Linguistic Characteristics of Legal English: An Evaluation

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Abstract

The main objective of this work is to show the Linguistic properties of Legal English as they are the matter of criticism for their static behaviour. It is claimed that the writing style of law professionals is "dull, wordy, pompous and unclear" (Malakoff, 1963:25). "They prefer to write eight words to say what may be said in two. Seeking to be precise they become redundant" (Wydick, 2005:3). Due to complex legal language, it is the common man who is most ignorant of the system because he or she neither gets the system nor law. Thus, his or her linguistic right is violated in the legal system. The criticism of Legal English is not new and not only raised by non-law people and it is not limited to a country. More or less, it is criticised universally due to its identical and static nature unlike normal languages. Swift (1726) and Jefferson (1817) and many European scholars have criticized Legal English for its static nature. In this analytical study our aim is to observe the lexical features of Legal English which causes complexities. This study is both analytical and descriptive in nature. It is based on a common hypothesis that the Legal English used in the legal system is highly complex and its comprehension needs proper training and practice. We have collected lexical items from different Indian Legal texts that represent the lexical features of Legal English. The main concern in this study is to point out the lexical properties that make Legal English different from general English. It also traces the causes of those properties that make Legal English 'frozen' and a matter of criticism.

Keywords: *linguistics, Legal English, doublets, latent ambiguity, morphology, syntax, semantics.*

1. Introduction

Legal English is the formalized language used in the legal system by law professionals, which is slightly different from plain English in terms of vocabulary, morphology, syntax, semantics and other linguistic features. It has particular relevance when it is applied to the legal drafting such as Acts of Parliaments, court pleadings, summons, and judgments, etc. Its development has been melded together with the history of Great Britain and its legislation and common law. French and Latin mutually influenced Legal English by major political, social and industrial growth in Europe. The current form of Legal English is therefore the result of many invasions in Britain (Shiflett, 2017:109).

The major impacts can be observed in the form of excessive use of Latin and French terms such as *pledge, obligation, debt, agreement, attorney, claim, contract, trespass* etc. The invasion that highly influenced the Legal English took place in 1066 by French forces, which dominated the British culture and made French the official language of the court in England. Since common men were not trained in the comprehension of French, they used English. When French power started disappearing from England, a statute of pleading was implemented in the 14th century which ordered English to be the official language of court proceedings but law professionals continued to use the legal terms from French and Latin for prestige and sometimes for the sake of avoidance of confusion. Thus, Latin and French became an integral part of Legal English used in Britain (Shiflett, 2017:110).

Properties of Legal English makes it complex for non- experts and a matter of negative criticism among the supporters of the plain language campaign. It is observed that linguistic features of Legal English create some undesirable barriers for laymen in approaching the court without the help of law professionals. For instance, some scholars such as Mellinkoff (1963), Charrow and Charrow (1982), Crystal and Davy (1969) believe that the distinct linguistic properties of Legal English are ample to consider it as a socio-dialect or a separate language from English. Some other scholars such as Dante (1979), Tiersma (1999), consider L.E[1] as a Register[2] of English used for expert communication, depending on socio-pragmatic context. A common thought has been built up among the supporters of plain language that linguistic complexities are the main hindrance for the common people in the participation of legal proceedings in the court. While law professionals are not ready to compromise with their professional monopoly. They have their strong argument that legal language or Legal English is a domain specific language that functions in a frame of a legal system like medical jargon has its own importance in the medical field, therefore linguistic liberalism in Legal English will lose its significance. Although this argument has its own strength, the claim of plain language supporters cannot be ignored. Mellinkoff (1963), Wydrick (2005), Madrunio (2013), Gocic (2012), Sagar (2017) and many more emphasize on using plain language in legal documents so that a person with average intelligence could comprehend the legal system without the help of trained law professionals.

The main concern in this study is to point out the lexical properties that make Legal English different from general English. It also traces the causes of those properties that make legal English 'frozen' and a matter of criticism. In this study we have collected many lexical items from various Indian legal texts that represent the lexical features of legal English. Supporters of *plain language movement*[3]consider that the distinct lexical items in legal English are the prominent cause of incomprehensibility for untrained people. In Spite of having suitable equivalence, law professionals are prone to use uncommon jargons in their linguistic behaviour deliberately with a view to making legal texts complex, uncommon, circumlocutory,

and full of linguistic burden. Thus, their writing is assumed *"dull, wordy, pompous and unclear"* (Malakoff, 1963:25).

2. Lexical Features

Lexical features of Legal English are one of the most complex aspects that make it unfamiliar to laymen. As Garzone and Salve (2007:12) have pointed out about the ritualistic lexical properties of Legal English which includes archaism[4] and high level of formality in legal texts. Most of the key terms in Legal English have either Latin or French origin.

Table: 1
Abolish *(from Old Frenchaboliss)*
Advocate *(from Old Frenchavocat, via from Latin'advocatus)*
Assurance *(from Old French assurer)*
Battery *(from Old Frenchbaterie)*
Contract *(Middle English: via Old French from Latincontractus)*
Counsel *(Old Frenchcounseil)*
Culprit *(Anglo-Norman French Culpable)*
Defendant *(from Latin defendere)*
Demise *(from Anglo-Norman French desmettre)*
Effect *(from Old French, or from Latineffectus)*
Heir *(Old French from Latinheres)*
Jury *(from Old Frenchjuree)*
Plaintiff *(from Old Frenchplaintif)*
Proposal *(from Old French proposer)*
Recovery *(from Anglo-Norman Frenchrecoverie)*
Reprieve *(from Anglo-Norman Frenchrepris)*
Resume *(from Old French resumer or Latin resumere)*
Society *(from French socio from Latin societas/ from socius)*
Suit *(from Anglo-Norman French siwte)*
Tort *(from Old French, from medieval Latintortum)*

Most of the borrowed lexical terms have been integrated in plain English by the process of adaptation[5]. Some of them are given in the Table 1 above.

Whereas some borrowed terms are used in their original forms which play an important role

in making Legal English complex and less comprehensible to the common masses. Table 2 and 3 represent some of these words.

Table: 2 (From Law French)

Assizes	*'settings'*
Estoppel	*'a legal principle that stops anyone from denying or alleging a certain fact due to previous conduct'*
Force majeure	*'superior force'*
Laches	*'defence to a proceeding in which a plaintiff seeks equitable relief'*
March overate	*'open market'*

Table: 3 (From Law Latin)

Amicus curiae	*'who assist the court but not a party/ court's friend'*
Alibi	*'elsewhere'* ("Accused was not at the place of crime, he was at another specified place")
Ex prate	*'one side only'* (on the application of one party only)
Ex post facto	'*retrospective*' (Ex post facto law)
Prima facie	*'at first sight'*

Legal writing becomes more complicated when law professionals use archaic and unusual words to express simple and common ideas with a view to show their professionalism in their writing. Although this habit is universally criticized, it is observed that despite having common equivalence, legal drafters use unusual words. Consider Table 4-7 which underlie some of these expressions under different categories.

2.1 Archaic, Formal, Unusual or Difficult Vocabulary

Table: 4

Legal	**Common**
Aforesaid	*'said'*
Forthwith	*'immediately'*
Herein	*'within'*
Hereinafter	*'further'*
Therein	*'here'*
Therewith	*'with that/with this'*
Whereby	*'by which'*
Witnesseth	*'eyewitness'*

2.2. Latin Words and Phrases, not in Common Use

Table: 5

Legal	Common
A non-domino	*'from one who is not the proprietor'*
Ab initio	*'from the beginning'*
Ab ante	*'before'*
Actus animi	*'act of mind'*
Ad idem	*'to the same effect'*
Ad infinitum	*'without limit'*
Alma mater	*'being mother'*
Alias	*'otherwise called'*
Billavera	*'a true bill'*
De facto	*'in fact'*
De jure	*'as the matter of legal right'*
De novo	*'a new, a fresh, a second time'*
Ex officio	*'from office'*
Fait accompli	*'an accomplished act'*
Felo de se	*'a felon as to himself'*
Fiat Justica	*'cause to be done'*
In limine	*'at the threshold'*
Laudatio	*'testimony in the favour of court'*
Lagalis homo	*'a lawful man'*
Novus homo	*'a new man'*
Nullius filius	*'the son of nobody'*
Nillumartitrium	*'no award'*
Prima facie	*'at the first sight'*
Suo moto	*'self-cognizance'*

2.3. French Terms not in General Use

Table: 6

Legal	Common
Abutting to	*'near to'*
Decree	*'judicial order'*
Herein	*'within the document'*
Hereto	*'in the document file'*
Patent	*'an official document granting rights'*
Petition	*'a formal written request'*
Pursuant	*'according to'*

2.4. Use of Formal Words/Professional Argot for Maintaining a Separate Identity

Table: 7

Formal Legal Expressions	Common
Accede	*'agree, grant, allow'*
Accordingly	*'according to'*
Accustomed to	*'used to'*
Alleviate	*'ease'*
Approach the bench	*'come here'*
Despite the fact that	*'although'*
In flagrante delicto	*'caught red handed'*
Inferior court	*'lower court'*
Issue of fact	*'denied fact'*
May it please the court	*'pleasant and courteous to the judge (before as king, doing or presenting something)'* Prior*'before'*
Your honour	*'thank you'*

2.5. Ordinary Words with Special Meaning

Common words with uncommon meanings are one of the important linguistic complexities for common people. When they try to interpret the text with general sense, they do not achieve the legislative intentions. For example, the term ***person*** refers to human beings and excludes animals, associations, and others; however, the legal definition includes firms, labour organizations, partnerships, associations, corporations, and legal representatives, among other things. The dictionary of Law defines "person-the object of legal right". There are two kinds of legal people: (1) *"human beings"* and (2) *"artificial people"*such as corporations. Another difference related to meaning in the legal system is its persuasive definition of key words depending on the scope of statues and the legislature's intention, i.e., 'person' in the Indian Citizenship Act-1995 does not include any company, association or body of individuals. The term 'child' in general means a person who is not mature, while in the legal system, child is defined by age. "Child means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". Another relevant example is the word consideration refers to *"an act of thinking carefully about something"* (Hornby, Ashby, &Wehmeier, 2009). While in legal system it is used for a *"payment or something in return"*[6] (Indian Contract Act, 1872:11).

Due to semantic differences between legal use and general use, legal writing becomes more complicated. It seems the writings of law professionals target a particular community and avoid the common mass of the state.

The use of common words with uncommon meanings may be more misleading than the use of Latin or some unfamiliar term of art. See Table 8 for some examples of common words having different senses in the legal system.

Table: 8

Words	Legal Meaning	Common Meaning
Action	*Lawsuit*	*deed*
Assign	*party to whom something is transferred*	*to give out as a task*
Damages	*money compensation for loss*	*defected*
Demise	*to transfer property by lease*	*a person's death*
Man	*legal person*	*adult male*
Motion	*application to the court*	*movement*
Of course	*as a matter of right.*	*yes*
Party	*person litigating*	*a social gathering*
Save	*Except*	*store for the future*
Serve	*to place food before*	*deliver legal papers*
Virtue	*face or authority*	*behaviour*
Action	*Lawsuit*	*deed*

2.6 Doublets or Binomials

The term doublets or binomials refer to the pair words used together in a fixed order. In Legal English the term 'doublet' is famous although Binomials and doublets are nearly synonyms. As Gustafson (1982) cites the term 'doublet' used for this expression was coined by Yakov Malkiel (1914)[7] as a *"sequence of words pertaining to the same for class placed on an identical level of syntactic hierarchy and ordinarily connected by some kind of lexical link"*(Gustafson, 1982:72). Such as *aid and abet* (to assist another in the commission of a crime by words or conduct), *goods and chattels* (All kinds of goods and professions), etc. Koskenniemi (1968:108) points out the doublets are the matter of reference which are in dual nature qualitative and quantitative[8]. Qualitative doublets keep two items together of different semantic value. For instance, *'salinityand reason', 'law and order', up 'and down', 'all and singular'*, etc. Whereas quantitative doublets are the pair of two words, expressing the same concept. Such as 'rule and regulation', 'fit and proper', 'null and void', 'far and wide'.

The important feature of legal doublets is that both the lexical items belong to same grammatical category:

Adj+Adj

- Null and Void,
- Fit and proper,
- Black and white
- Dead and alive
- Legal and valid
- New and novel

N+N

- food and drink,
- Soul and spirit,
- horse and carriage,
- Dollars and Cents

V+V

- shoot and kill
- order and direct
- Aid and abet.

Legal doublets have a history of its own. Most of them were formed during the transition period of England. In the 14th century in Britain, the court language was French. The elite class was dominant in the legal system. Uneducated or common people of English did not understand the court's proceedings. At the beginning of English control in England, a statute of pleading was implemented which ordered English language to be the official language of all the courts' proceedings in Britain, but it did not mean that French and Latin disappeared from Legal English. Law professionals continued to use Latin and French terms for the matter of prestige and sometimes they used them to avoid confusion during the time of transmission and its significance was also to give rhetorical weight and balance to the phrase and to maximize the understanding of readers or listeners (Bryan, 1987:198). The combination of synonyms or near synonyms of Latin, French and English, has become an integral part of Legal English such as *null and void* (Latin and old French), *save and except* (French and Latin**),** *fit and proper* (English and French), etc. This habit was extended to using two words from the same origin carrying the same concept such as *form and after* (old English), *each and every* (English), *have and hold* (English). Some scholars are of the opinion that doublets have more rhetorical and oratorical significance than etymology. For instance, George (1987) and Malakoff (1963) recommend avoiding the doublets from legal drafting. They consider them the cause of verbosity and complexity. Whereas some scholars consider the semantic significance of doublets. They view that doublets give the beauty of writing without losing the clarity. For instance, Bryan (1987) "*The purpose of doubling was dual to give rhetorical weight and balance to the phrase and to maximise the understanding of readers or listeners"*(Bryan, 1987:198). Charrow (1983) considers doublets to have the special purpose of balancing the phrase. He argues: *"Since coupled synonyms are by definition redundant, they rarely endanger its clarity. Since coupled*

synonyms add beauty to writing without sacrificing clarity, I see nothing sinful in their moderate use"(Charrow, 1983:1094).

Although doublets have linguistic beauty but it cannot be ignored that, they do not have a rhetorical impression. They play a vital role in adding verbosity to the writing and bringing a linguistic burden to common men. Their uses for following tradition, despite having suitable equivalence is not a good practice.

Table: 9 (List of some legal doublets usually found in legal texts)

Doublets	**Origin**
Act and deed	*Latin-German*
Aid and abet	*Lain-old French*
All and sundry	*German-Swedish*
All and singular	*German- French*
Any and all	*English-German*
By and under	*Middle Dutch-old English*
Custom and usage	*French-French*
Each and every	*English-English*
False and untrue	*Latin-English*
Fit and proper	*English-Latin*
Kind and character	*German-Greek*
Mind and memory	*German-Latin*
New and novel	*German-Latin*
Null and void	*Latin-French*
Order and direct	*French-Latin*
Over and above	*English-English*
Pardon and forgive	*French-English*
Save and except	*French Latin*
Null and avoid	*Old English- French*
Similar and like	*Latin-English*
Terms and conditions	*Latin -Latin*
Total and entire	*French -Latin*
True and correct	*Old English Latin*
Will and testament	*German Latin*

3. Syntactic Features

3.1. Long and Complex Sentences

Tiersma (1999) observes that legal language is too difficult for the general public to understand because it is riddled with wordiness, redundancy, and specialized vocabulary, and is frequently characterized by lengthy, complex, and unusual sentence structure. If a drafter writes a long and complex sentence, it must have one of two reasons: either he wants to fit

more information into a single sentence or he circumrotates it. Both Possibilities are considered barriers to clear communication. Long and complicated sentences are common among legal professionals. Usually, they use punctuation to guide oral delivery rather than to help in conveying the semantic importance. They prefer to include the introductory part, main content, reason and conclusion in a single sentence. Thus, sentences become long, complicated and complex. Long and complex sentences pack information tightly in intricate patterns of coordination and subordination (Crystal & Davy 1969:204; Gustafsson 1975: 22; Bhatia 1982:7). Gustafsson (1975) finds an average of 2.86 clauses per sentence and the average sentence contains about 55 words, almost twice as many as the average sentence of scientific English, and nearly eight times the number in dramatic texts. Length and complexity of structure tend to go together. Mackinlay (2004) considers syntactic discontinuity a major problem in comprehensibility of legal documents. Syntactic discontinuity creates a semantic and syntactic gap between components of a sentence. For instance we may see the length of sentences in Indian Penal Code-1860. Section 201 of Indian Penal Code[9] contains 258 words in a sentence which is not only complex but also against the cognitive system of the person with average intelligence. As psycholinguistic studies have revealed that the accessibility and understandability of long sentences are difficult for an untrained mind. The short-term memory may keep around seven unrelated pieces of information at a time (Miller, 1956). According to Wearing (1973), the length of sentences in texts affects readers' ability to understand and remember. More words in a sentence make sentences harder to understand and remember.

3.2. Passive structure of Sentence

A Passive voice stresses the recipient (object) of action. It hides the role of agent. The usual constructions of passive sentences use auxiliary to be or to get together with the past participle of the main verb.
Active – They filed a complaint.
Passive – A Complaint was filed.

Both sentences (A) and (B) give the same sense but the intention of the speaker/writer seems different, sentence (A) has focused on agent 'They' while sentence (B) has focused on the term 'complaint'. Despite the fact that many language critics of the twentieth century discouraged the excessive use of passive construction, law professionals are forced to use it in their writing on a regular basis. Willam Strunk (1918) suggests not to do excessive use of the passive voice. "The active voice is usually more direct and vigorous than the passive .... This rule does not, of course, mean that the writer should entirely discard the passive voice, which is frequently convenient and sometimes necessary"(Willam,1918) Passive construction omits the agent even where its role is important. Focuses on the transitivity of action, whereas sentences in active construction are more muscular, direct and succinct.In his essay "politics

and the English language", George Orwell recommends the active voice as an elementary principle of composition. He writes "never use passive where you can use active'' Critics of passive voice focus on mainly two issues (1). It requires more words than activity, so it violates the "principle of economy". Which seeks to save time and energy by conveying more information with less effort.Its aim is "to make things easy for our organs of speech,to economize time and effort in the work of expression" (Whitney 1877: 345).

Comparison between Active and Passive.

Active – (A) The trial judge will deny your motion. (7 words)

Passive– (B) Your motion will be denied by the trial judge. (9 words)

Active – (C) The legislative history supports our conclusion. (6 words)

Passive– (D) Our conclusion is supported by the legislative history (8 words)

Active – (E) The state will punish him. (5 words)

Passive– (F) He will be punished by the state (7 words)

Active– (G) The state should ensure the safety of every citizen. (9 words)

Passive– (H) The safety of every citizen shall be ensured by the state. (11 words)

In the above examples, both sentences in active and passive construction convey the same information, but sentences in passive voice are longer than those of Active. As a result, "one good reason to prefer the active voice is economy—the active voice requires fewer words."(2)a passive voice can create ambiguity.Through the active voice, we can easily express who is doing what to whom, while the passive voice hides the identity of the actor. Thus, sentences become impersonal such construction is called truncated passive, whose actor is hidden in fog. Bureaucrats and legal professionals purposefully write sentences in the truncated passive to conceal the actor's responsibility. Richard Wydick suggests law professionals prefer active sentences for comprehension of legal text clearly. He points out the shortcoming of truncated passive.

Bureaucrats love to write in the truncate passive because it allows them to hide in the fog: the reader is unable to determine who is responsible for the action or lack thereof."(Wydick, 2005). Krista Ratcliffe, professor at Marquette University, cites the use of passive as an example of the role of grammar as to establish relation between words and magical conjuring where passive voice mystifies accountability by erasing who or what does an action. The Order and command by truncated passive in statutes hide accountability of authority. Here we can understand with the following examples. If draft author writes **"**Notice shall be issued", then who will issue the notice? Which authority? It raises questions because he should have written, "The district collector (authority) shall issue the notice."

The criticism of passive construction does not imply that it has only flaws; it does convey the intended message; the issue is its overuse in legal writings. Agent is less important or no matters of accountability or you have good reason for its use, the passive can be used.

Conclusion

Psycholinguistic studies such as Charrow and Charrow, (1979), Sales et. al. (1977), Elworket. al. (1979) have proved that the uncommon and low frequent lexical items are less comprehensible and hard to understand than those of high frequent and common in general use. Most of the studies have discovered that word frequency and memory are correlational. High frequency words are easier to decode (Baddely and Scott, 1971) and (Duncan, 1973).

Thus, above identified Linguistic features of legal English are enough to consider that the comprehension of Legal English needs practice and training. Uncommon, archaic and distinct lexical items used in legal English contribute much to make it incomprehensible for laymen. They also give it an identity of English for specific purpose (ESP)[10] The concept of ESP emerged during the post-World War II development of science and technology, as an answer to students and specialists' needs to learn English to communicate in their fields of work. Hutchinson and Waters (1987: 6) have identified three main factors that have led to the development of ESP: the demands of a "brave new world", a revolution in linguistics, and the birth of the Learner-Centred Approach.

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End Note:

1 Legal English

2 A set of features of speech or writing characteristic of a particular type of linguistic activity or a particular group when engaging in it (Matthews, 2007:339).

3 A linguistic movement for determining simple language in public communication so that public participation in proceedings could be assured.

4 In language, an archaism is a word, a sense of a word, or a style of speech or writing that belongs to a historical epoch long beyond living memory.

5 The process by which loan words are changed to fit the sound patterns of the language into which they are borrowed.

6 Consideration is the price of the contract and it can be right, interest or responsibility etc. According to section

2(d) of the Indian Contract Act "when at the desire of the promisor, promise or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something, such act or abstinence, or promise is called a consideration for the promise." (Indian Contract Act, 1872:11)

[7] Yakov Malkiel is a Roman etymologist and founding member of journal Romance philology. One of his major contributions is the development of Latin words, roots, prefixes, and suffixes in modern Romance languages. (https://en.wikipedia.org/wiki/Yakov_Malkiel)

[8] There are referents, which are inherently dual in character. They may be things composed of two parts or containing two poles. The duality of the referent easily calls for the use of two symbols" (Koskenniemi,1968: 108).

[9] Causing disappearance of evidence of offence, or giving false information to screen offenders.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.—and if the offence is punishable with 1[imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence,..... for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine." (Section 201 in The Indian Penal Code).

[10] The concept of ESP emerged during the post-World War II development of science and technology, as an answer to students and specialists' needs to learn English to communicate in their fields of work. Hutchinson and Waters (1987: 6) have identified three main factors that have led to the development of ESP: the demands of a "brave new world", a revolution in linguistics, and the birth of the Learner-Centred Approach.

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