

Understanding Legal Language: Problems And Measures For Its Removal

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ABSTRACT

Law is a field in which language matters the most. Law is an inexact science as like other social sciences. Neither mathematics nor science is found in legal language. However, the language of the law seems mysterious, as if lawyers are priests muttering incantations in a secret tongue kept hidden from the laity. Law is a specialized subject and it has specific language and terminology. It employs specialized vocabulary and unusual sentence structure which contributes to its peculiarities. The language of law is not an ordinary English language but in fact a complicated arrangement of system containing juristic traits with fundamental of law which perhaps is capable to solve technical question of law. This research paper seeks to throw light on the concept of legal language, its problems and solution to the problems of legal language

KEYWORDS: Law, Language, Technicality, Problem, Remedies.

INTRODUCTION

Law is made by means of language. Languages are the basic legislative devices. It is innate and a veritable tool of the legal profession as a lawyer's proficiency is sometimes measured in terms of linguistic dexterity. However, there is an eclipse of uncertainties over the words though it is an admitted fact that words are the raw materials for the persons engaged in legal profession. It is often said, “*if you learn to play with words, you learn to play with the world*”. Words are not only the instruments of thought but they are means to achieve its objects. Law is a technical subject and has its own programming language known as legal language. It employs specialized vocabulary and unusual sentence structure which contributes to its peculiarities and deviations from ordinary language. The language of law is not an ordinary English language but in fact a complicated arrangement of system containing juristic traits with fundamental of law which perhaps is capable to solve technical question of law. What makes the “Language of Law” different from general English are the vocabulary, syntax and semantics used in it and this makes it onerous to learn.

CONCEPT OF LEGAL LANGUAGE:

Legal language aka legalese is a specialized language of legal profession.¹ It is the language in which legal prescriptions or legal norms are formulated. According to Tiersma “*Legal language has been called an argot, a dialect, a register, a style, and even a separate language. In fact, it is best described with the relatively new term sublanguage. A sublanguage has its own specialized grammar, a limited subject matter, contains lexical, syntactic, and semantic restrictions, and allows deviant rules of grammar that are not acceptable in the standard language.*”² The phrase ‘legal language’ is evidently not a single unified variety rather a cluster of uses, distributed on dimensions that need to be disentangled.³ The term is used to describe a general field of study like law and language, the language of the law, language in law as well as forensic linguistics.⁴ Legal language is not merely a language rather a specific language containing number of technical and specified words and its used cannot be avoided. As a result, there is a general conception that common men cannot understand legal language as it is a technical subject. Only the legal experts are able to

¹ Merriam-Webster, “*Legalese*”, available at: <https://www.merriam-webster.com/dictionary/legalese> (accessed on 10 June 2024).

² Allan Durant and Janny H.C. Leung, *Law and Language* 5 (Taylor & Francis, 2016).

³ *Id.*, at 2

⁴ *Id.*, at 3

understand the technicality of legal language because they possess technique to understand it.⁵ Legal language help in building a foundation to express better and it serves as a powerful tool in the hands of legal profession through which they have maintained their exclusive identity in the field of law.

The importance for studying language and law was realized during the 20th century. It was Australian Semantic Scientist Ludwig Wittgenstein who inspired the jurist for studying language and law. According to him the meaning of words depends upon its use of language. He further states that the function of philosophy is not to interfere with actual use of language but to interpret the language.⁶ Hence, there exist a symbiotic relationship between language and the law because the framing and understanding of the law is possible only through the process of language.⁷ The main object for studying law and language is to achieve clarity and simplicity in legal language. However, simplifying legal language is a matter of debate because legal language contains legal technicalities⁸ which arise from the necessity of having a comparatively small number of rules and principles to cover a great number of cases.⁹

Legal technicality is based on the strict interpretation of law. It is generally taken to represent a strict adherence to the words of statutes to determine the spirit of justice. This is because, 'law is not an omnipresence brooding in the sky, but the prophecy of what the Court will do'.¹⁰ In giving life to the abstract concept known as legal technicality, His Lord Justice Niki Tobi JSC (as he then was) notes¹¹ that-

"A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of Court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent."

FACTORS RESPONSIBLE FOR THE DEVELOPMENT OF LEGAL LANGUAGE:

The complexity of legal language evolved over the time and can be attributed to its long historical development. The following factors are responsible for the growth of legal language from ordinary language to its distinctiveness-

Legal English: Legal English is a register of English used in legal writing and is different from general English. According to David Mellinkoff, Legal English includes "*distinctive words, meanings, phrases, and modes of expression*". Legal English arises from culture, practice and historical dimensions.¹² The development of Legal English has been molded together with the history of Great Britain and its common law. Legal English changes its form rapidly and was greatly influenced by many archaic Anglo-Saxon, Latin and French languages, which acts as a backbone of legal language.

⁵ Dr. S.C.Tripathi, *Legal Language, Legal Writing & General English* 10 (Central Law Publications, Allahabad, Fourth Edition, Reprinted 2009).

⁶ *Id.*, at 5.

⁷ Oluwole Sanni, A review of legal language: A new direction for legal communication available at: https://www.academia.edu/81493905/A_review_of_legal_language_A_new_direction_for_legal_communication (accessed on 13 June 2024).

⁸ *Supra* note 5 at 6.

⁹ William W. Brewton, "Justice by Technicality" 37 *The Philosophical Review* 591 (1928).

¹⁰ Olusegun Femi Akeredolu, The Implications of Legal Technicality on Rule of Law and Administration of Justice available at: er.biu.edu.ng/wp-content/uploads/2020/02/THE-IMPLICATIONS-OF-LEGAL-TECHNICALITY-ON-RULE-OF-LAW-AND-ADMINISTRATION-OF-JUSTICE-Olusegun-Femi-Akered-olu-converted.pdf (accessed on 11 June 2024).

¹¹ In *Adedeji v. The State* (1992) 4 NWLR (Pt. 234) 248, at page 265.

¹² J. Tovel, Right and Rites: Initiation, Language and Performance in Law and Legal Education available at: <http://ssrn.com/abstract=950745> (accessed on 11 June 2024).

Mixed linguistic heritage: As aforementioned, legal language developed with Latin, French and English as part of its history and with time they have become more popular.¹³ As for instance- Ex turpi causa non oritur action (No right of action arises from an immoral or disgraceful consideration).

Doctrine of Precedent: The doctrine of precedent enjoins advocates to stand with the earlier decision so that when the situation arises in a new case, the earlier decision and its principles will be applied. Advocates have acquired the habit of adopting earlier archaic expressions and pleadings into standard form of contracts and deeds. A popular example is “in witnesseth whereof” used where a person signs a contract.¹⁴

Ostentatious pomposity: Use of jargon and bombastic words is the intentional self-importance quality of legal professional to inspire awe and respect in the field. As a result this language style and vocabulary have almost attained a cultist quality and have become a mark of legal profession.

SCOPE AND DOMAIN OF LEGAL LANGUAGE:

The scope and extent of legal language is very wide and technical as different types of people come within its ambit. In contemporary society there are two categories of people i.e.,-

Those who are affected with law (compulsory not legal expert); and

Those who deal with the law (compulsory legal experts).¹⁵

Here, compulsory not legal expert are the ordinary citizens and law-makers; and compulsory legal expert are the judge and legal adviser. **Furthermore, there are five dimensional communications in the field of law which are as follows-**

Firstly, from the law-makers – to judges – to advocates.

Secondly, from the judges - to the advocate and vice-versa.

Thirdly, among judges, advocates and legal experts.

Fourthly, here communication takes place between ordinary citizens and legal adviser (i.e., from jury to judge - from legal advisers to client – from client to legal advisers – from parties to the judges).

Last but not the least is communication among ordinary citizens expressed in contracts, wills, bye-laws, information etc.¹⁶

In the aforementioned communications, the language use in points (a) (b) and (c) are mostly technical whereas in point (d) the legal advisers uses simple language to the best of his ability because lack of clarity may creates misunderstanding. The language use in point (e) is very simple as it is communication among ordinary citizens.

CHARACTERISTIC OF LEGAL LANGUAGE:

The following are some of the essential attributes of legal language -

It is an archaic and conservative language. For example- “aforesaid”, witnesseth”, “herein”, “therewith”, etc.

It is highly formal and is full of Latin and French words and expressions. As for instance- inter alia, caveat emptor, sub silentio, ratio decidendi etc.

It is too wordy and redundant as opposed to brevity and accuracy. As for instance, in the title of almost every Will it is seen- **"Last Will and Testament"**. Here, there is no difference between a Will and a Testament but for some reason, it has refused to change.

It leads to repetitiveness and these eventually end up being long and windy.

It utilizes technical vocabulary. This includes words such as “asportation,” “interpleader,” “quitclaim,” “expunge a lis pendens,” “black-letter law,” “case on point,” etc.

It has lengthy and complex sentence.

It seeks to minimize ambiguity and vagueness.

¹³ Y. Yeo, “Plain English for Lawyers” 8 Singapore Academy of Law Journal 303(1996).

¹⁴ Philip Folarin and Eniayo Sobola, “Language of Law: Imperative for Linguistic Simplicity” 2 Journal of Research Findings 278 (2019).

¹⁵ *Supra* note 5 at 10.

¹⁶ *Ibid.*

It has impersonal constructions. The best example is avoidance of first, second person expression (“I” and “YOU”) and preference for third person in referring to oneself i.e. sex offender shall register with the police.

PROBLEMS OF LEGAL LANGUAGE:

The complexity in the legal language arise due to the following reasons -

Uncertainty and doubtfulness: In legal language there are many words which have no definite meaning thus reader guess the meaning by referring to the context in which a particular word is used. Hence, such uncertainty causes disastrous results. For Instance- The word ‘right’ means ‘Claim’ as well as ‘exactness’, ‘just’, ‘true’, ‘morally good’.

Incompleteness of the Human language: Language which has been made by human being experience incompleteness and imperfectness which therefore affects its expressions as a result true interpretations could not be made. For instance- whether a bicycle is a carriage-Answer is ‘No’.

Change in the meaning of words as time passes: Meaning of many words get changed with the passage of time. Some words become narrowed, some widened and some get changed by modification. For example- The word ‘asylum’ means ‘place for any kind of shelter’ but in course of time it means ‘place wherein mentally sick persons stay for treatment’ nevertheless its old meaning has not disappeared.¹⁷

Rhetoric language: The art of expression is considered to be the synonymous of legal language. Rhetoric language has both positive and derogatory connotation. In positive sense, it is the art of speaking and writing well elegantly and effectively, especially in order to persuade or influence other. While in derogatory sense, rhetoric indicates the language which is full of unnecessarily long, formal or literary words and phrases, and which is often insincere and meaningless. It communicates the idea of over-elaboration or insincerity in style. For instance- The words “as to” which are of doubtful statutory meaning and ignored outside the law, is used at anytime and in any way in law eg., As to the question, the plaintiff has no reply, She did not know as to where the offence was committed¹⁸ etc.,.

Legalistic language: The legalistic language does not remain ordinary language for the people and such mode of legal language is problematic indeed. For instance, the word ‘shall’ is used as ‘it is directed’ in legalistic language, ‘per day’ as ‘per diem’, ‘may’ as ‘be empowered to’ etc.,.¹⁹

Verbosity: Sometimes, to express a view, two or more words are used from different angle by using unnecessary irritative and obsolete words despite the change has been incorporated in law. For instance- said, the aforesaid, whereas, hereinbefore, hereinafter etc.

REMEDIES AVAILABLE:

There is dearth of proper words for expressing all the ideas in an unambiguous manner. However, if the words are used in performative manner, it may provide clarity in its expression to some extent. According to Prof. Hart, “*In contracts and deeds the use of performative language would be able to provide more clarity and it deserves to receive attention.*” Thus, use of performative language in legal language will be effective to solve problems of legal language. Due to technicalities of legal language it becomes difficult to understand not only by general public but sometimes by legal experts as well. Therefore, it is desirable to simplify the legal language instead of using verbosity, idiomatic language or traditional old words.²⁰ The following are some of the fundamental that need to be considered for simplifying legal language and to make communications more effectively-

¹⁷ *Supra* note 5 at 12.

¹⁸ *Id.*, at 13.

¹⁹ *Ibid.*

²⁰ *Supra* note 5 at 14.

Firstly, encourages teaching of drafting skill as it has a positive impact on students' communication skills. Secondly, brevity, plain English, and directness are the qualities of good draft. Thirdly, drafting in plain English increases efficiency, understanding and improves the image of the legal profession. Fourthly, attention should be given to law and language relationship rather than just legal language. Lastly, law students should be encouraged to draft within the boundaries of the law rather than just a draft-precedent, for better communication creatively.

CONCLUSION:

Legal language is the heart and soul of legal profession. It is the language which differentiates the lawman from the layman. Legal language is a complex language because the vocabulary of law is not so straightforward; hence misinterpretation of words can cause blunder for a legal professional. Playing with words is an art and is undoubtedly the most fundamental tool of the legal language. Thus, person engaged in legal profession must have a distinctive vocabulary and an impressive understanding of legal terms and legal language. Legal language is a tool to interpret the law and helps convey deep meaning. Law is a metaphysical phenomenon that is 'alive' only in language. Thus, Legal Language is a species within the genus Language.

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