COMMUNICATIONS & MISCOMMUNICATIONS :

A PRAGATIC STUDY OF LEGAL DISCOURSE

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 ABSTRACT

Language aims at communication. The study and analysis of language provides us an insight in to how we communicate, how we think and feel and how we behave in social contexts. Linguistics which studies language is a by product field where the linguist strives to study structural values of language. A sub-field of linguistics emerged in the 1970s which later came to be known as 'Pragmatics'. Communication done in one community in one situation with a certain set of sentences may vary in some other community in some other situation with the same lot of sentences. It is essentially because of this that one needs to dive deep into the matters of pragmatic analysis of communication. Randolph Quirk remarks :

> ***" Whereas 'language' in the abstract is our faculty to speak ; or 'the faculty of speech, which all human beings hold in common' ; 'a language' is 'a particular code, a set of conventions which we operate throughout the possession of the faculty of speech; and language is not held in common by all human beings but only by those who belong to specific community."***

Lawyers form one such community who possess “a set of conventions” in their speech. A pragmatic analysis of legal discourse would be immensely important in order to eradicate the idiosyncrasies and ridiculous nature of language employed in it. Legal discourse seems to have failed in communicating thoughts with common men and women. Legal discourse is known for its obscurity, ambiguity and complexity. Even a sweet, little, easy flowing poem can be butchered by the legalese. See, how Dr. Sandburg in his poem entitled ‘The Legal Guide to Mother Goose’ writes the line ***‘Jack and Jill went up the hill’.*** **:**

> ***“The party of the first part hereinafter known as Jack***
>
> ***And the party of the second part hereinafter known as Jill***
>
> ***Ascended or caused to be ascended***
>
> ***An elevation undermined height and degree of slope***
>
> ***Hereinafter referred to as hill,”***

In order to make legal language easy to understand, one needs to follow certain principles of communication as advised by pragmaticians. Grice, a noted pragmatician, has discussed four principles for effective and rational communication. They are as under. :

1 **Principle of Quality**

2 **Principle of Quantity**

3 **Principle of Relevance**

4 **Principle of Manner**

Most of the times all these four principles of communication are violated in legal discourse which ultimately leads to confusion. This paper shall discuss and examine legal discourse comprehensively in the light of above four principles of communication and shall derive following conclusions.

(1) All the four principles of communication discussed above should be sincerely executed in legal discourse.

(2) Obscure writing not only makes the language unintelligible but also wastes time of the reader.

(3) The teaching of linguistics, pragmatics and semantics is of prime importance for the students of law if at all we wish to reform the age old fashion of legal discourse.

(4) Omission of unnecessary words, use of proper basic verbs, much use of active than passive voice, shorter sentences, proper punctuation and proper arrangement of words will surely lead one to a more successful communication in legal language.

(5) If the foundation of a democracy or a civilized society is law, it should be readable, comprehensible and should be able to communicate with laymen.

(6) The legal discourse should be put forward in clear prose without aphoristic and artificial expressions. This is the demand of the time.

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COMMUNICATIONS & MISCOMMUNICATIONS: A PRAGMATIC STUDY OF LEGAL DISCOURSE

" The common language of the law or legal jargon is not the product of the necessity, precedent, convention, or economy, but the product of sloth, confusion, hurry, cowardice, ignorance, neglect, and cultural poverty."

- **Judge Lynn N. Hughes, U. S. District Court, Houston, Texas.**

" Language is the 'species – specific' and 'species – uniform' possession of man." Though it may seem quite simple, it is difficult to define and analyze language. Language is the most natural way for the expression of human mind and heart. The study and analysis of language provides us an insight into how we communicate, how we think and feel and how we behave in social context. *De facto*, language lies at the heart of understanding all aspects of human culture, human behavior, human thinking and human psychology.

Linguistics which studies language is a by product field where the linguist tries to study language and its structural values. But it was still left for some others to study and understand how language performs differently and invites various communications in various contexts – social, behavioral, psychological or cultural. As a result, a sub-field of linguistics emerged in the 1970s which later

came to be known as ‘ Pragmatics’. Communication done in one community in one situation with a certain set of sentences may vary in some other community in some other situation with the same lot of sentences. It is essentially because of this that one needs to dive deep into the matters of pragmatic analysis of communication. Randolph Quirk remarks :

> ***“ Whereas ‘language’ in the abstract is our faculty to speak ; or ‘the faculty of speech, which all human beings hold in common’ ; ‘a language’ is ‘a particular code, a set of conventions which we operate throughout the possession of the faculty of speech; and language is not held in common by all human beings but only by those who belong to specific community.”***

A pragmatic analysis of legal discourse would be immensely important in order to eradicate the idiosyncrasies and ridiculous nature of language employed in it. When it comes to approving or disapproving a point in the court or when it comes to claiming their clients’ right, the lawyers, it has been observed, leave no stone unturned to interpret or misinterpret the words written in law. This is precisely because of the ambiguous and obscure language of law. This paper does not in any way aim at disqualifying and condemning the lawyers and their tactics. Instead it shall humbly try

to point out how language plays its terrific role in communication inside the court.

The language employed in law and that employed by the lawyers in the court is

known to have been full of complexity. Most of the times, to interpret or to comprehend it proves to be hard nut to crack for the common man. Even a sweet, little, easy flowing poem can be killed mercilessly by the legalese. See, how Dr. Sandburg in his poem entitled 'The Legal Guide to Mother Goose' writes the line ***'Jack and Jill went up the hill'*. :**

> ***"The party of the first part hereinafter known as Jack***
>
> ***And the party of the second part hereinafter known as Jill***
>
> ***Ascended or caused to be ascended***
>
> ***An elevation undermined height and degree of slope***
>
> ***Hereinafter referred to as hill,"***

The way in which the line ***'Jack and Jill went up the hill'*** has been reproduced in

legalese makes it near to impossible for a child to comprehend. The common man too undergoes the same kind of struggle when he encounters a legal document. It leads to an idea that communication has failed here. It should be remembered that communication does not always take place. Sometimes though it takes place, leaves

some gap between lines or takes place partly. So in order to make legal language easy to understand, one needs to follow certain principles of communication as advised by pragmaticians. Grice, a noted pragmatician, has discussed four principles for effective and rational communication. They are as under. :

1 **Principle of Quality**

2 **Principle of Quantity**

3 **Principle of Relevance**

4 **Principle of Manner**

Language fails to communicate the moment these all or one of these principles are violated, which actually happens in legal discourse. Firstly, one must follow the principle of quality, that is, one should neither say what he/she knows it is false nor speak something the evidence of which he/she does not have. Now it is quite obvious that the principle of quality is violated most of the times by the lawyers. The very fact that one out of two parties in the court is proved wrong lays it crystal clear that one out of two parties continuously spoke lies even in spite of knowing that they are lies. Not only this false evidences are also projected in the court rooms.

Secondly, the principle of quantity should also be followed in order to derive

effective communication. It means that statements spoken or written should be as much informative as required, neither too much informative or descriptive nor too much less informative. But it is seen that this principle of quantity is also violated in legal discourse. As Stephen Wilbers puts it in 'William Kunstler's Last Will and Testament', a lawyer would love to draft his will in his legalese in this fashion. :

> ***"I give and bequeath my clothing, jewellery, ornaments, automobile or automobiles, household furniture and furnishing , books and personal effects of every kind and nature used about my person or home to my said wife if she survives me."***
>
> ***"Notwithstanding the above language of the previous article, if there should be in existence at my death a written statement or list written or signed by me purporting to dispose of items of personal property of mine then, in that event, such written statement or list shall take priority over the other disposition of the previous article."***

But a common student of English language would rather prefer to swallow the Paper up when asked to read and explain this much lengthy and complex will written in legalese. The same would prove more joyous if written in ordinary language as under.

> ***"I bequeath all my possessions to my wife. The only exception to***

> ***this would be if I have left written instructions for disposing of certain items of personal property in some other fashion."***

Thus, the above expression in legal language mars effective communication. Legal

writing should not be much different from ordinary well-written English. Sometimes too much involvement in archaic constructions, coupling of French or Latin words with English words etc. also make it more ambiguous. Much use of conjunction like "and/or", "if/when" together instead of using either of the two and frequent use of "same" or "said" as a substitute of pronoun and many more such expressions make legal discourse an alien one. All such expressions should be done away with. In his book 'The Nature of Legal Language' Tiersma puts it humorously how a lawyer would express the sentence ***"I will give you that orange"***. It runs :

> ***"I will 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 rights and all 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, or in any other deed or deeds, instrument or instruments of nature or kind so ever,***

to the contrary in any wise, notwithstanding."

The bearer certainly misses the sweet taste of orange in case he is handed over the

above draft with the orange. Communication certainly fails to take place when such complex, ambiguous, arbitrary or lengthy sentences are employed in legal discourse.

Thirdly, the principle of relevance must also be kept in mind while communicating. In order to achieve effective communication only relevant material or references should be cited. Irrelevant references will lead one to either misunderstanding or obscurity . It is generally seen in the court room that irrelevant questions are asked by the lawyers with a view to squeeze the interest of their clients. The word 'India' has been referred to time and again in 'The Constitution of India'. The word 'India' has been defined in much obscure manner giving references of a lot many articles and sections.

" **'India' and India as defined in the Government of India Act**

Throughout the constitution the word 'India' means the territory of 'Bharat' as defined in Act 1, 'ante'. The expression 'India' as defined in the Government of India Act, 1935 (as originally enacted)'which is used in Art. 6 (a) or Art. 8, means 'India' as defined in S. 311 (1) of the Government of India Act, 1935, i.e., British India as well as the

territory of the Indian states."

The above expression to define the word 'India' with references to Act, 1935, Article 6 (a) or Article 8 and Section 311 (1) does succeed in making it a little obscure. Clarity is invited for successful and effective communication. Similarly see how a judge got irritated by reading a legal document and wrote :

> ***" I read briefs prepared by very prominent law firms. I bang my head against the wall, I dash my face with cold water, I parse, I excerpt, I diagram and still the message does not come through. In addition the structural content is most often mystifying."***

Fourthly, the principle of manner shows that one should avoid using aphoristic style in communication. No ideas should be in contrast to the ideas expressed earlier in the same expression. There should be harmony of thought. But it is observed that legal discourse keeps the doors wide open for contradictions. A famous Indian proverb says, ***"Every law leaves a window open for the offenders"***. In 'Shorter Constitution of India' written by Durga Das Basu 'Right to Equality' has been given as under. :

> ***"The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."***

But at the same time the limitations of this law are also mentioned on the same

page under the title ‘Limitations of the Doctrine of Equal Protection.’ It reads :

> ***“(1) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment.***
>
> ***(2) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.”***

In this way, the way lawyers have been communicating (?) has been an object of bitter criticism for last more than four centuries mainly because of the reasons discussed above. Obscure writing not only makes the language unintelligible but also wastes time of the reader. An Australian study conducted in the 1980s found that lawyers and judges take twice the time in reading and presenting verdicts full of legalese than they do in plain language. (Law Reform Comm’n of Victoria, Plain English & the Law 69-70, 1987; repr. 1990.) No doubt, writing and speaking in simple language is not a bed of roses. It is extremely hard and demands talent, experience and practice. But it must be

taught to the students of law. The teaching of linguistics, pragmatics and semantics is of prime importance for the students of law if at all we wish to reform the age old fashion of legal discourse. The mark of true legal discourse is that it should be able to express clearly the most difficult ideas as simply as possible. Omission of unnecessary words, use of proper basic verbs, much use of active than passive voice, shorter sentences, proper punctuation and proper arrangement of words will surely lead one to a more successful communication in legal language. Moreover all the four principles of communication discussed above should be sincerely executed in legal discourse.

If the foundation of a democracy or a civilized society is law, it should be readable, comprehensible and should be able to communicate with laymen. The legal discourse should be put forward in clear prose without aphoristic and artificial expressions. This is the demand of the time. So at the end it can be said in the words of Stephen Wilbers :

> ***"So from this day henceforward I will acknowledge and confess, give , devise, remise, release, forever discharge, and bequeath the aforesaid knowledge for the rest, residue, and remainder of my days on this earth."***

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