

A THEMATIC ANALYSIS OF LEXICAL POLARITY WITHIN THE JARGONS OF LEGAL DRAFTING IN PAKISTAN

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Abstract

This present research aims to analyse the lexical polarity within the typical jargons of legal drafting in Pakistan using Clark and Braun's (2016) thematic analysis and triangulation of data through interview and observation. The findings suggest the presence of social structures, politeness, modality, legal disparity, contradiction, and metaphorical language in legal judgments, exemplified through statements within the legal discourse. In cases reported by female litigants, lexical choices revealed dehumanizing experiences for females, with explicit details exposing their physicality. The judgments highlighted societal taboos and implications surrounding justice for rape victims, often defaming the victim instead of the perpetrator. Modality markers demonstrated the institutional power in judicial discourse. Legal disparity and contradictions were observed between shariah law and the norms of the Pakistan penal code, reflecting patriarchal superiority in judgments. Judges acknowledged the specialized jargon of legal language, emphasizing its necessity for accurate judgments. Despite the complexity, efforts were made to keep the language decipherable for laymen, ensuring comprehension without legal expertise. Lexical

polarity, as explained by judges, revealed contextual variations in meaning between legal and common English.

Keywords. *Legal Discourse, Contextual Variation, Lexical polarity, Legal Drafting.*

Introduction

Language for Specific Purposes

English for Specific Purposes (ESP) entails specialized English instruction, distinct from General English (GE) education. Originating in the 1960s, ESP has evolved as a unique field, featuring distinct teaching methods and learning environments compared to general English. The key disparity lies in learners' motivation, with ESP students often being adults seeking to acquire professional competencies and engage in occupation-related tasks. ESP courses are tailored to address specific goals, needs, and English-reliant activities within professional contexts. Unlike traditional grammar-focused approaches, ESP emphasizes language use within specific contexts, encompassing diverse domains like business, medical sciences, tourism, and hospitality management's integrates English into a significant subject, catering to different learner personalities and aligning with specific educational objectives. It uses a requirements analysis to identify essential language skills, tailoring the syllabus accordingly. ESP recognizes that English usage varies across domains, such as business and medicine. The definition of ESP is provided by Dudley-Evans and St John. They define ESP using both absolute and variable features.

Features that is absolute:

- 1. ESP is tailored to the learner's unique need;*
- 2. ESP employs the methodologies and practices of the disciplines it supports.*
- 3. Language is at the core of ESP (grammar). Task-specific abilities, discourse, genres, lexicon and register.*

Characteristics that change:

- 1. One can link or tailor English for specific purposes to certain fields.*
- 2. ESP may utilize a different methodology than 'General English' in various educational scenarios*
- 3. Adult learners, whether enrolled in a postsecondary institution or working, are likely to benefit from ESP. It might, however, be used with secondary school students.*
- 4. ESP is usually reserved for students who are intermediate or advanced in their studies. The majority of ESP courses presume a rudimentary understanding of the language system, but it can also be utilized by complete*

beginners (T. Dudley-Evans and S. T. John, 2015)

A negotiated syllabus is one in which the content of a course is determined by a dialogue between the teacher and the students, based on the learners' wants and requirements, as well as the teacher's knowledge, judgment, and advice " (Hyland, 2009).

Legal Language

Legal language refers to the language used by those involved in the legal profession. The language used in the professional capacities of a lawyer, a judge, and a legislative draughtsman. Law, as a technical subject, speaks in its own register. What is commonly referred to as "legal language" is a highly complex type of discourse embedded in the highly diverse institutional space of various legal systems and cultures. To put it another way, the term "legal language" should be seen as a catch-all term for a vast array of written and spoken texts.

Language and Power

Critical language studies, sociolinguistics, conversation analysis, and social psychology recognize five dynamic interactions between language and power in communication. Two of these interactions are rooted in language's ability to reveal and reflect existing skills, both at micro and macro levels. Micro-level power involves a speaker leveraging attributes like weaponry, wealth, or social standing to persuade through convincing language. Macro-level power is derived from the collective strength of language-speaking groups. Beyond these, the other three language-power connections relate to a language's adaptability, cognitive functions, and its impact on meaning-making, social interaction, and language policy. For instance, language can perpetuate supremacy in legal, sexist, racist, and ageist discourses, influencing certain groups. Additionally, language plays a significant role in national cohesion and division, and its power extends to individual words, oratories, dialogues, and themes in political campaigns and propaganda. (Sik Hung Ng and Fei Deng, 2017).

Statement of the Problem

Research in judicial, executive, or parliamentary legal contexts delves into addressing unequal or unjust experiences and outcomes arising from language issues. This may involve examining gendered language in legislation and electoral procedures, the exclusion of ethno-linguistic minority groups from democratic participation (illustrating language challenges in legislatures), miscommunications in court (within judicial settings), harmful communication strategies in pre-trial criminal investigations (in executive settings impacting judicial proceedings), or prejudicial treatment based on speech in bureaucratic processes. This type of research can be broadly categorized as motivated by concerns related to 'linguistic justice' in the exercise of state power in Pakistani Courtrooms. This article aims to assist legal scholars and practitioners to navigate the wealth of linguistic and interdisciplinary

research about language-based problems in legal contexts.

Significance of the study

*This research employs diverse disciplinary approaches, with studies framing research problems in various ways. The resulting diversity can be challenging for non-specialists, especially legal practitioners, and poses hurdles for scholars. The emerging field appears somewhat isolated into sub-fields, particularly in the exchange between linguists and legal scholars. A lack of a cohesive articulation of shared bases in this interdisciplinary field hinders collaboration and the dissemination of findings. Thus, there is a need for an overarching critical analytical perspective to unify the field, enhance accessibility, and identify pathways for research. This article provides such an analysis, proposing organizing the field around three branches – language-related concerns within the judiciary, executive, and legislature – to foster mutual understanding in interdisciplinary discussions. The conceptualization stems from literature review, extension, and our involvement in establishing a symposium and network for interdisciplinary law and linguistics researchers. By publishing in the *Alternative Law Journal*, we aim to address social justice and academic impact concerns, reaching a broader audience beyond specialists in the field.*

Research Questions

Q1. *Is there a contrast between legal English language and Standard English?*

Q2. *Does the lexicon of the legal discourse dense with jargoned language and complex beyond layman understand?*

Q3. *Is it possible for the legal jargon to create ambiguities among Pakistani citizens?*

Judgments

"This play [i.e. the judgment text] is claimed to be the world's earliest extant courtroom drama. Much of literature, as well as reality, is concerned with the conflict between people's desire to take justice into their own hands, [take] revenge, or participates in self-help, and the legal systems, which, crucially from our perspective, are defined by a fair trial and fair verdict."

A good quality judgment has become a difficulty of the day in the legal fraternity, given the current state of litigation, backlog, and insufficient research facilities. A well-written decision based on a thorough examination of the facts and legislation reflects not just the judge's intellectual level but also the judicial system's standard. The most significant part of a sound judgment, according to Qaiser Javaid Mian, is clarity. The key to clear writing is clear thinking. When we talk about a "speaking judgment," we're referring to the judge's mental lucidity. A speaking decision demonstrates two things:

I. It informs the parties involved about the decision.

II. It provides reasons for a court of appeals to consider.

A judgment should be a stand-alone piece of writing. The best approach is to keep things simple, brief, and unambiguous. Some decisions seem to write themselves. The practice of writing long verdicts is frowned upon. The judge should write to express himself rather than to impress others. In a chronological arrangement, just the material facts should be conveyed. It is necessary to make a reasoned judgment rather than to give reasons for the judgment (Mian, n.d.).

A decision made by a court or other tribunal that resolves a dispute and establishes the parties' rights and obligations. A judgment is the final stage of a legal proceeding. Because it is deemed as the formal pronouncement of the law on the action by the court that was pending before it, a valid judgment resolves all contested issues and ends the lawsuit. It specifies who wins the case and what remedies are awarded to the victor. Money damages, injunctive relief, or both may be awarded as remedies. A judgment also indicates that the court's jurisdiction over the case has ended. Only appeals from final judgments are permitted under the Federal Rules of Civil Procedure and most state rules of civil procedure.

The judge's decision is expressed in the judgment. It tells the parties what the Court expects them to do and how the decision will be carried out. Any ambiguous drafting of an execution order could lead to a new dispute between the parties about the execution and the decision's contents. It's important to note that tone and attitude have no bearing on a fair judgment. The adjudicatory process suffers and the search for truth is impeded if the courtroom is allowed to vibrate with the heat created outside. Even if the critique is constructive, the language should be respectful and moderate. (Mian, n.d.). A legal judgment must be written, specific, and precise, with a clear description of the issue. It must be dated and filed with the court administrator's office. Legal documentation is essential for citizens seeking asset division or similar matters. This research aims to assess themes of authority, power projection, and sexism in court judgments. Legal language differs from everyday jargon, with lawyers possessing a unique vocabulary combining common and general language meanings.

Legalese

Legalese refers to the specialized language or terminology used in legal documents, contracts, and discussions. It often involves complex and formal wording that may be difficult for non-experts to understand. Legalese is employed to ensure precision and clarity in legal communication, but it can be a barrier for those not familiar with legal terms and phrases. In Pakistani judgments, legal language, or legalese, is employed for precision in expression. Common examples include phrases like "hereinafter referred to as," "in pursuance thereof," and "ab initio," contributing to a formal legal context. Terms like "inter alia" (among other things) and "prima

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facie" (at first glance) are utilized to convey nuanced descriptions of evidence or legal principles. These expressions underscore the formal and technical nature of legal discourse in Pakistani judgments, emphasizing clarity and consistency within the legal framework.

1. Hereinafter referred to as:	Used to introduce a term or expression that will be used later in the document.
2. In pursuance thereof	<i>Indicates an action taken to fulfill or carry out a specified provision.</i>
3. Ab initio	<i>Latin term meaning "from the beginning" and is used to describe something that has been valid since its inception.</i>
4. Inter alia	<i>Latin for "among other things," often used to indicate that there are additional items or examples not explicitly mentioned.</i>
5. Prima facie	<i>Latin term meaning "at first glance" or "on its face," commonly used in the context of evidence that appears sufficient to establish a fact unless proven otherwise.</i>
6. In pari material	<i>Latin phrase meaning "in the same matter" and is used to refer to statutes that relate to the same subject matter.</i>
7. Uberrimae fidei	<i>Latin for "utmost good faith," often used in insurance contracts to emphasize the requirement for full and honest disclosure.</i>
8. Res ipsa loquitur	<i>Latin phrase meaning "the thing speaks for itself," used in situations where the facts are so clear that negligence is self-evident.</i>
9. Sui generis	<i>Latin term meaning "of its own kind" and is used to describe something that is unique or in a class by itself.</i>
10. Nunc pro tunc	<i>Latin for "now for then," used to make a document retroactively effective to a date prior to its execution.</i>

Legal Drafting

Legal drafting is "The creation and production of legal papers such as deeds,

contracts, leases, wills, and trusts," according to the definition. This description excludes letter writing, legal opinions, legislative drafting, and other sorts of legal writing. Any sort of written legal document, such as a motion, a letter, a brief, a memo, or a contract, is referred to as "legal writing." The terms "draught a brief" and "draught a letter" are commonly used by lawyers and law instructors. It also covers the process of preparing a transaction, which entails far more than merely writing words on paper. It includes the basics of the law, as well as tactics for representing clients in transactions, negotiation skills, and contract closing. It is the ability to compose a legally binding language and put words on paper to define rights and responsibilities. According to Imhanobe (2010), "the ability to draught legal documents such as letters, contracts, deeds, wills, legislative bills, trust, lease, criminal charges, pleadings, appellate briefs, and other sorts of complicated legal writing." (2010, Imanhobe) A lawyer's practice includes a lot of legal drafting. You can't avoid it as an in-house lawyer or a full-time litigation counsel. It's a legal mode of communication that has benefited from the advancement of language and the art of writing as a way of self-expression. Legal drafting is an important element of a lawyer's or draftsman's education since it teaches them how to use good language and write effectively. Because it is critical for a legal draftsman to pay close attention to the way he draws his legal document,

Legal drafting is a form of ongoing communication;

1. To refrain from enquiring about what he has written;
2. The draftsman may be unavailable to provide more information;
3. What has been written and signed binds the parties;
4. save time and money by not having to rework the paper, and
5. Even after his death, the draftsman's name appears in a legal document.

Legal drafting is the practice of writing legal documents. Drafting is essentially an individual achievement because it is an art rather than a science of law. It can't be honed without a strong foundation, and it can't be mastered without practice. It does not rely entirely on talent and experience; it has its own set of rules that anyone of reasonable intelligence can describe and teach (Adubi, 1995).

Adubi(1995) distinguished between laws and drafting as a science and an art. "It's the end of the matter in terms of legislation if its ideas are known and understood," he argues. Knowing how to draw is only the start; it must be managed and applied in a variety of contexts and according to one's particular manner." (Adubi, 1995).

"The ability to draught legal documents such as letters, contracts, deeds, wills, legislative bills, trust, lease, criminal charges, pleadings, appellate briefs, and other forms of sophisticated legal writing" is defined as "the ability to draught legal

documents such as letters, contracts, deeds, wills, legislative bills, trust, lease, criminal charges, pleadings, appellate briefs, and other forms of sophisticated legal writing" (Imanhobe, 2010).

Importance of Strict Obedience to Legal Drafting Rules

1. To ensure that legal documents are written in such a way that they clearly express the legal issue, the client's claims, and any remedies sought.
2. It also guarantees that the legal document is appropriately organized. An unorganized, unbalanced document is ineffective.
3. To prevent the use of negative statements or an aggressive tone in documents from making them appear confrontational.
4. To limit the use of legalese, which consists of complex legal words and jargon that is beyond the comprehension of the average person.
5. To ensure that everything is clear (Paul, 2020)

Contracts, marriage certificates, wills, trusts, mortgage contracts, loans, and leases are only some of the things that legal writing entails. A legal document must be written such that the legal issue, the client's claims, and any remedies sought, if any, are all described properly. Legal drafting is crucial because it guarantees that the legal document is properly organized. A well-written document clarifies the document's purpose and application. Drafting abilities include the ability to not only produce legible papers, but also to express the intent of a legal document to a layperson. The law places a premium on language's ability to both create and comprehend. Outside of language, legal concepts are basically non-existent. "All legislation is spun on the loom of words," one commentator said (Weeramantry, 1975). Positive law is linguistically bound at the very least, because its legal ideas emerge exclusively within language and through it. A "verdict" ("verumdicere") expresses the law and is linked to "jurisdiction." However, one should not conclude that there are no laws that exist outside of language. Such a statement is contradicted by the presence of customary law. Customary law is frequently not expressed by using words, but rather manifests itself in certain scenarios (Fuller, 1968).

Looking at the etymological roots of these expressions confirms the close relationship between law and language. The fact that language development was a prerequisite for the establishment of guidelines in primordial times explains these similar roots. As a result, positive law might be argued to be nothing more than a concept developed and represented through language. A legislation that does not conform to the society's language sensibilities is not considered as "our law," but rather as something foreign. Positive legislation cannot produce legal mindedness without a language that encourages it (Rechte Gesinnung). At this time, "language

and law" become critical for modern legal systems, as well as the functioning and survival of legal cultures. The "magic" of language is still an important part of the judicial system. (Grossfield, 1985).

In the vast course of discourse analysis, the word 'discourse' is employed in a variety of manners (Fairclough, 1993). It is defined by two basic paradigms:

1. Structural
2. Functional.

It is a functionally distinct focus, such as language use, and a structurally distinct unit of language (above the sentence) (Schiffirin, 1994). Structuralists are interested in language form, such as grammar, and consider language to be an innate and individual property (Andersen, 1988), whereas functionalists are concerned in language usage, such as content. The structuralist paradigm defines discourse as language above the sentence (e.g., a type of structure), whereas the functionalist paradigm defines discourse as language usage (Shiffirin, 1994). Some linguists (e.g., Schiffirin, 1994) investigate both language structure and language function paradigms to see how they complement and support one another, resulting in a new discourse definition. The formal emphasis on extended patterns and the functional emphasis on how language is utilised in context appear to be balanced by defining discourse as utterances. The structural approach leaves a language theory gap, which the functional technique fills. The utterance, according to Lyons (1977b; Schiffirin, 1994), is the realized meaning(s) of a sentence's abstract meaning. The abstract sentence "I'm cold" can, for example, emerge in a number of utterances (acts) such as closing the window, turning on or off the air conditioning, and so on. This means that utterances are sentences in different settings, and defining discourse as utterances necessitates looking at speech in terms of language in context. Structured definitions emphasize text structure, while functional definitions emphasize context, and describing discourse in terms of utterances appears to strike a middle ground between the two ([Elsharkawy, 2017](#)).

Grammar /Politeness; Positive Face

It was observed that formal judgments produced in the high court and supreme court of Pakistan tend to inhabit lexical choices that aim at the positive face of individuals included or characters named in the judgments. These can be the plaintiff, respondent, defendant, complainant, victim or respective officer or former judge of an impugned judgment as well as the current operations in charge linked to the working case. The judgment writing includes words that target the positive face of the individual which is defined as an individual's desire for his personality to be appreciated. The judgments utilize words which contextually fit the targeted individuals for instance in one of the judgments it was noticed that the role of the mother was enhanced upon which showcases social constructions of the honor of a

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mother as well as religious value assigned to this role. Talking about the custody of a minor after a divorce settlement favored the mother with supporting arguments targeting a mother's universal personality where she withholds the unmatched intrinsic ability to provide care and loving upbringing. The judgment stated against deprivation of a minor from this right. The judgments tend to support and provide upper hand to the mother over the child custody with further appreciation towards the involved respondent's personality which showcases persistence and determination as she tends to support herself independently by working in a "embroidery center" to earn a living for herself. The judgments exhibit appreciation towards the lady by commending her determination to make it through the rough waters as presented before her by life. Further supporting her hustle towards maintaining her life single handedly the judgment drafters make lexical choices such as "honest" living, "determination", "perseverance" showcasing her credibility as a good individual.

The judgments reflect positive face value through usage of words like "confidence inspiring" when talking about the rape victim who decided to come forward and legally take an action on the criminal act. Analyzing this appreciative remark socially it is learned that rape being a taboo phenomenon to mention in this society, one can have reservations before mentioning and strength when opening up about such a topic. This sets forth a wide inspiration for rape victims who chose to not come forward due to the social repercussions attached to conversation or legal action on this subject, thus labeling the victim's act as something that exudes confidence and provides inspiration.

The legal personnel attached to the case are appreciated through particular lexical choices such as "faithfully", "competent", "senior" and "able". The judgments tend to value the personalities associated with the case or judges of district judiciary through whom the judgment then is presented in the high court. Their capability to render the responsibility laid upon them by their profession is highlighted through admiring their work and giving them a positive representation by constructive adjectives attached before their mention.

Rape victims are specifically appreciated and sympathized with in drafted judgments. They are defined as individuals who have taken a step into ridding the society of perpetrators who indulge in "heinous" crimes. The judgments states to provide the victim with "kindness" along with "understanding" and "encouragement" to step forward in this kind of a social construct where the victim is defamed and humiliated on being involved in crime which in real means is a crime against her own self which she suffers for socially and carries as a assigned blotch on her character.

In further judgments words like “cogent” “credible” have been assigned to an individual’s testimony targeting their positive face however, this claim is additionally supported by further defined arguments where it proves that the individual has left no loopholes in the procedure. Moreover, in terms of challenged earlier judgments by district courts presented in high court inhabit a space which is dedicated to reading, reviewing and putting on record the previous order passed on the case. In many instances the judgment of the high court tends to support or form a judgment which is in agreement with the previous order. In such circumstances phrases signifying praise for instance “correct approach” “properly evaluated” and “rightly passed” are stated in the judgment after the order is deduced from re-reading the already passed order and reevaluating it on grounds of further presented court trials and prosecution. The high court judgment corroborates with the earlier judgment and extends acknowledgements targeting the positive face of the court involved with the case earlier.

Modality

Modality tends to be an indicator of potentiality that is exhibited through discourse. Either the person seems sure of their claims or wordings or they showcase some sorts of possibilities associated with pragmatism in their dialogue. Modal verbs tend to display the dynamic of power in discourse.

Judgments use the modal verb “should” in the exercising obligation which the referred institutions are put under.

1. they **should** always
2. parents **should** have been taken
3. they **should** refer to such material
4. Agency **should** also retrieve
5. it **should** be accompanied

The court order is passed from a position of political power and assertively states the assigned obligation by employing the aforementioned modal verb.

The modal verb shall be used in the judgment consecutively.

1. **shall** be disposed of in accordance
2. objection **shall** be resolved
3. **shall** be unimpeachable
4. label **shall** be impressed
5. **shall** be given

The usage of this verb showcase a decision transpired by the court.

The modal verb “would” is seen used in the court judgments reflecting permission displaying power behind discourse e.g.

1. the Crown **would** be able to use
2. judge **would** be entitled

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3. event **would** exclude the possibility
4. **would** deserve acceptance
5. court **would** ... ordinarily regard

While explaining evidence and party stances the verb “may” is seen to have been appearing in statements for example:

1. which **may** be seen are reddening
2. and **may** be viewed as
3. they **may** be found between 48 and 72 hours
4. there **may** be some non-specific tenderness
5. forms **may** be found in the female genital tract

In this context the term may determine the probability of truth and validation in the statements.

However, the same modal verb is utilized in the following manner holding a different representation:

1. Court **may** consider appropriate,
2. Court **may** allow
3. Techniques **may** be lawful.
4. Police **may** send articles
5. Police **may** send articles

The repetitive usage of the word “may” demonstrates permission and a sense of authority exhibited by the court.

<i>The modal verb “can” is also employed in the judgments various statements like</i>	<i>This determines the clause of permission or more so revises it to the subjected audience to rejuvenate spirits of betterment and improvement</i>
1. Reliance can safely be placed	
2. can be considered	
3. it can be fairly stated	
4. agency can be charged	
5. No summons can be issued	

VOCABULARY

Word Meaning and Word Phrases

Social Structure

The judgments perused on the topics of rape, child custody or khula contained such vocabulary and phrases that exhibited the prevalent social constructions within the Pakistani society. The stigmatization of rape, the mother’s right to child custody of a minor and the problems developed out of petitioning for “khula” as compared to divorce. It can be vividly noticed how strongly certain social structures are granted

legal representation for the law-abiding citizens through the discourse incorporated by the judiciary assuming higher authority. A judgment mentions a woman petitioning against her husband who performed the act of marriage unconsented. Currently strict laws have been passed to assure the consent of the first wife before marrying another woman. This act is considered abhorrent by the court and it extends support towards the female petitioner considering this clause of an unconsented second marriage to **“regulate the structure of society”**. The court deems marriage as constructing the structure of society and it can be inferred from the statement that problems caused in the bond will be problematic as it will give rise to social problems and would **“frustrate the fabric of relationship”** in the society. The court employed specific vocabulary to display the social phenomenon of functional marital relations keeping the society regulated, otherwise ensuing complications within the basic structure on which the society develops and is maintained.

The clause of **Khula** is seen to have been approached in a way that differs from when a petition to divorce is filed. In cases of Khula the woman is preferred and given an upper hand by the court from such that a case arises where women agreed to conditional khula emitting desperate conditions to escape the fabric of marriage prompted by multiple background reasons stated. So much so she offered to give up child custody and conditionality was displayed in seeking khula however, this was over ruled by the court stating that the child custody remains rightfully with the mother and conditionality imposed on this petition of khula is not necessary or rectified. The husband is devoid of authority to incorporate this condition into the case and the wife is not bound to give up the child **“cannot be surrendered”**, which also functions in the favor of the infant or minor due to their right to be raised by a mother figure.

As stated in a judgment about homicide of a female in her husband's house, the judgment explains the responsibility of the husband employing the term **“heavy onus”** which is upon the husband to justify the incident. Be it domestic violence or the murder conducted in the house, the term heavy onus backgrounds how there is an immediate assumption of husband involvement in the murder of a wife or violence upon her given our existence within a patriarchal Pakistani society where stereotypically male showcase of power is exhibited by exerting it upon the females considered minority or the second sex ([Beauvoir, 1949](#)) along with in many other manners, through domestic violence, rape and incidences of karokari which translates to murder then justified by clauses like **“in the name of honour”**. As the husband is deemed suspect in murder his justification needs to be put forward **“satisfactorily”** through the use of this term we collect that the husband has now the weight of clearing his name off of the case in a manner that is convincing and strong enough to

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free him of the doubt and responsibility for the labels attached to the typical husband wife dynamic already has his name primarily in doubt and guilt.

The judgment concerning cases of rape victims inhabited lexical choices that puts the suffering under negative light also displaying the social taboo associated with the crime targeting the victim instead of the perpetrator.

1. "Scandalous/embarrassing cross examinations"
2. Life threats
3. "Social stigma" of being seen and labeled as the rape victim.
4. Agony
5. Prolonged

The terminology noticed in rape judgment highlights the problems faced by the rape victim as a she comes forward to rightfully seek justice on the matter of violence. Scandalous and embarrassing are words that portray how the cross-examinations happening of the victim involving vaginal swabs, medical reports and confirmations and the now discontinued two finger tests with elaborate argumentation on result accuracy and validity and repetitive quoting and testing procedures that can lead to cause great discomfort and embarrassment along with scandals based on the social image on the person as they are argumneted on being "habitual" (in terms of sexual activity or virgins with an intact "hymen").

Life threats determine the hegemony of the male gender over female victims that perpetrators may pose threats to their life or these may be extended by people who consider the woman one of foul character or impure due to assuming the persona of a rape survivor. This exhibits the social frames that delimit the respect of a female to her "chastity" and how sexual violence sufferer is the one deemed in a negative light rather than being subjected to support and acceptance. Similarly, terms used within similar judgments justifying the reasons why court needs to consider the rape victims appeal as well as the testimony given by their family members as a purpose of supporting the victims' claims is because it is stated to be "**unbelievable**".

As to why the parents of the victim would be otherwise willing to put the "**family's honor at stake**" by coming forward with a justice appeal against the offender or "**ruin her reputation for life**" as well as "**putting modesty of his/her daughter at stake**"

In another judgment a similar phrase "**tarnish her honor and dignity**" was written.

These terms give us an insight into the socially prevailing notion that the honor of the family lies with the daughter and whatsoever activities she's involved in. In this case even if the involvement is an offense against her own self and is

unconsented still the image being tarnished of the family or the reputation being ruined is based on the girl of the house who has undergone the crime with no involvement in it. The term “**unbelievable**” issues how concrete these notions are that the legal judgment produced by the judiciary itself believes it cannot be fathomed why the reputation of the girl and honor of the family will deliberately be ruined by baselessly giving voice to a rape offence labelling the crime as socially destructive and damaging for the victim as her reputation in the society will suffer due to undergoing rape crime.

The seriousness of rape is put forward as it being socially corrosive act and stated that it “destroys” the family as a whole.

Terms like “forcibly” referring to the family surrendering to embarrassment and social alienation due to having a rape victim in the family and “shame and disgrace” in terms of what they are subjected to by society at large paints a picture of how unjustly the society deals with the sufferers stigmatizing them under labels therefore even if one can form a valid case against their assaulter, they might not even come forward in fear of defamation that it will carry for them along with their family.

A repetitive trend noticed in rape judgments in particular is the usage of words like “family honor”.

While the judiciary passes a judgment in a case relating to a rape victim it looks at the case not from the sole perspective of deciding for the witness by means of what she underwent rather considers emotional elements and social constructs of family honor and defamation signifying that the family honor rests with the female of the house and although she underwent suffering, the decision or suffering is subjective to the victim alone rather impacts the entire family and sympathies are extended out to them as well.

A judgment while adding explanation to why a woman in the society will not by choice make a false claim of rape is so as we exist within a society that is “tradition bound” “non-permissive” when it comes to the sexual conduct of females and due to this the females will avoid talking about facing this crime. The judgment states that the women would face a “feeling of shame” talking about it. It is suggested and declared that the woman avoid talking about this incident due to feeling of shame thus this fuels another socially prevalent thought where victim shaming is prompted by individuals involved in discussion regarding the crime conducted.

Sexual assault is understood as an act of sexual conduct against the female consent however, words and phrases like:

1. Unchasten
2. modesty was intervened

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Such words target the victim more than the crime. The victim is framed as becoming chastised and getting her modesty strained due to being subjected to sexual assault.

Due to the stigma attached to rape in the society the judgment stated coming forward to file a case about sexual assault as “**confidence inspiring**” in the court keeping in mind the social repercussions that follow the woman and her family.

Another way to build a case against the woman who registered a FIR for being a victim of rape, the respondents have used terminologies like “**immoral character**”, “**unreliable**”, “**untrustworthy**”. Thus commenting at the “general immoral character” of the woman is an attempt at ridding her of any credibility at her end.

These words have been used by the party against the complainant and through the employing of such vocabulary they intend to compromise the validity of the argument put forward by the victim by labeling her as a woman of immoral character and through conducting character assassination they try to paint the woman in a light of doubt and lack of reliability justifying the sexual assault by claiming that the woman has consented to it, given that she was of immoral character already. These claims are attempts at defamation which root out of a myth stated in a judgment that such women who are allegedly of “immoral” “impure” character tend to provide consent for sexual intercourse.

Another point noticed in prosecution of rape cases is that bringing up labels commenting on sexual history of a victim or character of the victim are employed to discredit the individuals rightful appeal in the court. These predefined notions form a functional argument in the court of law by the prosecution to highlight lack of credibility due to assigned promiscuity to the victim’s character baselessly.

Words “virginity” and “chastity” are used synonymously in the judgments.

Legal Disparity

One of the many themes deduced out of analyzing the judgments was that of legal disparity. The judgments stated multiple clauses where an appellant put forward an appeal in the high court against a district court decision. When analyzing the previous grounds of decision, there arose many instances where earlier decision making was formed on grounds that elicited lack of thorough understanding of the case incorporating all aspects that lead to a just decision. Many points of legal disparity present within previous judgments are noticed as pointed out by the high court or supreme court judicial evaluation as one stated that unreasonable declination was faced towards the petition where the council “did not consider the objections.” or “did not consider” the report and “failed to consider” a certain point which would

have modified the decision. These clauses and statements showcase judgments decisions which are a product of legal disparity and highlights lack of rectified decision making by the court however also posits how such issues are put into consideration when appealed by the appellant and the flaws of earlier decision are identified and stated.

Further statements of legal disparity were noted in trials of property occupations and discourse petitions where

Objections “were not dealt”

Certain aspects of the matter “had not been taken into consideration”

Important matters “were not attended”

Directions issues were “not complied with”

There happened to be “Lack of implementation” and “noncompliance” towards judicial prescriptions.

All of the above stated phrases determine error in functionality and judgment of court that prompts challenging the discussion. Most of the statements just observe how lack of in depth understanding of certain cases such as the statements and lawful premises of the case did not occur due to which error in judgment was made.

Legal disparity was also noticed functioning within the judicial system when there were instances of selective justice in cases of rape victims. This showcases deliberately devising to function in compliance with stated law or deviating from it at the hands of the judiciary.

In a Khula judgment a judgment put forward evidences of legal disparity that challenged the decision against child custody by father using lexical items including “fact overlooked” and “wrongly allowed” however a reevaluation of this case determined how challenge put forward in prosecution of the case of child custody under the mother as a condition to Khula was actually against the defined boundaries of law and the judgment uses the phrase “cannot be surrendered” and overrules the husband's “demand” to accept such a surrender rectifying the disparity generated by aforementioned clauses about the Khula judgment.

Impugned judgment explained contain phrases like the court decision actually underwent “patent illegality” that makes an earlier judgment void of truth value to it thus subjecting it to be discarded.

One judgment about custody of a minor deems a decree being “**liable**” to be set aside as it happened to be “**passed without complying**” to certain trials that were obligatory in nature.

Welfare was “**disregarded**” and what “**should**” have been the case was countered by extended deprivation of a child from his mother.

The straightforward vocabulary used in negating the judgments that were

incorrect or inconsiderate displays how justice is granted through reevaluation and courts that are at fault are correct with decision mistakes explained in refined clauses and judgments by the supreme court and high court.

Contradiction

Selective Incorporation of Sharia Law

A dynamic identified while reading issued court judgments was that there exists a discrepancy between the constitutional law implemented in the state and the shariat law that is also present however noticeably employed in judgments only on an occasional basis for selective purposes.

An examples of this was seen in a khula judgment where according to the judiciary the wife had divorced the husband however later assessing those terms on the basis of sharia law it was deduced that the wife “**continued to be in the nikah**” of the husband as a marriage bond cannot be broken on the basis of khula according to sharia.

In a case where the husband and wife were reconciled and wanted to continue their marriage however not permissible due to khula orders and judgments restricting the act, the court resorted to decision in accordance with the sharia law which extended the argument that “**third divorce**” needs to take place for dissolution of marriage which is absent in the case thus the individuals can establish marriage without intervention form third party.

In another judgment where the marriage contract stated in clause nine that an amount of

500 000/- is supposed to be paid in an occurrence of unconsented marriage at the hands of the husband, sharia law was utilized by the prosecution to deem this clause irrelevant and incorrect. To negate the clause otherwise contracted and approved, the court constructed arguments on the basis of sharia law quoting Quran and Hadith.

In this incident the stated claim was overruled and selective incorporation of sharia law was seen to decide in the favor of the husband against the agreed payment amount.

This showcases a contradiction between the two sets of laws that provide principles for decisions of citizens.

Another body of law found contradictory through the lexical choices of the high court judgment is the jirga law devising a decision. Term used “**so called**” exhibits the irrelevancy assigned to jirga by the court with another phrase “**cannot be compelled**” issued which determines that on the basis of a decision approved by the jirga, a mother “**cannot**” be forced to be parted from her child.

Dehumanizing and Embarrassing Vocabulary

The terminology stated in the judgments for the purpose of medically explaining rape proof is gathered as embarrassing and dehumanizing in nature as phrases like removed her 'shalwar' in order to sexually violate her and witness sentences record phrases including the victim lying in the area in "**naked condition**" with "**blood was oozing out from the vagina.**" these details announced in the court of law in presence of the victim and later approved for reporting for the general public constructs an unease and embarrassment for the subjected victim. In other cases, phrases commenting on the hymen and whether it is torn or ruptures comes forth with explanations associated to the results were a freshly torn hymen creates proof of penal insertion and rape however if the hymen is not found torn there occurs the label of virgin or habitual and a preconceived myth is brought to light where habitual women are likely to consent to the intercourse as compared to virgins and minors.

Metaphor

Figurative language has been employed by a few judgments in order to enhance meaning and establish a sympathetic connection with the victim. For instance the words "**Satan**" and "**demon**" are employed to describe a man who committed rape. The choice of words here is talking about the sexual desires of men overpowering their decision making abilities and the factor of lust justifying action. The usage of the term satan signifies the indulgence of a man in this evil deed. Similarly the metaphor "**sex monger**" is used to comment on the lustful nature of a perpetrator that commits rape.

Interview Analysis

The first question of the interview was targeted at getting an opinion of the judges on the complex vocabulary encompassed within the legal language and what in their opinion made it difficult for layman understanding. A few follow-up questions were incorporated as well as the interview progressed where comments on layman comprehension of the legal jargonated discourse was targeted for comments. The answer to this question by all the respondents was noticed to be quite similar in approach. An interviewee considered the legal language absolutely necessary as plain meanings awarded to words will room for ambiguities and misinterpretation. One of the respondents justified the complexity of English by exemplifying it with the fact that the Urdu language legal language also has words borrowed from Persian stating that the English legal language has words borrowed from French and Latin in the same manner. Interviewees stated that legal words carry meaning given to them by the courts while interpretation and that too keeps changing with the gradual development of the law, "**extending or delimiting the meaning of the word**". Another answer showcased that in the perspective of the judges the legal jargon does

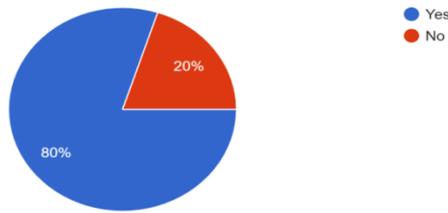
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not exhibit an unusual difficulty or difference from normal English due to their superior knowledge in the field. There was a general agreement on the fact that legal terms do complicate the language however the interviewees confirmed that the courts are required to use plain and simple language as far as possible so that the layman can fairly understand the outcome and process of the judicial proceedings. Further elaborating on their opinions the judges stated that complexity of terms is **“inherent”** as it’s a specialized field and the professionals are to perform this function just like the doctors, scientists etc. Language should be **“specific”** for **“administration of justice”**. Similar one claimed that to extract specific functions out of decrees, the language should be extremely specific targeting exactly what is needed.

Two of the judges gave the same example targeting the medical profession. They stated that patients do not complain of the medical terms but **“rely on the advice given by the doctors in plain words”** implying that the process of interpretation should be left to the professionals (lawyers, legal consultants). Similarly explaining the importance of designated specificity given to legal terminology, an interviewee explains the concepts with the same example of a medical professional stating that assume a person undergoes a head injury. The head has many parts and the injury can be very deep or very light. If we provide it with a general meaning saying **“chot lag gai”**(there is an injury), then losing an eye is a **“chot”** (injury) and so is a **“kharaash”** (scratch). What will determine quantum punishment without knowing the kind of injury? Therefore, court language similarly needs to be very specific. Further explaining the judge stated that the parts of the body are divided into sections with each organ having a certain name; if one just tend to state **“maslahai** (there is a problem)” without specifying **“maslakyaaurkahanhai”** (what is the problem and where it’s located), talking about the problem and the organ affected then what is the point or validity of that statement. Another judge/interviewee stated that plain English can be ambiguous in nature causing problems, and commented on this dynamic by sharing a personal experience regarding an order that was issued by him to a person permitting him to construct two steps in the Street. What he meant by the two steps was that both the steps would be one foot each however the individual utilized the ambiguity to his advantage forming two steps each of 6 feet, covering a 6 feet area of the street. A judge additionally shared her perspective that legal complexity arises due to the lack of legal knowledge. An interviewee commented on the complexity of legal language by saying that language consists of maxims which are to be aligned with the law of equity, this can exhibit a dual, meaning scenario which one tends to master though legal education and can be problematic for laymen without a formal learning. This complexity is faced only by

laymen, unlike lingual complexity which is faced by laymen and legists alike. Gathering from this answer it is deduced that the judges are aware of the complexity that might strain legal understanding of laymen however it is deemed necessary by them for the purpose of accurately describing the order avoiding ambiguities. The judges tend to communicate from a position of great knowledge and understanding clearly confident in their stance.

Do you think legal lexicon has words of normal English but inhabiting a contrasting to usual meaning due to their legal context?
5 responses



To this question 4 judges answered yes however one judge disagreed with the statement as he proceeded to explain that usually word sense will be the same but just **“approach differ karaygi”**(the approach will differ) in terms of the vocabulary used. The rest however agreed that words contextually differ in legal scenarios. If they have a particular meaning in a plain English environment, it may be targeted to more specification or highlighting a particular phenomenon in legal English.

For the purpose of analyzing the anatomy of lexical polarity in legal language, the third question asked the judges to provide examples of words that might mean one thing in a broader context however have a different meaning when employed in legal discourse. The judges provided numerous examples of this phenomenon found in legal language. The following table contains words with meanings as exemplified through the interviews by the various judge responses.

Words	Meaning in Plain English	Meaning in Legal English
Landlord	Owner of land	The one who gives property on rent
Maintenance	Keeping something in good condition	Living expenses paid by husband or father to his wife or children

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<ol style="list-style-type: none"> 1. <i>Process</i> 2. <i>Process (again quoted by a different judge)</i> 	<ol style="list-style-type: none"> 1. <i>“tareeqa” (method)</i> 2. <i>Process of life and seed growth (germination)</i> 	<ol style="list-style-type: none"> 1. <i>To initiate the proceedings of court trial</i> 2. <i>Summons of the court are called process is issued. (warrant of arrest can be issues)</i>
<ol style="list-style-type: none"> 1. <i>Arguments</i> 2. <i>Argument (again quoted by a different judge)</i> 	<ol style="list-style-type: none"> 1. <i>A cross talk or talking in a contradictory manner where two interlocutors say different things.</i> 2. <i>Usually it means exchange of diverging views, typically a heated or angry one.</i> 	<ol style="list-style-type: none"> 1. <i>Oral presentation of your case</i> 2. <i>But in legal language it means the brief of a case prepared by a lawyer supporting his point of view.</i>
<p style="text-align: center;"><i>Appeal</i></p>	<p style="text-align: center;"><i>Something that you like and admire so it appeals to you</i></p>	<p style="text-align: center;"><i>Lower court's decision, challenged on a higher forum.</i></p>
<p style="text-align: center;"><i>Award</i></p>	<p style="text-align: center;"><i>A prize or honor</i></p>	<p style="text-align: center;"><i>Decision</i> <i>Some special applications have decisions which are called awards.</i> <i>E.g. if someone goes into arbitration.</i></p>
<p style="text-align: center;"><i>Ward</i></p>	<p style="text-align: center;"><i>Some area</i> <i>E.g. areas of mandibahuddin are called wards as well as areas in a hospital are wards.</i></p>	<p style="text-align: center;"><i>Under 18 child</i></p>

	<i>ward 5, ward 6</i>	
<i>Major</i>	<i>Big An army rank</i>	<i>A person above 18.</i>
<i>Minor</i>	<i>Small Like a minor problem or dispute Things of a lesser gravity</i>	<i>Under 18 individuals.</i>
<i>Seal</i>	<i>Confiscation like Sealing someone's property Sealing a paper An animal</i>	<i>Seal of court. The stamp of final decision after which the record is closed.</i>
<i>Bond</i>	<i>Prize bond or something that glues things together or establishes a relationship like marriage bond</i>	<i>Surety. An undertaking given that certain task will be fulfilled. An undertaking is against money which says that if a certain task is not fulfilled the person giving the undertaking will have to pay a certain amount that is agreed upon.</i>
<i>Charge</i>	<i>Battery charging Something that has current flowing through</i>	<i>Charge is something formally framed upon someone in case an offense is committed. "Fard e jurm"</i>

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<i>Determination.</i>	<i>The ability to continue trying to do something even if it is difficult.</i>	<i>The final resolution or conclusion of a controversy. In legal use, determination implies the conclusion of a dispute or lawsuit by the rendering of a final decision.</i>
<i>Demise</i>	<i>death of a person</i>	<i>transfer of property by lease</i>
<i>Negligence</i>	<i>carelessness</i>	<i>an intentional breach of law and causing damage to the plaintiff</i>
<i>Motion</i>	<i>Movement</i>	<i>a request by a litigant to a judge for a decision on an issue relating to the case</i>
<i>Assume</i>	<i>suppose</i>	<i>An agreement to continue performing duties under a contract/lease.</i>
<i>Damages</i>	<i>Injuries, harm</i>	<i>money that a defendant pays the plaintiff in a civil case if plaintiff has won</i>

Conclusion

To conclude, the findings stated above suggest the presence of various social structures, the exhibition of politeness, modality, legal disparity, contradiction and metaphorical language in the legal judgments exemplifying them from statements within the legal judgment discourse. Through lexical choices it was noticed in rape cases that females underwent dehumanizing experiences with explicit

details about their physicality during and after rape exposed to the world similarly these judgments showcased the taboo and social implications behind asking for justice for a rape crime committed against women which defames not the perpetrator but the victim herself. Modality markers showcased the power in discourse present in judicial statements exhibiting the power of the institution. Certain statements exhibited legal disparity found within earlier court decisions which were then stated in decrees by the high court where the earlier decisions were challenged. Another aspect noticed was the contradiction present between the shariah law and the norms of Pakistan penal code implemented in the court of law. Selective inclusions of laws of sharia were seen and selective omission of aspects to issue decree in the favor of the males was noticed which revealed patriarchal superiority in the judgment passed. Understanding the complexity of legal language, what was gathered through judges' interview was that the legal language is a specialized jargon that necessitates it to employ specific vocabulary for the purpose of accurate judgments and clear orders. Lack of legal knowledge makes it difficult for comprehension for the laymen however the court does to keep the language decipherable and not too complicated so that the crux is gathered by laymen. Similarly in terms of lexical polarity, multiple words were explained by the interviewees/judges who carried contextually varying meaning in the court of law from what normally did in common English such as

1. Arguments
2. Seal
3. Minor
4. Charge etc.

Future Recommendations

This research includes judgments from the high court and Supreme Court of Pakistan and interviews conducted of the judges are also limited to those of the judges serving at District court, Sessions Court, Civil Court, Family Court and Magisterial court. In further studies on the subject, more courts of Pakistan can be utilized to gain judgment for a more diverse data similarly judges from all kinds of existing courts within Pakistan can be approached to gain data through interview samples getting increased representation and obtaining results that are easily generalizable to the entire Pakistani judiciary. For the future improvements can be made through appropriate steps by authoritative personals that can be adopted to improve approved orders if they may contain subjective speech in the constructed judgments. The court proceedings can be competently revised to pass well-read decrees. Basic legal education is supposed to be made part of the official education curriculum and crash courses can be made available for the general population to become aware of the

language of law to avoid ambiguities and lack of understanding.



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