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IS LEGALESE A GOOD MEDIUM OF COMMUNICATION? - AN EMPIRICAL STUDY

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ABSTRACT

India became independent 77 years ago. It marked a new beginning for the country. It became more nationalised in its approach. India started supporting local businesses and moving towards self-sufficiency. We gave ourselves a new constitution which mapped the development of our beloved multi-linguistic, multi-cultured nation. We started re-writing our laws adept to our needs. The language of the laws however, still remains the same. It won't be wrong to say that each profession has its own language, certain terms that are privy to that particular group of people. The legal field also has a different language, also commonly known as the "legalese". It
is predominantly archaic English consisting of Latin and French terms. As a layman we deal with multiple transactions daily and end up following and breaking many a laws, intentionally or unintentionally, but mostly unintentionally. In the famous case of State of Maharashtra versus MH George, the court recognized an important principle of the nation- Even a stranger passing through the nation must be aware of the laws of our nation. It puts an added responsibility for Indian citizens to be aware of the laws of the nation. Some jurists claim the use of legalese is used in the drafting of laws because of the precision it provides. This article shows empirically how difficult it is to comprehend legalese and how it can be simplified while preserving precision to be made more accessible using plain language. One of the aims of the Indian Knowledge System is to make knowledge accessible. Language plays a pivotal role in education. Once the legal language is simplified it becomes easier not only to comprehend but also to translate it into multiple other regional languages of India. The article also shows how the simplified version of the law can be easily translated into a more comprehensive translation into "Hindi" language of the same provision.

Keywords: Legalese, Plain English Movement, Access to Justice, Simplification of Law, Law in Regional Language

1. INTRODUCTION

It won't be wrong to say that each profession has its own language, certain terms that are privy to that particular group of people. The legal field also has a different language, also commonly known as the "legalese". While other professions have a little bearing on the day to day life, law isn't something that any man can opt out from. This use of "legalese" makes it impossible for non-experts to read and comprehend such opinions. As a layman we deal with multiple transactions daily and end up following and breaking many a laws, intentionally or unintentionally, but mostly unintentionally. In the famous case of (State of Maharashtra v. MH George, 1965), the court recognized an important principle of the nation- Even a stranger passing through the nation must be aware of the laws of our nation. But, what does one do when the laws are written in a language that needs an expert's opinion to decode it?

Any law student would agree that learning the language of law is equivalent to learning the Morse code, or worse- reading a Dan Brown novel. An attempt is made in this study to simplify a few provisions of Sale of goods act and the Consumer Protection Act, 2019. The simplified versions were juxtaposed with the original provisions and sent to a sample size of 21 people, belonging from legal and non-legal professional backgrounds, to give the final verdict on which out of the two they understand better. This study will further help in understanding whether simplification of the language of legislations is actually the need of the hour or not?

2. THE CASE OF PRECISION VERSUS CLARITY

English language in India came to be used around the late 18th century. (Mallikarjun, n.d.) Laws were borrowed, varied and codified. The language of the laws, however, remained the same as that of the country it's borrowed from i.e. English. But, this was no ordinary English; the language used to codify the law is rather technical and very different from the English people use in common parlance. This language of law, over the time, came to be known as Legalese.

Legalese was important to achieve the precision that the laws and courts demand. Laws cannot be ambiguous or open-ended. They must be written in a precise form and should cover unforeseen situations. However, in this quest of precision the drafters went so far away from clarity that's the legal language is beyond the comprehension of the ordinary man who is the subject of that very law. In the mid-20th century with the advent of the Plain English Movement we saw the ordinary men demanding a more comprehensible law for themselves. As noted by Mellinkoff (2004), legal language has always been distinct and inaccessible to the average person. He quotes Fortescue, C.J.-

"Sir, the law is as I say it is, and so it has been laid down ever since the law began; and we have several set forms which are held as law, and so held and used for good reason, though we cannot at present remember that reason."

He tried to trace the history of the "language of the law" elucidating its characteristics and mannerisms in great details. He also believes the reason behind the usage of the legal language is the famous theory of 'precision versus clarity'. His book marked the beginning of a new-era and everyone started demanding a consumer friendly law making process where the laws are written essentially in a language that could be deciphered by anyone without any middle-man. (Garner, 2013) has repeatedly laid emphasis on the perks of simple writing and the advantages of the same. According to him the best way to learn legal writing is a 3-step process. A person must firstly, frame his thoughts to provide clarity. Secondly, phrase them properly so as to avoid verbosity. And thirdly, choose words which have a direct bearing on the issue and are not used just for the heck of them being used, in other words- avoid expletives. He's made a record of many terms which are career specific. For example- a doctor's language is different from a police man's language or a lawyer's language. In his book he's made an effort to use a common man's language regardless of the profession one's pursuing. He has enumerated many exercises to improve a person's way of writing and making it more simplistic.

While deciding the battle between precision and clarity with time everyone realised that there need not be any one to win in this battle specifically and precision can be achieved while keeping the clarity of the law intact. A muddled language of law does not serve any purpose and is rather counterproductive. Many authors have tried to simplify the language of law such as (Butt, 2013) and (Kimble, n.d.) to name a few. Tiersma (2006) debunks several common misconceptions about legal language. The Vidhi Centre for Legal Policy (n.d.) provides extensive resources on legal reform in India. It is an Indian think tank which has taken the responsibility to simplify the codified law, one at a time, and publish the results online to compare.

3. STATEMENT OF PROBLEM

Although The Plain English movement started worldwide in 1980s, little to no efforts have been made in India to simplify the legal provisions. A bill demanding the laws to be written in simple language was introduced in the parliament half a decade ago but hasn't seen the light of the day. The growing menace of the technicalities of legalese, in a country like ours where English isn't the first language let alone legalese, needs to be studied. People advocating for legalese mostly belong to the legal community. A segregation of legal and non-legal community is made keeping in mind the special knowledge acquired by one community over time.

"Does the comprehension of legal language vary with the professional background of a person?" and "What is the consequence of substituting simple language for legalese in legal community and non-legal community?" are the main questions answered through this study.

4. OBJECTIVES OF STUDY

- To study the level of comprehension of legalese in legal and non-legal community- Here the aim is to find out if there is any relation between professional background and difficulty in understanding the legal language.
- To understand the results of simplification of legal provisions- Here the aim is to assess the comprehension of laws among adults who can read and write in English language from legal and non-legal backgrounds.

5. RESEARCH QUESTIONS

- Do people from legal background find it easier to understand the legal language as compared to people from non-legal background?
- Do people from legal background choose the actual legal provision over the provision written in simple language?

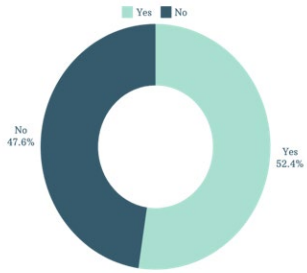
6. RESEARCH METHODOLOGY

1) Research Method- the researchers have adopted an empirical method of study. The study is of a socio-legal nature. This study is an empirical study that involves Quantitative Analysis of primary data collected through the help of a structured questionnaire, focused on the understanding of language in which laws are written, among people from legal and non-legal backgrounds.
2) Sample And Sampling Design- For this study the researchers have used stratified random sampling method. A structured questionnaire was given to strata of random people belonging to legal profession and another strata not belonging to any legal profession. The sample size consisted of 21 respondents, 11 belonging to the legal profession and 10 not belonging to any legal profession and not having any legal knowledge whatsoever. The time required to collect the data from both the groups was 4 days. The average time required to fill the questionnaire is 15-20 minutes.
3) Error:

- The researchers did not face difficulty in accumulating the data. However, some respondents complained of the questionnaire being too lengthy and asked for extra time to fill it resulting in a procedural error.
- The researchers, in the questionnaire, mistakenly kept option B as the re-drafted provision in plain English. Some respondents didn't read the last questions of the questionnaire and chose B as a default answer thinking it to be the simpler provision, resulting in another procedural error.
- Few respondents complained of the font of the questionnaire and the check boxes being too small.

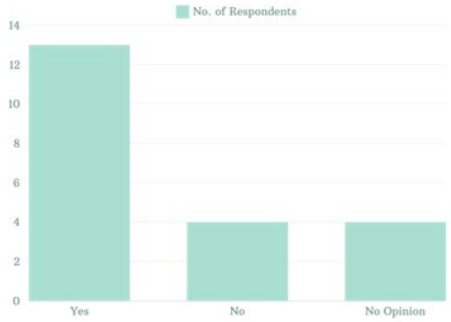
7. ANALYSIS OF DATA AND FINDINGS-

Q.1 Are you related to any legal field?



Out of 21 respondents 11 were related to the legal field and 10 were not

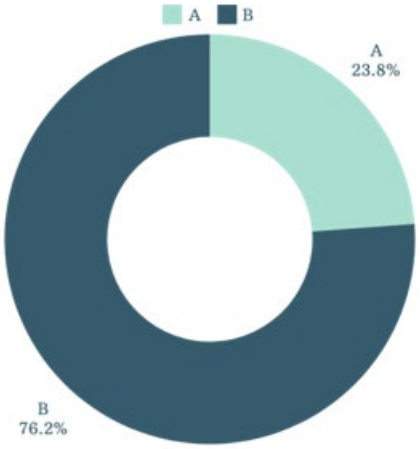
Q.2 Do you think laws are written in difficult language?



Out of 21 respondents 13 think that laws were written in difficult language 4 think they were not and 4 did not have any opinion.

Q.3 Which one do you understand better?

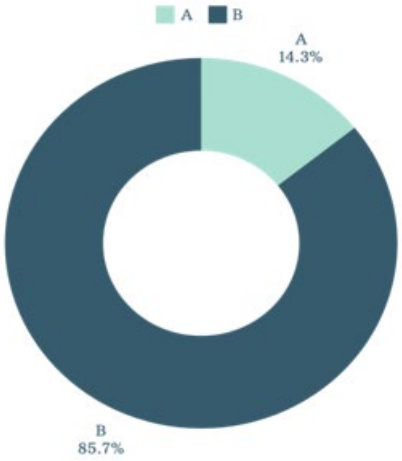
A) Insolvent	**B)** Insolvent Person
A person is said to be "insolvent" who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not	• One who has stopped paying debts • One who cannot pay his debts



Out of 21 respondents 16 chose the provision written in plain English.

Q.4 Which one do you understand better?

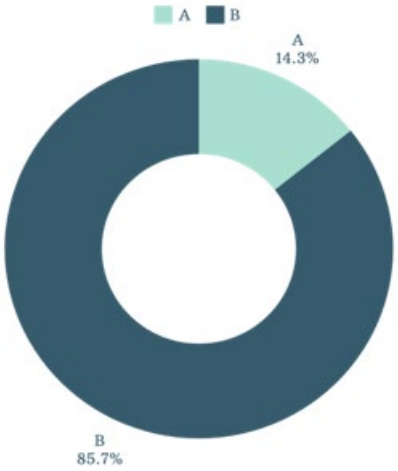
A) Mercantile agent	**B)** Mercantile agent
A mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods	Agent having authority to: 1. Sell goods 2. Consign goods for selling 3. Buy goods 4. Raise money on the security of goods



Out of 21 respondents 18 chose the provision written in plain English.

Q.5 Which one do you understand better?

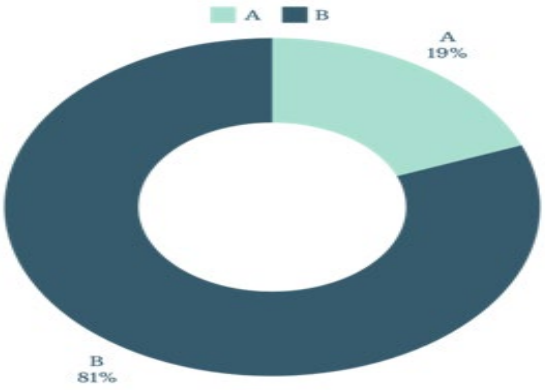
A	B
(1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided: Provided that, if the goods or any part thereof have been delivered to, and appropriated by, the buyer, he shall pay a reasonable price therefore. (2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain a suit for damages against the party in fault.	1. The parties in an agreement to sell goods can agree on a third party to decide the price of the goods. 2. If the third party cannot or does not decide the price, the agreement is cancelled. 3. If the third party is prevented from deciding the price because of the fault of seller or buyer, the party not in fault can sue the other party for damages. 4. If the buyer has received the goods, in whole or in part, under the agreement and he has used it, he should pay a reasonable price for the goods used.



Out of 21 respondents 18 chose the provision written in plain English.

Q.6 Which one do you understand better?

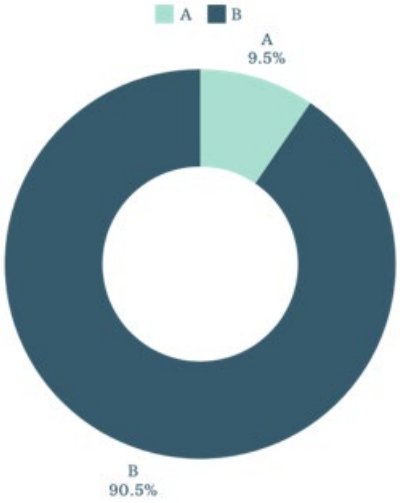
A	B
"Consumer" means any person who— (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose. Explanation. —For the purposes of this clause, — (a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; (b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing;	"Consumer" is a **person who-** **(i) buys any goods** **(ii) hires or avails any service** Explanation: (a) consideration for buying any goods or hiring or availing of service can be paid immediately or promised or partly paid immediately and partly promised, or under any system of deferred payment-like credit card etc. (b) a user of these goods or beneficiary of these services other than the person who buys or hires or avails is also a consumer, if the use is made with the approval of the **first person** and is not for resale or any commercial purpose. (c) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means. (d) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment



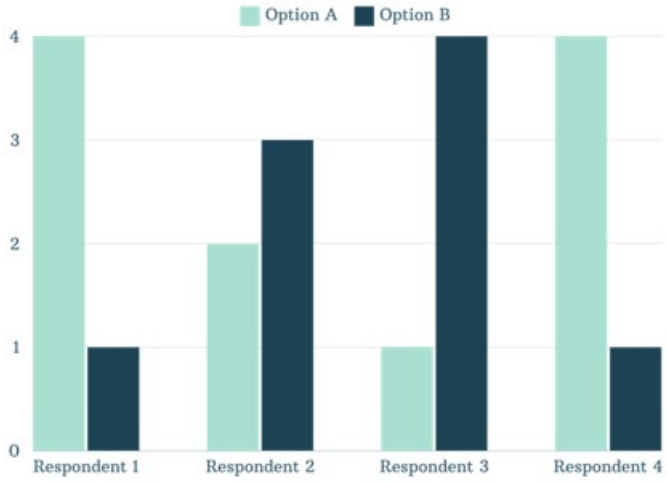
Out of 21 respondents 17 chose the provision written in plain English.

Q.7 Which one do you understand better?

A	B
Unless a different intention appears from the terms of the contract, stipulations as to time of payment arc not deemed to be of the essence of a contract of sale. Whether any other Stipulation as to time is of the essence of the contract or not depends on the terms of the contract.	(i) Parties to the contract can make any terms regarding the time. (ii) Any terms about the time of payment are usually not of essence of a contract of sale unless expressly agreed by the parties.



Out of 21 respondents 19 chose the provision written in plain English.



Only 4 respondents chose "No" when asked if laws are written in difficult language, however they chose the plain language provisions at least once.

8. HYPOTHESIS

H0: Professional background of a person and difficulty in understanding the legal language variable are independent

H1: Professional background of a person and difficulty in understanding the legal language variable are not independent
1) Variables:
A: Professional Background
B: Difficulty in understanding legal language

2)Chi square test

		Difficulty in understanding legal language		
		Yes	No	Column Total
Professional background	Legal	7	3	10
	Non-legal	6	1	7
	Row Total	13	4	N=17

Upon calculating Chi-Square from the 2x2 Contingency table Chi-Square is equal to 0.0291.

The critical value at 1 degree of freedom at 95% level of significance is equal to 3.84 p Value = .8643
3)Hypothesis Testing For statistical analysis, the contingency table calculator was used (GraphPad Software, n.d.)

Since the calculated Chi-Square with Yate's Correction (0.0291) is less than the tabulated Chi- Square at 1 degree of freedom is (3.84).
Furthermore, the p value is .8643 which is greater than the level of significance .05

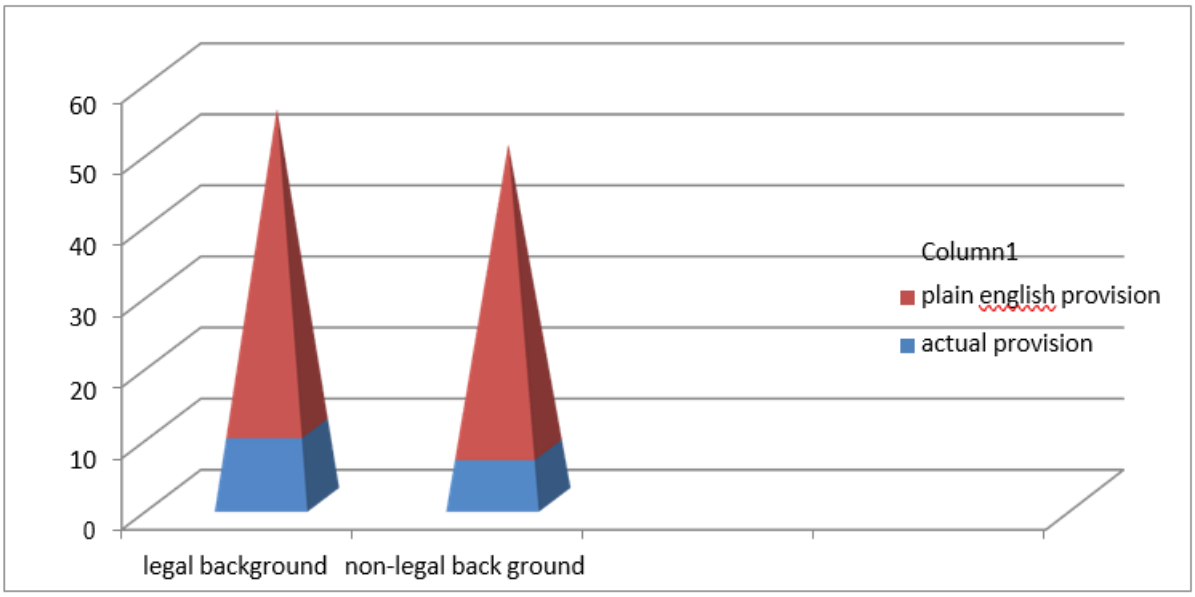
Therefore, the association between the variables is considered to be not statistically significant. Hence, we cannot reject the null hypothesis.

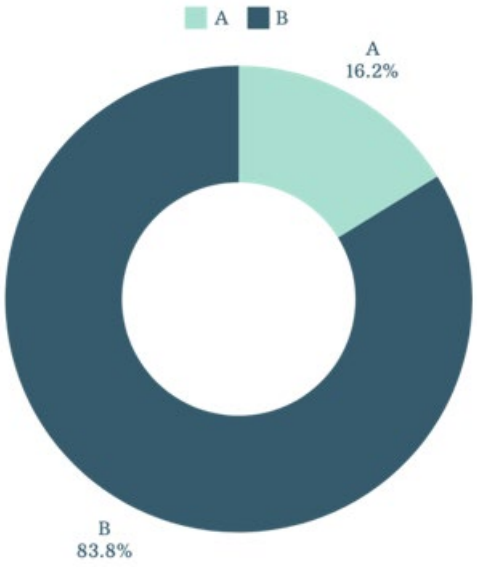
9. RESULT OF THE STUDY

- In answer to the first research question- Data was collected from respondents asking them about their professional background and whether they find laws to be written in a difficult language. To find the dependency between the variables Fisher's exact test was conducted since, the sample size was too low, coupled with yate's correction. The results show that the legal background of a person has no relation to the comprehension of legal language. Hence, people from all backgrounds find it difficult to comprehend the legal language.
- In answer to the second research question- the researcher juxtaposed 5 original legal provisions with the provision written by the researcher in plain English. The results are as follows:-

People from legal background ended up choosing the re-written plain English provision 45 times and chose the actual legal provision only 10 times.

- Out of the 5 questions where 21 respondents had to choose between the actual provisions and the provision redrafted in plain English, the provision re drafted in plain English was chosen 88 times out of 105.





Analysis of Total Responses
A-Actual provision B-Provision re drafted in plain English language

10. LANGUAGE AS A TOOL TO ACCESS JUSTICE UNDER IKS

Justice might seem like an easy term to define. This seven letter word, however, whenever one tries to make sense of what it might mean, one finds getting more and more confused within its nuances. It isn't a term or a concept that a layman can try to decipher easily. For example- let's take a look at an ailing person with meagre economic resources and what would justice mean to him? He has little to no money to buy medicine for his condition; will it be just to ask the government to provide him with economic resources to cure his ailing condition? Or will it be just to ask the pharmaceutical companies to provide him with medicines free of cost?

In the first situation, if the government starts providing economic resources, we'll need to track the source of the government's resources- which is a collective pool of resources of all the tax paying citizens of the state. Will it be just to take these resources from hardworking people and to give it away to other people who might or might not have contributed to these resources?

In the second situation, how just will it be to ask the pharmaceutical companies to give the fruit of their hard labour for free to citizens in need?

Let's look at a third situation, which is mostly followed by the governments these days- providing a subsidy on certain medicines for specific people in need. This approach can be termed as the utilitarian approach- which is the maximum pleasure of maximum number of people. However, let's try to look at the drawbacks of utilitarian approach to the society with the help of another example- the richest man in India Mr Mukhesh Dhirubhai Ambani has a net worth of $113.7 billion as of March 2024(Government of India, n.d.)if we look at that sum being concentrated in one man's hands and the BPL population in India which is 27.5% of the country's population wouldn't it be fair to take all the excess resources from one person and distribute it amongst all these people who are struggling to find daily necessities such as- food, clothing and shelter? Sounds a bit odd though, why must one person sacrifice to make good a society? Think of The Case of the Speluncean Explorers(Fuller, 1949), one of the defences taken by the perpetrators was that all four of them would have died had they not killed their companion and fed on him. If we go by the rule of the greatest good for the greatest number, this killing would be justified but somewhere deep in our conscience, or at the least in my conscience, something feels a bit odd again.

Let's borrow the brains of one of the biggest political thinkers and try to make sense of justice again, John Rawls (Rawls, 1971), opposed utilitarian theory and said not even "one" can be compromised for the benefit of others. He tilted in the favour of the social contract theory (Hobbes, 1651; Rousseau, 1762; Locke, 1690) but with some modifications. As we all know, according to the social contract theory we all give up some of our rights and agree to be curtailed in some fronts of life to live harmoniously in a society. The critics to this theory do not believe that giving up of these rights is wholly consensual. Even today, if we take the example of India which is a representative democracy- we choose our representatives and these representatives further vote upon our rights and duties as a citizen. The Farmer's protest is a perfect example to understand why the social contract theory is criticized. Although, the representatives are supposed to represent the people who elected them, often times they start serving their own interests. However, Rawls has found a way to minimize this by introducing the "veil of ignorance". Rawls argues that to construct a just society we must not be aware of our position in it. It is only under this veil of ignorance we would be able to derive the best working rules for a society without any biases and ulterior motives as nobody could comprehend their individual good so they will end up choosing those principles which will result in an overall good for the society. Rawls has built his own theory of justice on the foundation of the social contract theory. He gives two principles of justice-

1) Everyone should be given equal basic liberties- This principle states that each person should have an equal right to the most extensive basic liberties compatible with similar
liberties for others. It encompasses freedoms such as freedom of speech, assembly, conscience, and the right to vote.

2) The difference principle also known as the Maximin principle- This principle addresses economic and social inequalities. It states that inequalities in society should be arranged so that they are to the greatest benefit of the least advantaged members of society. In other words, inequalities in wealth and income should be permissible only if they result in improving the situation of the least well-off.

Rawls' conception of justice emphasizes the importance of fairness, equality, and the protection of the most vulnerable members of society. By employing the original position and the veil of ignorance, Rawls seeks to develop a theory of justice that is impartial, rational, and reflective of the values of a just society.

Fair to conclude, justice might seem like an easy term which we throw around in our daily conversations, but in essence it's a fairly more complex phenomenon.

Access to Justice

As we saw above justice isn't that easy a concept to define precisely. Various jurists and political thinkers are till this date trying to define this phenomenon. The society is a dynamic tool. With the change in society comes a change in the ideologies of its inhabitants, ergo the ever-changing notion of justice. If we talk about the concept of justice in today's society we can accept a few principles for determining whether justice has taken place in a given situation or not. These principles are:

a. There must be some well-defined rights and liabilities.
b. Such rights and liabilities must ensure the optimum living of the people at that given time.
c. There must be a well laid out procedure to access these rights and enforce the liabilities.

When it comes to the task of defining these rights and liabilities the present day needs of the society must be taken into account. We have seen examples of people leaving their age old customs and understanding their redundancy. Be it the prohibition of custom of "Sati" to entry of women in "Sabrimala temple" the rights and liabilities of the people have never been stagnant. These rights change as per the dynamics of the society sometimes by the courts and sometimes by the legislature. But, most of the times the change is called upon by the society.

However, the task of laying down the procedure to access these rights lies on the whole nation cumulatively. One of the key features of access to justice is to make the laws available to the people in a language that they could comprehend. IKS is also helping in this endeavour by translating ancient texts in regional languages. The task of this translation is also simplified by enacting laws in simple Plain English language. For example let's look at the translation of the actual provision of law and simplified provision of law into Hindi language-

Actual Provision	Translation in Hindi
Unless a different intention appears from the terms of the contract, stipulations as to time of payment arc not deemed to be of the essence of a contract of sale. Whether any other Stipulation as to time is of the essence of the contract or not depends on the terms of the contract.	"जब तक गब क तfi `क ह हरा5ा क7 ग 5 , rगताग क मय क त क िब क गब का 4क त ग5 माग जाता 5। िक मय क त गब का 4क त 5`या ग5 , य5 गब क तfi पर िगrर करता 5।"

Provision in Plain English Language	Translation in Hindi
(a) Parties to the contract can make any terms regarding the time. (b) Any terms about the time of payment are usually not of essence of a contract of saleunless expressly agreed by the parties.	(a) गब क पाि7या मय क ब म क ह r त तय कर कत 5। (b) rगताग क मय क ब म क ह r त मत र पर िब क गब क ि ॥ Wत म5 प ग5 5 त , जब तक िक पाि7या ह `4 Vप ` 5मित ग 5 ।

If the provision becomes simpler, the translation of it also becomes simpler. A simple translation engine can be used to make sense of the law of the nation. The need to consult with a legal attorney on all trivial law related issues will subside resulting in a gentry of well-informed citizens less prone to being duped and cheated.

11. CONCLUSION AND SUGGESTIONS

The study shows how the debate against legal language being simplified stands defeated. The comprehension of legalese is a problem regardless of the professional background of people. Even lawyers and people belonging to legal fields feel a need to simplify the legal provisions. It is pertinent for the development of any nation to educate maximum of its citizens. The process of simplification of law will help achieve this goal. Simplified provisions do not compromise on the

precision of the law. Furthermore, the simplified provision is easier to translate into any other regional language of India making laws more accessible to public.

CONFLICT OF INTERESTS

None

ACKNOWLEDGEMENTS

None

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