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Law and Language in the Current Context

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Abstract

Law and language are invariably connected to each other since the former is fundamentally reliant on the latter. The want of clarity and precision in the statutes framed or the judgement delivered can result in unfathomable complications. It can deter the judicial system from delivering timely and transparent justice. Down the centuries there have been numerous examples that authenticate the importance of mastering language to frame new rules, to interpret those rules, to argue before the learned judges and to ensure the delivery of impartial justice. This paper focuses on the current sociolinguistic dynamics which impact advocacy and goes on to argue that a deeper understanding of law as a linguistic construct is essential for the maintenance of justice, equity and the rule of law. It further highlights how misinterpretations or obscurities in language can lead to different or unintended legal outcomes. The emphasis is laid on the necessity for the lawmaker and its interpreter to be cautious and mindful of the need to avoid vagueness, linguistic error of any kind which could possibly lead to prolonged legal disputes resulting in untold sufferings for the complainants. To support this statement the researcher here cites multiple examples from litterateurs and legal luminaries.

Keywords: Legal language, ambiguity in language, linguistic error, sociolinguistic dynamics, interpretations of laws, clarity.

There is a fundamental bond linking law and language since legislations are formulated, interpreted, and executed through the medium of language. The clarity, precision and the proper formulation of legal language determine how effective, how fair and how

easily accessible law becomes to the beneficiaries for whom such legal guidelines are framed. It is increasingly seen today how lack of clarity or ambiguity in language or linguistic errors in different cultural contexts can alter the original intent of lawmakers across the world in general, or the framers of the Indian Constitution, in particular, for which there are numerous examples. Thus law, which is a body of rules and regulations, relies basically on language without which it ceases to exist. The significance of language is seen from the drafting of statutes to courtroom arguments made by lawyers on either side and the judicial observations and verdicts delivered by the jury, in the case of a British or American court, or the judge in other parts of the world like India.

Here the researcher seeks to highlight the inextricable linkage between the role of language and the effective expression and execution of law. This paper highlights the challenges faced by the framers of law and the precision and clarity that the bench and the bar need in order to properly place the facts of a case and the logical conclusion which they both arrive at and get manifested in the delivery of justice. It analyses how current sociolinguistic dynamics impact advocacy and it argues that a deeper understanding of law as a linguistic construct is essential for the maintenance of justice, equity and the rule of law. It also sets out to examine how misinterpretations or ambiguities in language can lead to different or unintended legal outcomes. In addition to these, this study delves into examples given by legal luminaries and litterateurs. As the centrality of language in jurisprudence is brought into sharper focus, the researcher lays emphasis on the necessity for the lawmaker and its interpreter to be cautious and aware of the need to avert ambiguity and linguistic error of any kind which could possibly lead to protracted legal disputes resulting in untold suffering for the litigants and which help only lawyers to make money.

The fundamental nexus between law and language hardly needs to be cited as the former requires the latter as the primary tool to assume its written form, get interpreted and

used to regulate life on earth in its varied facets. Law in every civilized part of the world today exists, as we all know, in its formal and written mode which governs a community, country or a state. Laws, unlike in the kingdoms of the past, are nowadays made by parliament or legislative assemblies. It is a truism to reiterate that the medium through which legislations, rules, principles, guidelines and concepts are expressed, explained and executed is the language of the state or the national language of the country or the lingua franca like English in a multilingual nation, as in the case of India.

The part played by language in the conception, perception and practice of laws, rules and regulations makes up crucial components since it serves to show how laws are understood, communicated and implemented. As laws are written in language, the choice of words, syntax and structure determine their clarity and precision leaving little room for ambiguity. When there are ambiguities in a bill passed by parliament or a legislative body, there is likely to be more than one interpretation which can trigger prolonged wrangles. Courts of law are usually approached to interpret ambiguously worded statutes to determine the true intent of the lawmakers concerned.

To cite an example in the current Indian context, the phrase “complete justice” is mentioned in article 142 of the Indian Constitution which grants the Supreme Court the power to pass any order to see that “complete justice” is ensured overlooking the reservations expressed by the executive. A current controversy has now erupted by what is implied by “complete justice”. Invoking this article, the apex court in a case “had granted deemed assent to 10 State Bills” passed by Tamil Nadu assembly. This judgement “had prompted the Centre,

through President Droupadi Murmu, to seek a Presidential Reference from the apex court.” This reference in question “had asked whether judicial orders passed by the Supreme Court under Article 142 could replace the powers of the President and Governor to decide the fate of State Bills awaiting assent.” It is evidently the ambiguity in language which prompted the

Central Government to ask, "Can the Constitutional powers of the President/Governors be substituted by a judicial order exercising Article 142 of the Constitution?" ("SC to hear in July T.N.'s plea to transfer V-C case from High Court" 6). The Constitution does not make it clear what exactly this phrase signifies, leaving it open to broad judicial interpretation, which tends to be dubbed by certain legislators as "judicial overreach". It is argued by them that the apex court ventures into legislative and executive domains, which impartial interpreters of a parliamentary democracy say, violates the doctrine of the separation of powers between the three wings of Indian democracy.

Francis Bacon, father of the English essay, has written a perennially pertinent essay titled "Of Judicature". The word, "judicature," according to online Cambridge Dictionary is "the legal system and the work it does." Bacon sets out to point out, "Judges ought to remember that their office is *jus dicere*; and not *jus dare*; to interpret law and not to make law, or give law." What the writer uses in the first part of the sentence is a Latin maxim which

he explicates in the second part. It signifies that the role of a judge is to interpret existing laws and not to make new laws. It emphasizes the separation of powers between the legislative and the judicial pillars of a democracy. How relevantly he emphasizes the essential traits of the judicial system with integrity in the forefront! He is of the view that, "One foul sentence doth more hurt than many foul examples." He goes on to point out, "The office of judges may have reference unto the parties that sue, unto the advocates that plead, unto the clerks and ministers of justice underneath them, and to the sovereign or state above them" (222). He urges judges to listen carefully to all the parties concerned and to avoid unnecessary interruptions and to prevent lawyers from manipulating arguments with excessive rhetoric.

Lack of clarity in language can thus lead to different interpretations of laws which at times leads to interminable or extended arguments and counterarguments. The British Prime

Minister, William E. Gladstone, is believed to have used the phrase, "Justice delayed is justice denied," to emphasize the need to expedite the legal system. It is interesting to see how the English jurist and British MP, Sir William Blackstone, in his book, Commentaries on the Laws of England, expatiates on the evolution of law and justice and reminds the reader:

> And however convenient these may appear at first, (as doubtless all arbitrary powers, well executed, are the most convenient) yet let it be again remembered, that delays, and little inconveniences in the forms of justice, are the price that all free nations must pay for their liberty in more substantial matters; that these inroads upon this sacred bulwark of the nation are fundamentally opposite to the spirit of our constitution; and that, though begun in trifles, the precedent may gradually increase and spread to the utter disuse of juries in questions of the most momentous concern. (204)

Legal language can at times be vague or even be equivocal. Terms, for instance, like "reasonable care" and "gross negligence" can result in different interpretations depending upon the contexts in which they are used. What constitutes "reasonable care" can be subjective and can lead to controversial arguments as to what exactly the phrase in question signifies. The plaintiff may argue that the defendant did not exercise reasonable care while the defendant may claim to have done it. Similarly, the lawyers on either side may come up with different interpretations of what distinguishes "gross negligence" from "ordinary negligence". This kind of vagueness in language can result in a heated face-off. It highlights the tension between precision and comprehensibility in legal communication. It shows one the need for a lawyer to be clear and precise in his or her language when they prepare their plaints.

The term "reasonable restrictions" in Article 19(2) of the Indian Constitution can be equivocal in certain context with regard to "decency or morality" which leave room for multiple meanings in a multireligious society like India. It can have misleading connotations

or strange meanings as the predictions by the second and third Apparitions summoned by the witches in the 1st scene of act IV in *Macbeth*. The hero is asked to be bold and resolute. He is told by the second Apparition which appears in the form of a bloody child, "laugh to scorn / The power of man, for none of woman born Shall harm Macbeth." (77) Macbeth wonders now why he should fear Macduff, the thane of Fife. Yet he says, "I'll make assurance double sure, / And take a bond of fate: thou shalt not live; / That I may tell pale-hearted fear it lies, / And sleep in spite of thunder" (lines 81-84). The Third Apparition appears in the form of a child wearing a crown and holding a tree in its hand and says, "Be lion-mettled, proud, and take no care / Who chafes, who frets, or where conspirers are: / Macbeth shall never vanquish'd be until / Great Birnam wood to high Dunsinane hill / Shall come against him" (lines 90-94). The enigmatic prophecies soothe Macbeth and the poor hero is deluded to be assured of his safety. This is exactly what some of the provisions in the Indian Constitution are as cryptic as the words of the strange beings in this play.

In a court of law, the ability to use language persuasively with clarity is essential for effective advocacy. This is exactly what M.C. Chagla points out in his autobiography, *Roses in December*:

> Law is a great discipline for the mind. It teaches you how to think clearly, precisely and accurately. Every word has its definite meaning, and must find its proper place in its own context. Verbosity and diffuseness are foreign to a well-trained legal mind. Such a mind is essentially logical, and has the courage to face the results of its own mental processes, and not to hide them under a cloud of rhetoric and declamation. (69)

He cites the example of a great legal luminary, Sir Thomas Inverarity, "one of the most eminent of lawyers that ever practiced in the Bombay High Court" during the colonial era. He was during Chagla's time "on the eve of retirement. But even then one could see glimpses of

his greatness as a lawyer and an advocate. He was nothing much to look at, he had no histrionic arts at his command; but he knew all the tricks of the trade, and not only was he a great and astute lawyer but also a very great and forceful advocate" (49).

In this context Chagla draws a distinction between a lawyer and an advocate. He saw both dimensions in the personality of Inverarity but when he refers to Muhammad Ali Jinnah, he explicates the difference because according to him, "Jinnah was a poor lawyer, but a superb advocate. He had a very striking personality, and the presentation of a case as he handled it was a piece of art. He was also a first-rate cross-examiner. It is surprising that despite his large practice he never really had the hallmark of an authentic lawyer." One can see how the writer saw in Sir Chimanlal Setalvad, another Indian lawyer who practised in the Bombay High Court, the hallmark of an eminent lawyer. Referring to him Chagla remembers, "He had a logical mind and an accurate knowledge of legal principles. He did not indulge in any flourishes, but his arguments were couched in such sober language that the judge instinctively felt that there could be no possible answer to the case as he presented it (53)."

When Chagla writes that the advocate "should be fearless, and refuse to accept any proposition which seems to him to be fallacious and erroneous that may emanate from the judicial authority presiding over the court, however eminent such an authority may be," the reader of Shakespeare's widely read play, *The Merchant of Venice*, recalls the remarkable advocacy skills demonstrated by Portia (70). How cleverly Portia appears disguised as a lawyer named Balthazar in the 1st scene of act IV and saves Antonio from death when Shylock

demands his pound of flesh! The duke greets her and asks whether she is acquainted with the facts of the case. She answers in the positive. After getting introduced to both the sides, she assures Shylock that Venetian law is indeed on his side. She initially insists on the need for mercy on the part of Shylock. Shylock demands to know, "On what compulsion must I? tell me that." It is in response to his callous question that Portia underscores the need to temper

justice with mercy, which, she says, "droppeth as the gentle rain from heaven/ Upon the place beneath: is twice bless'd;/ It blesseth him that gives and him that takes" (lines 183-84). She uses her knowledge of the law to interpret the bond between Antonio and Shylock and says, "And you must cut this flesh from off his breast: / The law allows it, and the court awards it." On hearing it Shylock jubilantly exclaims, "Most learned judge! A sentence! come, prepare!" (299-301). She cleverly saves the defendant, Antonio, from death with the argument that Shylock is allowed to have his "pound of flesh" on the proviso that he does it without the loss of a single drop of blood. Her words are pertinent to be quoted here:

> Tarry a little; there is something else. / This bond doth give thee here no jot of blood; / The words expressly are 'a pound of flesh': / Take then thy bond, take thou thy pound of flesh; / But, in the cutting it, if thou dost shed / One drop of Christian blood, thy lands and goods / Are, by the laws of Venice, confiscate / Unto the state of Venice. (lines 302-09)

One may have deep knowledge of law but lack advocacy skills. Proficiency in language comes to the rescue of an advocate. There is a well-known anecdote about a furious judge who convicted a prisoner and condemned him to death. His judgement said, "Hang him not let him go." However, the prisoner's advocate cleverly reinterpreted the statement by adding a comma changing its meaning entirely, "Hang him not, let him go." The judge's verdict lacked the punctuation "comma" which led to two possible interpretations. This shows how small linguistic details can have significant consequences in legal contexts. Britain's foremost scholar of criminal law, Glanville Williams, has observed in his seminal work, *Learning the Law*:

> Much stress is laid by educationalists on literacy and numeracy, but we hear little about the importance of being articulate. Footballers practise passing and shooting; pianists, singers and clowns also practise assiduously. Why is it supposed that speaking comes naturally and needs no effort or concentration? Fluency and clear

> enunciation are particularly important for the lawyer, when our forensic practice is largely oral. (183)

He goes on to underscore the necessity for a prospective lawyer to be trained in his or her discipline, which he tells them, "will help you in these respects, giving you experience in the art of persuasion, and of putting a case succinctly and intelligibly. Mooting not only gives practice in court procedure but helps to develop the aplomb that every advocate should possess" (183). There are many instances in our ancient epics like the Ramayana and the Mahabharata that validate the importance of fluency and enunciation in communication. For instance, in *Ramayana*, Rama praises Hanuman's clarity of thought and expression in the 166th episode as shown by The Indian Dharma, an online source, thus, "Oh Lakshmana! Please be careful while you talk to this person! I've never heard such an excellent and a brilliant speech from anyone in my life so far!!" He goes on to say:

> I've been keenly watching Hanuman talk for the past fifteen minutes or so. However, I couldn't find even one mistake in the words he used and also in the way he formed his sentences. Some people would speak four words continuously with one mistake in the middle, whereas some people would speak ten words with two or three mistakes in the middle. But for the past fifteen minutes of Hanuman's speech, I failed to deduct even one mistake in whatever he spoke! (Jaeyaram)

In *Mahabharata*, Dhritarashtra's half-brother, Vidura, is noted for his sagacity and moral rectitude which could be attributed to his composure, clarity of intellect, emotional intelligence and effective communication. His qualities of head and heart get manifested in his wise counsel and his clarity of expression in different situations in different parts of the epic and in "Udyoga Parva." When he finds Dhritarashtra in a pitiable plight afflicted with apprehension and insomnia, he tells the king in a rather sarcastic tone:

> My lord, five kinds of people are unable to sleep. A man who lusts after the wife of another cannot sleep. A thief cannot sleep. A man who lost all his wealth cannot

sleep, or one who thinks all his wealth will be lost. An unsuccessful man cannot sleep.

A weak man oppressed by a strong man cannot sleep. I hope none of these descriptions fits you. Surely, avarice and greed are not qualities to be found in you. (Subramaniam 400)

The kings of yore used to arrogate to themselves the current roles of the legislature the judiciary and the executive. Such a king is portrayed in the Tamil epic, *Silapathikaram*, authored by Ilango Adigal. There is in it a tragically dramatic moment when the Pandya king, Nedunchelian, learns from a goldsmith that one of the queen's stolen anklets is in the possession of Kannagi's husband, Kovalan. The king's command to the guard, "Kondu Vaa," meaning "bring him here," was misheard or misinterpreted by the messenger as "Kondru Vaa," which means, "kill him and come" (lines 152-53). The similarity in pronunciation between "Kondu Vaa" and "Kondru Vaa" in an oral tradition, where precise articulation is vital, could result in a fatal error. This kind of error underscores the possibility of miscommunication and the fatal fallout of hasty decisions prior to proper investigation. J. Srichandran of A M Jain College, Chennai, has brought out *Silapathikaram: Moolamum Uraiyum*. Dr. A. Chandran, another Tamil scholar, has written a paper focusing on "Contradictions and Gaps in Silappathikaram Reading" where he focuses on its textual inconsistencies and linguistic ambiguities.

Legal language is the cornerstone for the maintenance of justice. Therefore it needs clarity and precision to uphold this purpose. If laws and their provisions are shrouded in ambiguity like the prophecies of the witches in *Macbeth* or their spirits, they result in different interpretations, protracted legal wrangles and exploitation of litigants. Obscurity in language only serves to promote the selfish interest of lawyers and the private interest of lawmakers and corrupt judges. Legislations need to be framed in plain language for commoners to understand. Only then can the legal system play its role in the delivery of justice. It should

under no circumstances perpetuate a system which delays justice or leave room for exploitation of the gullible citizen. So simplicity in language is a moral imperative in every part of the world.

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