Unit-II

2.2 Characteristics of Legal Language

Legal language is that language which is being used by the people (like lawyers and other legal professionals) engaged in legal profession. Like English language, legal language itself is now a global phenomenon. It contains a number of unusual features which are related to terminology, linguistic structure, linguistic conventions, and punctuation. Due to its rich vocabulary, we find many problems in legal language like ‘ambiguity’, ‘multiple meaning’, and ‘doubtfulness in its contents’, etc. But Legal experts give the clarity and simplicity in legal language during the course of their work.

The main characteristics of Legal Language

1. Use of Foreign Words/Maxims: The development of legal English is closely connected with the history of Great Britain and the legal tradition of which is based on common law. For several centuries following the Norman Invasion, while almost all writing was done in French or Latin. During the history legal English was influenced by Latin and French. Following the Norman invasion of England in 1066, Anglo-Norman French became the official language of England. For a period of nearly 300 years, it was the language of legal proceedings. As a result many words using in modern legal English are derived from Anglo-Norman, e. g., property, estate, chattel, lease, executor, and tenant, etc.

   For the reasons, Legal English employs a great deal of technical terminology which is unfamiliar to lay men, for examples, waiver, restraint, res judicata, caveat emptor, promissory estoppel, etc. Due to such usage of difficult words and maxims, legal English sometimes seems to be difficult to understand. And sometimes these foreign words/maxims are used instead of English phrases, e. g., inter alia instead of among others.

   “Foreign words derived from Latin or French underwent either the process of transliteration or the direct borrowing process. The examples of native terms in legal English from the Anglo-Saxon period are: bequeath, goods, guilt, manslaughter, murder, oath, right, sheriff, steal, swear, theft, thief, ward, witness, writ. However, foreign words became overwhelming. Latin introduced the practice of using the following expressions: versus, pro se, in propria persona, caveat emptor, obiter dictum, Amicus Curiae, which sometimes have a specific meaning. Words of Latin origin are: negligence, adjacent, frustrating, inferior, legal, quit, subscribe. The French influence reflects not only in the words of French origin (appeal, attorney, claim, complaint, counsel, court, damage, default, defendant, demurrer, evidence, indictment, judge, jury, justice, party, plaintiff, plea, sentence, sue, verdict), but also in the use of adjectives standing behind the nouns which they modify in phrases such as: attorney general, court martial, fee simple absolute, letters testamentary, malice aforethought, solicitor general.”
**List of Latin and French Words**

1. *Ab initio* (Latin): from the beginning. For example, ‘this agreement is void ab initio’.
2. *Amicus curiae* (Latin): friend of the court; a person who is not directly involved in a case but advises the court.
3. *Locus standi* (Latin): place for standing; the right of a party to appear and be heard in court.
4. *Mens rea* (Latin): guilty mind; a criminal intention or knowledge that an act is wrong.
5. *Prima facie* (Latin): at first sight; evidence as it seems at first.
6. *Sub judice* (Latin): under judicial consideration; a rule which makes the act, an offence.
7. *Persona non grata* (Latin): a person who is not welcome somewhere.
8. *Ad hoc* (Latin): made or done for a particular purpose. For example, ‘an ad hoc tribunal was set up to deal with the claims’.
9. *Ad hominem* (Latin): to an individual’s interests or passions; used of an argument that takes advantage of the character of the person on the other side.
10. *Ad infinitum* (Latin): endlessly; forever. For example, ‘this case seems to have dragged on ad infinitum’.
11. *Ex gratia* (Latin): a payment given as a favour rather than because of any legal obligation. For example, ‘the executor made an ex gratia payment to one of the beneficiaries of the estate’.
12. *De jure* (Latin): rightful, by right (e.g. a de jure claim to the territory).
13. *Éminence grise* (French): a person who has power or influence without holding an official position.
14. *Ad referendum* (Latin): to be further considered. This often refers to a contract that has been signed although minor points remain to be decided.
15. *Bona fide* (Latin): genuine, real. For example, ‘a bona fide purchaser is interested in buying the company’.
16. *Bona vacantia* (Latin): property not distributed by a deceased’s will and to which no relative is entitled on intestacy.
17. *Caveat emptor* (Latin): the buyer is responsible for checking the quality of goods before purchasing them (literally, ‘let the buyer beware’).
18. *Circa* (Latin): around or about: used for dates and large quantities; can be abbreviated to c or c.
19. *De facto* (Latin): in fact, whether by right or not. For example, ‘she has acquired de facto control of the company’.
20. *De jure* (Latin): rightful, by right (e.g. a de jure claim to the territory).
21. *Éminence grise* (French): a person who has power or influence without holding an official position.
22. *Et al* (Latin): and others. This is used as an abbreviation in bibliographies when citing multiple editorship or authorship to save the writer the trouble of writing out all the names. Thus, ‘John Smith et al., Textbook on Damages’.
23. *Ex gratia* (Latin): a payment given as a favour rather than because of any legal obligation. For example, ‘the executor made an ex gratia payment to one of the beneficiaries of the estate’.
24. *Ex officio* (Latin): by virtue of one’s status or position.
25. **Ex parte (Latin)**: on the part of one side only. For example, ‘the lawyer made an ex parte application to the court to obtain an emergency injunction’.

26. **Ex post facto (Latin)**: By a subsequent act. It describes any legal act, such as a statute, that has retrospective effect.

27. **Flagrante delicto (Latin)**: in the commission of an offence. For example, ‘the accused was caught in flagrante delicto. He can have no possible defence’.

28. **Force majeure (French)**: irresistible compulsion or coercion. Often used in commercial contracts to describe events that may affect the contract but are completely outside the parties’ control. For example, ‘the contract contains the usual provision regarding situations considered by the parties to constitute force majeure’.

29. **Inter alia (Latin)**: among other things. For example, ‘the contract provides, inter alia, that the company will be sold for the sum of . . .’

30. **Inter partes (Latin)**: between the parties. For example, ‘the proceedings were held inter partes before the court.’

31. **Modus operandi (Latin)**: a way of doing something. For example, ‘his modus operandi was fascinating to watch’.

32. **Mutatis mutandis (Latin)**: ‘that having been changed which had to be changed’ or ‘with the necessary changes’. The phrase is used in contracts to indicate that a stipulation contained in one clause should also be applied in another part of the contract once the necessary changes have been made.

33. **Persona non grata (Latin)**: a person who is not welcome somewhere.

34. **Post mortem (Latin)**: after death. Generally used as a noun to describe the clinical investigation of a dead body.

35. **Prima facie (Latin)**: on the face of things; accepted as so until proved otherwise. For example, ‘prima facie you appear to have a reasonable case, although I will need further information before giving an informed opinion on its merits’.

36. **Procès-verbal (French)**: an informal record or memorandum of international understandings resulting from negotiation.

37. **Quid pro quo (Latin)**: a favour or advantage given in return for something.

38. **Ratio decidendi (Latin)**: the reason for deciding; the principles of law on which the court reaches its decision.

39. **Restitutio in integrum (Latin)**: restoration to the original position that existed before the events which triggered legal proceedings (re damages).

40. **Sic (Latin)**: thus; used in brackets in quotes to show that the writer has made a mistake. For example, ‘Jacques Chirats (sic) opposed the plan’.

41. **Sine die (Latin)**: (of proceedings) adjourned indefinitely.

42. **Travaux préparatoires (French)**: preparatory works that provide a background to the enactment of legislation.

43. **Ultra vires (Latin)**: beyond the powers. This describes an act by a public authority, company or other body which goes beyond the limits of the powers that it has.
44. **Vis-à-vis (French):** in relation to; as compared with.

2. **Synonymy:** Due to such French and Latin influence, English abounds in synonyms. At least three lexical sources gave rise to a great number of synonyms existing side-by-side. What complicates legal drafting is the existence of a number of synonyms referring to the same legal concept, like in the following examples produced by Haigh:

   Assign – transfer; Breach – violation; Clause – provision – paragraph – article;
   Contract – agreement; Default – failure; Lessee – tenant; Promise – assurance –
   undertaking; Void – invalid – ineffective

3. **Use of Archaic words:** Archaic or old words are being used less frequently than other terms, so they became rather obscure in the course of time. Old words are used in legal English primarily to avoid repeating names or phrases. For example, *The parties hereto* instead of *The parties to this contract*. We can find a long list of such words in legal language:
   a. **Hereat** means (1) ‘at this place or point’ or (2) ‘on account of or after this’. For example, ‘hereat the stream divided’.
   b. **Hereby** means ‘by this means; as a result of this’. For example, ‘the parties hereby declare’.
   c. **Hereafter** means ‘from now on or at some time in the future’. For example, ‘the contract is effective hereafter’.
   d. **Herein** means ‘in this document or matter’. For example, ‘the terms referred to herein’.
   e. **Hereinafter** means ‘later referred to in this matter or document’. For example, ‘hereinafter referred to as the Company’.
   f. **Hereof** means ‘of this matter or document’. For example, ‘the parties hereof’.
   g. **Hereto** means ‘to this place or to this matter or document’. For example, ‘the parties hereto’.
   h. **Heretofore** means ‘before now’. For example, ‘the parties have had no business dealings heretofore’.
   i. **Hereunder** means ‘later referred to in this matter or document’. For example, ‘the exemptions referred to hereunder’.
   j. **Herewith** means ‘with this letter or document’. For example, ‘I enclose herewith the plan’.
   k. **Thereafter** means ‘after that time’. For example, ‘The products shall be transported to The Grange. Thereafter, they shall be stored in a warehouse.’
   l. **Thereat** means (1) at that place or (2) on account of or after that. For example, ‘thereat, payments shall cease’.
   m. **Thereby** means ‘by that means; as a result of that’. For example, ’the parties thereby agree’.
   n. **Therein** means ‘in that place, document or respect’. For example, ‘The parties shall refer to the contract dated 1 May 1999. It is agreed therein that . . .’
o. **Thereinafter** means ‘later referred to in that matter or document’. For example, ‘thereinafter, it is agreed that . . .’

p. **Thereof** means ‘of the thing just mentioned’. For example, ‘Reference is made in paragraph 5 to the contract dated 1 May 1999. The parties thereof agreed that . . .

q. **Thereon** means ‘on or following from the thing just mentioned’. For example, ‘The machine rests on a wooden block. There is placed thereon a metal bracket . . .’

r. **Thereto** means ‘to that place or to that matter or document’. For example, ‘the parties thereto’.

s. **Therefor** means ‘for that’. For example, ‘the equipment shall be delivered on 13 September 2003. The Company agrees to pay therefor the sum of $150,000’. Therefor should not be confused with ‘therefore’ which means ‘for that reason’.

t. **Thereupon** means ‘immediately or shortly after that’. For example, ‘delivery shall take place on 13 September 2003. Thereupon the equipment shall be stored in the Company’s warehouse’.

u. **Whereabouts** means ‘the place where someone or something is’. For example, ‘the Company shall be kept informed as to the whereabouts of the products’.

v. **Whereat** means ‘at which’. For example, ‘The seller attempted to charge extra interest on late payment, whereat the buyer objected’.

w. **Whereby** means ‘by which’. For example, ‘the contract dated 1 May 1999, whereby the Company agreed to purchase the products’.

x. **Wherefore** means ‘as a result of which’. For example, ‘the buyer breached the contract, wherefore the seller suffered damage’.

y. **Wherein** means (1) in which, or (2) in which place or respect. For example, ‘the contract dated 1 May 1999, wherein it is stated that . . .’

z. **Whereof** means ‘of what or of which’. For example, ‘the Company one of the directors whereof is a foreign national’.

4. **Circumlocution**: *Circumlocution* comes from the Latin words *circum*, “circle,” and *loqui*, “to speak.” So, circumlocution, an essential characteristic of legal language, simply means “talking around.” Here, one unnecessarily uses large number of words to express an idea though it can be expressed more clearly in fewer words. There is a rich use of circumlocution in the legal language. There are equivalents of such expression in modern English, but legal drafters have decided to retain with the old tradition in order to secure legalism. Few examples of circumlocution are:

<table>
<thead>
<tr>
<th><strong>Circumlocuted Expression</strong></th>
<th><strong>Modern Equivalents</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Adequate number of</td>
<td>enough</td>
</tr>
<tr>
<td>At the time when</td>
<td>when</td>
</tr>
<tr>
<td>At that particular time</td>
<td>then</td>
</tr>
<tr>
<td>At a later date</td>
<td>later</td>
</tr>
<tr>
<td>As a consequence of</td>
<td>because</td>
</tr>
<tr>
<td>During such time as</td>
<td>while</td>
</tr>
</tbody>
</table>
For the duration of during
In the event that if
In close proximity to near
Similar to like
The reason being that because
Until such time as until

5. **Punctuation:** Punctuation is used insufficiently. Particularly in conveyances and deeds, we can observe the conspicuous absence of punctuation. Historically, there was a widespread idea among lawyers that the meaning of legal documents was contained only in the words used and their context. In modern legal drafting punctuation is used to clarify their meaning.

6. **Use of Modifiers:** The modifiers such as *the same, the said, the aforesaid, the aforementioned,* etc. which are used in legal texts are interesting, because they are very frequently used as adjectives to determine the noun, but not to replace them. For example, *the said John Smith.*

7. **Reciprocal words:** Legal English contains some words and titles, such as *employer and employee, addresser and addressee, lessor and lessee,* in which the reciprocal and opposite nature of relationship is indicated by the use of alternative endings.

8. **Phrasal verbs:** These are often used in a quasi-technical sense. For example, parties *enter into contracts,* *put down deposits,* *serve upon* other parties, *write off* debts, and so on.

9. **Ordinary words with special meanings:** In legal English, the ordinary words which we use in our daily life gets special meanings in legal context. For example, the familiar term *consideration* refers, in legal English, to *contracts,* and means, *an act forbearance or promise by one party to a contract that constitutes the price for which the promise of the other party is brought* (*Oxford Dictionary of Law*).

10. **Sentence length:** The length and complexity of sentences are the most obvious syntactic features. Plain English movement disputed the structural complexity in legal writing and explored the opportunities for the shortening of sentences. Specific sentence structure is caused by the fact that in the past every part of a legal document used to consist of a single sentence. Sentences included a great deal of information, repetitiveness, long noun phrases with plenty of modification, peculiar word order, prepositional phrases, as well as coordinate and subordinate clauses. As a result, lawyers are advised to measure the sentence length, or cut out superfluous words and sentences, or even delete redundant words and phrases. Only words that support the arguments given in the text add value to the sentence.

11. **Nominalization:** “Nouns derived from verbs are often used instead of verbs, such as: *to give consideration* instead of *to consider,* *to be in opposition* rather than *to oppose,* *to be in contravention* instead of *to contravene,* *to be in agreement* instead of *to agree.* However, it is hard to eradicate nominalization, as lawyers do not say: to arbitrate, but to
go on arbitration, because the arbitration is a legally defined procedure and should be considered as such”.

12. **Impersonal style**: Dependent on which party they represent, lawyers make frequent use of features that reduce the agent in his identity while emphasizing the action – a matter of strategy which has the impeding of comprehension as a consequence. The use of passive voice and peculiar use of pronouns are characteristics of a highly impersonal style of writing. Passive voice is inherent in legal language, but it is also overused in all types of legal documents. Legal drafters instinctively stick to it, so both laws and court decisions generally contain a verb in the passive, especially when obligation or condition is imposed. They tend to create the impression that such rules are infallible as they occur without the influence of the human agent. The legal drafters are encouraged to modify the texts by transforming passive voice into active, because the passive is justified only when the doer of the action is unknown or intentionally left out. The same goes for law. The omission of personal pronouns is another feature. Omission of the first person singular is motivated by the efforts of judges to achieve maximum objectivity. The omission of the second person singular is the characteristic of the written will. In this case, the first person singular is used instead. The second person singular is also omitted when there aren't direct orders and warnings or it is considered that legal rules should be impersonal. Thus, the use of the third person singular and plural is predominant. Everybody, everyone, every person is used when a provision applies to all, and no one, nobody is used in prohibitions. The intent is to create the impression that law is impartial, but such generalizations are vague, and their efficiency is often disputable.

13. **Capitalization**: In legal language, capital forms of words are being used widely and explicitly. Our Preamble (The Preamble of Indian Constitution) is a good example of the use of capital letters:

   **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**.

14. **Doublets and Triplets**: During the Medieval period lawyers used a mixture of Latin, French and English. The usage of pairs of words from different languages led to the emergence of mixed language doublets in legal language. Among the examples of mixed language doublets are:

   “Lands and tenements” (English/French)
“Will and testament” (English/Latin)
“Breaking and entering” (English/French)
“Fit and proper” (English/French)

The examples of English-only doublets are:
“Let and hindrance”
“Have and hold”

The other examples of doublets:
“bag and baggage”
“belt and braces”
“bread and butter”
“fast and furious”
“rock and roll”
“safe and sound”
“chalk and talk”
“hither and thither”
“hot and humid”

The examples of Triplets are:
“Healthy, wealthy and wise here”
“Here, there and everywhere”
“give, devise and bequest”
“ear, nose and throat (E.N.T.)”
“judge, jury and executioner”

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