

A CASE STUDY OF LEGAL INTERPRETATION AND POWER OF JUDICIARY

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ABSTRACT

Judges interpret words. And words do not bind the interpreters; rather the interpreters give meaning to the words. This joint legal and linguistic research studies how judges use language to create new legal standards and social practices. The study aims to analyze how judicial speech acts function as performative actions in courtroom. It investigate how judges' language reflects cultural norms, legitimizes authority, and enacts legal reality by looking at significant court decisions, verdicts, and judicial opinions. The study adopts a qualitative research method to identify judicial language practices and products. Through in-depth qualitative analysis this research assesses judicial decisions under the framework of Speech Act Theory while comparing two cases to discover how judges create official legal changes and affect public trust in justice. The findings of study reveals utterances used by judges in their courtroom are 20 assertives, 15 directives, 6 commissives, 6 expressives and 8 declaratives. Using the Speech Act Theory as a base, this study reveals that a judge's words not only describe legal relationships but also make performative declarations that have the power to create and reconstruct specific facets of social reality. To sum up this paper, different themes from selected documents have been discussed which gives a roadmap to future researchers to further work on them.

Key words: Authority, Speech Acts, Performative utterances.

Introduction

Indeed, during the courtroom proceedings, words are not just used as a tool of passing messages; they are legal actualizers, legal deciders and legal regulators, which bring order and construct social standards, and set legal precedents. Judicial speeches are of especial import as they are not just in saying, they are doing and their actions create legally enforceable effects. In the moment when a judge pronounces a verdict, explains a statute or imposes a sentence, one learns that words do change the world – a principle performative theory of language in the courts.

All the same, this performative aspect of judicial language is underpinned by Speech Act Theory: a concept originated by J.L. Austin in *How TO Do Things with Words* (1962). Austin's theory is that special speaking: performative speech does not merely report reality but makes reality. Very concretely, saying 'guilty' when a defendant is convicted by a judge guarantees a legal change, the

defendant becomes guilty and is punished. Likewise, when a court explains constitutional clauses or when it gives historical judgements, the language that is spoken reconstructs societal views, rights, and accountability as it reasserts social change agent of the judiciary.

J.L. Austin “How TO Do Things with Words” (1962)

Courtroom is a special type of language environment where judicial discourse is the most powerful language item. The words of a judge are authority bestowed by law and supported by social acceptance of justice system. These are capable of enthroning power, settling disputes and in fact articulating the concern for justice in people’s minds.

However, there is still a great lacuna of discussion regarding judicial speech acts as part of the linguistic and legal scholarship. Although Austin and later authors like John Searle have provided theoretical framework for speech acts, practical empirical exploration of it is scarce and unheard of in judicial setting. It was already established that language is a contested interface between law and society and thus a sensitive and detailed understanding of the nature and the effect judges’ language is needed as it refers both to legal practice and performance that impacts on social, cultural, and institutional realms.

The researcher try fill this gap through an examination of judicial performativity and the legal and social effects of its discursive practices. In the following research, the important court decisions, judgments, and judicial opinions will be discussed to analyze how the language of the judges constructs legal worlds, provides a punitive legitimization, and epitomizes the culture of a society. It will examine how performativity relates to legal language and explore the implications to know that words spoken in the court are not only declaring but also doing something in the real world.

Research objectives

1. To analyze how speech acts of judges function as performative actions in the courtroom.
2. Investigate how the rhetorical strategies used by judges can affect public trust in the legal process, particularly in high-profile cases.

Moreover, this study will seek to answer the ethical and practical concerning the use of speech acts by judiciary. Realizing the performative function of judicial language at a time when legal decisions become genuine objects of controversy over their bias, strains of combined impartiality and accountability is valuable. Judicial speech acts make up justice, but they also sustain power relations and may erase structures of dominance. Through this critical analysis of language as a tool in the courtroom, it is the hope of this research to provide addition insights towards a fair and clearer perception of judicial proceedings.

Literature review

Democracy demands the distributions of the rule of law must be fairly and reliably conducive. The contribution of the interpretation of statutes to the protection of the rule of law where the latter is defined by the provision of an understanding of how to read and apply the law. Interpretation of statutes is one of the aspects of legislation that focuses on an effort of arriving at the right meaning of a statute that the legislature intended to be given to it in order to perform the purpose for which it was enacted; the discretionary powers of the judicial system in its applicability are ideal instruments for handling/ addressing issues with the assistance of the present legal aids. Speech Act Theory developed by J.L. Austin in the book *How to Do Things with Words* (1962) gives a basis for determining how language works. Austin categorized speech acts into three types:

Locutionary Acts: The simplest idea that involves uttering some words conveying a particular message.

Illocutionary Acts: The actual carrying through of something as to convey and during an act or an object; in saying anything, as to make a promise or deliver a command.

Perlocutionary Acts: The impact that the utterance has on the receiver, for example, to convince or mobilize to take particular action. **J.L. Austin “How TO Do Things with Words” (1962)**

John Searle then positively built on Austin’s work and centered his ideas on the rules which existed in the speech acts and their relevant circumstances. With the help of Searle’s classification of the speech acts into directives, commissive, expressive, declarations and assertive, judicial utterances can be examined comprehensively.

Of Austin’s (1962) ideas, the theory of performativity specifically fits legal sciences best, as it shows that statements can declare and constellate realities. Rather than merely reporting the legal world, judicial performances help to constitute it. This performativity was given a broader understanding by many scholars including Judith Butler by relating performative acts to power relations and constructions. Analyzing judges’ speech, it is worth stating that the words used in the course of trial are performative – not only due to the role of imposing laws, but also because they reconstruct the authority of the judiciary branch.

For example legal changes occur when a judge says that a law is unconstitutional or the accused is guilty. Peter Goodrich and Marianne Constable have pointed out that judicial discourse is saturated with the authority of the law, the talking makes up a part of law, and is an exercise of power.

It’s important to understand that judicial speech acts are different from other speech acts because they are inserted into an institutional setting and enveloped in society’s trust. In their study, Lawrence Solan and Brian Tamanaha espoused that words coming from the court remain authoritative as they form the public attitudes to justice, parity, and equality. In their context, courts are dependent on language to achieve legal decisions, as speakers of the legal community, judges use words to work out the controversies, explain or apply a law, and set a legal precedent thereby regarding speech acts as foundational to legal systems.

Investigations of key four cases like *Brown v. Shepard* (1966) in India, the Supreme Court challenged the sovereignty of Parliament to make laws in the United State, the United Kingdom or India, respectively. Supreme Court of India decisions examined in India: *The Kerala State* (1973) exemplify that legal rulings shape society. These cases exemplify how such language also epitomizes social discourses on rights, equality as well as justice.

In the following paper, it is necessary to shine light on behalf of the ethical aspect of judicial speech acts. Indeed, as early as in the seventies, Robert Cover and more recently Deborah Rhode stated that legal discourse is perfectly capable of reiteration of the system of meanings that are oppressive. For example, the language used when passing a sentence involves biases in such a way that it will have a large impact on all the minorities. The ability of judicial decisions therefore to perform these functions means that their performative potential must be acknowledged and regulated for in order to be fair and accountable.

DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 17-18 (2000).

Thus, in the contemporary world characterized by a great level of globalization, judicial speech acts have become international. Anne-Marie Slaughter and other scholars provide analysis of how opinions that are delivered in one jurisdiction set the tone for legal practice across the world. Significant social justice or environmental legal cases are on one or more key issues that mark

them as influential legal cases, whose decisions permeate across borders to put into performance an important judicial word.

In the study about “policy preferences and legal interpretation”, Ward Farnsworth also notes, that the PDF needs to return to the common understanding of its state public policies as being discernible in its legislation in the event that it has addressed them and that where the former has not, one has to take recourse to either court decisions or the constant practices of the government bodies. However, when legislative authority says that on a particular matter, it has legitimate right to exercise power in relation to a matter, public policies in such instance are what the law adopts.

W Farnsworth, D Guzior, A Malani Journal of Law and Courts, 2013•cambridge.org

In his book “The nature of the Judicial processes”, Cardozo, appropriately discussed that a judge may well be prevented from making a decision based on rationality depending on the conscious or unconscious factors. He also has reference to several views of justice that were postulated by western Scholars at the time. The term “law” encompasses the package of rules and norms to which the judiciary is assumed to turn over for a decision. He in his book wondered how a judge derived the law he writes in his judgment. According to him, all doubts and ambiguities in consideration are valid and these cannot be completely eliminated; they must be stifled.

Benjamin N. Cardozo, “*The Nature of the Judicial Process.*” New Haven: Yale University Press, 1921, pp. 30-31.

Justice Scalia and Bryan Garner adopted an “unapologetically norm” approach throughout their work “Reading Law: Textualism and Legal Interpretation: What a Philosophy of Statutes and the Interpretation of the legal Text”, having assembled only those norms that could be legally legitimate under the chosen textualism approach. What about majority of the times the terms used do not refer to a specific meaning or are there are conflict on the specific meaning of the phrases. In such cases, recourse must be made to the goals, objectives, justification and spirit of the legislation in question. I believe the best way to understand a law is to understand why that law was enacted in the first instance.

Scalia & Garner's Reading Law: A Civil Law for the Age of Statutes?, 6 J. Civ. L. Stud. 1 (2013) Although Speech Act Theory has a clear theoretical background, its use in the judicial contexts has not been studied extensively. In most researches, the cognitive prospective of legal language is of descriptive character, not performative. This research aims to fill this void by exploring the logical consequences of performative utterances within judicial discourse and the role of speech acts in constructing legal discursive practices and reconstructing societal norms.

Research objectives

1. To analyze how speech acts of judges function as performative actions in the courtroom.
2. Investigate how the rhetorical strategies used by judges can affect public trust in the legal process, particularly in high-profile cases.

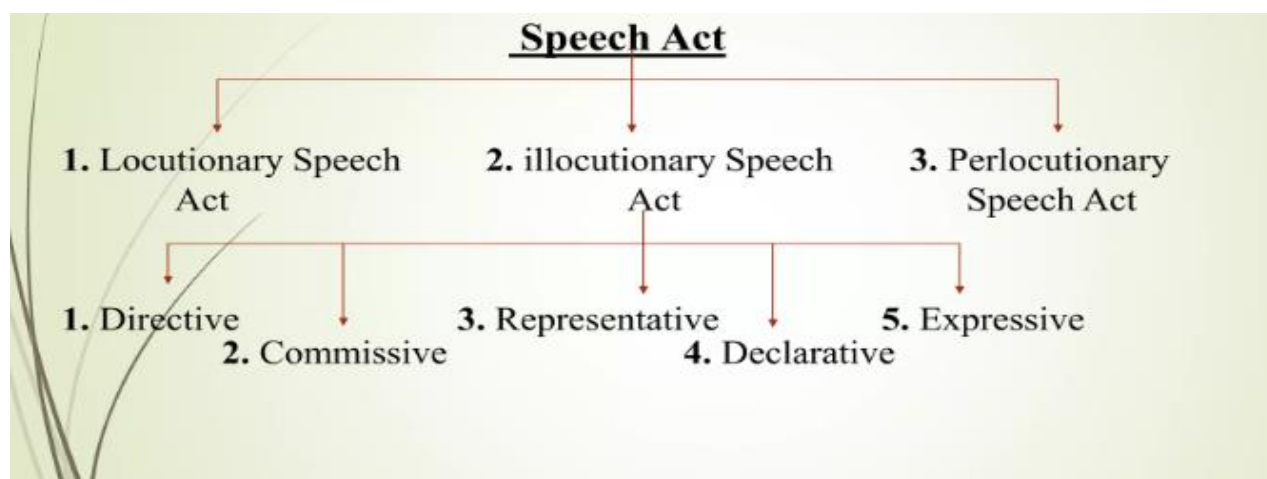
Methodology

With a view to examining the performativity of judicial discourses and the legal and social consequences of such discourses, this study adopts a qualitative research methodology. In the course of the research is it proposed that judicial utterances should be examined from the perspective of Speech Act Theory, with an emphasis on performative aspects. Through analyzing qualitative data of major court cases, decisions and judicial opinions, the study identifies

specialized language practices and products that the judges employ and how these language practices contribute to constructing legal discourses and regulating the norms of the society.

Theoretical framework

The research bases its theoretical approach on speech act theory developed by J.L. Austin(1962) and sear(1969) to analyze the performative nature of judiciary utterances. This section utilizes Austin's foundation to combine linguistic and legal research advances when citing cases for studying judicial language at the law. A systematic approach to judicial language analysis becomes possible through the examination of speech acts.



➡ https://en.wikipedia.org/wiki/Speech_act

Case Analysis:

- The Punjab Group of Colleges fights back against two Higher Education Department notifications from Punjab that adjusted how private colleges pay for their registration documents.
- The case examine the appeal against his Section 9(c) Control of Narcotic Substances Act, 1997 conviction by Muhammad Imran. An initial verdict of life imprisonment plus a fine of Rs 5 million sentenced him after law enforcement officers discovered 19 kilograms of heroin on his property.

Judicial Opinions: The language used in statutory interpretation, by judges in delivering their verdicts and in putting down their precedents is analyzed from written judgements and opinions in the study.

Contextual Review: Specific case archival and social backgrounds are considered to identify the impact of judged language on general values and norms.

Data Analysis

Speech Act Categorization: In order to analyze performative aspects of judicial speeches, their division into locutionary, illocutionary and perlocutionary act is made.

Thematic Analysis: To analyze the identified discourses frequency and study their temporal dynamics and changes, a thematic analysis is performed with the focal themes of authority, legitimacy, and societal impact of the judicial rhetoric.

Comparative Analysis: Judicial decisions from various legal cultures are analyzed in order to assess similarities and dissimilarities of judicial performance in multicultural and legal framework conditions.

Ethical Considerations

The proper selection and analysis of cases needs full transparency to ensure credibility along with fairness. Courtroom language gets deep examination to determine its role in both sustaining or combating existing social inequities along with its impact on systemic disparities. By selecting multiple jurisdictions and different viewpoints this study seeks to deliver unbiased results which demonstrate how judicial discourse impacts overall societal outcomes. This methodology is useful in providing a strong background for analyzing how judiciary employs speech act performativity as well as the repercussions of the speech acts. Thus, combining theoretical and practical aspects, the study's purpose is to extend the understanding of how language in the courtroom constructs legal contingencies and social norms.

FINDINGS AND DISCUSSION

Speech Act Type	Number of Instances Identified
Assertives	20
Directives	12
Commissives	6
Expressives	6
Declaratives	8

Assertive speech acts

No.	Speech Act Type	Example from Document
1	Assertive	"Appellant has called into question judgment dated 25.11.2022 (announced in open Court on 16.12.2022)."
2	Assertive	"Appellant is an educational institution and claims to have been running 262 campuses throughout Punjab."
3	Assertive	"Impugned notifications dated 14.03.2022 & 31.03.2022 were issued by respondent No.2 / Secretary, Higher Education Department."
4	Assertive	"No provision of applicable law or rules has been cited to show from where Respondent No. 2 derived the authority to issue the impugned notifications."
5	Assertive	<i>"A silver coloured car upon which registration No.LEH-4720 was displayed emerged."</i>
6	Assertive	<i>"Hassan Iqbal SI (PW.2) along with four other police personnel was present in a neighbourhood known as Vehari Morr, in connection with his official duties."</i>
7	Assertive	<i>"The recovered heroin was placed in a black bag which was exhibited during trial and upon it the particular of the case was mentioned as 351/19."</i>
8	Assertive	"Case FIR No.212/2020 dated 22.05.2020 registered under Section 9(c) of the Control of Narcotic Substances Act, 1997..."

No.	Speech Act Type	Example from Document
9	Assertive	"The prosecution failed to substantiate the claim of preparing the complaint at the spot and its dispatch to the police station for the registration of formal FIR."

Assertives statements

These statements are assertive because they provide information or make statements using factual features without embracing questions, commands or feelings. Explanatory declarative sentences are identified by their function of conveying informational or evaluative content; and each of these sentences fall into this category because they express facts, assertions or observations about the appellant, the respondent and the notifications at the subject of the appeal. They are not conceived to elicit an answer or to demand one which is the primary characteristic of assertiveness.

"Appellant has called into question judgment dated 25.11.2022 (announced in open Court on 16.12.2022)."

It is an assertive statement because it vests information regarding what the appellant has done that is to challenge a certain judgment. It does not demand, require, state things in any other way but the statement of fact conveys it.

"Appellant is an educational institution and claims to have been running 262 campuses throughout Punjab."

This is an assertive statement because in this proposal, the appellant states that he operates several campuses in Punjab and he is an educational institution.. It imposes fact or alleged information.

Case FIR Statement:

The first one embedded with facts and figures relating to the First Information Report (FIR) number, date on which it was registered and the legal provision under which the FIR would have been registered. It adopts the position that there is the FIR and that it belongs to a given legal act, which is a statement of facts.

Recovered Heroin Statement:

While the first two points narrated about the amounts of heroin seized and recovered, the third one explains the state in which the recovered heroin was found during trial and presence of a black bag etc., the case particulars mentioned on it. To sum up, assertives are employed to express statements of facts or opinions and cannot be challenged, muddled or require any reply what fits into the given statements perfectly.

Directive speech acts

1	Directive	"The appellant shall not claim refund of the already paid fee as per undertaking given before us."
2	Directive	"No order for refusing to grant a certificate of registration shall be made without giving the applicant an opportunity of being heard."
3	Directive	"The Government shall, by notification, constitute one or more Registering Authorities in a district."
4	Directive	<i>"The incriminating articles...cannot be read in evidence."</i>
5	Directive	"It is requested that the conviction inflicted upon the appellant be overturned."
6	Directive	"We have anxiously noted another legal deficiency deciphering from the date of preparing the un-scaled site plan."
7	Directive	"The prosecution is generally required to prove the flawless recovery proceedings of contraband substance..."

Statements

In this context the following sentences can be described as directive statements as they contain or suggest a proposition or an expectation from the author to a reader or listener or watcher. The reporting statements are employed to relate what has to be done on the presumption of incurring obligation or responsibility.

The first sentence requires the appellant's conviction to be quashed. There cannot be any misunderstanding to the recipient of that particular message. This makes it to direct as it points at how a concrete target is to be accomplished.

The second sentence is also a linking sentence because it refers to a legal technicality, and by innuendo, to glance at a problem that ought to be looked at.

Commissive speech acts

Commissive	"In case instant appeal is allowed, appellant will not raise any demand for refund of fee."
Commissive	"In the given circumstances, we do not have any other option but to hold that prosecution failed to substantiate the claim of preparing the complaint at the spot and its dispatch to the police station for the registration of formal FIR."
Commissive	"We do not have any other option but to hold that prosecution failed..."

Commissive Statements

These statements are commissives because it enters a pledge into another activity, or the lack of it. Commissive statements are recognized for their statement of an intention, assurance, or undertaking as to the manner of conducting themselves. In this case the appellant is agreeing not to demand a refund of the fee in the event that the appeal is granted. It means such statements impose obligations towards something to perform and thus it is a commissive in nature. It can be classified under commissive statement because it involves an assurance of the speaker in regard to a given stand or action plan. Declarative sentences are believed to be employed for the purpose of expressing decisions or during promising or in the course of assuming responsibility for an opinion.

Expressive speech acts

1	Expressive	"Feeling disgruntled, appellant assailed aforesaid notifications."
2	Expressive	"Learned counsel for appellant submits that the notifications... are unsustainable in the eye of law."
3	Expressive	"It sounds strange that even in the wake of recovery of narcotics contained in the bag placed on the front seat of a vehicle, still the case of prosecution is in eternal silence about the details and description of such car."

4	Expressive	"It sounds strange that...the case of prosecution is in eternal silence."
5	Expressive	"Jaw-droppingly noticed by us"

Statements

Expressive statements refer to sentences that include information about how the speaker feels, how he or she responded to a particular event or how he or she feels about something. Opinion statements mean a speaker's attitudes or feelings toward what is being described either explicitly or implicitly. These statements were found to be expressive because they are a way to point out feelings, attitude or judgment towards a certain situation. Emotive statements are distinguished by their function as being used to convey feelings or attitudes rather than to inform or prescribe. In these examples one can detect personal subjectivity, feeling disgruntled or submitting that the notifications are unsustainable in the eye of law. They are expressive in that such statements mainly convey the speaker's attitude or epistemic stance.

Declarative speech acts

1	Declaration	"We hold that it is not safe to rely on their testimony to maintain conviction."
2	Declaration	"We have anxiously noted that though Muhammad Waheed Iqbal 285/HC (PW.3) claimed in his examination-in-chief to have registered the formal FIR (Exh.PD) after the receipt of complaint, but during cross-examination it turned out to be an outcome of dishonest improvement."
3	Declaration	"This appeal is allowed in the manner that impugned judgment is set aside, and impugned Notifications are declared to be illegal and without lawful authority."
4	Declaration	"Approved for reporting."

5	Declaration	“In the given circumstances, we do not have any other option but to hold that prosecution failed to substantiate the claim of preparing the complaint at the spot and its dispatch to police station for the registration of formal FIR.”
6	Declaration	“We are conscious of the fact that as far as site plan is concerned it has no evidentiary value but its importance can also not be denied...”

Statements

The given sentence examples are declarative because the main goal of this type of sentence is to state propositions, make statements, or give views of the speaker. Assertive statements prescribe an explicit and unambiguous manner of putting forward information, facts or an opinion without engaging an argument.

The first sentence announces that the ending has been reached in the sense of the failure on the part of the prosecution to support its allegation. It makes a justified conclusion based on the circumstances and then post the speaker’s final verdict of the issue at hand.

The second one states fact about the use of site plan along with stating the obvious, that the site plan is of immense importance. It provides a rational and cogent assertion, and consequently it is an enlightened assertion concerning the matter.

Like any declarative statements, both the sentences concentrate on the provision of information of facts, opinions, conclusions with minimum distorting factors involved. What the children are not doing is asking questions, making commands, or stating feeling but are giving premises and conclusions instead.

CONCLUSION

The understanding of legal speech acts as performative means to embrace a profound effect of judicial discourses on the paradigms of law, society and culture at large. As this research ground also focuses on the notion of performativity of judicial cases and legal rhetorics, this investigation deals with the jurisprudential questions of authority and legitimacy of judicial language together with the ethical imperative for justice in the law. Moreover, the study emphasizes that the role of judicial language is going beyond national contexts and becomes more linked with the worldwide tendencies. Judgements given today in one jurisdiction presume to regulate other jurisdictions and thus make the judiciary a global player in the enhancement or the corrosion of justice. Still, the sort of force that judicial speech acts possess also requires a process of vigilant differential analysis for biases and proper guarding of the exclusions most especially when dealing with issues of power. Finally, this analysis enhances the knowledge of judicial language, and encourages its appropriate application for maintaining justice, legal purity, and social progress. On the basis of the analyses of theoretical and practical considerations this research contributes to the discussion of the relationship between law, language and society and invites further research in this important field.

CDA Implications

Multiple themes have been derived from these documents are being discussed. They show judge' utterances shape power dynamics, legal authority, rule of law, commitments and responsibilities in society. This gives a gateway for future researchers to look through different lenses and work further on them.

No.	Theme	Explanation
1	Power Dynamics and Legal Authority	In the text, there is the emphasis on various forms of power, vested in the different sides of the appeal process such as the appellant, the respondents and judiciary. The following aspects point it out: It reveals disagreements of the respondents' actions such as issuance of notifications.
2	Legal Procedural Fairness	Supports that cite sections of the Ordinance of 1984 and Rules of 1984 highlight issues to do with procedural formalism and natural justice.
3	Institutional Responsibility	The responsibilities of the Director Public Instructions and Higher Education Department in regulating educational institutions are central.
4	Economic Burden on Institutions	The appellant object to excessively high registration fees claiming irrationality and illegality of such decision. This is a view of economic interest of private institutions.
6	Judicial Oversight	The role of the judiciary in reviewing administrative actions and ensuring compliance with law is highlighted in phrases like "impugned notifications are declared to be illegal."
7	Conflict Between Stakeholders	The text continues to capture existing and current struggles between private educational institutions and the government on regulatory measures and government forced contributions.
8	Commitment to Public Service	The appellant is presented as an educational provider ("running 262 campuses") and presenting its benefit to society while challenging regulations
9	Negotiation and Compromise	Hence, where, as here, the appellant offered not to claim a refund in the event the appeal is allowed, the willingness to compromise is within the legal provisions.

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