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The Interpretative Nature of Law and the Role of Language

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ABSTRACT

Language, being a tool of communication, was never studied in connection with the field of law in the past. Legal experts concentrated only on the law in their studies. However, law and language have been a point of focus in law schools in recent times. Interpretation has played a crucial role in court decisions. Naturally, it boils down to the linguistic nature of law. Even though some jurists believe that law is independent and objective in its nature, that is not true. Its very existence depends upon language, and language is deeply rooted in the socio-cultural fabric of the society. Therefore, language is essential to understand the true nature of law.

Keywords: *Law, Language, Interpretation, Objectivity, Formalism, Norms, Meaning*

Language has always been regarded with respect and admiration. It has long been the most powerful instrument of reasonably clear and precise communication between individuals and an individual and society of which he or she is a part. We imagine, think and express almost everything we perceive through our senses through language in the form of writing or speaking. In order to do so, we use different words marshalled into a particular order in the best possible way. Words that are instrumental in expressing diverse meanings in different contexts are used substantially in our communication related to any general topic or to any specific area of information or knowledge that we possess. Therefore it is the language that makes interaction between different human beings from different cultures or professionals from distinct professions and fields possible. The law is one of the most widely known and fascinating areas affecting people's daily lives. As our lives are organized into law, it is in the language that we speak. Furthermore, as the law describes our relationship, so do the words. Therefore, Peter Tiersma's opening remarks in his book are probably more suggestive: "Our law is a law of words. Although there are several major sources of law in the Anglo-American tradition, all

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consist of words. Morality or custom may be embedded in human behaviour, but law-virtually by definition- comes into being through language."(Peter Tiersma) It implies how law and language are closely connected.

Law and Language

As the introductory passage indicates the connection between law and language, it would be more pertinent to throw some light on law and language separately. As a vital aspect of society, law plays a crucial role in our political, social and economic life. Various jurists and theorists have explained the nature of law. There are two major streams in the discussion about the nature of laws: natural law theory and positive law. In the contemporary period, legal philosophers studied it from the point of view of justice. The meaning of law will help us understand its nature in some way. Law is considered to be "a rule or system of rules recognized by a country or community as regulating the actions of its members and enforced by the imposition of penalties."(Concise Oxford English Dictionary) Along the same line of meaning of law, Hart has explained the nature of law in simplistic features:

i) rules forbidding or enjoining certain types of behaviour under penalty; (ii) rules requiring people to compensate those whom they injure in specific ways; (iii) rules specifying what must be done to make wills, contracts or other arrangements which confer rights and create obligations; (iv) courts to determine what the rules are and when they have been broken, and to fix the punishment or compensation to be paid; (v) a legislature to make new rules and abolish old ones.(Hart)

In considering the meaning of law stated above, the law is all about regulating human behaviour in society and maintaining expectation norms binding in the future. (Luhmann Niklas) Violation of law incurs punishment in the cases of crimes, and law compensates people who are deprived of their rights in cases of a civil nature as law carries the command of sovereign. What is at the centre of these rules is justice, the essence of law (Hart 8). Therefore, law plays a vital role in achieving peace in society and the protection of the rights of people.

Different sources go to make up the law. Based upon some ideas, laws can come into existence. Such sources can be called informal or material sources, but the law that comes out of such sources may not be harmonious for the public or may be inconsistent with the general notions of the public (Ketcham E. H 363). However, formal sources of law lay down standard behaviour principles for people in society. They are statutes, rules from the delegated authorities, judicial decisions or precedents and the customary law formulated through the custom of popular action and granted by a judicial decision (Pound Roscue 253). This is how

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law appears in the form of statutes, rules, judicial decisions and recognized customs. All these forms of law build up the foundation of a legal system which also acquires a formal nature.

After these initial and summary remarks about law, the second aspect of the introductory passage, language, deserves some deliberation in connection with law. Language, being so significant in human life, has a central position in human activities. As mentioned above, it is the medium of communication in human life. "Language is the carrier of human culture, by which mankind continually produces and contemplates itself … Language is the medium of mind…"(Pitkin, Hanna Fenichel) central to every social and political issue. It implies that it illuminates the nature of every activity in human life. Human beings are engaged in various activities or various fields of knowledge. As language is used for the sake of communication in human transactions, it is not of the same kind for each of them. It changes in its form and structure to some extent. As far as plain language is concerned, it is used to speak to children, teachers, officers, labour, parents, and rivals. The purpose of communication that decides its nature matters significantly. The general lexicon is in vogue, so it should not be a communication barrier and should not put off listeners or readers. The conversational and social clichés form crucial part of plain language. (Havranek Bohuslav) Utterances perform the communication function in daily conversation, and it is presumed that the meaning is conveyed to the reader or listener very straightforwardly. For plain language, one does not need a specific kind of vocabulary or mastery over some forms of sentence structures. However, when the same language is used in some specific field, it acquires a different colour and becomes rather qualified and specific in its nature and form to a great extent. This is applicable to the language that is practised in the field of law.

The connection between law and language has been absolutely incontrovertible. When we think of law, language's role is easily visible in law. Schane writes, "Language as it operates within the legal system functions as a means for investigating psychological processes, societal interactions, or cultural traits."(Schane Sanford) As law comes into existence only through language, Stroup notes, "law is language – not only language, but a very special kind of language…" (Stroup, Danial G) It is true that it is a specialized language; it is, therefore, called legal language. Wroblewski defines it as "the language in which legal prescriptions or legal norms are formulated" and treats it as "a sub-type of natural language." (Wroblewski Jerzy) several elements make it specialized and understandable only to a special group of people. Legal language is used in both forms- written and spoken. Lawyers, law students, law professors and judges use it in various contexts. These professionals form the legal community

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wherein the legal communication takes place. It is also in the spoken exchanges between lawyers and their clients. However, legal terminology is incomprehensible for a layman to understand until and unless paraphrasing is put into practice to clarify the meaning of legal terms.

Its use is also somewhat restrictive regarding its contextual settings. It is used in courts in interrogations, cross-examinations, arguments, interviews with clients, and law classrooms, wherein legal jargon becomes a pivotal part of such interpersonal communication. In regard with written texts, it ranges from applications and petitions to verdicts in courts; to drafting notices, wills, and various kinds of deeds such sale deed, gift deed or release deeds, insurance policies and contracts in lawyers' chambers; to drafting statutes, ordinances, rules and regulations passed in legislative assemblies or parliaments; and to framing treaties and conventions in national and international organizations. (Williams, Christopher) This is how legal language is employed explicitly in such documents by the legal community. As a result, it has got its status or register.

The Nature of Legal Language

There has been considerable research on the nature of legal language and its structure from the linguistic point of view. There is no doubt that legal language shares several standard features of natural language in respect of semantics and pragmatics "such as fuzziness, contextuality of meaning and viability as an instrument of communication" (Wroblewski 240). Still, it has its own identity due to specific factors. First, it is full of legal jargon that we do not use in daily conversation. In order to express the exact meaning of legal concepts, legal terminology including Latin words is practically used in all legal documents. The words such as affidavit, arraignment, incrimination, indictment, rejoinder, de jure, in limine, inter vivos, form the major portion of it. Since the emphasis of legal documents is always on the feature of characteristic preciseness, the legal community prefers using legal argot in place of paraphrasing or simplification of such words.

Under this presumption, lawyers and judges try to enhance precision, especially by the legal vocabulary and "even today, the need for precision is offered as a justification for the many peculiarities of legal language" (Tiersma 71). There is a belief that by the use of legal expressions (for instance, “surrejoinder” – a reply by the plaintiff to a rejoinder by the defendant), longer explanation could be avoided. Similarly such explanation with unusual lexicon may create barriers in communicating exact meaning and the proper meaning may not preserved in a particular context. However, sometimes, it actually leads to vagueness and

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obfuscation at the semantic level. Out of this fear, nouns are repeated but pronouns are avoided. As far as some specific words in a statute are concerned, the legislators try to define those words initially in statutes used in a specific sense as against their ordinary meaning based on common practice or usage.

Besides these specifications, legal language stands apart regarding its sentence structure. The common language of daily communication has simple sentences as legal language could have. One can find intricate patterns of coordination and subordination to make long and complex sentences (Williams 113). While drafting statutes or contracts, the embedding of qualifying expressions and provisos is heavily used, giving rise to convoluted and lengthy syntactic structures and grammatical complexity. Bhatia notes this, “most legislative provisions are extremely rich in qualification insertions within their syntactic boundaries.”(Bhatia) The legislative draftsmen believe that they bring more clarity and precision regarding the words in statutes. Therefore they “try to insert qualifications right next to the word they are meant to qualify, even at the cost of making their legislative sentence inelegant, awkward or tortuous but never ambiguous, if they can help it” (Bhatia 112). The point is that legal language involves syntactical complications by way of longer sentences running into even in a hundred or more words at a time.

Legal language is also identified as more formal than the natural language of usual communication. As it is largely formal in legal documents, it is in the spoken discourse of courts. The narration of events happens in a quite formalized manner as the relation between witnesses and lawyers or judges for that matter remains formal. Its formal nature occurs mostly in its distinctive style of writing. Through the use of legalese, the stylistic preference for complicated sentence expressions and a fondness for wordiness, the legal community retains a higher level of formality in legal language. Naturally, it does not remain within the reach of a layman. Therefore, Tiersma remarks, “whether lawyers’ language makes them enemies of mankind is debatable, but is clearly helps set them apart” (Tiersma Peter 51).

Lastly, the language of law is supposed to be normally impersonal and objective in its nature. Personal expressions are avoided and they are neutralized with the help of other linguistic tools. For instance, instead of using the expression, "I believe that Mr Sharma is involved in the crime and is guilty of it," in legal language, "these findings indicate that the accused is involved in the said crime and as per Section 302 of the Indian Penal Code, the accused is held guilty of the said crime" will be preferred. The language of the statute is rather prescriptive, laying down various norms relating to human behavior or human transactions. These norms remain to be

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directive to concerned authorities or the courts in dealing with cases involving sections of statutes. Moreover, the third person is also referred to as the first and the second person references in contracts, meaning, thereby, the use of proper nouns, Rajesh or Raman rather than I or you.14 This leads to objectivity in legal language. Tiersam notes, “The third person also promotes an aura of objectivity, greatly desired by lawmakers” (68).

Formalist Approach to Law

It has been discussed briefly above that there is a connection between law and language, and legal language has created its own aura of being formal, objective, impersonal, and independent in its usage of law. Independent is used in the sense that language structure has no social grounding.15 Formalists believe in settled meaning, leaving much less scope for interpretative force. Such legal scholars presume that this unique style of language has impacted law. It contributes authoritativeness to the law in its normativity. Therefore, they assert that legal discourse is formalistic and objective. The phenomenon is like what Hart says, "the facts and phenomena to which we fit our words and apply our rules are as it were dumb.” (Mertz Elizabeth) They do not consider the law in relation to other institutions of society. They have full trust in its form rather than in its matter. They are not very much concerned with the issue that "in applying legal rules, someone must take the responsibility of deciding that words do or do not cover some case in hand with all the practical consequences involved in this decision” (Hart 607). Austin's remark suggests his emphasis on its form, "A law, which actually exists, is a law, though we happen to dislike it, or though it varies from the text, by which we regulate our approbation and disapprobation.”(Austin, John) It is a formal structure of rules working in relation to each other. It empowers an agent with legitimate authority for governance based upon the principles of the constitutional order in society. The official power comes from the rules and not from the outside. These rules or norms control practices through legal institutions. It functions on its own. Stanley Fish sums up formalism inappropriate words:

> Formalism is the thesis that it is possible to put down marks so self-sufficiently perspicuous that they repel interpretation; it is the thesis that one can write sentences of precision and simplicity that their meanings leap off the page in a way no one - no matter his or her situation or point of view – can ignore; it is the thesis that one can devise procedures that are self-executing in the sense that their unfolding is independent of the differences between the agents who might set them in motion. (Stanley 18)

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Fish has raised the point of interpretation, precision, inherent self-sufficiency and free from the differences existing between the executing agencies. Therefore the formal source of legal power and meaning is nothing but law only.

Following this line of thinking, another characteristic of formalist jurisprudence is the law's being determinate in its meanings. From such kind of deductive reasoning, when applied to law, it is possible to have determinate meaning which is embedded in the law itself. It is presumed that language is univocal and definitive in its expressions of law and law is a set of propositions which have already been fused with specific meanings; so law is “a code with a system of fixed meanings.” (Phillips, Alfred) This clearly implies the feature of certainty of law. As far as judicial decisions are concerned, judges apply the law to cases and makes decisions. They simply “declare the law,” meaning thereby, the meaning already exists in law and it is just revealed through its application in reading a case (Alfred 52). Ultimately it boils down to the form of law that generates meaning with more emphasis on the application of law than on interpretation. Hart who goes close to formalists, points out the same thing as Goodrich notes, "the system of rules determines the value or normative meaning of any specific term…" and therefore "they are self-referential in the sense that the legal dictionary is semantically determined by the interdependency of its terms (lexical units) within the legal code or unity of jurisprudence" (55). He believes that judicial decisions are made out of reasoned basis with judicial characteristic virtues such as "impartiality and neutrality" but it is not concerned with morality.20 As a result, validity or recognition (Hart's term) appears to emerge from within the internal rules. Therefore, Goodrich makes a crucial comment on how the legal system is conceived by these jurists, “What is presupposed, in the last instance, is the unity of jurisprudence-law is assumed to be a coherent system of meanings and texts, a coded unity accessible to legal experts though no one else” (55).

Objectivity is also seriously considered in the study of law as scholars of this school believe that law is objective. Meaning should not be derived from law based on any conjecture about the addressee. Objectivity lies in the intended meaning of the author that dictates the right or authorized sense of the law (Phillips 95). It implies that the law has to be understood as the founders of it have meant it to be. Kelsen has categorically mentioned it in his book:

> To be sure, the man acting rationally connects his act with a definite meaning that expresses itself in some way and is understood by others. This subjective meaning may, but need not necessarily, coincide with its objective meaning, that is, the meaning the act has according to the law…. The specifically legal

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> meaning of this act is derived from a 'norm' whose content refers to the act; this norm confers legal meaning to the act, so that it may be interpreted according to this norm… The norm functions as a scheme of interpretation…That an assembly of people is a parliament, and that the meaning of their act is a statute, results from the conformity of all these facts with the contents of actual happenings agree with a norm accepted as valid. (Kelsen 21)

The above remarks explicitly point out how meaning objectively conforms to the legal norms. Goodrich notes that legal meaning is determined according to the legal norm but the validity of such meaning does not extend to "the intentional semantics or extra legal factors" (69). Therefore he draws a conclusion, "Legal meaning is no more than a logical property of the interrelation of legal rules or a cognitive attribute of the process of subsumption" (Goodrich 71). This means "the objectivity of the judge-interpreter founded on the requirement or practice of justifying decisions by reasons" (Phillips 147). It naturally leads to the confirmation of meaning on the basis of the property of logical reasoning.

> Given this position, it clearly demonstrates that law has been separated from socio-political aspects of society. It is believed that law establishes itself on its self-referential nature. Kelsen writes that the Pure Theory of Law "wishes to avoid the uncritical mixture of methodically different disciplines which obscures the essence of law and obliterates the limits imposed upon it by the nature of its subject matter" (Kelsen 1).

As against this view of law, it could be firmly believed that there is no possibility that law can be separate from other disciplines such as politics, sociology, economics, and language; at the same time it cannot be free of them in its nature. Some critics have criticized the formalist approach as they feel it makes the law impoverished and devoid of any content. Actually it is a parochial view to exclude the socio-political base from the study of law. Radical thinkers of the recent times believe that this value system has already entered law. Concentrating just on the form of law is nothing but "a claim to a spurious purity" (Fish 143). Fish contends:

> However much the law wishes to have a formal existence, it cannot succeed in doing so because- at any level, from the most highly abstract to the most particular and detailed- any specification of what the law is will already be infected by interpretation and will therefore be challengeable. (144)

Fish has challenged legal meaning on the basis of formalist views and it is almost impossible to examine law in its pure form. Therefore, many linguists, other social theorists and legal experts started studying law linguistically.

As other disciplines are discourses, law is also a discourse; however, it is definitely different from them for various reasons. The language of law being so specific and distinctive forms the discourse of law as it has been stated by Tiersma:

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> Our law is a law of words…. The legal profession focuses intensely on the words that constitute the law, whether in the form of statutes, regulations, or judicial opinions…. Attorneys use language to discuss what the law means, advise clients, argue before a court or jury, and question witnesses. The legal rights and obligations of their clients were created, modified, and terminated by the language contained in contracts, deeds, and wills. Few professions are as dependent upon language. (1)

Without the use of language, the existence of law in its conceptual framework and its operation in day-to-day practice is not possible. Therefore, legal language, with its distinguishing features, constructs the discourse of law, and the system of law works through this kind of language. But again, one should be encouraged to think that law has an independent existence.

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