

Block 3

Legal Translation

Unit 9

Legal Text : Meaning and Dimensions

Unit 10

Language and Terminology of Law : Constitutional-Legal Aspects

UNIT 11

Translation of Legal Texts

Suggested Readings for Block-3

Introduction to Block 3

The field of legal translation is very wide. This in itself is a unique but difficult area of expertise. In any country, law has great importance in the lives of its citizens. Every aspect of their life is governed by law and their freedom is limited by law. Language has a special role in this. In order to maintain the un-ambiguity of meaning and language, in the field of law each term is used in the single sense. Due to the constitutional provisions and statutory arrangements, there is a need for legal translation in the country. The lack of basic drafting in Hindi continues to keep the translation status quo in this field. But legal translation is not an easy task because even a slight variation in the meaning of the translated text from the original or even a silly mistake can destroy the meaning. Therefore, realizing the need to consider the legal status of Hindi translation, the context of translation and the condition and direction of Hindi use in this difficult and specialized area, an independent section on 'Legal Translation' has been prepared under the 'Areas of Translation'.

There are three units in this Block.

Unit-9 : '**Legal Text : Meaning and Dimensions**' discusses the meaning and nature of law. Along with this, the importance of law in social life, areas and types of law, and characteristics of the language of legal text has also been included. At the same time, the difference between legal literature and creative literature has also been presented. Knowledge of all these aspects is indispensable for any legal-translator.

In Unit-10 : '**Language and Terminology of Law : Constitutional-Legal Aspects**', the Constitutional and legal provisions related to the language of law, the use of Hindi in the field of law after independence and the development of legal terminology have been discussed.

Unit-11 '**Translation of Legal Texts**' discusses the need and prerequisites of legal translation. In this, it has mainly been explained that how legal literature should be translated and what things the translator should pay attention to in this work. In this context, first of all, a major question emerging in the translation of legal literature – whether the translation should be literal or sense-for-sense translation – has been considered and also the context of legal translation and the language-style of law has also been made the subject of discussion. In addition, the problems of translation of legal literature are discussed in length.

Some useful books are listed at the end of the Block. To understand the subject of legal translation in detail and in depth, students can use them.

Unit 9 Legal Text : Meaning and Dimensions

Structure

- 9.0 Objectives
- 9.1 Introduction
- 9.2 Importance of 'Law' in Social Life
- 9.3 Law : Meaning and Nature
- 9.4 Areas and Types of Law
 - 9.4.1 Areas of Law
 - 9.4.2 Types of Law
- 9.5 Difference Between Creative and Legal Text
- 9.6 Characteristics of the Language of Law
 - 9.6.1 Significance of Words and Inflected Words/Phrases
 - 9.6.2 Unity of Meaning/Semantic
 - 9.6.3 Semantic Interpretation by the Court
 - 9.6.4 Semantic Conciseness and Definiteness
 - 9.6.5 Definition and Specific Connotation of Common Words
 - 9.6.6 Minor Semantic difference
 - 9.6.7 Structured and Compacted Language
 - 9.6.8 Use of Present Tense
 - 9.6.9 No Place for Honorific Usages/Expressions
- 9.7 Constitution of India : From Translation to Authoritative Text
 - 9.7.1 Question on Legal Status of Hindi Translation
 - 9.7.2 Process of preparing the authoritative text in Hindi
- 9.8 Let Us Sum Up
- 9.9 Exercises

9.0 Objectives

After going through this unit you should be able to:

- know the meaning, nature, scope and types of 'law';
- understand the importance of 'law' in social life;
- understand the features of the language of law; and
- differentiate between creative literature and legal literature.

9.1 Introduction

Law is very important in human life. All the conduct and activities of man are controlled and regulated by 'law'. Without it, human life remains loose and disorderly. Law, along with disciplining human life, also expresses the discipline of the society. This establishes justice in the society. But it is necessary that the enforcement of the law should be done in such a way that every person can make proper use of his rights. In this context, it is also necessary to understand the meaning, nature and importance of the concept of law. Since expression takes place in a particular language, therefore, understanding of its specialty is also necessary. At the same time, it is also necessary to keep in mind that what is the difference between creative and legal literature. The present unit covers all these dimensions related to law.

9.2 Importance of 'Law' in Social Life

Man is a social animal, he is an integral part of the society. This tendency of his brings him in contact with other members/individuals of the society and inspires him to do many types of

mutual behaviour. Man makes these behaviours a part of his conduct. Human's social life is based on these conducts and behaviours. But, this fact also cannot be denied that there is a possibility of a situation of conflict between the interests of the members of the society. If there is no necessary control in this context, then there will be a situation of disorder in the society. This will hinder the progress and development of the society. Therefore, proper control is necessary on the conduct and behaviour of humans. Without some degree of control over the members of the society, there is no possibility of an organized social life. So control is necessary to maintain the behaviour in the society. Through this control it becomes possible to enforce mutual rights and duties.

Social practices are born with the aim of controlling the conduct and behaviour of human beings in the society. Customs are the result of efforts to bring social behaviour back to a proper pattern. In ancient times, the society was small and simple; each member of the society knew each other personally. Apart from this, there were no rapid changes in social life then, nor were there any serious social problems. For this reason, the task of social control was easily done through customs. But, the work of social control through customs is not possible in modern societies because in modern societies many types of groups live side by side instead of only one type of group living side by side. Because of this multiplicity, the practices of all the groups cannot be the same; each of these may have different practices. In such a situation, the work of social control on the basis of customs is not possible. It is possible to make up for this lack of practices by law because the law in a particular area is uniform and applies equally to the people living in that area. Today's era-society is changing very fast. Due to this, social needs are also changing very quickly. It is not at all possible to fulfill or control these changing needs only by traditional practices. Whereas, due to the progressiveness and changeability of the law, the fulfillment of social objectives becomes possible. Therefore, the need and importance of law in modern social life is not only undeniable but it is continuously increasing.

The need and importance of 'law' in social life can also be seen from the point of view of maintaining social organization and social order. Since the law makes them aware of their rights, duties and responsibilities at the level of the citizens of the state, then it also gives the right to the state to punish them for their inappropriate behaviour. The state maintains law and order in the society by forcing the individual to obey the law under the threat of punishment.

Apart from this, law is more important in social life to protect the fundamental rights of the individual because many sections of the society are trying to violate the fundamental rights of the members of other sections. For example, it is always the endeavour of the capitalist-rich class of the society to get the maximum work from the other (labour) class for the least amount of money. But the workers get basic rights from the state against their exploitation, whose protection is possible only by law. Fundamental rights are given by the democratic rule to the citizens of the state so that they can have physical and mental development. Therefore, it is believed that in the absence of protection of fundamental rights, their existence is really meaningless. Law is the means to protect the fundamental rights.

Law is an effective means of social control. Social control is concerned, broadly, with the maintenance of order and stability in society. Since the law is made by the government, it applies equally to all the people of that state. There are proper arrangements or organizations from the government side to implement the law. Arrangements are made to punish those who break these laws by police, court, jail etc. This punishment can be both physical and financial. In the law, under the penal code, the criminal can be punished with imprisonment,

exile or death penalty, by which the society gets rid of the bad influence of criminals. The fear of being punished by the law or the provision of punishment deters a person from acting against the law. Due to this, the work of social control is done easily and organization and order is maintained in the society. Thus, law becomes an effective instrument of social control.

9.3 Law : Meaning and Nature

In the Oxford English Dictionary, 'Law' is said to be a rule of conduct enforced by the state. In this way, the word 'law' can be used for any rule-regulation etc. because 'law' is related to rules. The rules-regulations etc. made by the state for the purpose of the welfare of the individual are called 'law'. These are the rules that govern the conduct of human beings in society.

Synonyms of the Word 'Law'

The jurists have used the word 'law' in many senses and have used the words 'justice', 'rule' etc. Although the words 'law', 'justice', 'rules' are more prevalent in place of 'law' in daily practice, but the Government of India has considered the word 'law' as standard. 'Law' has different synonyms in different countries and communities. Under the Latin law, it is called 'Jus', 'Giri' in the Japanese law, 'Droite' in the French law and 'Hukum' in the Islamic system. As far as ancient Hindu law is concerned, law is addressed by the name of 'Dharma' i.e. 'Religion' (which includes religious, moral, social and legal duties). In its broadest sense, 'religion' is the combined form of all the rules and regulations on the basis of which human conduct and behaviour are controlled in the world of life.

Definition of 'Law'

It is difficult to define 'law' as a concept. One reason for this is that in different societies, using different words for 'law', it has been taken in different meanings. Second, jurists have defined law from different points of view. Some considered the law as God given and some redefined the basis of its implementation. Apart from this, there is a tendency to define it on the basis of its nature, purpose and results. One of the reasons for not being able to give an agreed definition of law is that law is concerned with human behaviour and social science. Along with the social development, where there is a change in the conduct and behaviour of man, it is not only always changing, but it also keeps on getting modified along with the social change. Due to the difference in lifestyle, beliefs and concepts of different countries, it is not possible to define the law in a universal way.

While defining law in his book 'The Elements of Jurisprudence', Holland writes that 'law refers to those general rules of human action, which are expressed by the external conduct of man and which are implemented by a certain authority. This authority is someone who is chosen from among the authorities who are omnipotent in a political society. On the other hand, according to Samand's 'Jurisprudence', in the general sense, all the work related to rules are included under the law. He says that law in a specific sense refers to the civil law which is applicable to the citizens of a country, which he has called the law of the state, the law of lawyers and the law of the court. According to him, in fact jurisprudence or law is the same, which has used the word 'law' in three senses - in the first sense, law is such a legal order by which human conduct in a well-organized society of a polity is regulated by society is kept under control. In other sense, law acts as an authoritative guide. In the third sense, all the judicial and administrative activities of the country are included under law. In this way Pound accepts the general legal system of the country as 'law'.

Clause (3) of Article 13 of the Constitution of India defines the word 'law' in a context-specific manner and gives an inclusive definition as follows – '(3) In this article, unless the context otherwise requires, (a) the law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India.'

In the light of the wide scope of the purpose of law, legal-translator Mr. K.G. Aggarwal has defined it in his book '*Vidhi Anuvad : Vividh Aayam*' (Legal Translation : Various Dimensions) - 'The definition of law, in short, is the rules regulating human conduct, can be done as a code of rules. These rules are made to achieve social goals and objectives.' (p.2)

In the light of the above definitions, it can be said that 'law' is the rules made by the state to control human conduct and external behaviour by determining the appropriateness or inappropriateness of them, which leads to established social control, unity, peace and order in the society. These rules compel individuals to follow the law.

In the absence of control in the form of rules and regulations on the conduct of human beings, the tendency of disorderly or free living arises in them, which can prove to be a hindrance in the progress and development of the society. Therefore, the state exercises proper control in various spheres of human life through law. This feature of law can be said that it is applied equally to all without any discrimination. From this point of view uniformity and stability is reflected in the law. In other words, it can be said that there is no place for individual self-conscience in 'law'. The work of enforcement of law is done by the courts, established by the state and the persons who enforce the law are called judges. Law is an essential means of administration of justice. Justice without law is an illusion and without justice, law itself is considered incomplete. Therefore, there is a close relationship between law and justice. Uniformity and certainty in the law compels the judges of the courts to give decisions according to the law. However, due to the firmness-certainty of the rules, the law does not conform to the situational reforms. Therefore, in a development-oriented society, it is talked about the appropriateness of the law. The formality and technicality of the law hinders its actual enforcement. Its complexity and perplexity are beyond the comprehension of the common man. The role of 'law' as an instrument of justice-administration is important and will remain so. 'Law' is not an end in itself but a major means of social control. Establishment of justice in the society and promotion of the welfare of the society is the ultimate aim of the law.

9.4 Areas and Types of Law

After knowing about the importance of 'law' in social life as well as its meaning and nature, let us now consider the scope and types of law.

9.4.1 Areas of Law

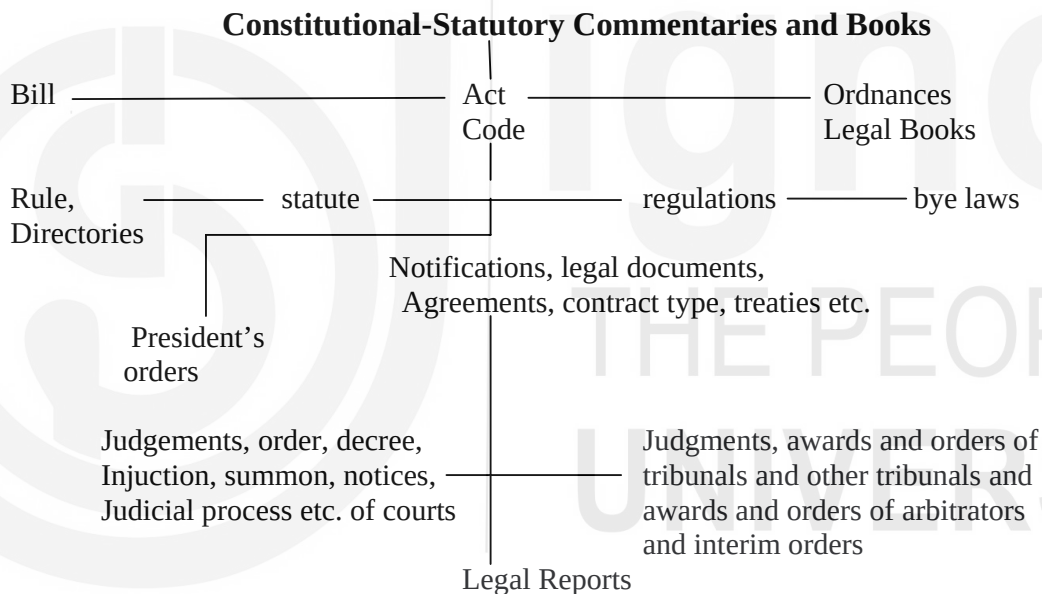
The field of law appears to be small, whereas in reality it is very wide. 'Law' is created by the legislative power of the state. All the citizens of the state - be it a common man, a businessman, a government employee or a judge of a court - have to comply with these laws dutifully. Therefore, it is said that law is closely related to man and his society. Intimate and subtle matters of human life are considered in the field of law.

In the first place, 'law' itself in the form of legislation directly falls within the domain of law. Dr. Balveer Singh Bhatnagar has written in his article '*Vidhi Sahitya Ka Anuvad*' (Translation of legal literature) published in '*Rajbhasha Bharti*' that 'the language of law, its written form, its interpretation, earlier decisions, the procedure to be followed by the judicial officer, statement, evidence etc. are all subjects directly related to the field of law. The most important of all is the written form of law because the first basis of judicial process is its

written constitution. The law is made according to the procedure laid down under the Constitution. Therefore, all papers related to the Constitution, Acts, Rules, Regulations, Standing Orders, Service and Service related matters, Contracts and Agreements etc. can be counted under legal literature... most of the papers of general offices are counted in non-constitutional type of documents, but when a case is filed in the court regarding their interpretation or dispute, then they come within the legal limits. (p.10)

Based on the vastness of the field of law, the field of source material of legal translation is also wide. In the context of India, the main subjects of legal translation are quite numerous. In these mainly the Indian Constitution, books related to various rules-regulations-acts of the Government of India, law subject books, decisions of the courts and various documents related thereto, legal codes, new and amended rules-acts, various types of government notifications etc. were enumerated. In addition, all the material related to the judicial system is the source material for the translation of legal literature. Broadly, legal literature can be divided into three parts. These are:

1. Legislation (Acts, Rules, Regulations, Bye-laws etc.);
2. Various manuals of the Government of India etc.; and
3. Various types of documents like notifications, contracts, leases, tenders etc.



9.4.2 Types of Law

Many jurists have divided the laws into different categories according to their respective viewpoints. But in simple sense there are two types of laws. These are (1) the general/common law; and (2) the specific law.

The **Common/General Law** applies equally to the whole community. It is the general law of the country and is applicable to the whole country. Indian Penal Code, Indian Companies Law, Transfer of Property Act, Contract Law, Juvenile Justice Act, Prevention of Terrorism Act, Passport Act, Protection of Human Rights Act, National Commission for Women Act, Conservation of Foreign Exchange and Prevention of Smuggling Act, Press Council Act, Patent Act etc. are similar laws that apply to all equally.

While the scope of **Specific Law** is limited, they apply only to a particular location. It includes certain other collections of rules which are special and exceptional in terms of their nature, source or application. The specific law is considered to be outside the scope of the

general law. Delhi Rent Law Act, Delhi Sales Tax Act, Delhi Municipal Corporation Act, Delhi (Delegation of Powers) Act, Delhi Apartment Ownership Act, Jammu and Kashmir Representation of the People (Supplementary) Act, Himachal Pradesh State Act, Madhya Pradesh Land Revenue Code, Uttar Pradesh Panchayat Raj Act etc. are specific laws.

9.5 Difference Between Creative and Legal Text

The beauty and style of language have special importance in creative literature. The place of ‘*Vakrokti*’ (quibble) and miraculous use of words in poetry and drama is well-known. Once upon a time, ornamented literature was considered the best. Today, there is no situation like ‘*Ritikaal*’, yet the ornaments still attract. Language is fluid. The saying changes according to the situation. Regional language is used in regional novels. Character does not speak a particular standard language. Its pronunciation and word usage differ from the standard language. All these increase the effect of expression.

Creative literature is emotion-oriented. The place of thought is relatively secondary. The author expresses his feelings through poetry or creates a novel, story, drama from the point of view of folk entertainment or public education or presents his views on art, culture, literature, politics, philosophy, religion etc. through a fine essay. In this the main goal is communication. Style and language make it attractive and comprehensible, so their importance is no less.

The purpose of legal literature is different. Broadly speaking, it can be said that the state makes rules by controlling the conduct of human beings in the society. Similarly, rules governing the conduct of the state are also made so that the state and its organs - the executive, the legislature and the judiciary- work within their limits. Therefore, the object of law is to regulate conduct.

Law creates rights and duties. Certain acts and omissions are prohibited and punished. Procedure is prescribed for doing certain things, such as sale of land, formation of company, formation of society, foreign trade, banking, share market etc. Powers and duties are delegated to certain bodies such as municipalities, telephone regulatory authorities, insurance regulatory authorities, universities etc. Rights are given to citizens and other persons, such as fundamental rights, right to vote etc.

The purpose of law is not public entertainment or to educate the public. There is public regulation. It is the work of the judiciary to decide what is the limit or extent of the limits that the law creates. There may be a difference of opinion from one person to another or between an individual and the State as to the interpretation of a law or the meaning of a law. The only institution to deal with this is the judiciary. Judiciary has been doing this work for many years. In the last two hundred years, the judiciary has propounded some principles for interpretation so that all the courts follow the same method in interpreting the law. There should be uniformity in interpretation, not arbitrariness. Not only this, in order to bring certainty and transparency in interpretation, definition of terms and expressions used in each act is given. A separate Act is made for frequently used words and expressions. The name of this act in India is ‘General Clauses Act, 1897’.

Whenever the question of interpretation arises in the court, there are two or more parties in that suit or action and the parties present their respective sides.

It is the endeavour of the drafter who creates the law that the text of the law should be such that there is no room for doubt, only one meaning emerges – the meaning that the drafter wants to give. While doing so, he prepares the draft keeping in view the General Clauses Act,

statutes on the same subject and earlier decisions of the court. It aims at clarity and certainty and unambiguity. There is no place for figure of speech or rhetoric. It will be interpreted by expert advocates, so no special effort is made to make it comprehensible to the general public.

9.6 Characteristics of the Language of Law

After studying the meaning and nature of ‘law’ in Section 9.3, it must have become clear to you that law is the codification of rules etc., regulating human conduct and external behaviour. It is written. Legal rules compel individuals to follow the law. The courts interpret these rules and enforce the law, depending on its language. Therefore, the language of law has special importance. For example, in the language of law, each word is used to convey the single sense. Similarly, if we look at the level of syntax, then the legal content is of a specific form. Similarly, this feature of the language of law can be seen in other contexts as well.

9.6.1 Significance of Words and Inflected Words/Phrases

The legal system that has been adopted in our country is the gift of Britain. In this, the experience of word related difficulties is especially high in the field of law and justice. Therefore, the importance of words and inflected words/phrases in the field of law is very high. In this, such words are used which are free from the defects of overlap or minor difference. To know this importance of words and inflected words/phrases, let us see example. As in law, especially in acts, rules etc. by giving definitions of words and inflected words/phrases, their meaning is limited or expanded. Sometimes this is done so that the meaning is beyond doubt. It should have the same meaning that the drafter intended, no other meaning. Let us consider the following example from the Indian Penal Code to know more clearly the importance of words and expressions.

Definition of ‘person’ has been given in the Indian Penal Code. This Code has the following provisions - ‘Whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to a person. (Section 415) Similarly, part of Section 11 of the Indian Contract Act reads as follows - ‘Every person is competent to contract who is of the age of majority..... and who is of sound mind.....’ At the same time, Article 14 of the Constitution of India is as follows - ‘The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.’

It is clear that there are many places in the legal literature where the word ‘person’ has been used. The question may arise whether a company, society or trust is included in a ‘person’ or only a human being. If the company comes within the purview of the word person used in Article 14, then the company will get valuable rights.

To avoid such questions, it has been made clear in Section 11 of the Indian Penal Code that any Company or Association or body of persons, whether incorporated or not, comes under the term ‘person’.

9.6.2 Unity of Meaning/Semantic

The unambiguity of meaning and sense is a special quality of the language of law. The language of law, especially the language of Acts, Rules, Bye-laws etc., is designed keeping in mind that advocates and judges will interpret the same according to accepted principles of interpretation. It is also certain that each party will interpret the provisions of the Act in such a way that it is in its favour and is favourable to it. It is not expected that someone will interpret it in good faith. Therefore, an attempt is made to bind the meaning. It is ensured that the blame of suspicion does not creep in. The syntax for this is done very thoughtfully. Unity

of the meaning is the goal of used language. Even if the sentence becomes complicated and difficult to achieve that goal, it is not considered a fault. Language becomes tangled. Only this effort remains that the feeling or meaning which should be manifested should be manifested, nothing else. This is the paramount principle. In order to maintain this unambiguity of meaning and sense, every word or expression is used in every Act with the same single meaning. If a different meaning is to be shown, another word or phrase is used. One word will denote the same meaning everywhere.

Not to repeat the definitions in every Act, a separate Act has been made. The definitions given in it are applied for the interpretation of Central Acts. In this, the definition of 'person' has been given in section 3(42). This also applies to the Constitution of India. Reading this, it would be appropriate to conclude that the company will also get the benefit of the right to equality given in Article 14 of the Constitution.

Take another example. Is the damage only physical or something more? Section-44 of the Indian Penal Code gives the answer - The word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.'

In law, definitions of such words are given, which are understood by the common man but it is necessary to limit their meaning in the special context of the law, so that there is no doubt about the meaning. For example - the word 'life' is indicative of human life. The word 'death' signifies the death of a human being.

The object behind this is that the language of the Act should be such that it conveys the same meaning as the drafter intended. Also, the Acts etc. have to be interpreted according to the accepted principles of interpretation.

The drafter also has to follow the principles of interpretation while drafting the Act etc.

It is the responsibility of the drafter that the language he is preparing should be such that short, clear and concise language is used in it so that it conveys only one meaning. No one could make out another meaning even after trying and pulling. The only meaning that emerges should be the meaning that the drafter intended. This is called the '**Law of Unity of Meaning/Semantic**'. To achieve this purpose, the meaning of words in the law is delimited and the syntax is made in such a way that only one meaning is understood. For this reason the sentences become obscure. And language becomes awkward. But as long as we keep the legal system imported from Britain, this linguistic defect cannot be removed.

9.6.3 Semantic Interpretation by the Court

There is another feature of the language of the law, which is combined with the purpose of the law. When the legislature creates a law, it creates rights or has an adverse effect on rights or imposes some kind of restriction on human conduct.

The court determines the limits or boundaries of these rights. The court derives meaning from the language of the law itself. In any other field whether it is a science like physics, chemistry, or biology or humanities or social sciences, the learner derives the meaning himself. But there is a need to derive meaning in law when there is a difference of opinion between two or more persons. For their own selfishness, the parties do such a thing which favours them. Every accused wants to find a means so that he is not liable to punishment or is liable to minimum punishment.

The court decides which is correct among the arguments of the parties. Only the court can tell what is the meaning of the language of the law. This happens only in relation to law. Not in other areas of knowledge or science etc. The drafter carefully composes the law.

9.6.4 Semantic Conciseness and Definiteness

In law, especially in statutes, rules, bye-laws, etc., the word is used as a symbol with a special meaning. By giving the definition of the word, its general meaning is expanded or narrowed. This fact can be understood with the help of an example. For example, there is a sentence in the Indian Contract Act - 'An agreement enforceable by law is a contract.'

In general practice 'agreement' and 'contract' are synonyms, but the definition of 'contract' in 'Indian Contract Act' narrows down its meaning. Only such agreements which can be enforced by law i.e. through a court or a tribunal, will be called 'contracts'.

Two persons 'A' and 'B' agree that whenever they commit theft, they shall divide the stolen property in half. Is this 'agreement' a 'contract'? 'A' and 'B' commit theft together. The stolen goods are kept in B's house. When 'A' asks 'B' for his share, 'B' refuses to give it. Now if 'A' goes to court, the court will not help him. The purpose of this agreement is prohibited by law, also unethical and against public policy, so the court will not give any recognition to it.

Let us do this with another example. Suppose 'A' and 'B' together open a shop for selling notebooks. It is agreed between the two that 'A' shall pay to 'B' ten thousand rupees every month. If 'A' does not pay him this amount every month, 'B' may go to court. In that case the Court will assist 'B' and compel 'A' to perform the agreement, because the 'agreement' between the two is, in fact, a 'contract'.

Thus, it is clear that every 'contract' by definition is an 'agreement'. But every agreement is not a contract.

9.6.5 Definition and Specific Connotation of Common Words

In the field of law, by giving the definition of common words, they are made to denote specific meaning. Different words are used to denote different meanings. We can explain this with the help of the following examples.

First of all let us take the word 'theft'. The use of this word is seen everyday. But in the 'Indian Penal Code' its meaning has been limited by giving a definition. By definition, whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

On the basis of this definition, let us take an example to know the definition of the word 'theft' and the specific meaning contained in it. Suppose 'A' pledges his ring to 'B'. Two days later, when 'A' went to B's house, he found the ring lying on B's table. 'A' picked him up silently and brought him. The question then becomes whether 'A' has committed 'theft', or whether by reason of her carrying away her thing (the ring) it will not amount to theft. On the basis of the definition of 'theft' given in the Indian Penal Code, it can be said that 'A' committed the theft because the ring was in the possession of 'B'. To the layman it would seem strange that a man should be convicted of stealing his own ring.

Let us now take another example. The word 'extortion' has been defined in the Indian Penal Code. The gist of that definition is that whoever dishonestly induces a person to deliver any property by putting him in fear of any injury, commits extortion. For example, 'A' tells 'B' to give him one lakh rupees or else he will carry away B's child. In that case 'A' shall be deemed to have committed the extortion.

Like the word 'theft', 'loot' is also a common word. But in the language of law it is a defining word because it expresses a specific meaning. According to the law, it can be said that if a person commits murder or shows fear of murder (fear can be of many types and not

only murder), then that theft is 'robbery'. Similarly, 'extortion' also turns into 'loot' by being combined with the fear of death etc. It is a graver offense than robbery, theft or extortion. And if we consider a general word like 'Dacoity', then on the basis of law it can be said that if five or more persons commit robbery then it is a crime of 'Dacoity' which is more serious than robbery. Thus we see that according to the Indian Penal Code four persons cannot commit dacoity. There should be at least five persons for dacoity.

In this Section of the unit, the discussion on the words 'theft', 'extortion' and 'dacoity' in the context of the definition and specific meaning of the general word is basically to show that in the law 'theft' is divided into three types so as to provide for progressively greater punishment. There is no use of force in 'theft'. There is use of force in 'loot'. In 'dacoity' five or more persons commit robbery. In this way words are given new meaning according to the purpose in law.

In language of law, it can also see the definition of the general word and the specific meaning expressed by it in the context of the word 'person'. There are two types of 'persons' in law - one is 'natural person' i.e. 'human'. Every human being is such an entity in which duties and rights can be vested. There are exceptions to this - minor or unsound mind. Others are persons - 'artificial person or juridical person'. Law has provided that there are certain entities other than natural persons in which duties and rights are involved. These are legal persons - Company, Society, Trust, Partnership etc. They are created according to the provisions of law and they have certain rights, duties etc. The Income-tax Act etc. requires a distinction to be made between these two types of persons. In the Income-tax Act, the word 'individual' has been used to mean 'natural person' and 'person' has been used to mean both 'human being and juridical person'.

Take another example. The definition of 'Anglo-Indian' is given in the Constitution of India. If there was no definition, the word would mean 'a person whose mother or father is an Englishman'. But its meaning has been expanded and explained as well. According to the definition of the Constitution, this word means 'a person whose father or any other male progenitors in the male line is or was of European descent but who is a native of India' i.e. if the mother is English then the child is not Anglo-Indian. Even if the father is French, Spanish or German, the progeny will be Anglo-Indian.

The technical words of law have their technical meaning only, not the general meaning. If any word or expression used in the latter Act is used in the former Act, it shall have the same meaning as in the former Act.

9.6.6 Minor Semantic difference

One of the characteristics of the language of law is that no word is wasted. An Act of Bombay State provided that 'the State Government may acquire any premises for the purpose of the State or for any other public purpose'. It was argued before the Supreme Court that by 'any other public purpose' such public purpose is meant which is also a purpose of the State. The Supreme Court did not accept this argument. The Court said that if this meaning is accepted, the words 'any other public purpose' would consequently become redundant.

When the session of a committee starts, it may be necessary to stop it midway for some reason. Due to the expiry of the day also the session has to be stopped. The President of the session announces an adjournment in both the circumstances. Announcement is made that the session is adjourned till 2.30 o'clock or tomorrow at 11 o'clock. The postponement can also be for an indefinite period (sine die). If the date of the session has to be shifted further, it is called 'postpone'. If the meeting is called on a date earlier than the appointed date, it will be an 'prepone'. When the court is satisfied that the action of any other court or authority is

causing harm to the applicant, then the court stays that action. There is a difference between a 'stay' and 'adjournment'. 'Adjournment' is done by the Speaker or the Court itself. The 'stay' is imposed by a higher court or authority.

The Speaker adjourns the session of the Lok Sabha, but the President 'prorogues'. The 'dissolution' of the Lok Sabha is also done by the President. Prorogation ends the session but Lok Sabha is dissolved by dissolution. Lok Sabha can adjourn the consideration of any subject. The session of the Lok Sabha begins at 11 am. There is one meeting before the meal and one after the meal.

If a person aggrieved by the decision of the lower court appeals to the higher court, then that court receives the appeal after conducting a preliminary hearing. After the full hearing, if the court is satisfied that there are reasonable grounds, the court allows the appeal. If there is no settlement, then the appeal is dismissed.

Through these few examples, an attempt has been made to show that the definitional words or terms in the field of law have definite meanings. There is a difference of meaning in them and in terms similar to them. These words are tangents and not synonymous. Their connotations are overlapping but not equivalent or similar.

In law, similar words are not synonymous. Special care has to be taken in their use.

9.6.7 Structured and Compacted Language

The language of law is well-formed and concise. It is not scattered, not loose with unnecessary detail. There is a fundamental difference between the syntax of English and Hindi. This syntactic difference between English and Hindi is clearly visible in the different articles (e.g. Articles 14 and 21) of the Constitution.

In English there is a passive voice. For example, Article 75 of the Constitution may be seen (The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.) But it is not necessary that similar sentence should be composed in Hindi as well. The nature of Hindi is of active use. Therefore, while preparing the authoritative text of the Constitution, the said article was translated in the passive voice.

9.6.8 Use of Present Tense

Law is eternal, constantly expresses. Therefore, the present indefinite tense is generally used in law. The English word 'shall' shows that the law is mandatory and does not show the future tense. Like 'you shall not leave the room.' It means 'Don't go outside the room' or 'You are not allowed to go outside the room'.

In legal text literature, 'goes', 'does', 'proposes', 'is able', 'is competent' etc., only indefinite verbs are used.

In the same way, where 'may' word is used in legal literature, the sense of giving power or authority is expressed there.

9.6.9 No Place for Honorific Usages/Expressions

Each language is also the carrier of the culture of its user language-speaking society. This is the specialty of Hindi language that the expression of respect gets a place in its syntax. For example, '*Pradhan Mantri kal Jaipur jayenge.*' (The Prime Minister will visit Jaipur tomorrow'. The word '*jayenge*' used in the sentence does not indicate plural but expresses respect. This type of use is easily acceptable in literature, mass media etc. But, this type of linguistic use is prohibited in the language of law.

9.7 Constitution of India : From Translation to Authoritative Text

In the first meeting of the Constituent Assembly which drafted the Constitution of India, it was urged that the proceedings of the Assembly should be done in Hindi and not in English. As a result, the rules of the Constituent Assembly were changed and then speeches were allowed in Hindi and other Indian languages.

Dr. Rajendra Prasad, President of the Constituent Assembly wanted the Constitution to be in Hindi as well. He constituted an expert committee in 1947 itself to draft the Constitution. This committee did the Hindi version of the draft Constitution. This Hindi draft was sent to the members of the Constituent Assembly, which was opposed to some extent. As a result, Dr. Rajendra Prasad formed the second translation committee. In addition, he convened a conference of language experts whose purpose was to decide on a vocabulary for the translation of the constitution, which could be used as far as possible in Hindi and other languages. The conference had representatives from all the eight languages mentioned in the Schedule VII. The synonyms of the technical words determined in the conference were used in the Hindi translation of the Constitution. The last session of the Constituent Assembly took place on 24 January 1950. By then the Hindi translation of the constitution had been done and its printed copy was ready. The Hindi copy bears the signatures of 282 members including Pt. Jawaharlal Nehru. After this the Hindi version was published in the Gazette of India.

9.7.1 Question on Legal Status of Hindi Translation

In the year 1961, the Official Language (Legislative) Commission was established in the Ministry of Law. Around 1968, the question arose in the Commission as to what is the legal status of the Hindi Constitution signed by the Constituent Assembly. A committee of the commission opined that the translation did not have the force of law. When the then Attorney General Niren Dey was consulted on this question, he said that this is not the authorized text and now the Constituent Assembly has been dissolved, so there can be no text of the Constitution in Hindi.

The Hindi Salahkar Samiti of the Ministry of Law constituted a committee. The Committee was of the opinion that it is the authoritative text of the Constitution in Hindi. Then different opinions were taken from former Attorney General Shri M.C. Setalvad and former Advocate General of Uttar Pradesh Pt. Kanhaiyalal Mishra. His opinion was mainly based on the fact that the Hindi text was not considered paragraph by paragraph, so it was not passed by the Assembly.

Later, an attempt was made to find a way how the Constitution should be the authorized text in Hindi. For this, it was decided that appropriate provisions should be made in the Constitution by amending it. If there is a provision in the constitution, it will become valid. It was then decided that full respect should be given to the signed copy. It is a historical document. Apart from this, the changes in the language, style and terminology adopted in the authoritative text of the Central Acts in Hindi till then, should also be made in accordance with the Constitution. The amendments that have been made in the Constitution till this date should also be included. Apart from this, provision will also have to be made for the 'authoritative text' of future amendments to the Constitution. All these works have to be done with the authority of the President, only then its dignity will be maintained.

In the light of these, arrangements were made to incorporate the amendments after 1950 and to translate some words into Hindi with the authority of the President by changing some words as per the need. A new chapter, Article 394A, was added to the Constitution, declaring that the text so published shall be deemed to be the 'Authoritative Text in Hindi'. The

Constitution (Amendment) Bill was introduced in the Parliament on 27 February 1987. It was passed in the Lok Sabha on 24.11.1987 and in the Rajya Sabha on 26.11.1987. The President gave its assent on 9.12.1987.

9.7.2 Process of preparing the Authoritative Text in Hindi

After the passage of the constitutional amendment, the task of preparing its 'Authorized Text' was very responsible. Linguistic and stylistic changes were to be made in the Constitution after reading it closely. The application of the law which had evolved by the time this amendment was passed, was to be reflected in the authoritative text as well. The syntax had to be comprehensible.

The Hindi translation of the Constitution was minutely examined. The terminologies were sorted out and compared with the terminologies in the Acts. Words, sentences, expressions or clauses which occur more than once have been marked so as to maintain uniformity. Similarly, it was also seen from the point of view of use. After marking this, careful changes were made. Till the 58th Constitutional Amendment, all the amendments were included in the authoritative text of Hindi.

9.8 Let Us Sum Up

It must have become clear to you from reading this unit that not only is the relevance of law undisputed in the present day social life, but its need and importance is increasing day by day. Law has a special role in ensuring the progress and development of the society by avoiding the situation of social justice-equality, security and conflict of mutual interests of individuals. Those rules made by the state to control human conduct and external behaviour are called law, which leads to social control, unity, peace and order are established in the society. These rules compel individuals to follow the law. Intimate and subtle-very subtle topics of human life are considered in its field.

From the point of view of translation, there are three types of translation of law - Legislation (i.e. Acts, Rules, Regulations, By-laws etc.), Court's decisions; and contract, lease, tender etc. documents. The law can be general as well as specific. General laws applicable across the country (such as the Indian Companies Act) and specific laws applicable to specific locations (such as the Delhi Sales Tax Act). On the basis of aesthetic of language and style, purpose etc., there is a lot of difference between creative and legal literature. Courts interpret the language of law. The language of law is of a specific nature, which has many dimensions. These aspects are discussed in this unit. However, there are some constitutional and legal aspects related to the language of law, which will be discussed in the next unit.

9.9 Exercises

1. What is the need and importance of law in social life?
2. Explain the concept of 'law' in your own words.
3. Differentiate between creative literature and legal literature.
4. Throw light on the importance of words and phrases/inflected words and unity of meaning/Semantic in the language of law.
5. How was the legal status of Hindi translation clarified in the Constitution of India? Describe.

Unit 10 Language and Terminology of Law : Constitutional-Legal Aspects

Structure

- 10.0 Objectives
- 10.1 Introduction
- 10.2 Language of Legal Text : Pre-Independence Period
- 10.3 Language of Legal Text : Constitutional and Statutory Provisions
 - 10.3.1 Official Language of the Union and Regional Languages
 - 10.3.2 Language of the Supreme Court and High Courts
 - 10.3.3 Authoritative Text
 - 10.3.4 Authoritative Text of the Constitution in Hindi
 - 10.3.5 Language of Subordinate Courts
- 10.4 Use of Hindi in Legal Field : After Independence
- 10.5 Development of Legal Terminology
 - 10.5.1 Development of Legal Terminology before Independence
 - 10.5.2 Development of Legal Terminology in Post-Independence era
- 10.6 Let Us Sum Up
- 10.7 Exercises

10.0 Objective

After going through this unit you should be able to:

- know about the language of law in the pre-independence period;
- understand the constitutional and legal provisions made regarding the language of law;
- understand the status of use of Hindi in the field of law after independence; and
- familiar with the historical development of legal terminology.

10.1 Introduction

Unit-9 you have learned the meaning and nature of 'law' and what are its areas or types. In the field of law, 'language' has special requirements. It must have been clear to you what is the specialty of the language of law. Along with this, you have also realized its difference from creative literature.

The present unit also deals with the language of law. But it is to be noted that the purpose of this unit is not to outline the features of the language of law, but to give information about the constitutional and legal provisions related to language. Before getting this information, it is also necessary to know what was the language of law before independence and what constitutional and legal provisions were made in this regard for independent India. You have already read about the Official Language of the Union in Unit-1 of this course (MTT-013), but here again these constitutional and legal provisions will be discussed in the context of the language of law. Along with this, the situation of use of Hindi in the field of law after independence will be highlighted.

10.2 Language of Legal Text : Pre-Independence Period

Hindi as a vernacular has been established for a thousand years. Sadhus-Saints, pilgrims, merchants and soldiers made it the language of all-India contact. It was spoken and understood from Kabul (presently in Afghanistan) to Assam and from Kashmir to Rameswaram.

Sanskrit was the official language in the era of Hindu kings like King Harshvardhan, Chandragupta Maurya etc. The language of the '*Dharmasutras*' and the '*Smritis*' i.e. the legal scriptures, was Sanskrit. The commentaries and commentaries written on *Smritis* etc. were also in Sanskrit. Epics like *Ramayana* and *Mahabharata* were also composed in Sanskrit.

In 1192, the establishment of the Turkish state in Delhi changed Delhi. Some of their coins have inscriptions in Sanskrit but the inscriptions are in Arabic and Persian. Gradually the Turks made Persian the official language. By then, Persian had become the language of Afghanistan and surrounding regions outside Iran.

Hindi remained the language of day-to-day dealings. When the rule of the Turks extended to Khandesh, Telangana in the south and Bengal in the east, Hindi reached there too. He was called 'Hindavi'. Hindi remained the official language in Bijapur, Golconda etc. Not only this, the poetry composition was done in Hindi. When Muhammad Tughlaq made Devagiri the capital, Hindi made a place there as well. The irony was that the official language in the Hindi heartland was Persian.

The early period of the Afghans and the Mughals was so tumultuous that no definite official language could be established. Stability came during the time of Akbar. Then the land management done by King Todermal, Persian words were used in it. Persian words like 'Khasra', 'Khaataa', 'Khatauni', 'Girdavari' etc. have been in vogue since then. Persian became dominant in the administration. Even then Hindi remained the vernacular and the language of communication between the king and the people. The poetry composed in this period in Hindi (in Braj or Awadhi) is still the most popular and respected.

Chhatrapati Shivaji was a visionary emperor. Before him, Persian was the dominant language in Maharashtra as well. Self-language was also important in Chhatrapati's Swarajya. According to the language plan, he entrusted the work of making '*Raj-Vyavahaar Kosh*' to Pandit Raghunath Hanamante. The words composed by him are still popular today, for example - 'Deshmukh', 'Deshpande', 'Kulkarni', 'Patil', 'Gramani', 'Amaatya', 'Sumant', 'Pant Pradhan' etc.

During the reign of the Peshwas, the use of Persian along with Marathi started again.

Before the British rule, Persian was being used in administrative work in the Hindi states of North India. In 1835, when Viceroy Bentinck accepted Macaulay's opinion, in a way English became the medium of higher education. In the administration, the British also adopted Persian in the beginning. In 1837, Persian was replaced by English in judicial and revenue work. But not in the whole of British India. In 1835 Hindi was replaced by Persian in Sagar and Narmada Commissionerate.

In 1882, the British rule in India decided that the text of the Acts should be published in Indian languages for the information of the public. The Government of India decided to publish Urdu translations of Central Acts from the North-West Frontier Province (Peshawar) to the eastern border of Bihar and from the Punjab to the southern end of the Central Provinces. It is well known that the main language of this region was Hindi, but by neglecting it, priority was given to Urdu. English and to a lesser extent Arabic-Persian dominated Urdu became the languages of the courts. In 1901, the use of Devanagari script was allowed in the United Provinces (now Uttar Pradesh). The language remained Urdu.

Section 85 of the Government of India Act of 1935, English was declared the language of the Legislative Council. On October 8, 1947, Hindi language and Devanagari script were recognized in Uttar Pradesh for use in the Council. Upon the promulgation of the

Constitution in 1950, Uttar Pradesh passed the Uttar Pradesh Languages (Bills and Acts) Act 1950, recognizing Hindi and Devanagari as own language and script respectively. Similarly, in other Hindi-speaking states also, Hindi was introduced in the legislatures only after the establishment of the Republic.

Pre-independence, in the then provinces of Mumbai, Madras, Bengal, etc., translations were done in local languages, but the language of legislative work and courts was English.

10.3 Language of Legal Text : Constitutional and Statutory Provisions

Part 7 of the Constitution of India deals with the Official Language. This Part has 4 Chapters and 11 Articles. (Articles 343 to 351; after Article 350, the two articles are numbered 350-A and 350-B). The first chapter is 'Official Language of the Union'; the second is 'Regional Languages', the third is 'Language of the Supreme Court and the High Court'; and the fourth is - 'Special Instructions'.

10.3.1 Official Language of the Union and Regional Languages

In this context, first of all, we will have to know that what arrangements have been made regarding the official language of the Union.

Official Language of the Union :

Article 343 of the Constitution declares that the Official Language of the Union shall be Hindi in Devanagari script. The numerals will not be of Devanagari. The numerals which are currently being used in the Roman script of English will be used. It has been called the international form of Indian numerals in the Constitution.

The English language will continue to be used for official purposes for 15 years from the commencement of the Constitution. Parliament by law after a period of fifteen years may provide for further use of the

- (a) English language; or
- (b) Devanagari form of numerals

It will be used for such purposes as may be specified.

Parliament had passed the Official Languages Act, 1963. At the end of the period of 15 years, it was amended in 1967 to provide that the use of English would continue to be used for all the official purposes of the Union, for which it was used till now. And it will continue to be used in the functioning of the Parliament. {Section 3(1)}

Due to this provision of the Official Language Act, the use of English became legal and also ended the time limit that the constitution had kept (fifteen years).

It was the dream of the makers of the constitution that after 15 years, Hindi would spread all over the region. Exceptions will remain for some places or subjects for which Parliament will allow the use of English by enacting an Act. But the Parliament gave exemption to English for eternity.

According to the Constitution of India, English is not the official language, but in practice it is.

Language Planning

After attainment of independence, planned development was done for the use of Hindi in the field of administration and law, which can be called 'Language Planning'. There are four stages of language planning - selection, codification, extension; and implementation.

Language naturally develops slowly. New subjects arise, new words are created for them, they are used. Words have more or less meaning. Some words become extinct. The meaning of some changes. Language is formed in the same way as forests are formed naturally.

Language planning is a social effort to do this work in less time. An empowered tribunal decides the alternative. Books are written in new vocabulary. It is used in teaching. The development and dissemination of the language is done by the government. With this planned development of language, the work which is done in the long term is done in the short term.

It has been said in Article 344 that at the end of 5 years from the commencement of the Constitution and after the end of 10 years, the President will constitute a Commission. The Commission will have a Chairperson and members representing the languages mentioned in the Eighth Schedule.

On June 7, 1955, the Official Language Commission was constituted. Shri B.G. Kher was its chairperson.

No Commission was formed after 10 years. The then Law Minister gave the opinion that the use of 'shall' in Article 344 (i.e. 'The President shall constitute a commission') is not mandatory. It is in the discretion of the President whether to constitute the commission or not.

Article 344 itself, there is a provision to appoint a parliamentary committee to consider the recommendations of the Official Language Commission and give its opinion. In 1957, the Parliamentary Committee was formed. It had 20 members of the Lok Sabha and 10 members of the Rajya Sabha. Its president was Pt. Govindvallabh Pant (the then Home Minister).

The Parliamentary Official Language Committee which is functioning at present has been constituted under Section 4 of the Official Language Act. Its purpose is to review the progress in the use of the official language and give a report. This is entirely different from the purview of the aforesaid parliamentary committee.

Article 344 (6) it was said that the President will be able to give appropriate directions after considering the report of the Parliamentary Committee. The President issued the first order on 27 April 1960. The power to issue orders of the President is very wide. The Supreme Court has said that this power can be used to promote the spread of Hindi language.

Articles 343, 344 and 351 was to formulate and implement a language planning for India. But by ignoring the provisions of the Official Languages Act and the spirit of the Constitution, the objectives of the Constitution have been defeated.

After knowing about the Official Language of the Union, now let us know about the official language of the states.

Regional Languages:

The Official Language of the states was not fixed in the Constitution. Article 345 empowered the states to declare any one or more of the languages used in the state or Hindi as their official language. To do this, it is necessary to enact a law. Almost all the states have declared own official language. For example, Maharashtra has made Marathi, Tamil Nadu Tamil and Uttar Pradesh Hindi as the official language. There are some states which have made Hindi as the official language of the state along with the main language of their respective states. Punjab and Gujarat are the only states that have adopted Hindi as their official language along with Punjabi and Gujarati respectively. Some states in the North-east namely Nagaland, Mizoram, Meghalaya and Arunachal Pradesh have declared English as their official language.

10.3.2 Language of the Supreme Court and High Courts

Article 348 states that until Parliament by law otherwise provides, all proceedings in the Supreme Court and the High Courts shall be in English. Recognizing that the transition of courts may take more than 15 years, the task of setting a time-frame has been left to Parliament.

Section 7 of the Official Languages Act provides that with the permission of the President, Hindi or the official language of that State may be used for the decision, decree or order of the High Court.

So far the High Courts of Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh have got this permission.

The Central Government has refused permission for the use of Tamil in Tamil Nadu. This is in a way a violation of the Constitution.

The Official Language Act will have to be amended to change the language of the Supreme Court.

10.3.3 Authoritative Text

Article 348(3) provides for the authoritative text. Its background needs to be understood. Courts give decisions on the basis of Act, Rules etc. The text of the Acts which is passed by the Legislature cannot be changed even to the slightest degree. Courts interpret the words, expressions or provisions of an Act passed by the Legislature. If someone translates the Act, the courts cannot decide on the basis of translation. Such a situation also arises when the Act is originally passed by the Legislature in one language but it is necessary to have its authoritative text in the other language also because the courts will give judgment in the other language. This problem can be solved in two ways. The Legislature should pass the Bill in both the languages or some other procedure should be found to obtain the authoritative text in the other language. This solution will be for those acts that will be made in future. What will happen to those who are already there?

The Legislature has one lack of time and the other Legislature is not competent to check the correctness or wrongness of the translation. So another route was found. The Act shall be translated into the other language and shall be published in the Official Gazette under the authority of the highest authority of the State. By this process the translation will acquire the prestige of the authoritative text.

This second route is adopted in Article 348(3). This Section lays down that where the Legislature of a State has prescribed any language other than English as the language of Bills, Acts, Ordinances, Orders, Rules, etc., English shall be published in the Gazette of that State under the authority of the Governor of that State. A translation thereof in the language shall be deemed to be the authoritative text thereof in the English language. This will be clear from an example. Hindi is the language of Bills, Acts etc. in Uttar Pradesh. There, the bill is introduced in Hindi and is passed after discussion. Once passed, it becomes an act. Its original text was in Hindi. When passed, it becomes the authorized text of the Act in Hindi.

A translation of this Hindi text into English is published in the Gazette of Uttar Pradesh under the authority of the Governor of Uttar Pradesh. When published, it becomes the authoritative text of that Act in English.

Thus in Uttar Pradesh each Act has two authorized texts. One in Hindi and the other in English.

The Centre has authoritative texts in several languages. Under Section 5(1) of the Official Languages Act 1963, the translation in Hindi of Central Acts, Ordinances, Rules etc.

published in the Gazette of India under the authority of the President shall be its authorized text in Hindi.

A similar provision is made in the Authorized Text (Central Laws) Act, 1973 for the languages of those states whose official language is not Hindi. On its basis, not only Hindi and English, the authorized text of Central Acts can also be in the official languages of the states (Marathi, Gujarati, Bangla, Tamil, Telugu, Malayalam etc.).

All acts in Canada are in English and French. According to Article 111 of the Charter of the United Nations, the authoritative text of the Charter is in 5 languages. All the conventions, declarations etc. of the United Nations are in 5 languages.

Article 349 of the Constitution of India states that every person may make representations for redressal of grievances in the language used in the Union or in any State.

10.3.4 Authoritative Text of the Constitution in Hindi

The original text (authoritative text) of the Constitution was in English. The Constituent Assembly had given the authority to its President to prepare the Hindi version of the Constitution. The last meeting of the Constituent Assembly took place on 24 January 1950. On that day all the members signed the English and Hindi text of the Constitution. Later the question arose whether the Hindi text was a translation or an authorized text. The Constitution was amended in 1987 to end this controversy. A new article 394A was added. Under this, the Hindi translation of the Constitution was published with the authority of the President. While preparing it, the translation signed by the members of the Constituent Assembly was considered as the basis. In the same article, it was declared that the translation so published shall be deemed to be the authoritative text of the Constitution in the Hindi language. (This has been discussed in detail under section 9.7 of the previous Unit No. 9, 'Constitution of India : From Translation to Authoritative Text'. Therefore, please read section 9.7 as well.)

Thus there are two authoritative texts of the Constitution, one in English and the other in Hindi.

10.3.5 Language of Subordinate Courts

Under the High Court are the District Court, the Court of Session, the Chief Judicial Magistrate, the Chief Metropolitan Magistrate and all the Magistrates. Broadly speaking, it can be said that all the courts up to the district level are subordinate to the High Court. Therefore, they are called 'subordinate courts'. The state government has the right to decide the language of the subordinate civil courts. The State Government may, by notification under Section 137 of the Code of Civil Procedure, declare what shall be the language of the Civil Courts.

Similarly, the state government can prescribe the language of criminal courts by notification under section 272 of the Code of Criminal Procedure.

Documents will be presented, proceedings will take place, evidence will be recorded, arguments will be held and decisions will be pronounced in the prescribed language only.

10.4 Use of Hindi in Legal Field : After Independence

After going through Section 10.3 of this Unit, it must have become clear to you that Hindi was almost non-existent in the field of law in India before independence. You have read that by Section 85 of the Government of India Act of 1935 (Government of India Act, 1935),

English was declared the language of the Legislative Councils. Pre-independence, in the then provinces of Mumbai, Madras, Bengal, etc., translations were done in local languages, but the language of legislative work and courts was English.

In Uttar Pradesh, the Hindi language and the Devanagari script were recognized for use in the Council on October 8, 1947. After the implementation of the Constitution in 1950, Uttar Pradesh passed the Uttar Pradesh Languages (Bills and Acts) Act, 1950 and recognized Hindi and Devanagari as the official language and script. Similarly, in other Hindi-speaking states also, Hindi was introduced in the legislatures only after the establishment of the Republic.

Soon after independence, Uttar Pradesh, Bihar, Madhya Pradesh and Rajasthan adopted Hindi as their official language. Himachal Pradesh and Haryana were not there at that time.

It has been mentioned in Section 10.3.1 that the Official Language Commission was formed in 1955 for the purpose of formulating the language plan and providing theoretical guidance, under the chairmanship of Shri B.G. Kher. The report of the Commission was considered by a parliamentary committee whose report came in 1957. Its chairman was the then Home Minister Pt. Govindvallabh Pant. After considering the report of this committee on 27th April 1960, the President issued an order on Para 13 of this order stated that the Ministry of Law shall constitute a committee consisting of legal experts for proper planning and carrying out the entire work relating to preparation of Common Legal Glossary (for use in all Indian languages) and translation of statutes into Hindi.

In compliance of this order, the Official Language (Legislative) Commission was established on June 8, 1961. The Commission was entrusted with the following functions:

1. Preparation of Standard Legal Glossary.
2. Preparation of authoritative text of Central Acts etc. in Hindi
3. Preparation of authoritative text of Central Rules and Regulations etc. in Hindi
4. Translation of Central Acts into the official languages of the States.
5. Any other work that may be assigned by the Government of India.

The Official Language (Legislative) Commission had scholars from all major languages as members. The president was a judge of the High Court.

In 1976, the Commission was abolished and in its place, the Official Language Wing was established in the Ministry of Law and all these tasks were handed over to it.

Official Language (Legislative) Commission started translation of major Acts. While translating, the Hindi equivalents of the English terms were fixed in that context. This is the method adopted by the Official Language Wing. The synonyms which were fixed were compiled and a book was published from the top of the legal vocabulary. Its sixth edition is currently underway.

So far the authoritative texts of all the Acts have been published. Section 3 of the Official Languages Act lays down that all rules, regulations etc. shall be published simultaneously in Hindi and in English. It is being complied with. Every notification, rule etc. is printed in both the languages in the Gazette of India and not in one language.

The Law Ministry publishes three journals - Supreme Court Judgments Magazine, Civil Judgments Magazine, Criminal Judgments Magazine.

Acts which are related to the general public, their bilingual versions are brought out in which English is on one side and Hindi on the other.

In the Hindi-speaking states of Madhya Pradesh, Rajasthan, Uttar Pradesh, Bihar, Uttarakhand, Chhattisgarh and Jharkhand, Hindi is the language of the Legislature and of the courts up to the district level. In Madhya Pradesh and Rajasthan, decisions can be delivered only in Hindi up to the district level.

This linguistic change did not happen in Himachal Pradesh, Haryana and Delhi.

Hindi is permitted to work in the High Courts of Allahabad, Patna, Madhya Pradesh and Rajasthan. In Hindi speaking areas, the examinations of law (L.L.B and L.L.M) can be given through Hindi medium. In fact, majority of the students are of Hindi medium only. The Bar Council of India admits students passed in Hindi medium as an advocates.

There is an option of Hindi medium in the judicial service examination in Hindi speaking states, the benefits of which are being availed by a large number of candidates.

Books are being written in Hindi on the subjects of Law to help the students.

10.5 Development of Legal Terminology

You have read about the language of law in the pre-independence period in Section 10.2 of this unit. It has been told in this that during the pre-independence period Hindi and other vernacular languages of India were being used in very limited areas in the field of law. Before the British rule, Persian was used in governance in most of the Hindi-speaking regions of northern India. Later it was replaced by English. It is meant to say that due to non-uniformity of the language of law, there has been a need to develop legal terminology. We can see the development of legal terminology by dividing it into two phases. These are the development of legal terminology in pre-independence and post-independence.

10.5.1 Development of Legal Terminology before Independence

It has been explained in Section 10.2 that the language of pre-independence legislative work and courts was English. However, in Alwar, Indore, Orchha, Kota some native states, initiative was taken to work in Hindi. But in the absence of proper guidelines, the fact remained that a strange language was used in Devanagari script by using cumbersome words of Arabic-Persian. During this time Hindi was kept out of the field of law and court. One result of this was that there was not enough vocabulary to express legal concepts in Hindi. The second result was that there was a dearth of such persons who are proficient in law, who are adequately capable of drafting in Hindi or using Hindi in the field of law.

To remove this lack of legal terminology, a scientific effort was made in the then Baroda (Vadodara) state. As a result of this effort, in 1931, a dictionary named '*Sayaji Shasan Shabd Kalpataru*' was published. In this the entries were placed in ten columns. In its first column the English word was kept and after that the words prevalent in Gujarati, Marathi, Sanskrit, Urdu, Persian, Hindi, Bangla, Vadodara and the standard words proposed for Vadodara were kept respectively. This encyclopedia was a unique experiment in terms of inclusion of words prevalent in different languages.

Although before '*Sayaji Shasan Shabd Kalpataru*', Patrick Carnegie had written a book in Roman script in 1820 by the name of '*Kachahari Technicalities*'. He had brought out this book to help the British officers. In this context, mention may also be made of H.H. Wilson's dictionary which was published in 1855. This was also prepared by Wilson to introduce the British to the judicial and revenue terminology of Hindi, Urdu, Sanskrit, Bangla, Marathi etc.

Perhaps the first individual attempt to compile a glossary of law in Hindi was made in Gwalior. Mr. Parmeshwar Dayal Srivastava of Gwalior published '*Srivastava's Dictionary*' in 1939, in which Hindi equivalents of the technical terms used in English were given.

Taking this work forward, Shri Harihar Niwas Dwivedi of Gwalior published '*Shaashan Shabd Sangrah*' (Government word collection). Mr. Dwivedi, while working as an officer of Gwalior State, published the authorized text of all the Acts of that time in Hindi. This was the first state effort to translate the Acts into Hindi. These translations are of high quality both in terms of law and language.

In the year 1948, '*Prashaasan Shabdavali*' (Administration Dictionary) was published under the editorship of Rahul Sankrityayan. This dictionary was published by Hindi Sahitya Sammelan, Prayag. Apart from this, Raghubar Dayal Chaturvedi's Hindi equivalent of some English words prevalent in the courts; Munshi Dhanna Lal Vijayvargiya's '*Nayayalaya Shabdkosh*' (Court Dictionary) (1948), Shri Harish Chandra Singh and Shri Jagdishwar Singh's '*English-Hindi Nyaykosh*' (1948) etc. are also noteworthy.

10.5.2 Development of Legal Terminology in Post-Independence era

After independence, efforts to prepare legal terminology can be seen at the governmental and non-governmental (individual) level. Individual efforts in the creation and development of this vocabulary include '*Vidhi Shabd Sagar*' by Shri Jagdish Prasad Chaturvedi (1951), '*Vaidhaanik Shabdavali*' by Pt. Chandra Shekhar, '*Sankshipt Vidhi Shabdkosh*' (1958), '*Law Lexicon*' (1958) by Surendranath Tagore and the '*Angrezi-Hindi Kanuni Dictionary*' of the Law Book House, Chhindwara, Madhya Pradesh.

As far as the development of legal terminology at the government level is concerned after independence, systematic work was done in this direction. Its beginning is linked to the efforts of the Constituent Assembly. After the formation of the Constituent Assembly for India, it was felt that the lack of technical legal terminology in Hindi should be removed. The President of the Constituent Assembly, Dr. Rajendra Prasad called a conference of language experts and the Constitutional Glossary was prepared. This terminology making work made it clear that to a large extent uniform and standard vocabulary could be prepared for different Indian languages. This was the first attempt to prepare a standard and agreed vocabulary in independent India.

The Official Language Commission (constituted in 1956), prepared its report on legal terminology. In the light of the opinion of the Parliamentary Committee formed under Article 344 of the Constitution to consider the report of the Commission, the President issued an order in 1960 to form a permanent Commission of legal experts. The Government of India established the Official Language (Legislative) Commission in 1961. The Commission was also entrusted with the task of preparing Legal Terminology, along with other legal tasks. The Commission published the first edition of the legal glossary in 1970. The important work of preparation and publication of this glossary was done under the supervision of the then Additional Secretary of the Ministry of Law, Mr. Braj Kishore Sharma. This glossary contained approximately 10,000 entries.

Later, in 1976, the work of the Official Language (Legislative) Commission was handed over to the newly established Official Language Division in the Legislative Department of the Ministry of Law. This Section brought out the revised edition of the Legal Glossary in 1979. Thereafter, the third edition of the glossary was published in 1983 and the fourth edition in 1988. The fifth edition of the Legal Glossary was published in 1992 and the sixth edition in 2001. The sixth edition has about 50,000 entries.

‘Legal Terminology’ is particularly noteworthy from the point of view of creating ‘Principles of Legal Terminology’. In its ‘Introduction’, Mr. Braj Kishore Sharma has mentioned these principles in detail. Today, these principles are universally accepted.

‘Vidhi Shabadavali’ (Legal Glossary) published by the Government of India is a tested dictionary on the basis of practice. In this, such legal words have been given place, which have been used in the definitional form in any Central Act. In this, such posts are also compiled which are used repeatedly in the law. Giving separate explanation of different meanings of technical words, separate synonyms have been given as per their requirement. It also contains Latin-Hindi words and a list of names of Central Acts.

‘Vidhi Shabdavali’ published by the Ministry of Law and Justice, Government of India, makes it clear that Hindi’s legal terminology is continuously developing and expanding. Its time to time further additions indicate its continued demand in the market.

As a government effort, mention may also be made of the ‘Glossary of Parliamentary, Legal and Administrative Terms’ published by the Lok Sabha Secretariat in 1957, in which as far as possible the words used in the Hindi translation of the Constitution, as well as Hindi versions of many other words and phrases are also included.

10.6 Let Us Sum Up

In this unit, which throws light on the legal terminologies as well as the constitutional and legal aspects of the language of law, it has been told that Hindi and other languages of India were being used in very limited areas in the field of law before independence. Before the establishment of British rule, Persian was used in governance in most of the Hindi-speaking areas of northern India. Initially, the British gave the highest place to Persian in the administration, but later on, its use was abolished. After independence, where constitutional provisions were made in relation to the official language of the Union etc., there were also provisions like the language of the courts, the authoritative text and the authoritative text of the Constitution in Hindi. In the Hindi-speaking states of Madhya Pradesh, Rajasthan, Uttar Pradesh, Bihar, Uttarakhand, Chhattisgarh and Jharkhand, Hindi is the language of the legislature and of the courts up to the district level. In Madhya Pradesh and Rajasthan, decisions can be delivered only in Hindi up to the district level. But in spite of all this Indian languages are yet to get their due place in the field of law and justice.

Technical Terminology is essential for working in law in your own language. Its lack was felt in Hindi. To meet this deficiency, many efforts were made at individual levels. After the creation of the Constituent Assembly for India, efforts were also made at the government level in view of the lack of uniform and authentic terminology related to law in Hindi. The ‘Legal Glossary’ is the standard and agreed glossary published by the Ministry of Law, Government of India. This is a tried and tested terminology of practice as it has been prepared on the basis of Hindi versions of Central Acts. It has proved very helpful in the direction of maximum use of Indian languages in the field of law. It is widely used in the fields of universities-courts and original writings related to law. For legal-translation, it is the basic tool. In the unit, we have given some legal terms/phrases from this glossary and their equivalent in English-Hindi form. By the way, this terminology is equally used in the context of Hindi-English translation. Questions related to this legal terminology and its translation will also be included in the term-end examination. These questions can be related to either of the two forms i.e. English to Hindi translation or Hindi to English translation. Finally, some key words are included for the sake of information on the level of difference between ordinary and legal meaning.

Translation need, purpose, expectations, problems etc. of legal text are some such aspects which need to be considered. These will be discussed in detail in the next unit.

10.7 Exercises

1. Write a note on the language of law in the pre-independence period.
2. What provision has been made regarding the language of the courts (Supreme Court, High Courts and Subordinate Courts) in the Constitution?
3. What provision has been made in Article 348(3) of the Constitution regarding 'authoritative text'?
4. Discuss the efforts made in the form of a language plan for the use of Hindi in the field of law after independence.
5. Explain the role of the Official Language Wing of the Ministry of Law in the use of Hindi in the field of law.
6. Throw light on the development of legal terminology in the pre-independence period.
7. Trace the development of legal terminology after independence.

Unit 11 Translation of Legal Text

Structure

- 11.0 Objectives
- 11.1 Introduction
- 11.2 Need for Legal Translation
- 11.3 Translating Legal Text : Prerequisites
- 11.4 Should the Translation of Legal Text be Literal or Sense-for Sense Translation?
- 11.5 Legal Translation and the Language-Style of Law
- 11.6 Problems of Translating Legal Text
 - 11.6.1 The Problem of Especially Expressive Words in Common Speech
 - 11.6.2 The Question of Translation of Conceptual Words
 - 11.6.3 Selection of Similar Semantic (Tangential) Words
 - 11.6.4 Specific Use of Words
 - 11.6.5 Inadequacy of Standard Vocabulary
 - 11.6.6 Lack of Uniformity in Technical Terminology
 - 11.6.7 Avoidance of Remote-fault
 - 11.6.8 Non-availability of Supplementary Material
 - 11.6.9 Problem of Original Drafting
 - 11.6.10 Lack of Legal Translators
- 11.7 When Legal Text should not be Translated
- 11.8 Let Us Sum Up
- 11.9 Exercises

11.0 Objectives

After going through this unit you should be able to:

- understand the need for translation of legal text;
- know the prerequisites for translation of legal literature;
- aware about the problems faced by the translator while translating legal text; and
- understand when legal literature should not be translated.

11.1 Introduction

While studying in the previous unit about the legal aspect of the language of legal literature, it must have become clear to you that what was the language of law in India before independence and what provisions were made regarding the language of law in the Indian Constitution. In that unit, you have also come to know about the current use of Hindi in the field of law. At the same time, you must have become clear that in the light of constitutional provisions and legal arrangements, today there is a need for legal translation.

Keeping this aspect related to translation of law in mind, the purpose, expectations and problems/challenges of translation of legal literature have been made the subject of study in the present unit. At the same time, it is also necessary to know where and under what circumstances legal literature should not be translated. These aspects related to translation of legal literature have been included in this unit.

11.2 Need for Legal Translation

In the previous Unit No. 10, while giving information about the legal aspect and terminology of the language of law, you have been told about the historical perspective of the language of

law. Here this perspective of the language of law is being summarized in the context of the purpose of legal translation.

You know that in the older days, village *panchayats* used to take decisions according to the moral-religious beliefs and traditions and hearings were held by the king on major events. The language of judgment was a big language. But with the passage of time, laws were made and officers were appointed for their compliance. During the Mughal reign, the administrative work was done in the Persian language. For this reason, Arabic-Persian terminology was widely used in the field of law. But after the Mughal rule, the law-governance system of England was brought here during the British rule and along with the appointment of English officials, the discussion of law also started in English. In this way before independence, English was the language of law and the use of Hindi in this area was negligible because then the language of government was English and before that Urdu-Persian. In such a situation, it is but natural that there was a lack of legal literature in Hindi, while it was available in abundance in English.

After the attainment of independence, Hindi was accepted as the Official Language and the use of Hindi started in the field of law as well. But the language of the High Courts and the Supreme Court remained English. In this way the use of English has been going on continuously. Article 348 of the Constitution and Section 3(3) of the Official Languages Act, the use of Hindi and English in all documents issued by government offices and to be used compulsorily and by definition, general orders, rules, acts, notices, administrative reports, press releases, contracts, agreements, licenses, tenders, government papers to be placed in any House of Parliament etc. compulsorily in Hindi and English. Due to the constitutional position of Hindi in the field of law and justice, under the Constitution, the Official Language Act 1963 and 1967 and the Official Language Rules 1976, the way opened for the use of Hindi (or the Official Language of the state) at the level of the legislature and the judiciary, the option of Hindi exists, remained and the supremacy of English was accepted. Apart from this, it has become necessary from 1 October 1976 that every bill to be placed on the floor of the Parliament should be prepared in Hindi and in English. Thus it can be said that this bilingual situation has necessitated the translation of legal material. Although today, Hindi is the Official Language of the country according to the constitutional system, but this fact cannot be denied that the existence of Hindi in the field of law and justice is negligible, it lacks Hindi users. This situation in the country has created the necessity of translation in the field of law.

No doubt that today Hindi is the national language of the country, it is the official language, it is the language of the general public. It is an accepted fact that in order to maintain the faith in the rule of justice and more than that to gain the confidence of the general public, it is essential that justice should be given to the people of the State in their own language so that the common people can understand it well, can assimilate. But if the common people get justice in a foreign language, how will they be able to understand and imbibe it? When they will not be able to understand it properly, then how will the judicial system be implemented in a meaningful way? The condition of the English language of law is such that even a well-educated person, let alone illiterate, cannot understand its subject matter properly. Therefore, the law is said to be available in its own language so that the general public can also understand it well. Only after this understanding, compliance with the law can be expected. In such a situation, the need for Hindi translation of legal text available in English becomes mandatory.

On the basis of constitutional provisions, arrangements have been made to present the law in the language of the public, but till the bills etc. are not originally prepared in Hindi, the

compulsion of translation will remain. There is a complete lack of thinking and original writing in Hindi in the field of law. While it is acceptable that language becomes easy only by use. Behaviour enhances the spontaneity of language, words like 'artificiality', 'unnaturalness', 'difficulty' don't get caught near him. By being trapped in the translation of legal content, the form of legal translation remains word for word translation.

If they themselves do not understand the language of the law made for the general public, then it becomes inevitable that legislation and adjudication should be in that language. If it is impossible or difficult for the majority of the people to learn the language of the judge, it seems appropriate that the judge should learn the language of the people. For the benefit of many, it will not be much troublesome for a few to suffer.

One side of the inevitability of legal translation is also related to deficiency-fulfillment. In the absence of legal knowledge, legal redress of injustice and oppression is also difficult. General knowledge of law is necessary to save oneself from malpractice-injustice-harassment. If this knowledge is in other language then translation seems necessary to understand it by bringing it in our own language. In such a situation, the translated version becomes the medium of knowledge-accomplishment. Therefore, legal translation is an essential and important task.

In nutshell, it can be said that as a result of the declaration of Hindi as the Official Language of the Union, after the attainment of independence, all the laws inherited from the English language were translated into Hindi. The need of legal translation has increased. Due to the provisions regarding official language Hindi at the level of main legislations and subordinate legislations in the Indian Constitution, in the light of the imperative of bilingualism, the entry of translation in the field of law has become notable, important and necessary.

11.3 Translating Legal Text : Prerequisites

Law is concerned with the conduct and behaviour of human beings. Due to the generality of human life, the field of law is also wide. There are different types of translation in the field of law. But this translation itself is a very complex and difficult task. Legal translation is a separate discipline in itself. The constitutional position of law in India has made the need for translation of law imperative. In all other types of translations of administrative material etc., it is generally stated that in case of any inaccuracy/doubt in respect of the translated version, the original text shall be treated as authentic. While there is a bright side to the present situation of the need for translation of law, it is that if the translation of Acts and Subordinate Legislation is followed by the prescribed procedure, then its translated version becomes equivalent to the original law rather than being a mere translation. i.e. the translated text in the target language becomes the independent text of that legislative act, it becomes the authorized text. You have already learned in Section 10.3.3 of Unit 10 that as per the provision of Article 348 of the Constitution and Section 5 of the Official Languages Act (1963), when any Central Act is translated into Hindi and is introduced in India under the authority of the President (after it is published in the Official Gazette), it becomes the 'Authoritative Text' of that Act in Hindi. Similar provisions are also there in the Constitution with regard to making the authoritative text in English. Clause (3) of Article 348 of the Constitution provides that where a language other than the English language is prescribed for use in Bills introduced in the Legislature of a State or in Acts passed by it, it shall be published in the Official Gazette of that State, published translated text thereof shall be deemed to be the 'Authoritative Text' of the English language.

The authoritative text of legislative drafts also does not mean that it is less important than the original text or that some general information about the law is given in it. And it does not even mean that it cannot be used or implemented while making decisions. The reality is that

such a translated text is of the same status as the authoritative text, the original text, both have equal status. If we consider the authorized Hindi text prepared on the basis of original English, then it can be said that the courts of the country can give decisions not only on the basis of English but also on the basis of that authorized Hindi text. The same principles as are applicable to the interpretation of the English text shall apply to the interpretation of the authoritative text in Hindi also.

Difference between the Authorized Text and Translation :

It would not be inappropriate to underline the difference between the 'authorized text' and translation here. There is a difference between the authoritative text and the translation. In case any Act etc. legislative drafts are to be treated as translated versions, in case of any dispute the original text prepared in the source language shall be considered as the basis/authentic. In such a situation, the court will not give its decision on the basis of translation. While the text translated into the target language of legislative drafts acquires an independent existence as that particular draft, it becomes the authoritative text. He can give decision only on the basis of authorized text.

It is of no importance to the Court that the authoritative text is in only one language (e.g. English). It can also be in one, two or more languages. Canada and India have authoritative texts in two languages, while the Charter of the United Nations is known to have authoritative texts in more languages. The fact is that the Court can use any authoritative text as an external aid to the interpretation of the translation. Thus, the original English text and the authoritative Hindi text are considered to have the same status or level and are fully legal. While interpreting the provisions of the relevant Act, the court may consider either the source language (original) text or the target language (translated) text. Now, let us discuss the prerequisites of translation of Legal Text.

1. Authoritative Knowledge of Source and Target Languages

In order to translate any type of material, it is necessary for the translator to have a good knowledge of the source language and the target language. But authoritative knowledge of source and target language is specially required for translators to do the translation work in the field of legal translation. A legal translator must have a proper knowledge of the grammar of both the languages. In legal literature, due knowledge of words, sentences, clauses in sentences, verbs, clauses or adjunct etc. grammatical devices, the legal-translator is able to do the translation work well.

2. Essential Knowledge of Discipline of Law

In order to do legal translation work, the translator must have good knowledge of the source language and the target language as well as the knowledge of the discipline of law. Legal-translator can have this knowledge in the form of educational qualification or can be experiential. If the translator does not have the knowledge of the law, then he will not be able to translate correctly. Legal translators having good knowledge or knowledge of the field of law and authority over the source and target language have the ability to transfer the legal content in a better way. This is the reason that in the Legislative Department, the translators who are selected for Hindi translation of Acts and Bills etc., have a degree in law, authoritative knowledge of Hindi and English language and a judge in the judicial service or a legal person at a higher level. Experience of more than seven years of service is covered. Only translators having such educational and professional qualification-experience can do authentic legal translation.

3. Pay Special Attention to the Vocabulary and Expression of the Original Text

In Legal translation, what is being expressed in the form of word, meaning and expression should be equivalent to the original. Therefore, the legal translator should read the original

very carefully while doing the legal translation and translate carefully so that there is no possibility of mistake. Even a slight difference of meaning or a small mistake can destroy the meaning. Hence, the translator has to pay special attention to the vocabulary and expression in legal translation. If the translator does not understand any word or expression, then instead of translating it on the basis of guess, he should refer to the dictionary or should discuss it with an experienced translator.

4. Use of Authentic Vocabulary

While translating the content of the law, if the translator does not know the equivalent words in Hindi, first of all, he should use the 'Dictionary of Law' published by the Official Language Wing of the Ministry of Law, Government of India, to know the equivalents of the defined words in the legal text. One should take the help of this book. This will establish certainty in the expression. If more than one equivalent has been given for that particular word in the glossary, then the translator should read and understand their meaning and use only the equivalent word that reflects the original meaning according to the context.

When the words of science-technology or other branches of knowledge come in the legal text, the translator should not try to create synonyms for it. In this case, the drafter should take help from the related dictionaries published by the Commission for Scientific and Technical Terminology (CSTT), Ministry of Education, Government of India. By doing this, where uniformity of words will be established, uniformity of meaning will also be established. More or less the definitions of all subjects have been prepared and published by the Commission. The translator should always bear in mind the fact that the use of arbitrary synonyms is especially objectionable in the field of law.

5. Formation of New word, in Absence of a Suitable Equivalent

However, it is also true that there may be a possibility when a suitable equivalent is not available in the legal terminology. In such a situation, the meaning of that word should be first ascertained from the general dictionaries or legal dictionary and then it should be translated keeping a word in its place to match that meaning. But this should be done experimentally because that word may not be appropriate later in other contexts. In such a situation, there may be a need to choose other words in place of that word. But while keeping the word experimentally, it should be kept in mind that it should be such that other words can be made from it.

While choosing a particular word, it should also be kept in mind that the adopted word should be adaptable i.e. it should have the quality of creative ability according to the form of Hindi language, that is, it should be able to mix in Hindi. Adopting the English word 'appeal' in Hindi, it is transliterated. From this word 'appeal' it is not difficult to create words like 'appellate' etc. in Hindi. But there may be some words like 'juvenile', 'jurisprudence', 'obiter dicta', 'ratio decidendi', 'rule of Eiusdem Generis' etc. which cannot be assimilated in Hindi.

6. Follow all Legal Rules and Principles as a Drafter

A translator who prepares an authoritative text in the target language follows all the rules and principles followed by the drafter of the original text. In such a situation, it is but natural to expect all those qualities from a legal translator, which should be in a legal drafter of the original language. A law translator literally expresses the law laid down in the original Act in the target language. Therefore, in legal translation, the translator is not a 'translator' but a 'drafter'. The responsibility of this 'drafter' is more than that of those who translate the text related to other subjects. It is mandatory to take special care in the translation of any Act etc. legislative formats.

7. Using the Authoritative Text of Pre-Illustrations and Specimens

While doing the work of translation in the form of drafting in the law, the drafter/translator should use the authoritative text of the precedents and specimens found in the original. Since while drafting in the law, keeping in mind the single sense of meaning with concentration, the syntax which is made by selecting the words is accepted as a standard by deliberating on it. Sometimes the situation even becomes such that the same provision comes before the court for interpretation also and the court confirms its meaning. With this confirmation by the court, the particular provision gets even more force. In such a situation, these provisions become precedents. Later, whenever the same idea is to be expressed, the original drafters do not re-form the language of the same provision or take it as it is without any change in it. By making changes, there is a possibility of making a mistake or deviating from the meaning. Therefore, the later original drafter uses the language already used. When its authoritative text is prepared through translation in any language, these pre-used provisions of the same idea must necessarily be used from the authoritative text itself. The Official Language Division of the Legislative Department of the Government of India has published some standard drafting volumes in booklet form. This published book is useful from the point of view of taking the material which came in the form of precedents from the authorized texts. In addition, the drafter should research the need to find samples and use them in the authorized text.

If the drafter has to prepare the authoritative text of the subordinate legislations, he should prepare the authoritative text in the light of the text of the parent Act. In some Acts, the central or state government or any other authority has been given the power to make subordinate legislation, which is also called 'delegated legislation'. The provisions of the Principal Act and the Subordinate Legislation will not match with each other if the drafter does not keep the text of the Principal Act at the centre. In such a case, the subordinate legislation would become invalid. To avoid such a situation, the translator-drafter should resort to the authoritative text of the original text.

8. Resorting to Transliteration as needed

Transliteration means -- writing the material written in one script in another script. For example, writing the English words written in Roman script in Devanagari script of Hindi. It is also expected from the legal translator that he should not only translate the original text, but should also take appropriate support of transliteration as per the requirement. Considering this aspect, Mr. Brajkishore Sharma has written in his book '*Vidhi ki shabdavli aur Vidhi ka Anuvad*' that 'Where a reference is made to a repealed Act and the authorized text of that repealed Act has not been prepared in Hindi or cannot be prepared, the name of that Act should be transliterated, that is, its original name should be written in Devanagari script.' (p.147)

Transliteration of originals in the field of law is not the only case when drafting from one language to another. Sometimes it so happens that the drafter includes the English as well as the Hindi equivalent in transliterated form in the Act as originally written. The basic reason for this is that the legislature wanted to avoid any kind of ambiguity in the original text. This type of effort also has its own importance to bring clarity-unambiguity in the language of law. If any kind of ambiguity remains in the provision of the law, it leads to unnecessary disputes. Therefore, taking care, words/expressions from both the languages are included in the original as well. For example, in Clause (6) of Section 2 of the Forward Contract (Regulation) Act, 1952, definition for the words 'option in goods' is given as – 'Option in goods' means any agreement, by whatever name called for the purchase or sale of a right to buy or sell or a right to buy and sell goods in future and includes a teji, a mandi, a teji-mandi, a gulli, a put, a call or a put, and call in goods.'

In the above definition of 'put', and 'calls' etc. words have been used in English, which express the meaning of Hindi's 'teji' and 'mandi' respectively i.e. these are Hindi synonyms. Therefore, even if transliteration in Hindi had not been given before these English expressions, they would have been expressions of the same meaning. Therefore, while drafting the original, both the expressions were used so that there was no ambiguity.

In this type of situation, both the expressions should be used by the legal translator while preparing the authorized text in the target language so that the translation is correct and at the same time there is no scope for any kind of ambiguity.

11.4 Should the Translation of Legal Text be Literal or Sense-for Sense Translation?

There are many types of translation, but word-for-word translation and sense-for-sense translation are the main ones. Like other branches of knowledge, in relation to the translation of the law, this idea emerges whether the translation of the law should be literal or sense-based.

At the time of translation of law-literature, there is importance of the word because in the law, the word is the controller of the law. In the field of law, due to the word being eternal, paramount, timeless, omnipresent and omnipotent, it is given the noun of 'God'. Dr. Balbir Singh Bhatnagar has written in his article titled '*Vidhi Sahitya Ka Anuvad*' (Translation of Legal literature) that 'words are important in the field of law. In the law, such words are used, which are free from the defects of over-statement and under-statement. The syntax and format in the law are of a completely different type. Words are not colloquial. In the literature, the same word or different synonymous words are not used repeatedly. This is considered his fault, but in the language of law, by using several synonyms of the same word together, that thing is focused and well-defined. This is a natural process of law.' (*Rajbhasha Bharti*, April-June 1994, p.10) Therefore, in the field of law, due to the possibility of misappropriation, confusion and injustice to the meaning of the word, it is considered necessary for words to be expressive of a clear and definite meaning.

On the other hand, the view is also expressed that the translation of law should not be a literal translation but based on sense-for sense translation. At its core lies the idea that justice is to be decided according to the interpretation of the law and the law is to be interpreted according to the meaning contained in the words. Therefore, the meaning of the language of law should be simple and clear, which is possible through sense-for-sense translation. But due to this, the possibility of encroachment on the purity of the law remains. Dr. Balbir Singh Bhatnagar says in the mentioned article that 'If only expressions are taken instead of language in the law, then translation definitely becomes a simple process, but its legal value is reduced.' (p.11) From this point of view, even 'sense-for-sense translation' is also not acceptable in the field of law.

Although it is true that 'word' has special importance in the field of law, but it does not mean that attention should not be paid to 'sense'. While doing the work of translation of legal text, the translator should take special care that he is translating the meaning and not the words. It is meant to be said that as much meaning is conveyed by an article, section or sentence in English, the same meaning should be given to the translated article, section or sentence in Hindi. For this, the translator does not have to limit himself to literal translation.

In fact, the question of translation of words or expressions in the field of law requires serious consideration of the relationship between the two. In this context, the precise thoughts expressed by Mr. Krishna Gopal Aggarwal in his book '*Vidhi Anuvad : Vividh Aayam*' (Legal

Translation : Various Dimensions) are as follows - 'Every word of law is meaningful. Word and meaning both have an interdependent relationship. Thus in my personal opinion translation of law can be called 'Substantive translation based on equivalence'. (p.26)

In fact, the field of law is such that translation cannot be done except for 'words' and only with the help of 'sense', nor can translation work be possible with the help of 'words' except for 'sense'. Therefore, while translating legal text, it becomes necessary for the translator to always maintain a balance between literal (word-for-word) translation and sense-for-sense translation.

11.5 Legal Translation and the Language-Style of Law

While doing translation work, the style of the source language text also dominates the translator. But he can do translation work by changing the style of the original to make the translated version easily comprehensible. But while translating law (i.e. while preparing an authoritative text from one language to another), style is also given importance. If there is a question of determining priority among these, then in legal-translation keeping the style secondary, meaning is given paramount importance. Accepting the paramount power of meaning, the translator should not worry even if the level of style falls in the right expression. The effort of the translator should be that along with the correct expression in the target language text, the style should also be perfect. If meaning and style have to be maintained, then instead of meaning, there is a possibility of compromise in style. For example, inserted (investiture) sentences are not used in Hindi. But in the field of law, to say many things in a single sentence, there is a practice of clarifying the meaning by placing such clauses between punctuation marks. Due to not conforming to the nature of Hindi, change in syntax is acceptable during translation of such inserted sentences. For example, 'Whenever a Magistrate is of opinion, after hearing the guilty.... evidence of the prosecution and the accused.'

Question of understanding to Common People

The context of law translation and the language style of law is actually linked to the question of its being understood by the general public. The same question is also related to the understanding of the translated text of the law by the general public. It is expected from the translator of any subject or material that the text translated by him should be understandable to the common man. Keeping in view the seriousness and intricacy of the subject of law, the same expectation is also made from the legal translator. No doubt, the law-translator is not only a translator but also a drafter. Therefore, he has to ensure scrupulous adherence to the principles of interpretation and drafting. In the event of not being fully familiar with legal epistemology, the legal translator will not be able to understand the exact meaning of the law correctly or completely. Due to the translator's scrupulous adherence to the principles of interpretation and drafting, the drafting of a legal text understandable to the general public becomes secondary.

According to linguistics, there are three levels of language use. These are -- informal, formal; and specialized levels of exchange of information or knowledge. If seen at the level of exchange of special information or knowledge, the one who expresses the language and the one to whom it is addressed is also an expert. Both the experts are fully conversant with the language of their subject. For this reason they both discuss through symbols related to their subject. This is especially applicable at the level of law. Therefore, in the present legal system, it is not possible to draft a law that is understandable to the general public.

Question of Imitation of Syntactic Style

While translating legal material written in English into Hindi, syntax style of the source language is not followed. Changes can be made in the syntax in Hindi for this purpose of style. For example, keeping in view the style, adjective and adverbial clauses can be placed near the adjective or verb, without changing the meaning, according to the nature of Hindi.

Each language has its own specialty, its own idiom. The translator should keep in mind that the expressions used in the target language should not seem unpleasant to the users of that language. But it is not necessary that other language-speakers also find them good. This thing also applies to English and Hindi languages. It is not necessary to follow the style when translating such expressions. In such a situation, the translator should use the preferred expressions or words that denote the same meaning in place of such expressions. For example, there is an expression in English - 'persons of either sex'. English-speaking users do not find this expression unpleasant. But if it is translated into Hindi, it will not look elegant in Hindi language. In such a situation, the translator should translate it in such a manner which convey the feeling 'whether it is a woman or a man. This type of Hindi translation will not seem unpleasant at all.

Honorific Use of Words

Similarly, respectful words can be taken. The Hindi equivalent of the English pronoun 'you' is 'tum'. But due to the difference of linguistic culture, the word 'Aap' is used instead of 'Tum' in Hindi translation. Hindi-speaking people use it as much as possible. In Hindi translation, the word 'Aap' is always used for the word 'you' of English - whether the addressed person is a high official or a lower class employee.

But honorific or respectful addresses also emerge as a problem in the translation of the law in Hindi in particular. While translating from English to Hindi, the verb phrase is put in the plural form along with the noun in respectful addresses coming in the translation of other than legal material. In English language, while making plural, 'S' is given with singular noun, but there is no such system in Hindi. Some words change their form in their plural while some remain in the same form – their plural form is indicated by the verb. This is in accordance with the nature and temperament of the Hindi language. According to this nature of Hindi language, President, Governor, Prime Minister, Chief Minister, Minister etc. designations are addressed with respect. For this reason, most of the verb forms accompanying these designations are made plural despite being singular.

But as far as the translation of law-literature is concerned, in such respectful addresses, the verb with the noun is kept in singular form instead of plural form. This style has been followed everywhere in the translation of the Indian Constitution.

Making Negative Sentences Positive

Just as while translating law-literature, in respectful addresses, the verb with noun is kept in singular form and not in plural form, in the same way negative sentences can also be made positive. For example, while translating the English sentence 'No offence will be compounded except as provided by this section', the careful drafter will translate it in Hindi giving positive form to its negative side, which convey that 'The compounding of the offense shall be done only in accordance with the provisions of this section, otherwise it cannot be'.

Similarly, 'unless' or 'until' words of English creates confusion in translation. While translating a sentence containing English words 'unless', only negative syntax is used in Hindi. But if negative language is used along with the word 'unless' in English, then the thing to note is that the sentence does not remain negative. This happens because according to the grammar rules of English, two prepositions together form a simple sentence. In such a

situation, the alert translator, without getting entangled in the words, adapts the syntax according to the nature of the Hindi language, so that there is no loss of meaning and there is no burden in the language.

Pay Attention to Grammatical Variation in Sentence Formation

The sentence formation of each language has its own characteristics. The difference between languages comes from the features related to syntax. Due to this difference, problems arise while translating. Variation in syntax, especially in the field of law, is a formidable problem. The source language of legal text in India remains English and this text is translated into the target language i.e. Hindi. There is a lot of difference in sentence formation in English and Hindi language. Due to the differences existing in the grammar, terms, order of words and structure etc. of these two languages, it is natural to see differences in the syntax of both the languages.

Due to colonial mindset, there is an impact of British legal drafting system in law. The language and its syntax-structure, in which clauses are expressed through long, complex and twisted sentences, are normally seen. It is natural for the shadow of this type of drafting to be reflected in the translation as well. Very long sentences are often used in English. But his Hindi translation sometimes becomes very complicated, difficult or obscure. For example, the original content of Article 312 of the Constitution can be seen:

‘All India Services – (1) Notwithstanding anything in Chapter VI of Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so Parliament may by law provide for the creation of one or more all India Services (including an all India Judicial Service) common to the Union and the State, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.’

The structure of the source language influenced to target language. Then, the question arises as to whether the long-twisted sentences of the legal text can be translated at all? In this regard, it can be said that when such a sentence occurs in a section or sub-section etc., it can be divided into small sentences and then translated. But while translating the sentence by dividing it, it should be kept in mind that by doing this, there is no difference in the number of sections, there is no loss in any meaning of the original -- its meaning is not being changed. With this, simplification in translated text can be made in legal translation in very limited situations without harming any meaning of the original. The impact of the complex-difficult syntax of the law is also visible in the field of administration. Although the scope of both is different, but the law is implemented in administration, so the language of administration can reflect the impact of the terminology and nature of the law.

In original writing, the writing work is done by keeping the syntax in accordance with the nature of the language, this fact is also kept in mind in translation. The careful drafter sometimes even changed the syntax of the authoritative text to that of the original language.

Use of Passive Voice :

In every language composed sentence, there is dominance of one of the subject, object and emotion. The sentence with the priority of the Subject is called ‘Active Voice’. On the other hand, the sentence in which the Verb is related to Object is called ‘Passive Voice’. If we say that ‘Rama killed Ravana’ then it is a passive voice sentence while saying ‘Ravana was killed by Ram’ is a passive voice sentence. Similarly The sentence ‘I have done this work’ is Active Voice sentence while ‘The work has been done by me’ is Passive Voice sentence.

As far as the field of administration is concerned, it can be seen a plurality of use of passive sentences without subject. The reason for this is that the authority in administration is not vested in the individual but in the post. So the officer does not take decisions at individual level. For this reason, in the administrative-language the person working remains missing or indirect. Accordingly, the syntax in the official language is subjectless, it appears to be passive voice. like, 'early action in this matter is requested', 'orders may be issued to reinstate him', 'effective steps should be taken to clear the arrears', suggestions may be accepted', 'explanation from the defaulter may be obtained', 'instructions are solicited' etc. It is not necessary to translate such sentences of English in passive voice while translating them in Hindi.

According to the nature of the English language, there is more tendency to use passive voice in it, whereas in Hindi, active voice is used. The tendency to use the active voice in Hindi is more spontaneous. But in today's scenario, it seems that Hindi is following English and is getting hurt by the aura of English. This influence can also be seen in the context of the multiplicity of passive voice usage in Hindi. In the field of administration, due to the trend of translation from English to Hindi, the use of sentences with the word 'by' i.e. verb, is increasing. While the translator should take the basis of the naturalness of his language and should avoid this type of language so that the translation is not overshadowed by English and the target language does not take the form of 'translated Hindi'. If the translator takes a little care in this direction, then he can compose sentences according to the nature of Hindi. This does not cause any difficulty to the translator. The legal translator should also keep in mind that this fact has been taken care of in the Hindi version of the Constitution.

11.6 Problems of Translating Legal Text

The field of law appears small, whereas its scope is very wide. Law includes laws governing the actions of human beings, controlling their conduct and behaviour. Therefore, where even the most intimate and subtle matters of human life become considered in the law, this wide area also increases the problems of translation of the law. In fact, the problems of translation of the law are also considerable, the translator faces the challenges. The problems that arise in the area or subject to which the legal material is related, also become of the same type. For example, the problems faced in translation of laws related to socio-cultural, religious, inheritance, marriage-divorce etc. will not be like the problems faced in translation of any rule or act of parliament or constitutional amendment. It means to say that according to the subject matter, there is a difference in the problems of legal-translation. But still, here those problems related to legal translation are being discussed which are more or less present in all types of legal translation. In this study-deliberation, the context of English-Hindi translation is being discussed here.

11.6.1 The Problem of Especially Expressive Words in Colloquial/Common Speech

While doing translation work, translators try to find out their correct meaning with the help of a dictionary, being especially cautious about such big and difficult words that are used less in the original text. But often words that seem simple often mislead the translator. While doing the translation work of law, the translator does not escape from this problem. Certain words in common parlance have special meanings in legal text. If the translator does not understand that particular meaning and translates it assuming it to be a simple word, then it will definitely be a wrong translation. As an example, the word 'farmer' used in Section 6 of the 'Transfer of Property Act' may be taken. Simple in appearance, the Hindi translation of this word becomes 'Krishak'. But here it is misleading because here it does not mean

‘agriculturist’ but the person who collects the rent and deposits it with the government. Similarly, the English word ‘assurance’ can be taken. In Article 299 of the Constitution, it does not mean ‘insurance’ but ‘transfer letter’. In law, that document is called ‘assurance’ when land, building is transferred to another person by sale, mortgage etc. If the translator does not pay attention to this aspect and considering the word ‘assurance’ as simple, translates it in Hindi as ‘*Bima*’, then the translation becomes wrong. Therefore, in the translation work of law, it is necessary for the translator to be constantly aware and on the basis of the context, he should infer whether the general word in the original text does not have any special meaning in that context and if it has a special meaning, it should instead of giving its normal Hindi equivalent, use special meaningful equivalent.

11.6.2 The Question of Translation of Conceptual Words

Mostly, the translator can adopt such words from the source language as per the requirement, which are not indicative of the concept but are the name of the object etc. or any other similar word. Many such words are prevalent in Hindi. Many similar words are found in the field of law as well. For example, English words ‘draft’, ‘platform’, ‘rail’, ‘bank’, ‘cheque’, ‘police’ etc. words can be taken. Similarly many Arabic-Persian words can also be taken as examples. Such words are not translated but only transliterated. But if the word of the source language is indicative of a particular concept, then taking it as it is, instead of transcribing it, it should be translated with essential meaning. As an example, ‘right’, ‘law’, ‘property’, ‘tort’, ‘duty’, ‘transfer’ and ‘contract’ words etc. can be seen, instead of transliterated in Hindi, there synonyms have been determined. Because the words that point to a concept are more likely to produce other words. In addition, words have to be found and used for concepts similar to them. For this reason, the denoting concept should be compulsorily translated instead of taking the original word of the source language as it is. But this should be done only when there is a lack of pre-determined equivalent terminology.

11.6.3 Selection of Similar Semantic (Tangential) Words

While expressing views on ‘compulsory translation of concepts’, it has been indicated that the translator can take such words from the source language as necessary which are not indicative of the concept but are names of objects etc. or similar words. In the same way, when an equivalent to the word of the source language is kept experimentally, then at the same time all the Semantic (tangential) words expressing the similar meaning of that concept should also be considered. It is meant to be said that the similar semantic word should be consider all the expressive words near that particular word together. For example, English word ‘evidence’ can be taken. Hindi word ‘*Sakshya*’ is kept for ‘evidence’ word. ‘Deposition’, ‘Testimony’ and ‘Protest’ words are likely to be similar to ‘evidence’ and are prescribed for Hindi words ‘*Abhisakshya*’, ‘*Parisakshya*’ and ‘*Prasakshya*’ respectively.

Examples of word-formation are also found by using prefix or by differentiating the root word to reveal the difference of interrelated concepts. Therefore, whenever there is a lack of pre-fixed vocabulary, word-selection should be done keeping in mind the above principle.

11.6.4 Specific Use of Words

Certainty of meaning is essential in legal terminology. But while translating, sometimes, some difficulties arise due to the peculiarities of the language. One of those difficulties is related to the specific use of words. This is the situation of ‘root word one and synonyms many’. It means, for a word used in one language, there is not a corresponding word in the target language. In such a situation, either the translator has to adopt the words of the original language or instead of it, more than one available words of the target language have to be used. For example, in Article 6 (a) of the Indian Constitution, the word ‘Grand parent’ has

been used in English. Due to many synonyms in Hindi, four words have to be used for this one root word - '*Pitamah (i.e. paternal grandfather) or Pitamahi (i.e. paternal grandmother) or Matamah (i.e. maternal grandfather) or Matamahi (i.e. maternal grandmother)*'.

11.6.5 Inadequacy of Standard Vocabulary

The inadequacy of legal standard terminology can be said to be the main problem of legal translation, because the legal translator feels the need for the corresponding standard terminology. While the availability of sufficient standard vocabulary proves helpful in making legal translation successful. In its absence, a complex task (like legal translation) becomes more and more difficult. In the translation of legal text, the translator is not at liberty to choose a suitable substitute for the original word from the available substitutes. It is mandatory for him to choose the appropriate equivalent from the standard vocabulary. In this, due to the use of other equivalents in place of the standard word, there is a possibility of punishment for an innocent and freedom for a criminal. Therefore, standard terminology is of extraordinary importance in the field of law.

Although the lack of standard terminology related to law was the main problem of legal translation during the British rule, but after the attainment of independence, the establishment of the Official Language (Legislative) Commission and the creation of standard terminology by this Commission from the year 1961, the situation of inadequacy of standard terminology has changed to a great extent. The Legislative Department of the Ministry of Law prepared the 'Legal Glossary' and so far six volumes have been published. But we cannot ignore the fact that instead of accepting Hindi as the source language, we still have it as the target language (i.e. the language of translation). While Rules-Acts and Legislation are made continuously and will continue to be made. In such a situation, there is a lack of updated standard vocabulary in Hindi. This problem cannot be solved until Hindi acts as a source language in the field of law.

11.6.6 Lack of Uniformity in Technical Terminology

Lack of uniformity of technical terminology is a major problem in legal translation. Where there is difficulty in doing legal translation work due to the multiplicity of terminology, on the other hand it also creates confusion. The lack of uniformity of technical terminology is not at all a feature of the language of law, but it is also a problem for law-translators.

11.6.7 Avoidance of Remote-fault

It is expected from the translator that he should give place to the linguistic structure and acceptable linguistic usage in the translated version. The linguistic structure of the translated text should be without remote defects. This remote-fault can be seen in terms of the distance of the infinitive with the subject or object, the distance of the adjective from the object etc.

The translator should not separate the inflection from the subject or object. If it does so, it reduces the legibility. Similarly, when the verb in a sentence is in the participle form, it should be placed near the noun it is related to. Similarly, as far as possible, in Hindi sentence structure, the adjective should be kept near the adjective. e.g. 'No person shall enter the auditorium who is in possession of a mobile phone'. In this sentence, 'mobile phone' is the adjective and 'person' is the substantive. It is better to bring the adjective nearer to the substantive, avoiding the remote defect prevalent in this sentence.

11.6.8 Non -availability of Supplementary Material

The original drafters took the provisions as precedents for the expression of a particular idea, without altering them as they were, using the language already used. Due to this, where the possibility of deviation ends, uniformity is also established. The authorized text of all Central

Acts in Hindi has been published under Section 5(1) of the Official Languages Act with the authorization of the President. The sections, sub-sections, terms and words of these published Acts become necessary in the new Acts. For this reason, the translator should keep in mind that which sections have been standardized in a way by being enacted earlier. Instead of re-translating such standardized translations, the translator should copied it as it is. The translator should use the prepared version in the target language text of precedents and examples found in the source language text.

For the translator, these pre-examples and samples work as supplementary material. The Official Language Division of the Legislative Department of the Government of India has published some Standard Drafting Clauses in draft form. These publications are useful from the point of view of taking the material used as precedents only from the authoritative texts. But in spite of this, the situation before the translator becomes such that such supplementary material is not available to him. This problem can be seen especially in the context of the published texts of regional laws in Hindi, because the translator sitting in the office of the central government does not know the difference between the authoritative texts prevalent in Hindi-speaking states.

Another aspect of the same problem pertains to the Hindi authoritative text of pre-published Acts and Rules. Acts and rules of which Hindi authorized text (translation) has been published, but while translating the amendments, the problem arises before the translator of the original legal text and the original authoritative text. Without these, no attempt should be made to translate the revised part. The legal-translator should write proper nouns, simple clauses and applications of the Act, Rule etc. in the same form as they are in the original Act-Rule etc. He should not try to translate them in his own way as they are subject to interpretation. But they have been tested and become carriers of a definite meaning.

11.6.9 Problem of Original Drafting

One of the most complex problems in the field of legal-translation is that of original drafting. It is true that no matter what language the original drafting is in, it is often a difficult task to translate it into the target language. Conveying direct and clear meaning is important in legal text. While considering legal translation from the perspective of India, it is not unfair to say that legal material has been created basically in English here. The Statutory law is made in the English language by the Legislatures and mainly by the Parliament of the country. It is difficult to bring the original draft in Hindi due to the difference in English structure, language-style, long-long and combined syntax etc. from Hindi. This complexity of drafting comes as a major obstacle in the field of legal-translation.

But if legal documents are prepared in Hindi, then there will be no need for legal translation, nor will the problem of complexity of original drafting arise. As a result, the residents of India will not need to learn the judicial system and the language of the courts. For this, only the judicial system and the judges will have to try to learn the language of the Indians. Initially this task will seem difficult but it is not impossible. It is often said that legal-translation should be simple but the reality is that the dividing line between simple and difficult text is not a simple task in itself. Many words of the law, which seem difficult to see and hear, seem simple due to repeated use. No doubt, due to excessive prevalence of many standard and technical Hindi words are relatively more simple and familiar to common people.

11.6.10 Lack of Legal Translators

There is a lack of skilled translators who have the ability to translate legal text into Hindi as compared to text related to literature and other branches of knowledge other than law. Lack

of legal translators is the main problem of legal translation. Along with the knowledge of law, due knowledge of English and Hindi is very necessary for translation work, only then correct law-translation is possible. While knowledge of law and legal content on the basis of authority on English as well as Hindi language very few legal translators are available with the ability to translate/transfer the legal text. Although, many such people are found who are legal experts, but in them equal authority on both the languages is found. The problem with the few people who have equal command over law and both languages is that they lack the time and will to work in the field of legal translation due to their professional engagements. In his view, translation work is secondary and of minor importance.

11.7 When Legal Text Should Not be Translated

As you know, Section 11.3 of this unit is related to prerequisites for translation of legal literature. You have read that a legal translator is not just a translator but a ‘drafter’ and while preparing the authorized text (translation) of any Act etc., he has to follow all the rules etc. While drafting the authoritative text, the translator has to give due importance to each word as well as to the sense. But it is not necessary that he should translate every word of the original text. From this point of view, there is a need to pay attention to the pre-constructed names of some terms, expressions, pre-published acts etc. that came in the original. In addition, there can be names of authority-bodies, offices, designations etc.

The legal translator may find certain words and expressions pre-constructed in the original in pre-published Acts etc. In such a situation, they do not have to be translated. Because all these have got noun form in themselves i.e. they should be written in the same way as they are written in the original Act etc. The translator has to look carefully and use his/her discretion to see what partial material is there in the original that he/she should not translate himself/herself. For this, it is necessary that the legal translator should have an understanding of which part of the material he has to translate and which not. We can clarify this statement with the help of an example. For example, if an Act contains the expression ‘for the purpose of this Section ‘Income’ has the same meaning as in the Income Tax Act’ which shows that the word ‘income’ in the newly created Act is actually synonymous with the word used in ‘Income Tax Act’. Because it has already been made and the Hindi equivalent of the word has been prescribed in it, the same equivalent should also be included in the newly created Act. Therefore, in that case the translator will not have to translate the pre-constructed word.

Similarly, the legal translator must also see that he does not translate the name of the Act (in the context of the above example) himself, but gives the exact name of the cited Act as given in the authoritative text of that Act published in Hindi. If any crimes have been created on the basis of any Act (for example, kidnapping, culpable homicide not amounting to murder, dacoity), then they should not be translated and taken as it is from the Act that created those crimes.

Similarly, those Acts of the States are also not to be translated, the authoritative text of which has been published, even if their name and title may seem strange to the translator. In such a situation the translator has to keep the same name in his translation. He cannot change his name.

11.8 Let Us Sum Up

The constitutional provisions and the legal system have created the situation of need for translation of legal literature in the country, it will continue to exist due to the imperative of bilingualism. In the field of law, due to the lack of original thinking and original creation in

Hindi, translation in this field is still necessary. Some of the prerequisites for translation of law have also been highlighted in this unit. These prerequisites are really guidelines for legal translators. An important question also arises in front of the translator on the basis of which to be translated in word-for-word translation or sense-for-sense translation in legal translation. In fact, legal translation requires a balance between the two. Therefore, by establishing a harmonious adjustment between the word and the sense, the legal translation should meet the test of principle of equivalence. Language-style and various issues related to it also require special attention by the translator. Along with this, problems create obstacles in the way of legal-translation, limitations make the translator languid. The knowledge of the problems makes the translator cautious but the limit tells when the legal-translator should not translate. By including these aspects in this unit, an attempt has been made to complete the subject of 'Translation of Legal Text'.

11.9 EXERCISES

1. Explain the purpose of legal translation and the prerequisites for translation of legal literature.
2. Why the translator of legal literature called a 'Drafter'? What is the problem relating to original drafting in legal literature?
3. Should legal literature be translated on the basis of word-for-word translation or sense-for-sense translation? Why it is necessary to give importance to style while translating legal literature?
4. Discuss problems of translating legal text with suitable examples.
6. When should legal literature not be translated? – Explain.

Suggested Readings for Block-3

- -----, Constitution of India, New Delhi, Official Language Wing; Ministry of Law and Justice, Government of India.
- --- (Sixth ed., 2001). *Vidhi Shabdawali* (Legal Glossary), New Delhi Legislative Department; Official Language Wing; Ministry of Law, Justice and Company Affairs, Government of India.
-
- Sharma, Brajkishore, 2009. *Bharat Ka Samvidhan : Ek Parichay* (The Constitution of India: An Introduction), New Delhi, P.H.I. Learning Private Limited.
- Khanna, Santosh, *Bharat Ka Samvidhan : Anuchanitan Ke Naye Kshitij* (The Constitution of India: New Horizons of Reflection), New Delhi, Vidhi Bharati Parishad.
- Sharma, Brajkishore, 2009. *Vidhi Ki Shabdawali Aur Vidhi Ka Anuvad* (Glossary of Law and Translation of Law), New Delhi, P.H.I. Learning Private Limited.
- Aggarwal, Krishna Gopal, 2004. *Vidhi Anuvad : Vividh Aayam* (Legal Translation: Various Dimensions), New Delhi, Sanjay Prakashan.
- Aggarwal, Krishna Gopal and Tandon, Puranchand (eds.), *Vidhi Anuvad : Siddhant Aur Vyavahar* (Legal Translation: Theory and Practice) (Part 1 and 2), New Delhi, Bhartiya Anuvad Parishad.
- Nagendra (Ed.), 1993. *Anuvad Siddhant : Siddhant Aur Anuprayog* (Science of Translation: Principles and Applications), Delhi, Directorate of Hindi Medium Implementation, University of Delhi.
- Goswami, Krishna Kumar, 2008. *Anuvad Vigyan Ki Bhoomika* (Role of Science of Translation), New Delhi, Rajkamal Publications.
- Gupta, Neeta and Tandon, Puranchand (Eds.), 2001. *Anuvad Shatak* (Translation Centenary) (Part 2), New Delhi, Bhartiya Anuvad Parishad.
- Tiwari, Bholanath; Goswami, Krishna Kumar and Gulati, Ajit Lal (Eds.), 1993. *Karyalayi Anuvad Ki Samasyaen* (Problems of Official Translation), Shabdkar, Delhi.
- Aggarwal, Kusum, 1999. *Anuvad Shilp : Samkalin Sandarbh* (The Craft of Translation: Contemporary Context), Delhi, Sahitya Sahakar.

Magazines

- Judgment Magazine, Supreme Court,

- Civil Judgment Journal, Supreme Court
- Criminal Judgments Journal, Supreme Court
- ‘Translation’, Bhartiya Anuvad Parishad, New Delhi.
- ‘Rajbhasha Bharati’, Department of Official Language, Ministry of Home Affairs, Government of India, New Delhi.
- ‘Vidhi Bharati’, Vidhi Bharati Parishad, New Delhi.
- ‘Vidhi Bhaswar’, Gwalior.
- Jabalpur Law Journal.
- Madhya Pradesh Revenue Decision.

