# The Pillars of Nero: Professionally Imposed Barriers to Legal Awareness and Solutions to Them

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*This essay presents the dangerously low degree of legal awareness in India, and argues that it may to a substantial degree be attributed to the opaque linguistic and discursive practices of the legal profession in India. It thereafter argues that such practices have become deeply intertwined with authority and social status both in and of the profession. The essay then reviews some arguments made in favour of legalese, and concludes that they do not hold outside a narrow range of situations. It highlights the potential and actual public harms inflicted by the unnecessary use of legalese.*

*The essay then surveys the possible sociological explanations for the continued proliferation of legalese despite discouragement and dislike, and locates the cause not in deliberate malice but in certain common educational and professional practices. Thereafter, it explores solutions to this problem, some suggested by experts and others actually adopted in different jurisdictions. Finally, it makes the case and provides suggestions for reform at the individual level, in curricula, in judicial and bureaucratic practices; as well as through plain language legislation already pending before the Parliament.*

***Keywords:*** *access to justice, legalese, legal profession, plain language movement, transparency, rule of law.*

## I. Introduction

It was said that Emperor Nero was used to "posting edicts high up on the pillars, so that they could not easily be read."[1] Perhaps the legal profession,

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1 Antonin Scalia et al, *A Matter of Interpretation: Federal Courts and the Law* (Amy Gutmann ed, Princeton University Press 1997) 3-21.

including in India, is even today susceptible to this charge. Legal writing is, to say the least, widely disliked. No less a jurist than Jeremy Bentham charged lawyers with "poisoning language in order to fleece their clients", a view that has now become wholly commonplace.[2] This does not, even so, seem to have significantly improved the average quality of legal texts. However, in the context of countries such as India, where even basic legal awareness is at depressing lows, obfuscatory legal communication becomes not merely a stylistic concern, but an urgent threat to the integrity of the legal order and access to justice.

In this article, Part II explores the intertwined nature of law and language in general, presents the scenario of legal awareness in India, and argues that the continued usage of certain kinds of legal communication constitutes a major professionally imposed barrier to legal awareness. Part III argues that such legal writing is unjustifiable and may, in some cases, cause or enable violations of the rule of law. Part IV of the paper investigates the possible causes of the continued usage of such style despite criticism. Part V recommends a number of solutions that may be adopted at the individual, institutional, and legislative levels. The paper concludes with a reflection on the rewards and challenges involved in such reform.

## II. The Law, Its Princes, and Its Subjects

As the vigour of jurisprudential debate demonstrates, 'the law' is very difficult to define. It clearly consists of the whole body of legal texts, but the understanding and scope of these texts remains contested even within the legal profession—meaning here legislative drafters, bureaucratic officials, lawyers, legal academics, and judges. Still, a few important conclusions regarding the role and function of texts within the legal system may be drawn.

Firstly, the original meanings of the prior legal texts all taken together neither do nor can always determine the likely or 'correct' judgment in any given case.[3] Secondly, conventionally accepted methods of extra-textual reasoning play a significant role in determining the behaviour of the law.[4] Thirdly, the perceived content of the law is, therefore, at least partly dependent on the status and perspective of the perceiver.[5] Fourthly, this effectively implies that, as Ronald Dworkin puts it, "the courts are the capitals of law's empire, and judges are its princes."[6] More prosaically, this means that the legal profession is an 'interpretive community': a group of readers and writers structured around certain texts,

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2 Robert W Benson, 'The End of Legalese: The Game is Over' (1984) 13 NYU Rev L & Soc Change 519, 521.

3 HLA Hart, *The Concept of Law* (Clarendon Press 1961) 124-147; Ronald Dworkin, *Law's Empire* (Be Press 1986) 400-417.

4 ibid.

5 ibid.

6 Dworkin (n 3) 407.

such that the traditions of writing and reading developed in the group determine the possible meanings of the underlying texts.[7] This is because the existing law, especially for many cases that reach the Supreme Court, is rationally indeterminate, and justifies no unique outcome. In these cases, it is the moral and political inclinations of the judge that determine the outcome—but crucially constrained within the boundaries set by methods of reasoning accepted within the legal community, to which the judge is held accountable.

This presents us with a dilemma: given that the law is supposed to be followed by all citizens, the fact that its content, explicated in the traditionally legal 'style', is properly accessible only to a much smaller group, it implies that the average citizen is largely unaware of the rules that govern their lives. This is precisely what we will find. However, before we proceed further, it is important to define what we mean by the legal style of communication. It refers to the features that distinguish legal discourse on a given matter, written and oral, from its counterpart as conducted by lay interlocutors. Some observed features of 'legalese', as it is often called, are "long words; rare Old and Middle English words; Latin phrases; common words with uncommon meanings; French expressions; "terms of arts"; argot; fossilised formulas".[8] Legal language also suffers from maladies such as verbal reduplication, unusual prepositional phrases, long and complex sentences, unending word lists, excessive use of nominalisations and passives, multiple negatives, illogical order of ideas, omission of referential pronouns in favour of repetition, and stylistic peculiarities such as pomposity, verbosity, and dullness.[9]

## A. Legal Awareness in India

Despite the fact that State-sponsored general surveys of legal awareness remain woefully few and far between, the data collected on the topic paints a bleak picture. One instance which highlights how the lack of legal awareness and rights arising thereof harm the people is in the area of consumer rights. Rural consumers in India have been subjected to exploitation due to poor knowledge about their rights and available remedies in case of infringement of such rights.[10] This lack of awareness has made them endure sub-standard products and services, adulterated food, short weights and measures, spurious and hazardous drugs, profiteering, and a plethora of other unfair trade practices.[11] With a large population in India still suffering from poverty, unemployment, and poor literacy levels,

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7 See John R Morss, 'Who's Afraid of the Big Bad Fish - Rethinking What the Law Wishes to Have' (2003) 27 Melb U L Rev 199; William S Blatt, 'Interpretive Communities: The Missing Element in Statutory Interpretation' (2001) 95 Nw U L Rev 629, 689.

8 M I Sastri, 'Legalese Revisited' (1988) 80 Law Libr J 193, 198.

9 ibid.

10 Dhiraj Kumar Mishra, 'Awareness of Consumer Rights and Responsibilities in India: Prospects and Challenges' (2018) 9 Indian J L & Just 39, 57.

11 ibid.

consumer rights and, by extension, general law awareness remain low in India, particularly among the rural consumers.[12]

Another instance which highlights the deplorable state of legal awareness in India is the situation of the tribal communities living near reserved forests and other remote places. A study found that more than 80% of the locals residing near reserved forests had no knowledge of the Forests Rights Act, which governs such protected areas and provides them certain rights.[13] All activities in reserved forests, under the Indian Forest Act enacted in 1927, are prohibited unless permitted. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, enacted in 2007, provides traditional forest communities with rights over forest resources and forest lands, besides providing substantial power to the local government. This legislation was meant to mitigate the increasing conflicts between multiple actions over forest use rights.[14] However, ignorance about the laws governing such areas among the locals give rise to a situation where they may violate the law without even being aware of any such violation. Another substantial outcome of this unawareness is that it makes them vulnerable to exploitation by corporations and private entities intending to encroach upon such regions, along with the bureaucracy that facilitates such unjust encroachment.

The extent of legal unawareness in India may be gauged from the fact that even professionals possess inadequate knowledge about the law applicable to their professions. A study revealed that the knowledge on laws and various legal provisions thereof, as was applicable to nursing, across all categories of nurses under review, was inadequate to say the least.[15]

While the existing empirical data on the matter is far from sufficient, it may be taken to indicate a dangerous insufficiency of legal awareness. The danger arises out of the fact that awareness of the law is a necessary requisite for claiming one's legal rights and also for refraining from falling afoul of the law. Insofar as the inaccessibility of the law to large segments of the population hinders the fundamental goal of ensuring equal access to justice, it becomes imperative to explore its possible causes.

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[12] ibid.

[13] Macura, B, F Zorondo-Rodríguez, M Grau-Satorras, K Demps, M Laval, CA Garcia, and V Reyes- García, 'Local Community Attitudes toward Forests Outside Protected Areas in India. Impact of Legal Awareness, Trust, and Participation' (2011) 16(3) Ecology and Society <https://www.ecologyandsociety.org/vol16/iss3/art10/> accessed 13 August 2020.

[14] ibid.

[15] Hemant Kumar, Gokhale, Kalpana Jain, DR Mathur, 'Legal Awareness and Responsibilities of Nursing Staff in Administration of Patient Care in a Trust Hospital' (2013) 7 Journal of Clinical and Diagnostic Research 2814 <www.jcdr.net/back_issues.asp?issn=0973-709x&year=2013&month=December&volume=7&issue=12&page=2814-2817&id=3886> accessed 13 August 2020.

## B. Possible Barriers and Attitudes to Them

It would be invidious and inaccurate to pin all or most of the blame for this state of affairs on the legal community. Larger systemic barriers, such as the high level of socioeconomic and especially educational marginalisation, are almost certainly the main contributors to overall low awareness of the law.[16] Nevertheless, for three reasons, special attention must be paid to the role of the legal profession's discursive practices in raising barriers to wider awareness. The first of these is the lack of comprehension of the law among non-legal professionals such as medical staff, who do not, at least to the usual extent, face the same systemic barriers as the general public. Some part of this problem might be accounted for by a lack of interest in the law among such professionals, but this is largely inadequate, given that they stand, at least in theory, to face extensive reputational, monetary, and even criminal penalties in the event of an inadvertent breach of the rules. Therefore, systemic barriers cannot entirely account for low legal awareness.

Secondly, systemic barriers in areas as complex as education and poverty alleviation require massive investment of resources, coordinated social and political action involving cooperation among various loosely connected factions, and a significant amount of time. In comparison, changing certain pernicious habits of the legal community regarding the style and form of communication requires relatively inexpensive action on the part of a group of persons held together by formal and informal structures of authority. As a practical matter, therefore, it is prudent to begin with the 'low-hanging fruit'.

Thirdly, several instances show a lack of consciousness of the dangers of unclear communication. In recent years, the Indian legal profession has witnessed nationally anticipated judgments that routinely run up to hundreds of pages;[17] judgments of public importance that contain a litany of arguments seemingly unconnected to the legal issue;[18] and, in one case, a High Court judgment that the Supreme Court overturned due to obscure writing.[19]

As a result, it has been suggested by learned experts that the proliferation of verbose judicial writing in India has led to "the conflation of the length of a

[16] Prime Minister's Office, 'Prime Minister Launches National Legal Literacy Mission' (PMO Archives, 6 March 2005) <https://archivepmo.nic.in/drmanmohansingh/speech-details.php?nodeid=75> accessed 22 September 2020.

[17] The Print Team, 'Supreme Court's Nearly 500-Page Order on Sec 377: Are India's Judges Most Erudite or Too Verbose?' (*The Print*, 7 September 2018) <https://theprint.in/talk-point/supreme-courts-nearly-500-page-order-on-sec-377-are-indias-judges-most-erudite-or-too-verbose/113607/> accessed 20 August 2020.

[18] ET Edit, 'A Judgment Too Far from Uttarakhand' (*The Economic Times*, 14 August 2018) <https://economictimes.indiatimes.com/blogs/et-editorials/a-judgment-too-far-from-uttarakhand/> accessed 20 August 2020.

[19] *Sarla Sood v Pawan Kumar Sharma* 2017 SCC OnLine SC 1673.

judgment with its profundity".[20] Others point out that it discourages efforts to translate judgments into commonly understood regional languages.[21] It also makes it possible for lawyers to "pick and choose from large reams of text to build entirely different and contradictory arguments" in future cases.[22] Finally, it has been argued that obscure writing permits judgments to "confuse and befuddle" readers, making critical engagement with the judiciary difficult.[23] Whether or not some or all of these charges are true, they echo the perception of many observers, which bodes ill for the acceptance and authority of law in India.

Empirical studies, although conducted outside India, indicate that people, irrespective of their educational background and understanding of the legal system, prefer clarity and emphasise the importance of understanding legal communication.[24] Interestingly, one study asked some judges and their research attorneys to assess passages from briefs written in "legalese" while asking other judges and research attorneys in the same court to assess the same passages rewritten in "plain English".[25] The versions written in legalese were perceived to be "substantively weaker" and "less persuasive" than their plain English counterparts by statistically significant margins.[26] The question, then, is whether the use of legalese is beneficial or detrimental to the purpose sought to be served by the law.

## III. The Rules and the Rule of Law

It has been argued that the length of important legal documents, opaque reasoning, and the difficulty or alienness of the language used constitute professionally entrenched barriers to proper public awareness, comprehension, scrutiny, and acceptance of the legal and judicial process. However, it remains to be decided whether it can in fact be dispensed with. The latter proposal has sometimes been answered in at least a qualified negative. It is thus necessary to review and respond to the arguments for the usage of legalese.

### A. The Plea for Legalese

The plea for retaining the current mode of legal communication proceeds essentially along four lines: what may be called the argument from innocence; the argument from precision; the argument from specialisation; and the argument

[20] The Print Team (n 17).
[21] ibid.
[22] ibid.
[23] ibid.
[24] Christopher R Trudeau, 'The Public Speaks: An Empirical Study of Legal Communication' (2011-2012) 14 Scribes J Leg Writing 121,137.
[25] Robert W Benson and Joan B Kessler, 'Legalese v. Plain English: An Empirical Study of Persuasion and Credibility in Appellate Brief Writing' (1987) 20 Loy L A L Rev 301, 301.
[26] ibid.

from authority. The argument from innocence denies that legalese is responsible for any significant adverse outcomes, holding that it is either the poor reasoning or the lack of grammatical and stylistic proficiency of legal professionals that is actually responsible for the adverse outcomes attributed to legal writing in general. In a more extreme form, this may even extend to denying that there exists a distinctively legal style of writing at all.[27]

The argument from the perspective of precision accepts that legal language and provisions, while indeed unusually full of archaic phrases or technical terms, are of such a characteristic only to ensure that they convey a precise meaning understood by all who are familiar with the law: "a degree of precision which a person reading in good faith can understand; but … a degree of precision which a person reading in bad faith cannot misunderstand".[28] The argument from specialisation carries this line of justification further and also accepts that the nature of legal writing delineates the legal profession as a distinct 'policy subcommunity' whose members understand and influence the law much more than the average citizen. However, it insists that this is a net positive, because legal reasoning takes "preexisting goals like efficiency and equity and focuses on the best means for achieving them."[29]

Finally, the argument from authority even concedes that legalese enables legal professionals to invest claims of questionable legal validity with seeming legal authority, so as to subvert external scrutiny. However, it claims that this is justified at least in some cases on the grounds of the positive results produced, such as the strengthening of international institutions through international legal vocabulary;[30] or in fulfilment of the advocate's duty to their client even when the legal case is weak; or in the legitimation of controversial but arguably desirable decisions like *Kesavananda Bharati*.[31]

## B. Why the Plea Must Stand Dismissed

The first argument is trivially true if it is construed to simply mean that the usage of legalese is not the metaphysical efficient cause of more substantive problems in legal argumentation. However, it is empirically false on the non-trivial reading, insofar as legalese does deprive laypersons of the full understanding of

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[27] J Christopher Rideout and Jill J Ramsfield, 'Legal Writing: a Revised View' (1994) 69 Wash L Rev 35, 41.

[28] Matt Keating, 'On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting' (2018-2019) 18 Scribes J Leg Writing 91, 91.

[29] Blatt (n 7) 644.

[30] Iain Scobbie, 'Rhetoric, Persuasion, and Interpretation in International Law' in Andrea Bianchi, Daniel Peat, and Matthew Windsor (eds), *Interpretation in International Law* (OUP 2015) 61-77.

[31] The Print Team (n 17).

judgments and other legal documents, including widely used consumer contracts, consent-to surgery forms, and statutes.[32]

The arguments from the perspective of precision and specialisation hold good, but within a limited scope. Specifically, they can justify only texts of private contract law, interpreted to a limited number of laypersons by specialists. However, they do not justify the usage of legalese either in public, tort, and criminal law, or arguably even in standard form contracts, where unaided laypersons are disabled from fully understanding and scrutinizing obligations that accrue to them.

This leaves the argument from authority, which justifies legalese *as* legalese, arguing for it despite or because of the loss of general public comprehension and scrutiny of the law. This could be interpreted as a general justification on account of its normative correctness, or one addressed to a definite group, on account of its impact upon that group. These two interpretations are each rebutted below.

If the argument for legalese from its enhancement of the legal profession's authority is the latter, we must interrogate to whom exactly such an argument could be addressed. By definition, it could not be addressed to the public at large, considering its iniquitous implications. However, empirical studies show that it could not be successfully justified to professionals either, who in fact tend to assess plain language legal documents, and the lawyers who write them more favourably.[33]

If, however, it is not addressed to any determinate group of persons, but is a more general normative justification for legalese, then it may be sufficient to point out the trade-offs, also previously mentioned in the context of verbose judgments. Namely, it requires undermining to a significant degree the principles of legal generality, publicity, and predictability of law's content and behaviour, which cumulatively form the bedrock of the rule of law.[34] Such a trade-off presupposes a low degree of confidence in or respect for a given legal regime. It may be the case that the positive effect of the additional authority vested in some legal document by the "legal style" may outweigh the negative ones in some extraordinary circumstances, such as when it helps to support a judgment which is not otherwise uniquely determined on the basis of the legal reasons alone. However, because the rule of law demands that the law be generally clear and predictable on any given topic, the regular stylistic obfuscation that is characteristic of legalese as an institutional habit cannot be defended thus.

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[32] Benson and Kessler (n 25) 302.
[33] ibid.
[34] Lon Fuller, *The Morality of Law: Revised Edition* (Yale University Press 1965) 33-41.

The plea for legalese is also refuted by the negative impact of legal unawareness upon access to justice, facilitating which is the very purpose of the legal system. Firstly, at the collective level, it hampers the ability of the citizenry to exercise their democratic autonomy and bring the State to account for lapses in upholding its legal and ethical duties. Secondly, at the individual level, it may deprive individual persons of their ability to identify when they have been wronged and thus to seek redressal. The cumulative effect is to weaken the legal system in its actual functioning. Hence, there is a need to recognise the causes for the use of legalese and find possible ways out.

## IV. The Causes of Legalese

If it is accepted that the usage of legalese is not justified, and therefore that it ought to be reduced to the extent feasible, its appeal still remains to be explained. Explanation for human activities is admittedly often contentious. However, here we are concerned only with finding the social and other factors that encourage the usage of legalese, so that they may be effectively dealt with. Two broad lines of explanation have been offered: one that attributes ill intent to the legal profession taken institutionally, and one that does not.

### A. Social Status in and of the Profession

A rather crude condemnation of the legal style projects the legal profession as a group of scheming persons who consciously and maliciously use their language as a smokescreen, a way of preserving the mystery of the profession, in order to justify high fees. This is the familiar charge "that through obfuscation and jargon, lawyers delude the public into believing that lawyers are wise, and therefore valuable economically".[35] Needless to say, it is rather unlikely that most professionals think in this caricaturesque way.

A more viable critique explains legalese as an institutionally entrenched mechanism that, on a subconscious level, enables legal professionals to feel "in no way inferior" to other professionals.[36] Legalese has been described by some as a means of making the profession special and distinctive, akin to the way customs and rituals function for communities.[37] However, not only status but also power flows from language as surely it does from might or money. The power

[35] Michael Stephenson, 'Harry Potter Language: The Plain Language Movement and the Case against Abandoning Legalese' (2017) 68 N Ir Legal Q 85, 87.

[36] Robert W Benson, 'The End of Legalese: The Game is Over' (1984) 13 NYU Rev L & Soc Change 519, 570.

[37] Jyoti Sagar, 'Whereof They're Ipso Facto Words: India Needs to Simplify the "Language of the Law" ' (*The Economic Times*, 6 March 2018) <https://economictimes.indiatimes.com/blogs/et-commentary/whereof-theyre-ipso-facto-words-india-need-to-simplify-the-language-of-the-law/> accessed 04 July 2021.

of legal language is extraordinarily strong as it is backed by the legitimacy and sanctions of the state. The "frequently obscured persuasive, argumentative and coercive levels inherent in the writing of legal texts" also function to legitimise power through intimidation.[38] This takes on a greater urgency in the Indian context, where it frequently provides a garb of legality to strongmen and others with socioeconomic power. They are often able to manipulate and repress the common populace into obedience through the assistance of those well versed with the intricacies of the legal system and the law of the country.[39] The inability of the common populace to manoeuvre the legal system and seek remedies for wrongdoings further exacerbates the situation. It is thus suggested that the institutional preference for legalese, especially in the Indian context, arises in part from its role in placing the legal profession at the centre of an alternate network of authority, composed of powerful political and financial actors who can subvert the rule of law from within the legal structure.[40]

## B. Learning and Acculturation in the Law

The explanation for the prevalence of legalese depends either on legal professionals exhibiting a clearly malicious or at least selfish attitude, or on legalese being an institutional habit, fostered in individuals without any deliberate plan or purpose. Granting that the first possibility is realised in some cases, the latter case is likely much more common. However, the explanation in the latter case must work at a closer level to illuminate useful solutions. Specifically, it is important to pay close attention to the role played by the channels of acculturation in the legal profession.

Firstly, it has been observed that the lack of care by institutes of legal education to teach the art of legal writing leads to students adopting the most ostentatiously distinctive legal jargon in order to be perceived as experienced legal writers.[41] This ends up further increasing the density in legal prose that alienate ordinary readers, while at the same time decreasing the clarity, concision, and precision that characterises good legal writing. Secondly, Justice Scalia has contended that legal education often uncritically emphasises judgments in 'hard cases' where legal reasoning is at its most tenuous and rhetoric plays the greatest role.[42] This inadvertently teaches students that legal reasoning is about "playing king

[38] Peter Goodrich, 'Rhetoric as Jurisprudence: An Introduction to the Politics of Legal Language' (1984) 4 Oxford J Legal Stud 88, 99; Benson (n 36) 571.

[39] Thomas Blom Hansen, 'Sovereigns beyond the State: On Legality and Authority in Urban India' in Thomas Blom Hansen and Finn Stepputat (eds) *Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World* (Princeton University Press 2005) 169, 191; PSBT India, 'All Rise for Your Honour' (7 January 2015) <https://psbt.org/films/all-rise-for-your-honour/> accessed 25 September 2020.

[40] PSBT India (n 39).

[41] Rideout and Ramsfield (n 27).

[42] Scalia (n 1).

— devising, out of the brilliance of one's own mind, those laws that ought to govern mankind" by using "fictions, subterfuges, and indirection".[43]

Thirdly, it has been pointed out that the general public often judges the quality of legal work by its verbosity, complexity, and other irrelevant traits.[44] It has also been observed that there is low public awareness of and tolerance for the ambiguities and normative dimensions inherent in the very nature of legal argumentation.[45] This may lead to legal professionals having to necessarily resort to using legalese to vest their arguments with public legitimacy, while at the same time reducing public awareness and tolerance towards the legal regime.

Finally, others pin the persistence of legalese on mundane factors pertaining to the complexities of altering entrenched behaviours, such as inertia, perceived necessity, and insecurity.[46] Inertia refers to the uncritical adoption of the established style usually employed by lawyers, which is often inculcated in law schools. Perceived necessity often motivates lawyers to resort to legalese out of a fear that departure from traditional language might lead to "defective drafting and the spectre of professional negligence".[47] Lastly, insecurity may play a part in the continuance of legalese as many consider it safer to stick to the older ideas.[48]

## V. Proposals for Reform

Supposing that the above explanations taken together are adequate for guiding at least basic reform so as to remove professionally entrenched barriers to legal awareness, we may group the strategies available into roughly two sorts: short term ameliorative strategies that may be adopted by dedicated individuals or groups within the profession, and structural reforms that require cooperative and even formalised action on the part of the profession and the public.

### A. Short-Term Amelioratives

A number of useful recommendations come from scholars attached to the 'Plain Language Movement', which has had some success in the United States. One may easily employ techniques such as avoiding complicated terms, Latin words, multi-word prepositions, and using active voice so as to rectify the worst

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43 ibid.

44 The Print Team (n 17).

45 Brian Leiter, 'Constitutional Law, Moral Judgment, and the Supreme Court as Super-Legislature' (2015) 66 Hastings LJ 1601, 1615.

46 Peter Butt, 'Legalese versus Plain Language' (2001) 35 Amicus Curiae 28, 29.

47 ibid 30.

48 ibid.

aspects of legalese,[49] without any sacrifice on accuracy, certainty, or precision.[50] Almost all of the suggested rules and procedures for plain language legal writing are applicable to writing of any kind but it is instructive to see how often they are neglected in legal texts.[51] Stock plain language tips such as writing shorter sentences, with fewer double negatives, passive constructions, nominalisations, and embedded clauses suffice at least to treat the most obvious symptoms of the problem.[52]

Individualised linguistic reform has its limitations as well as detractors. For instance, it has been argued that simplification of the language of an insurance policy or contract may sometimes have unexpected and undesirable effects.[53] In particular, Professor Uriel Proccacia has advised against linguist reform on the ground that linguistic obscurity may benefit disadvantaged litigants.[54] Often judges rule for individuals and against corporations on the basis of the *contra proferentem* rule, which provides for an ambiguous provision in a written document to be construed more strongly against the party which picked that language.[55] Thus the danger is that linguistic reform may lead to individuals being held more strictly to the contractual language.[56] However, such an analysis is not very relevant because it neglects to account for the many ways in which complexity of legal language discourages most lay readers from reading, understanding, and where necessary contesting contracts in the first place.

The more substantive critique of linguistic reform contends that legalese makes use of certain legal concepts whose own history of usage gives them their respective peculiar meanings, and which therefore cannot be translated into 'Plain Language'.[57] What this also misses is that not all the intricate historical details of a concept in any given legal text need to be translated into 'Plain Language' at all, but only such implications of the concept that the text is making use of. This may be accomplished in several ways, but effectively not by individuals or specific groups.

Furthermore, once linguistic reforms are introduced, its functioning would be enough to counter the perceived necessity of legalese for the integrity of the legal system and contractual obligations. This is because the supposed "lacunae"

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[49] Christopher R Trudeau, 'The Public Speaks: An Empirical Study of Legal Communication' (2011) 14 Scribes J Leg Writing 121, 151.

[50] Lucinda Phillips and Christopher Balmford, 'Plain Language- It Just Plain Works' (1995) 12(3) The Compleat Lawyer 27, 27.

[51] Frank Winter, 'Legalese, Bafflegab and Plain Language Laws' (1980) 4 Can Cmty LJ 5, 10.

[52] Brady Coleman, 'Are Clarity and Precision Compatible aims in Legal Drafting' (1998) Singapore Journal of Legal Studies 376 (Dec), 380.

[53] Brenda Danet, 'Language in the Legal Process' (1980) 14(3) L & Soc Rev 445, 490.

[54] ibid.

[55] Winter (n 51) 7.

[56] Danet (n 53).

[57] ibid.

that might be created due to the simplification of laws and contracts can be easily filled by the interpretation of judges who look at the parties' objective intentions or "the meaning which the document would convey to a reasonable person" in cases of contracts and the drafter's intention in cases of legislations.[58] However, factors such as insecurity and inertia that contribute to the perpetuation of legalese can only be tackled with structural changes.

## B. Possibilities for Structural Change

It has been argued at length that legal language is no longer a contingent characteristic of an essentially distinct legal practice, but exists in a mutually constitutive relationship with the legal profession.[59] Given this, it is reasonable to expect that the most enduring reforms would require concerted institutional action to execute. At the simplest level, some real change may result from efforts such as teaching clear and precise writing in institutes of legal education. As noted above, legal language is not necessarily characterised only by its unappealing aspects, but may, if taught and deployed well, serve as a model for aesthetic and functional finesse in writing.[60] Certain measures like introduction of exercises involving the simplification of legal provisions and judgments can be useful in this regard.[61]

Secondly, initiatives for improvement in legal writing ought not and cannot be confined to academia, but must be adopted at the beginning of the legal pipeline. An excellent path for ensuring this may be through the 'Drafting of Law in Plain Language Bill', introduced in Parliament in 2018, which mandates that "all Government Bills and Acts be drafted using plain, clear and concise language to maximise readability, eliminate ambiguity and ensure compliance through easy interpretation."[62] Much guidance on how to accomplish this is provided within the Bill, while more may be taken from the advice of experts from the Plain Language Movement.

Thirdly, it must be acknowledged that a significant part of the law is developed not in the statute itself but in subsequent judgments. Therefore, it is necessary for any successful reform that judges, especially in courts of record, use plain language in their opinions wherever possible. This must involve not only clear writing, in ways specified above, but also reducing verbosity and proliferation of

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[58] Keating (n 28) 95; See also *Investors Compensation Scheme Ltd. v West Bromwich Building Society* (1998) 1 WLR 896 at 912 (Lord Hoffman) (UK); *Amalgamated Society of Engeneers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129, 161- 162 (Austl).

[59] See Morss (n 7).

[60] Rideout and Ramsfield (n 27) 64.

[61] Sarada Mahesh, 'Lose the Legalese: The Plain Language Movement in India' (LiveLaw, 14 September 2020) <http://www.livelaw.in.nludelhi.remotexs.in/columns/lose-the-legalese-the-plain-language-movement-in-india-162892>accessed on 4 July 2021.

[62] The Drafting of Law in Plain Language Lok Sabha Bill (2018-19) [236].

wholly concurring opinions. It would also be advisable to add a headnote summarising the facts, judicial reasoning, and decision in at least judgments dealing with issues of public and criminal law. Finally, judgments must be translated as quickly as possible into regional languages, a process that has already begun.[63]

Fourthly, laypersons are regularly rendered vulnerable due to the complexity of legal language in their capacity as consumers of products and services offered by legally well-advised corporations. Hence, it has been suggested that "a plain language law based on subjective standards and limited to injunctive relief for enforcement" could be universally acceptable. This would provide corporations and other commercial entities with the opportunity to come up with their own ways of simplifying their transactions to make it more accessible for consumers while providing sufficient protection to corporations from a deluge of lawsuits demanding exorbitant damages for breach.[64] While being a relatively mild measure, it might be more feasible than other extreme proposals because language usage takes time to change and cannot be achieved immediately.[65]

Finally, any successful programme for reform aimed at increasing legal comprehension must help individuals through their perhaps most frequent and intimidating encounter with the law, that is, dealing with governmental bodies. Particularly instructive in this regard is the success of the Plain Writing Act, 2010 in the United States.[66] Passed as a result of several years of activism, this Act requires all federal agencies to adhere to specified Plain Language Guidelines in their public documents and websites; train their staff in using plain language; and designate a senior official to oversee the implementation of this process.[67] Agencies are also required to prepare and publish annual reports detailing measures undertaken to comply with the Act. This Act may serve as a model for Central and State legislation in India, in order to demystify legal processes whose complexity all too often discourages necessary civic engagement.

In attempting any solution to the problem of legalese in India, it is essential to pay attention to the circumstances specific to the country, especially the high levels of linguistic diversity and inequality of educational attainment. Thus, while the lessons from plain language movements elsewhere are relevant in India, the specific suggestions may often need to be modified or added to. It is of particular importance to ensure that legal documents are regularly translated to as many regional languages as feasible; that the translations of legal documents to

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63 Bar and Bench, 'Supreme Court Judgments to be Made Available in Regional Languages' (Bar and Bench, July 3 2019) <https://www.barandbench.com/news/supreme-court-judgments-regional-languages> accessed 22 September 2020.

64 Wetter, 'Plain Language in Pennsylvania: Fading Issue or Development on the Horizon?' (1985) 89 Dick L Rev 441, 471.

65 ibid.

66 Plain Writing Act, 2010 (United States).

67 ibid.

non-English languages are similarly free of unduly difficult vocabulary and grammar in those languages; and that the appropriate level of difficulty is determined keeping in mind the circumstances in India.

## VI. Conclusion

As argued, the two traditional understandings of legalese are inaccurate, at least for the Indian situation. The complex and seemingly obfuscatory nature of many legal documents is certainly not a wily ploy by lawyers, judges, and bureaucrats, to maintain a hegemonic status, as some vehement critics seem to think. Nor, however, can it be dismissed merely as an unfortunate but unavoidable and relatively unimportant vice manifested in some legal documents. As things stand in India, the truth of the matter is that the style and the substance of legal discourse are closely intertwined to create the authoritative legal community.

However, the legal profession would be not weakened but strengthened if it were to transition to a more accessible communication style. This would be because the increase in transparency would likely enhance its public legitimacy, enable it to readily detect and correct instances of faulty reasoning, and prevent the force of law from being misused by powerful external actors with the help of a very few unscrupulous internal ones. Further, reading and writing easier and shorter documents will most likely result in increased professional satisfaction.

What this requires is concerted action at both the individual and institutional levels. The legislature, the executive, the judiciary, and the legal academia would have to change certain longstanding behaviours. Both the benefits and many of the ways of making such reforms are evident from the case of other countries, especially the United States. The corresponding hindrance is the vast diversity, amounting to stratification, of the legal profession in India, which ensures that the job is both complex and seemingly confounding.