

## Language and Legal Education in India: An Observation

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**Abstract:** *A lawyer's ability to communicate in standard legal language is invaluable. The journey of understanding legal writings and thinking like a lawyer begins the day an individual decides to pursue a programme in legal studies. The importance of language in the life of a law student cannot be overstated. A student of legal studies is exposed to legal jargons, various judgment readings, reading legal texts, and many other texts from the start of their legal education. Students also participate in research, which is a significant feature of law school from the start. Law students must be able to understand legal terminology in order to interpret its meaning and conduct productive research. Understanding of the legal provisions can be considered a pre-requisite for justice, equality, dignity, and liberty for any citizen of a democratic country like India. However, due to the complexity of legal language, it is difficult for a layperson (and sometimes for commoners) to comprehend the profound meaning of the legal statutes. As a result, the legal profession's specialized language becomes increasingly important. In India English is the language of legal education however, for most of the Indians it is not a mother tongue. This paper is an attempt at understanding the English used in legal education and to investigate major challenges usually encountered by the students of a legal programme in India. It also aims to provide plausible solutions to the complexity of the English language in practice.*

**Keywords:** ELT, Legal Language, Legal Education

### Introduction

It is language that makes us able to communicate not only about present but past and future also. On careful examination we can visualize that innate ability to language use is one of the markers of human race. Different languages have evolved over a long period of time. There is no disagreement that language has since time immemorial been the prime means of communication.

In India, there are as many as 19,500 languages used as mother-tongue in the different states (The Hindu Business, 2018). Since we do not have a national language, there have been two official languages unanimously adopted, that is, Hindi and English, including 22 scheduled languages, and any of them can be used for conveyance (Bhardwaj, 2016). Language is the principal legislative tool and of prime importance in the study of law. And law is such a branch of study that calls for consistent intensification of knowledge. 'A well-administered and proper legal education can therefore be said to be the only viable choice'. Rightly observed by the renowned jurist, Nani A. Palkhivala, 'the two marks of a truly educated man are the capacity to think clearly and intellectual curiosity which enables him to continue and intensify the process of learning even after he has finished the law course'.

Law demands great reading, thinking, and speaking prowess. With changing aspects in law, lawyers are obligated to pursue novel ways to stay updated in order to master expertise in legal language, and in that process, language becomes a cornerstone for people associated with the legal profession as well as for prospective students. Legal documentation is heavily weighted with technical and substantial employment of legal diction and phraseology. Words are of noteworthy significance in the field of law as cases largely depend on the denotation attributed by judges. However amusing and peripheral it may sound to include English language lectures at a law school, it is prominent to realize its importance in terms of legal language as differentiated from the regular, plain English that one uses in everyday life. Absence of English language in a law school would be similar to a situation where a soldier on his very first day of

his joining is sent to the battlefield without providing him with needful training, with anticipation of genuine outcomes.

### Dive into The Past

Let us now dive into the past conditions of the legal scenario. In former days when legal studies were being acknowledged as an important course, the perception of most of the universities' legal pedagogy differed. An obvious purpose of education used to be the betterment of lower but competent aspirants, whereas the privileged held the option to go to the England's Inns of Court (Bhavani, 1962). In India, legal education had never been in limelight. After graduation, there were courses available in the law departments of universities as three-year programs, commonly known as the LLB Degree. As early as 1958, the Law Commission shared its concern that hardly 43 institutes were tutoring law students for the test at that time.

Having enunciated this deep regard, the government enacted the Advocates Act, 1961, resulting in an increment in the number of institutes imparting legal education. However, this did not warrant the quality of these institutes. The amenities of these novel institutes were deplorable: the faculties were mediocre because they taught only as part-time and were not completely dedicated in the act of teaching, and most of the colleges were deprived of libraries and the entrance criteria were facile with the minimum eligibility percentage set to 40%. Owing to this fact, large numbers of students became eligible. Such mainstream practices were ultimately questioned, and National Schools of Law were established (Bajpai, 2020). Since the last three decades, there have been many amendments in the education system. The Indian legal education had entirely become a trade which was reformed in the *Unni Krishnan case, J.P. v. State of A.P.*, where the Supreme Court held that 'education cannot be allowed to be converted into commerce', and with the help of sustained education and skill enhancement only can the conditions of the education system improve.

### Current Scenario

Despite globalization having impacted our lives as well as the legal profession intensely, devoted attorneys, lawyers and judges call for recommencement of organized legal education. Currently, legal education system holds much value as efforts have been taken to sincerely improvise them. They are much finer than what they used to be in the bygone era. Nevertheless, they are still outlying and far off from becoming the greatest. The improvements that have been followed can be further utilized by contemplating more on practicality, supremacy of law, strength of character, confidence and dignity. The recruiting department of Indian law schools needs to work according to the worldwide vision, with the focus being solely on providing apt environment and opportunities to the Indian as well as international scholars where they can efficiently work on their caliber and encapsulate models of other countries such as adopting video conferencing of lectures which has given prolific results. Thus, English language is not the regular English that lawyers use. They are expected to emphasize the compounded legal jargons. However, it does not automatically govern the use of neglected complex legal jargons in every undertaking. Taking an example of recruitments in law colleges, the answer to what the recruiters' expectations are and what really works wonders for candidates being interviewed is the command on language and, even more importantly, the hold on legal language. Michael S. Greco (1973) aptly noted, 'Lawyers are always going to be students, because the learning doesn't stop in law school. The irony is that when we become lawyers, we not only continue to be students, we simultaneously are teachers'. It becomes imperative for future lawyers to possess precise diction which would help them to conduct their encounters with clientele seamlessly, and this has to be done right from their law school curricula. This has to be prioritized because, for instance, when a new student from a completely disparate academic backdrop joins the law school, then the student decrypts the teaching as part of regular plain English and shapes his understanding which gives him the nearest simple meaning. But in that situation, it is difficult

for him to understand that there exists a broader meaning of the text than just the seemingly plain English. For example, when a teacher refers to a judgment declared by a 5-bench judge, the teacher refers to the 5 judges who collectively pronounced a decision for a case, but that student might misinterpret it as the bench that is used to sit. He is embarrassed enough to reveal his ignorance before his peers that prevents him from learning. There might be many such instances where students might live in their own make-belief world of thoughts of plain vernacular school of English. He might gradually get a clearer picture of the appropriate meaning of the terms, but it is high time now that a more professional method of education is imparted and such situations do not become a hindrance in the journey of a potential successful lawyer.

There are four components that must be taken into consideration while trying to find insight into the subject if one really wants to learn the subtleties of it. Firstly, and fundamentally, one always keeps learning and comes across new words, and those words and expressions only have meaning as legal concepts. Words and phrases such as *executory value*, *demurrer*, *resjudicata* and *mensrea* demand from college students to update their diction power. It is necessary to know the meaning to infuse the accurate interpretation of those words and phrases. Secondly, some common terms practically in use are much more cumbersome and result in the misinterpretation of a completely different meaning. For example, when we use the word defamation law, 'Malice does not mean hatred or meanness; it means with reckless disregard for the truth'. Similarly, 'consideration' is minutely related with interpretation of contract law; it means something of value proffered by a contracting party. When a party is 'prejudiced' by statute, this might mean that the party has placed them as a disadvantage, not because the party is prejudiced. Under real law, 'Fixtures' is about more than mere bathroom and kitchen appliances. Thirdly, words have remarkable discrepancies. The agreements and discrepancies depend on a particular context or location in which the term is used. In a situation, if a woman has lived there for six months, that citizen may be considered as a state resident. However, in another sense, for example, obtaining a driver's license, after only a few days, an individual may be known as a 'resident'. Depending on what is said and where it is said, the same word may have a contrasting meaning. Fourthly, there are phrases that are indicative of specific legislative bodies or legal concepts that work as short-term phrases for hypothetical connotations. Words like 'unfair competition', 'due process of law', 'foreseeable' and 'cruel and unusual punishment' are few such examples. Such terms have been the defining subject in many established cases over a prolonged period of time by the judges, and there is not yet a similar concise and crisp description that can work in all state of affairs.

When a student enters law school, he is loaded with assignments and classroom tasks. As per his habit of taking down notes, he does so simply from the examination point of view. This lack of exertion makes the student consider it merely a passing subject, and as a result, he invests minimal time in it in the due course. Majority of law students have experienced that a vent exists in the education system and legal English is not paid much heed to comparable with other subjects related to law. An important reason behind this might be the fact that a number of law universities are not inclined to enforce English as their first language. They still lack the directive principle of implementing strong measures such that the subject is studied with absolute sincerity. This superficiality is clearly reflected when the lawyers across different states in India naturally prefer to conduct their daily proceedings of court in their own native language. Taking a real-life example from Dehradun where disparity subsists, the legal language learning has been made mandatory in the 5-year course for a period of 1 year, but not in the 3-year course. The grim reality of the situation is such practices are not restricted to just Dehradun or any one city, but are spread across the nation with regard to the 3-year and the 5-year courses.

## Challenges

Let us now address some serious challenges in the legal education domain in India, the major ones being quality of academicians, lack of academician–industry interaction, and the obsolete practices used in

teaching of the language. But to start with, the fact needs to be observed that legal education in India is managed by the Bar Council of India, an autonomous body with practicing lawyers as its acting members. But the council has been in dearth to utilize the exposure and proficiency of lawyers in moulding the legal education through an even more rational approach. As in the earlier times, the linguistic barrier still exists because of the wide imbalance between the affluent and the people belonging to lower strata of society. This barrier is a measure of the socio-economic polarity that is coherently prevalent between India and Bharat or, to put it more aptly, between the rich and the poor. The affluent class has easy access to privatized system of education which works as an entitled facet resulting in a fine hold on fluency and an education that is a cut above the lower class. It is a sad fact that instead of this reducing, this gap is continuously surging because of mismanagement and the inadequate foundations of the government schools.

That English is still not a sharp focal point in the education system in a uniform manner; students are left with no other choice than to follow the already existing traditional modus operandi of teaching that is mostly non-inclusive in nature. Another problem that needs attention is that amid such obsolete learning practices; students fixate on 'remembering' and not 'understanding'. Although it is true that seeking education in the local language of any state (till under senior secondary) helps in preserving the linguistic and cultural heritage and the student becomes eloquent in that language, this becomes an obstacle in the later stages of a student's life when there comes a time to face the technical subtleties of the polished form of English language. The fact of the matter is the student has to now face entrance exams in order to get admitted to the leading law schools which is in English and comprises at least 25% of the questions of English section. The Common Law Aptitude Test (CLAT) is one of the foremost exams leading to the top law universities consists of a demanding 25% section of English comprehension, and it might get strenuous for a student belonging to a state board to cope.

Another major challenge with the practices in law schools is the language of the law, that is, the legalized English. The Latin-, French-, and Victorian-embedded English sets a standard for students having studied English as a secondary language. The use of terms like 'notwithstanding', 'without prejudice', 'arguendo', 'including but not limited to' 'indemnification' and 'hereinabove' makes the language even more complicated than being fruitful, and they have lost their importance with passing time (Bhavnani, 1962). These terms can be heavily found in statutes, policy papers and government orders which make them difficult to comprehend for the populace. Since it is clear that India through the colonial times remains largely influenced by the British bequest, and it is true that it once helped shape our legal system in the way it is today, such practices are typical to have penetrated our system. However, it is unacceptable if we continue to let it be a part of us; it is overdue on our part that we efface the obsolete set of linguistic conventions that prove as obstacles in imparting justice. Moot court is an activity that largely unveils the skill of oral argumentation and helps students illustrate the simulated court and arbitral proceedings, which is an essential quality of an attorney. Premier Law universities have formed an alliance to teach, research, and provide world-class legal education, and through these collaborations received favourable responses. Likewise, there should be guest lectures by leading members of the legal society papers and also support for extracurricular activities. Furthermore, alliance with foreign law universities to obtain access to their law reports, case laws, research helps build a global legal ambit. With emanating accomplishments in the legal field, there stands a need to rekindle the young potential minds, with a judicious and planned learning outlook. In addition, this devised outlook needs to be equivalent with other law subjects.

## Solutions

Having addressed the major challenges, it is now time to present solutions that are essentially two-fold and two-dimensional in nature. *First*, embracing English as the language of common higher education, specifically in the legal field, will solve the problem of linguistic disparity to much an extent, keeping in

mind the fact that the Supreme Court and high courts hold on to English as their official language. The states have to be simultaneously persuaded to include English as one of the priority subjects in their curricula, which is at par with the local language. Chiefly, discourses related to Indian polity and social sciences should be in English medium so that the students remain enlightened with the technical as well as legal expressions.

*Secondly*, the law schools, lawyers and courts should emphasize on using colloquial English as much as is feasible and outdo the remote methodology of inscription from the colonial times. There has been an urge for this from throughout the globe. The Harvard Business Review has championed for simplification of legal English since a longtime now.

The grammar should be effortless and the diction straightforward (Aggarwal, 1959). That being the case, the availability of legal education will surge and the entrance obstacle for students from non-English background will reduce, thereby enhancing their ease of comprehending legal expressions. The states will also have to readily call for the need to cooperate with the Bar Council of India. The Council should grab this chance to manifest a Legal Education Reform Committee that puts its sheer focus on the augmentation of language. The Committee should have academicians, lawyers as well as representatives of students from the national law universities on an assorted ground where the technical finesse of the language becomes a necessity as they are considered the masters and custodians of legal papers and records. On the other hand, the state boards should also pledge to inculcate English comprehension and diction in their curricula mandatorily.

Moreover, added endeavours must be undertaken to make the texts more legible. As it is rightly said that language is a unifier that is capable of amalgamating minds, ideas and ambitions, it should also become a bridge between the privileged and lower class that effaces the economic as well as linguistic gap, so that more aspirants are enticed to embrace law as a career.

## Conclusion

From the above discussions, it can be said that law schools should concentrate on implementing a curriculum that promotes and trains students to write in simple English, regardless of the course they are writing in. It is also vital for law schools to improve their study materials and ensure that the information they supply is up to date and written in the style that future lawyers and judges are expected to use. Students must be rewarded for using simple words and shorter sentences in law school, so that they master the art of producing well-articulated laws and documents in simple terms and shorter sentences.

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