English, it has been a common practice to draft documents using phrases that more often than not, are avoided in practical life conversations. Due to this, the law has often been far off from the outreach of a common man's intellect. To banish this rotten culture, it is important to first shrink the age-old practice in law schools. Simplification of legalese would save the common man from ignorance of the law. Marshalling unnecessary jargons into the language, however, would act as a facilitator of conversation between lawyers, not the people; and the law is made to best serve justice to the needs of the common men. Hence, law schools need to propel a culture that would require its law students and faculties to reinvent the legal language.

Conditioning student's exposure to variant cultures and variant legal systems will help channelize their responses to 'invention' in the legal field. Language is the means by which we communicate and perceive things around us. Legal language is the heart of law and the entirely legal system. As already established, language is symbolic and every symbol has a pattern. Similarly, legal language has a pattern to accommodate students into the legal profession.

Consequently, we have to push forward the study of legal language in its crude form in the initial years of the legal curriculum; and to introduce materials along with faculties well-equipped with skills to enable students to imbibe this pattern of study. Knowledge is a weapon that serves well for who masters it.

⁵¹ Robert W. Benson & Joan B. Kessler, 'Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing' [1987] *L.A. L. Rev.* 301 <<https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1493&context=llr>>

8.

LEGALESE: A FARCICALLY OVERBLOWN ENIGMA

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Introduction:

"... apposite objections preferred theretofore by the JD/tenant manifesting therein qua the decree put to execution theretofore not warranting recording of affirmative orders thereon, it is standing fully satisfied, standing stained with a vice arising from the factum of its palpably slighting the factum of unfoldments occurring in the relevant record existing theretofore comprised in the testification..."⁵²

This piece of judgement, meant to deliver justice to laymen, fighting for their rights, clearly leaves the readers baffled, more so than the title of this article. Elucidation, consequently, becomes the sole reason for knocking on Court doors. Isn't this Injustice in itself? The archaic approach of increasing the complexity of legal discourse and language, in order to maintain the divinity perhaps, backfires when it starts acting as a barrier between 'Janta' and 'Justice'.

From an Indian perspective, this problem boggles many learners of law. Legal language/legalese, as per Merriam-Webster dictionary, connotes a 'specialised' language of the legal profession. It deviates from everyday English and gives a narrow, conceptualised meaning to simple words. English terms such as "Wrong" used to convey something that is not correct signifies privation of a right under the law. This lends this language a systemic base that is unique to the legal faculty⁵³.

Uniquely so, there also lies 'Inter-connectedness' between terminologies, that lends a uniform sense of meaning to this language. For Instance, phrases such as 'Reasonable Man' or 'Reasonable Doubt' or 'General Interest of Public' or 'Due process of law' have no defined meaning. But their constant, variegated use ensures that we gain a definitive perspective of these phrases. Legal Language becomes a variety of English with its own style, tone and

⁵²Devika, 'When SC reversed HC order for incomprehensible content' (*The SCC Online Blog*, September 30, 2018) < <https://www.scconline.com/blog/post/2018/09/30/sc-archives-when-sc-reversed-hc-order-for-incomprehensible-content/> > accessed May 6, 2020.

⁵³*Jubilee Engineering Co Ltd v. Sales Tax Officer And Ors, (1956) 7 STC 423 AP*

register. As Solan points out, "I imagine a lawyer is some sort of bizarre translating device: The lawyer is presented with a problem in the actual world, such as an automobile accident. He translates this easily understood problem into some sort of incomprehensible jargon. The judge then rules, and the incomprehensible jargon is translated into dollars owed, or prison terms, or something else that can once again be understood. For all of this translation back and forth, the lawyer charges a healthy fee."⁵⁴

English is not the problem:

Every profession has its language of discourse. As per 2011 Census, Hindi is the most widely spoken language in India. In a country that is rich in its diversity and culture, it's a fool's move to lay extra emphasis on English and discard learning legal terms in one's regional or local language.⁵⁵ It is also equally true that English is the second most widely spoken language in India. Since Indian legal systems have found their birthplace in Common Law, it is no surprise that law itself is best understood in English. For instance, let us consider this discussion in Rajya Sabha, by late Mr Pramod Mahajan, upon the bill of (SICLD)⁵⁶ Act, 2000, "I do not understand one thing. When I went through the Hindi version, Hindi does not have one common word as 'person'. It is 'Adhyaksha' or 'Upadhyaksha' only. There is nothing like 'person' in Hindi which can denote both genders. It can be 'Adhyaksha' and not 'person'. In law you cannot say 'Adhyaksh' or 'Adhyaksha' what will we write in Hindi then? It does not understand 'Chairperson'."⁵⁷

A law student learning law in a local language may have to face the same problem. Hence, to maintain uniformity, English stands a pedestal above the rest.

Thou shall not Syllabificate:

Bentham jested about the long-windedness of legal language⁵⁸. Now, considering the fact that Bentham's jest could perhaps be justified by his times, let us witness this 192 word-sentence, "The present appeal projects and frescoes a scenario which is not only disturbing but also has

⁵⁴See, Lawrence M. Solan, *The Language of Judges* (First edn., *University of Chicago Press* 2010) 121

⁵⁵Prashant Singh, 'Breaking the legal language barrier' (*The Pioneer*, November 28, 2017) <<https://www.dailypioneer.com/2017/columnists/breaking-the-legal-language-barrier.html> > accessed May 5, 2020.

⁵⁶Semi-Conductor Integrated Circuit Layout Design, Act of 2000

⁵⁷ Rajya Sabha Deb. August 18, 2000, Vol. 190 <http://164.100.47.5/Official_Debate_Nhindi/Floor/190/F18.08.2000.pdf > accessed May 8, 2020.

⁵⁸Jeremy Bentham, *The Works of Jeremy Bentham* (First edn, Edinburgh, W Tait; London, Simpkin, Marshall, 1843) 249.

the potentiality to create a stir compelling one to ponder in a perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the Court as if it is a laboratory where multifarious experiments can take place and such skilful persons can adroitly abuse the process of the Court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurize in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for 'one-time settlement' with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them."⁵⁹

This verbose sentence simply admonishes litigants who misuse the tool of litigation for their own personal, monetary motives. As a law student, understanding takes a back seat. Cramming (and not analysing) becomes the norm. Consequently, the judgment not only fails to be understood but also fails to make a lawyer out of a law student.

The Liberal Conservatism:

Legal Conservatism is evident from the everyday rituals inside a courtroom. Infused with the placement of witness boxes and segregated public seats, Law courts morphed into an intimidating thing to behold. Law courts and not law itself then became antique and regal, almost divine. This however also seems to have left a perennial impression upon its language. Consider this heavily cryptic piece of judgement, "Emboldened by the lucrative yields of such malignant materialism, the perpetrators of this malady have tightened their noose on the societal psyche. Individual and collective pursuits with curative interventions at all levels are thus indispensable to deliver the civil order from the asphyxiating snare of this escalating venality."⁶⁰

⁵⁹Apoorva Mandhani, 'SC Slams Bombay HC For 'Unintelligible' Order, But Courts Are Full Of Convoluting Rulings' (*The Print*, 2019) < <https://theprint.in/judiciary/sc-slams-bombay-hc-unintelligible-order-courts-full-of-convoluted-rulings/317171/>> accessed on May 7, 2020

⁶⁰Rohan Venkataramakrishnan, 'Variegated Cancerous Concoctions Of Corruption': Supreme Excerpts From The Sasikala Verdict' (*Scroll.in*, 2017) < <https://scroll.in/article/829331/variegated-cancerous-concoctions-of-corruption-supreme-excerpts-from-the-sasikala-verdict>> accessed on May 8, 2020

This tired use of synonymous, complex words leaves a reader confused. This pertains to two main reasons a) Why is there a need to use such complex words? b) Would simple words make it less efficacious as a judgement?

Defying the laws of grammar:

On May 22, 2019, After 7 years, the Union Government corrected words like 'members' and 'stalemate' used in the 97th amendment to the Constitution. Surely, a language where even a comma gets varyingly interpreted, this error must not have been overlooked?⁶¹ Not so surprisingly then, instead of offering simple words, the legal text offers complex phrases such as 'Hereat Wherewithin', 'Whereas', 'Hereinbefore', 'Forthwith' etc. As soon as the young trainee-in-law attempts to acquire a) The meaning of these words and b) The context under which these words are used, there comes the peppering of Latin maxims that hold 'Immemorial antiquity as sages of law'⁶². The problem then arises not so much in learning the meaning behind these maxims but from re-wiring the brain to adopt this antique tone to learn the law.

It doesn't help to know that this language is filled with synonymous words and telegraphic tones that have sparked debates as to their usage. The improper structure is also a trademark of the French roots. Using adverbials before participles 'herein mentioned' and not 'mentioned herein', throwing in 'ee' after every word 'lessee, trainee, detainee etc. and having adjectives modify the noun, e.g. 'court-martial', 'attorney general', 'solicitor general' etc.

It is the cocktail mix of all these vane errors and tautologies that make-up the legal language, thus rendering it difficult to comprehend and in urgent need of diagnosis.

Concluding Remarks:

Bingham's 1st Rule of Law is collecting dust in Indian Courts. Indian Judiciary has its roots cultivated in Indian soil. Hence, it is only just to calibrate itself to the needs of society. Ostentatious English certainly does not help in this regard. Firstly, this reluctance to let go of the legalese must be thwarted. Exemplary measures must be placed to de-motivate the writing of such ancient scripts. Secondly, Law schools must not encourage the use of excessively

⁶¹ Amandeep Shukla, 'After 7 Years, Centre Fixes Spelling Mistakes In Law' (*Hindustan Times*, 2019) <<https://www.hindustantimes.com/india-news/after-7-years-centre-fixes-spelling-mistakes-in-law/story-vv5kYYs7JLRVTUj3Z7z0MK.html>> accessed on May 7, 2020.

⁶² Punjab National Bank v. Baba Kishandas Thakur Das [1997] 1 MPLJ 208 (High Court of Madhya Pradesh).

technical terms while teaching. Thirdly, Legal Language must be taught, keeping in mind the diverse backgrounds and English – learning abilities of the students. Frequent evaluations must be done in order to hone the skills of students. As one Supreme Court advocate pointed out, “All through legal education, there is no standalone course which teaches legal writing. It is only something that you pick up on the job, through peer learning or through wisdom passed on by your seniors. So, in the absence of any standards set in stone, a lot of people make the mistake of thinking that flowery language is a substitute for the expression being communicated.”⁶³

It seems that the legal profession prescribes old cures to new diseases. This neither cures the disease nor renders help in innovation. We cannot entirely abandon our precedents but we can utilise them in a way that benefits all, not just the legal faculty. It is time we shed the veil of vanity and embrace the true tenets of law, beginning with clarity.

⁶³ibid (n 8)

9.

LEGALESE EDUCATION IN INDIAN LAW SCHOOLS: THE NEED OF THE HOUR

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Joseph Ratzinger in his book “The Spirit of the Liturgy” said, “*When every man lives without Law, every man lives without freedom*”⁶⁴. Law thus can be termed as the sine qua non for justice, equality, dignity and liberty for any individual of a country. But, to the contrary, it is not so easy for a normal person to understand the deep essence of the Legal statutes due to its complex Legal Language. Hence the importance of Legalese i.e. specialized language of the legal profession comes into the picture.

Significance of Legalese

The importance of Law is not concealed but to correctly interpret it further, a guardian to do the same is the next crucial step. But how does a Court of Law interpret? Who helps the Court of Law looking at both aspects of the problem? As obviously, the Barristers. As one rightly pointed, 'the Counsels on both sides are the right and left brain of the judge, the one who convinces the Court with his arguments wins the case'. Tony Robbins said, “*Every form of power comes down to language. In law, there are all kinds of words you don't know if you're not a lawyer and that gives them power*”. It is almost impossible for people to learn legal analysis in a language in which they can neither think nor express themselves.⁶⁵

Furthermore, the words and phrases of the legal language have meaning only as legal terms. Students are thus obliged to acquire some new vocabulary to understand the essence of words or phrases such as *res judicata*, *impleader*, *executory interest*, *demurrer* and *mens rea*. Also, the understanding of the usage of legal words becomes more essential when they are to be used in different scenarios. Words that have distinct or specialized meanings in a particular context in law is called "Terms of Art." In the law of defamation, 'Malice' for example, does not mean hatred or meanness; rather it implies "with reckless disregard for the truth." Likewise, “consideration” in Contract Law, means something of value given by a party to an

⁶⁴ Joseph Cardinal Ratzinger, “The Spirit of the Liturgy” (first published 2000, *Ignatius Press*) 18

⁶⁵ Getman, Julius G., "The Development of Indian Legal Education: The Impact of the Language Problem" (1969). Articles by Maurer Faculty. Paper 1900 <<http://www.repository.law.indiana.edu/facpub/1900>>

agreement and has nothing to do with thoughtfulness. When a party is “prejudiced”, it does not mean that the party is bigoted and usually means that the party was put at some disadvantage. Examples like above are in abundance, and students must shake loose their ordinary understanding of a word to absorb its legal meaning.

This enlightens up the importance of Legal Language education aka Legalese Education for budding and struggling advocate in the picture. One cannot explain the aspects and legality of his/her claim in a laymen's language to a Judge, it is rather very crucial that an advocate talks over Law and that too in a proper Legal Language including the decency and formality of words, proper legal drafting, Latin words and most importantly legal jargons whose main purpose is too concise a very crucial principle or precedent in limited words.

A dearth of Legal Language Education in India

In contemporary occasions when Legal training is picking up significance as an extremely rich and dynamic field of instruction, its language of guidance is turning into a significant obstruction in its accessibility to each researcher who wants to study the discipline. But where does the Indian Legal Education system lacks? It essentially lacks pondering over the importance of this front of the legal education despite it being in the limelight always.

It often seems that our Legal Education system has impliedly considered that the students will get a remand over Legal Language on their own by their study during the 3 years of Law. This is being proved by the facts that the BCI Rules for Legal Education-2008 have not considered it important to add Legal Language as a compulsory subject for Law Schools.⁶⁶ Also, when the rules were revised in 2019 the same was again ignored. Ironically, one of the reasons mentioned in Preamble of new rules included, 'Necessity of emphasis on clinical skill training both in courtroom litigation management.'⁶⁷ The formulators of the structure of Indian Legal Education system has time and again ignored the certitude that one needs to be able to express himself efficiently and lucidly to do well in the profession, for which imparting education of Legal Language is of utmost importance.

In these contemporary times, sources for every kind of study and expertise are available through the internet facilities and books online. Likewise, it's not that the sources of education of legal language are less available to someone getting a legal education. Sources

⁶⁶ BCI Rules for Legal Education (2008)

⁶⁷ BCI Rules for Legal Education (2019) Preamble- Reason (c)

like Concise Law Dictionaries, Editions of Law Lexicon and major drafting skills taught throughout one's legal education do contribute to the learning of Legal Language to some extent. But the fact which needs to be acquiescent is that one needs special guidance of a teacher to understand a difficult and wide language. Though it's not the case that the subject has been ignored in Indian education as a whole. For instance, a college like Hidayatullah National Law University in its course structure has included Legal English in first two semesters.⁶⁸ But the need of the hour is to implement the same across the whole country. The characteristic of strictness and ambiguity of legal vocabulary in different situations has always been ignored by Indian Legal Education System which can only be taught by a specialized faculty with the expertise of the same.

In Juxtaposition with Foreign Structure

The situation is however quite contrasting in Law Schools outside India. Many Foreign Law Schools give great emphasis on imparting education concerning legal language. Harvard Law School, as being one of the finest Law School's in the world, conducts seminars over Law and Language Interpretation as "Advanced Interpretation: Law and Language" mentioned in its course catalogue for Legal Education.⁶⁹ Also, The Law School of the University of Melbourne has the discipline of Legal Language in their course curriculum at undergraduate level 2. The university further in its overview for the subject mentions, 'The subject explores the cultural and institutional languages within which contemporary law is communicated, expressed and understood'.⁷⁰ The Stanford Encyclopedia of Philosophy has also in its publication on Law and Language brought to light the importance of Legal Education.⁷¹ Other schools like Brooklyn Law School, New York, USA, Case Western Reserve University School of Law etc also provides full-time courses for teaching Legal Language.

The Importance of Legal Language and Formatting in Forensics has been expressed by Sir Pamela Newell, University of North Georgia, USA.⁷² Furthermore, Snjezana Husinec, Faculty of Law, University of Zagreb, Croatia, in his research paper pays emphasis on how the content-based Legal Language course which is compulsory in the first two years of the

⁶⁸ HNLU, B.A.LL.B. (Hons.) Course Structure <<https://www.hnlu.ac.in/index.php/academic/b-a-ll-b-hons>>

⁶⁹ <<https://handbook.unimelb.edu.au/2020/subjects/laws20008>>

⁷⁰ Legal Language (LAWS20008), University of Melbourne
<<https://handbook.unimelb.edu.au/2020/subjects/laws20008>>

⁷¹ Stanford Encyclopedia of Philosophy, 'Law and Language' (First published 2002, Substantive Revision 2016)

⁷² Newell P, 'The Importance of Legal Language and Formatting in Forensic Psychological Assessments Ordered by the Court' (2018)

University has helped students. The results of the survey in the research paper showed that around 77.3 % of all students find such knowledge important for their successful study of Legal English.⁷³

Steps That Should Be Taken

As someone famously said, “Better late than Never”. The Indian Education system should now acquiescent the importance of Legal Language and should further ponder over implementation towards building up infrastructure and changes in Legal Education system. Some of it may include

- Legal Language as a compulsory course to be taught in Law schools during the initial years.
- Compulsory and easy accessibility to sources for learning Legal Language such as Law dictionaries, and other Legal Vocabulary books.
- To create an obligation on Law Schools to teach Legalese by specialized teachers, and
- To generate awareness among students and teachers regarding Legal Language importance in Legal Education.

Conclusion

The Indian education system has undoubtedly ignored the importance of Legalese education for a long time. But in these contemporary times of Globalization, a budding Lawyer has to be well versed with Legal Vocabulary to establish his/her successful career in the Legal Profession. Therefore, we can conclude that the situation now demands the teaching of Legal Language and that too preferably in the initial years of the Legal Study which would help students better understand, analyze and interpret the statutes and drafts.

⁷³Snjezana Husinec, ‘The Importance of Content Knowledge for Successful Legal Language Acquisition’ (2011) vol. 9.1

10.

ANALYSIS OF CHALLENGES FACED IN IMPARTING LEGAL EDUCATION IN LINGUISTIC ASPECTS

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Introduction:

At a period when technical competence is gaining popularity as a wealthy and comprehensive field of education, its instructive language is a significant barrier to its accessibility to any disciple who wants to learn the orderliness. As a linguistically diverse country, it is a matter of significant discussion for us to decide on means of field education that will meet the requirements of all and make it accessible to everyone.

We have a lot of problems with Professional English, which is the language of law and the means of professional and legal education, although not being the language, we speak. On the other side, we cannot consider our Indian rule, the rule of law for the country inhabiting a community so complex. Therefore, to address the query we have to think of such a plan without any disagreements and solve the problem effectively.

Chain of Events Occurring:

The true means of teaching remains the mother tongue in most government English medium schools. So, this system logically puts 83 percent of students at an underneath position. Although 11 lakh students sit for JEE and 13 lakhs for NEET, just 60,000 students go for CLAT. While the previous two are selling a bilingual document for the question papers, the latter just provides a document in one language, i.e. English. It is one of the following reasons behind a low number of students going for the study of law - one of the world's most coveted educational fields.⁷⁴

This further limits the analysis of law in the classroom to a pure form in a lecture in which a candidate is unable to comprehend issues, evaluate the jurisprudence and share her/his opinions. Eventually, they wind up wasting much of their time memorizing and jamming,

⁷⁴All India School Education Survey by NCERT (8th edn, 2016)

instead of studying, evaluating and recognizing the legal issues. This makes it harder for them to study law and sustain and survive in a law school. During practice, the real problem they face is that those lecture forms of teaching and rotary instruction struggle as they move on the functional fields of practice. Furthermore, as the language of Clients and the language of the subordinate courts is in the national context or the mother tongue, English experience is not functional there.

“There is no doubt that the establishment of the national law schools, starting with the National Law School of India University (NLSIU) in Bangalore, successfully challenged this institutionalized mediocrity and succeeded in attracting serious students to the study of law. In fact, the study of law has received better attention among high school graduates in the country since the introduction of five-year integrated programs.”⁷⁵ But still we are unable to achieve a fully competitive academic environment, legal education still faces a major issue the issue of language, so some students who would want to be lawyers could not do it due to the barriers of the English language, moreover we have still not unlocked the full potential of students studying across the various law schools in India due to this major reason.

Globalization and Legal Education:

The main reasons for the usage of English as the primary language for legal education in India can be termed as Globalization. On one hand usage of languages such as English pose a difficulty for the candidates to access legal education. On the other hand, it would be unjust for others who have been studying law because if we don't have a global curriculum to follow, we would be heading back in the competition of being lawyers. As discussed above that India is a diverse country with many languages spoken all over India, so selection of a particular language would be unfair for the other people of the country. Here, English comes into picture which not only becomes a language which could be accessible all across the nation, but also globally. “A few decades back, law schools in India could do well as long as their curricula were focused on Indian law and issues relating to the country's legal system.” But in today's scenario just having knowledge about Indian laws is not enough, students tend to opt for study of International Laws, Work in various International Organizations and some

⁷⁵ C R Kumar, 'Legal Education, Globalization, and Institutional Excellence: Challenges for the Rule of Law and Access to Justice in India', Vol. 20, No. 1 (2013), *Indiana Journal of Global Legal Studies*, pp. 221-252

even start practice in other foreign countries. These are some of the major issues which can be faced if legal education in India is not offered in global language.

Major Reasons why this Difficulty of Legal Language arises:

- “The use of Latin, and sometimes French, words, and phrases to express a rule, principle, doctrine, maximum, etc. which can be easily phrased in English”.
- “The use of obsolete, archaic or old English words which have passed from the English language but have been kept alive by their frequent use in the Legal profession”.
- “The practice of assigning common English words a new, different, unusual and purely legal meaning or assigning these words some exclusive legal definitions” and,
- “The ridiculed tendency of legal professionals both lawyers and judges to write often long and complex sentences without any punctuation”.

Reforms and Suggestions:

Both the current and previous administrations have attempted to exclude English from graduate schools, majorly law schools and further subject areas and the formal agenda has only sought to operate with Hindi, the most popular language. But what they neglect to understand was that the bulk of the population did not even speak Hindi. If a report by the Registrar General and Census Commissioner is to be considered then we could observe that while the claim is that over 40% of the Indian population claims to identify Hindi as their mother tongue, the notion of the language is quite different.⁷⁶ Also, Hindi cannot be considered as an option because only 40% of the population is speaking it. While the imparting of legal education to the local language seems difficult what can be easy is to promote the use of both English and Hindi or the local language as two major languages, throughout the country which would be the prove to be a really good alternative for this issue. Of course, the imparting of education over a second language like English could be difficult but the government schools should be equipped to deal with it. This way more and more people could come forward and take part in this amazing journey of studying law and using it for the upliftment of the different classes of the society.

⁷⁶AP Aggarwal, ‘Legal education in India’(1959), *Journal of Legal Education*, 12(2), 231-248.

Technical law practice in English has to be moved to a basic English vernacular. This condensed dialect may then be translated in different regional languages. Moreover, India has implemented laws established by the British in English, so that language is capable of managing the escape clause and nuances of the topic that could or could not be handled by Hindi or some other national language.

Conclusion:

It is clear that language acts as an obstacle to the growth of legal learning, but the biggest challenge is the barrier of vocabulary coupled with the barrier of work. The needless usage of a complicated legal language makes it impossible for the general man to prosper from the advantages of legislation and be powerless in the presence of those who gain from this sophistication. If the question of ambiguity is tackled rather than English as a hurdle, it would eventually serve to expand legal education because English maintains its basic type across the world and can therefore be translated easily in various national languages to answer the needs of the whole nation.

11.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Legal Language is the communication of words and thoughts between persons either orally or in a written form, that is connected to the profession of law. It can be in the form of written judgement or legislation or orally in the form of lawyers communicating with other lawyers or judges in the court of law, etc. In this article, the researcher will firstly discuss as to what exactly makes the legal language complex and inaccessible to most of the people belonging to the non-legal profession. The researcher then goes on to discuss as to how this culture of making legal language complex still exists. The last part of the article discusses as to what can be done by the law schools to stop this culture.

What makes the Legal Language complex?

It is often seen that a rule that can be easily phrased in simple English language is distorted with the use of extremely complicated or archaic words and phrases. The languages that earlier emerged in the profession of law were Latin and French, which laid down numerous maxims and principles that we continue to follow even today.⁷⁷ Although in India, there is absolutely no usage of French and Latin, nor do most people understand French and Latin, the principles and rules are still explained with the aid of these French and Latin words. Legal professionals also continue to use obsolete and old words of the English language. Even though these words are no longer used in communication from decades, the usage of these words is still prevalent in the Legal Profession. Moreover, commonly used English words that have a definite meaning are assigned new, exclusive and sometimes extremely peculiar definitions and an entire statute is then interpreted on the basis of that assigned definition.⁷⁸

⁷⁷ Jyoti Sagar, 'Language and Law: The Incomprehensible Lawyer [Part II] (Bar and Bench, May 12, 2018) < www.barandbench.com/columns/language-law-incomprehensible-lawyer-part-ii > accessed on April 27, 2020

⁷⁸ John W Hager, 'Let's Simplify Legal Language' (1959) 32 Rocky Mntn L Rev. 74

An example of this can be the word 'negligence' which means 'carelessness' in simple English but has a completely different and elaborative legal meaning.⁷⁹

Furthermore, the lawyers and judges have been trained to write extremely complex and long judgements with flowery language. The judgements that act as precedents also lay down the foundation of the legal justice system of a nation. The judgements, today, have become so complex that even another judge may not be able to comprehend and understand the judgement. A judgement of the Himachal Pradesh High Court was recently set aside by the Supreme Court because the contents of it were so complex that a mere sentence of the judgement amounted for an entire page of the document.⁸⁰

Law is something that every person engages with on a daily basis. A person stopping on a red light, signing an employment contract and even doing something as mundane as buying a water bottle can be said to engage with law. For this, the law does not need any unusual definitions or Latin and French phrases to regulate our actions. In fact, using non-legal language in the drafting of a law has a better impact as it is understandable to layman and is hence, followed.⁸¹ The logic behind having longer documents was perhaps to make the law elaborative and prevent any sort of ambiguity that may lead to wrong interpretation of the law, or to prevent any sort of loopholes that may be taken advantage of by the wrong doer. Ironically however, the very effects that an elaborative judgment may seek to prevent, it ends up causing it. Long judgments with archaic terms, tends to increase the vagueness and ambiguity around a judicial order. To lay the foundation of a good law, it is absolutely unnecessary to use complex legal language with archaic words or French or Latin Maxims. While some people may argue that law is a specialization like engineering or a medical practice and like every specialization it must have a language of its own. However, the unique nature of law with its constant expectation of engagement with the masses dictates that it must always be understandable and coherent to the common man.

India is a diverse nation in which there is no single language that is understood by each and every person. In fact, there is no single language that can be considered to be the 'mother

⁷⁹ Gertrude Block, 'Legal Language, Lay Meanings' (1986) 43 IGS 169, 174

⁸⁰ *Pawan Kumar Sharma v. Sarla Sood*, 2016, SCC OnLine , HP 2699

⁸¹ John W Hager, 'Let's Simplify Legal Language' (1959) 32 Rocky Mntn L Rev 74

tongue' for more than half the population.⁸² Hence, the role of translation of laws and judgements to regional languages becomes important. Activities from the European Court Of Justice (judgments of the ECJ are translated into various languages) tell us that the only precondition for translations to happen be that the legal language used is simple and easily comprehensible. Hence, to be able to translate the laws or judgements, it is imperative that they must be written in simple words, irrespective of the language in which they are written.

Law Schools - The Real Perpetrators?

The next question that needs answering is- how does such a culture arise in the first place? The researcher believes that a lot of blame lies with the legal education in the country. There are two commonalities in every law school in the country. First, is that the legal language is always English. Second, is the teaching of an esoteric legal language. These two characteristics of the legal language in India prove to be a double whammy for anyone studying law.

English is only the 44th most widely spoken first language in the country.⁸³ A significantly low number of people (only 4%) in India are fluent in the language.⁸⁴ Therefore despite such a low percentage of the population actually being proficient in English, it still continues to be the medium of instruction in law schools and continues to even be the language of the highest court of the land. Law schools are places that produce future lawyers, judges and law makers. By restricting the legal language to English, it caters to the needs of only 4% of the Indian population. English as a tool of education was introduced by the British to colonise the mind of the Indians. With the Britishers gone, this tool is now being used by the elites of the country to systematically oppress the other 96% of India- something that we were forewarned of by scholars and activists like Ram Manohar Lohia⁸⁵ (ironically the NLU in Lucknow is named after him-an institution teaching in English). English rather than acting as a medium of instruction, becomes a medium of 'restriction' for people. It becomes a tool of domination

⁸² Bharti Jain, 'Hindi mother tongue of 44% in India, Bangla second most spoken' (*The Times of India*, June 27, 2018) <timesofindia.indiatimes.com/india/hindi-mother-tongue-of-44-in-india-bangla-second-most-spoken/articleshow/64755458.cms> accessed on April 27, 2020

⁸³Rukmini S, 'In India, who speaks in English, and where?' (Livemint.com, May 14, 2019) <www.livemint.com/news/india/in-india-who-speaks-in-english-and-where-1557814101428.html> accessed on April 27, 2020

⁸⁴ Sunil Bhatia, 'How English creates a new Caste System in India' (Pacific Standard, June 14, 2017) <psmag.com/news/how-english-creates-a-new-caste-system-in-india > accessed on April 27, 2020

⁸⁵ Sudhanva Deshpande 'Lohia and Language' (Economic & Political Weekly, November 28, 2009) <www.epw.in/journal/2009/48/discussion/lohia-and-language.html > accessed on April 27, 2020

and oppression as people with a higher proficiency in English are rewarded with better jobs and better opportunities. Thus, with this understanding of the law as a tool for justice and equality, it can no longer be taught in a way that perpetuates inequality and exclusion of the masses.

This problem gets aggravated when this English is coupled with long and complicated drafting, mixed with Latin, French and obsolete English words and phrases, which makes it almost impossible to translate it accurately into the regional languages. The lawyers and judges use such complicated language because this is what they have been taught to read, speak and write during their law course. The students are made to learn Latin and French rules and principles, and get evaluated on that basis. Moreover, the books and case briefs that the students are expected to read also have extremely complicated and elaborative explanations. Some of the material, especially case briefs are also outdated, naturally containing an older style of writing.⁸⁶ This gets aggravated by the assessments that the students are expected to undertake. The current culture of teaching in law schools is one which rewards long answers, excessive formatting and proficient English. Law schools make students adapt to the art of manipulating words, even when there exists a basic way of doing the same. They further pen these down in the judgements, cases or contracts that they write, when they enter the legal profession.

What can be done?

A two-fold reform is necessary to be brought in by the law schools- 1) a curriculum reform and, 2) the method of rewarding students, which is to be done by the faculties.

They law schools must focus on introducing a curriculum that encourages and teaches the students to write in simple language, irrespective of the language they are writing in. It is also necessary that the law schools undertake to bring a reform in their study material and make sure that the material they provide is up to date and contains a style of writing that they expect future lawyers and judges to adopt.

Even if legal writing is a part of the curriculum in some law schools, the law schools have failed to show whole hearted commitment in designing the course and teaching it

⁸⁶ Brett Campbell, 'The Curse of Legal Language' (1989) 16 Barrister 15

appropriately, and the course has turned out to be highly unsatisfactory.⁸⁷ The same should be guided by systematic planning and deliberate thoughts invested by the faculties. The law schools must introduce a culture of rewarding students on the simplicity of language, in a way that they learn the art of writing perfectly articulated laws and documents in simple words and shorter sentences.

⁸⁷Gerald Torres, 'Teaching and Writing: Curriculum Reform as an Exercise in Critical Education' (1986) 10 Nova LJ 867

12.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Importance of Legal Language

Languages are basic legislative devices. Word is of great significance in the study of law; cases rely on the definition ascribed to words by judges and advocate must find the correct vocabulary to fulfill the needs of clientele. It is suggested that one should learn and keep their vocabulary up to date while studying law, although in truth law as a subject is far more interesting and hard as well and while it may seem near impossible to master it, there are four factors you must consider and follow while learning the subject.

Firstly, and most importantly, you'll learn new words that you haven't ever used before. Such words and expressions only have meaning as legal concepts. Words or sentences like *executory value*, *demurrer*, *res judicata*, and *mens rea* require college students learning new vocabulary words. It is necessary to know the meaning of those terms to grasp the correct meaning.

Secondly, some common terms used in practice are much more complicated and assume separate or new meanings. For example, when we use the word defamation law, "Malice does not mean hatred or meanness; it means with reckless disregard for the truth". Similarly, 'consideration' has little to do with interpretation of contract law; it means something of worth offered by a contracting party. When a party is "prejudiced" by statute, this mostly means that the party has been placed them as a disadvantage, not because the party is prejudiced. Under real law, "Fixtures" is about more than just bathroom and kitchen appliances.

Thirdly, words have significant variations. The agreements or variations depend on the context or location in which the term is used. In one situation (e.g. divorce), if she has lived there for six months, a citizen may be considered a state resident. In another sense (obtaining a driver's license) after only a few days an individual may be known as a

“resident.” Depending on what is said and where it is said, the same word has a different meaning.

Fourthly, there are phrases that reflect specific legislative bodies or legal concepts that function as short-term phrases for abstract meanings. Words like "unfair competition", "due process of law", "foreseeable" and "cruel and unusual punishment" are only a few examples. Such terms have in certain cases definition has been the subject of over lengthy stretches of time by judges and there is no chance of having a straightforward and succinct description that can work in all circumstances.

Review of Legal Education in law schools

Lawyers would need to learn to know new resources and competencies. “A well-administered and proper legal education can therefore be said to be the only viable choice”

“The two marks of a truly educated man are the capacity to think clearly and intellectual curiosity which enables him to continue and intensify the process of learning even after he has finished the law course” - by the famous jurist, Nani A. Palkhivala

In India, questions are directed not only to the Indian current legal system taught and studied but also to those still interested in this endeavour in many other areas of the world. The recruiting faculty for Indian law schools needs to have a global orientation. Of course, progress must rely on the willingness of the schools to provide Indian or International scholars with the right kind of academic climate and financial and other opportunities to educate and conduct study in India and to donate to its developing action. Learning from examples in many countries where video conferencing of lectures has tackled teachers and workers vacancies is worthwhile.

Continuing Legal Education

“Lawyers are always going to be students, because the learning doesn't stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers -by Michael S. Greco”.⁸⁸

⁸⁸Justice Rajesh Bindal, ‘Legal Education – A Global Perspective, Global Speech’ (1973)<https://highcourtchd.gov.in/sub_pages/top_menu/about/events_files/GlobalSpeech.pdf> accessed on May 9, 2020

The study of law most certainly does not end with graduation from law school, but continues throughout lawyer's life. A significant percentage of lawyers identify crucial differences in what is learned in law schools and the expertise they require in the workforce, so there is little use of relevant technology to help narrow this void. Legal Education has traditionally provided no significant priority or publicity in India. After graduation, courses were taught in the law departments of universities as three-year programs which led to the award of an LL.B degree. This mediocrity was challenged with establish National Schools of Law, and it did succeed in recruiting students to study law.⁸⁹ In the early years when a legal study was being recognized as an important course, most of the University's legal education vision was different. The recognized and apparent purpose of the education was the development of lower qualified cadres who aspired to do something better. One could go to England's Inns of Court, if one could afford it, of course.⁹⁰ There is a recognized need worldwide that a continuum of continuing legal education is necessary to ensuring a flourishing legal profession within a justice system. Despite globalization, which has shown a huge impact on our lives and on the legal profession, dedicated attorneys, lawyers and judges are especially in need of continuing legal education. While the basic principle of continuing legal training and education programs solves the fundamental questions of increased legal competence, it should, in particular, keep lawyers aware of developments in global and international legal environments. Legal practitioners continue to develop a greater understanding and knowledge of the encounters in the world economy and the constant dynamics taking place in the modern day.

How to improve legal learning and its urgent needs

The Law Commission shared its concern in 1958 that barely 43 institutes were training law students for the test. After this concern was voiced, the Advocates Act, 1961 was enacted and there was growth in the number of institutes in legal education. Even though there was growth but there was degradation in the quality of the education. The resources of these newfound institutes were not up to the mark, some didn't even consist of libraries to facilitate the students for their studies. The admissions in these institutes were very easy as the minimum marks for eligibility were set to 40% and a large number of students were eligible

⁸⁹Bajpai Meghna, 'Legal Education System in India', <<http://www.legalserviceindia.com/legal/article-199-legal-education-system-in-india.html>> accessed on May 9, 2020

⁹⁰J.K, Bhavani, *Journal of the Indian Law Institute*, s [1962] pp. 167-190

according to this criterion. The faculties of the institutes were also not very noteworthy because there were only part timers for faculty and not fully invested in the act of teaching and this led to low quality of the teaching.

During the last three decades there have been many reforms in the education system. The legal education had merely become a business and that was reformed in the case of *Unni Krishnan, J.P. v. State of A.P.*, Supreme Court expressed its concern and firmly laid down that "education cannot be allowed to be converted into commerce" and with the help of continuous education and skill upgrades for faculty and institutes improved the conditions of the education system. The current legal education system is many times improved and better than where it started from but still it is far from being the best and there is room for improvement. These improvements can be made by giving more attention to practicality, supremacy of law, strength of character and confidence need to be met, and no hesitation should be there. It demands great reading, thinking, and speaking skills. Those things can be included as regular debates and discussions in the course. Moot court (mock practice) brings the skill and demonstrates the mode of argumentation which is an essential quality of an attorney, Collaboration with foreign law universities. Law is a subject that demands a growing expansion of knowledge. Collaborating with foreign law schools to gain access to their law reports, case laws; research papers etc. can increase this skill. Law colleges such as NLSIU Bangalore, NALSAR Hyderabad, and NLU Delhi⁹¹, etc., have collaborated to teach, research, and provide world-class legal education, and through these collaborations received positive reaction, similarly there should be guest lecture by the leading members of the legal society and also support for extracurricular activities.

⁹¹ Rajiv Jayaram and Aditya Swarup, 'Legal Education in India' (*Higher Education Review*, 2018), <<https://www.thehighereducationreview.com/opinion/last-word/legal-education-in-india-fid-95.html>> accessed on May 9, 2020

13.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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“The law is a profession of words.”

-David Mellinkoff

Legal Language

Legal Language is “a varietal system of technical terms, situations, meanings, complicated procedural arrangements, etc. which communicate at least among the law men in a unique style imperceptibly interwoven with certain justice traits and judicial qualities.”⁹² Legal profession for long has had its own peculiar language. Perhaps the language of lawyers is so **Daedalian** because of the traditionalism of this profession and its reverence of history. The legal English is indeed a product of its history & traditions. It’s a story of Anglo-Saxons, Scandavian raiders, Norman invaders who had no apparent legal profession but they did develop a kind of legal language, remnants of which are still in existence. Legal language has developed as the language of law. Faced with a chunk of legalese, it pinpoints the writer as lawyer. It plays a significant role in this profession as words are lawyers’ most essentials tools. This language has its own specific characteristics. Legal fraternity uses language in order to articulate, scrutinize and execute laws.

Why the Need?

In his book *The Discipline of Law*⁹³ Lord Denning highlights the importance of language in the legal profession as they are the “*tools of trade*”. We need a comprehensive learning of legal language for a bunch a reason, some of these are: **Firstly**, Law cannot exist without language as words are of paramount importance in law. **Secondly**, for the craft of lawyering it is most important to effectuate the wish of their client & that is possible with efficient use of legal language. **Thirdly**, for the further growth of legal profession it is a great requirement to have a brilliant legal fraternity & that growth starts right from the law schools. **Fourthly**,

⁹² N.R. Madhav & Behl., ‘Legal Language and Drafting’, (1969).

⁹³ A Denning, ‘The Discipline of Law’, (1979).

various **jurisprudential concerns** like the expectations that lawyers should maintain professionalism and spirit of law will prove up to the mark after inculcation of legal language among students. The importance of legal language is not limited to these four points rather it covers up every aspect in lawyering.

Linking Teaching and Research

Research in legal education is necessarily a function of research in law.⁹⁴ It is a well-proven fact that research develops analytical skills among students and inspires them to think. Research instills critical thinking and makes the students do **intellectual labour**. Students after high school moderately steeped into the rigours of academia thus not making research a priority. In such a scenario, a research-based curriculum becomes the need of the hour. Today, law schools are considered as law stations, a way station to get better jobs only. Teaching of practical aspects which actually makes a difference is missing from law schools. Practical training through legal clinics and internships is required to instill habit of legal language among students in this profession. This exercise will automatically generate a deep understanding of legal language among students.

- **A specialised section in curriculum**

Today, the reason why the Indian Law Schools are lacking in imparting legal language is because of ignorance to this section of the law. We can tackle this situation by introducing legal language to be a part of curriculum/ academics. This will eventually result into the eradication of ignorance regarding this issue.

- **Resources**

- **Faculty**

The establishment of National Law Universities has well-served the purpose to foster legal education in India. But still these schools suffer from shortage of quality teachers which is the foremost need of any law school. It is obvious fact that quality teaching can be ensured only by a good faculty, proficient in exploring every aspect practically & efficiently. Teaching should not be seen as the passive transmission of information from teacher to the taught - rather, the teacher should be seen as a constructive facilitator of a process of learning through

⁹⁴P. K. Tripathi, 'In the quest for better legal education', (1968), Vol. 10, No. 3, pp. 469-491.

active and direct student experience.⁹⁵ A Faculty with a good understanding in legal language is a pre-requirement for its teaching.

- **Finance**

It is evident that there exists some financial problems due to which sometimes issues like legal language gets compromised. Some effective measures on the part of Law Schools are urgently needed like management of funds in an effective way for example, regularization of popular legal magazines for students in order to infuse habit of legal reading & to encourage legal language.

Certain Tie-ups with other reputed universities is the need of the hour for the exchange of knowledge, culture and legal trends. These exchange programs will prove beneficial in the long run. Not only with universities but also with lawyers and attorneys' sessions are required in law schools. These small things make big differences.

Effect of This Ignorance

With all these loopholes being in existence today, we often see the reluctance on the part of students to pursue litigation as a brightening career. One of the main reasons our legal system suffers from is the deficiency of a wholesome knowledge and awareness of legalese, which is considered as salient feature of legal education. This reluctance unintendedly leads to **miscarriage of justice** because of dearth in sharp and quick-witted lawyers who can secure justice to the victim. This issue needs to be addressed by our law schools as soon as possible so that the incoming generation of lawyers would prove to be a boon to the Indian Legal System. It has become important for law schools to divert their attention to these issues as they are the bearer of future legal fraternity in the **legal gurukuls**. We need to change this ignorance into our **strength**.

Summing Up

Student requires developing elevated sense of linguistic precision. The main technique of teaching law in most of the law schools of India is by lecturing. The pros and cons of lecturing are well known, and there is no need to reiterate them here. But at the same time, it is true that even in India, it has been felt, at least since the beginning of the twentieth century,

⁹⁵<https://www.ebc-india.com/lawcoll/bangalore/vision.htm>.

that this method of teaching law is defective and needs to be changed.⁹⁶ Despite the establishment of National Law Schools, the future of legal education seems denuded. Reasons for this sad “state of affairs” are manifold.⁹⁷ We are undeniably lacking in this regard and due to the lack in education of legal language, the entire purpose is defeating. Indian Higher education is in a continuing process of changes in orientation and methodology.⁹⁸ It is high time that Indian law schools realize the objectives of legal education and transmit it in the most efficacious way. With the globalization of legal education and research becoming a universal trend, promoting Clinical Legal Education through institutional mechanisms is the need of our times.⁹⁹

⁹⁶Arjun P. Aggarwal, ‘Legal Education in India’, (1959), Vol. 12, No. 2, pp. 231-248.

⁹⁷K. N. Chandrasekharan Pillai, ‘Legal Education – in search of new vistas’, (2008), Vol. 50, No. 3, pp. 367-374.

⁹⁸Amit K Kashyap, ‘Professional Legal Education in India: Challenges and the Way Forward’, (2016)

⁹⁹ibid

14.

DECODING TECHNICALITIES WITHIN THE LANGUAGE OF LAW

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“The law is a profession of words.”

- David Mellinkoff

Law moulds our behaviour from birth to the grave which is why it is essential for every person to possess legal knowledge.¹⁰⁰ It formulates the central backbone of society and it becomes a concern when the language used is “convoluted, pompous and ponderous”.¹⁰¹ Statutes were initially written in Latin and French and the transition to English only came after 1489.¹⁰² Interestingly, the words used in the *force majeure* clause, an important part of Contract Law contain 28 words, 17 of which come from Old English, 7 from Old French and 4 from Latin.¹⁰³ Understanding this complex combination has proven to be a difficult task for students, litigants and the public at large. In this background, the paper aims to explore a reconceptualization of the language used by lawyers to improve accessibility for those who do not necessarily speak English.

Foucault’s theory of Discourse and Power states that there are certain practices such as commentary on the Constitution and cases which provide layered meanings. The discourse is restrained by exclusive access, limiting it to qualified speakers using specialized languages and journals.¹⁰⁴ This makes it difficult because of *Ignorantia juris non excusat* (the ignorance of law is no excuse) which expects an individual to know the law. Yet, little is done by the state to disseminate the huge amount of legal information to the common man. It is the duty

¹⁰⁰Lokupotha VD, Why It Is Important to Know about the Law in Your Own Country? (Nerdynaut, February 24, 2020), <<https://www.nerdynaut.com/why-it-is-important-to-know-about-the-law-in-your-own-country>>

¹⁰¹Tiersma PM, Legal Language (*The University of Chicago Press*, 1999).

¹⁰²Schneiderová A, Historical Background to English Legal Language.(37 *Journal of Modern Science* 117,2018).

¹⁰³ibid.

¹⁰⁴Turkel G, Michel Foucault: Law, Power, and Knowledge.(17 *Journal of Law and Society*, 170, 1990)

of the state to present the law in a 'recognizable way'¹⁰⁵ and failure to do so would mean infringement of the fundamental Right to Information.¹⁰⁶

Common legal documents like wills and contracts employ incomprehensible legal terms¹⁰⁷ making it inconvenient for people to give informed consent.¹⁰⁸ This barrier also arises in attorney-client conversations,¹⁰⁹ which made way for the Plain English Movement of 1975-80. The movement was the first to question if legal language could be rephrased into a simpler version.¹¹⁰ A survey showed that the ability to comprehend legalese can be increased by revising the jargon and providing explanations of complex terms¹¹¹, however such alterations must convey their original meaning.

The accessibility of legal education has been restricted to those with conducive backgrounds. Entering law school, one is immediately plunged into the world of case laws and subjects without a second thought about the foundational aspect. "In the process of putting up signs on classroom doors for English for Lawyers course, I encountered a member of the university staff whose comment "About time!" encapsulates the layperson's opinion of the language."¹¹² In India, the proportion of respondents who rate their fluency in Written English at the time of joining a top law school as 'Extremely High' is a mere 51.3%.¹¹³ The diversity of students and the linguistic challenges pose a major problem. In Banaras Hindu University, less than 10% of the 1967 batch could barely even explain a simple sentence from a judgement.¹¹⁴ Due to the various socio-economic backgrounds, people studying in vernacular medium schools are daunted by the difficulty of English and its amalgamation with French and Latin. The Education system is removing English as a necessity due to

¹⁰⁵*Harla v. The State of Rajasthan* [1951] AIR 467.

¹⁰⁶S. Pai, Lawmaking-Knowability of Law-Ignorance of Law-When an Excuse.(SCC Online)<<http://www.sconline.com>>

¹⁰⁷Radulescu and Adina, Dealing with 'Terminological Incongruency' in Legal Language (*Contemporary Readings in Law and Social Justice*, January 1, 2012) <<https://www.questia.com/library/journal/1P3-2772533661/dealing-with-terminological-incongruency-in-legal>>

¹⁰⁸K. Marina, Peculiarities of Legal Language in Civil Law Contracts Concluded via the Internet.(69 SHS Web of Conferences 00067, 2019)

¹⁰⁹B. Danet ,Language in the Legal Process (14 Law & Society Review 445, 1980)

¹¹⁰C. Felsenfield , Plain English Movement, The Plain English Movement <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1475&context=faculty_scholarship>.

¹¹¹Greene E, Fogler K & Gibson SC, Do People Comprehend Legal Language in Wills? (26 *Applied Cognitive Psychology*, 500, 2012)

¹¹²J. Northcott, Teaching English Language: Contexts and Cases<https://www.researchgate.net/profile/Jill_Northcott>

¹¹³ NUJS Diversity Report, 2019. <[http://sja.nujs.edu/storage/The NUJS Diversity Report, 2019.pdf](http://sja.nujs.edu/storage/The%20NUJS%20Diversity%20Report,%202019.pdf)>

¹¹⁴ Getman, G. Julius, The Development of Indian Legal Education: The Impact of the Language Problem. (Articles by Maurer Faculty. Paper 1900, 1969)

growing political considerations and inadequate teachers.¹¹⁵ The level of teaching in State Schools is subpar, which is demonstrated with only 7% of these students in law schools.¹¹⁶ Publication in journals, mootings and other core activities are then restricted to the affluent layer, as the other students cannot express opinions with sophistication. The Indian legal system has adopted English at its core; it is unrealistic to expect the entire institution to shift towards different mediums. The Bar Council of India in its proposal for Legal Education has underpinned English as the medium of instruction while imposing it as a requisite for accreditation.¹¹⁷ This problem permeates to the real practicing world where lawyers are often befuddled with the terminology used in higher courts. The advertisements of crash courses are testimony to the same while only providing a superficial understanding. Since the language cannot be discarded, legal education is in need of enhancement by creating a course which enables every student to get a fair chance. This is especially because most students do not even understand simple sentences let alone the conundrums of legal English.

The Government of India released a draft report which suggests that “State institutions offering legal education must consider offering bilingual education for future lawyers and judges - in English and in the language of the state in which the law programme is situated.”¹¹⁸ While a switchover to vernacular languages might be idealistic, the transitional period will be extensive. The task involves searching for a ‘natural equivalent’¹¹⁹ in the required language that conveys the same essence of the source. The difficulty arises when terms connected to cultural aspects are used.¹²⁰ Mistranslations can lead to loss of meaning which could potentially attract expensive lawsuits. During this period, simplifying the original documents to a level easily understandable by the average person would go a long way. Since English cannot be removed completely, a specialized foundational course in legal terminology for all law students before embarking on the educational process would be beneficial.

¹¹⁵ Daswani CJ, Language Education in Multilingual India (UNESCO 2001).

¹¹⁶ NUJS Diversity Report, 2019 (n 15).

¹¹⁷ Bar Council of India Part IV Rules of Legal Education – 2019. <<http://www.barcouncilofindia.org/wp-content/uploads/2019/11/Draft-Rules-of-Legal-Education-2019.pdf>>

¹¹⁸ India L, Govt Draft Policy: Make LLBs Bi-Lingual, Teach Students 'Indian Lit, Myth' Jurisprudence, 'Victory of Dharma over Adharma' (Home - Legally India - News for Lawyers, June 6, 2019)

<<https://www.legallyindia.com/lawschools/gov-t-draft-policy-make-llbs-bi-lingual-teach-students-indian-lit-myth-jurisprudence-victory-of-dharma-over-adharma-20190606-10595>>

¹¹⁹ Radulescu (n9).

¹²⁰ C. Camelia, Errors and Difficulties in Translating Legal Texts. <<http://www.strategiimanageriale.ro/papers/140464.pdf>>

Even if university programs and curricula cannot allot time to studying the origins of English Legal Language, teachers and students should get familiarized. In our opinion, this approach can lead to improving the teaching/learning process; an easier way of learning legal terms; increased interest in the material and increased understanding of linguistic conservatism. Studying the origins of English Legal Language should gain traction so that students understand its evolution which would then facilitate the teaching and learning of a minimum specialized vocabulary.¹²¹ Legal documents can be more accessible if hyperlinks and summaries are added to concepts referred in the document.¹²² An initiative could be taken to provide a brief explanation of complex statutes that litigants often end up looking at. Implementation of better teaching processes in the form of a unique course would be the most efficient solution to addressing all current concerns.

With thousands of wills and contracts being drafted daily and courts citing parts of judgements from old records, legal liaison has become a pressing issue. The current state of education leaves many students and professionals ill-equipped to deal with the complex jargon and terminology. Keeping in mind the constraints imposed by the lack of knowledge and the myriad backgrounds of people engaging with the law, a simplification of the existing legalese is necessary.

¹²¹N. Lavinia, Teaching the Origins of English Legal Language. (*Contemporary Readings in Law and Social Justice*, January 1, 2012) <<https://www.questia.com/library/journal/1P3-2772533701/teaching-the-origins-of-english-legal-language>>

¹²²Legal Knowledge and Information Systems

15.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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There are multiple challenges in the field of legal education in India which are seriously preventing the cause of justice in the country. Most of them are related to the quality of academicians, lack of academician-industry interaction and an archaic system that focuses more on 'remembering' rather than 'understanding'. However, another aspect which needs attention is the linguistic aspect of the Legal Education in India which has not been an enabling factor, as yet. There is a gap in the elite and less privileged in the society which becomes glaring when it comes to legal education.

Before we begin, it must be noted that legal education in India is regulated by Bar Council of India, an autonomous body with practicing lawyers as its members. However, when it comes to using the expertise of lawyers in making legal education more pragmatic, the council has not been able to do justice. The archaic and traditional factors and language controls continue to govern the field and there appears to be a resistance to change- even in the field of legal education. Moving to the language issue, India has 2 official languages- Hindi and English and 22 Scheduled languages and any of them can be used for official communication.¹²³ Different states have different official languages and preferences for such official languages are clearly visible in the education system of these states. India has no national language, to be precise.

While the languages and the corresponding freedom to the states to devise their education systems (till under senior secondary stage) help the states in preserving their culture, it creates an acutely diversified pool of linguistic skill sets at the higher education stage. A student, till he enters a law schools, has been made conversant and fluent in the official/local language of his state. And when he or she enters the law school where usage of Latinised English is prevalent, he is faced with a crushing task to adapt to one of the most technical forms of English. In fact, the entrance exams to most of the premier law schools in the

¹²³S Bhardwaj, English in India: The White Man's Burden, 3(3) Modern Research Studies, 556 (2016)

country are in English and have at least 25% of the questions related to English language. The Common Law Aptitude Test (CLAT), conducted by and for the National Law Universities, the finest law schools in the country has a tough English Comprehension section which carries around 25% of the total marks. This also acts an entry barrier for students who have English as their second language or come from state boards.

This entry barrier is also an indicator of the existing socio-economic divide that exists between India & Bharat i.e. the rich and the poor. The rich and the elite have access to privatized education, better educational infrastructure that works as an enabling factor and therefore, focus and become fluent in English.¹²⁴ On the other hand, the government schools which offer educational facilities to the less privileged- economically and socially, are often characterized by terrible infrastructure, poor quality of teachers and often an aversion to English. The fluency in English is missing and that creates an issue when the students from such schools seek admission in law schools where English is the preferred language. The language gap created by a mismanaged education system is only increasing due to lack of a standardized focus on one language, preferably English, as the mode of communication. The students are left at the mercy of the traditionally rigid systems which do not appreciate divergence and/or diversity.

Another problem with language of the law, as taught in the law schools, is the legalized English¹²⁵ which is used in the law school. The Latin, French and Victorian embedded English that is taught in the law schools raises the bar for students who never had English as their first language. It is normal for such language to have crept in our system but completely abnormal to have stayed with us for so long. While it is understandable that India being a common law country would be deeply inspired by the legal principles as well as linguistic preferences of the British legal system,¹²⁶ there is hardly any reason for us to stay with such orthodox set of linguistic barriers. The legacy of a colonial rule can help establish a legal system but should not continue to regulate and govern it. The use of terms such as ‘notwithstanding’, ‘without prejudice’, ‘arguendo’, ‘including but not limited to’, ‘indemnification’, ‘hereinabove’ etc. merely make the language look more complex rather

¹²⁴Sahithi Aula, The Problem With The English Language in India, *The Forbes* (November 6, 2014) <https://www.forbes.com/sites/realspin/2014/11/06/the-problem-with-the-english-language-in-india/#57ded1f2403e>

¹²⁵Jill Northcott, *Legal English 1* (2012).

¹²⁶Bernard S Cohn, *Colonialism and its forms of knowledge: The British in India*, 113 (Princeton University Press, 1996)

than effective. They may have made sense when we received independence for a continuity to prevail¹²⁷ but with passage of time, they may have lost the necessity. The usage of such phrases, however, is not limited to law schools but is used in the statutes, policy papers and government orders making it difficult for common people to understand the said statutes and documents. However, that is debate for a different time. As of now, the highly complex English used in the legal system and legal education system is creating an already wide linguistic driven gap in society. This will have sociological impact in long run- on the legal education and society as well.

The solution to the aforesaid problems has to be two-fold and two-dimensional. *Firstly*, the acceptance of English as the language of higher education, at least in the legal field, will have to be accepted considering that Supreme Court and most High Courts recognize only English as their official language. The states will have to be convinced to teach English to their students with as much importance as they give to their local languages. Especially, the discussions related to Indian polity, civics and social sciences should be in English for the students to remain familiar with the terms when they appear in an exam to enter or enter a law school. *Secondly*, the law schools, lawyers and even courts will have to focus on using plain English as much as possible and move away from the old style of writing which has plagued our legal as well as legal education system for years. There have been calls to this effect from across the legal systems in the world. The Harvard Business Review has advocated for simplification of legalised English for long.¹²⁸ The grammar has to be made easy and the vocabulary has to be simplified.¹²⁹ There is no need to form an exclusive club of people who can understand legal English. The accessibility of legal education will also increase exponentially. The entry barrier for students from non-English background will be lowered and their ease of understanding of law and legal principles will increase exponentially.

The legal education has to be simplified with focus on English as the centre of that. The states will have to take the lead and coordinate with Bar Council of India in this regard. The state education boards will have to introduce and focus on English- comprehension, vocabulary

¹²⁷J. K. Bhavnani, Legal Education in India, 4 (2), *Journal of the Indian Law Institute*, 167 (1962)

¹²⁸Shawn Burton, The Case for Plain-Language Contracts, Harvard Business Review, (January–February 2018) <https://hbr.org/2018/01/the-case-for-plain-language-contracts>

¹²⁹Arjun P Aggarwal, Legal Education in India 12 J. LEGAL EDUC., 231 (1959).

and writing. Separately, Bar Council of India should take this opportunity and form a Legal Education Reform Committee which should focus on the language aspect in great detail. The Committee should have academicians, lawyers as well as representatives of students across the national law universities. Extra efforts should be made to simplify the language and make it more reader-friendly. It will help in making more people understand the law and attract more people to adopt law as a career. As it is said, language is a unifier that can unite minds, ideas and aspirations. It has to be an enabler in the society and not a barrier to filter the less privileged ones. Our legal education field will have to adopt this notion to create a new era and a new breed of lawyers.

16.

RETHINKING THE PEDAGOGY OF 'LEGALESE' AT LAW SCHOOLS

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“Everything that can be put into words can be put clearly” - Ludwig Wittgenstein¹³⁰

Every branch of knowledge and profession has its jargon from medicine to mechanics, agriculture to painting; in these branches same terminologies may have different phone, meaning and utility. The language of law is no exception in use of an arcane language. The art of writing (or drafting) and advocacy gains immense significance in Law, it plays in a multitude of layers such as legislative drafting, drafting pleadings and notices, judgement writing, presenting oral arguments etc. Taking an analogy, similar to Law, Journalism too is depended on the art of writing but wherein the cardinal principles are to be precise, punchy and eloquent,¹³¹ are junked by the legal fraternity which blindly holds on to legalese. In the above-quote of the thinker, “*clearly*’ is clearly missing in the legal language. In my considered view, to call for an instant change to plain English is mere vanity, rather the focus should be to bring about the change among the young law students, the future lawyers, judges and lawmakers. This brief discourse elaborates on the need for a thoughtful pedagogy on the usage of legal language which will eventually drive a change in the language of courts, arbitrations, law reviews and others.

Legal English is a mixture of languages which has produced the English language in general. But, French and Latin have a good amount of influence in the Legal English and legalese as well. The key reason was the usage of Latin in Roman legal tradition and its courts; surprisingly this has lasted even after the fall of Roman Empire. This had strong influence on the anglo-saxon and anglo-norman periods, during latter the King’s Courts became the centre of the legal system and a mixed legal dialect was prevalent.¹³² These accounts are of interest to only historical linguisticians, and not lawyers. Both legalese and Plain English are ways of legal writing/drafting. Until decades back, especially in England and other common law

¹³⁰ Hacker PMS, “Ludwig Wittgenstein” in Richard Mason (ed), *Cambridge Minds* (Cambridge University Press 1994).

¹³¹ Lynn Ludlow, 'Legalese' (1990) 47(3) ETC: A Review of General Semantics 257, 259.

¹³² KL Bhatia, *Textbook on Legal Language and Legal Writing* (Universal Law Publishing House, 2010) 11.

countries, 'Legalese' was synonymous to 'Legal drafting' but after a critical Plain English movement started gaining momentum, they were interpreted independently. In other words, legal drafting became the set and legalese became the subset of it. Legalese is arcane confined to the legal fraternity, and it's hard to read and comprehend by laymen. The fallacy here is that the main motive of agreements, affidavits, or contracts is to establish a relationship between two or more persons who will not understand their legal document at the first place. If this is the way it is, the idea of establishing a relationship fails.

Legalese constitutes the archaic words and the conventions followed for centuries. "*We use long sentences so that by the end of it the reader needs another lawyer to explain what it means*"¹³³, however jokingly put, this causes equal misery. The misery is of the clients; especially the commercial world is facing excessive burden because of these wordy contracts. The business world always needs an attorney to understand a contract, or respond to a legal notice, or to sign an affidavit. This only poses additional time, expense and lack of confidence among the businesses. Contracts with commonly used English takes much less time to vet, they leave very less loopholes, less revisions and the negotiations can happen between the parties without taking cover under a technical jargon. This is equally (or in legalese *mutatis mutandis*) applicable to the language used by the drafters of law. The more clear a Statute is the less is the burden for the Courts of Law. In fact, Plain Writing Act, 2010 was enacted by the Obama administration to promote the language which people can understand. Even before this legislation, the US government has for a long period pushed its departments to use simple language to avoid disputes.¹³⁴ The Courts, which are placed in a different footing, have fallen prey to the age-old language both in terms of the oral arguments and the written submissions. The judgements are lengthy and resounds a loquacious tone, this is not sustainable for a transition to plain English. Even the ought to client-friendly arbitrations are no less than the courts, in terms of the legalese usage.

The problem is not only with archaic terms such as *aforsaid* or *thenceforth* and foreign terms such as *ab initio*, *force majeure* or *pari materia* but equally with the ritualistic words in vetting contracts as "*unless repugnant to the context*", "*notwithstanding anything contained..*" or addressing the Court as "*May it please this Honourable Court*" or "*Your*

¹³³ Jyoti Sagar, Whereof they're ipso facto words: India needs to simplify the "Language of the Law", (2018) 7 SCC (J) 2.

¹³⁴ Shawn Burton, 'The Case for Plain-Language Contracts' (*Harvard Business Review*, 2018) <<https://hbr.org/2018/01/the-case-for-plain-language-contracts>> accessed on April 30, 2020.

lordship". Many of these words carry a mere ceremonial significance, these words are used just because our predecessors and forefathers in the fraternity have used since time immemorial. The solution to these challenges lies in a gradual change towards the normal day-to-day English which we use in non-legal formal documents, *i.e* Plain English. A textbook referred it as, "Plain English is perhaps language at the lowest common denominator. It is a reader- focused language."¹³⁵ In fact, this was realized in various common law countries in the latter half of the 20th century itself, this change in trend has not crept the solid walls of Indian legal system.

No one questions these words and conventions, there is no attention given to the language of law, all that matters is to stick with the language used by the lawyers' crowd. Thus, the change must start from the students *i.e.* in law schools. Most students have not either studied a separate paper as legal language or is often overlooked.¹³⁶ But I urge that there must be comprehensive language course in the novice year of the law school itself, this must include the history of legal language and legalese as one part of it. And subsequent part must concentrate on the need and success of plain English movement in US, Britain etc. The students should be able to distinguish for themselves, they must constantly engage in debates on Legalese vs. Plain English. There is an attitude of treating legal language subject as a second-grade subject, but this must be discarded to treat it at par with any other law subject like Constitutional law or corporate law. The professors and lecturers teaching these courses must be proficient with English and Law. Courses in legal drafting, pleading, and conveyancing should not be mere format-based copy paste work but the students must be encouraged to draft legal documents in Plain English. Apart from regular subject papers, periodical workshops and lectures, even on a small level will augment the significance of drafting in Plain English. The two major exercises in law schools are, moot court competitions and research papers, they both are highly regarded for in-depth research and analytical skills, argumentative and articulating skills etc. Moot Court competitions must try to avoid legalese, ceremonial statements, foreign terms and they should not become the very place for inculcating a legalese-centric mentality. Law Reviews/Journals seeking papers also must take steps encouraging Plain English. In the longer run, these small steps will bring radical changes in the language of the legal system. A caveat is that no change can happen instantaneously and even such miracle happens, that will be counter-intuitive and disastrous

¹³⁵ Bhatia (n 3) 14.

¹³⁶ Sagar (n 4) 3.

to the existing language in legislature, courts and the legal fraternity as a whole. But this is not only enough; the institutional framework is *contra* to all the suggestions and aspirations. The statutes and case-laws read in the law schools are from the institutions which hold tightly to legalese, lengthy verbose sentences and archaic-arcane language. Thus, at least for now, law students must be proficient in Legalese and Plain English; this will help them thrive in the immediate future in the legal field.

On a concluding note, I quote Justice Felix Frankfurter, "*Words are clumsy tools, and it is very easy to cut one's fingers with them, and they need the closest attention and handling. But they are the only tools we have, and imagination itself cannot work without them.*"¹³⁷ These are words of immense wisdom, in our case, the transition from Legalese to Plain English must happen slowly and smoothly to avoid a '*cut*' as the Judge points out. A balanced pedagogy is the need of the hour in Indian law schools, and after all is said and done, the legal system and regulatory bodies should give space for the law schools to drive a change.

¹³⁷ Ludlow (n 2) 257.

17.

THE TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Introduction and Historical Background

Law is a field in which language matters the most. It is often said, “if you learn to play with words, you learn to play with the world”.

Language has been and will always be an important aspect of law. Even though justice was an important aspect of our society even in ancient India where law was considered equivalent to Dharma, the concept of ‘lawyer’ seems to have surfaced during the British period only. Interestingly, proficiency of a person in English language was the only qualification required at that time to be a lawyer along with certain personality attributes. However, although today we need a ‘law degree’ to be a lawyer, the success in the profession is largely dependent upon this proficiency in legal language.

Teaching of Legal Language in Law Schools: Current State and Challenges

As a newcomer to the law school, devoid of any previous knowledge or scope of law, a student is introduced in the very first year to usually Law of Contracts or Law of Torts or other subjects depending upon the law school you are in. What is disturbing however is that there is an expectation from students to study core legal subjects without any prior knowledge of legal language per se.

It is not a new thought that legal language is complex and it takes a certain level of technique and skill to not only understand it but also use it not only while writing exams but also other assignments that students are loaded with in the very first year including write-ups, articles and even research papers.

In order to help students in understanding the complex legal language which becomes denser because of use of certain legal jargons, most law schools have a subject called “Legal English” in their curriculum, primarily in the very 1st year. The subject is aimed at making

students familiar with various facets of legal language. Analyzing the syllabus of Legal English and Communication Skills of one of the prominent law school of India, it was observed that the syllabus was comprehensive and tried to include each relevant aspect which would be helpful for a law student. The very first unit included topics like reading comprehension of legal and general texts which was followed by topics requiring writing like paragraph and precis writing, abstract writing, petition writing, note taking and drafting of reports and projects, all inevitable for a law student. The second unit included along with communication related topics, concepts like legal maxims, foreign words and even legal counseling and interviewing. The topics covered by both these units seem really impressive and the fact that they aim to enrich students with legal language cannot be debated.

The third unit however did not appear much impressive as it included topics like legal communication and reading and analysis of writings of eminent jurists including judgements which appeared more like a repetition of topics from first and second unit. Only distinct topic in this unit was mooting, the efficacy of which is not disputable. The fourth unit included a number of plays, stories, books and biographies which a student is expected to read within a short span of a semester.

After interviewing students from various law schools across the country, it was found out that the above-mentioned curriculum appears to be the best-case scenario available in terms of making students aware of legal language. Although upon talking with the students from law schools which follow 'this syllabus', it was observed that most law schools did not have any permanent faculty to teach Legal English. The subject was mostly taught by either Ph.D. Scholars or guest faculty. One of the students informed that they had three different teachers teaching the subject and some teacher would come some day and another would come another day, all of them teaching different topics causing confusion and hurdles in the process of logical flow of information. Ironically, it appeared like a practical example of 'barriers to communication' which itself is a sub-topic under this subject. The coordination between the teachers was almost nil and there were circumstances where either no teacher would come or sometimes two teachers would come at the same time, with students being the ultimate sufferers in the process. All this was enough to show the 'importance' given to this subject by the colleges which in turn generates an attitude amongst students that the subject does not require much attention.

A student of one of the NLUs informed that they are taught language in two papers, both of which have lengthy course. This approach of teaching language in two semesters might seem impressive but a look at the syllabus would remove such an illusion. The syllabus hardly contains any legal language topic or writing skill exercise as one would expect. The syllabus has an abundance of books, plays, stories etc. which is next to impossible to cover in a semester. The focus and objective of the syllabus is only to give knowledge about societal norms and sense of justice without any focus on improving the language per se. Student interviewee however gave a positive feedback in terms of availability of course material and the enthusiasm and approach of teachers towards teaching it and method of teaching which involved acting the plays.

Another student from a top law college in Maharashtra informed that they were taught Legal English but not in 1st year. It was in their second year where they were introduced to this subject. In my point of view this partially destroys the very purpose of the subject which is to make students understand the legal language before they proceed towards studying more complex core areas of law.

While all the above case scenarios might indicate the sad scenario that law schools are in when it comes to teaching of legal language, the reality is harsher than one would expect. Since all the above-mentioned case scenarios relate to government law schools, an attempt was made to get in touch with students from private law schools as well in order to get a clearer picture. This interaction with private law school students was what presented me with the harsh reality. Students from most private law schools denied even having heard of any legal language related subject, neither as a compulsory nor as an optional one. Most of them were astonished to hear that any such subject is taught in other law schools. The situation of students who take up law as a three-year course after completing graduation is no different. They also denied studying legal language paper.

Conclusion & Suggestions

The sorry state of legal language in the law schools in India generates a cause of worry. Upon interviewing students from various law schools across the country as well as analyzing their syllabus, one can easily conclude that fault lies not only in the teaching of legal language. Teaching in fact forms the later stage. The primary issue is with the syllabus. The distinction in the curriculum of the subject in different law schools across the country is not as much a

cause of worry as the fact that the syllabus lacks its very objective, which is, making students familiar with the legal language. It appears that most private law schools and law schools providing three-year LL.B degree have excluded this subject from their curriculum. On the other hand, there are law schools which teach the subject not in first but in second year, defeating the very purpose of the subject. While some law schools fail to include legal language related aspects in the curriculum of the subject, others which include such aspects fail to provide with professors who not only have knowledge of the subject but also the technique to make students understand this very foundation of the law school. A lack of knowledge of legal language or an incomplete knowledge of the same creates difficulties in understanding various legal subjects which are there to be studied in subsequent years of law school causing problems for students not only in their college life but also in their whole legal career beyond law school when they face the real life legal problems.

All these make it the need of the hour to give attention to the linguistic aspects of law both in terms of curriculum as well as teaching methods in law schools. Having a compulsory subject on legal language with uniform syllabus prepared by experts appears to be the initial step towards this direction. This can be followed by taking reviews as well as suggestions from law students both on curriculum as well as teaching method. These could be the building blocks in the achievement of the ultimate goal of having a generation of well-read knowledgeable lawyers with an expertise in the legal language as well which would benefit not only the lawyers and their clients but the society as a whole.

18.

LANGUAGE: A COHERANT WEAPON IN LAW

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The law is a profession of words.

- David Mellinkoff

A courtroom is an open field, lawyers are the batsmen and words are their weapon. A judgment demands appurtenant articulations, a lawyer should make terse statements that underscore the keynotes only, language has the power to change the game anywhere anytime. If you've ever attended law school you are very much aware that it is a process that pushes scholars towards "learning to think like a lawyer". It propels them to think and talk radically new, in addition to that it also directs them towards different approaches to conflict. The legal meanings of words constitute the common language of lawyers and judges, who rely on this language to communicate efficiently and effectively.

A voguish opinion exists that you will be learning a new language when you study law but it is way more intricate than it sounds. The meaning of these legal terminologies is of extreme importance when it comes to reading a case or a judgment or any legal document for that matter. Legal terms may possess more than one meaning, you will have to figure which one to apply where. A legal practitioner or the ones, who are aiming towards becoming one, require augmented respect for linguistic precision. Heedful use of legal terms is extremely important; otherwise it may lead to parlous errors or even misunderstandings.

Prominence of Legal Language in Law Schools

Language holds an immense amount of influence in the field of law. Legal language is very complex and different from our regular language. Law and Language go hand in hand; this is a very acute and exquisite relationship. Lord Mansfield has rightly stated that "Most of the disputes in the world arise from words." (Quoted, Tandon & Behl 2) hence while using language one has to be very discreet as a minor blunder can modify things substantially sometimes the same word makes a different meaning in a different context, for example, the word "consideration" in the law of contracts means a value given by one of an agreement to another party, it doesn't relate to thoughtfulness or concern for something.

Legal Language is considered to be complex because the jargon acquires its words from Latin & French. That is why the study of Legal Language should be included in the curriculum of a law student and should be taught in Law schools as this profession requires a profound adherence for linguistic rigor.

A proper study of grammar, punctuation, spelling, syntax and diction is quite necessary to say what is intended and desired. Vagueness, ambiguity, lengthiness, verbosity, and complexity are the defects in legal language arising out of the linguistic incompetence and stylistic defects. This necessarily shows the close or a rather inseparable relationship between law and language. Both are intertwined and interwoven in a fabric which is a very interesting topic of study. Hence, the study of the language used in the legal discourse i.e. legal language is imperative. Whatever the form of legal writing, both legal and language skills are significant.

Challenges and Inklings

Legal language is not a cakewalk, considering the situation of India which is a home to 19500 mother tongues (as per data released by The Registrar General and Census Commissioner, India). 40% of India speaks Hindi, still out of this 40% of people who may choose Hindi to be their official language is doubtful. Although even today a section of the Indian society claims that Hindi should be our legal language, English should be abolished from India and that those who speak English are “*Angrezon ke gulaam*” which means slaves to the Britishers. You cannot deny the fact that when as kids or for that matter even as adults when we speak a little standardized English from your Enid Blyton’s, we often hear a very common phrase thrown at us “*Angrez chale gaye tumhe chodh gaye*” which means the British left (India), but left you behind. Little does this section of the society understand that law is not a concept that emerged yesterday, it was, it is and it will exist forever. It has been in existence from time immemorial and a major portion of this law that our lawmakers, while creating our legal sphere, took into account is in English.

In law, we study the practicalities of one’s conduct towards another, his society and his government. The vocabulary of law is not so straightforward; hence it is baffling for a layman to decipher it, which is the rationale behind hiring an advocate whenever we land ourselves in a legal dilemma. Thus, a law student must have a profound grasp of legal jargon this is why Law Schools are mandatorily required to teach legal language.

Schooling is not given much importance in rural India and when it comes to urban India although schooling is regular, language is not given much importance, compared to other core subjects. For this reason, gradually when these kids start attending law schools, the major problem they face is language and to add on to that, again legal language isn't given much importance

Legal Language should not be given as a choice to law students; it should be included as one of the core subjects in the curriculum. Law faculties who are experts in language should be made available to the students to understand the technical language of the law, which might seem easy from the outset; it is rather complex and confounding. Hence, law schools should accommodate the prerequisites.

In most of the law schools in the country legal language is taken up as a subject in the first year, but it is not a part of the core subjects, therefore, no student takes it seriously. This subject holds a fundamental footing in the legal sphere so there is room for correction in the way of teaching this subject in law schools. Law schools should incorporate "Legal Language", as a core subject for both 3-year and 5-year LL.B for a minimum of one and two years respectively.

Conclusion

A person well versed in English may still not be capable of interpreting the Constitution, the way a lawyer or a person deft in legal jargon would be capable of. The justification behind this is, legal vocabulary contains terminologies, maxims, and phrases from Latin and French which makes it grueling for a layman to understand. Legal language is different from our regular English which makes it onerous to learn.

It is a necessity to bolden the requirement of legal terminology classes more often, thence, enhancing the vocabulary of the upcoming legal authorities. We would never want our statutes and legislations to highlight loopholes for criminals to escape. A statute must be framed in a way that there exists finite scope to amend it (apart from the ones that demand amendment due to transmogrify in circumstances). These are excerpts from two judgments that tried to resurrect the rape laws in the country; these were delivered between a period time of approx. two years.

“mere slightest or partial penetration of the male organ within the *labia majora* or the *vulva* or *pudenda* is sufficient to constitute ‘sexual intercourse’”

“.....with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for section 375 and 376 of the Indian Penal Code. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stain”

A layman may read it and derive the same meaning, but if we look at like a lawyer you will notice how the word “attempt” caused a major gulf. This is how the legal way of framing sentences can cause a boost to the case brief or judgment itself. ‘*Ignorantia juris non excusat*’ a Latin maxim which means ignorance of law is no excuse. Law should be comprehensible to all and language should not be a barrier between lawgiver and men of law. This is why we have advocates, judges and jurists who can interpret this wordy and complex legalese. No one is a born judge or advocate they are made. Therefore, a legal expert is incomplete without the knowledge of both law and language.

19.

LEGAL LANGUAGE - A BEACON OF LEGAL PROFESSION

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Last Year, I was interning at the Delhi High Court when I witnessed a case of murder of a 9-year-old girl from a village near Delhi. During the investigation, no direct evidence was found and only the circumstantial evidence was adduced which pointed towards the defendant's guilt. Therefore, the credibility of the evidence was doubtful. During the process of investigation, the defendant was asked to give certain evidence which the defense counsel in the trial alleged to be violative of Article 20(3) of the Constitution of India. In the case at hand, the High Court acquitted the defendant on infraction of his Right under Article 20(3) which he was entitled to as he was 'accused of an offence'. In an appeal, the Supreme Court, while reversing the decision of the lower Courts held that for invoking Article 20(3), the person should be 'accused of any offence' and not 'accused of an offence'. The former relates to a formal accusation and the latter a mere suspicion.

So, there I realized the importance of mastering the legal language which is often ignored in Indian law schools. So, the Senior Advocate I was interning with informed me that often, due to the ignorance of nuances of legal language, many lawyers make a legal error in the interpretation of the law text which mostly leads to tendering protection to those who are not entitled to in the eyes of law. Lack of knowledge of words or incorrect usage of words may land up an innocent person guilty and a guilty person innocent, both of, which will be against the very fundamentals of this noble profession. This narrative highlights the ramification due to lawyers' poor interpretative skills, engendered through the lack of meaning and application of legal language.

"The society of law has a peculiar cant and jargon of their own that no mortal can understand, whereby they have confounded the very essence of truth and falsehood" is a popular saying which is true. Usage of words like *prima facie*, *due process of law*, *res judicata* etc. are jargon which a common man may find difficulty in comprehending but which is of paramount significance for a lawyer to understand.

“The noblest literary gift of a well-educated man is the power of welding language well.” This infers that, language has an eternal role to play in almost every profession. For instance, every discipline be it Mathematics, Social Science, Medicine has its peculiar terminology. This linguistic perspective makes every subject *sui generis* in its nature, making it distinct from each other. In the same way the legal profession is not an exception. It stands on the edifice of academic excellence and clarity in juristic concepts and legal principles. These attributes are reflected by the command over the legal language.

Etymologically speaking, “Legal language is the language in which legal prescriptions or legal norms are formulated”, meaning thereby the language is specific and exclusive to a particular discipline i.e. Law. Thus, Legal Language is a species within the genus Language.

Underpinning the significance of legal language it has been said “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.” Thus, Legal Language serves a powerful tool in the hands of lawyers through which they have maintained their exclusive identity in the Profession.

Undoubtedly, “Law is a metaphysical phenomenon that is only ‘alive’ in language.” The instrumental approach of legal language can be gauged from the fact that it acts as a conjunctive element between the two poles, i.e. legal practice and legal scholarship. Budding lawyers’ skills of interpretation of texts, construction of legal arguments, preparation of briefs and of argumentation heavily depend upon their command over the legal language. Thus, a lawyers’ commitment to serve the justice delivery mechanism can be gauged by his/her command over legal language. Often, critics in their scholarly works, criticized the language of the law as full of archaic words, old French and Latin legal maxims and technicalities rather than projecting it as a tool of resolving human conflicts, commanding proficiency and developing thoughtful insights. They ignored its significance in helping lawyers in professional communication, learning the art of legal rhetoric and reasoning, persuading the jury, preparing briefs, interpreting Statutes, drafting documents etc.

Unfortunately, despite the acknowledgment of language is specific to a discipline, there is a disturbing trend observed in the legal field. There has been a disjuncture between legal practice and legal scholarship, caused by ill-suited legal pedagogy. In the words of Judge Posner, “there has been a belittlement of Conventional legal scholarship”. There is no doubt that law schools, which are the fascinating institution and not merely “slot machines or

breeding centres” endeavor hard to give a holistic approach to study law, including doctrinal and practical experience, but this blatant ignorance of ‘Learning Legal language’ in course curricula acts as an impediment in its designed pedagogy. It has been observed that the curriculum of most of the “elite law schools” does not include specific courses on ‘Learning Legal Language’. This problem is also highlighted in the words of Irving M. Mehler, Professor of Law at the University of Denver, as it’s an undeniable fact that pass out graduates from Law Schools cannot write or speak in a coherent, organized or elegant way.

It is emphasized that the curriculum in Professional Institutions cannot be anti-theoretical. Law School’s pedagogy in focusing on the application of the laws, ignoring the very language which forms the foundation for the proper application of such rules is a daunting task before such institutions. This approach defeats the very purpose of the legal scholarship. Neither a graduate will have a proper understanding of rudiment legal doctrines and juristic ideas nor will he/she be able to develop a persuasive and convincing legal argument before the court of law because of disjointedness between the substance of law and practice of law. Also, by disregarding the importance of legal language, one’s ability to write unambiguously is diminished because of lack of knowledge of the meaning of legal jargons. He/She will suffer from an infirmity of not being able to differentiate between ordinary language and legal language. Therefore, it is the need of the hour to inculcate among future generation of lawyers the skill of “lexico –grammatical mechanism.”

Therefore, in order to bridge this disciplinary barrier, Law Schools should modify their curriculum. It should include a mandatory course on ‘Lexical Semantics Pragmatics’, meaning thereby, study of legal jargons with a practical outlook. It will be a pedantic approach towards understanding not only meaning of legal terminologies but also its context - specific application. This eclectic approach will enrich the student’s minds and enhance their critical thinking in a fairly interesting manner by developing the art of legal rhetoric. Professors of specific law courses can aware students of the legal jargon used and can have a practice session twice a month to hone their skills.

Thus, there is an urgent need to include this dynamic course in the curriculum, to create a milieu of intellectual liveliness thus making young legal fraternity to master the art of learning legal language. Therefore, proficiency in legal language will prove to be boon in the justice delivery mechanism by honing the cognition and psychodynamic skills of a good

judgment and will facilitate prudential decision making without any ambiguity, thus committing oneself to the ideals of justice.

20.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Abstract

Time and again it has been discussed how legal language is important for the law profession. Legal Language is one of the main key tools which all the people related to the legal profession must know about. Legal languages at law colleges are very important, having being introduced to language from the beginning of one's career in the field of law is very important. It helps to understand the constitution better, the true meaning of the words and the phrases. For example words such as *res judicata*, *impleader*, *executory interest*, *demurrer mens rea*, etc. oblige students to acquire some new vocabulary.

Introduction

Teaching is one of the most honoured professions in our country. This profession is not only known for its knowledgeable skills but it also tests a person's speaking, expressing its view and make other people understand what the person is teaching.

The profession of legal teaching has existed since the era of rulers like Ashoka but it was not specific at that time. The legal language and its teaching were not specified at that time and few people were able to study law in India. The legal education was present at the time when the East India Company came to India. The concept of codified laws was brought by Britishers to India when they converted the Mayoral Courts into the Supreme Court and various High Courts. These courts were established under the Indian High Courts Act passed by the British Parliament in 1862¹³⁸. But Legal Education was not provided in India until Government Law College, Bombay was established for those who wanted to study law before 1855. This provided legal language to be studied in India as well. This was one of the starting steps of providing legal teaching in India.

¹³⁸Brief History of Law in India <<http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/>> accessed on May 9, 2020.

The law subjects in a law college generally start from the 1st semester of the college itself. The teacher in a law college uses many languages to teach the law subject. But for a general person to understand a law it can be either English or Hindi. The present official language in The Supreme Court of India is English while various high courts have both English and Hindi as their official languages¹³⁹.

When the law schools were established and there were no specific teachers present for the specific laws judges and lawyers were asked to be a part of the teaching as when they had time to teach the students¹⁴⁰. This provided the students with a better understanding of the law as they were not only taught by the ones who interpret it to the best of their knowledge.

This field in the last few years has brought many new techniques which were not present in the early 2000s due to lack of technology. This provided the development of new laws in the country and new ways to resolve cases using Alternate Dispute Resolution such as Arbitration, Mediation and Negotiation which was earlier used very rarely but at present, this field is on the boom. This also provided not only for the students to learn new subjects but also for the teachers to understand those subjects and provide the same information to their students in a way they can understand it.

There are over 1500 law colleges in India out of which 75% are private colleges. Recently disciplinary action was taken against 25 law colleges in India as they didn't have efficient teachers for the students studying in those colleges¹⁴¹. This also provided a lack of teaching on the part of the colleges which harmed the careers of the students did not get the proper to chance to study the legal phrases which are an essential part of the college journey of a student.

When it comes to the job of lecturer in a government college, they are selected by an exam conducted all over India at the national level. The examiner checks the knowledge of the person who gives the exam. The merit rankers are only selected for the jobs of the lectureship and the others are provided with the Junior Research Fellowship (JRF)¹⁴². This exam only

¹³⁹The Constitution of India 1949, Article 343

¹⁴⁰ Harry T. Edward's article "The Growing Disjunction between Legal Education and the Legal Profession" (1992) 91 *Mich. L Rev.*, 34 says at p. 103

¹⁴¹Bhadra Sinha, 'Bar Council seeks de-recognition of 25 law colleges', *Hindustan Times* (New Delhi, December 2, 2019)

¹⁴²National Eligibility Test <https://en.wikipedia.org/wiki/National_Eligibility_Test> accessed on May 9, 2020.

checks how much the person knows, not how the person is well equipped with the language part which is one of the main aspects in the legal field.

The Legal Education in National Law Schools is provided by many highly qualified teachers as some of the teachers are transferred from one college to another. Some teachers are guest lecturers in various fields of law and they are not permanent for the jobs and they are not paid sufficiently prescribed by the government in various colleges¹⁴³. Those persons specialize in various fields are asked by the colleges to provide knowledge to their students about the topics which they have for their course. Due to these specializations in specific fields of law, these teachers are able to provide legal teaching on a better level.

There is another barrier which comes into the play when it comes to the teaching of law is of the language of the subject itself. The laws are made either in English or Hindi in India but there are sometimes when the judges use the Latin phrases in their judgements. These phrases are mainly used to express the ideas that a writer could easily express in English. These phrases do not have a specific legal function; as they are the words which judges choose when they find them useful¹⁴⁴. These phrases are sometimes not understood by the teacher itself what they mean. As these phrases have a different meaning of their own and their interpretation is different from one person to another, but when it comes to teaching a teacher only interprets the given words in the same manner as written in the judgement, they do not use any external minds to provide a broader aspect of these phrases.

Conclusion

When a student's college life begins, it is important that the right teachers to be present in the college to help the student in providing better information in the chosen field. Some of the prestigious colleges are able to provide the perfect knowledge to a student to study and are better able to understand. Some of the colleges there might come under the barrier of the language or the accent in which the teacher provides the information. This might bring the barrier of teaching as the teacher is unable to understand his student. But there has been a steady rise in the field of law as many students are entering the colleges for the graduation.

¹⁴³Pon Vasanth B.A., ' Guest lectures in government colleges demand reservation in recruitment', *The Hindu* (Tamil Nadu, September 4, 2019)

¹⁴⁴ Peter R. Macelod, " Latin in Legal Writing: An Inquiry into the Use of Latin in the Modern Legal World" (1998) 39, *Boston College Law Review*, 235, 237

The course is also providing a person to not only get theoretical knowledge but also practical knowledge which has been a point of interest for any person. The students are getting in this field not only to earn the money but also to earn a position in the society as after clearing the judiciary the person has several powers which increase as the post of the person increases.

21.

IMPROVEMENT OF LEGAL LANGUAGE STANDARDS IN INDIAN LAW SCHOOLS: AN OVERVIEW

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Introduction

In the words of Plato- “*Human language is a result of divine gift*”.

In layman’s terms, language refers to words which may be spoken or written for the expression or presentation of the infinite unseen emotions of humans. The essence of language is that it is tool or medium of communication. Communication is the basis of human’s social existence that is to convey one’s ideas, views, information etc.

Language occupies a paramount position in the legal profession. Words are the weapons of a lawyer must choose wisely to effectuate the wishes of their clients as well as tune the case into their client’s favour.¹⁴⁵ In the words of Charles Alan Wright, a renowned authority in the practice of law and legal procedures.¹⁴⁶

“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.”

There’s been a proper term to legal language to justify its meaning and importance. The term is ‘Legalese’ which defines as “the specialized language of the legal profession.”¹⁴⁷ It comprises of Anglo, French, Latin and other foreign words which are losing to modernized legal society. The upcoming legal professionals no longer want to work hard to discern legal facts, arguments and conclusions especially since many are difficult to understand even in plain English language. So, this is completely certain that English is not the legal language which is specific terminology bound shaped by the legal system and reflects the law and legal

¹⁴⁵Mayank Shekhar, ‘Challenges of Legal Education in the 21st Century’ (*Legal Bites*, July 6, 2017) <https://www.legalbites.in/challenges-legal-education-21st-century/> accessed on May 6, 2020

¹⁴⁶Jyoti Sagar, ‘Language and Law: The incomprehensible lawyer- Part I’ (*Bar and Bench*, May 1, 2018) <https://www.barandbench.com/columns/incomprehensible-lawyer-part> accessed on May 6, 2020

¹⁴⁷‘Legalese’ (Merriam-Webster’s dictionary of law Online, Merriam-Webster, 2011), <https://www.merriam-webster.com/dictionary/legalese> accessed on May 6, 2020.

dimension in use; however, English is considered, no doubt, to be the most popular medium of instruction for legal education as well as for legal practices and procedures.

Tracing the origin of Legal Language

For the last three decades, there have been efforts to establish the relationship between law and language by means of linguistic and semiotics. The subject matter of semiotics deals with the use of language. Also, the semiotics does not only expose the meaning of legal terms, symbols but also the political, psychological and sociological roles of legal language. Further, it's been used for studies relating to legal philosophy, legal sociology and also for the study of legal textbooks. Law and Language both show cultural consciousness and nationality. Languages contain a diversity of words, sentences, sounds and interpretations. In the same way, law too varies from country to country. The founder of Historical theory Carlwan Saveini affirmed that the communication and acceptability of law are easy and simple in the mother tongue.¹⁴⁸ The founder of realistic theory Jeremy Bentham criticized the then prevailing draftsmanship containing pseudo expressions and complexities and inspired the jurists to focus legal language and its development.¹⁴⁹ As such, there is no particular historical origin to the evolution of legal language as it gradually took its shape with time and dynamic legal issues forming a crucial part of legal custom and legal education. Towards the beginning of the 20th century, there was a growing emphasis on legal language; however, there existed a penumbra of uncertainties existing over the legal terms and its usage. And, gradually there were doubts due to the use of legal hypothesis having multiple interpretations. The terms such as justice, torts and administration of law were more focused on the expression of inner conscious, rather than simply providing meanings and interpretations of the terms. This led to a lot a more ambiguities in norms and rules which shaped the development of legal English which was easy to understand as well simple to interpret leading to the development of Common Law.

And, since India was a colony to the British Empire, it also adopted English as the foremost language of study as recommended by Lord Macaulay¹⁵⁰, same way Legal Language lost its battle to Legal English. This journey from Legal Language to Legal English has led to a

¹⁴⁸Dr. S.C. Tripathi, *Legal Language, Legal Writing & General English* (6th edn, *Central Law Publications*, 2014), 5-14.

¹⁴⁹ *ibid.*

¹⁵⁰Harsh N Dudhe, 'Language Reforms in the Indian Legal Education System' (Legal Service India) <http://www.legalserviceindia.com/legal/article-1740-language-reforms-in-the-indian-legal-education-system.html> accessed on May 6, 2020

complete transformation and interpretation of the legal system very different from the way it originated and existed.

Importance of Legal Language

Legal Language is not an object rather it is the means to achieve the objects. It is a universal fact that the scope and use of legal language are very wide and extensive. The static form of legal language exists in texts, reports and the Constitution while the dynamic form exists in judgments, arguments and drafting. The different interpretations of legal language deliver different consequences. So, the legal perspectives in order to be understood in its literal and original meaning and sense, it is very essential for every legal professional to master the legal language as well as legal English. The legal language is the basis of the legal analytical mind of legal professionals. Legal English is equally important since there needs to be an equilibrium in the sense of justice worldwide and since, English is the most popular language, it forms the basis of medium of communication. Legal language ought to be taught in its original form since it's more of a custom of the legal profession and all legal professionals ought to be bound by it, no matter how difficult its learning is. Every profession ought to maintain its level of dignity and culture to be respected in the society and legal profession derives its sense of dignity from the legal language. So past, present and future generations need to understand that legal education is not everybody's cup of tea and needs sheer dedication and hard work.

Current status of Legal Language in India

The language, its form and conventions which developed hundred years ago is still a part of the existing legal developments¹⁵¹, however, the interpretations and meanings have been given a drastic change. For example, the legal students are being taught legal English as a part of their curriculum which is majorly of English and less of legal language. Most of the lawyers are not even aware of the basic legal language and get into practice and over the years they follow the existing trend and get used to it. The skills depicting of legal language is gone into books which do not even make a way out of libraries. The suitability and relevance of the vocabulary of “language of the law” in the contemporary world is not a

¹⁵¹Jyoti Sagar, ‘Language and Law: The Incomprehensible Lawyer [Part II]’ (*Bar and Bench*, May 12, 2018) <https://www.barandbench.com/columns/language-law-incomprehensible-lawyer-part-ii> accessed on May 7, 2020.

subject of any serious discussion in the profession neither the profession recognizes the knowledge of the legal language as an essential requisite to be a legal professional¹⁵². Despite the fact that most of the time of legal professionals is dedicated in articulation, most of the law colleges rarely focus on developing legal language and legal writing as a skill essential to be a competent legal professional¹⁵³. The entire system of legal education has reduced to only mugging up the books, bare-acts and laws as its, writing in the exam without contouring its legal implications in the practical aspects. The present professionals hardly believe in reading textbooks and authoritative legal documents and reports. The cycle of ignorance of legal language is a generational handover and the cycle continues so on. The language is a technical one which has words specific to legal concepts and it is very unprofessional of professionals to use ordinary language in the legal field of work. As the times evolve, the styles change, but the language remains static & stood the test of time and the existing language of law in today's time is nothing more than junk antiques of legal vocabulary¹⁵⁴. There are many eminent lawyers like Lord Denning considering legal language to be complex, propagate to use plain English while handling legal issues as legalese, jargons are considered by him to be a showoff¹⁵⁵. Ultimately the result is that the standard of legal language in the profession is not great.

Suggestions to improve the status of Legal Language

Before the legal language becomes a part of history in its existence, the educational institutions, legal education regulatory authorities and professionals need to understand the vitality of legal language to the legal system as well as the essence of Legal English and also that both are very different concepts and are equally important in their respective spheres for the legal professionals. And, that calls for compulsory implementation of legal language as a separate subject into the legal curriculum for the entire 5 or 3 years course since it's a language so technical and the students need to be efficiently skilled into the different aspects of legal language and for that, a period of 3 to 5 years is essential. This suggestion is based on the facts that any regional language is taught to students in school for 6 to 7 years so that the students become fluent in legal language and the same applies to legal language. Also, legal English is equally essential to be part of legal education in the initial years so that the

¹⁵²ibid.

¹⁵³ibid.

¹⁵⁴ibid.

¹⁵⁵ibid.

students from regional language medium of education do not feel to be less competent legal professional due to language differences. Also, the professors employed for the teaching of legal language should be linguistic competent in the legal fraternity and should not expect the students to learn on their own. Apart from legal teaching, there should be extensive research and practical projects so that the students know the peculiarities of legal language and also, know its implementation in daily professional life.

Conclusion

The continual deterioration of legal language demeans the prestige and respect of the legal profession which further diminishes the faith and trust of the public in the country's legal system and administration of justice. The doubts and criticism of legal language being a barrier in the administration and access to justice are completely untrue and baseless as it ought to be clearly understood by the critics as well as those who have such thoughts that no language can ever be a barrier no matter how difficult or technical it seems to be. It's only the ignorance about the law which creates a justice delivery system failure to an extent. And, for that, the focus should be on improving the legal literacy in India rather than destroying the sacredness and sanctity of the legal profession.

22.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Historical Background of Legal Language

Ever since the time man has started to imbibe a tool to express himself, he has progressed extensively by challenging his own potential and bringing in all that he could for the generations to come. When we speak of language as a contrivance of one's expression, it indirectly explains that there are different forms of language which are needed to be used at different platforms. Legal language is one such language. A language which requires utmost precision, clear expression and specific narration. There is no precise definition to 'legal language' as language is something which is used to predicate notions, which follows that notions are subjective to each individual and thus their ways of expression differ and hence a 'narrow' compilation of words to define the phrase (legal language) is not feasible. But as per my subjectivity, I would name it as a language which was centuries ago when there were no boundaries for reinforcements. It has been developed in courtrooms, by professionals who practiced and were a part of resolving disputes even in an informal manner. For example the word 'PAROLE' which in today's time means an early release of prisoner by certain regulations to his conduct after his release. This word trades back to early French middle ages where prisoners were released by 'the word' that they would abide by the rules after their release. So, some commonly used words in olden times became an extensive part of legal universe and contributed to legal language as a whole.

In prehistoric Britain, traditional common law was discussed in the vernacular (see Celtic law). The legal language and legal tradition changed with waves of conquerors over the following centuries. Roman Britain (after the conquest beginning in AD 43) followed Roman legal tradition, and its legal language was Latin. Following the Roman departure from Britain circa 410 and the Anglo-Saxon invasion of Britain, the dominant tradition was instead Anglo-Saxon law, which was discussed in the Germanic vernacular (Old English), and written in Old English since circa 600, beginning with the Law of Æthelberht. Following the Norman invasion of England in 1066, Anglo-Norman French became the official

language of legal proceedings in England for a period of nearly 300 years until the Pleading in English Act 1362 (and continued in minor use for another 300 years), while Medieval Latin was used for written records for over 650 years. Some English technical terms were retained, however in legal pleadings, Anglo Norman developed into Law French, from which many words in modern Legal English are derived.¹⁵⁶

Importance of Legal Language in Law Schools

“In the life of an individual and society, language is of great importance than any other. For the study of language to remain solely the business of handful of specialists would be a quite unacceptable state of affairs”.

- Ferdinand de Saussure

India as a country with the largest democracy has around 900 institutions to impart legal knowledge. Legal knowledge might and might not be able to impart legal language. For e.g. if we talk about the constitutional theory of pith and substance, we definitely receive legal knowledge, but the language in which the knowledge gained about the theory is to be expressed holds much importance than the knowledge itself. So, to put forward something that is learnt that too ‘legally’ requires learning of the legal language. The basic concepts of law can be delivered well by the laymen too but for the one who is in actual terms functioning as legal practitioner, needs to know the true essence of the concepts and their verbal transmission in a legalistic format.

There are so many similar words in the legal dictionary which have totally different meanings. For example ‘joint tenancy’ and ‘tenancy-in-common’, the words mentioned here look and mean synonymous to each other which is not the case. There is a difference of inheritance of property in both the cases. In joint tenancy, after the death of the owner, the property gets transferred to other surviving owners, whereas, in ‘tenancy-in-common’, refers to ownership over a certain property without any rights of survivorship. For expressing such complex legal phenomena, learning of legal language holds immense importance.

The most ancient written law traces back to 1794, i.e. The *Manusmriti*. It was translated by Sir William Jones. The essence of describing this in the present context is because, this text

¹⁵⁶https://en.wikipedia.org/wiki/Anglo-Saxon_law#Language_and_dialect

was written in Sanskrit, giving certain code of conduct for the people. To make people understand about the *Smriti*, there used be scholars who particularly knew the Sanskrit language. By knowing the language of law, and by learning the means to express such a language, people faced no difficulties in understanding the code of their regulation. Which deduces that legal language is a concept of past and learning it for proper functioning becomes important for all the legal practitioners?

The person who intends to communicate his idea to the general public not just has a responsibility to speak what he knows but also to make others understand all that he intends to communicate. In a courtroom scenario, where the parties expect their litigants to produce their case precisely and where the judges expect the litigants to produce their case authentically, the litigant has to take care of all the aspects of the case in question. It is simply the language that he uses to produce a particular argument that will decide his win or lose situation. And this training is acquired by a practitioner in his early years of leaning the law and language.

When we talk about learning the legal language, it is the importance of the language that forces us to take a glimpse of it. The lingual aspect of the argument can be classified in a three-fold manner. Firstly, the professional conduct of the speaker. Secondly, to keep the audience on the same page as the speaker himself is. Thirdly, to produce his arguments in a manner which is not just lawful but convincing to the judges and the audience combined. Now if we analyze all the three given aspects, we can construe that there is always a hidden agenda to make the one who is listening, understand the analogy in the same manner in which it was intended to be understood. This follows that the understanding of such minute parameters is developed only by knowing the learning the language of law.

In the current scenario where legal education is being imparted at such an extent that almost all the states have recognized institutions by the Bar Council of India , it is necessary to ascertain that the subjects which are responsible for the furtherance of legal education in the country by their knowledge and insight, be aware of the vocal conceptual terms. The syllabus that is designed for such students often lack this very basic phenomena of linguistic approach to the study of law which holds much importance where the public that comes to seek justice belongs to unorganized strata.

Challenges and Reforms in Learning the Legal Language

The intricacy of a licit language arises because of four reasons: The use of Latin, and sometimes French, words, and phrases to express a rule, principle, doctrine, maxim, etc. which can be facilely phrased in English. The use of obsolete, old English words which have passed from the English language but have been sustained by their frequent use in the Licit vocation.

Having 22 Scheduled languages the country is home to more than 19,500 mother tongues (as per data relinquished by (The Registrar General and Census Commissioner, India), however, 97% of the people have these languages as their mother tongue. Out of these Hindi is verbalized by 40% of the population while English is considered as a mother tongue by a meagre 1% of the population.

Still most of the official work of the regime and all the cases dealt by The High Court and Supreme Court are in the English Language. in order to practice law one needs to be well versed in English, even the Bar Council of India in its Proposed Direction for reforms in Licit Inculcation has accentuated the medium of ordinant dictation at all law schools would be English and this would be a compulsory and requisite for accreditation of the law school. Albeit the edification of law has been in English for more than a century, a majority of India Law Students feel that it is arduous to decipher the explications and discussions in English, it is arduous for them to cerebrate in English and still more arduous to inscribe in licit English.

Hence the ordinant dictation to abstract English from Licit Edification to its daily practice in courts looks plausible. The present regime and even the precedent regimes endeavoured to supersede the English from the Higher inculcation, Law and other fields and from official regime work as well by the But what they fail to agonize was that even Hindi was not verbalized by the majority of the population. As shown in the reports of Registrar General and Census Commissioner - Albeit 40% of the population claims Hindi as its mother tongue, the notion of Hindi language is different for many people coming under the 40% category.

Suggestions

It is true that language acts as a barrier in the spread of licit edification however language barrier coupled with vocation barrier acts as the authentic challenge. The dispensable utilization of involute licit language makes it arduous for mundane masses to avail of the

benefit of the law and are left helpless in front of those who are able to utilize this intricacy to their advantage. If the involution issue is addressed than English in lieu of acting as a barrier will culminate up availing in the spread of licit edification as English retains its standard form all across the country and can be then interpreted into sundry regional languages addressing the concerns of the whole country efficaciously. When we talk about teaching and learning of legal language, we often tend to regard it as something very specific to people concerned with law, which is not totally sound. The language that we are talking about is for all the citizens who are subjected to law of the state. By referring to knowledge of legal language to all, I do not obscure the population that is illiterate or does not have any secondary education. But to fulfill the goal of our constitutional makers and upholding the provisions of article 39A of Free Legal Aid to the poor, it is necessary to bring to light such trifles of legal language being important. Because to fulfill the aim of the delivery of justice at people's doorstep, it is fundamental that we function successfully in that regard.

Conclusion

As mentioned earlier, it is not the knowledge of law but the expression of that knowledge of law that holds importance. In a country where half the students pursue law as a career but ending up choosing some antonymic field is because of the lack of verbal and practical expression of the knowledge that they are being imparted. For removing such discrepancies and lacuna in the most respected and the most required field in today's times, it is greatly important to give speech to knowledge. *'The limits of language are the limits of knowledge for, it is the language which makes you think, think a little better, a little clearer.'*

23.

TEACHING LEGAL LANGUAGE IN LAW SCHOOLS : NEED OF THE HOUR

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A language is a system of arbitrary vocal symbols through which a social group cooperates.¹⁵⁷ Language not only encompasses the concept of spoken languages like French, Italian or English but also includes professional terms and argots which are exclusive to a particular field. Legal Language or Legalese, is one such jargon used by lawyers, government officials, and others in fields related to the legal profession for court documents, legislation etc.¹⁵⁸

The most notable characteristics of this "language" are precision, density, neutrality, formality, and frequent use of archaisms, including Latin and other foreign words and phrases.¹⁵⁹

Every language is composed of distinctive characteristics which help in identification with a specific entity. As every field has its own set of jargons and argots, same goes within the realms of law. Hence, for having a niche in this field, a stronghold on its language is desired. As we know, a language is an indispensable tool of law. Within its boundaries, this tool becomes highly essential. As David Mellinkoff¹⁶⁰ said, "*Law is a profession of words*", and if linguistic precision is lacking, it can bring a stark difference in the meaning of the sentence. Hence, studying the language of the law (from now on legal language) becomes highly imperative.

Why Law Schools Need to emphasize on Legal Language?

The primary role of any educational institution is to socialize the student with the culture of the community. The main aim of law school is to teach a heterogeneous group of people, who

¹⁵⁷ Definition is given by American linguists Bernard Bloch and George L. Trager.

¹⁵⁸ Heikki S. Mattila, *Comparative Legal Linguistics: Language of Law, Latin and Modern Lingua Francas* (Christopher Goddard tr, first published 2006) 3-4

¹⁵⁹ Ibid 65-103

¹⁶⁰ David Mellinkoff, "The Language of the Law" ,(Resource Pub. 2004)

come from widely different backgrounds and goals, to think like lawyers. To think like lawyers not only means teaching logical and analytical skills but also developing a niche for persuasive language and legal expertise.¹⁶¹ Law School acts as the primary cultural and ideological device to teach the professional norms required in the legal profession. The imprints formed at the law school plays a significant role in the coming life of a legal professional in future. As Kronman says, "It is in the law school classroom that lawyers are introduced to the culture of the profession and here that their professional self-conception first takes shape."¹⁶²

As law teachers encounter prospective lawyers before their impressions of the legal profession are fully formed, they "have a unique opportunity to influence the attitude of the nascent lawyer committed to their classrooms at the embryonic stage."¹⁶³ Hence, to teach excellent lawyering skills, it becomes paramount to train the student from the inception of the course in the law school throughout his stint of study.

Why Legal Language Needs to be Improved?

Language acts as an emblem of a lawyer. The better his command over the language, the more efficient he is among the public.¹⁶⁴ The reason why words are so important is that words are the vehicle of thought. Hence, they are considered essential tools in this profession.

The pursuer, of this subject from the initial phase of his career, has to indulge in various facets of the legal language. As a medical practitioner has to be aware of the devices and equipment used for performing surgery, similarly a legal practitioner has to be mindful of the language which he would be using to achieve the desired goal.¹⁶⁵ For example, the legal rights and obligations of clients are created, modified and terminated by the language

¹⁶¹By this the author means technical legal skills like an acumen for legal terminologies, having knowledge of the structure of legal arguments, remarkable legal writing skills in a variety of legal fields like drafting, writing scholarly research papers, clinical courses etc.

¹⁶²Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (first published 1993, Harvard University Press 1995) 269

¹⁶³ John R. Peden, 'Goals for Legal Education' (1972) 24 *J legal education* 379,382

¹⁶⁴ Lord Denning makes an important point: "To succeed in the profession of law, you must seek to cultivate command of language. Words are lawyer's tools of trade. When you are called upon to address a judge, it is your words which count most. It is by them that you will hope to persuade the judge of the rightness of your cause.

¹⁶⁵ That goal can be of advising a client, advocacy, filing a plea, or pursuing scholarly legal writing

contained in contracts which have to be linguistically precise. Such is the need of having command over the legal language.

The lawyer in his field- even as the physician and the priest in theirs remains the last resource of other men and women. When the wisdom of common men fails them and disaster is at hand when laymans' brain is overworked till his mental fuse burns out when the human derelict is finally tossed upon the rocks by the stormy seas of life, then the lawyer is sent for, and his "quiddities" and his "quilllets" are more than welcome.¹⁶⁶

Suggestions for Improving the Teaching of Legal Language

The skills and values of the competent lawyer develop along a continuum that starts before law school, reaches it's most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career.¹⁶⁷ Although students in law school have schedules for language courses, yet a significant question mark persists on the efficacy of those scheduled classes.

Rewiring the Brains -

The primary step should be to make the students aware of the need for learning the legal language. Psychology plays an imperative role in deciding whether a task should be done or not. If the teachers try to rewire their brains by making them realize the utter need of having a command on the legal language, they would involuntarily have a preference for the task.

It is only possible when the educators dedicate themselves towards teaching the language and contribute immensely in the process.

Throughout and Thorough Focus on the Language

Ironically, the subject which forms the cornerstone of the law as a field, legal language is taught only in the first year or maybe the first semesters of a law school. The preemptory reform should be the uniform distribution of the subject in the whole stint of study. Law schools are the place where the regular grooming of law students takes place. As language

¹⁶⁶Urban A. Lavery, *The Language of the Law*, (1921), *American Bar Association Journal*, Vol. 7, No. 6 277-283

¹⁶⁷Report of the Task Force on Law Schools and the Profession (Narrowing the Gap, 1992) also known as MacCrate Report.

requires a considerate amount of time for its development, a thorough analysis of the subject becomes mandatory for the grooming of a student with practical lawyering skills.

Changing the Pedagogy Style to Content Based Learning

The legal practitioners have developed a range of unique legal concepts, which can be expressed efficiently only by using legal jargon. As the legal system moulds legal language from where they emanate, they reflect the legal culture and hence is considered inseparable from the law. But at the same time, these legal nuances are not relatable enough and give a feeling of being esoteric. Therefore, to instill the urge to learn, Content-Based Education (CBE) can be employed. Owing to the specificity and interdisciplinary nature, CBE can be one of the avenues for teaching the language. It is a relatively new methodological approach in second language acquisition which refers to “the concurrent study of language and subject matter¹⁶⁸. Through this, the attention shifts from learning language per se to learning language through a relevant learning context. Communicative competence is achieved in the process of learning about specific topics.¹⁶⁹

With interdisciplinary content, the whole learning process becomes relatable and relaxing. When this approach is juxtaposed with the traditional method of reading comprehension and analysis of terminologies, the former overrides because of the efficiency it generates.

Online Platform Exclusive for Language Discussion

One quintessential example could be the methodology of JURIST Paper chase.¹⁷⁰ Herein, the posts are real-time legal news stories written in two-paragraphs in an inverted methodology where the contemporary news is shared. Then the traces and evolutions of the law are focused. With this method, a student can have a two-fold development: one, by reading the legal news, he will research the topic; come across the legal jargons and method of legal writing. Secondly, as that would be an online post, so he would be having myriads of articles to read and develop his lawyering skills, with concern to the linguistic aspects.

¹⁶⁸ Brinton, Donna M., Snow, Marguerite Ann & Wesche, Marjorie Bingham Content-Based Second Language Instruction (Newbury 1989, New York) 7

¹⁶⁹ Juez, M Teresa Alejos. “Linking language and content: ESL instruction through legal topics.” In Proceedings of the 5th International AELFE Conference 328

¹⁷⁰ The online legal news and commentary service founded by Professor Bernard J. Hibbitts and hosted by the University of Pittsburgh School of Law

It is like a mini casebook with research readings on short themes (disguised as legal news) with a significant focus on legal analysis.

Such platforms will help the student to read, write and acquire knowledge which is not only limited to the current legal news but helps in tracing the evolution of the legal concepts, terminologies, variations of writing procedure etc.

Hence, these suggestions will help in improving the methods of teaching of legal language in law schools and will set a new notch in the standard of legal education in the country.

24.

ENGLISH – THE “OFFICIAL” LANGUAGE OF NLUS

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Introduction:

Law has always been something that the common people connect to or understand. It is seen as an alien that haunts every section of society, no matter how rich or poor you might be. It is criticised for being a time and money sucking void that inevitably draws everyone in at some point of their lives.

In the times that we are living in right now, the interest in law has sparked. People are thronging the various competitive exams, to get a seat in the multiple law schools that are present in the country, government and private. These people come from all corners of the country, with their distinct languages and cultures, often ones that not all are familiar with.

The article will aim to have a grasp on the reasons for a lack of clarity of the legal language amongst the students of law in National Law Universities (hereinafter referred to as “NLU”) and how this lack of clarity, resulting from an excess of English language, presents further problems in their profession.

Legal Language in the classroom:

NLUs have emerged as temples of law where students are taught how to interpret the law, as enacted by the legislature. It is dissected and then put back together, glued with the help of various Latin maxims and legal jargon. While doing so, what we fail to realise is the very implicit form of discrimination that happen *discrimination on the basis of language*.

NLUs were envisaged as institutions where students would be taught how to understand and interpret the law. They were seen as universities which would produce exceptional lawyers and that is the primary reason why students from all over the country were allowed to sit for exams to get into the NLUs. These students come from all sections of the society and from all corners of the country and thus, have different capabilities and capacities.

As per the concerned state's requirement, every NLU has a fixed reservation percentage, which includes certain seats reserved for students belonging to the Scheduled Castes and Scheduled Tribes. Although they are allowed entry into the classroom, they never become a part of the teaching curriculum because of the medium through which the law is taught to them. Our NLUs like any other national university have followed suit in making English the medium of imparting education. We think that only if the student is taught in English will he have a better grasp of the law. And this is where the problem starts.

Problem with English as the medium of instruction in NLUs:

In NLUs, we are taught the law and as I have already stated above, that teaching involves a large amount of foreign words and legal jargon. This complex mixture of words is sometimes not even intelligible to the professors. Then how can we expect students coming from diverse backgrounds, having a varying degree of higher English education to understand the same.

The moment we walk into an NLU, we see groups of people talking with each other in a myriad of languages and that gives us a glimpse into the diverse culture of India. But, the moment we walk into the classroom, all the cultural diversity is clamped off and overtaken by the "official" language, English. We are taught subjects like Law & Poverty, which makes us understand the importance of having access to resources but all that in a language that a big number do not comprehend easily and have to put in extra effort that the others do not. Students coming from villages or some even from cities generally do not have access to basic English education and are taught the basics in either broken English or in the local language. The local language serves as a great base for enabling the child to grow but, it is English that lets him/ her progress in the society and that is the sad reality.

But, the fault is not of the universities but of the Bar Council of India (hereinafter referred to as "BCI"), that sets out rules with regards to the imparting of legal education in India. As per the *Rules of Legal Education, 2008*, it is specifically stated under Schedule II that the medium of instruction would be English for the five year integrated course and the three year course.¹⁷¹

The legal system that we follow in India was implemented on us by the British and under their rule, Indians changed from a very parochial form of dispute resolution to a British led,

¹⁷¹Bar Council of India, Rules of Legal Education, (Part IV), Schedule II Page 21.

English way of dispute resolution. It is for this reason that the medium of communication in the High Courts and the Supreme Court is made English and almost all the law firms operating in the country, run on an English speaking staff. It is from this British imposed legal system that we can relate the BCI's rule of English being made the official mode of instruction.

Having English as the medium of instruction serves well to ease the administrative burden of teaching the subjects in regional languages and also helps condition the students for future job related interviews. But, all this comes at the cost of the student losing faith in his/ her mother tongue and being forced to learn and converse in an alien language.

Repercussions of English being the sole medium of instruction:

The first repercussion has already been talked about is one that makes the student lose the ties that he/ she has with their mother tongue. This loss is not individual but a loss for the society as a whole as, with a growing number of people losing ties with their mother tongues, those languages fear extinction.

Another repercussion is that the student loses confidence in himself when confronted by his peers who are, at times, much more fluent in English and are able to answer the questions put to them in class in a clear and coherent manner. This makes the student feel disadvantaged for something that he is not responsible for. It is a result of access to resources that results in such situations.

This feeling of being disadvantaged, coupled with the inability to participate in classroom discussions and seminars prevents the students from understanding the nuances of the law for which they came to the NLU. This further affects their careers, as lawyers who do not have clarity on the law themselves cannot help others with their disputes. And these problems arise whether the student opts for a job in a law firm or if he opts for litigation as his career.

Suggested changes:

The situation is grave and there is need of immediate and active changes to enable the students of law in the NLUs in becoming the best lawyer they can. The first change that is suggested is for the BCI to alter their *Rules of Legal Education* and remove English as the

sole medium of instruction and add other languages to it or, allow the concerned university to make provisions for the language(s) in which it wants to impart knowledge to the students.

Another suggested change is for the NLUs themselves. The administration should focus on the coming up with ways to allow students, not comfortable with English to be able to understand and participate in classroom discussions, like having the discussions translated into the regional languages, having vocational courses related to law in regional languages, organising seminars where the medium of communication are regional languages etc.

Conclusion:

To conclude, I would like to mention that India is a diverse country of many different cultures and languages and making English as the medium of instruction for colleges where students come from all over the country is not fair. English has its spot and its relevance in the legal field as it is the mode of communication between various State jurisdictions but, it being the sole medium does not lead to a very student friendly atmosphere in NLUs.

Efforts are being made to better the situation and progress is being achieved but, what we must understand is that it is not only the job of the authorities but us as individuals must also put in efforts to help out our colleagues and make the institution a better place for them to understand and learn.

25.

LEGAL LANGUAGE: A VITAL BRANCH OF LAW UNDERSTATED MANIFOLDS

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Let us start this article with a popular story you are likely to have heard in your college years.

A bunch of advocates were leaving the court premises and they saw a road accident. Now instead of asking “what happened?” the senior advocate asked curiously “whom to blame?” That is how precise a lawyer has to be in the field of law.

Meaning and Definition

Legal Language means a language used by the persons connected to the legal profession. It is the language used by the lawyer, jurist, and the legislative draftsman in their professional capacities. Law being a technical subject speaks through its own register. Legal language has developed through centuries and includes maxims from numerous languages like Latin, Greek, French, etc. apart from Legal English.

As defined by Webster¹⁷² in his lexicon, the term is derived from the Latin word ‘Lingua’ meaning a system of communication between humans through written or vocal symbols. It is a speech peculiar to an ethnic, national or criminal group. It is the articulate or inarticulate expression of thoughts and feelings by living creatures. It is the system of sounds and words used by human being to express themselves.

Importance of Legal Language

Legal Language is the language which differentiates the lawman from the layman. A legal practitioner clearly stands out of the crowd with a good command over legal language. A lawyer must have a distinctive vocabulary as legal language is much more than just a mode of communication. Words are the essential tools of the law. In the study of law, language has

¹⁷²*Lex Research Hub Journal*, ‘Define legal language, nature and scope of legal language; importance of language in law’ <<https://lexresearchhub.com/q-a-define-legal-language-b-nature-and-scope-of-legal-language-c-importance-of-language-in-law/>> accessed on May 4, 2020.

great importance; cases turn on the meaning that judges ascribe to words, and lawyers must use the right words to effectuate the wishes of their clients.¹⁷³

Scope of Legal Language

A nice example of this can be seen in *Nix v. Hedden*¹⁷⁴, a Customs and Excise case, where the question in issue was whether a tomato is a fruit or a vegetable? In rejecting the dictionary definition of tomatoes as a fruit the court stated “in the common language of the people” tomatoes would be “vegetables which are grown in a kitchen garden and not served, like fruits, generally as a dessert”. It is also interesting to note that the court held, as a point of law, that where words have not “acquired any special meaning in trade or commerce, they must receive their ordinary meaning. Of that meaning the court is bound to take judicial notice and upon such a question dictionaries are admitted, not as evidence, but only as aids to the memory and understanding of the court.”¹⁷⁵

This example shows how important interpretation of statutes actually is. It basically provides the correct understanding of law. This process is commonly adopted by the court to get the exact intention of the legislature because the objective of the court is not merely to read the law but also to apply it in a meaningful manner according to the case. Equality before law under Article 14 is a Fundamental Right granted to all citizens is all about interpreting law through legal language. As stated in the case of *E.P. Royappa v. State of Tamil Nadu*¹⁷⁶ “Equality is a dynamic concept which cannot be cribbed, confined or cabined within traditional limit.”

Law comes from the society and as per the will and need of the society, interpretation of law and necessary amendments must be brought into the statutes which can certainly be achieved through legal language.

Now you clearly see it has a wide scope and being a budding lawyer you surely don't want to miss a chance to excel in the same... Do you?¹⁷⁷

¹⁷³ Prof. Sheila Hyatt, ‘Legal Language’ (Law.du.edu, 2018) <<https://www.law.du.edu/index.php/law-school-learning-aids/legal-language>> accessed on May 5, 2020.

¹⁷⁴ *Nix v. Hedden* [1893] 149 U.S. [304].

¹⁷⁵ Frank Mayers, ‘An Introduction To Legal Language’ (Frank Mayers, April 3, 2016) <<http://frank-mayers.com/en/an-introduction-to-legal-language/>>, accessed on May 6, 2020.

¹⁷⁶ *E.P. Royappa v. State of Tamil Nadu*, 1974 AIR [555].

¹⁷⁷ “Do You?” With reference to the law students.

Need of Legal Language

Playing with words is an art! Different words have different meaning and a lawyer must know which one to use where. For instance, consideration in law of contract has nothing to do with thoughtfulness or being considerate.

Similarly ‘mumbo jumbo’ words like *Res judicata*, *Impleador*, *Mens rea* and legal maxims like *ubi jus ibi remedium*, *volenti non fit injuria*, *res ipsa loquitor* and my co-author’s personal favorite *qui facit per alium facit per se* which means he who acts through other does it himself. (Pun intended).

So what is the point in learning these when that can easily be communicated through English or any local language?

Well, law developed over a long period of time and different communities had influenced it in different time periods. That is the reason you will find touch of Latin, French and Roman in legal English.

Here, the role of teacher comes into picture. An important characteristic of a good teacher is that they develop your interest in the subject and simplifies the hardest topics.

In order to explain better to you, I’ll share my personal experience with you. It was the class of 2011 when our professor entered in our first legal language class and as soon as he entered, he wrote on the white board, what is the difference between cat and a dog? Half of the class went giggling and half tried to answer in a way a two year old would do, he then explained, “in this whole semester you will feel this paper is too easy and why are we even studying this, but the more you go in depth, the more you will realize how crucial it is and how less you know. So fasten your seat belts because we are going to have a hell of a ride.”

In such a changing society there is need to improve the legal education and expand its scope; with the concept of modernization. It is time to enhance its boundaries. There is need to increase its ambit and for that, it is necessary that legal education is not limited only to the study of law, legislation, and procedures of law, but also to the command over legal language.

Condition of Legal Language in present scenario

Today, Law is viewed not merely as an instrument of social control, but also as an instrument of social change. Lawyers have been characterized as social engineers. Like liberal education, legal education may serve the society by imparting to law students general and cultural education making them good, law-abiding citizens. Such education will instill into the students the significance and relevance of democratic culture¹⁷⁸- says the text book but in reality we are not even close to attaining it.

We all want good budding lawyers, better teachers and best legal practitioners for the society we live in but we tend to forget that the raw material we put in will provide us the same quality of finished goods.

Unfortunately, the condition of legal language in India is sulking and sometimes we ignore the condition until it is a little too late.

What gives birth to such mental framework?

Numerous things work in this direction starting from no prior encounter of children with legal education before preparing for entrance examination after completing their higher secondary education. It's more like blaming someone of not liking pasta when the poor chap never got a chance to taste Italian food.

Then the subject is introduced to you in the very first year of your law school and considered a secondary subject to score better, not only among the students but unfortunately by teachers as well.

It's better to not talk about the University administration who allots general English teachers to teach legal English in some great colleges. Some teachers rush to complete the syllabus and deal only with the outdated aspects naming it as history of legal language.

Students as well as administration need to develop heightened respect for lingual precision in order to craft the art of advocacy. Of course advocacy is an art and good command over legal language helps let you be a better artist.

¹⁷⁸ Pragati Ghosh, 'Essay On Legal Language In India' <<https://www.shareyoureassays.com/knowledge/essay-on-legal-education-in-india/116804>> accessed on May 4, 2020.

Expression, communication and understanding are crucial to legal language for shaping and reforming legal system.

Need of the hour

There is an urgent need to understand that even a citizen of the country needs basic understanding of law in order to exercise his or her rights. Policemen, businessmen, policy makers have to keep grasp over law for their proper functioning. Hence legal language is now viewed as a great social necessity.

In legal profession, time is money, regardless of you working in a law firm or practicing individually. Legal language helps convey deep meaning and helps build a foundation to express better. It's vital because it is far reaching and most of the times it is not sufficient to reach out to others, your clients in a layman way because in such a condition, a sense of alienation remains due to lack of right emotion.

Conclusion

As discussed above legal language is very important to make out the real intent of the legislature which will decide the future interpretations of law.

Basically legal language is a tool to interpret the law and make it adequate for every coming generation by interpreting and reexamining it according to the new dynamics whilst keeping in mind the true intent of the framers of legislation and legislature.

Thus establishing the concept of living law and legal language is too essential a tool for practicing this principle. Law is a dynamic concept as described by Savigny, "law is the spirit of people" and at the same time static or stagnant law cannot fulfill the need of the society without replacing the whole statute frequently which is nearly impossible.

Therefore we need the tool of legal language by which we can interpret and amend laws according to the changing needs of society so that law will serve its purpose and functional aspects. We have to understand that for the benefit of public at large and for the greater good, legal language needs urgent attention.

26.

PEDAGOGY OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS PARLOUS SCRUTINY

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Background of Legal Education:

Language and Law concord with each other. Law being a strenuous subject forms its foundation over the command of the language. Language has a great importance in the subject law especially if we talk about the legal words used in subject. Legal words grooved in Law have been originated from Latin, French, English which are of paramount pertinent to study of law. Use of legal language can change the overturn the directions of the cases. The law curriculum designed in India for the law students tries to give a glimpse of legal language to students in the very beginning of their law prospectus but the students don't grab much knowledge from it and emphasize only on memorizing it like parrot to pass the exam because of the sole reason that this subject is not given much importance in upcoming years of law school. Moreover, they don't even form a part of the impending curriculum of legal studies. This leads to difficulty to law students once they go out in field to work and get a reality check. This problem is faced by more or less every law student and as a result there is a burning need to bulldoze the schooling of legal language in Indian law schools.

Obstacles of legal language under Indian Education Sector :

Bar Council of India (BCI) has introduced integrated course which is known as Under Graduated Law course. The Law Commission of India has over the years articulated the substance of legal language and education. It defines legal education as an art and science which imparts knowledge and awareness to students regarding the principle of law.¹⁷⁹ Having a sway over legal education starts with gaining hegemony over legal language. The justice system clearly works on the code of '*Ignorantia juris non excusat*' which means ignorance of law has no excuse and in order to understand better, stand out from the herds of advocates in court, one needs to understand the legal education and law in particular a bit

¹⁷⁹ 'Challenges faced by legal education sector in India' (Kyabae), <<https://www.kyabae.com/challenges-legal-education-sector-india/>> accessed April 21, 2020.

extra from a layman. The only way to achieve a higher benchmark in front of judges while representing a case is possible only bit extra from a layman. The solitary way to achieve a higher benchmark in obverse of judges while representing a case is probable only when the advocate is able to grasp the law pleasingly and is sentient with the principles of law along with legal terms used in this pasture as ultimately ignorance of law especially by someone dedicated to the field is nowhere conventional. The main technicality lies here is that even the top most lawyers lack in this due to their weak nub as well as insufficiency in curriculum devised by Indian Law Schools.

Predicament of Law Student regarding Legal Language:

When one enters a law school he is encountered has to go through four phases of understanding legal words to completely hold domination over legal language. In the opening phase one gets to learn new legal words in the first year of law schools which are the very foundation of legal language and have a great importance in arena of law, for example words like *res judicata*, *mens rea*, *actus rea* etc. A person needs to get this lesson of groundwork meticulously as this is the first stepping stone in becoming a good lawyer. Secondly, as one precedes in his legal curriculum he is encountered with words that he is familiar with but have a different meaning in law for example ‘consideration’ in Contract Law, has nothing to do with thoughtfulness; it means something of value given by a party to an agreement.¹⁸⁰ Thirdly, a law student is encountered with those words that have poles apart meaning depending on what question is asked and where it is asked, In one State, a person may be said to ‘possess’ a firearm if it is within his/her reach in an auto. In another State, that person might have to be in control of the firearm to be considered in possession of it.¹⁸¹ Fourth and the last segment of legal words are those words which do not have a crystal-clear and literal meaning and is subjected to interpretations by judges from case to case.¹⁸² The words that form part of this legal syllabus are majorly derived from Latin, French and English and a student needs to gain precession over this linguistics but dejectedly the nastiest part is neither do the law schools nor the students furnish even half of their time to become skilled at the legal language. In a quantity of law schools they don’t even shape a fraction of the legal

¹⁸⁰ Prof. Sheila Hyatt, ‘Legal language’, < <https://www.law.du.edu/index.php/law-school-learning-aids/legal-language>> accessed on April 22, 2020.

¹⁸¹ *ibid*

¹⁸² *ibid*

prospectus after the very earliest semester only and in this manner thus showing the deficiency of magnitude specified to it.

Exhortations:

Quality of manipulation of words and having a good command over legal language is what most of the lawyers should boom for and this would initiate by altering the outlook of the universities providing this itinerary. As the legal language is a multifaceted surface to lay a hand so many students refrain from learning it and are dreaded to be trained at this. It becomes the exclusive conscientiousness of the universities to ad infinitum involve students in learning legal terms. The universities mere spotlight in topical times have been in philosophy of the technical subjects only and they pass on their accountability to students to cram up the legal language on their own, forgetting that legal language acts as the biggest barrier in competitive exams. Colleges need to egg onto students and introduce legal language as a separate subject in every year rather than just giving a short glimpse of it at starting point. Due to destitution in legal linguistic precession, students who are although brilliant in knowledge holdup behind in exposure. They take a step back while participating in legal competitions and reserve themselves to be a part of the crowd. Unspecialized faculty in college, teaching legal language is also one of the chief technicality issues in India law schools. The improper teaching modus operandi of legal languages at law school leads to lack of good researchers, doctrinal exposure and leaves the Indian law school far behind from the International law schools and thus Indian law students fail to have frontage with international law students. The law students appearing for further exams have to start from beginning to learn legal terms and many times opt for special classes which puts extra burden on them. The legal terms should be on tips of the law students while passing out from college as in every area of law legal terms are the essentials for which both students and colleges need to put in their extra effort for keeping update with it.

Thereby, the Indian law fraternity should try and conduct various workshops, seminars etc. at intervals making it obligatory for law students to attend it so that when the students compete with the faint humankind they are fully competent in this language and misunderstandings and blunders are avoided when they are representing in court. There should be international exposure given to law students and specialized faculties should be appointed to teach this subject. Law schools should try and teach this language in as simplified manner as they can

and translate the Latin, French and English legal words into various different languages like Hindi etc. so that the students are able to quickly grasp it. Creative techniques should be endorsed by law schools to preach this language. The Law Commission should also emphasize more over this topic. Law schools should make comprehensive legal language syllabus embedding within itself the four phases mentioned above. It is not only the dependability of law schools but also the of the law students to comprehend and abide by the legal terms as this is what differentiates them from a layman and helps them to excel in every subject and area of law.

Coda:

One commentator has stated that, "It is on the loom of language that all law is spun."¹⁸³ There is no law outside the language. Law is surrounded by legal language and its usage makes sense only when proper understanding of technical terms are developed among the young minds. The theory of legal language is what brings out the superlative lawyer standing at par with excellence and therefore play an effective role in legal system. Tremendous legal language makes communication of law a boon for society and for lawyers and thus it should be encouraged in every way possible.

¹⁸³ C.G. Weeremantry, *The Law in Crisis* 133 (1975).

27.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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“Ignorance of the law is no good excuse, where every man is bound to take notice of the laws to which he is subject.”

–Thomas Hobbes, Leviathan

Law and Language

Language is the key to communication and mutual understanding. If people can understand a certain language, it is easier for them to convey what they intend to and it is easier for the person on the receiving end as well. It is through language that social problems are translated into legal issues.¹⁸⁴ Accuracy and precision is necessary in the legal field and words are a significant tool of law and it is upon the lawyer to use the correct words so as to facilitate the demands of the client to support the case. Legal Language consists of jargon, legal terminology and maxims derived from various segments in the society mainly Latin and French. It is used by draftsmen, jurists, lawyers while acting in their professional capacities which could be a formal communication between the council, the judge and the council, and also the client who is a layman and the council. ‘The Language of the Law, written by David Mellinkoff, Professor at UCLA School of Law, focuses on law and language and states the development of legal English from the historical period up until the present day. Some characteristics of Legal Language which have been identified by Mellinkoff are the use of Old and Middle English words which are rarely used now, use of Latin words, use of argot, and formal words.¹⁸⁵ Peter Tiersma’s work, Legal Language, explains that a layman is unable to comprehend the legal language because it is full of unusually lengthy sentence structures, complex vocabulary and redundancy.

Legalese i.e. Legal Language differs from our day to day language and is not used in our ordinary speech. It is far more complex and not easily comprehensible by an ordinary man as

¹⁸⁴Elizabeth Mertz, “The Language of Law School: Learning to “Think Like a Lawyer, 2007”

¹⁸⁵Crandall Joann & Charrow Veda, Linguistic Aspects of Legal Language (1990).

it is different from “ordinary English”. If a lawyer wants to succeed in his profession, the understanding of the legal language apart from the statutes is essential as it aids to the growth of his knowledge. There are certain general principles of law which are accepted by most civilized nations such as *res judicata*, *mens rea*, *ejusdem generis*, *estoppel* etc. In the language of law, there is a small area of relative precision mostly in terms of art.¹⁸⁶ Legal terminology is not devoid of ambiguity and vagueness as the usage of such terms changes over time and from place to place as one may use the same word in a different context at the same time. Judicial decisions and definitions in the statutes give such terms more clarity and precision but sometimes judicial interpretation may also deviate from the meaning which it derived from its usage over the years. Legal Language has evolved due to historical, political, jurisprudential and sociological causes but it cannot be simplified for the understanding of a lay man as most lawyers state that the problem is not with the complexity of legal language but the problem lies with the conceptual complexity of the law.¹⁸⁷ It takes a person several years of experience and training to be well versed with their sub-language and its proper usage.

Current situation in Indian Law Schools

The main goal of a law school is to train the students to think like lawyers. We come across such terminology while studying the law in university. Normally we study legal language as a subject in the first year or second year of law school. Despite it being a part of the curriculum, not much importance is given to it exclusively as a subject in itself. This subject is of utmost importance to those getting into the profession of law because it brings out clarity in several things including the basics and concepts. Often concepts are based on these maxims which make it essential to understand them in order to get a better in-depth knowledge of the concept we are studying. In many law schools, the subject of legal language is taken leniently in comparison to other subjects. Students are not taught the maxims or legal terminology or it is left to the students to study it themselves which ultimately is not fruitful to the budding lawyers as it does not help in understanding other subjects and even while practicing as a professional. Legal maxims and terminology have not lost their relevance over the years and still hold a lot of value. It may be described as “Old Wine in New Bottle” as their application in certain contexts may change over the years but the meaning of the maxim remains the same.

¹⁸⁶David Mellinkoff, “Language of the Law. Boston: Little Brown and Co, 1963”

¹⁸⁷Crandall Joann & Charrow Veda , Linguistic Aspects of Legal Language (1990).

Methods to inculcate while teaching Legal Language

Firstly, the Socratic Method may be adopted in order to teach this subject. The Socratic Method is a great tool to reach the depth of the subject matter by engaging a large group of students in a discussion about the same while analyzing the questions surrounding it.¹⁸⁸ Students learn through critical thinking and logic as this method involves questioning the students which shows on what assumptions and motivations the students are living upon and gives a better chance to involve the participation of all the students. Secondly, competent faculty must be recruited to teach the subjects as they are well versed with the subject and will be able to educate the students better than any other faculty member. Teachers can collaborate to reflect on the various methods of teaching used by them which gives the most effective results. Dialogues may be initiated amongst law school professors from around the world to discuss ideas and methods to globalize the instructions and keep it up to date to make the most of it. Thirdly, students must be encouraged to write essays or short notes on various topics under Legal Language which will help them understand the concept better and weekly objective based tests may be carried out to keep a check on the students grasping power of the subject. Law schools in India must shift to programs which focus on outcomes instead of focusing on the content only as focusing on the outcome will help to advance the method of instructions used to educate the students. New technology should be used so that students become familiar with it when they enter the profession and they have the skills to access and acquire the data using such technology, in order to make sure that the students are being given a fair opportunity to learn Legal Language and they make the most of it.

Conclusion

There are so many budding lawyers in India and in order to be a good practicing lawyer, one must be familiar with the concepts of Legal Language and that is why teaching of Legal Language in Indian law schools requires urgent attention. With the globalization of legal education, the need of the hour is to focus on developing the curriculum in such a manner so as to meet the legal services, establishing training and research centers, recruiting competent faculty, fulfilling the required financial support and a well-established library.

¹⁸⁸The Socratic Method, The Socratic Method | University of Chicago Law School, <https://www.law.uchicago.edu/socratic-method>

28.

TEACHING OF LEGAL LANGUAGE IN INDIAN LAW SCHOOLS NEEDS URGENT ATTENTION

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Introduction:

Legalese is defined as the “specialized language of legal profession”.¹⁸⁹ It includes Latin words and phrases as well, out of which, most of them are outdated now. The legal language has evolved over time due to invasions in Britain. It has become a complex and verbose language which is hard to understand by laymen.

The legal language of India as approved by the Constitution of India, 1950 is English. Article 348 of the constitution mandates the usage of English in the High Courts and Supreme Court of India. The law students are trained in the law schools to understand the legal language and its usage. The Indian law schools have failed to train students in an appropriate manner leading to difficulty with the language for the students. The students are struggling to learn the legal language which acts as the basic foundation for their profession. Hence, it needs urgent attention for better teaching.

Origin:

English as a legal language is a culmination of many other languages. The origin of the language is from the Britain. It evolved as the time passed by due to many invasions by the Celts, Romans, Anglo-Saxons and the Normans. The Celts didn't influence the legal language much but the other invasions affected the language. They influenced the language and culture prevailing during that time in Britain.¹⁹⁰ Example: The word *writ* in legal language has an Anglo-Saxons origin. In 1066, when the Normans invaded Britain, the legal language was made French with Latin as the written language. Words like attorney, waiver, demurrer etc are derived from French.¹⁹¹

¹⁸⁹ Legalese <<https://www.merriam-webster.com/dictionary/legalese>> (Merriam Webster) accessed on April 25, 2020

¹⁹⁰ Peter Tiersma, *Legal Language* (University of Chicago Press, 1999) 5

¹⁹¹ *ibid*

Hence, legal language includes many terms and phrases derived from Latin, French, etc. It further becomes difficult for the law students to decipher and understand exact meaning of the maxims, phrases etc. The legal language has many problems which makes it difficult for people to understand.

Characteristics of Legal Language:

1. Verbosity
2. Wordiness and redundancy
3. Ambiguity
4. Negation
5. Use of old, archaic and obsolete English words
6. Complexity

In the olden times, the written submission made to the judges consisted of lengthy arguments using flowery language which often confused the common people and made it hard for them to understand. The lawyers tend to increase the wordiness of the arguments by using different words with similar meanings. Various Latin maxims, words etc were included whose meaning could not be translated exactly. Thus, it created confusion for people and the legal language became complex.

Indian History:

The resolution to introduce European literature and science in India was initiated by Lord William Bentick in 1835. He planned to introduce English as a medium of instruction so that an English minority is created which would be loyal to the empire. It was made mandatory for anyone applying for government jobs. Its institutionalization created a barrier for non-English speaking people. The colonisers made laws in English and as it was not the language of the common people, they could not understand the laws. The colonisers thus, started teaching English as both language and law, so that people understand their laws and rules. The introduction of teaching in English started in India with the establishment of Universities at Calcutta, Bombay and Madras by 1857.¹⁹² By 1726, a royal charter was formulated which

¹⁹² Harsh N Dhude, 'Language Reforms in the Indian Legal Education System' , <<http://www.legalserviceindia.com/legal/article-1740-language-reforms-in-the-indian-legal-education-system.html>> accessed on April 10, 2020

authorized the introduction of mayor courts in the presidencies of the East India Company.¹⁹³ The courts had to follow English law and this system was known as the Uniform Judicial System. Through this, the courts and the legal system started to function properly. Thus, English developed as a legal language in the Indian courts.

The legal language traces back to the establishment of courts by the East India Company in its presidency towns. By the end of 18th century, a proper court system was established and the law they followed was mainly English.

After independence in 1947, the official language of the courts was made English for a period of 10 years because as a country with diversified languages and culture, Hindi could not be made to be an official language. The period of 10 years has continued to be extended even to this date.

Present Scenario in Indian Law Schools:

The current situation in teaching of legal language in Indian law schools needs urgent attention because of its low quality faculty as well as improper approach towards the language. The legal language consists of certain terms and phrases which may mean differently in English than what they actually mean in the legal profession. For example: the word ‘consideration’ in its normal usage means “thoughtful and sympathetic regard; continuous and careful thought”¹⁹⁴ but, in the contract law it is something of value in the eyes of law given to the party in a contract. Therefore, the language needs utmost attention so that the students learn and absorb the legal meaning of the terms departing from their normal usage.

Another issue which arises with the usage of words is that, that the meaning of a specific word changes in accordance with the context in which it is being used. Example: the word ‘possess’ might either mean to have control of that particular thing or just have it with them. There are many words in the legal language like ‘appropriate proceedings’, ‘foreseeable’, ‘due process of law’ etc. which do not have any specific meaning in law but keep evolving with time and according to the interpretation of judges of the courts. Hence, it is very

¹⁹³ J.K Bhavnani, ‘Legal Education in India’ (1962) 4 Journal of Indian Law Institute, <<http://www.ili.ac.in/>> accessed on April 17, 2020

¹⁹⁴ Legalese (n 1)

important that law students are made aware of these intricacies of the legal language so that they can craft their advocacy skills in a better fashion.

In India, the law students are taught legal language in the first year itself. The pedagogy is not efficient enough and follows doctrinal method of teaching which is not producing the desired results. The common method students choose is to memorize the maxims, phrases etc. along with their meanings by cramming and mugging up. Legal Language is an important subject as it makes the students 'think like lawyers'. It is important to realize that students need to know the structure of the legal texts in order to understand the language. They need to be taught the method to read and learn the laws, write laws and judgements as well. In order to make the students understand the language, the law schools need to improvise their methods of teaching.

Suggestions:

The teachers who teach legal language must be well-versed with the intricacies of the language. They must be able to teach the students in a way where the students can think out-of-the-box and open up to a more broad and practical thinking.

The doctrinal method of teaching must focus on the contextual structure of the legal text. With the help of legal text, the faculty needs to train their students to notice aspects of pragmatic structuring.¹⁹⁵ Instead of concentrating on the factual aspects of given legal texts, the students must be taught to analyze the legal texts and understand how it is related to its authority. This will help the students to differentiate between different legal texts, their language, their authority etc.¹⁹⁶ As the law professors teach students to read and discuss legal texts, the students learn to ask new questions and to focus on different aspects of language and hence, get a better understanding of the legal epistemology.

Conclusion:

Legal language is a complex language which has evolved over the time. The law students, in order to have a grip over it, need to learn it in a practical way. Many of the law schools in India have failed to provide an adept faculty for the same. The quality of professors is what

¹⁹⁵ Elizabeth Mertz, 'Teaching Lawyers the Language of Law: Legal and Anthropological Translations' (2000) 34 J. Marshall L. Rev. 91, 101

¹⁹⁶ *ibid*

the students are mainly struggling with. The students are left to learn by themselves, which is a very inappropriate manner to learn the legal language. Hence, the law schools must try to train their faculty to impart the knowledge to the students in the best manner possible. A practical and sophisticated approach needs to be followed to train students in legal language for them to have a grip and complete understanding of it.

29.

FOCUS ON TEACHING OF LEGAL LANGUAGE NEEDS URGENT ATTENTION

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Introduction

In present scenario when legal education is acquiring the importance, and at the same time is coming out as the progressive field of education among the present generation, the language used in its instruction is appearing as the hindrance for every scholar. As we know that India is the nation with diversified language so it is the serious issue as to which language should be taken for the medium of instruction for the purpose of satisfying everyone's need.

The technical English which is the medium of instruction in law imposes a lot many problems are not understood by all. But, at the same time it is also true that we cannot go for one language and make it as a language of law for the whole nation, being there so many people who have their diversified languages.

Detailed analysis of Legal Language in India

Language is the ultimate medium through which we spread the knowledge and learn what is being taught. But in a country like India where there are so many diversified languages, language of majority of people are Hindi and English. If we see the history, we will find that this language problem existed from the time of British rule itself. English was made mandatory for the people applying for all kind of government services. This however, automatically created the barrier for the people not speaking the English language.

At the time when constitution was being written up, Hindi language was chosen for this purpose as it was the language known by majority of the population. Mahatma Gandhi also told the reason that why everyone should learn Hindi, and moreover make it as their main language. But then at the same time leaders like Ram Manohar Lohiya opposed this idea and suggested to go for diverse languages in India.

As a result, the constitution was also drafted in English for the people who don't know Hindi. For the purpose of making environment inclusive for the people who come from certain other

linguistic background, the administration started working in English. However, this decided the fate of the students at certain legal institutions that in which language they would be taught.

Causes and Effect

Ignorantia juris non excusat which means that ignorance of law is no excuse which is the very basic principle of justice made it compulsory for the colonial rulers to understand as well as comprehend the law made by them. As the language which was used was English so it was been made important for all colonizer to teach the colonized the English language as well as the law. Therefore, the study of English law in English language began with the establishment of the first law college in Bombay named as the Government Law College in the year 1855.

After independence i.e., 1947 among lot of question regarding legal education system one of the questions was that what should be the medium of teaching the legal theory. Even this led to many of the conflict arising between the educationist and the politician. However, as the result the Chagla Committee said that “it is necessary for the students of law to have proficiency in English, as the language of law as well as the court will be English.”¹⁹⁷ A result of which the First Indian Law Conference decided that the medium of legal education will be English for the present time”¹⁹⁸

Almost everything related to the field of law like the judgments, commentaries, The Constitution of India, laws of land etc. in India is in English language. Therefore, the present availability of the legal matters and day by day the increasing availability of all these matters in English language makes pretty impossible for us to translate such wide matters in our language and understand them as well. The other thing which is quite disappointing in relation to the legal language is that the not availability of technical language vocabulary in our Indian language which makes it difficult for us to understand certain terms. Thus, there should be the other substitute language which would prevent us from all these problems which are imposed by this English language.

The government does not emphasis on the loopholes in the Indian Legal Education system which is the other problem that we are not able to move towards a particular solution in this

¹⁹⁷Report of Bombay Legal Education Committee, 1949

¹⁹⁸ J.K. Bhavani, Legal Education in India, *Journal of Indian Law Institute*, Volume 4 (1962), 167-190

regard. The allocation of the planning as well as the fund's is compared to other fields is quite less. And without the proper fund & planning the language of courts and law and improvement in the Indian legal education system can't take place.

If we see the data that has been provided by the All India Schools Education Survey by NCERT, in 51.45% of schools the medium of instruction is still Hindi whereas only in 33.06% of the schools the medium of instruction is English due to which a large no of population is deprived of opting law for further higher education.¹⁹⁹ Due to these problems those students who anyhow enters law schools without having good hold in English language find it difficult to sustain in that environment. This is only because of the reason that English is not the mother tongue of all Indians. As per the report given by one of the Bombay University there it was been mentioned that "one defect in work of examinees was that they are not able to express what they have in their minds in clear language."²⁰⁰

Reforms for the betterment of the Indian Legal Education System (Solutions)

For improving the present legal education system, we will have to look for different aspects of the nation. India is the country where there are so many languages as we know that there are 22 Scheduled languages. And out of this total population as per the data if we see ten Hindi is spoken by 40% of the total population while English is spoken merely by 1%. Still seeing the data also most of the cases at Supreme Court and High Court are dealt in English language.

Therefore, for practicing the law one should be thorough with the English language as well as its technical side. Also, the Bar Council of India has also mentioned that English should be the only medium of instruction at all law schools and it's a mandatory as well as strict requirement for the purpose of accreditation of law schools.

The problem that it's difficult to understand law in English and even more difficult to write it down seems real and therefore the demand in the court to remove English from the legal education seems reasonable. The present as well as the previous government tried to remove English as the legal language and also from the entrance examination of all government services with Hindi but they fail to do so because of the fact that most of the population does

¹⁹⁹All India School Education Surey by NCERT ,8th edition (2016), 29

²⁰⁰Aggarwal, A. P. (1959), "Legal Education in India", *Journal of Legal Education*, 12(2), 231-248

not speak Hindi as well. Although out of the total 40% of the population claims of having Hindi as their mother tongue but among them also Hindi language is of different types.

Therefore, from this it was been clear that the problem faced by the legal education cannot be solved by merely changing the medium of language but at the same time there should be the careful analysis of the other problems as well. As we all know that this language divide imposes hindrance in the legal education system but along with that it is also to be noted that there is a profession divide as well.

The legal work in the complex English need to be done in simpler English. And then further the people can convert this simple English in their own respective languages. This complexity in the legal language comes out because of four reasons: -

- 1) The use of the French Latin words, doctrine, principles etc.
- 2) The use of the old English words which are difficult for us to understand.
- 3) The assigning of the words which have purely the legal meaning.
- 4) The tendency of lawyer and judges to write complex and long sentences without existence of any punctuation.

Conclusion

Often there is a language problem or we can say the barrier which imposes lot of problem in the Indian legal education system but this along with the profession barrier imposes the real problem. The usages of all these complex English words act as a hindrance for common people with little knowledge of English to opt for legal education as their future studies. Therefore, this complex English language which imposes the lot of problem should be simplified in the easier language so that the people could interpret it into their regional language.

LINGUISTIC BALANCING A STEP TOWARDS LEGAL EASE

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“The language of law must not be foreign to the ears of those who are to obey it.”

- Billings Learned Hand (Justice and Philosopher)

Introduction:

Ignorantia Non Excusat Legem. Ignorance does not excuse the Law. The aforementioned Latin phrase precisely summarizes why at once there was a need to write all those legal Codes, Acts and Rules. A society and its constituent members- whether institutional or *homo sapiens*, conduct themselves according to the law laid down. In the words of **Aristotle**, “*At his best, man is the noblest of all animals; separated from law and justice, he is the worst.*” Law can be simply defined as the rules and regulations laid down for the people for better coordination and existence in the society. We can claim as much as we want that we are sovereign, but truly, sovereignty rests with law and so does our social conduct. It is unimaginable and unfathomable how much law controls us, but what if one is not able to understand this very essential law, which governs our societal web of relationships- be it with the governance system or amongst ourselves? Do we still say ‘*Ignorantia Non Excusat Legem*’? or do we excuse the person of not knowing the law? Either ways, neither the law nor the people for whom it has been created, benefit.

Pandemic and Legal Knowledge:

Take the modern day scenario when we all are buckled up in our homes while thousands are there on the streets, not knowing whether they will ever be able to go back to their homes and meet their families. Yes, the migrant labours. Most of them are illiterate and don’t even know what laws can be applied on them if they violate any rules. **Section 188** of the Indian Penal Code punishes violators who disobey the guidelines of a public servant. This Section was made operative vide an Order dated March 24, 2020 by the Ministry of Home Affairs, in exercise of powers under Section 6(2) of the Disaster Management Act 2005. According to a news report (The Tribune, May 10, 2020) In Uttar Pradesh, 20,000 FIRs have been registered and 60,000 people have booked for violating the

prohibitory orders. It is no trite that maximum of these people booked were poor migrant labourers, suddenly thrown out on dimly lit, unsafe and unhygienic streets from their tinshed temporary shelters which at least didn't make them an ideal 'creature' for police brutality. Due process was never followed during such unlawful booking of people. There is no provision for registration of FIR under Section 188 IPC and the same has been emphasized by the Courts time and again. However, a complaint can be made by such public servant whose orders have been violated (*C. Muniappan v State of Tamil Nadu - 2010*). A person unaware of law is naturally, whether intentionally or unintentionally going to break it. Penalizing someone by the State for its own shortcomings doesn't really suit a democracy. ***Unprecedented times do not warrant for usurping the law.***

Yet, no one really focuses on the root cause of all this. The problem lies in reading understanding the law. The law- which we read in the colonial language and ironically enough, we have been free from that colonial legacy for the past 70 years now. Not even a single sincere effort has been made to localize the legal language. Creamy-layered by Latin maxims, iced with the flowery French words and English colonial laws act as the cherry on the top for Indian laws, which haven't been *Indianized* till now. How can we expect the people to follow a law which is not even theirs? Not in their language, not coherent for them and seemingly impossible to the greatest extent for them to comprehend it- this is what ails our legal system. It is not pendency of cases, it is not vacancies, it is not the money-minting advocates, it is the law itself which bedevils the law.

Solutions:

'You cannot ask for Rights when you don't know about them.' Similarly, laws can be expected to be followed by them who know about them. The advocates will mind their business lawfully when the poor, illiterate clients- who are most exploited by them- know about how the system works. They no longer will have to wait for years to know what is actually happening with their case. Article 348 talks about the language of the Supreme Court and the High Court- English. Apparently, the Legislature has successfully amended the Constitution so many times, and yet failed to look at this one particular flaw which backfires so badly in a country like India. Be it the minorities, the migrant labourers, the uneducated population, the underprivileged women, a daily wage earner, an exploited factory worker, an innocent culprit, a landless farmer and innumerable other marginalized members of our society, whom we neglect while we talk of our legal system. Even the

Vice President of our country, Sri M. Venkaiah Naidu has highlighted this problem in one of his lectures by saying, “the language used in the courts should be understood by the petitioners who are seeking justice.”

The easiest and the most cost-effective way of solving all these problems is ‘**Linguistic Balancing.**’ Legal Education system of our country needs to be revamped because of the aforementioned reasons. The issue is not that this language bias entered our ground norm but that , it has stayed for more than 70 after our independence. The legal system of our country needs dire help. This must start with the legislature amending the Constitution and actually allowing the High Courts to function in the local and regional languages. This will not only bring confidence in the citizens but will also build up their trust in the judicial system. Judgments must be translated in the regional language along with being originally written in the English language. A step has already been taken by the Supreme Court in which it has started translating judgments into selective local languages and desires to increase its vernacular base as when its capacity allows it to. Cases are being translated into 13 local languages. There is huge apprehension in the minds of lawyers before going to the High Court or Supreme Court after years of arguing in the local courts, who are not that well-equipped with the English language, that they spend nights thinking and studying their case but the English language. This needs to change so as to make people more confident about the law that governs them.

Legal reading material for the law schools must be translated in all the local and regional languages so as to encourage students and young minds to take up law as their field of profession. Most of the children studying from a vernacular school do not opt for such subjects because of the language included in it. However, the Government should try to make the subject more accessible to the young minds so that more and more people take up law as a profession. Right now, each and every Act of the government is officially passed in the English language and to the most, in Hindi language. But, nothing gets translated in the local language because of which there is a huge gap between the law making agencies and the people for whom the law is made. This gap needs to be bridged so that legal knowledge can be accessed by one and all. The legal education system and the big law schools teaching in English should make translators available to them who are not that well versed in English. A student speaking his/her own mother tongue must not be ashamed in front of everyone but should be respected because that student has the courage to live his

life- not with some borrowed colonial language but his own language. If this step be taken to translate all our legal knowledge in regional languages, even the issue of diversification in Courts can be solved.

Legal Education in regional languages must be provided at secondary and senior secondary level to make students aware of the same from the grassroot level. Internships, mootings, etc. must be encouraged in local languages as well.

Conclusion:

If Google can, why can't our legal system translate everything in the local language. The steps taken by our judiciary alone are not enough to solve the ailments that our legal system is suffering from. Steps such as suggested above and many others will be required to bring a complete overhaul in our legal system. And the same is quite possible if our legislature and judiciary become a bit more proactive. At the end, it's the people who really need to carry forward their own aspirations, because the law is the public conscience and the public must know about it.



**“THE LAW IS A
PROFESSION OF
WORDS.”
-DAVID MELLINKOFF**