Chapter III

Legal Syntax

3.1 Introduction:

After conserving the facets and features of legal lexicon in the previous chapter, the syntactic features of legal language have been incorporated in the present chapter. Before contemplating on the legal syntax, it is imperative to have a look at some of the definitions of syntax. Wikipedia defines syntax as "the arrangement of words and phrases to create well-formed sentences in a language."

The legal syntax is unique in its own ways. The legal scholars take it as the speciality whereas the laypersons perceive it be a defect because legal syntax is too complicated to be understood easily by laypersons. It is marked by long and complex sentences, too many embedded clauses, and overuse of certain classes of words and so on. All these features have been discussed in detail.

3.2 Long and Complex Sentences:

The legal language comprises of a very large number of long compound and complex sentences. There are multiple sentences too. However, one noticeable thing is the little or minimal presence of the simple sentences. The simple sentences appear either in the beginning of the text or at the end of it. Hence, the compound sentences are full of many main clauses and they also make the sentence very long. The complex sentences, as the name is enough to denote, are full of various subordinate clauses which are interdependent and finally dependent on the main clause(s). Hence, there is delay in arriving at the conclusion of the sentence. It has been recorded that there are as many as 462 words in a single sentence. (Lavery 37) This number is enough to state the long and complex nature of the sentences in the legal language.

Bentham has noted that lawyers have favoured "long windedness" and suggested that "the shorter the sentence the better" (Jenny Bentham 264)

Too many modifications, over-caution, embedded clauses, atypical word order and insertion of words or phrases there where they are not usually used in the usual discourse cause complexity of sentences.

The following Article regarding the use of English language in legal sector itself is the fine example of intricate and lengthy sentence structure:

"Article 348 (3) of the Constitution States that where the Legislature of a State has prescribed in, or Acts passed by the Legislature of the State or in Ordinances

promulgated by the Governor of the State or in any order, rule, regulation or bye-law referred to, in above stated provision, a translation of the same in the English language published under the authority of the Governor of the State in Official Gazette of that state shall be deemed to be in the authoritative text thereof in the English language under this article." (Tripathi ix)

The above Article (in a single sentence) contains 92 words! It is not an example of lengthy sentence but of the repetition of words ('state'). It contains several phrases and nonfinite clauses. The words: article, state and acts, have dual meaning which can confuse a layman very easily. The error in capitalization of 'States' committed by the writer in the opening line, may put the average reader in jeopardy. As it is a verb, it must not be capitalized. Moreover, the word 'state' recurs 4 more times as a noun and once as a verb in past form. Hence, the caution has to be taken while using them their proper form to avoid any ambiguity.

Long, convoluted sentences also result from adopting the principle of all-inclusiveness, which is often essential in a legal document if every possible circum-stance and eventuality is to be envisaged (Maley 35; Bhatia 138). However, it is found and often criticised by the experts that this 'all-inclusiveness' excludes the non-law masses.

The sentence below (Ireland's Assurance Policy) consists four cases of syntactic discontinuity, coming respectively after *If, are, may* and *including*:

"If, after informing the supervisory authority concerned under subsection, any measures taken by the supervisory authority against the insurance undertaking concerned *are*, in the opinion of the regulatory authority, not adequate and the undertaking continues to contravene this Act, the regulatory authority *may*, after informing the supervisory authority of its intention, apply to the High Court for such order as the Court may seem fit, in order to prevent further infringements of this Act, *including*, insofar as is necessary and in accordance with the Insurance Acts 1909 to 2000, regulations made under those Acts and regulations relating to insurance made under the European Communities Act 1972, the prevention of that insurance undertaking from continuing to conclude new insurance contracts within the State."

The Indian Evidence Act 1872 is delineated, under the subtitle 'May Presume', thus:

Whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume" – Whenever it s directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it disproved;
"Conclusive proof" – When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

The Preamble of Indian Constitution is a unique piece of solemn and stately legal language. Though the sentence contains 84 words, it is systematically and logically divided into different parts and each part is like a poetic line with the initial capital letter of the word. It is all inclusive and encompasses the mission and vision of the country. Certain words are foregrounding by highlighting them through making them bold.

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a **SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC** and to secure all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought , expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The preamble of India is a one whole coherent sentence. It is a compound sentence contains many phrases. The long but easy-to-read sentence is divided into various parts with the commas and semicolons. The sublime adjectives *SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC* have been used in the beginning show alliteration with the repetition of the sound 's'. Further, the aims are stated which are further explained with more adjectives. So *JUSTICE* is *social, economic and political.* There is a marked break with a semicolon as equally important points follow. It is the oath to secure *LIBERTY of thought, expression, belief, faith and worship*. Again with a semicolon yet another point is noted down- *EQUALITY of status and of opportunity; and to promote among them all.* One more point is noted and it is the last one- ***FRATERNITY*** *assuring the dignity of the individual and the unity and integrity of the Nation.* Though the sentences are

divided by the semicolons and breaks in the lines, the sense is continuous and many things are covered in the briefest possible way. The words are stately, the composition of the preamble is of epic scale, the style is also grave and the overall form of it is elevated. There is parallelism in the structure. Firstly the adjectives are having the same form and then the important points which substantiate the constitution. Hence, we find *justice, liberty, equality and fraternity* are have parallel structure. Interestingly their form is same. All the letters of these core words are capital letters and they are foregrounded and highlighted through that. Moreover, the nouns *justice, liberty, equality and fraternity* have been followed by the adjectives that describe and qualify the nouns that they follow. This parallelism in the structure at once makes it easy to understand and looks great in form and appearance. The syntactic structures, the tight and compact sentence structure, the systematic division of the sentence make the preamble at once an embellished piece of writing and a superb example of rhetoric.

The preamble of the Indian constitution vehemently shows that the length matters little if the sentence is systematically drafted and properly divided.

3.3 The Syntax of/in Acts:

The Acts have a very typical syntax. It has been very systematically drafted with the delineation of minute details. Utmost care and caution is taken and each and every necessary term is duly explained. Moreover, citations are given to refer to the precedents. The style of acts is discussed in details in the next chapter. However, here is the syntactic analysis of the acts. The act taken for discussion is The Maharashtra Prohibition Act.

THE MAHARASHTRA PROHIBITION ACT

The [6][State] Government may, by notification in the Official Gazette, appoint an officer to be called the [7][Commissioner of Prohibition and Excise], who subject to the control of the [6] [State] Government and subject to such general or special orders as the [6] [State] Government may from time to time make, shall exercise such powers and shall perform such duties and such functions as are conferred upon, by or under the provisions of this Act and shall superintend the administration and carry out generally the provisions of this Act :

[1][Provided that, the person holding the office of Director of Prohibition and Excise immediately before the commencement of the Maharashtra Director of Prohibition and Excise (Change in Designation) Act, 1973 shall be the Commissioner of Prohibition and Excise for the State and shall hold that Office until the State Government otherwise directs]. (advocatekhoj)

Above part of the act can be primarily divided into two parts: the delineation before the parentheses and the explanation in the parenthesis. There are marked parallel structures visible in the example. The expression 'subject to' that lays the condition has been twice mentioned. 'Such duties and such functions' are other phrases that see the parallel structure. 'Shall exercise' and 'shall superintend' also have the marked resemblance. The sentence begins with the main clause: "The 6[State] Government may, by notification in the Official Gazette, appoint an officer to be called the 7[Commissioner of Prohibition and Excise]". The subject of the sentence is 'The 6[State] Government'. The word 'state' in the brackets has been given a footnote as it was earlier referred as 'Provincial'. This has been clearly explained in the footnote to avoid any ambiguity arising out of it. The subject consists of the head word government and its parenthetical attribute state which has replaced provincial. But its insertion in the brackets shows the use of the earlier attribute in some areas or the probability of its use. 'Appoint' is the main verb which is transitive and regular. 'An officer' is the object of the main clause which has 'an' as the attribute and 'officer' as the head word-a noun. This officer is in parenthesis.

The officer has now been called 'Commissioner of Prohibition and Excise' and earlier he/she was the 'director'. The expression he is accountable to or controlled by the state government is expressed through the typical legal language-*subject to the control of the [6] [State] Government and subject to such general or special orders as the [6] [State] Government.* The adjective clause beginning with the subordinator 'who' is actually *who shall exercise such powers* and it has been made compound with the coordinator *and* which adds another clause *shall perform such duties and such functions* for which 'who' is common. It is split. The above expression beginning with 'subject to' is imbedded in it. Yet another subordinate clause *as are conferred upon* is embedded.

Moreover, two more subordinations are found. Again the clauses begin with the modal auxiliary 'shall' and have 'who' as the common subordinator which also functions as the subject of the clauses. In all the modal auxiliary 'shall' has been

used four times and each time it is quite away from the subordinator-subject 'who'. This increases the complexity of the over sentence structure. It is very difficult to identify the clauses and the relationship between the parts of speech split. The overall sentence may be called a *multiple sentence*. 'Who' connects the sense, as it is about the officer and hence all the expressions are co-related to it.

More details of the person appointed are given in the brackets and it is no less than a paragraph though it is a single expression. The addition of footnotes clarifies doubts and leaves no ambiguity though it increases the complexity. The citations also make the complex sentence more complicated. The substitutions add somewhat difficulty for the layperson's understanding. The modal auxiliary 'shall' has an obligatory function for which 'must' is used in the general context.

The further delineation of the Maharashtra Prohibition Act under the heading 'Prohibition' is paragraph containing a single sentence which is quoted below.

> *Notwithstanding anything contained in the following provisions of this Chapter, it shall be lawful to import, export, transport, manufacture 7 [bottle], sell, buy, possess, use or consume any intoxicant or hemp 8[or to cultivate or collect hemp] or to tap any toddy producing tree or permit such tree to be tapped or to draw toddy from such tree or permit toddy to be drawn therefrom in the manner and to the extent provided by the provisions of this Act 9 [or] any rules, regulations or orders made or in accordance with the terms and conditions of a licence, permit, pass or authorization granted thereunder.* (advocatekhoj)

The sentence containing 104 words in its single para commences with the typical legal expression 'Notwithstanding'. The verbs *import, export, transport, manufacture, sell, buy, possess, use or consume* stand in parallel with one another. Maximum possible alternatives are given. In all 24 verbs have been used in this sentence which is approximately 25%. It is all-inclusive and every care has been taken to include everything which ought to be included leaving no room for loop holes. Interestingly, the sentence is simple with only one clause and too many verb phrases. Two words 'therefrom' and 'thereunder' show archaism of the language which too adds to the complexity of the sentence structure.

The average sentence length of an act is 48 words. The sentence length of a scientific prose, on the contrary, is 27.6 words; of a dramatic text in one corpus is 7 words (in a sentence). (Marita Gustafsson 9-10.) Risto Hiltunen (108-9.) has found

lengthier sentences where the sentence length is around 79.25 words. The shortest sentence, as per his study, is having 7 words whereas the longest sentence contains 740 words.

The reason behind using the lengthy sentences is the motive to include all the necessary information on a specific topic in single self-contained and self-sufficient unit called sentence. It is possible with the help of many conjoined and embedded clauses which increase the intricacy of the matter. According the study of Gustafsson (13-14), sentences in Acts have an average of 2.86 clauses per sentence and there are few simple sentences. Surprisingly, one sentence has nine dependent clauses. Hence, the legal discourse appears to be more complicated than the scientific and journalistic discourses.

3.4 The Unique Syntactic Features of Deeds:

Deed is legal document wherein there is the close association of laypersons. However, the complex sentence structure and the repetition of certain words with lengthiness add to the difficulty of understanding by the laypersons. Here is a sample of Deed of Separation between Husband and Wife and Maintenance. (Retawade 690) The unnecessary part is omitted and the focal area has been taken for consideration here.

After the preliminaries of biographical details of the parties, the deed goes thus:

Whereas the parties hereto are husband and wife, their marriage having been solemnized at Pune on…..according to the Hindu region and Vaidic rights and ceremonies;

And whereas after their marriage, the parties hereto have been residing and cohabiting together for a period of about five years;

And whereas while cohabiting together, the parities hereto had a happy married life;

And whereas during the recent past, there have been a lot and serious type of differences between the Husband and the Wife;

And whereas all the efforts for bringing about reconciliation made by their friends and relatives have failed;

And whereas the parties hereto have come to a tacit conclusion that it has now become extremely difficult for them to live and cohabit together;

And whereas due to the indifferences between the parties, here have been mental tensions and tortures caused to both the parties inter se;

And whereas the parties hereto have finally decided to live apart for the mutual understanding and reciprocate benefits as per the advice given to them by their well wishers;

And whereas the parties have anyhow reached to their final decision of living separately on some terms and conditions, which they have worked out and also decided to reduce into writing;

In the above part of the deed of separation, the subordinate clauses that are conditions prevailing till the separation have been mentioned. There is a characteristic syntactic style as the first sentence begins with *whereas* which means *while.* The sentence does not end till the terms and conditions are mentioned further to be agreed upon. The next condition in the form of clauses begins with *and whereas*. This is an unusual beginning in general English but specialty in the legalese. The clauses end with a semicolon and there is a parallel structure of such conditions arranged systematically syntactically which is easy to understand though the lexical features might increase difficulty to the common reader. The archaic word hereto adds the antique impression of the language. If we take into consideration the conditions alone, they are 206 words. Obviously, more the conditions, there are more the words.

Almost all the deeds, contracts and agreement have similar formats and styles. Here is the sample of DEED OF SETTLEMENT:

WHEREAS *the vacant site more fully described in the Schedule hereunder was purchased by the* ***SETTLOR*** *herein by a sale deed dated executed by and others represented by their Power of Attorney/ Agent and the said sale deed was registered as Document .No. of Book No. volume No. filed at pages from to on the file of the Sub Registrar of and the* ***SETTLOR*** *herein has been in exclusive possession and enjoyment of the property more fully described in the Schedule hereunder till date ;*

Similar to the earlier cited example, this deed also has its characteristic legal syntax. The antique words *hereunder* and *herein* are used. The single condition is divided into four mail clauses the principal clause being the clause beginning with *whereas*.

Besides the deeds, memorandum too has its own salient legalistic features. The syntax differs from the general syntax employed. Here is an example of the same. It is the Memorandum of Trust ((Retawade 681).

We, the following signatories to this deed of trust desirous of doing some social service of public development, do herby come together and agree upon the following memorandum…

Soon after the mention of the subject *we*, the noun phrase in apposition appears which is having nine words.

3.5 Uniformity:

Uniformity is another key characteristic of the legal syntax. Even though it is studded with too many clauses and phrases, they are interwoven systematically and logically. Though the sentences are long, they are divided into clauses and phrases with commas, colons and semicolons; citations are added with the footnotes which gives the sense of uniformity. There is a marked form and structure of the legal documents. This has been discussed under many heads in the present project. However, it is felt imperative to discuss an act. If we talk of the Motor Vehicles Act, 1988, we find that the structure or form of the act is similar to other acts.

It begins with the short title, followed by the definitions of the important terms, words, phrases and expressions. Then under different heads, necessary information is given. Firstly, the whole act has the great signs of uniformity. Secondly, the sentences, though very long and complex, too have uniformity. Here is an example of the commencement of the Motor Vehicles Act, 1988:

It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different State and any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State.* (advocatekhoj)

The commencement of the act is delineated in 63 words which occupy five lines of this page and is divided into various clauses and phrases with commas in place. *It shall come into force on such date* is the main clause of the sentence followed by the adverb clause of time *as the Central Government may appoint.* However, the mode of appointment and its announcement is imbedded- *by notification in the Official Gazette.* The semicolon in the second line suggests a long

break. The appointment is further detailed with the dates for different states. There is marked rhythm with the internal rhyme in the expression *different **dates** may be appointed for different **States***. This is followed by a two main clauses *different dates may be appointed for different State* which has passive voice-another salient feature of the legal syntax. Another main clause *any reference in this Act to the commencement of this Act shall, in relation to a State, be construed as a reference to the coming into force of this Act in that State* has one prepositional phrase embedded and this clause is also in the passive voice. There are 14 prepositions in the sentence-almost a quarter of all the words in the long-composite sentence. Hence, even though the sentence is long and complex, it is clearly divided into various segments which make it easy to be read and understood.

3.6 The Recurrent Use of Passive Constructions:

Another aspect characterizing written legal English is the frequent use of passive constructions (Jackson 119-120). Approximately one quarter of all finite verbal constructions in prescriptive legal English take the passive form (Williams 228). In the following passage (Article 5) we find four successive verbal constructions in the passive:

"The acronym EURES shall be used exclusively for activities within EURES. It shall be illustrated by a standard logo, defined by a graphic design scheme. The logo shall be registered as a Community trade mark at the Office for Harmonization in the Internal Market (OHIM). It may be used by the EURES members and partners."

The below cited example is the 32nd point of the judgment of the honourable Supreme Court of India. It is between Appellant: Smt. Indira Nehru Gandhi Vs. Respondent: Shri Raj Narain and Anr. The case was decided on: 07.11.1975.

Judicial review in many matters under statute <u>may be excluded</u>. In many cases special jurisdiction <u>is created</u> to deal with matters assigned to such authorities. A special forum <u>is even created</u> to hear election disputes. A right of appeal <u>may be conferred</u> against such decision. If Parliament acts as the forum for determination of election disputes it may be a question of parliamentary privilege and the courts may not entertain any review from such decisions. That is because the exercise of power by the Legislature in determining disputed elections <u>may be called</u> legislative power. A distinction arises between <u>what can be called</u> the traditional judicial determination

by courts and tribunals on the one hand and the peculiar jurisdiction by the legislature in determining controverted elections on the other. (advocatekhoj.com)

Not just in the acts but in the judgments also we find passive voice constructions. It is the impersonal style of writing. It is sometimes to foreground the act done or the object or sometimes it is the uncertainty of the subject i.e. when the subject is not certain, passive voice is preferred to be used.

In Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. AIR 1958 SC 538, passive voice is visible:

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds...(advocatekhoj.com)

In the first example of passive voice construction, it is to be presumed by whoever reads it or is associated with it. Hence, the subject is not certain which necessitates the construction of passive voice. The laws are directed by many authorities who cannot be told singularly.

Active voice is more concise and stronger and there is clear identity of the actor or the doer of action. However, if the actor is not known or is unspecific or is not intended to be known or when the action is more important than the actor (or the doer of action), in such circumstances passive voice is preferable. Ideally speaking, active voice should be preferred because it can determine clarity and conciseness which are two great assets of any writing. Moreover, active voice is clearer and hence better because it draws our focus on the "doer of the action" which helps to bring conciseness. Passive voice is more difficult to understand and generally takes more words.

Nevertheless we cannot undervalue the importance of passive voice in the persuasive writing especially when the actor's identity is expected to be de-emphasized or even masked. The selection and use of voice depends upon the side one is defending. If one's client is a criminal, passive voice is better to be used to conceal his/her identity and to describe the happening. On the contrary, if one's client is the victim, active voice is preferred to be used as active verbs help to link the defendant to the crime. Of course this is limited to the lawyers' drafting and the judge and other persons have no role to play in such situations.

- e.g.

- The Defendant slashed Mr. Patil four times with a knife.
  (prosecution--Active Voice)
- Mr. Patil was stabbed.
  (defense--Passive Voice)

If the actor or the doer action is not known, passive voice is necessitated to be used. Moreover, if the actor's identity is decided to be kept a secret, in such contexts also passive voice is preferably used. If action is intended to be stressed and not the actor, then also passive voice is preferred to active voice. Many English scholars advise to avoid the passive voice as they fear and believe that it is weaker and more burdensome than the active voice which is more vigorous and more condensed. It should be summed up by saying that the selection of voice is governed by the situation and intention.

In the Passive constructions and nominalizations, the identity of the actor is quite unclear which sometimes increases ambiguity and reduces precision.

Even Supreme Court of the United State of America has commented on this in the following way:

"When Congress writes a statute in the passive voice, it often does not indicate who must take a required action. This silence can make the meaning of a statute somewhat difficult to ascertain." (United State v. Wilson 334-35)

The law drafters especially the legislators and judges intend to make their commands to seem as much objective as possible and try to give them the greatest feasible rhetorical strength which subsequently results in the passive constructions. The active voice construction 'we shall punish the guilty' appears quite personal and even vindictive. However, if passive construction is used-'The guilty shall be punished' sounds more convincing. 'Those who skateboard on sidewalls shall be punished'.

3.7 Multi-meaning and Ambiguity:

Inactive and ambiguous form of words can create doubt in legal result. E.g. the expression: *"Notice shall be issued."* It is not categorically mentioned who will issue the notice. Here is another expression: "*School building shall have fire alarms."* It is not clear from it who is liable-School Authority, Fire Brigade, State Fire Extinguisher Office, Electrical Contractor or who.

3.8 An Impersonal/Detached Style of Writing:

Using passive forms is one of the most common methods of emphasizing the impersonal in a language (Sarcevic 177). The comprehensive use of the third person (singular and plural) in legislative texts helps to emphasize the idea of objectivity, detachment and authoritativeness. Where, for instance, a provision applies to everybody, the sentence either begins with every person, everyone etc. when expressing an obligation or authorization, or no person, no one etc. when expressing a prohibition:

No one may be subjected to slavery, servitude or forced labour.

Everyone has the right of access to – (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights.

Unsurprisingly, in wills, which is a personalized document, the first person singular is used abundantly. One of the few exceptions to the common rule of 'impersonalization' in legislative texts is usually seen at the beginning of constitutional documents, such as the Preamble to the Indian Constitution where the first-person plural pronoun and possessive adjective are used:

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens…" (Wikipedia)

3.9 Verbosity:

One of the most criticized features of legal language is verbosity. "Verbosity or verboseness is speech or writing which uses more words than needed." (Wikipedia) Precision and conciseness are the hallmarks of good style. Verbosity is considered as a defect. When one word can suffice, why is there the necessity of many? This is a common question that arises in the minds of readers. There are varieties of expressions and variety is the spice of life. The word 'although' has its verbose expression in the form of a phrase 'despite the fact that'.

The drafters of legal language have been often criticised for their verbose expressions. There are literary figures like Mark Twain and Ernest Hemingway who are known for their succinct styles and avoidance of verbosity. Wordiness, verbiage, prolixity, grandiloquence, garrulousness, expatiation, logorrhea, and

sesquipedalianism are the brethren of verbosity and all are detested. “Slang terms such as verbal diarrhea also refer to the practice.” (Wikipedia)

Often, to express one view, two or three words are used differently and rather unnecessarily. The following comparison of the verbose and exact expression justifies the same:

Verbose Expression	**Exact Expression**
Give consideration to	consider
Give goods to	delivery
At the time of his birth	when he was born
Have need of	need
Make provision for	provide (for)

The legalistic and ordinary expressions also make a vast difference in understanding:

Legalistic	**Ordinary**
Adequate number of	enough
Be empowered to	may
Be able to	can
Abutting	next
Per diem	per day
In case	if
Previous to	before
Pursuant to	in accordance with
Until such time as	until
In order to	to
In the interest of	for
Per annum	per year

The verbose expressions increase the complexity of the legal expression which usually already marred by many other things that keep the laypersons away from it. This verbosity is often the result of the caution and care i.e. in order to avoid loopholes in the interpretation.

The verbose, wordiness and redundancy have been severely criticised even by the persons belonging to the legal sector. An American judge has said that “the legal mind finds magnetic attraction in redundancy and overkill.” (Coca Cola Bottling Co.Vs Reeves 4 pp. 383-4.) It has been further criticised that the motto of

the law fraternity seems to be "Never use one word where you can use two; and the more you use, the better". Verbose is evident at many instances. Nevertheless, verbose is commonly found in the grants of rights. It has been said that the grantee is given "the full right to pass and repass on foot or with or without vehicles along and over the foot paths and roads respectively of the said estate". **(**J&K State Land Grants Act, 1960)

The use of prepositional phrases in particular and other phrases in general also gives birth to verbose or wordiness. Prepositional phrases are preferred to adverbs which tend for the extra words to be added and contribute to verbosity.

Instead of using the subordinators like 'if, 'before', and 'after', the phrases such as 'in the event that', 'prior to', or 'subsequent to' have been preferred. Instead of using 'during', 'during the time that' has been used whereas in place of 'until', 'until such time as' and in place of 'to', 'in order to' for 'to' have been employed which increase the complexity and contribute to wordiness. Sir Mathew Hale, Chief justice of the King's Bench, has given amusing reasons for the development of lengthy pleadings:

"These pleadings being mostly drawn by clerks, who are paid for Entries and Copies thereof, the larger the pleadings are, the more profits come to them, and the dearer the clerks." (111-12)

There have been many examples in India and abroad where lengthiness is evident in the law books, pleadings and judgments. There has been a recent example of lengthiness caused by wordiness wherein a pleading which was originally of over 2600 pages had to be reduced to about 360 pages. The judge expressed his dislike and displeasure at it by using epithets like "contradictory, embarrassing, and so convoluted that the pleadings are well-nigh impossible... to comprehend."
(South Australia Vs Peat Marwick Mitchell & Co.)
An American expert on legal language Richard Wydick who advocated clarity opines:

"Lawyers are busy, cautious people, and they cannot afford to make mistakes. The old, redundant phrases worked in the past, a new one may somehow raise a question. To check it in the law library will take time and time is the lawyer's most precious commodity. But remember once you stay one of these old monsters, it will stay dead for the rest of your legal career. Such trophies distinguish a lawyer from scrivener." (20-21)

3.10 The High Concentration of Latinisms:

The legalese is full of the Latin lexicon. Not just words but the Latin phrases represent a distinct identity of legal syntax. The English equivalents or the English meaning of the Latin expressions are different obviously, problems are faced while interpreting the Latin expressions. Here are some examples of the Latin phrases used extensively in the legal language.

ad hoc	for this purpose
amicus curiae	friend of the court
bona fide	in good faith
corpus delicti	"body of the crime" - material evidence that crime has occurred
cui bono	good for whom, i.e., who benefits?
de facto	according to the fact or deed
de jure	according to the law
de minimis non curat lex	the law takes no account of trifles
et uxor	and (his) wife
ex officio	by virtue of the office held
ex post facto	a new law applied retroactively to a deed already done
habeas corpus	you may have the body (writ requiring party be brought to court promptly)
mala fide	in bad faith
in flagrante delicto	in the act
in prope persona	in one's own person - without a lawyer
ipso facto	by the very deed
modus operandi	manner of working, operating
nolo prosequi	“I don't wish to prosecute” (will drop all parts of a lawsuit)
nolo contendere	I will not contend (plea equal to admission of guilt but allows recourse to deny the matter in subsequent proceedings)
non compos mentis	not of sane mind

obiter dictum	a judicial opinion not binding on other courts
onus probandi	burden of proof
per se	in itself
prima facie	at first sight
pro forma	as a matter of form only
pro tempore (pro tem)	for the time being, temporarily
quid pro quo	something for something - a fair exchange
sine die	without a specific date set for reconvening
subpoena	under (threat of) punishment

3.11 Importance to Precedent:

Precedent has been defined by the Oxford Dictionary as "A previous instance taken as an example or rule for subsequent cases, or used to support a similar act or circumstance; *spec.* (*Law*) a judicial decision which constitutes a source of law for subsequent cases of a similar kind." It is further defined as "A record of past proceedings, serving as a guide for subsequent cases." Both definitions pertain to the legal context. In a court of law, a precedent is important because it gives the judges a base guideline to work from when deciding the outcome of a case. Many of the precedents laid down for the courts to follow have been around for over 200 years. (reference.com)

Wikipedia defines precedent as "In legal systems based on common law, a precedent, or authority, is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts."

In common law legal systems, a precedent or authority is a legal case that establishes a principle or rule. This principle or rule is then used by the court or other judicial bodies use when deciding later cases with similar issues or facts. This principle or rule is then used by the court or other judicial bodies use when deciding later cases with similar issues or facts. (Legal Information Institute). The use of precedent provides predictability, stability, fairness, and efficiency in the law. The Latin term stare decisis is the doctrine of legal precedent.("Stare decisis". Legal Information Institute) Precedent is central to legal analysis and rulings in countries that follow common law like the United Kingdom and Canada (except Quebec). In some systems precedent is not binding but is taken into account by the courts. (Wikipedia)

While the article 14 that talks of Equality before Law. In order to explain it more, the precedent has been used thus:

"In *Kalyan Sarkar v. Rajesh Rajan,* (2005) 3, SCC 3.7, the Supreme Court ruled that, members of Parliament or influential politicians were not above the law and while in custody were to be kept in a prison cell like any other normal prisoner." (Anbhule 49)

The characteristic style of such precedent is evident in many matters where the case or the name of the parities is taken both in the bold and italics followed by the year of judgment. SCC stands for Supreme Court Cases. This in itself is quite unique syntax of the precedent.

Precedent has its own positives. Common law tends the users to look backwards as in the past (precedent) lies the authority. The past judicial decisions are easier than innovating something. Instead of altering the existing premise, the precedent is preferred. The popular saying says the same: "Hard cases make bad law".

Lord Denning, a famous judge for his balanced comments, while expressing his views on clear and right style, gives his valuable opinion on precedent. He says:

"Let it not be thought from this discourse that I am against doctrine of precedent. I am not. It is the foundation of our system of case law that has evolved by broadening down from precedent to precedent. By standing by previous decisions, we have kept the common law on a good course. All that I am against is its rigid application—a rigidity which insists that a bad precedent must necessarily be followed. It would treat it as you would a path through the woods. You must follow it certainly so as to reach your end. But you must not let the path become too overgrown. You must cut out the deadwood and trim off the side branches, else you will find yourself lost in thickets and brambles. My plea is simply to keep the path to justice clear of obstructions which would impede it." (314)

Not just the lawyers but the literary artists have also criticised the legalese. In his masterpiece *Gulliver's Travels,* Jonathan Swift, the eighteenth century novelist and pamphleteer endorses the views of the twentieth century judge Lord Denning. Swift, through the mouth of his hero, describes society of men in England bred from youth to prove by words multiplied for the purpose that black is white and white is black. It is said:

"It is a maxim among these lawyers, that whatever hath been done before: may legally be done again. And therefore they take special care to record all the Decisions formerly made against common justice and the general Reason of Mankind. These, under the name of precedents, they produce as Authorities to justify the most iniquitous opinions; and the judges never fail of decreeing accordingly... It is likewise to be observed, that this society hath a peculiar Cant and Jargon of their own, that no other Mortal can understand and wherein all their laws are written, which they take special care to multiply; whereby they have wholly confounded the very Essence of Truth and Falsehood of Right and Wrong, so that it will take Thirty years to decide whether the Field, left me by my Ancestors for six Generations, belong to me, or to a Stranger three Hundred Miles off." (249-50.)

Swift's attack on the typical legal language through Gulliver is the most lethal one in order to call for a clear and precise legal language.

3.12 Circumlocution:

Merriam-Webster dictionary defines circumlocution as "the use of an unnecessarily large number of words to express an idea".

Wikipedia defines it thus: "Circumlocution is locution that circles around a specific idea with multiple words rather than directly evoking it with fewer and apter words," but has been criticised because "it is also often a flaw in communication." Circumlocution is the roundabout way of expressing the ideas. "Roundabout speech refers to using many words (such as "a tool used for cutting things such as paper and hair") to describe something for which a concise (and commonly known) expression exists." (Wikipedia)

Circumlocution tends a person avoid making the references directly and habituates him or her to use scholarly expression and long-winded sentences amounting to roundabout way of saying the things.

There are many such expressions found in the legal discourse and outside. The popular legalistic examples of circumlocution are: 'The guardians of law' for the police, 'pillars of justice' for judges and so on. There are some positives too as evident in the following opinion:

"Used occasionally, and in the proper context, circumlocution lends variety to the style of writing and speaking, but frequent use of it can turn away the readers or

the listeners. Circumlocution may be taken as one's desire to show off their scholarship." (www.univsource.com)

3.13 Equivocal Expressions:

"Equivocation is the use of ambiguous language with the purpose of avoiding telling the truth or committing oneself". (New Oxford American Dictionary)Having several meanings; synonymous with ambiguous. The word equivocal is an adjective and has number of synonyms which shows its complexity and extensive use in the legal discourse. Here is the list of the synonyms:

- ambiguous
- ambivalent
- amphibological
- bewildering
- cloudy
- confusing
- controversial
- debatable
- deceptive
- dim
- disputable
- doubtful
- dubious
- enigmatic
- enigmatical
- equivocating
- equivocatory
- hard to understand
- hazy
- imperspicuous
- imprecise
- indecisive
- indefinite
- indeterminate
- misleading

- moot
- nebulous
- obscure
- of doubtful meaning
- of uncertain significance
- open
- open to question
- perplexing
- possessing double meaning
- prevaricating
- puzzling
- questionable
- recondite
- shadowy
- uncertain
- unclarified
- unclear
- undecided
- undefined
- undetermined
- unexplained
- unintelligible
- unplain
- unresolved
- unsolved
- unsure
- untransparent
- vague

Equivocal words and those which are used in a doubtful sense are to be understood in their more worthy and effective sense

3.14 Unusual Sentence Structure:

This is s ample of ‘a notice to the employer institute for compliance of the demands made by our retiring client’. The words in the single inverted commas form

the title of the notice which is spread in 7 pages. One of the conditions has been cited below.

"That you are hereby requested and called upon to please note it very seriously that it was and is still incumbent upon you as the competent authority to take all the necessary actions in all these matters, or, at least, inform my client about their progress, but unfortunately nothing of the sort has ever happened, and hence, you are liable for the same, not only in your official capacity but also personally." (Retawade 57)

The single sentence with very few breaks and pauses runs into 72 words. There are nearly five clauses. There are many such long and complex sentences that vary from 15 words to 100 words. All the points that are in the form of conditions begin with the conjunction 'that'. It is because the notice begins thus:

"Under instructions from and on behalf of my client, Dr.PWD, resident of 1111, Shivajinagar, Pune 411005, I have to address you t his notice as follows:" (Retawade 52) Hence, the conditions are , though complete in themselves, are the conjunctive clauses or subordinate classes. If the whole expression is taken into consideration, it serves as the object of 'have to address'. This sentence structure and the form of notice are quite usual to the legal professionals but quite strange to the laypersons.

3.15 Nominalization:

This feature has been discussed in the previous chapter as well. The consideration there was of the lexical characteristics of nominalization. In the present chapter the issue is of syntactic nominalization.

Nominalization has been perceived as either a lexical or a syntactic device in literature. As far as its lexical sense is concerned, it has been defined as "a process whereby a verb or adjective is converted into a noun" (Givón 287), whereas in a broader in general and syntactic sense in particular, it is "the process via which a prototypical verbal clause, either a complete one (including the subject) or a verb phrase (excluding the subject), is converted into a noun phrase" (*ibid.*).

Legal discourse is full of nominalizations. It is a distinct feature of the legal language but at the same time it is a curse on the part of the layperson or the average-common reader. Nominalizations let the speaker to leave out reference to the

performer. Here is an example of publishing agreement where nominalization is reasonable:

If there is an 'infringement' of any rights granted to the Publisher ... the Publisher shall have the right, in its sole discretion to select counsel to bring an action to enforce those rights...(Schane 66)

In the above case, as we find in passive constructions, the doer of action or the actor is all inclusive. As no specific actor is mentioned, it covers anyone associated with it i.e. whoever infringes. If the nominalization has been replaced by the possible regular constructions like "if anybody or any person infringes any rights" or "whoever infringes", the possibility of a corporation or group infringing cannot ruled out. In such contexts, the nominalization is justifiable. (Schane 67)

Gotti (59) and Bhatia (126) advocate the judicious use of nominalization. They believe that through nominalization, information is extremely condensed in titles, lists and preambles, and it is systematically arranged as a series of nominal expressions so as to fit well with the organized structure of parliamentary acts and articles. From this viewpoint, nominalization conforms to some of the primary requirements of legal writing, namely efficiency and concision on the one hand, and condensation and all-inclusiveness on the other hand.

Encapsulation is one of the important functions of nominalization. Nominalization enables to create the sense of objectivity for the text. However, there are the critics of the nominalization. It has been believed that nominalization makes the text more ambiguous. In a text packed with nominalizations, when clausal patterns or congruent forms are replaced by nominalized ones, some of the information is lost. Nominalization sometimes makes the wording more lengthy, complex, objective, succinct, convincing, and unified. It is best to use straightforward active verbs rather than nominalizations or passives. The basic sentence type containing a subject, active verbs and object, is easiest for people to process. (Fredrick Bowers 339).

Anne Enquist & Laurel Currie Oates (87) have criticised the nominalisation by giving the following examples and their simplified versions:

Nominalization: The usage of the property by the defendants was for the storage of firewood and building materials. (17 words; passive voice; weak verb)

Better: The defendants stored firewood and building materials on the property. (10 words; active voice; stronger verb—"stored" instead of "was"; you don't need "usage" at all)

 Nominalization*:* An agreement was made by the parties to reach a decision by Friday. (13 words; passive voice; weak verb)

 Better: The parties agreed to decide by Friday. (7 words; active voice; stronger verbs—"agreed" and "decide")

 Nominalization: The intention of Congress was for the interpretation of the statute to be made broadly by the courts. (18 words; passive voice; weak verbs)

 Better: Congress intended the courts to interpret the statute broadly. (9 words; active voice; stronger verbs--"intended" and "interpret")

It can be concluded from the above discussion that nominalizations lead to verbose and increase the sentence length amounting to complexity. Because when a verb is turned into a noun, the sentence necessarily demands additional verbs, prepositions and articles. Nominalization also leads to passive voice construction and a weaker has been chosen for the purpose. Hence, it is desirable to use it reasonably.

3.16 Separation of the Auxiliary from the Main Verb:

Separation of the helping verb from its main verb is another characteristic feature of the legal syntax. The following examples will suffice the view:

(a) … the vendor if called upon to do so *will* at the request of the purchaser or any person deriving title under him, *do* all lawful assurances …

(b) The Insured *shall* within fourteen days of the loss or damage coming to his knowledge and at his own expense *deliver* to the company a claim in writing containing as particular an account as may be reasonably practicable. (Victoria A.)

Because of this feature, it is often very difficult to comprehend the legal text without efforts. It increases the complexity and the layperson may find it too difficult to understand easily.

3.17 Numerous Phrases:

As has been criticised and noticed in the legal texts, the sentences in the legal texts are full of numerous clauses and phrases. There are plenty of adjective phrases, noun phrases, prepositional and adverbial, finite and non-finite clauses, and of-constructions.

The commonly found legal prepositional phrases are ‘In the event of’, ‘for a period of’, and ‘during the course of’. However, it is because of the convention that they have been retained otherwise they can be substituted by the words. Words replacing the phrases can minimize wordiness and subsequently the sentence length and consequently the complexity. The shortened forms of prepositional phrases can be as follows:

‘In the event of’ = ‘if’,

‘For a period of’ = ‘for’,

‘During the course of’ = ‘during’.

Many words carry both literal and idiomatic meanings. They may be termed as the connotative and denotative meanings. The words and phrases in ordinary usage may mean differently from their use in the legal senses.

Here are some more prepositional phrases with their simplified equivalents preferred by the proponents and practitioners of plain English taken from Bryan Garner's *Legal Writing in Plain English* (2013)

an adequate number of - enough

a number of - many/several

a sufficient number of - enough

at the present time - now

at the time when - when

at this point in time - now

during such time as - while

for the reason that - because

in the near future - soon

is able to - can

notwithstanding the fact that - although

on a daily basis - daily

on the ground that - because

prior to - before

subsequent to - after

the majority of - most

until such time as - until

In order to validate eh point, here is an example of the details and provisions-Procedure when investigation cannot be completed in twenty-four hours.(Bhuvan 163)

(2-A) notwithstanding anything contained in sub-section (1) or sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, **if** he is not below the rank of a sub-inspector, may, **where** a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, **on whom** the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing authorize the detention of the accused person in such custody **as** he may think fit for a term not exceeding seven days in the aggregate; **and**, on the expiry of the period of detention so authorized, the accused person shall be released on bail except **wher**e an order for further detention of the accused person has been made by a Magistrate competent to make such order; **and**, **where** an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit the nearest Judicial Magistrate the records of the case together with a copy of the entries in the dairy relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the investigation, as the case may be.

The above quoted example is a single sentence containing 277 words. Of course, it has too many clause and numerous phrases. It begins with the difficult-sounding word 'notwithstanding' which has been quite rarely used in the general circles. There is marked separation of the verb from the rest of the part of the sentience especially the modal auxiliary 'may' indicates that distance. There are nearly eight conjunctions most of them being the subordinators. There are many clauses embedded. The meaning stretched further and further. All kinds of phrases ranging from the noun phrases, verb phrases and prepositional phrases are evident in plenty. Interestingly, a very rare use of adjective phrase 'accused person' is found. Adverb phrases are quite in the legal language.

3.18 Summing Up:

Legal language has its own characteristic syntactic peculiarities. Sentence length and its complexity are the major issues that have severely criticised. However, it has been often found to be the part of convention as well as the necessity determined by the complexity and seriousness of the subject matter as well as the cautious nature of the purpose of language. Latinized expressions, unusual order of words, embedding of clauses, separation of the subject from the verb, passive constructions and nominalizations are some of the most prominent features of the legal syntax.

If legal language is taught with special focus on the use of language i.e. as English for Specific Purposes, it would be easier to be understood. However, the large chunk of common people is bound to remain aloof from it. Though plain language has its own positives, it cannot be brought into force overnight. Hence, the best alternative is to make oneself aware of the features of the legal language.