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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**LINGUISTIC BARRIERS TO LAW: THE EVOLUTION
AND CHALLENGES OF LEGAL LANGUAGE IN INDIA.**

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Linguistic Barriers to Law: The Evolution and Challenges of Legal Language in India.

I. Abstract: -

The law is more complicated than it seems; its real complicity lies within the language in which it is couched. The language of the law is not simply a conveyance of rules; it exercises power, delineates social realities, and decides who is entitled to justice and who is not. This collision between linguistic diversity and a colonial past has conspired with the hegemony of English language in legal proceedings to create a rift between the law and the people it seeks to serve in India. This language barrier keeps millions out of justice, especially from marginalized communities. The language of law from English's first colonial imposition through Constitution drafting was a double-edged sword: some were empowered, while others were excluded. Even though there have been attempts to bridge the gap since independence, the continued existence of jargons, archaic terms, and lack of regional translations still acts as a barrier to justice. How can any legal system deliver justice when the language shuts out many? From Examining the Vernacular Press Act Amendment Bill, 1878 to our own Official Languages Act, 1963 and reimagining how justice is communicated, we can move closer to a legal system that speaks for everyone.

II. Introduction.

Language possesses the ability to not only create meaning, but also imply power, social class hierarchy, and different definitions of equity and justice. This seems to be the case even more so in a legal world where the language used both diminishes and empowers a language used as a weapon. Legal language is its own type of language, whether understood by the layperson or not; it legitimizes it, making subsequent decisions about what can and should be done to solve conflict and subsequent social behaviors an inevitability. The language constructed by those who inhabit legal systems teaches the common citizen what the law can do, whom it will not speak for, who it allows to have a voice, and relative ideations and intentions of equity and justice. This idea of law, language, and power exists in a different manner relative to India.¹

India is a culturally diverse nation, so the means of legal application extend beyond culture, making it an even more complicated issue with a colonial past from an empire that once tried to control it all, and a democratic society for Indian politics with millions more complicating factors of language. Yet when our Supreme Court or High Courts function in English predominantly and substantive law is rendered in antiquated terminology, those who require justice the most are the least likely to get it. This idea of language and power exists not only as equity for the singular citizen but as a microcosm of the social realities of majority and minority.

III. The Power of Legal Language: Defining Reality.

There is such power in legal language that it becomes the authority and the arbiter of society and its power structures. It determines what is appropriate and what is recklessly and irresponsibly forbidden. Legal language is the constitutions and the laws, the language of contracts and the decrees from judges; it implies how people subject to the laws as well as those in power—will act. However, legal language goes beyond exclusion and judgment by definition; it creates obligation. When a judge states, "The defendant is guilty," he/she/they are not merely acknowledging someone's presence within a state of being; they are creating it, and in that moment, lives change, and societal being becomes irrevocably transformed.

¹ Dr. Kusum Chauhan, *Language of Justice in India: Needs a revitalisation from complexity to simplicity*, International Journal of Advanced Academic Studies, 50-57, (2022) <https://www.allstudyjournal.com/article/912/5-1-14-837.pdf>

But this power to create and render meaning also creates exclusivity and separation. The law is verbose; it is unapproachable; it is crafted in the tongues of yesteryear. It comes with a professionalized legal jargon that does not transpose to the layman. Such verbal accreditations only cement the hierarchies of the legal world and legal practitioners against each other as the law becomes accessible to the layman. In a place like India, for example, where the law is practiced in English—and not all citizens speak English—this separation is even more severe. Thus, the idea of court as a place—and a thing—becomes ethnocentric and quasi-intimidating to many, thereby separating citizens from ever wanting to interact with the law even more.

IV. Legal Language & Social Structure.

The relationship between legal language and social structure is symbiotic, legal language embodies social power, and social structures are legally regulated. The perfect example of this is none other than India's Constitution, as a legal constitution of a fledgling nation, it has certain realistic hopes, yet it seems to acknowledge social potential.

It tries to fulfil the constitutionally hoped-for notions of equality and justice in the globalized, the international judicial world yet knows the need of its fragmented, multicultural legal social structure of India. Yet it's the application and interpretation of these constitutional principles that suggest what is most effective across legislation.

For instance, "reasonable restrictions" legally operate when a court decision relates to free speech—it allows the government to deny freedoms whenever and wherever it chooses; yet what's "reasonable" is often determined by those in the political and social majority.

Thus, I would use the example of when the Supreme Court of India served as an amazing example of this doctrine in play the landmark case of **Shreya Singhal v. Union of India (2015)**² when the Supreme Court struck down Section 66A of the Information Technology Act and deemed the "reasonable restriction" perfectly highlighting the ambiguity and potential misuse of the term and how the increasing stack of cases and welfare schemes where this complex legal terminology has been discouraging the marginalized communities from seeking legal recourse and acting as a barrier to justice.

A simple method in which simplifying the legal language and providing translations in

² Shreya Singhal v. Union Of India, 2015 AIR SC 1523.

regional languages³ to bridge this gap, which has already been implemented by the efforts of ret'd. CJI, Justice DY Chandrachud as he agreed with the fact of access to justice being barred due to a miniscule language barrier, as not every citizen of India is fluent in English.

V. Legal Language in the Historical Context of India. (Colonial & Post Colonial)

The colonial History of India has been colored by the arrival of the British and the setting up of the East India Company and later having a British Colonial Rule and it was at this time when legal language became a pivotal tool in consolidating power and perpetuating the control of the Crown, the British introduced English as the main medium of language in India for law and governance as a tool to alienate the masses of India who were unfamiliar with the language, along with systematic suppression through various Acts, Charters, Commissions like the Hunter Commission of 1882 that suppressed the indigenous knowledge systems and prioritized English through education policies.

1. Drafting of the IPC.

The Indian Penal Code, is one of the earliest examples of a comprehensive legal framework imposed by the British, it was drafted by Lord Thomas Babington Macaulay and helped standardize the Criminal Law at the time, yet it was inaccessible to most Indians due to the language, the use of this new foreign language and the complex concepts of the law used to disempower the native population worked on a grand scale.⁴

2. The Vernacular Press Act, 1878.

This Act proved to be an indicator of how the colonial government leveraged legal language to suppress the rising dissent. This Act was filled with such vaguely worded provisions which allowed the British to clamp down on Indian newspapers who published any anti-colonial sentiments.⁵

3. India's Independence Movement & Legal Language.

Indian leaders decided to take matters into their own hands and became legal scholars and

³ Live Law News Network, <https://www.livelaw.in/news-updates/supreme-court-judgments-translated-four-regional-languages-english-citizens-cji-dy-chandrachud-219840> (last visited Jan. 6, 2025).

⁴ SONALI BANSAL & SNEHIL TRIPATHI, MODERN INDIAN HISTORY (McGraw Hill 2021)

⁵ Council of the Governor General of India, Vernacular Press Act Amendment Bill, (1878) https://eparlib.nic.in/bitstream/123456789/764251/1/ilcd_16-10-1878.pdf

practicing advocates, Mahatma Gandhi, Bal Gangadhar Tilak, B.R. Ambedkar were all learned and had knowledge pertaining to the law.

Tilak's Trial under section 124A (1897 and 1908) of the IPC, sedition, marked a turning point in the colonial interpretations of justice and his defense highlighted the ambiguity in legal language in the hands of the imperial authorities and later raised more questions about freedom and speech and expression.

B.R. Ambedkar united the marginalized communities underscored the importance of language as a whole during the Poona Pact of 1932. His negotiation exemplified truly how linguistic precision could act as an instrument of unity.

VI. Post Colonial Legal Language.

After India successfully acquired independence, the leaders and the framers envisioned a legal system where every individual is included and had equal rights and responsibilities. The vision was to fully dismantle the colonial hierarchies and to empower the people, the Constitution of India, drafted under the leadership of B.R. Ambedkar was written in Hindi and English and aimed to create a balance and paved the path to democracy in India.

1. The Official Languages Act, 1963.

The intention of this act was to address the ongoing issue of language in Indian Law and Governance as designating both Hindi and English as the official languages to balance the regional linguistic diversity but there are still issues with the continued dominance of English in legal proceedings and this creates a barrier about inclusivity and accessibility for the masses.⁶

This extensive journey of legal language in India and its transition from colonial to democratic underlines how there is a critical interplay between the history, power, and society. There are attempts at inclusivity, but for the citizens, it is deeply flawed. The mere existence of laws or constitutional ideals is insufficient without practical mechanisms for inclusivity. The inability to democratize legal language has stifled India's progress towards an equitable justice system.

⁶ *The Official Languages Act, 1963*, No. 19 of 1963, Acts of Parliament, 1963 (India), <https://rajbhasha.gov.in/sites/default/files/olact1963eng.pdf>.

The question, then, is not merely about recognizing these barriers but addressing them in a rapidly changing world. If there is the same amount of ambiguity in the law as there was in the Colonial Era to suppress the people, it leaves a strong question to ponder about if there is really a change or is there a barrier placed by the government themselves and if the “change” is really a “change”.

VII. Comparative Analysis in Legal Linguistics.

India is not the only multilingual country in the world, other countries like Canada, South Africa, Switzerland are also multilingual and they have adapted this to ensure that there are no barriers to justice, let us take an example of South Africa, where they have 11 official languages recognized and the Courts strive to accommodate the diversity as they offer legal services in various languages. Even Canada, which has a bilingual legal system which mandates that the federal laws and legal proceedings be accessible in both languages.⁷

The type of Legal Environment built in these countries screams accessibility where as the one in India, predominantly conducts its legal proceedings in English, but not every citizen of India speaks English fluently, so in a way, the system excludes all the non-English speakers either intentionally or unintentionally but regardless it does so. India could learn from these multilingual countries by increasing the availability of legal translations and promoting the regional languages in the court. Even multilingual legal education can aid many as the legal system serves all citizens effectively, regardless of their linguistic background.

The scope for improvement here can be in simplification of legal language by adapting a method wherein the archaic terms are slowly phased out to help the understanding for the non-experts. Drafting clearer laws can also help the ambiguity and even reduce the reliance of people on legal professionals to uncover the statutes.

Public awareness campaigns to increase legal literacy by both government and non- government organizations to raise awareness about legal rights and processes in local languages, even community legal aid can help serve this purpose of legal advice in regional languages for the marginalized communities.

⁷ Atul Chandra Patra, "Multilingual Legislation." *Journal of the Indian Law Institute* 10, no. 4 (1968): 661-86.
<http://www.jstor.org/stable/43949977>

These solutions seem extremely simple, but India has yet to formally and comprehensively address this issue as well, these problems still exist in the lower courts of India and all the initiatives are far from reaching these places, the preeminent use of English in the higher judiciary and legal education has played a key role in the continuous alienation of a significant portion of the population.

VIII. Case Laws.

The image of the court in how the language can hinder justice has been evident through these cases where it was directly addressed as to how language can impede in the process of Justice.

1. *In the case of Vinayak Hari Kulkarni And Others v. State of Maharashtra, (Bombay High Court, 2010)* The court itself acknowledges that most of the judges of the Bombay High Court understood Marathi and it was deemed beneficial to allow the filing of the documents in Marathi, this even helped in minimizing litigation costs and facilitate easier access to the justice delivery system for litigants and more so, the court even emphasized how the said that this provision aligns with Articles 350 and 39A of the Constitution, which advocate for the right to understand legal proceedings and access to justice.⁸

2. *Even in Krishna Yadav v. State of Bihar By Home Secretary And Others. (Patna High Court, 2019)* the court discussed the implications of the use of Hindi in legal petitions and the necessity for translations to ensure that litigants and lawyers could effectively understand the said proceedings, the demand of the broader commitment to ensuring that legal language does not become a barrier to justice can be successfully seen in this case.⁹

3. *In Solai Subramaniam v. Chief Secretary, Tamil Nadu State Government (Madras High Court, 2014)* dealt with the importance of conducting court proceedings in a language understood by the locals, Tamil, which is relevant for litigants who are not as proficient in English.¹⁰

4. *General Secretaries, Linguistic Minorities Protection Committee v. State of Karnataka. (Karnataka High Court, 1989)* this judgement addressed the issues for the need for regulations regarding language in education to promote unity and fraternity among people of

⁸ Vinayak Hari Kulkarni And Others v. State Of Maharashtra And Another, 2010 BOMCR 4 89.

⁹ Krishna Yadav v. State Of Bihar By Home Secretary And Others, 2019 SCC ONLINE PAT 594.

¹⁰ Solai Subramanian v. Chief Secretary, Tamil Nadu State Government, 2014 SCC ONLINE MAD 3157.

different linguistic backgrounds and how this case addresses the broader concern for language accessibility within legal frameworks.¹¹

5. *In Smt. Shanta Sabharwal v. Smt. Sushila Sabharwal, (Delhi High Court, 1979)* it suggested that the legal system should favor interpretations that lead to substantial justice and reduce the number of appeals, which indirectly does fall toward the direction for clarity and accessibility in legal language.¹²

These cases illustrate the courts' recognition of the need to simplify legal language to promote understanding and accessibility to justice for the public, but there are only a handful of cases in which this doctrine has been accepted. The current scenario will benefit immensely if it applies these doctrines but alas, it is only these cases, which primarily arise from High Courts which gain the attention.

IX. Conclusion.

In the case of Legal Language v. Accessibility, it is utterly daunting that accessibility is still facing severe barriers due to the archaic and intricate nature of legal language and how the legal jargon in the strongly worded judgements and orders often steers people away and this keeps increasing the gap in law and the people.

India is a rich and developing nation with a humongous and diverse population and is indeed making commendable to bridge this gap but despite these efforts, there is still areas where the country is falling short in addressing the widespread inaccessibility of legal language and many citizens remain unaware of their rights due to the persistent use of complex terms and insufficient dissemination of simplified legal information, these challenges are further exacerbated by the limited reach of legal literacy programs and the slow pace of judicial reforms in the system.

There is a reason every single time an underprivileged or marginalized person who needs legal aid thinks twice before putting themselves into this slow-turning machinery.

The intimidation itself creates an impenetrable system where the pursuit of justice is dependent on the people to understand the outstretched judgements that go on for thousands of pages at times or to learn the proceedings of the court if they ever find themselves in this

¹¹ General Secretary, Linguistic Minorities Protection Committee v. State Of Karnataka, 1989 SCC ONLINE KAR 26.

¹² Smt. Shanta Sabharwal v. Smt. Sushila Sabharwal And Others, 1979 SCC ONLINE DEL 29.

scenario. Simplifying legal language, while also preserving its accuracy is not a matter of convenience anymore, but it is an important step to ensure that there is an urgent legal reform in India that prioritizes transparency and inclusivity, making the legal processes more navigable for everyone.

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