



Use of Archaic Language in Law

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Abstract:

The purpose of writing this research paper has been to highlight the problem of legal language nowadays, since the language that is used is archaic and inappropriate, similar to the language when laws were first drafted. No effort has been made to boost the evolution of the language in the law field, this, in many ways, creating problems amongst the law students in understanding the legal language. This problem could be dealt at school level when they are still being moulded at the graduate level.

The idea that lawyers actually bent legal English, or cling to old habits, to keep the public in the dark and continue to protect their monopoly on legal services is an exaggerated perspective. Still, lawyers seem to trot out their most ancient, outmoded, and long-winded and complicated phrases when writing documents directly for clients, all too often, complexity of language masking simplicity of content.

Key words: legal language, legal English, technicality, accessibility

“Read the documents carefully, it is drafted by an advocate” - this is the most common statement that we hear when a person gets a letter written by an advocate. The first logic behind this sentence is that the language drafted by the advocate is so complicated that it is really difficult for a layman to understand what exactly is written in it. The second reason is that a lawman will most often make use of archaic language that was used in the 15-16th centuries. In both cases a layman ends up by appointing a new lawyer to understand the clauses that are drafted by the first lawyer. As argued by Peter Butt,

“Traditional legal language is archaic legal language that is full of legalese, illogical word order because of Law French and Law Latin, complex grammatical structures, and sentences of excruciating length.” (Bhatia 2010, 23) It has become a ritual amongst the lawmen to use the old English which they consider a style symbol of the lawyers. The fact remains the same that it becomes a horrifying experience for a layman to go through each and every word of the letter which he finds beyond his capacity to understand and answer.

A general belief prevails that only a lawyer can understand and communicate to another lawyer, though it is a fact that a lawyer’s profession depends on language and how well equipped one is in the use of the structure and grammar of the language. A lawyer’s profession depends on language; lawyers earn from it, and general grammar rules govern their language use and style. However, lawyers think otherwise, that it is difficult to communicate in plain English because they are lawyers. (Dave 2002)

In spite of the fact that English is not the language of the common man in India, it is widely used in the practice of the law cases; and law is for its citizens. The immediate question that arises is the following: if a layman doesn’t understand the language of the law then what purpose does it serve by being the language of only a handful of people who manipulate it and fool around with its technicality? “Let us not be hesitant to submit that in India neither the Bar nor the law scholars have addressed the problems relating to legal language as it has been addressed by the Common Law or Civil Law followers in English or non-English speaking countries such as Canada, England, Australia, America, Switzerland and Germany. The Indian Judges, too, have neither criticized the defects of unclear archaic mode of legal language nor encouraged the plain legal language brief-writers about its benefits in pursuit of justice.” (Bhatia 2012, 17) Though there is no parliamentary law to say that the legal language should be plain, the language has to a certain extent failed to evolve in time.

This has virtually made legal language a dead language. The legal language is used in a different way as compared to the ordinary manner in which language is used. According to Ashok R. Kelkar, generally legal communication takes place in

one of the five types of situational contexts: “i) the law-giver to the judge and the counsel-statutes, preamble to statutes, ii) the judge to the counsel, the Counsel to the judge-judgments, briefs, court room exchange, preamble like portions of judgment and briefs, iii) consultation among judges, among counsels among men of law, iv) the judge to the jury, the counsel to the client, the client to the counsel- the judge’s brief, consultations, and v) between ordinary citizens-contracts, testaments, by-laws, notices, and the like. The language of law is however, also subject to certain other hazards- the hazard of interested disputes as to interpretation and the hazard of interested disputes as to the correct text itself.” (Kelkar 1993, 369)

Some of the critics of legal language offer the argument that due to its technicality, the law legal language is different from the ordinary or plain language. N.R Madhava Menon points out that “the language of the law is not just English as ordinarily understood, but a varietal system of technical terms, situational meanings, complicated procedural arrangements etc. which communicates, at least among the law men, in a unique style, imperceptibility interwoven with certain juristic traits and judicial qualities.” (Menon 1993, iii-iv) However, the question remains the same - whether the technicality of the language can be communicated in plain language or not. The survival and evolution of any language depends on its adaptability and effective understanding. He further suggests that, “with change in the language of law, it may become necessary to evolve a new Indian jurisprudence which is not as much dependent on English precedents as in the case now and which adopts a new approach to interpretation of statutes and style of argumentation.” (Menon 1993, iv)

Knowing the problem and not seeking solution is one aspect, while not paying any heed to it is likely to be a different issue. Every law practitioner understands this problem but as soon as he graduates the Law school he enters the same lobby of the lawyers who are acclimatized with this legal language. The lawyers in making in the law school have to take up this challenge of plain legal writing boldly, because plain legal language is not encouraged. Irene Leonard King, in “What’s It Going to Take for You to Use Plain Language”, pleads for the advantages of plain legal language: “It increases effective and conveyance; it tends to persuade the others; it tends to

persuade the Bench; it tends to increase the clientele base; it increases clear communication; it provides a high level of quality legal service to consumer-clients; it tends to help legal accuracy, skill to say in the simplest way in brevity but with clarity; plain legal English is more persuasive; it shows the proof of creativity; it helps to improve document's substance; it saves time; it helps to lessen the use of 'hereby' that adds nothing to the document; it helps to wither legalese habit; and it proves to be productive." (in Bhatia 2010, 22)

The foremost benefit of plain language is earning good clientele. "Plain language will definitely give a chance to the lawman to excel in the competition once he starts using plain language in his practice. Plain legal English drafting shall develop good drafting and good drafting attracts clienteles who are looking for lawyers that use plain legal English drafting understandable by the clienteles easily." (King in Bhatia 2010, 23) To excel in good plain language writing, the lawman must have both a good understanding of law and a grasp of principles of plain legal writing, claim Helen S. Shapo, Marilyn R. Walter and Elizabeth Fajans in *Writing and Analysis in the Law* (2003).

Conclusion

Legal writing suffers from two wrongs. First, its style, and, second, it's content. (cf. Rodel 1991) This may seem to be due to a number of unusual features largely relating to terminology, linguistic structure, linguistic conventions, and punctuations, which have their roots in the development of English as legal language. Law French and Law Latin have influenced the development of English as a legal language. (Cf. Williams 1946)

BIBLIOGRAPHY

- Bhatia, K.L. 2010. *Textbook on Legal language and Legal Writing*. New Delhi: Universal Law Publishing
- Dave, Sandeep. 2002. "Features- Plain Language in Law." <http://www.llrx.com/features/plainlanguage.htm>

Kelkar, Ashok R. 1993. "Communication and Style in Legal Language." *Indian Bar Review* 10(3): 363-78.

King, Irene Leonard. "What's It Going to Take for You to Use Plain Language." Accessed May 24, 2013. <http://www.plainlanguagenetwork.org>

Menon, N.R. Madhava. 1993. "From the Editor." *Indian Bar Review* 10(3): iii-iv.

Rodel, Fred. 1991. "Goodbye to Law Reviews." In *Trails and tribulations- An Anthology of Appealing Legal Humor*, edited by Daniel R. White, Anova Books.

Shapo, Helen S., Marilyn R. Walter and Elizabeth Fajans 2003. *Writing and Analysis in the Law*. Foundation Press.

Williams, Glanville L. 1945. 1946. 'Language and the Law.' (Pt 1-4) (Pt 5) *Law Quarterly Review* 61.62.