

Chapter IV

Legal Style

4.1 Introduction:

Every profession has its unique language peculiarities. These peculiarities are visible at the phonological, semantic, syntactic, lexical and graphological levels. Hence, the language of a profession could be termed and distinguished as professional register. It differs significantly from the other registers in terms of the stylistic features manifested in the lexical, the syntactic and the graphological peculiarities. The legal texts are prescriptive, descriptive, argumentative, persuasive and analytical depending upon the context. Present research is an attempt to discuss such stylistic peculiarities of the legal language. No fixed parameters have been chosen for the analysis as quite a few stylistic features have been available which make the legalese distinct. However, foregrounding, cohesion and such parameters have been the part of the analyses and interpretations.

Style is man. Every person and profession has a distinct style of its own. No language should be considered as “a readily identifiable object in reality which we can isolate and examine” (Crystal and Davy 3). Stylistics is the study and interpretation of the different elements that make a particular writing distinctive and unique. Leech, Deuchar and Hoogenraad define style in this way “...language also varies according to the use to which it is put. While the term dialect is convenient to refer to language variation according to the user, REGISTER can be used to refer to variation according to use (sometimes also known as style).” (9)

The style of legal language differs not just from other professions but also from the ordinary usage of language. Legal language is a particular language variety; it is a “functional variant of natural language” (Mattila 3). The unique lexicon, the syntactic features that comprise of the sentence types, clauses types, the way the things have been presented and so on constitute the stylistic study of the legal language. Actually, Legal language comprises of many sub-genres within the domain of legal matters mirror a great variety of legal discourses. The kind of language used by advocates in the Courtroom language is different from the language used by the authors of legal texts or legislators. Judicial decisions have their own peculiarity and

stands as sub-genre; the language of regulations, statutes, agreements, etc. is another distinct sub-genre, etc.

“Common features of style include the use of dialogue, including regional accents and individual dialects (or idiolects), the use of grammar, such as the observation of active voice and passive voice, the distribution of sentence lengths, the use of particular language registers, and so on.” (Wikipedia)

Though legal language is not the premise of an individual or group, its convention makes it a distinct register. Danet is of the opinion that legal language is distinct and differentiated. Hence, she thinks it is possible to call it a separate dialect or sublanguage. Nevertheless, she prefers to label it a register due to her conviction that “register is mainly a matter of formality” (275). In order to understand the peculiarities of it, stylistic study is imperative. This study does include the lexical and syntactic features of the legal language which have been already discussed in the previous chapters of this research project. However, there will be an attempt to throw light on the same with new dimensions and other added features will be discussed in this chapter which is devoted to the study of legal style.

There is marked difference in the way the lawyers or the persons belonging to the law fraternity speak especially in the legal discourse. Though spoken legal language is not aimed at here, its mention is necessary. Urban Lavery (Bhatnagar 33) appreciates lawyers for their nimbleness in spoken discourse against their poor writings skills. Speech and writing differ greatly. The legal language in written form has its own features and defects too which is the area of this research.

In order to validate the argument, various cases, acts and other legal documents have been taken into consideration. Some of such texts have already been discussed after their thorough analysis in the previous chapters. Hence, in order to avoid their repletion, only peculiarities have been discussed here. The stylistic analysis will be at the graphological, grammatical, syntactic, lexical, grammatical and textual levels.

4.2 Technical Terms:

Every profession has its own characteristic and distinct lexicon. The legal discourse is full of the terms like *abate*, *bail*, *allege*, *requisition*, *domicile*, *forfeit*, *Decree*, *Mortgage*, *Sub-letting*, *Deem*, *Permisses*, *Tenant*, *Lease*, *Hereinafter*, *landlord* which do not any meaning in the general usage and hence they are technical

as belonging to the law discourse alone. Though they increase the difficulty in understanding for the laypersons, they have been accepted for years and hence have special significance in the discourse and cannot be replaced as claimed by the proponents of the plain language. The words carry great significance and have been tried and tested over the years. They are the part of the great legal tradition as well. Hence, though seemingly they are different and abstract in nature, they have been defined duly especially in the acts as even known words have been defined in order to suggest the specific meaning intended by the law in the context. Such words have been discussed in detail in the second chapter of this project. Moreover, in the cases and acts that have been analysed in this chapter, they are easily visible.

4.3 Archaism:

The legal discourse is highly distinct discourse as it is rich in its own way. Though archaism has been criticised as a defect, the close look at it makes one believe it be a highly ornamental thing. Though ornamentation has hardly any significance in a professional discourse, it brings its peculiarity to the fore. Hence, the age-old and outdated expressions like *hereinafter*, *herein*, *hereto*, *hereby*, *hereof*, *whosoever*, *thereof* are still retained. Though their simplified versions are available, their absence makes the legal language indifferent. Hence, it seems, they have been used today also. These simplified versions or equivalent of the archaic words have been discussed at length in the second chapter of this project the title of which is 'Legal Lexicon'. They give an antique look to the legal language. In the second chapter of this research project, they have been discussed in detail. The criticism in favour and against has also been taken into consideration there.

4.4 Foreign Expressions:

English is a borrowed language and the Norman domination is quite evident in the legal language. As a result of this we find many words from the French and Latin languages. The words like *Jurisdiction*, *alien*, *per capita*, *suo moto*, *statute*, *ex officio*, *de facto*, *amicus curiae*, *prime facie*, *habeas corpus*, though belong to foreign languages, no more appear so because of their consistent appearance not just in the legal discourse but in the journalistic and parliamentary discourses. Some of such words have been now widely used in the everyday use. The expressions- *alien*, *per capita*, *ex officio*, *prime facie*, etc. have been extensively used in general discourse

also. Besides, *ad hoc*, *per diem*, *bonafide* have been used in many official discourses which have no direct connection with the legal discourse.

Moreover, there are many legal maxims which have got a great validity and wide meaning and have been used quite extensively. Here is just a sample of it- *Ignorantia Facit Excusat*: Ignorance of law is no excuse (though ignorance of fact may be excused). These maxims are the legal proverbs. The proverbs are pregnant with meaning. A sentence tells the things that cannot be expressed in hundred of words. They are like the moral that we draw and derive from the parables and other such stories. They help for being succinct in expression especially amidst the charge against the lawyers for being verbose often.

4.5 Common Terms with Uncommon Meanings:

Words carry contextual meanings. Words have many layers and facets of interpretation depending upon their use in a discourse. The same is the case with legal language where the words gain special significance. The common words found in the everyday usage like *action*, *suit*, *appeal*, *judge*, *right*, *duty* and numerous others have a distinct meaning in the legal register. Such words are termed as quotidian words too.

Even the modal auxiliary ‘shall’ which has been ordinarily used after the first person pronouns have obligatory meaning in the legal discourse. It gives a binding force. It is used after any subject and is not restricted to the personal pronouns alone. “Every student shall abide by the rules and regulations of the college” is binding on the students. The students are supposed to follow the rules and regulations of the college.

4.6 The Use of Doublets and Triplets or Binomials:

One of the salient features of the legal language is the use of synonymous words side by side. It is “a sequence of two words pertaining to the same form-class, placed on an identical level of syntactic hierarchy, and ordinarily connected by some kind of lexical link”. (Gustafsson 9) If they are two, they are doublets and when they are three, they are termed as triplets. Though this contributes to wordiness, it makes the intended meaning clearer. Legal language has such features that at a time some appear to be stylistic defects and the qualities too. Here are some examples of the same:

- answerable and accountable

- bind and obligate care and attention
- due and payable
- heirs and successors
- new and novel

It is equally important and inevitable to mention that the doublets are necessary if different situations are taken into consideration. Law is a game of words and on the basis of the interpretations of the words mostly that the matters are decided. Hence, to avoid any sort of misinterpretation or the meaning beyond the expected one, doublets have been in vogue. In the above cited examples, thought answerable and accountable are synonymous, they have their own meanings which are possible to be meant different in different legal situations. Heirs differ from the successors; new and novel differ on many grounds and due is not every time payable.

Here are some triplets:

- form, manner and method
- name, constitute and appoint
- possession, custody and control

In order to give no way to more than one interpretation or in the situation when multiple possibilities are supposed, triplets are also utilized. Hence, on one hand form, manner and method different from one another on the other hand they have been used in a single phrase to mean the same. The words stand in resemblance maintaining their own individuality. Possession may be of property; custody is of a person and control can be of a situation too.

However, doublets are not always synonymous. Sometimes they are antonymous e.g *directly* or *indirectly*. Often there more than one possibility which are better served by such doublets. Though it is a quality, it is a defect as it brings monotony too. This has been already discussed in the second chapter of this project.

4.7 Nominalization:

This is one of salient characteristics of the legal language which has been dealt in detail in the second and third chapters of this research project. However, here is a cursory glance from the stylistic viewpoint.

When a verb or adjective is converted into a noun, the process is called nominalization. The most frequent nominalization found in the legal language is deverbal nominalization where the suffixes *ion* and *ment* are found in plenty. We

have the nominalised words with the suffix *ion* like *foundation, protection, provision, adoption* and with the suffix *ment* such as *punishment, imprisonment, agreement*. The suffixes *ion* and *ment* denote the state, action or instance of verbs and signify the process of making or doing.

This style has been criticised bitterly for incrassating the intricacy which is already there in the legal language.

4.8 Lengthiness, Complexity and Monotony:

Legal language is full of very long, enormously complex sentence structures that give birth to monotony in expression. Instead of terming it to be a stylistic peculiarity, it is better to call it a stylistic defect. The proponents of the plain language movements have worked on this more than anything else. Other peculiarities have positives more than the negatives. But this feature has more the defects. Whatever it may be, it one of the stylistic features of the legal language where the average sentence length varies from seven words to over four hundred words. In his very scholarly article the legal language entitled 'The Language of the Law'; Urban Lavery, a veteran legal scholar and critic has cited numerous examples from the medieval to modern periods. Right from the Acts of Parliament in the times of Henry VII to the modern Acts of Parliament, the writer finds extremely long and intricate sentence structures which, to him, are utterly unnecessary. He has justified his argument quite convincingly by citing the examples where the sentences with more than four hundred words have been frequently found. (33-48).

The complexity is the result of wordiness which is considered as a defect. Moreover, it is also the consequence of too many modifications, over-cautiousness to avoid misinterpretation, embedded clause, archaic expression, employment of foreign expressions which are termed as jargon or argot, foreign maxims, Latinized expressions and so on. The below cited examples under the various heads like style of acts, deeds and cases would better exemplify this. Moreover, these issues have been given justice in the third chapter of this research project entitled 'Legal Syntax'. We criticise legal language for repetition and hence, to discuss this feature more would amount to repetition itself.

4.9 Extensive Use of Passive Voice:

Whether it is to attain uniformity or to bring objectively, the extensive use of passive construction is the characteristic feature of the legal language. This has been

less criticised by the experts as it is felt to be a necessity quite often. There are situations where and when the actor is not specific. There are requirements when the identity of the actor is to be kept a secret deliberately. There are times when the action is more importance than the doer of the action. In all such and many other situations, passive voice is preferred. Though it adds to the ambiguity and abstractness, it is sometimes the necessity. Hence, if the proponents of the plain language call it a defect, it is actually a necessary thing. If it is evil, in their eyes, it is a necessary evil for me. However, it must be taken positively as it is wonderful stylistic feature of the legal language especially because it ensures objectivity and uniformity which are the necessities of the law and its discourse. Moreover, the impersonal and detached character of the legal language is desired which is achieved by the use of passive constructions. This feature has been delineated with quite few examples in the third chapter of this research project.

4.10 Verbosity:

Verbosity or wordiness is another style of the legal language. This is also much criticised as being needless and contributing to complexity and monotony. The doublets and triplets which have been discussed earlier in this chapter also cause wordiness. When one word enough, why two? Though this is justifiable in certain situations, this has been considered as a defect as it causes wordiness and wordiness is not a virtue. Precision and conciseness are the properties of good style.

The bountiful verbose expressions are found in the legal discourse. *Adequate number of* is used instead of *enough*; *Until such time as* is used for *until* and so on. The preference of prepositional phrases to adverbs amounts to wordiness. This feature has been detailed in the third chapter of this research project.

Arthur Symonds has bitterly criticized the verbosity, wordiness and pompousness of lawyers and parliamentary draftsmen. (75) He has given a very amusing example where a simple expression ‘I will give you that orange’ will be pompously and monotonously put forth in the legal language.

“I give you all and singular, my estate and interest, right, title, claim and advantage of and in that orange, with all its rind, skin, juice, pulp and pips, and all right and advantage therein, with full power to bite, cut, suck and otherwise eat the same or give the same away as fully and effectually as I the said A,B, am now entitled to bite, cut, suck or otherwise eat the same orange or give the same away

with or without its rind, skin, juice pulp and pips, anything hereinbefore or hereinafter any other deed or deeds, instrument or instruments of what nature or kind so ever, to the contrary in any case, notwithstanding.” (Symonds 75)

4.11 Circumlocution and Jargon:

Circumlocution is yet another stylistic feature of the legal discourse. It is considered as a defect too. Rightly so as needless employment of more words cannot be an asset. Urban Lavery, a very strong and staunch critic of the defects in legal language says:

“Another chief defect in the writing of lawyers is the fact that they use circumlocution rather than straight, blunt speech. They prefer to go round a subject with their words rather than straight to it. In their use of language they prefer a steam shovel rather than a spade-and then they neglect to cast away the rubbish.” (43) Circumlocution and jargon have a very close association. Jargon necessitates to use the lawyers use circumlocution rather than short straight speech. Moreover, it tends for the use of vague, woolly, abstract nouns rather than the concrete nouns.

Sir Arthur Quiller Couch, the famous professor of English literature at Cambridge University, in his treatise ‘Art of Writing’, while rebuking circumlocution, devotes one chapter to ‘Interlude: On Jargon’. He says (Quoted, Lavery in Bhatnagar):

“Caution is its father, the instinct to save everything and especially trouble; its mother, Indolence. It looks precise, but it is not. It is in these times safe; a thousand men have said it before and not one to your knowledge has been prosecuted for it.” (44) In order to justify his point, the learned professor cites a fitting example:

“Has a minister to say “No” in the House of Commons? Some men are constitutionally incapable of saying no; but the Minister conveys it thus: “The answer to the question is in the negative.” That means “no”. Can you discover it to mean anything less, or anything more except that the speaker is a pompous person?” (44)

The words like *case, instance, character, nature, condition, pursuant, degree* have been used many times rather unnecessarily. Quiller-Couch says: “...whenever in writing your pen betrays you to one or another of them, pull yourself up and take through...” (44)

The expressions like *as regards, with regard to, in respect of, in connection with, according as to whether* are considered as the dodges of jargon. In Marathi or Hindi also such expressions frequently used as fillers. When the thought or idea is unclear, they help to fill the gaps in communication/conversation until the proper words is arrived at. Hence, we have “I want say...”, “Do one thing...” and so on. I call it the introductory expression which is quite needless in fluent speech or rhetoric. Such words amounting to circumlocution have been compared to charity as they too have multitude of sins. The words are compared to springboard, used for jumping from one idea to another. (45)

4.12 Prolivity:

Prolivity is considered as a salient feature. However, it has been criticised too. Webster defines *prolix* as *extending to great length*. It is one of the most frequently found feature of the legal discourse which has been discussed to great length in this chapter under the heading *Lengthiness, Complexity and Monotony*. Webster considers prolivity as one of the worst qualities of style. (Lavery in Bhatnagar 41) Prolivity in the legal discourse is evident due to an impelling urge toward guarded and cautious language. It happens when the phrases and clauses are imbedded and parenthetical expressions are used. The cases, acts and other examples of legal language quoted in the present research would serve the purposes.

4.13 Stretched Definitions:

This is another stylistic feature of legal language. Every act has numerous words which have been defined in characteristic way. This feature has been discussed in detail under the title ‘The Style of the Acts’. The definitions serve the intended meaning and not more than that. They help to the users to be specific and help to reduce misinterpretation, if any that arises or may arise. Drafting should be without loopholes. As Crystal and Davy state:

“Whoever composes a legal document must take the greatest pains to ensure that it says exactly what he wants it to say and at the same time gives no opportunities for misinterpretation.... when a document is under scrutiny in a court of law, attention will be paid only to what, as a piece of natural language, it appears actually to declare ...and if the composer happens to have used language which can be taken to mean something other than he intended, he has failed in his job.” (193)

To layperson it is often strange to read the definitions of very common and usual words. It sometimes creates unintended humour. This is evident in an Australian statute where ‘fish’ is defined as that includes ‘beachworm’, ‘fingerprint’, and ‘toeprint’. (Fisheries Management Act, 1994.)

Another example of this which also creates wordiness is of the definition of *industry*. Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of ‘workmen’. (Industrial Dispute Act, 1947.)

Such stretched definitions have invited criticism not just from the supporters of Plain Language Movement or layperson but also from the legal fraternity. When it has been acknowledged and criticised by a person of Justice Krishna Iyer’s stature, it assumes more significance and requires serious attention. Commenting upon the definition of ‘industry’, the honourable justice says: “...a definition is ordinarily the crystallization of legal concept promoting precision and rounding off blurred edges but, alas! The definition viewed in retrospect has achieved the opposite.. .” (A.R.R 1978, S.C. R.548) He has criticised the definition of *industry* terming it to be “clumsy, vaporous and tall and dwarf.” (A.I.R. 1978, S.C. R. 548.)

Firstly, the definitions are expected to be served when necessary. Secondly, they should be as much succinct as possible. The length of definition should not make read feel that the word is easier than the definition. Hence, stretched definitions need to be avoided. Reed Dickerson too thinks in the similar way and call stretched definitions, Humpty Dumptyism, echoing Humpty Dumpty’s scornful assertion: “When I use a word, it means just what I choose it to mean—neither more nor less.” (Carrol 127)

4.14 Conjoining:

Conjoining is another salient feature of the legal language. It is joining of words and phrases with the coordinating conjunctions *and* as well as *or*. They are also termed as *binomial expressions like any and all*. (Gustafsson 123 & 132.)

This feature of language is also termed as ‘recursion’: “given any grammatical sentence of the language, it is always possible to form a sentence that is longer” (O’Grady, Dobrovolsky and Aronoff 134.)

Various linguistic categories are jotted together. There are nouns and even verbs. Here is an example of a typical publishing contract where conjoining is evident:

“While this agreement is in effect, the author shall not, without the prior written consent of the publisher, ‘write’, ‘edit’, ‘print’, or ‘publish’ or cause to be ‘written’, ‘edited’, ‘printed’ or ‘published’, any other edition of the work, whether ‘revised’, ‘supplemented’, ‘corrected’, ‘enlarged’, ‘abridged’, or otherwise...”(Farnsworth and Young 166.)

In the above example, first the active verbs and then the passive forms of verbs have been conjoined. It’s the repetition of the same class of words in order to cover larger canvas of meaning and interpretation.

4.15 Impersonality, Detachment, Objectivity and Formality:

Using passive forms is one of the most common methods of emphasizing the impersonal in a language (Sarcevic 177). The comprehensive use of the third person (singular and plural) in legislative texts helps to emphasize the idea of objectivity, detachment and authoritativeness. Where, for instance, a provision applies to everybody, the sentence either begins with every person, everyone etc. when expressing an obligation or authorization, or no person, no one etc. when expressing a prohibition:

No one may be subjected to slavery, servitude or forced labour.

Everyone has the right of access to – (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights.

Unsurprisingly, in wills, which is a personalized document, the first person singular is used abundantly. One of the few exceptions to the common rule of ‘impersonalization’ in legislative texts is usually seen at the beginning of constitutional documents, such as the Preamble to the Indian Constitution where the first-person plural pronoun and possessive adjective are used:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens...” (Wikipedia)

Though the style of the preamble is not completely detached, it is all-inclusive because of the first person plural pronoun. It appears majestic, impressive

and objective. It has been said that an alternative to the third person pronoun in order to bring objectivity is 'we', which is often used in formal or scientific writing by a single individual. (Quirk et al 350)

However, in most of the cases, the third person pronouns are used which give the sense of impersonality and objectivity. The honourable judges are not addressed 'May it please you' which will give it a personal colour. On the contrary 'May it please the Court' is preferred which is completely detached and impersonal. This is evident at many instances. It has been said 'it shall be unlawful', 'it has been alleged' 'the plaintiff has alleged' and so on. Passive voice also helps in ensuring objectivity and detachment in the legal discourse. It has been said that the legal profession's regular reliance on impersonal constructions is another factor that makes legal documents harder to understand. (Felker et al 31-33.) Though objectivity and impersonality or detachment increases complexity, it is necessary also. Hence, objectify at the cost of complexity is understandable. The general applicability and address to the general and not specific people necessitates the objective and impersonal style. Hence it is quite justifiable. The expressions bench and court (synecdoche and metonymy) also help to keep the legal style impersonal, e.g.

'Has the court made a ruling yet?'

'May I approach the bench?'

However, this impersonality is highly objected for being less human and more machine-like. Some people think that since law is for real people in real situations, the language of law should be more humane. Richard Lanham opines:

"Human beings, we need to remind ourselves here, are social beings... We become uneasy if, for extended periods of time, we neither hear nor see other people. We feel uneasy with the official style for the same reason. It has not human voice, no face, no personality behind it. It creates no society, encourages no social conversation. We feel that it is unreal." (66.)

Almost all the documents except the deeds, agreements, testament and affidavit are written in the third person that denotes impersonality of the legal language. Even when first or second person pronouns are used, the use of passive voice, employment of technical words and formal vocabulary make it quite formal and balances the formality and impersonality.

Many expressions in legal discourse have too much of formality, e.g. the preference of shall to will; positions of people and institutions involved have capitalised initial letters, for instance Grantor, Devisee, Contractor, Attorney, even the names of the documents are capitalised – Warranty Deed, Last Will and Testament, etc.

4.16 Multi-Meaning and Ambiguity:

Legal language has been criticized for having multi-meaning and ambiguity. This has been evident when the vagueness has been tried to be minimized by the use of doublets and triplets. However, there are expressions, where more than one interpretation is possible. Inactive and ambiguous form of words can create doubt in legal result. E.g. the expression: “*Notice shall be issued.*” It is not categorically mentioned who will issue the notice. Here is another expression: “*School building shall have fire alarms.*” It is not clear from it who is liable-School Authority, Fire Brigade, State Fire Extinguisher Office, Electrical Contractor or who.

4.17 Importance to Precedent:

A record of past proceedings, serving as a guide for subsequent cases is precedent. While the new judgments are pronounced, a reference to the previous judgment has often been taken into consideration which validates the given judgment. The precedent serves as the basis or strong foundation. Most importantly, precedent is also a judgment given some time in the past. All the necessary factors are taken into consideration while it is declared. Hence, high amount research and thought has been utilized in it which becomes a very solid foundation for the convincing judgment. Moreover, it helps to take extensive research in hand as already the courts are heavily burdened with too many pending matters. Hence, the characteristic feature of citing the previous judgment of the superior court which is termed as precedent is a peculiar and quite useful style of the legal discourse. This feature has been discussed in detail in the previous chapter of this research.

4. 18 The Style of the Acts:

Every act begins with a short title, year of its enactment and its extent and commencement. As many laws had been introduced by the British during their rule in India, the new laws with sometimes the same titles with the year of its commencement and enactment in the title are brought to the fore.

e.g. *The Evidence Act, 1872*. The title has the year of its commencement. Though it was introduced by the British, it has been continued and retained today also. Had it been modified or repealed by the Indians after the Independence of India, the year could have been different.

The title is followed by the extent. The aforesaid *The Evidence Act, 1872* further says:

It extends to the whole of India³ [Except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial,⁴[other than Courts-martial convened under the Army Act.,] (44 & 45 Vict., c.58)⁵[the Naval Discipline Act (29 & 30 Vict., c 109) or⁶[***] the Indian Navy (Discipline) Act. 1934⁷] (34 of 1934)⁸[or the Air Force Act] 7 Geo. 5, c. 51) but not to affidavits presented to any Court to any Court or Officer, not to proceedings before an arbitrator And it shall come into force on the first day of September, 1872. (advocatekhaj.com)

In the above quoted extent, the scope and nature of the law/act is clearly defined and mentioned. What it includes and what is excluded are taken into account which does not let to have any confusions or ambiguity. The citations and references are also mentioned. There are exclusions and their references are mentioned in the brackets.

Every term has its source mentioned and nothing is in the air. Nothing is hypothetical. It has got its base which is precisely mentioned in the extent of the act itself. If anybody has any doubts, (s)he can visit the source. If there are amendments, the year mentioned at the end of the title of act ensures which one is the latest one. The clear-cut aim, scope and extent which follow the title of the act are the salient feature of legal writing. As everything has to be dealt in neatly and clearly and there is little or no margin to have any other interpretation than the literal meaning, very often the legalese appears to be lengthy. However, it can be asserted from the above quoted example that lengthiness is imperative when you are expected to encompass the inclusions and the exclusions.

The definition and extent are followed by the interpretation of the expressions in the form of words which are supposed to have distinct meaning in the legalese. It is called the interpretation clause. It begins thus:

In this Act the following words and expressions are used in the following sense. Unless a contrary intention appears from the context-

“Court”- includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence.

Caution and care are the key features of the legalese. At the outset of the interpretation clause, the intended meaning of the words and terms have been mentioned. However, in case there is possibility of any other interpretation, the act says:

Unless a contrary intention appears from the context...

This affirms the fact that the meaning defined is not final and there are possibilities of the contextual meanings of the words. Though the word ‘court’ is quite common, it has also been clearly interpreted. However, more interesting is the interpretation of the word ‘fact’.

“Fact” – “Fact” means and includes-

- (1) any thing, state of things, or relation of things, capable of being perceived by the sense;
- (2) any mental condition of which any person is conscious.

Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in goods faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

“Relevant” – One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The definition of the word is followed by its illustrations. Various possible meanings have been taken into consideration and it is expected that the meaning or interpretation of the word ‘fact’ does not go beyond the meaning illustrated. There are several words in the act and almost all the words which may have more than one interpretation have been defined and illustrated. This gives birth to two things-one it gives a very clear and unambiguous nature to the law; two it makes the legalese lengthy and complicated. Bentham (265) has endorsed this function of definitions

and ‘abbreviated words’ as a remedy for long windedness. He has suggested that they be used in legal language like the variables X and Y in mathematics.

Illustrative and descriptive nature of the legalese is evident here. The act cannot be made compact and if it is made, it may be open to more than one interpretation. It may create loopholes. Hence, lengthiness becomes a requisite thing.

In order to support this argument, here is another example. It is the Motor Vehicles Act, 1988. (advocatekhoj.com) The act is too long to be quoted here and discuss in detail. However, it is imperative to mention that the act has been defined in a very very detailed manner as it contains the definitions of 49 terms. Every act has the customary beginning followed by the illustration. Despite all this caution and care, there have been loopholes that are found out by the legal experts and there are arguments in the court. One of the striking features of the legalese in the use of English while drafting acts is the use of the modal auxiliary ‘may’.

This Act may be called the Indian Evidence Act, 1872.

This Act may be called the Motor Vehicles Act, 1988.

The use of ‘may’ indicates that ‘it may be called’ and not necessarily ‘is called’. It shows a bit of tentativeness. However, contrary to this tentativeness is the compulsion reflected in the modal auxiliary ‘shall’.

“It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different State and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.”* (advocatgekhoj.com)

Some things are made mandatory as the enforcement of the law whereas the states have the liberty to introduce it through passing some law which is indicated by the modal auxiliary ‘may’. Considering the multiple possibilities, the addition of clauses is evident. In the routine discourse the above discussed modal auxiliaries contend different meaning.

The Maharashtra Universities Act, 1994 is another prime example of the legalese with distinct words and expressions which is quite different from the ordinary usage of English language. The objective of the act is cited at the outset which says thus:

“An Act to unify, consolidate and amend the law relating to the non-agricultural and non-technological universities in the State of Maharashtra”.

The expressions ‘relating to’ instead of ‘related to’ and ‘in the State of Maharashtra’ instead of ‘in Maharashtra’ distinctively represent the legal style. The act is further delineated in a characteristic legal style with many clauses and phrases.

WHEREAS it is expedient to provide for a unified pattern for the constitution and administration of non-agricultural and non-technological universities in the State of Maharashtra and to make better provisions therefore;

AND WHEREAS with a view to consider and recommend measures for better governance of such universities and reorganisation of higher education, the Central Government and the Government of Maharashtra had appointed various committees and study groups;

AND WHEREAS after considering the recommendations made by these committees and groups, and the experience gained in implementing the present university Acts, it is felt necessary to make provisions to enable each university to effectively carry out with responsibility the objects of the university, to promote more equitable distribution of facilities for higher education, to provide for more efficient administration, financial control, better organisation of teaching research, to ensure proper selection and appointment of teachers and other employees, to provide for representation of students and teachers on various bodies of the university, to take measures for curbing or for eradicating undesirable non-academic influences detrimental to maintenance of discipline and standards of education or academic excellence in the universities and to provide for matters connected with or incidental thereto; it is considered expedient to unify, consolidate and amend the law relating to such universities in the State; It is hereby enacted in the Forty-fifth Year of the Republic of India as follows :-... (advocatgekhoj.com)

The expression *WHEREAS it is expedient to provide for a unified pattern* is the exclusive expression of legalese. Usually in the general English (non-legal English) the conjunction ‘whereas’ does not come at the beginning of a sentence. Its recurrence is seen in the long sentence divided into three parts. Parallelism is quite evident there. Moreover, there is recurrence of the non-finite phrases beginning with

‘to’ which talk of the objects of the university. The ‘to’ infinitive is written in bold in the above quoted example. The sentence contains two hundred and twenty nine words out of which there are twenty five verbs.

...it is felt necessary to make provisions to enable each university to effectively carry out with responsibility the objects of the university...

The underlined main clause from the above quotes has three infinitives. The first one ‘to make provisions’ functions as the object of the verb in passive form ‘is felt’ whereas others function as adverbials.

4.19 The Legalese Reflected in the Cases:

Use of Passive Voice is a salient feature of the legalese. Many cases are too long to be discussed and quoted. Hence, important part (s) of them has been taken for discussion here. In the Delhi Rape case, it is said thus:

“The convicts are also informed that they can file an appeal against the judgment and order on sentence within a period of **30** days as per Article **115** of the Limitation Act, 1963.” (advocatgekhoj.com)

The expression like ‘the convicts are also informed’ are found quite frequently in the legalese. The idea behind it is that there is no particular authority or person informing it. Moreover, the expression ‘*within a period of 30 days*’ is an example where the characteristic legal expression is seen. It could also have been said as ‘within 30 days’. However, in the legalese, the ‘period’ has to be mentioned, hence the occurrence.

It is further said in the judgement-“*The exhibits be preserved till the confirmation of death penalty by the Hon’ble High Court.*”

‘Be’ is not a verb which can be used in isolation. It must accompany some verb. However, it is widely used in the legal expression as in the above quoted example. The judgement further says thus-

“The file be prepared as per Rule 34 of Chapter 24 Part B Vol. III of Delhi High Court Rules and be sent to Hon’be High Court as per rules”.

Moreover, the word honourable is written in the contracted form as ‘*hon’ble*’.

The Supreme Court judgment in the Keshawanand Bharti vs the State of Kerala case is spread over 1450 pages. However, it is said by the legal experts that the ratio has to be gone through and not the obiter dicta (a Latin term). This case produced the basic structure of the Indian constitution. Hence, many minute things had to be

explained which amounted to the lengthiness and bulkiness of the judgment. Multiple issues were raised and hence, more things had been necessitated to be illustrated. This is the defense of the legal experts.

4.20 The Language of a Deed:

If we take into consideration the legal language from the graphological point of view, we find that the legal texts have their own characteristics of the layouts. There is identical structure of the layout in most legal texts as is reflected in different forms and deeds.

There is a marked division from the beginning till the end. The whole text or document is systematically divided into various paragraphs. We find this division in the form of sections and subsections, units and subunits depending upon the character of the document. Here is an example of the *Deed of Partnership*:

Deed of Partnership

This Deed of Partnership is made at..... on this day of by and between: Shri aged about years, son of Shri resident of (Hereinafter to be called the First Party); Shri aged about years, son of Shri resident of (Hereinafter to be called the Second Party); Shri aged about years, son of Shri resident of (Hereinafter to be called the Third Party); Shri aged about years, son of Shri resident of (Hereinafter to be called the Fourth Party);

Whereas the parties to this deed have been carrying on the business of under the name and style of M/s. with its principal place of business at on the terms and conditions incorporated in the Partnership Deed executed on(advocatekhaj.com)

There are various techniques used to determine the division. The first means or technique used is capitalization (the title of the deed in the above mentioned case and names of the parties as First, Second and Third...they are considered as the proper names and of course the initial letters of new sentences...in fact the initial capital letter confirms the beginning of a new sentence). The second technique is spacing or

ellipsis. The necessary or desired information is to be filled by the respective beneficiaries in the spaces left blank. The third tool used for division is the additional information given in the brackets which is explicitly used in the above deed. Often the names of the parties are made bold for simplicity and ease and sometimes for focus as well. The entire paragraph or the even the deed or document is punctuated well which enables a reader, even a layperson to read and use the document easily. Hence we find the commas, full stops, colons, semicolons and brackets appropriately used in the above cited example of the deed. There are 136 characters in the above sentence. The sentence is quite long but is systematically divided with the proper use of punctuation marks. The proper placement of punctuation mark is important from the point of view of emphasis, focus, division (separation) and the contrastive information.

The above cited example of the deed is only 10% of the entire deed as further details are too long to be quoted here. However, it is imperative to mention that there are single sentences that constitute the paragraph of the document. Sometimes a single sentence is divided into two paragraphs. Such singular division is due to the additional information given separately with equal emphasis. Here is the example from the same deed quoted above:

AND FURTHER WHEREAS the parties to this deed have been carrying on the above said business in partnership on the terms and conditions orally and mutually agreed amongst themselves as aforesaid;

And Now Whereas the parties to this deed desire that the terms and conditions on which they have been carrying on the above said business in partnership since and propose to continue in future be reduced to writing to avoid future difficulties or misunderstanding.

It is quite interesting to note that the sentence begins with the word ‘and’ which is rather unusual. Further, all the letters of the first three words are capitalised. Since it is a deed document, conditions are laid with the further division of the sentence into paragraphs. This is probably to systematize and simplify the document. The first letters of the first three words in the last paragraph quoted above, though it is not the beginning of the sentence as it is followed by a semicolon used at the end of the previous paragraph, highlight the importance of the deed and its conditions in the present and future times. The doublet *terms and conditions* is also a salient

feature of the legalistic style of the language used for the specific purpose. Apart from this, the deed contains many archaic words viz. *Hereinafter*, WITNESSETH and aforesaid.

4.21 Summing Up:

Legal language is argumentative, descriptive, prescriptive, regulatory and even expressive depending upon the context and circumstances. Regardless of its function, the common characteristics and the stylistic features are evident all over the discourse. Legal language is a distinct variety of English. Many peculiar features of it have been evident. Length and complexity of sentences, Latinism, verbosity, technical jargon, formality, passive constructions, ambiguity, antiquated expressions, etc have been the salient characteristics of the legal style. Ignorance of law is not an excuse. Hence, a language should never a barrier. If one chooses “to disregard the rules of language, or fail, through ignorance, to obey them, then language can become instead a barrier to successful communication and integration” (Crystal and Davy 4).