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Reading Material for B. Com LL.B. X Semester

LEGAL LEXICON

1.1 Introduction:

The present chapter discusses the lexical features of legal language. A lexicon is the vocabulary of a person, language, or branch of knowledge. Legal lexicon has its own characteristics. It differs from the general-usual discourse in multiple ways. Three p's namely, 'precision', 'preservation' and 'prestige' are quite crucial in this regard. Legal language is characterized by utmost precision as every care is taken to avoid loop holes. It is an attempt to save from the possibility of instability and vagueness of meaning with the likely effect of dissolution of agreements and contracts. As many words from the traditional sources have been used in the legal texts that are available in the forms of treaties, contracts, agreements, etc, they are more or less known as legal jargon today as they belong to the classical languages like Greek and Latin. The legal drafters too prefer such words in the legal documents as the retaining of the words does not necessarily change the connotations or acquire new meanings of the words utilized. The words from such sources have validity for years and hence the necessity of new words does not arise.

Several years ago, Thomas Jefferson, lawyer and statesman, had criticised the legal language in general and the outdated archaic words in particular by saying that language becomes incomprehensible due to the use of *said*s, *ands*, *ors* and *aforesaid*. He was refereeing to the lengthiness of legalese which generates complexity. He further verbally attacked the endless tautologies, convulsion of case within case,

parenthesis with parenthesis, multiplied efforts at certainty by said and aforesaid.
(Tandon & Behn 5)

1.2 Technical Terms or Technical Vocabulary:

Technical words are the words the meaning of which is well agreed to among law persons, but are unfamiliar to a lay person using ordinary English. Most of the words in the legal discourse are technical and obviously so, as they belong exclusively to the discourse of law. As law touches every field of this universe, the range of legal words or the technical words is quite wide. Some of the legal words or the legalised words are- *abate, bail, allege, requisition, domicile, forfeit, Decree, Mortgage, Subletting, Deem, Permisses, Tenant, Lease, Hereinafter, landlord*, and so on. Some of these are English words whereas many of them belong to the foreign origin. Every profession has its own characteristic vocabulary so has the legal language. The terms like *warranty, deed, criminal proceedings, Procurator Fiscal, grantee, devisee, waiver, furnish, covenant, demurrer, novation* and so on are typically found in the legal language and make it distinct. Then there are some terms or words which have both the everyday meaning and the legal meaning too and obviously both differ. They are polysemic in nature and have high contextual meaning e.g. *Assignment, Maintenance, Consideration, Title*.

However, it is quite interesting and significant to note and mention here that such technical words which are hardly found in the everyday discourse have been duly defined in the acts. Here is an example of the THE MAHARASHTRA UNIVERSITIES ACT, 1994:

“‘adjunct professor, ‘adjunct reader’ or ‘adjunct lecturer’ means a person from industry, trade, agriculture, commerce or any other allied field who is so designated during the period of collaboration or association with the university.” (advocatekhaj)

The term ‘adjunct professor’ is not very familiar or usual and hence the definitions are served in the act itself to avoid any ambiguity arising out of its unfamiliarity. There are many such definitions of the unusual expressions like ‘Denotified Tribes’, ‘conducted college’, ‘autonomy’ and so on in the act but in order to be succinct, they have not been refereed here.

Technical terms or phrases like ‘cy pres’ that means in case the purposes for which properties are dedicated by way of Trust or Will cannot be accomplished, it is permissible under the doctrine of cy pres to utilize the properties for similar purposes are a boon because in just two words an explanation in a paragraph is accomplished. Such technical terms have precise definitions. The great scholar of legal language Mellinkoff (293 & 388) who usually criticises legal jargon also admits that “a small area of relative precision in the language of the law—mostly terms of art”. The use of technical terms in legal language is the result of the convention.

1.3 Archaic Expressions:

“Art of expression or efficiency in speaking is considered to be a synonymous of the legal language.” (Tripathi xxi) When the present writer spoke about the faults of others, he himself has committed many grammatical errors in the above sentence.

Among the rarely used or archaic expressions are the adverbial expressions like *hereinafter*, *herein*, *hereto*, *hereby*, *hereof*, *whosoever*, *thereof*, *therein*, *heretofore*, *herewith*, *whereby*, and *wherefore*; said and such (as adjectives); verbs like to *darraign* (to clear a legal account or settle an accusation or controversy); nouns like *surrejoinder* (the answer by the plaintiff to a rejoinder by the defendant); adjectives like *afore-said*, and so on.

The archaic adverbs which are actually a mixture of deictic elements (Alcaraz & Brian 8):

-The parties *hereto* agree as follow.

- *Hereinafter* referred to as wife.

- The total rent for the term *hereof* is the sum of_____.

The origin of such archaic expression can be traced back in Old English and, “may have originally been introduced as ambiguity resolving elements or means of abbreviation” (Hiltunen 84). The archaic expressions make the legal documents more formal and distinct too. Tiersma states that “legal language often strives toward great formality; it naturally gravitates towards archaic language”. (95)

Many lawyers prefer to use the antique terms. ‘imbibe’ replaces ‘drink’; ‘inquire’ is used in place of ‘ask’; ‘peruse’ has been widely used instead of ‘read’; ‘forthwith’ is a substitution of ‘right away’ or ‘at once’ for them. (Alcaraz & Brian 5). Moreover, the words like ‘witnesseth’ instead of simple ‘witness’ add the archaic flavor the legal language.

Rather arbitrary and strange expressions are often experienced in the legal language. The expressions ‘of even date herewith’ is used in place of the easier and usual expression ‘dated the same as this document’; ‘these presents’ instead of ‘this document’; ‘the date hereof instead of ‘today’; ‘in my said mother’, instead of ‘my mother’; ‘for the purpose of identification only more particularly delineated’, instead of ‘for identification only’ or ‘more particularly’ delineated ; ‘jointly and severally’ instead of ‘separately and together’.

On one hand the archaic expressions or the antiquated terminology add complexity to the meaning and on the other had it is a boon also. Besides retaining the distinct identity of the legal language, it has other functions to perform. It helps to evade niggling changes as regards the legal lexical meaning is taken into consideration. Crystal and Davy (213) rightly endorse it when they say that “what has been tested and found adequate is best not altered”. The archaic and antiquated expressions have been tested and have received authoritative interpretation over the years. Moreover,

the frequent use of rare Old English and Middle English gives archaic feel to legalese.

The world renowned linguists namely David Crystal and Derek Davy (1969) in the masterpiece *Investigating English Style* have said that they had been also intrigued by the rarity in legal documents of substitute words like *he, she, they, their, this, that* and *it*.

It is not difficult but also risky to alter them. Words have different facets of meanings as per the context (s) and hence, sometimes it has been felt better to retain the same archaic words. So the risk of finding difficulty in understanding is better than the danger of misinterpretation. Hence, the conservative legal terms are better often though they handicap the better understanding especially of the laypersons as they become more inaccessible to the common readers.

1.4 The Use of Foreign Words and Expressions:

English legal language is greatly instilled with lexical items derived especially from French and Latin which must be the result of the long Norman domination of England in the fields like law and government. Regular use of old French and Norman French words like *tort, lien, estoppels, laches* which are never used in common vocabulary can be termed as loan words which cast shadow over most legal works. (Wikipedia)

Since Anglo-Norman was the language of the courts, there were French borrowings into the legal English. Interestingly, Latin was used for the official documents. Due to the widespread opposition to the Latinized expressions, there was an unsuccessful attempt through the British Parliament in 1730 to abolish Latin expressions from the legal proceedings. However, there was not smooth sailing in the absence of Latin expressions and the Latin expressions had to be restored after short suspension. Blackstone (cited in Williams 65) has said that certain technical terms were “not

capable of an English dress with any degree of seriousness”. The Legalese inevitably comprises of many Latin and French expressions (medieval and modern) in their original forms. As we Indians follow the British model of English and legalese is primarily English, we find many French and Latin expressions in the legal discourse. As a result of this, we have ‘habeas corpus’, ‘de jure’, ‘animus furandi’ and ‘ex parte’ very much legalised from Latin whereas ‘tort’, ‘a posteriori’ etc are borrowed from the French. There is a very wide range of words from the Latin and French origins.

Moreover the huge number of terms of Norman origin is still used in legal English (e.g. *court, judge, appeal*). Many of such words are now virtually unfamiliar outside legal circles, e.g. *attainder* (the loss of civil rights through conviction for high treason). However such terms have become ‘naturalized’ as English words due to the consistent use of them in the usual functioning. Other expressions have maintained all of their Frenchness, such as *profits à prendre* (meaning the right of common, where one has the right to take the fruits of the property of another). A French term found in contemporary legal English is *acquis communautaire*, which refers to the entire body of EU law. A vast number of foreign lexical terms or expressions in legal texts originate from Latin, such as *ex parte* (on behalf of), *ratio legis* (the reason for, or principle behind, a law) etc.

The foreign expressions such as *Jurisdiction, alien, arbitrator, attorney, per capita, suo moto, statute, ex officio* have become amalgamated and assimilated in such a way that they are undistinguishable today from the other native expressions. However, the words like *mens rea, de facto, amicus curiae, prime facie, habeas corpus, corpus delicti, interalia*, though are borrowed from foreign languages, have little place in today’s normal English language. Here are some more expressions with their meaning:

- **sine die:** without arranging a date for another meeting
- **ad hoc:** (Latin) for this purpose only
- **alias :** a name used other than the given name of a person
- **sub judice:** a legal case or piece of evidence which is being considered by a judge or in a court and some details of it cannot be discussed in public.
- **alimony:** support paid by one ex-spouse to the other as ordered by a court in a divorce case.
- **per diem:** per day. e.g. The financial assistance for permanent teachers of University/colleges will be paid maximum 50% of the total admissible expenditure.
- **bona fides:** evidence or proof that someone has sincere feelings or is who they claim to be Synonyms or related words for this sense of bona fides.
- Res judicata: an issue adjudicated
- Bes nova: a new thing; an undecided question of law
- Actus reus: guilty act

As far as Indian legal language is concerned, we find many Parasi-Arabic- Urdu words in it. It must be the result of the 400 year old Mughal Empire. Hence the words like *Vakalatnama*, *Belif*, *hawaldar*, *mamletdar*, *kacheri*, *mofusil*, *talak*, *kabool*,

hokum are still found in the legal language used in India in general and Maharashtra in particular.

Like Latinisms, the existence of legal French terms within English legal language is also apparent. After the Norman Conquest in 1066, the language of the invaders gained an undeniable position in the legal sphere of England, bringing with it a wealth of legal French terminology (Crystal & Davy 208)

English is a borrowed language and so is law. The emperors affected the language and law equally. Hence, clear evolution through the impact of the invasions and emperors is apparent and evident in the legal language. The legal vocabulary (in English as English is considered here as the legal language) contains many words of French origin viz. *appeal, bar, counsel, suit, estate, jury, lease, summon, tenant, verdict, contract, proposal, schedule, terms, conditions, policy, alias, quash* and so on. During the time of Christ, Latin became the language of law, court records and statutes. However, it remained the language of the highly learned-intelligentsia and could not become the legal language in strict sense as it was hardly used in pleadings and debates. Despite this, it left a mark on the legal language as the Latin terms like *ab intio, suo motu, ultra vires, bonafide, adhoc* got assimilated into the legal language. Such Latin terms and Latinized vocabulary has become the life and blood of legal language.