



The Construction of Factuality in Pakistan's Legal Discourse: A Stylistic Analysis of Logical Fallacies

¹Mian Muhammad Saleem, ²Ayaz Ahmad, ³Sana Hussain

¹Associate Professor, Department of Law, Abdul Wali Khan University, Mardan, Pakistan

²Lecturer, Department of English, Abdul Wali Khan University, Mardan, Pakistan, ayazmardan@gmail.com

³MPhil Research Scholar, Department of English, Abdul Wali Khan University, Mardan, Pakistan

ARTICLE DETAILS	ABSTRACT
<p>History Revised format: May 2019 Available Online: June 2019</p> <hr/> <p>Keywords Legal Discourse, Legal Text, Legalese, Stylistics, Logical Fallacies, Supreme Court, Factuality</p> <hr/> <p>JEL Classification: K40, K49</p>	<p>Factuality remains the highest virtue of a legal text. The paper finds how this virtue is jeopardized by the presence of logical fallacies. The stylistics analysis is performed for identification of linguistic features of logical fallacies in legal language. Two randomly selected verdicts of the Supreme Court of Pakistan are selected for analysis. Analysis of verdicts reveals that factuality is compromised by fallacies with distinctive stylistic features. These features include the fallacies of relevance, defective induction and ambiguity. Lexical choices, syntactically complicated structure and graphological markers of style contribute to the formation of these fallacies. The findings establish that stylistic aspect themselves contribute to the projection of fallacies in verdicts, therefore, the study recommends avoiding stylistic formulae of the legalese or legal registers which lead to the formation of logical fallacies in the legal language.</p> <p style="text-align: right;">© 2019 The authors, under a Creative Commons Attribution-NonCommercial 4.0</p>

Corresponding author's email address: ayazmardan@gmail.com

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1. Introduction

The legal language in the courts of Pakistan remains English as a colonial legacy. The highest virtue of legal language is factuality as it provides language a certainty, making the litigants, defendants and society a chance to achieve the coveted goal of rule of law. However, this does not prove to be a fact when expediency and lack of command on language forces the writer and reader to confuse and get confused as the language of legal discourse suffers from errors and ambiguity. Therefore, factuality becomes the most serious casualty of stylistic weaknesses in the legal in Pakistan. The presence of logical fallacies acts as a trap which opens the door for corruption and subversion. This paper explores this phenomenon in the legal discourse of Pakistan. The paper comprises sections on literature review, research methodology, analysis and conclusion to systematically explore the issue.

2. Literature Review

Stylistics in the sense of dictionary is "an aspect of literary study that emphasizes the analysis of various elements of style (such as metaphor and diction)" (Merriam-Webster, 2019). While the dictionary definition avoids committing stylistics to the study of any particular form and species of language, others were quick to dedicate her to the altar of literature. Therefore, stylistics became a bridging discipline for literature and linguistics. The use of stylistics analysis gradually expanded to include not only the appreciation of aesthetics but also as a tool in the

interpretation of meaning (Wales, 2001). Widdowson (1975) considers it an advantage of stylistics that how the specific language structure and for corresponds to the underlying message. Wetherill (1974) cautions against excessive reliance on stylistics as the only means of the interpreting literature. He considers the treatment of masterpieces of literature as mere text the main culprit in limiting the scope and meaning literature in the stylistics analysis. However, others expanded the scope of stylistics and termed it, "... the study or interpretation of the linguistic element or distinctive linguistic element in a writing, group of writings, or a text (that is, a structure capable of being interpreted by a code including intentional structures like a culture or a whole knowledge)" (Bloomfield, 1976, p. 271).

The range of linguistic elements in stylistics, remains inclusive in nature. The stylistics study includes a broad range of features which range from the macroscopic "big-picture elements" where literary conventions specific to a genre are investigated including character, dialogue, imagery, irony and symbolism, and it can become microscopic by peering down the "line-by-line elements" of diction, metaphor and syntax etc. (Nordquist, 2018).

Language of legal texts has evolved through time and shaped by the juridical and legislative forces to reach its modern formulation. Diversity marks the comparative aspect of legal language. However, the legal texts of a particular polity can be analyzed on the basis of specific set of features. Danet (1985) has identified, the criteria of (a) the tools/means used in the presentation of text along (b) the level of formality, as useful way of analyzing, comparing and classifying legal texts. Tiersma (1999) also acknowledges the variation in legal texts and opposes the idea that this language is homogenous. Despite the variation, geographical and conventional factors play a deterministic role in enforcing convergence in the style of the language. Gozdz-Rszkowski (2011) asserts that language is the only means of expressing and communicating the legal concepts and processes. The difficulty in interpretation of legal concepts and processes are enshrined in legal text and it lies in the language being used. He includes a spectrum of legal texts in legal discourse which range from legislation (at various levels) to its implementation in courts (at various levels) and also includes academic writing in the form of journals, books and non-academic context in fiction and news. He successfully demonstrates that variegated manners of contexts, modes of expressions, participants and their relationship contribute to the rich variety in legal texts. He identifies the stylistics aspects of "legalese" favors formation of, "long, convoluted sentences, impersonal constructions, conjoined phrases and lists of words (usually nouns) resulting in and exceptionally dense use of technical vocabulary...., multiple negation, the use shall, etc." (p. 12). Hernandez (2017) while exploring the micro-level stylistics features in the Philippine Supreme Court's decisions find a recurrent feature of medial placement of adverbial of emphasis and attitude that is peculiar to Philippine English and this feature is supposed to emerge from the influence of local legal context. Azmat (2017) conducted a study on the needs of law students in Aligarh Muslim University (India), where she found insufficient communication skills and lack of familiarity with the legal register becoming a major cause of inefficiency and lack of professionalism in the legal fraternity of India. She proposed a specialized ESP (English for Specific Purposes) to be very effective way improving professional competence of lawyers and judges.

With an uptick in publications in the field of linguistics, legal texts and discourses have been targeted to unearth patterns and structures that perform descriptive, interpretive, explicative or evaluative function. S. A. Asghar, M. A. Mahmood, and Z. M. Asghar (2018) while focusing the macro stylistics aspects of text identify a non-homogenous quality of legal texts in the use of linguistic pattern depending on the purpose, context, goal and audience of the text. Further, they identified a variety of informational levels being used in the text through a non-narrative technique. S. A. Asghar, M. A. Mahmood, and Z. Asghar (2018) have identified eight categories i.e. "constitutions, directives, acts, articles, legal decisions, ordinances, legal reports and rules" where the stylistics variation can be observed. M. Ahmad, Nadeem, Khan, and Ahmad (2015) carried out the stylistic analysis of "ordinance" genre of legal English in Pakistan. They find the use of font, paragraph format, numbering of sections, logical division of sections were adopted to give formality and clarity to the message represented through text. Their study found unique stylistic aspects which arise out of the local context of legalese, culture and linguistic traditions. In another study of stylistics of legal text of Pakistan, (Nawaz, Bilal, Khan, & Ahmed, 2013) have identified stylistic features in the graphological, lexical and syntactic aspects of legal texts which give the legal texts of Pakistan a distinctive identity. Their analysis revealed that the layout, use of italics and bold text, capitalization, omission lines and other punctuation marks were used in such a way that a distinctive graphological style of legal genre of Pakistan was formed. At the lexical level the abundance of archaic British and Latin vocabulary and formal diction added to differentiate Pakistani legal texts' style from other texts. The nominalization of verbs, quaint determiners, passive constructions and use of very long and complicated structures were abundant in the syntactic aspect of the style of

legal texts in Pakistan. The echo of similar stylistic aspects are found in the work of Alabi (2003), where Latin and French lexicon, long complex sentences, excessive use of punctuations, repetitions and use of old and archaic words abound in the international legal texts.

An important and seldom explored aspect of stylistics is the investigation of stylistics of logical fallacies. Halper (1968) considers logic an essential component of reasoning in legal discourse. He argues that unlike popular belief that, “law is sometimes too logical” as it is not always the case, and when logical reasoning lacks logical fallacies creep in. Writing about the Supreme Court’s decisions in the United States, McClurg (1988) proposes that the verdicts of Supreme Court employ rhetorics and commit logical fallacies especially begging the question and undistributed middle term. Sharma (2004) advocates the linguistic analysis of fallacies as such a study would help in viewing fallacies, “as linguistic strategies employed to gain undue advantage or the upper hand”. Halper (1968) presents five practices which result in omission of reason while “logic” is used as a cover for committed fallacy. First, when a court uses a short cut, second, when a court relies on perverse and “delicate inferences”, third, when a court obsessed with rule of law even when such a law is inconsistent with reality, fourth, when court “deliberately maintain contradictions: they occasionally adopt a principle which entails negation of a pre-existing contrary principle” and fifth, the judge becomes a preacher. Sharma (2004) considers semantic, lexical and syntactic features as useful aspects in studying the stylistics of logical fallacies. Kruchinina (2019) proposes that stylistics study can be used to understand meaning and logical constructs in a given text. She propose the use of stylistics analysis in interpretation of connotations of the text. She proposes the aspects of emotive connotations, evaluative component, expressive connotations and stylistic connotations as useful aspects to explore connotations of a text especially in the form of rhetorics, figures, metaphors and tropes. Aristotle in his work, “Sophistici Elenchi” identified 13 fallacies where errors in arguments occur because the conclusion does not follow from premises. He broadly summed up these in two categories i.e. linguistic and non-linguistic. In the former he included: accent, equivocation, amphiboly, composition/division and figure of speech, while in the former he included, “affirming the consequent, accident, ignorance, certain aspect, false cause and many questions” (Changing Works, 2019). This classification laid the foundation for later categorization (Hansen, 1996). Bennet (2012) has compiled a collection of around 300 logical fallacies as he considers fallacies as “erroneous thinking”. Fischer (1970) has identified around a hundred types of fallacies in the domain of history. Copi and Cohen (2014, p. 109) have defined logical fallacy as, “mistakes in reasoning that exhibit a pattern that can be identified and named” and limited the number of logical fallacies to 19, neatly placing them under the categories of (a) fallacies of relevance, (b) fallacies of defective induction, (c) fallacies of presumption and (d) fallacies of ambiguity. He considers fallacies of relevance as those where, “the premises of the argument are simply not relevant to the conclusion” and consider appeal to populace, emotions and force as good examples. The fallacies of defective induction are defined as those where, “the mistake arises from the fact that premises of the argument, although relevant to the conclusion, are so weak and ineffective that relying on them is a blunder” and they give appeal to inappropriate authority and false cause as the examples. Fallacies of presumptions are those where, “too much is assumed in the premises” and the give accidents and complex questions as the examples of this category of fallacies. The fallacies of ambiguity are those where, “equivocal use of words or phrases” mislead and they give examples of equivocation, ambiguity and amphiboly as examples of this category of fallacies. Fish (1970) finds stylistics as a useful tool in the analysis of affective fallacy. The affective fallacy closely resembles the category of fallacies of relevance, especially the appeal to emotion and appeal to populace. Al-Hindawi, Alkhazaali, and Al-Awadi (2015) reiterate the significance of highlighting the linguistic features of logical fallacies in the use of language. They propose that the text containing fallacies have macro and micro level of linguistic features that make their analysis and identification feasible. At the macro level dialectic relevance and shift make good foci for investigation, while at the micro level, the study of sufficiency helps.

3. Research Methodology

This being a qualitative study aims to find how the virtue of factual use of English language suffers from logical fallacies and what stylistic features they have which can be used to identify them. Therefore, the paper finds answer to the following questions:

- What are the common logical fallacies that compromise the factuality of legal text?
- What stylistic aspects of the legal text can be used to identify the logical fallacies?

Two randomly selected verdicts of the Supreme court of Pakistan are textually analyzed, using the theoretical construct of Copi and Cohen (2014). He has identified four categories of logical fallacies which are then subdivided into particular types. “These are:

1. Fallacies of relevance

- The appeal to populace
- The appeal to emotion
- The red herring
- The straw man
- The attack on the person
- The appeal to force
- Missing the point

2. Fallacies of defective induction

- The argument from ignorance
- The appeal to inappropriate authority
- False cause
- Hasty generalization

3. Fallacies of Presumption

- Accident
- Complex question
- Begging the Question

4. Fallacies of ambiguity

- Equivocation
- Amphiboly
- Accent
- Composition
- Division (Copi & Cohen, 2014, p. 111)”

The two text that are selected are downloaded from the website of the Supreme Court of the Pakistan, <http://www.supremecourt.gov.pk>. The first verdict is civil appeal No. 585 of 2018 and the second verdict is a civil petition no. 536 of 2015. These verdicts are identified in the analysis section of this paper as Text 1 and Text 2 respectively.

4. Analysis and Discussion

Text 1: Para 6.

Detected Categories of Fallacies

(1) Defective Induction, (2) Ambiguity

Table 1: Stylistic features that contribute to the fallacies

Stylistic feature	Example	Description
Quote Marks	“Master and Servant”	Conclusion is drawn that the quoted term applies to the case, and application of this term dismisses the case.
Lexical choice	Admittedly	None admitted the presence of “statutory Provision” so such provision does not exist.
Underlining	“PLA....Rizvi” etc.	Instantiates example facts that are purported to confirm the drawn conclusion
Complicated and ambiguous syntax	As the.... be invoked	A 40 words long sentence which attempts to convey the lack of applicability of constitutional provision and applicability of legal concept.
Brevity	Whole para 6	In attempt to use fewer possible words, the smooth transition from one point to the next does not happened and thus make the para wanting in details to establish logical premises, which are left to be guessed from the context.

The lexical choice in the para adds to the implication that sufficient premises did not exist on the basis of which the conclusion can be drawn. Use of the word “admittedly” confirm that the fallacy, “D 1: The argument from ignorance” is formed. Three precedents are cited while the relevance of none is established which leads to the fallacy, “D4: Hasty generalization” is formed. Further, The complicated sentence in the paragraph 6, create, “A1: Equivocation” fallacy where meaning of a sentence can change when the sentence where “reliance” can be interpreted meaning “dependence” that would make other premises of the conclusion irrelevant or “trust” where a blind faith without authenticity of the said cases is assumed.

Text 1: Para 2 and Para 4

Detected categories of logical fallacies

(1) Ambiguity, (2) Relevance

Table 2: Stylistics features that contribute to the fallacies

Stylistic feature	Example	Description
Phrasal feature	“Leave of the court”	“Leave” has multiple meaning possible in the way it is used
Syntactic	“Learned counsel of the.... Writ jurisdiction”	The 83 words long sentence coincide with para 4 of the order. Where all premises and the drawn conclusions are jumbled together
Morphological	No Merits	Plural morpheme of merit is incorrect. The use of plural morpheme makes the legalese of this court verdict can be treated as peculiar feature of Pakistani legal English.

The lexical choice in para 2 in the sentence, “Hence, this appeal with the leave of this Court.” of the word “leave” is confusing as the Blackwell Law dictionary mentions “leave of the court” as the permissive power of the court, while the given sentence structure is at best incomplete even from the perspective of legal discourse contained in the standard legal dictionary. From non-legal perspective it is an ambiguous sentence where “A2: Amphiboly” fallacy is present because the sentence incompleteness implies multiple interpretations of “leave”. The second instance of a long and complicated sentence in para 4 of the order includes all premises and conclusion. The conclusion that the appeal is invalid is stated indirectly through implication. The contained premises are not logically relevant to the conclusion, therefore “R7: missing the point (irrelevant conclusion” fallacy is created.

Text 2: Para 5 and 6

Detected categories of fallacies

(1) Fallacies of defective induction, (2) Fallacies of Ambiguity

Table 3: Stylistics features that contribute to the fallacies

Stylistic feature	Example	Description
Lexical choice and syntax	Expert, pioneer chairman, appraisal, examining, report, conclusion	The validation of field of expertise was established through the terms, establishing authority of the persons and their opinion.
Lexical choice	Weed Parthenium, Parthenium weed	The report uses weed with Parthenium emphasizes that Parthenium is a weed.

In the first row of the table we find the example of normal procedure employed by courts to reach a conclusion about a specialized areas through the support of experts. However, basing conclusion in para 5 on the opinion of an expert without logically sound inferences makes the argument and the derived conclusion faulty and in such case we find the fallacy of “D2: The appeal to inappropriate authority”. Stylistically, the lexical choice showed the presence of authority and description of a process through which the conclusion was derived. The next example in the second row of Table. 3 shows the relevance of the title of dissertation to the field of weed science, however, it also implies erroneously that by studying a particular weed a person becomes expert of all weeds. This leads to the fallacy of “A4: composition” where the language is used in such a way that the features of specific components are generalized to the whole.

5. Conclusion

The legal discourse in Pakistan is a legacy of the British colonial system. English as the dominant language is used pervasively in different genres of the legal language. Unlike the popular belief, the legal language suffers from a variety of logical fallacies. Stylistic analysis of such fallacies helps in understanding the avoidance of such fallacies. The overview of the verdicts of Supreme Court of Pakistan reveals that the fallacies of defective induction, ambiguity and relevance exist in these verdict. Lexical choices, syntactic structure, punctuation and graphological features of style make such fallacies stand out in the analyzed texts. The researchers recommend that special training of the lawyers and judges may be arranged where they learn to avoid logical fallacies in the use of English language.

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