

FORENSIC LINGUISTICS IN CRIMINAL LAW AND JUSTICE

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Abstract

Forensic Linguistics (FL) is a comparatively a fresh branch of applied linguistics which analyses various crossings between legal field and language. With the purpose for a just legal operative procedure, whosoever working in a legal process (police, advocates, investigating officers, judicial magistrates, and many more) has an advantage if they have definite consciousness of linguistic doctrines. The professional testimony of forensic linguist can help in recognition and understanding of probable clarifications or versions of evidence, which else might have got overlooked. Forensic Linguistics helps to explore the clues, read between the lines, and predict the subsequent plot on basis of written or spoken words. This research paper will dive one into the fascinating field of forensic linguistics. This study will discuss about if language is truly significant, define different features in forensic linguistics and will discuss on if forensic linguistics is merely about law and language or is it applicable to different fields and areas. This research paper emphasizes an outline of the vast area of Forensic Linguistics and highlights various ways this discipline could aid to the criminal justice system. This discusses few legal cases and summaries the junctures between forensic linguistics and criminal legal system. This research paper deliberates on forensic linguistics, its branches, historical development, procedures and methods, types of forensic texts, tools, practice of linguistic evidence in court proceedings, status of forensic linguistics in India and challenges and limitations in this ocean of forensic linguistics.

Keywords: Forensic Linguistics, Forensic Applications, Law and Language, Linguistic Evidence, Criminal Justice System

Introduction

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Forensic linguistics (hereafter referred as FL), is evolving sub-branch of forensic science, and is interdisciplinary arena of applied/descriptive linguistics that involves research, interpretation and measure of language in form of crime, legal proceedings/ legal quarrels. The link amongst vocabulary, law and crime could be observed, example; throughout study of the courtroom debate, the interpretation and clarification of trial, readability or comprehensibility of legal records, and comprehensibility of police caution to offenders. At present, it is far from being as precise as DNA testing. Forensic linguistics uses the skills of informative and applied linguists to uncover legal problems. Other uses of forensic linguistics includes familiarity with the wider application of linguistics as a social science, sociolinguistics, phonetics, phonology, morphology, grammar, pragmatics, dialectology, corpus linguistics, and discourse analysis.

The forensic linguist applies linguistic expertise and procedures to the language. It can be used in court cases or litigation and private disagreements between the parties that could lead to legal action. Law is codified in and then umpired by, words. That implies there is no statute without language. Yet, vocabulary of law is somewhat distinct as compared to that of common language. This leads to need of lawyers with knowledge of linguistics as common people cannot understand the structure and vocabulary of legal documents. For this cause, linguists those who extend their understanding of linguistic theory to the forensic sense of the law i.e. forensic linguists, also have to analyze the significance of the legal language meticulously: just as doctors are qualified to watch things X-ray which normal person can't see and understand. Therefore linguists are qualified to watch and hear systems which are inaccessible to amateur people. The purpose of this research paper is to give analysis of this field of Forensic Linguistics by demonstrating various aspects in which the discipline has made vital roles to the judiciary.

This article will firstly consider what is forensic linguistics exactly, its sub-branches and major areas of study. Then it will provide an overview of what does forensic linguistics do, types of forensic texts, historical background, forensic linguistics in context of western countries, interaction and intersection of law and language, use as forensic linguistic evidence in legal proceedings, and forensic linguistics in Indian Legal Context. This article will conclude by raising some challenges in FL, relevance in social media nowadays, its applications and lastly discuss future prospects. The junctures between FL and applied linguistics are in three interconnected fields: language as a means to contact amongst law implementation officials and witnesses/

suspects, law's language (lucidity problems, understanding and building of legal language, language and linguistic proof (usage, legitimacy and authenticity in court of law).

Understanding the term 'Forensic Linguistics'

Let's break this term into two, forensic and linguistics. Forensic is investigation of some crime or while working with legal things. Linguistics is work on language using this scientific procedure (observing, by experimentation and qualitative and quantitative analysis). So when we use linguistics for investigation of some crime or while working with legal things, we can say we are dealing with forensic linguistics. It is offset of applied and socio-linguistics that applies linguistic theory, research, methods and principles to real life language in legal context, including valuation of evidence in written/ spoken form and legislation's language.

One of vital targets of FL is to incorporate a vigilant and efficient investigation of the language. The discoveries of this examination could be utilized by a wide range of specialists. For instance, cops may utilize this data not only to talk with witnesses and suspects all the more precisely, but also to determine and crimes reliably. Advocates, judicial magistrates and members of jury may practice these analyzes to aid determine problems of innocence and guilt more equally. Moreover translators and transcribers may use the research to communicate more precisely. Forensic Linguistics helps public discover facts when a crime is been committed and serves justice.

Branches of Forensic Linguistics

There are 3 key zones for use of linguists employed in forensic contexts² — To grasp the written law's language; Analyzing the use of vocabulary in judicial and forensic trials; and Provision of linguistic evidence. Forensic linguistics as a discipline is heterogeneous; it includes wide variety of specialist, researchers and analysts in various aspects of this field.

Nowadays Forensic Linguistics is widely divided into two primary fields that has further several distinct sub-branches — Spoken Language and Written Language. Spoken language here refers to the language spoken by transcribers during formal interviews with victims, perpetrators and witnesses; language used by victims/criminals in the crime. Emphasis of the field is what has been said and how it has been said. Written language is the language used in text of local, national and

² Centre for Forensic Linguistics, *What is forensic linguistics*, ASTON UNIVERSITY (June 1, 2021, 10:05 AM), https://web.archive.org/web/20100927010829/http://www.forensiclinguistics.net/cfl_fl.html.

foreign laws. Other examples of use written language in forensic context can be in transcripts of cops conversations with suspects and witnesses, criminal communications used in cases of suicide, abduction, extortion, terrorist threat, and many more; conversion of legal papers from one language to other; review of script or written content to reply queries on the who might be the author and who might not be (copyright issues).

Work of a Forensic Linguist

A forensic linguist conducts a language study of written or preserved documents that aids to solve criminal cases. Forensic linguist research on sentence structure, parlance, phonetics, grammar, and additional areas of linguistics to assess authenticity and safeguard accurate understanding. Forensic linguists can analyze the written language in several other different forms: phone messages, documents, hand-written letters, social media posts, etc.

Examples of Forensic Texts Analyzed by a Forensic Linguists

1. Suicide Notes: It is generally short, succinct and propositional in nature, and a tinge of vagueness.
2. Ransom demands: Menace communication is corresponding to the promise and is a significant aspect of the ransom demand.
3. Death row statements: The death row comments either admit crime, leave witness with an imprint of integrity and authenticity, or refute the crime, parting the witness with an imprint of goodness.
4. Social Media, Text messages and Emails: These are specific to particular context, and their analysis may be differ from person to person.
5. Emergency call: The ability of the emergency operator or receiver to principally retrieve and linguistic data in situations of danger and to provide appropriate response in the timely means is vital to the fruitful conclusion of a call.
6. Other forensic texts: Contracts, Wills, Confessions, Phone call transcripts, Trademarks, Witness statements, Courtroom transcripts, Police inquiry transcripts, and so on.

Historical Development of Forensic Linguistics

The term 'forensic linguistics' first emerged in 1968 when Jan Svartvik, teacher of linguistics, applied it in the study of Timothy John Evans's remarks. This was a matter of re-examining the testimonials given to the cops by Evans, in Britain during 1949 in case of the suspected killing. Evans had been accused of killing his child and wife, and he was convicted and hanged for this crime. However, once Svartvik analyzed the testimonials supposedly made by Evans, Svartvik found that it had various stylistic markers in this, and Evans did not make his testimonials to the policemen as they had been told during trial.³ So, after the study of the case, early forensic linguistics in United Kingdom concentrated upon challenging authenticity of police interrogations. As noticed in many prominent cases, many of biggest issues were the statements used by police officers.

In United States, the emergence of this study of forensic linguistics, started with case of Ernesto Miranda in 1963. Miranda's case contributed to development of Miranda's right and pushed forensic linguistics to concentrate on interviewing of witness rather than on cop's statements.

The pioneer of forensic linguistics is broadly viewed as Roger Shuy, former University of Georgetown educator and writer of such key reading material such as (Creating) Language Crimes. The sources of his prominence in forensic linguistics goes to way back to a plane trip in 1979, when Shuy ended up conversing about a case with an advocate sitting close to Shuy. Before they finish of flight, Shuy suggested himself as a specialist observer in that assassination case. From that point forward, he's been associated with various cases in which scientific investigation uncovered how significance had been twisted by the way towards composing or recording.⁴

Forensic Linguistics in Western Countries (Particularly USA)

The work of Forensic Linguistics is used to identify the guilty and also to defend the innocent. An amazing example of how this can be achieved is a special fixed-form written text called 'Miranda Warnings.' "The fact that someone has been arrested doesn't imply that he/she is guilty; and even if an accused person has committed a crime, the policemen are still obliged by law to ensure that the rules of the nation are upheld and protected. In order to ensure that these rules and protocols are always complied with the police are expected to read the formal text in many countries. This

³ Vinko Žigmundovac, *Forensic Linguistics*, J. J. STOSSMAYER UNIVERISTY OF OSIJEK (June 2, 2021, 10:30 AM), <https://zir.nsk.hr/islandora/object/ffos:634/datastream/PDF>.

⁴ Jack Hitt, *Words on Trial*, THE NEW YORKER, July 23, 2012, at 3.

text is called the ‘Miranda Warnings’ in the USA.”⁵ Forensic Linguists who specialize in ‘Miranda Rights’ research will demonstrate how differences in how the text is interpreted can change the way it is understood. They can also examine how translations of the text could alter the original legal purpose.

Interaction and Intersection of Law and Language⁶

Legal Text’s Language — analysis of legal document’s language includes diverse variety of forensic texts. This involves analysis of modes of analysis and text styles. Any piece or text of language spoken could theoretically be used in a legal or criminal context as forensic text. Legal Process’s Language — this part discusses the use of language in: cross-examination and interview, the interpretation of evidence, the guidance of the judge, the police alerts, the police testimony in court, the overview of the jurors, the interviewing methods, the investigation procedure in court and in other fields such as police inquiry and cross-questioning.

Use of Forensic Linguistic Evidence in Courts and Judicial Process

Language at times itself acts as evidence in civil or criminal cases. The use of language as evidence to turn judgments in our favor is acceptable. To create evidence of out of semantic sources requires a linguist to contemplate the overlapping meaning or form of the clues provided. Forensic Linguistic evidence is used in courts to escape miscommunication due to diverse dialects, languages or codes. Forensic Linguists interpret the gist behind linguistic actions of accused during cross-examination or inquiring.⁷ Forensic linguistic evidence is some form of text (signed/ written/ spoken) that may aid in forensic case or as proof in court of law. Such communications include phone calls, secret emails/calls, instant messages, suicide notes, confessions, ransom notes, police documents and many more. Even if best known role of forensic linguists is to perform as an expert witnesses to classify the authors in copyright cases, the forensic linguists also deal with other types of language crimes like intimidation, theft, fraud, perjury, forgery etc.

⁵ MIRANDRA WARNING, <http://www.mirandawarning.org/> (last visited June 3, 2021).

⁶ Maitie Correa, *Forensic Linguistics: An Overview of the Intersection and Interaction of Language and Law*, 23 KALBŪ STUDIJS STUDIES ABOUT LANGUAGES 5, 5 (2013).

⁷ MALCOLM COULTHARD ET. AL., *AN INTRODUCTION TO FORENSIC LINGUISTICS: LANGUAGE AS EVIDENCE* 5 (Routledge 2010).

Forensic linguists can provide proofs in⁸:

1. Author identification. — Identifying whether a person has said or written anything is dependent on an interpretation of his/her style or on specific patterns of use of language (grammars, terminology, accent, and spelling).
2. Variation. — Intra-author differences are methods in which the texts of an author vary from the other. They are means in which the writing of various writers differ.
3. Forensic phonetics. — It deals with the development of correct transcripts of what has been said. Further from a transcript, we can understand and interpret the details of social and regional context of a speaker. Forensic phonetics could distinguish correlations amongst speakers of two or more different records.
4. Discourse analysis. — It deals with the analysis of the use of sign language in literary or oral forms and other important textual occurrences.
5. Detection of Plagiarism. — The prevalent use of technology and invention of internet has made it possible to plagiarize work on computers. Plagiarism could be seen in almost every area, counting science articles, art designs and source code. Identification of Plagiarism could be either done manually by forensic linguist or by the use of Artificial Intelligence (AI) based software with algorithms of forensic linguistics tools.
6. Linguistic dialectology. — Analysis of dialects in a methodical and logical way focused on anthropological knowledge. Organized understanding of dialects, particularly in the language, English, are becoming more relevant nowadays.
7. Forensic transcription. — Primary type of transcripts are printed records, audio and video files. Accurate and trustworthy transcription of the text is necessary since the text is information that can become as an available evidence.
8. Forensic stylistics. — Corresponds to spoken/written materials or both, that is used for scientific examination for determination and assessment of substance, authorship, context, or speaker identity and to detect plagiarism.

Forensic Linguistics in Indian Criminology

⁸ Mohsen Ghasemi Ariani, Fatemeh Sajedi, et.al., *Forensic Linguistics: A Brief Overview of the Key Elements*, 158 *PROCEDIA – SOCIAL AND BEHAVIORAL SCIENCES* 222, 222-225 (2014).

The multilingual nature and linguistic diversity of India provide a wide scope for Forensic Linguistics (FL). There are many challenges as well because India had more than 1600 languages and only 22 languages are recognized out of those by the Indian Constitution.⁹ Very few reports are there of use forensic linguistics in police investigations, court trials, and law interpretations. Forensic linguistics can modernize and sophisticate our investigations. For instance, accused statement is recorded by policemen in language or dialect that of the policemen, which may or may not be near to the language of accused or not exact same. Often, due to this issue, there is under representation of the events, attitudes, and view of the accused. The accused very often dictated statements by the policemen which can be seen in villages in India where investigating officers fool, misinterpret and impose their statements for accused to make them speak what they want, during the court trial.

In a country like India with literacy of 74%¹⁰, the practice of FL techniques to check the correctness of documentation or statement of the accused and with witness, would enhance the Right to Fair Trial by Article 21¹¹ of the Constitution of India. Section 277¹² in the CrPC ensures the access of trail in the accused's language. The role, importance and relevance of Forensic Linguistics is primordial in India. The Perceptive Plan of Indian Forensic¹³ (2010) reported that only Chandigarh Laboratory (one of the 4 Central Laboratories in India) is minimally equipped with speaker identification infrastructure. Needless to tell other potentials of forensic linguistics in India currently has after this example. Government did made Directorate of Forensic Science Service¹⁴ in 2002 for innovation in FL, but no effort had been reported so far in building capacity in linguistics to assist courts and investigating agencies in law of language and forensic linguistics.

Challenges and Limitations of Forensic Linguistics

The limitations and challenges to forensic linguistics are — limitations on what we could speak or write, restrictions about what we should talk about, short time limits set by the court, limitations on how to write, and unfamiliarity of audience about this field. Then, necessity to characterize

⁹ INDIA CONST. schedule 8.

¹⁰ Know India, *Literacy*, KNOW INDIA GOV.IN (June 4, 2021, 10:45 AM), <https://knowindia.gov.in/profile/literacy.php>.

¹¹ INDIA CONST. art. 21.

¹² The Code of Criminal Procedure, 1973, § 277, No. 2, Acts of Parliament, 1974 (India).

¹³ Ministry of Home Affairs Report, *Perceptive Plan of Indian Forensic* (December 18, 2010).

¹⁴ Ministry of Home Affairs, Gazette of India, Order no. 25011/41/2001-GPA.II/PM-II (Issued on December 31, 2002).

difficult practical knowledge in terms of something that can be interpreted by public who don't understand anything about this profession. Other challenges are: retaining the position as specialist who has a deep understanding of these difficult technical notions, constant modifications or conflicts in authority in the area of legal system itself, and sustaining as an impartial and non-advocacy approach in area where advocacy is a central mode of exhibition. Moreover, changes in the mode of communications, different social media platforms coming up with dynamic features and increasing cybercrime are the upcoming challenges for forensic linguistics¹⁵.

Applications of Forensic Linguistics

Forensic linguists work mostly as experts and support law enforcement authorities with the identification and detection of crimes. They give specialized advice on legal disputes, judicial trials, criminal and civil inquiries. Forensic linguists are consulted alongside legal firms on cases concerning infringements of copyright, defamation and patents and other infringements. The government employs forensic linguists for Foreign Service, Intelligence Agencies and Department of Defense in some countries.¹⁶ Forensic Linguists collaborate in a team to protect the government from international counter-intelligence attacks, corruption, sabotage, cybercrime and other criminal offences.

Forensic linguistics contributes in a number of areas to address issues relevant to linguistic questions. They use various methods as there is no definite standard way to extract necessary data. E.g. forensic linguistics aims to make legal documents (contracts, jury instructions, and agreements) easy to understand and more detailed. Forensic linguistics also help attorneys to provide a concise interpretation to the courts for legitimate terminologies. This is generally done using the widely used terms as way of establishing contract with the parties further simpler. Forensics linguistics are often asked by the courts or by the parties to testify and explain sense of such spoken or written words/texts when a disagreement occurs in true sense of words.

Setting trademark disputes is one other feature of forensic linguistics. When two sides are in disagreement over a trademark, its responsibility of forensic linguistics to decide who actually

¹⁵ Ria C Perkins, *The Application of Forensic Linguistics in Cybercrime Investigations*, 15 (1) POLICING: A JOURNAL OF POLICY AND PRACTICE 68, 68-78 (2018).

¹⁶ California University of Pennsylvania, *Forensic Linguists Career, Job and Salaries*, CAL U (June 6, 2021, 11:15 AM), <https://www.calu.edu/academics/graduate/masters/forensic-linguistics/jobs-careers-salaries.aspx>.

holds right to use trademark. Moreover, examine the credit of authorship (who spoke or wrote) of the language. Sometimes, Forensic linguist is requested to offer forensic support or specialist testimony for use in court. There has been a significant emphasis in the linguistic literature on laws for the admitting of the authorship to criminal proceedings, though part of forensic linguist in the supply of evidence is wider than that. Assistance a forensic linguist may offer is advisory and not binding on the court.

Forensic linguistics in reference to social media

There are many cases of crimes and murders by the use of Facebook¹⁷, Instagram and even WhatsApp, where a written note was used to convict the suspects. Forensic linguistics does contribute to the cybercrime inquiries, even through the basic linguistic skills used by the investigators. There is also a need to incorporate cyber issues in the area of forensic linguistics and raise awareness of its future uses in the cybercrime field.

Conclusion

Therefore, linguistics is a scientific study of languages and that is referred to as forensic linguistics when used it in the resolution of crimes or legal problems. Forensic linguistics leads to solving problems related to linguistic issues in a number of means like by observing patterns, parallels or other differences in speech or written content. The fields of forensic and legal linguistics give legalists a chance at improving the prestige of right and justice. Language and law have come a long way hand in hand, growing at their distinct aspects and also the interdisciplinary aspects. The collaboration of both, knowledge of legal as well as linguistic methods and procedure can help in faster and smoother settlement of disputes. With the world running ahead with globalization as well as technology, legal norms require developments to fit in this world of data and communication. This present age requires new remedies to the seemingly unmanageable problems created by the technology.

The responsibility lies on forensic linguists to bring research into exercise and provide remedies to the misinterpretation and ambiguity of legal norms. Legal institutions are required to collaborate with other specialized fields in helping them maintain the social order. Hence, Forensic Linguistics

¹⁷ Raif Shenai, Press Association, *Man jailed for killing girlfriend after Facebook row*, INDEPENDENT, March 09, 2010, <https://www.independent.co.uk/news/uk/crime/man-jailed-killing-girlfriend-after-facebook-row-1918589.html> (last visited June 5, 2021).

is one of the emerging areas of applied linguistics in the legal field. Its importance to law and justice standards, marks it a significant and fascinating field of legal science. The scope for research, a variety of sub-disciplines, and connection to allied disciplines such as Sociology, Law, Sociolinguistics and Pragmatics, and Psychology, attracts interest and makes it much more popular among young scholars and practitioners. A variety of societies and organizations have brought together forensic linguists and other practitioners of various fields, dealing with language as evidence. Some of such organizations are International Association for Forensic Phonetics and Acoustics, International Association of Forensic Linguistics, and many more.