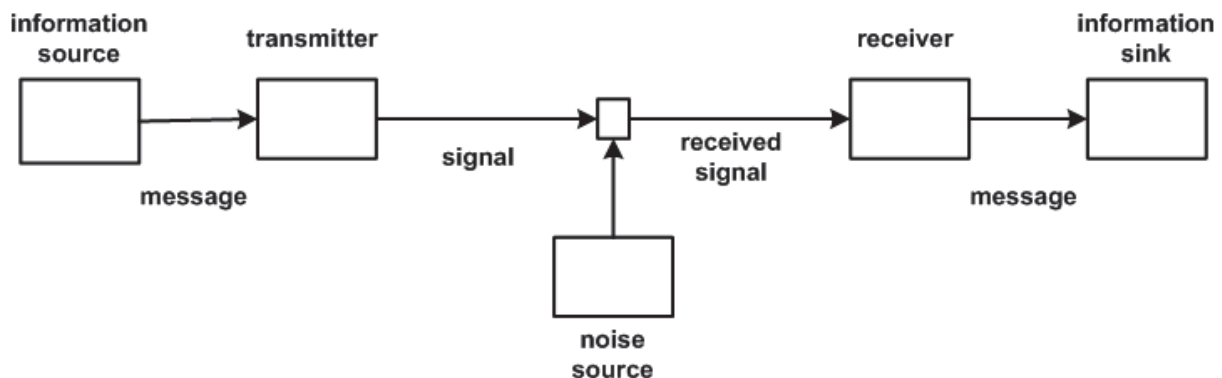


## A STUDY OF COMMUNICATION HURDLES IN LEGAL ENGLISH

*By Dr Jaya Verma<sup>277</sup>*

The process of communication involves sending and receiving messages and it is considered incomplete if message is not received by a receiver. The message is received by a receiver successfully if there is no hurdle in channel and in medium. Language is the medium of communication and basic function of language is to transfer message from one person to another but there is a field in which it fails to perform its basic function of communication. The field to discuss here is law. The English language used in this field is known as legal English or legalese. The present paper presents the arguments that legal English fails to perform the basic function of a language that is communication as it violates some general principles of communication. In legal English, sender or law professionals do their best to convey message but in spite of their effort receivers do not receive message completely. Due to its failure in communication Crystal and Davy consider legal English “least communicative” among all the variety of language (Crystal and Davy 1969).

Shannon and Weaver (1949) propounded a basic model of communication. This model suggested that the ingredients in communication are: source, transmitter, signal, receiver and destination. If we translate the source into speaker, the signal into speech and the destination into the speech and destination into listener, we receive a concrete process of communication. According to this model, if any trouble occurs in source and in channel, communication will stop.



<sup>277</sup> Assistant Professor, CVR College of Engineering, Hyderabad.

## **Figure 1-** Shannon and Weaver's fundamental model of communication

In legal English, communication is not only conveying information rather it directs society which influences everyone's life whether that person is able to understand the message or not. Kocbek (2008) states:

*Unlike language in general use in its most obvious function, it does not merely convey knowledge and information but it directs, affects and modifies people's behaviour (e. g. through statutes, court decisions, contracts) and as such contributes to creating and expressing the norms in force in different societies. Furthermore, it has an explicit performative character...The legal language used to pronounce judgements in courts, impose obligations and confer rights, grant permission, express prohibition, etc. provides indisputable evidence of its performative power...Due to its performative nature, legal language in general uses structures which enable the performing of specific speech acts – establishing obligations, conferring rights, granting permission, expressing prohibition, etc.*

**Kocbek (2008: 56)**

If we compare legal English on this model of communication, we find source and code complicate message to the extent that it is not received by receivers. Here source means law experts and code is the language in which legal documents are produced by them. Complication in communication occurs in these two areas. In other fields, non-verbal communication alleviates the problem but legal English does not employ it to avoid any sort of ambiguity.

The fundamental questions here are: does legal English intentionally violate general principle of communication? Does it have its own system of communication? For analysing communication hurdles, first we have to have insight into these hurdles.

### **Legal English and Legalese**

Legal English is formal academic English with some technical law jargon. It is used in Legal literature, legal textbooks, and correspondence: office memoranda, judicial opinions, and client letters. They tend to be in formal but Standard English, with little legalese. Legalese is a term used, often derogatorily, to refer to the unique characteristics of legal English. Legalese is typically criticized for being overly complicated, dense, repetitive, and outdated. Legalese

usually contains one or more legal speech acts by performative verbs that are meant to carry out its intended functions. The documents composed in using legalese are Acts, Judgments, Briefs, Pleadings, and Wills. They contain more legalese.

Legal English is characterized by highly technical vocabulary and colloquial terms used in specialized ways. It is also inundated with lengthy noun phrases, heavy use of passive voice, multiple negatives, nominalization and complex grammatical structures, including multiple embedded clauses and unusually placed subordinate clauses, long, complex sentences with intricate patterns of coordination and subordination.

### **Principles of communication:**

Communication is regarded as an effective communication when it is examined on the certain parameters of communication. Communication principles emphasizes on 7 C's of Effective Communication are: Completeness, Conciseness, Consideration, Concreteness, Clarity, Courtesy Correctness. Many other principles as brevity, clarity, preciseness, completeness, avoidance of redundancy have been proposed by Neal (2014), Goldsmith (2013), Dorling (2010) and Pal (2004).

### **Communication is two-way process:**

Communication is two-way process which involves sender and receiver but legal English is three-way process as between sender and receiver there is law expert. Comprehending legal documents is quite difficult for a lay person as law experts follow traditional way of writing so ultimate decoding of legal document is possible with the help of law expert. Tiersma (2006) thinks that the lawyers are more comfortable and safer to adhere to the well-known forms. Lawyers prefer their clients to remain totally dependable on their services.

### **Brevity:**

Brevity is considered as one of the key skill in communication. Brevity implies to use of a few words when expressing views in written or spoken form. Language experts advise learners to bring brevity in their writing. On the contrary, legal English is known for excessively long sentences. Traditionalists held that in legal English sentences are long because it is required to make texts clear and precise. If simple and short sentences do not cover all the necessary

guidelines of law, it is not appreciated in law. Butt (2006) notices that sentence length has association with the quality of being all-inclusive in legal English. He says:

*Not content with incorporating definition of questionable necessity, many drafters attempt to extend them to cover every conceivable circumstance. This results in definitions of excessive length and detail. Excessively long and detailed definitions can be counterproductive. In attempting all-inclusive, the drafter may unintentionally omit something which should have been avoided.*

**(Butt 2006:158)**

### **Clarity of expression:**

The principle of communication prescribes usage of simple words and short sentences to convey message while legal English trades off clarity and comprehension through long sentences. Even if the clarity of facts is established through the use of appropriate words and grammatically correct sentences yet readers find it difficult to comprehend. Only grammatical clarity is not enough to make a text clear, comprehensibility is equally important. A text is approved on the parameter of clarity when it is easier for reader to understand it.

In legal English sentences are long because it is required to make texts clear and precise. If simple and short sentences do not cover all the necessary guidelines of law, it is not appreciated in law. Law experts generally do not compromise on complexity to bring linguistic clarity. Assy (2011) writes:

*For the lawyers, clarity is not merely linguistic-in fact; linguistic clarity (simplicity) is subordinate and instrumental to legal clarity (precision) and must not undermine it. Furthermore, linguistic clarity is valuable for the lawyer only to extent that it contributes to legal clarity.*

**Assy (2011: 392)**

### **Redundancy:**

Repetition induces monotony and irritation. People repeat information in order to stress it but according to writing principles once information is given should not be repeated unless first time it has been conveyed in complex form.

Bowers (in Lehto 2012) states, 'legal language further tends to be conventional and repetitious; it often employs conventional syntactic structures and lexis that makes it easier to interpret as the writing is more predictable.' Inventory of law diction has been compiled with French, Latin and English. Many words have combination of above mentioned languages. This is the reason, we have pair of words like: null and void. Latin word *nullus* is the origin of the word 'null' and 'void' comes from the old French *voide*. French and Latin construction started interfering in English sentence structure. The chancery English that was used in administrative writing developed during the 15<sup>th</sup> century. In the below example redundancy of words is quite obvious:

*Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, <sup>Adv cl F</sup>(if in force at the commencement of this Act, continue to be in force,) and <sup>Adv cl F</sup>(so far as it could have been made, **directed, passed, given, taken, executed, issued or done** under or in pursuance of this Act,) shall have effect <sup>Adv cl F</sup>(as if made, **directed, passed, given, taken, executed, issued or done** under or in pursuance of this Act*

**The Company Law Act 1956**

### **Use of personal language:**

Legal texts are notable for their objectivity. The presentation of information in the most possible generalized and impersonal manner is performed in legal language. Various means or linguistic devices are used to achieve maximum objectivity and impersonality in the text. The most usual of them are passive constructions, nominalizations and specific use of personal pronouns.

Legal English avoids using first and second person expression (*I* and *you*) instead uses third person pronouns or nominal phrases as the statute addresses everyone in general not to one individual. Judges too refer to themselves as *the court* rather than *I*. This factor of course is likely to have favoured the selection of passive rather than active voice. Here actually the Principle of End Weight functions, according to which long, complex noun phrases are moved to the end of the sentence.

Nominalization is one of the leading characteristic of formal writing and it is indispensable part of legal English is 'ultra formal' (Russel: 2001) in its style. They are used to make language more compressed and impersonal. Nominalization is strongly recommended in academic English to make language more formal but legal English stands out in its use of nominalizations. Verbs have lower frequency than nouns. The verbs that are used in legal English have low frequency of finite verbal constructions. (Williams 2005). William (2005) finds legal documents tend to be "nouny" rather than "verby". Nominalization brings objectivity style to writing. In legal English nominalization may sometimes be used, like the passive, in order to "depersonalize" (Tiersma 1999: 77). The example given below illustrates nominalization and passive construction:

*A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.*

**The Company Act 1956**

Reformists' demands for simplification of legal English so that it could be made accessible to common people The Plain English Movement has been promoted the use of plain language in legal writing to break the hegemony of law professionals and to make law people's friendly. Purists or traditionalist do not want any kind of amalgamation in language of law. If it is wished that legal messages could reach to more and more people then little amendments on according to the principles of communication is required in legal English.

### **Bibliography**

Assy , R. (2011).Can the Law Speak Directly to its Subjects? The Limitation of Plain Language. *Journal of Law and Society*. Volume 38, number 3, pp. 376±404

Butt, P. & R. Castle (2006) *Modern Legal Drafting*. New York: Cambridge University Press.

Crystal, D. & Davy, D. (1969). *Investigating English Style*. London: Longman.

Goldsmith, Laurence. 2013. *Brevity*. Oxford University Press: UK.

Kindersley, D. (2010). *Humanities and communication skills*. Delhi: Pearson Education India.

Kocbek, A. (2008): "The Challenge of Intercultural Legal Communication." In: *International Journal of Euro-Mediterranean Studies*, Vol. 1, No. 1.

Lehto, A. (2012). Development of subordination in early modern English legal discourse. *Journal of historical pragmatics*. Volume 11, Issue 2 pp. 277–300  
(24)<http://www.birmingham.ac.uk/documents/college-artslaw/corpus/conference-archives/2011/Paper-176.pdf>

Neal, K. L. (2014). *Six key communication skill for records and information manager*. Chandos Publishing Elsevier Limited: UK.

Pal, R. and J.S. Korlahalli. (2004). *Essential of business communication*. Sultan Chand & sons: Delhi.

Russel, S. (2001). *Grammar, structure & style*. New York : Oxford University Press.

Shannon, C. and W. Weaver .(1949). *The mathematical theory of communication*. Urbana, IL: The University of Chicago Press.

Tiersma, P. M. (1999). *Legal Language*. Chicago: The University of Chicago Press.

Williams C. (2005). *Tradition and change in legal English: verbal constructions in prescriptive texts*. Peter Lang: Bern.