

# Legislative Drafting in Plain Urdu Language for the Islamic Republic of Pakistan

## A Question of Complex Intricacies \*

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### Abstract

*The plain language movement (PLM) for the writing of laws calls for improving legislative clarity by drafting the laws in a clear, simple, and precise manner. However, the main purpose of this aspiration is to facilitate the ordinary legislative audience to understand the laws with the least effort. In this respect, turning the pages of recent history reveals that this movement for plain language statutes has mostly been debated and analysed in the context of English as a language of the legislative text. However, in some parts of the multilingual world like India and Pakistan, English is not understood by the ordinary population at a very large scale but is still used as a language of the legislative text. This disparity owes its genesis to different country-specific ethnolinguistic and political issues. In this context but without going into the details of these ethnolinguistic and political elements, this article aims to analyse the prospects of plain Urdu legislative language in the Islamic Republic of Pakistan by analyzing (1) the possibility of producing a plain language version of the legislative text in Urdu and (2) the potential benefit that the ordinary people of Pakistan can get from such plain statutes in terms of the themes of the PLM. In answering these questions, the author concludes that neither (at present) is it possible to produce plain Urdu versions of the statute book in Pakistan nor is the population of Pakistan likely to avail any current advantage from the plain Urdu statutes and further that, for now, it is more appropriate to continue with the colonial heritage of English as the language of the legislative text.*

**Keywords:** Urdu, Pakistan, multilingual jurisdictions, legislative drafting, plain language movement.

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## A. Introduction

*Urdu*, derived from the Turkish word *Ortu* with the literal meaning ‘army – a military camp’,<sup>1</sup> is the national language of the Islamic Republic of Pakistan as declared by its Constitution of 1973. However, unfortunately due to serious issues of ethnolinguistic diversity and sociopolitical elements,<sup>2</sup> it has neither attained the position of being the language of the entire nation nor remained the sole official language in the country.<sup>3</sup> It is not possible to encompass these issues and elements in this article, so without going into these details, this article argues that even if this problem is resolved and the people are happy to adopt the use of *Urdu* as the language of the legislative text, even then it is not possible to produce a plain version of the *Urdu* legislative text, and even if this goal of plain *Urdu* legislative text is achieved, the people of Pakistan are not likely to derive any immediate benefit as aspired by the plain language movement. So for now, it is more appropriate to continue with the colonial heritage of English as the language of the legislative text.

In order to prove this hypothesis, this article poses two questions, that is, (1) whether it is possible to produce a plain version of *Urdu* legislative text so as to serve the ordinary legislative audience of the country and (2) whether the people of Pakistan are likely to avail any immediate benefit from the plain *Urdu* legislative drafting as aspired by the PLM. For that matter, the research methodology applied in answering these questions largely remains an analysis of (a) different primary and secondary sources, (b) the statistical data and reports published by different agencies of the Government of Pakistan;<sup>4</sup> and (c) a few interviews of politicians, lawyers, drafters, and linguistic experts.

- 1 The term *Urdu* is said to have been used for the first time around 1780. Earlier, the names of the language had been Hindvi, Hindi, Dihlavi, Gujri, Dakani, and Rekha, and *Urdu* and Hindi are said to have come from a common origin. Moreover, it does not have many words from Turkish, but has been Islamised and Persianised in the 18th century. See for further details S.R. Faruqi, ‘A Long History of Urdu Literary Culture, Part 1: Naming and Placing a Literary Culture’, in S. Pollock (Ed.), *Literary Cultures in History: Reconstructions from South Asia*, 1st edn., Berkeley, Los Angeles, London, University of California Press 2003, pp. 805-863, at 806; Jamil-Ud-Din Ahmad, ‘Is India One Nation’, in V. Grover & R. Arora (Eds.), *Political System in Pakistan*, 1st edn., New Delhi, Deep & Deep Publication 1995, 1 (Genesis of Pakistan), 151-155 (pp. 162-163). However, the fact that *Urdu* owes its genesis to *Hindi* is unacceptable for Pakistani users. For critical analysis and account of point of views, see T. Rahman, *From Hindi to Urdu: A Social and Political History*, Karachi, Oxford University Press 2011, pp. 18-52, at 49-52 (Chapter 4, pp. 79-97). For an Indian view, see G.C. Jain, *Ek Bhasha: Do Likhawat, Do Adab [One Language: Two Scripts, Two Literary Traditions]*, 1st edn., Delhi, Educational Publishing House 2005, pp. 139-140.
- 2 In this context, *Sindhi v. Urdu* linguistic, ethnic, social, and political controversies have remained at the heart of the problem.
- 3 English has always remained the official language of Pakistan alongside *Urdu*; however, in practice it is mostly English which is used in the official matters. *Urdu* is mostly used in the lower tiers of the government at administrative levels.
- 4 Most of the calculations are made on the basis of census records of 1998 as published in different statistical records of the Government of Pakistan from time to time.

## B. Possibility to Produce Plain Urdu Legislative Text

In addition to the lack of political will, another main hurdle in the way of the adoption of Urdu as a legislative text is the lack of legal vocabulary familiar to ordinary people. In as much as the Urdu language is a combination of Turkish, Arabic, Persian and other local language words deriving their grammar from Sanskrit, the drafter will have to revert to rarely spoken Turkish, Persian and Arabic legal texts in order to produce a precise legal Urdu text.<sup>5</sup> In the words of Kibrey J.,<sup>6</sup> as he said for 'English', it represents the confluence of two significantly different linguistic streams. So to achieve the goal of legislative simplicity, precision, and clarity in Urdu would invariably entail the use of the ancient Persian or Arabic text unfamiliar to an ordinary Pakistani.<sup>7</sup> Likewise, the experiment of the Islamisation of the legal system during the regime of General Zia Ul Haq (1977-1988) and afterwards has already burdened various statutes with Arabic texts totally foreign to the linguistic prudence of even expert lawyers.<sup>8</sup> Similarly, the legislative drafters, judges of Superior Courts, expert and seasoned lawyers, and members of the legislature appear to have a perception that the Urdu translations of different statutes already contain more archaic words than in the case of

- 5 A. Gledhill, *The British Commonwealth, The Development of Its Laws and Constitution*, 2nd edn., London, Stevens & Sons 1967, 8 (Pakistan), p. 126. Moreover, the issue that Urdu, as used in the legal system of Pakistan, is only confined to pure Urdu or has the traces of different other languages (Hindi, ancient Persian) is highly debatable because during the last centuries, that is, the Muslim Rule in India, all these languages have been used, jointly and severally, as the languages of the lower revenue and judicial and administrative field in different parts of the State. This was later on mixed with the use of English in the Superior judiciary and the legislation during English rule, with translation of the laws into the local languages. So the language of the legal system appears to have developed out of a mixture of other different languages with Urdu. For example, as per account recorded by T. Rahman 2011, p. 261, the use of some revenue terms like *Banjar*, *Chak*, *Chunji*, etc. owes its genesis from the Hindi language.
- 6 The Hon Justice M. Kirby, 'Statutory Interpretation and the Rule of Law – Whose Rule, What Law?', in D. St. L. Kelly (Ed.), *Essays on Legislative Drafting: In the Honour of J Q Ewens, CMG, CBE, QC*, 1st edn., Adelaide, The Adelaide Law Review Association, Law School, University of Adelaide 1988, pp. 84-99, at 87. See also the interview of M. Kirby J. by K. O'Brien, 'Judicial Attitude to Plain Language and the Law', *Clarity*, Vol. 57, Nos. 9-13, 2007, pp. 9, 10.
- 7 It is pertinent to point out here that on the question of plain Hindustani, in neighbouring India, Sanyal remarks that "Had India been steered toward a plain language, it would have had to choose plain Hindustani, which is a mix of colloquial Hindi and Urdu. Urdu is a mixture of Persian and Arabic with Hindi that evolved in India during three centuries of Muslim rule that preceded British rule. That mixture would have been nearer the idea of a plain language and would have served all of north India. But that mixture makes little sense in south India". J. Sanyal, 'Towards a Plain Lingua Franca for India', *Clarity*, Vol. 59, 2008, pp. 34-37, at 35. Given the author's description of Hindustani (Hindi + Urdu), and the propagation of the inclusive approach of Hindi into Urdu to describe Urdu (Hindi + Persian + Arabic), he has brought Hindustani and Urdu as co-equal in India and assumed it an idea nearer the plain language for north India. However, even if this idea is true, but keeping in view the expertise of the author limited to the field of academics and journalism, his hypothesis may be true for literary writings, but indeed is not entirely suitable for legislative drafting entailing complex analysis concerning legislative accuracy and precision which limit the choice of familiar words to suitably represent the intention of the legislature-suitable words for the legislative text.
- 8 See particularly Sections 337A to 337H of *Pakistan Penal Code* (1860).

the English translations and so do not seem very comfortable with the *Urdu* legislation.<sup>9</sup> However, as against this issue, the linguistic experts have maintained that such will be the case with any other language including English if the legislative text originally drafted in *Urdu* is to be so translated in other languages without loss of the intended meaning.<sup>10</sup> The *Urdu* linguists claim that they can always produce any legislative text couched in familiar words and with necessary precision and clarity if given a chance but at the same time blame the sense of linguistic imperialism inherited by the present ruling elites in Pakistan.<sup>11</sup> However, the fact remains that none of the linguistic experts of *Urdu* has volunteered to take up the gauntlet as Cutts or Adler<sup>12</sup> has undertaken for the plain English legislation, and more so, the legislative drafting office of Pakistan is far away from the idea of jurilingualism (legislative linguistic) in statute drafting.<sup>13</sup> Moreover, given the secular and western norms of the legal system in Pakistan, we cannot avoid a methodology of importing legislative transplants and eventually entailing the translation of foreign language legal terms into *Urdu*.<sup>14</sup> On the other hand, it also appears that even any linguistic achievement by any *Urdu* expert alone is not likely to help change the legislative text from English.

In this respect, some drafters are of the view that it is quite convenient to express the intention of the legislature in English language in relation to the established rules of interpretation devised by the largely English-styled judicial

- 9 Dr. T. Aziz, Professor of Urdu, Forman Christian College, Lahore, Pakistan, interviewed in August 2011; Dr. Ali Muhammad Khan, Professor of Urdu Language, Lahore, Pakistan, interviewed in October 2010
- 10 *Ibid.* See also B. Bekink and C. Botha, 'Aspects of Legislative Drafting: Some South African Realities (or Plain Language Is Not Always Plain Sailing)', *Statute Law Review*, Vol. 28, 2007, pp. 34-67, at 54; D.L. Revell, 'Bilingual Legislation: The Ontario Experience', *Statute Law Review*, Vol. 19, 1998, pp. 32-40, at 38. "But the style and organization that we confront in EU documents, translated into Swedish, are not at all encouraging. It takes us back, more or less, to where we started in twenty years ago", B. Ehrenberg-Sundin, 'Plain Language in Sweden', *Clarity*, Vol. 33, 1995, pp. 16-18, at 17; A.K.P. Lai & A.S.L. Li, 'Through the Looking Glass: What a Reader of Hong Kong Legislation Found There', *The Loophole*, 2012, pp. 21-34, at 22 & 23; T. Yen, 'Bi-Lingual Drafting in Hong Kong', *The Loophole*, 2010, pp. 65-71, at 67; V. Nzanze, 'Challenges of Drafting Laws in One Language and Translating Them: Rwanda's Experience', *The Loophole*, 2012, pp. 42-53, at 42 & 46; L. Poirier, 'Whose Law Is It? A Jurilinguistic View from Trenches', *The Loophole*, 2010, pp. 50-60, at 52; D. Berry, 'The Effect of Poorly Written Legislation in a Bilingual Legal System', *Clarity*, Vol. 53, 2005, pp. 15-17, at 16; T. Yen, 'One Law, Two Languages', *The Loophole*, Vol. 4, 1997, pp. 4-6, at 6; N. Jamieson, 'Linguistics and Legislation', *The Loophole*, 1997, pp. 17-19, at 17; W. Voermans, 'Styles of Legislation and Their Effects', *Statute Law Review*, 2011, pp. 38-53, at 44.
- 11 See *supra* n. 9.
- 12 M. Adler, 'Legalese and Plain Language', *The Loophole*, 2010, pp. 74-80. He has proposed to convert the legalese of Section 4 (1) of the UK's *Appropriate Act* (2008 [UK]). 2008 into plainer language.
- 13 For the definition and the role of jurilingual drafters in the field of legislative drafting, see L. Poirier, 'Whose Law Is It? A Jurilinguistic View from Trenches', *The Loophole*, 2010, pp. 50-60. For comments about the development process of the jurist linguistics, see S. Laws, 'Consistency Versus Innovation', *The Loophole*, 2009, pp. 25-37, at 34.
- 14 For example, for the concept like decree, *resjudicata*, *ressubjudice*, etc., *Urdu* language cannot offer familiar substitute.

system of Pakistan. Moreover, though for a few decades, the judiciary in Pakistan has propagated the policy to prefer the principles of Islamic jurisprudence in the interpretation and construction of laws, however, the principles so enunciated are invariably in English. There are only a few judges of the Shariat Courts who have handed down their judgments in Urdu; however, these expositions in Urdu remain not more than a drop in the ocean. In view of this matter, it appears that the drafter's community has excused the Urdu legislative text for the practice of judgment writing by Courts in English. But, according to Haque, the reason for the practice of judgment writing in English language is the legislative language of Pakistan, which is English.<sup>15</sup> However, in reality both are the cause and effect of each other, and none desires to alter it due to a prevailing inferiority complex of the non-English-speaking community.

On the other hand, the replacement of English with Urdu in the local or lower administrative field may not entail much difficulty. However, this will surely add much complexity in the prevailing legal system of Pakistan when it is already undergoing reformation under the Islamic principles in the legislative as well as the judicial field<sup>16</sup> because the partial Islamisation of the legal system has already created "conceptual fault lines and tension within the legal system" in Pakistan.<sup>17</sup> Then, the difference amongst various schools of Islamic *fiqh* is another important issue.<sup>18</sup> Hence, the legal system in Pakistan is already hanging in between an undefined fantasy and the reality of modern life full of technological advancement. So the priority of the drafters in Pakistan is always to legislate strictly in accordance with the Shariah (Islamic canonical law) and the need of the modern society.<sup>19</sup> As such, starting another experiment of Urdu legislation, just when the legal system is in the process of merging and substituting the legacy of colonial jurisprudence with the Islamic Jurisprudence and there is growing demand to generate quick bills in accordance with Shariah that is acceptable to all religious school of thoughts in Pakistan, is likely to add to the burden upon the drafter as well as the legal system that both of them are not in a position to bear at present.

15 A.R. Haque, 'The Position and Status of English in Pakistan', in R.J. Baumgardner (Ed.) *The English Language in Pakistan*, 1st edn., Karachi, Oxford University Press 1993, pp. 11-18, at 14 & 15.

16 M. Lau, *The Role of Islam in the Legal System of Pakistan*, 1st edn., London Leiden Series on Law, Administration and Development, Vol. IX, Boston, Netherlands, Martinus Nijhoff Publishers 2006, pp. 8-9.

17 See also 'Report of the Constitution Commission of Pakistan', unpublished thesis, 1961, p. 123, para. 193; Lau 2006, p. 9.

18 'Report of the Constitution Commission of Pakistan', 1961, p. 124, para 194; Lau 2006, p. 7; Gledhill 1967, pp. 280-282; W.J. Sweetman, 'Islam: View Points in Pakistan', in V. Grover & R. Arora (Eds.), *Political System in Pakistan*, 1st edn., New Delhi, Deep & Deep Publication 1995, 4 (Islamic State of Pakistan: Role of Religion in Politics), pp. 93-125; I. Talbot, *Pakistan: A Modern History*, 3rd edn., London, Hurst & Company 2009, p. 270; S.P. Cohen, *The Idea of Pakistan*, 1st edn., Washington, D.C., Brookings Institution Press 2006, p. 162.

19 Every draft of the Bill is not normally sent for opinion to the Islamic Ideology Council, the institution vested with the constitutional duty to make recommendations for the Islamisation of the system, nor does the legislature comprise the Muslim jurists. As a result, the obligation remains with the drafter to make sure that the terms of the proposed law are in conformity with the Injunctions of Islam as laid down in the Holy Quran and the Sunnah.

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Moreover, besides English, the only languages that have been very receptive to the plain language movement are French and Swedish, and both have been the language of text in Canada<sup>20</sup> and Sweden<sup>21</sup> for centuries. However, *Urdu* has never been so.<sup>22</sup> Rather, it has been largely patronised by the *Mohajirs* in Sindh and the *Punjabi* ruling elites.<sup>23</sup> However, Bengali in Bangladesh,<sup>24</sup> French in Canada,<sup>25</sup> and Swedish in Sweden have been symbols of large-scale nationalism for the citizens of these countries and are also mother tongues of a considerable and competitive majority, whereas neither *Urdu* nor any other language in Pakistan has that force for the entire country. Hence, keeping in view the sensitivity of the *Sindhi v. Urdu* controversy, Pakistan is not even ready to experiment with the bilingual method of drafting to bring only *Urdu* and English together on the pat-

- 20 For the political history of the use of French as the language of the legislative text in Canada, see S. Lortie & R.C. Bergeron, 'Legislative Drafting and Language in Canada', *Statute Law Review*, Vol. 28, 2007, pp. 83-118, at 84-91. See also M.-C. Guay, 'The Yin and the Yang Drafting in Two Languages: From Finesse to Faux Pas. A Canadian Perspective', *The Loophole*, 2012, pp. 7-20, at 7.
- 21 B. Ehrenberg-Sundin, 'Plain Language in Sweden', *Clarity*, Vol. 33, 1995, pp. 16-18, at 16.
- 22 A.A. Kazi, *Ethnicity and Education in Nation Building in Pakistan*, 1st edn., Lahore, Vanguard 1994, p. 69.
- 23 In Punjab, the Punjabi language is characterised as one of the ratios of high and low social classes. So the people prefer to speak *Urdu* as opposed to the indigenous languages as an instrument to find a place in higher social classes for economic and social gains. On the other hand, in the rest of the provinces, people mostly prefer to talk to each other in their common mother tongue. For further details, see S. Mansoor, *Punjabi, Urdu, English in Pakistan: A Sociolinguistic Study*, 1st edn., Lahore, Vanguard 1993, pp. 124 & 127; and T. Rahman, *Language and Politics in Pakistan*, 1997 edn., Hyderabad, Orient Longman 2007, pp. 119, 127, 131, 132 & 253; T. Rahman, 'The Urdu-English Controversy in Pakistan', *Modern Asian Studies*, Vol. 31, 1997, pp. 177-207, at 179; C. Jaffrelot, 'Nationalism without a Nation: Pakistan Searching for Its Identity', in *Pakistan: Nationalism without a Nation?*, 1st edn., New Delhi, Manohar Publishers & Distributors 2002, pp. 7-47, at 16. For a more detailed analysis of the question of Punjabi dominance, see F. Ahmed, *Ethnicity and Politics in Pakistan*, 1st edn., Oxford, New York, and Delhi, Oxford University Press 1998, pp. 285 & 285.
- 24 Gledhill 1967, p. 126.
- 25 Lortie & Bergeron 2007, p. 86. For further discussion about the long-standing use of methodology of the co-drafting in Canada, see P.E. Johnson, 'Legislative Drafting Practices and Other Factors Affecting the Clarity of Canada's Law', *Statute Law Review*, Vol. 12, 1991, pp. 1-15, at 1 & 2.

tern of (co-drafting or double drafting)<sup>26</sup> French and English legislation in Canada<sup>27</sup> or the practice of unilingual (English) drafting/translation of laws in Chinese as in Hong Kong.<sup>28</sup>

In view of the above discussion, it is evident that the immediate challenges in the way of achieving the goal of plain Urdu language in Pakistan are: (1) the lack of originality of Urdu and the zeal of Urdu linguistics; (2) PLM being largely the plain English movement; (3) the English system of legislative and judicial dispensation and; (4) the effects of the Islamisation of the legal system on the legislative drafting. Yet in this context, as discussed in the following paragraphs, there is another interesting fact that the legislative drafting neither in plain Urdu nor in plain English is likely to benefit the public legislative audience at large in Pakistan.

### C. Scope of Benefits from the Plain Urdu Legislative Drafting in Pakistan

In view of the above discussion, the idea of plain Urdu language appears to be a matter of a daydream alone. However, even if this dream comes true, it is not likely to yield the optimum benefits desired by the PLM.<sup>29</sup> Yet the situation in respect of plain English is not very different either! It is mainly due to low literacy rates (57.7%), so a large part of the population is unable to read any written text,

26 Under the co-drafting model, two drafters are assigned the job of drafting in each language under separate instructions, and one drafter takes lead to prepare the first draft and the other one generally waits for that before beginning to draft in the other language. This model is used in New Brunswick, Canada. In 'double drafting', the same drafter drafts both the versions; however, both are opposed to the translation model. Double drafting is sometimes used in Ontario, but according to D.L. Revell, 'Multilingualism and the Authoring of Laws', *The Loophole*, 2004, pp. 36-48, at 40, this has been largely rejected. D.L. Revell, 'Bilingual Legislation: The Ontario Experience', *Statute Law Review*, Vol. 19, 1998, pp. 32-40, at 35 & 36. See also R. Sullivan, 'Some Implications of Plain Language Drafting', *Statute Law Review*, Vol. 22, 2001, pp. 145-180, at 149-152; Lortie & Bergeron 2007; N. Fernbach, 'Getting Message Across in Language Other Than English: The Canadian Example', *Clarity*, Vol. 48, 2002, pp. 28-31; Guay 2012, pp. 12 & 13; L.A. Levert, 'Work Methods and Processes in a Drafting Environment', *The Loophole*, 2011, pp. 29-39, at 37 & 38.

27 See also Sir William Dale, 'A London Particular', *Statute Law Review*, Vol. 6, 1985, pp. 11-20, at 13 & 14; Johnson 1991, p. 2; L.A. Levert, 'Bilingual Drafting in Canada', *The Loophole*, 1995, pp. 39-42. Switzerland produces three and sometimes four authentic versions of the legislative text in French, German, and Italian plus the fourth Latin-based local dialect called Romansh. See for further details E. Wagner, 'Producing Multilingual Legislation in Switzerland', *Clarity*, Vol. 53, 2005, pp. 18-20; Guay 2012, p. 8.

28 In Hong Kong, new legislation is firstly drafted in English and then translated in Chinese, and both the texts are considered equally authentic. For issues of translations in Hong Kong, see Lai & Li 2012; Yen 2010. However, for developments and problems in respect of multilingualism in Hong Kong after the relinquishment of Her Majesty the Queen's sovereignty, see D. Morris, 'Multilingualism and Legislation: Dominance or Equality?', *Statute Law Review*, Vol. 20, 1999, pp. 74-80, at 75. See also M. Cutts, 'Plain English in the Law', *Statute Law Review*, 1996, pp. 50-61, at 60; Berry 2005; D. Berry, 'The Effect of Poorly Written Legislation in Bilingual Legal System', *The Loophole*, 2007, pp. 88-91. See for illustrations of other multilingual drafting references Voermans 2011.

29 See for the South African experience, C. Williams, "'And Yet It Moves': Recent Developments in Plain Legal English in the UK", *Clarity*, Vol. 60, 2008, pp. 11-15, at 63.

much less a legislative text in either of the languages.<sup>30</sup> However, unfortunately, it is troubling to note that none of the present reports or other authentic literature provides the conclusive statistical data about what proportion of the literate population can read and write *Urdu* and English language well enough to read and understand a law.<sup>31</sup> Yet the statistics of language competency is imperative to understand the effects of multilingualism on the PLM. So this part of the thesis attempts to derive the relevant statistics to all possible extent from the available and authentic official statistics of Pakistan.

In this respect, there remains a common perception that the percentage of people capable of speaking and understanding written *Urdu* well must be directly proportional to the percentage of the literate public (57.7%) or the educated population in Pakistan. However, this is not wholly true for the reasons that firstly, the literacy ratio in Pakistan is the ability of a person to read a newspaper and write a letter in any language, which does not necessarily mean only *Urdu*,<sup>32</sup> as the publication of a newspaper is not confined to *Urdu* alone, yet the largest figure of publication remains of the print media published in *Urdu*.<sup>33</sup> Similarly, according to the latest census records of 1998, the total percentage of the educated population (39,085,411)<sup>34</sup> including the lower primary education in the total population of Pakistan (132,352,279)<sup>35</sup> remains 29.53%, which is far less than the then literate population of 43.92% of 1998. In this respect, it is pertinent to note that due to the variety of mother tongues, the informal medium of education in all parts of Pakistan for earlier education is not always *Urdu*. On the other hand, there are many (7.57%) who have got *Urdu* as their mother tongue and do not require formal education to acquire the relevant expertise;<sup>36</sup> however, for the rest of the population, indeed, one of the most popular and effective modes to acquire the relevant expertise is formal school education mostly after primary

30 See 'Economic Survey of Pakistan', unpublished thesis, 2010-2011, p. 133. For a similar issue in South Africa, see D. Omar, 'Plain Language, the Law and the Right to Information', *Clarity*, Vol. 33, 1995, pp. 11-15, at 14.

31 Lastly, it was the census report of 1951 and 1961 which detailed the percentage of the population able to read and write English to 2.58 and 2.67%, respectively. However, this kind of information did not appear in any of the subsequent censuses of 1972, 1981, and 1998.

32 See 'Census Report', unpublished thesis, 1998 Literacy Ratio.

33 As out of 952 newspapers and periodicals: 761 (79.94%) are in *Urdu* language, 84 (8.82%) are in English, 38 (4%) are bi-trilingual, and the remaining 69 (7.25%) are in Arabic, Brahvi, Balochi, Punjabi, Pashto, Sindhi, and Saraiki. See 'Pakistan Statistical Year Book', unpublished thesis, 2011, p. 426 (Tables 19.2).

34 'Pakistan Statistical Year Book', 2010, p. 339, (Table 16.22: Population (10 years and above) by Level of Education Attainment, Sex, and Urban/Rural Areas, 1998 Census).

35 According to the latest official statistics, the total estimated population of Pakistan in the year 2011 has remained 177.10 million. See 'Pakistan Statistical Year Book', 2011, p. 317 (Table 16.1), however, as the figure mentioned in the parenthesis, 132, 352, 279 has been noted from the latest census records of 1998.

36 'Census Report', 1998 Mother Tongue.

level.<sup>37</sup> So to correlate the capability of the population in Pakistan to understand and speak Urdu with the literacy rate or the percentage of the total educated population of the country does not give true and accurate results.

On the other hand, the ability of a person to speak and understand ordinary written Urdu does not imply his competency to read and understand the legislative text, if drafted in plain Urdu language. For this purpose, the fair ratio for the ability to read and understand Urdu well remains the academic qualification matriculation (10 years of regular school education) or at least middle class (8 years of regular school education). Because by this stage Urdu is taught as a compulsory subject in all parts of Pakistan and regardless of the medium of education, one gets the relevant level of expertise sufficient to understand all kinds of literature in Urdu. An analysis of the relevant statistics reveals that the percentage of the entire population who has qualified at middle class (19,982,269)<sup>38</sup> comes to 15.10% and that of the people who have qualified at the matriculation examination (11,814,314)<sup>39</sup> comes to 8.93% of the total population. Besides this, there is only a meagre population, 171,048 (0.13%) in the total population, who have gained 'other qualifications', which mostly includes religious education in Arabic, and they too normally have no hindrance in reading Urdu language as the script of Urdu and Arabic is the same. So the maximum percentage of the population that can read the Urdu legislative text comes to 15.23%.

On the other hand, the statistical situation is not very satisfactory even if the legislative text is in English. In this context, it is pertinent to point out that English is a compulsory subject in the local Secondary School Certificate (SSC – matriculation), Higher Secondary School Certificate (HSSC – intermediate), and the Bachelor (graduation) examinations in Pakistan. In view of the PLM, only a person who has qualified in English in the graduation examination can be safely said to be able to read and understand the legislative text written in English.<sup>40</sup> However, the proficiency of any graduate as gained in the academia diminishes with the passage of time if he/she does not continue with English in any aspect of his/her life for a longer period thereafter. On the other hand, there is another

37 However, the Punjabi, the mother tongue of the population residing (mostly) in the central part of the province of the Punjab, is also relatively closer to the Urdu language than the mother tongues of the other regions of Pakistan. So the ability of the illiterate or uneducated part of the respective Punjabi-speaking population to understand Urdu language essentially varies, but they do have the problem in speaking Urdu without having good standard formal education or the private company of the Urdu-speaking community.

38 This figure is the sum of the members of population who, according to the Pakistan Statistical Book Year 2010, have passed Middle + Matric + Intermediate + B.A. etc. + M.A. etc. + Diploma/Certificate education; See 'Pakistan Statistical Year Book', unpublished thesis, 2010, p. 339 (Table 16.22: Population (10 years and above) by Level of Education Attainment, Sex and Urban/Rural Areas, 1998 Census).

39 This figure is the sum of persons having a minimum qualification of Matric + Intermediate + B.A. etc. + M.A. etc. + Diploma/Certificate as given in 'Pakistan Statistical Year Book', 2010, p. 339 (Table 16.22: Population (10 years and above) by Level of Education Attainment, Sex and Urban/Rural Areas, 1998 Census).

40 See for a similar American Survey conducted by Dr. Flesch as quoted by A.F. Conard, 'A Legislative Text New Ways to Write Laws', *Statute Law Review*, Vol. 6, 1985, pp. 62-83, at 66.

class of students who adopt the British General Certificate of Secondary Education commonly known as GCSE<sup>41</sup> and Advanced Level of GCE<sup>42</sup> as the academic route to reach up to the level of graduation instead of the local system of SSC and HSSC. These students normally achieve a good standard of English even before their graduation and are less vulnerable to the linguistic decay. However, the strength of these students (1-2%) in any particular year in comparison to the other students (98-99%) appearing in the local system of examination is very low and so is negligible as against the larger population of the country. According to the data collected in the census of 1998, the percentage of the population (2,331,245)<sup>43</sup> having qualified in their graduate examination in the then total population of Pakistan (132,352,279) was 1.76%, and so they can be safely considered to be the population of Pakistan who can read well and understand English as well as the legislative text, if written in the plain English language.

Moreover, given the fact that English is a foreign language for the Pakistani population, it can also be assumed that the part of the population that can gain proficiency in spoken English cannot be more than the people capable of writing and understanding a good standard of English.<sup>44</sup> However, it is pertinent to explain that different literature has given an exaggerated figure in this respect. For example, Crystal (2003) has given the figure of 11.72% of the population who normally speak English in Pakistan, so the people capable of writing and understanding English well must be more than 11.72%.<sup>45</sup> Moreover, a latest report (2009) of Euromonitor as commissioned by the British Council, UK, has ridiculously raised this percentage to 49%.<sup>46</sup> However, the reason for this exaggeration is manifest in the theme of the respective titles of both the studies: 'English as a Global Language' and 'The Benefits of the English Language for Individuals and the Societies: Quantitative Indicator from Cameroon, Rwanda, Nigeria, Bangla-

41 The common name of this exam was O Level. However, it was short for Ordinary Level of General Certificate of Education.

42 The common name of this exam was A Level. However, it was short for Advanced Level of General Certificate of Education.

43 See *supra* n. 34; The figure is calculated by adding the population comprising the persons having qualified the examinations of B.A./B.Sc. (1,712,308) and equivalent and M.A./M.Sc. and equivalent or above (618,937) as given in the latest census report of 1998.

44 See S. Mansoor, *Language Planning in Higher Education: A Case Study of Pakistan*, 1st edn., Oxford, Oxford University Press 2005, p. 219. According to her results, 23.8% of the students have full competency in written English, however, the percentage of the students who are competent as to the *full* spoken English has remained 11.6%.

45 D. Crystal, *English as a Global Language*, 2nd edn., Cambridge, UK, Cambridge University Press 2003, p. 62; D. Crystal, *The Cambridge Encyclopedia of the English Language*, 2nd edn., Cambridge, UK, Cambridge University Press 2003, p. 109; D. Crystal, *English as a Global Lanaguge*, 1st edn., Cambridge, Cambridge University Press 1997, p. 59. It is interesting to note that neither in his encyclopedia nor the first edition of this book he has given the source of the statistics.

46 The Guardian (Weekly), <[www.guardian.co.uk/education/2011/jul/05/research-backs-english-language-delotbiniere](http://www.guardian.co.uk/education/2011/jul/05/research-backs-english-language-delotbiniere)>, accessed on 20 January 2014; 'The Benefits of the English Language for Individuals and Societies: Quantitative Indicators from Cameroon, Nigeria, Rwanda, Bangladesh and Pakistan', *A Custom Report Complied by Euromonitor International for the British Council*, December 2010, p. 114.

desh and Pakistan'. Similarly, Rahman,<sup>47</sup> perhaps in anticipation to confirm the result of Crystal, also appears to have given an exaggerated figure of 17.9%.

In view of the above analysis, it is clear that, at present, neither simple English nor plain Urdu legislation is likely to benefit a very large part of the population in Pakistan. The same conclusion applies to the other regional languages – as they are also spoken and understood by small populations and are confined to their regional boundaries.<sup>48</sup> However, there can always be an argument that Urdu is still better than English because it is the national language as so declared by the Constitution and has larger audience (15.23%) than that of English (1.76%). Moreover, in this respect, the general view is also that it is always better to draft the laws in the language of one's daily communication (link language) or the mother tongue, which in the case of Pakistan is never English.

However, in this context, it is pertinent to point out here that one of the main reasons against the option of Urdu as a legislative text remains the linguistic disharmony in opposition to Urdu as a national language, particularly the growing and violent *Sindhi v. Urdu* controversy, and as a result, the adoption of Urdu as legislative text for all Pakistan does not appear to be viable option. For that matter, the failure of the National Language Authority to perform its role under the auspices of the government and the complex intricacies concerning the legislative drafting in the plain language are also contributing factors. On the other hand, English is the latest language of international communication, and learning English as a priority in education is important for appropriate development in differ-

47 T. Rahman, 'The Role of English in Pakistan with Special Reference to Tolerance and Militancy', in A.B.M. Tsui & J.W. Tollefson (Eds.), *Language Policy, Culture, and Identity in Asian Contexts*, 1st edn., Mahwah, New Jersey, London, Lawrence Erlbaum Associates 2007, pp. 219-239, at 221. He has based this figure on the ratio of the population who has qualified the Matric examination according to the census of 1998. Since he has given the total population to be 132,352,000, 17.29% would amount to almost 22,883,661, which must be equivalent to the number of people having qualified the Matric examination in the census of 1998. However, this figure does not match the relevant data, because the total number of educated population is 39,085,411, and if we deduct the part of the population whose education is less than Matric (27,100,049), then the figure comes to 11,985,362. See for the relevant data of the census of 1998, as reproduced in Pakistan Statistical Year Book 2010, Government of Pakistan, Statistics Division, Federal Bureau of Statistics, p. 339 (Table 16.22: Population (10 years and above) by Level of Education Attainment, Sex and Urban/Rural Areas, 1998 Census)

48 Punjabi, 44.15%; Sindhi, 14.10%; Pashto, 15.42%; Saraiki, 10.53%; Balochi, 3.57%; others, 4.66%; Source 'Census Report', 1998 Mother Tongue.

ent multinational social, cultural, economic, and special academic fields,<sup>49</sup> and moreover, unlike *Urdu, Sindhi, Punjabi, Hindko, Balochi, Barohi, Pashto*, and *Saraiki*, it is not so far categorised as the language of any competing ethnic identity in Pakistan. Likewise, for foreign investors, it is necessary to know the relevant law of the country of investment, and someone can better do that if the original version is in the language which is otherwise the language of international trade and business and so accessible on electronic databases;<sup>50</sup> the popular language of that too is English.<sup>51</sup> Lastly, most of the developments in the field of plain language statute drafting are also in English as well. As a result, keeping in view the issues concerning the language controversies, the better option left, in this respect, remains to continue with English as the language of the legislative text and pursue the goal of plainness in the same language.

- 49 There are many who have suggested that the English language is also necessary for the scientific and modern technological studies. See Haque 1993, p. 17. For a more radical approach, see Z.J. Khan, 'Language Policy in Pakistan', in S. Mansoor, S. Meraj & A. Tahir (Eds.), *Language Policy, Planning & Practice: A South Asian Perspective*, 1st edn., Karachi, Agha Khan University and Oxford University Press 2004, pp. 23-26; T. Rahman, 'English Teaching Institutions in Pakistan', in S. Mansoor, S. Meraj & A. Tahir (Eds.), *Language Policy, Planning & Practice: A South Asian Perspective*, 1st edn., Karachi, Agha Khan University and Oxford University Press 2004, pp. 27-52, at 52; S. Mansoor, 'The Medium of Instruction Dilemma: Implications for Language Planning in High Education', in S. Mansoor, S. Meraj & A. Tahir (Eds.), *Language Policy, Planning & Practice: A South Asian Perspective*, 1st edn., Karachi, Agha Khan University and Oxford University Press 2004, pp. 52-76, at 73; S. Mansoor, *Language Planning in Higher Education: A Case Study of Pakistan*, 1st edn., Oxford, Oxford University Press 2005, pp. 341-344; D. Crystal, *English as a Global Language*, 2nd edn., Cambridge, UK, Cambridge University Press 2003, pp. 11-14.
- 50 See also Voermans 2011, p. 49. In this context, it is pertinent to point out that it is generally understood that it is enough, if the commercial law is in English. However, given the idea that English is necessary to facilitate the foreign direct investments in the country, the foreign investor is not immune from the application of penal or other non-commercial laws of the country. They would be subject to the same law as local persons. So in order to better facilitate the foreign investors, it is always better to have all the laws in international vernacular. Yet the gap of local and international vernaculars can be filled in by education at all levels in both the languages without ignoring either of them.
- 51 For a useful discussion on the popularity of English as the language of soft technology, see D. Block, 'Globalization, Transnational Communication and the Internet', in S. Rajagopalan (Ed.), *English as the Global Language: Perspectives and Implications*, 1st edn., Hyderabad, India, The Icfai University Press 2007, pp. 41-62, at 59. He emphasises that the use of English in soft technology is decreasing day by day. According to him, during 2001 to 2002, the use of Chinese for the development of websites has increased from 3.87% to 10.9% and that of Japanese has also increased from 5.85% to 9.7% and so on. However, the use of English for same purpose has decreased from 68.39% to 36.5% during the same period. Without going into the defects of methodology to derive the relevant conclusion, there is no denying the fact that the economies that lack English expertise to deal in international trade and commerce are at a disadvantage. For an East Asian experience, see D.C. Lazaro & E.M. Medalla, 'English as the Language of Trade, Finance and Technology in APEC: An East Asia Perspective', in *English as a Global Language: Perspectives and Implications*, 1st edn., Hyderabad, India, Icfai University Press 2007, pp. 147-72, at 154.

## D. Conclusion

In view of the above discussion, it is clear that due to the hybrid system of law and legislation, on one hand, and because of lack of interest on *Urdu* linguistics and the fact that the PLM is largely the plain English movement, on the other hand, there is least likelihood to produce precise and plain *Urdu* legislative text in the Islamic Republic of Pakistan. Yet, even if it is possible to do so, even then, due to the low literacy rate and lack of focus of the government on the quality of education, the ordinary population of the country is not likely to receive any immediate benefit from the plain *Urdu* legislative drafting as aspired by the PLM. Moreover, under the current circumstances, due to different ethnolinguistic, socio-political, and international and economic reasons, legislative drafting in English language happens to be the most viable option.