

Representation of Discourse Features of Lawyers on Judge Persuasion From Forensic Linguistics Perspective: A Case Study of the Discourse of Criminal Cases

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Abstract

The purpose of this study is to investigate the procedures of persuasion of judges by lawyers in the Iranian criminal and legal courts based on the critical discourse analysis approach. The methodological nature of this research is descriptive-analytic and the authors have collected the data by referring to courts, Tehran courts, and lawyers' offices, by studying hundreds of cases and observing dozens of interrogations in 1397, then analyzed 50 excerpts of conversations of participants (10 cases) based on Laclau and Mouffe's approach (1985,2001,2002). The main features of this approach are: signifier and signified, restlessness, antithesis, hegemony and fixation of meaning, power, myth and social imagination and metaphor, subject position and political subjectivity. According to the discourse of lawyers, it can be said that they use from the establishment of the semantic system of discourse including such words as client release, mitigation of punishment, proving the guilt of the accused, and seeking punishment for the accused, each of which establishes its own signifier with specific concepts, as influential cognitive and behavioral factors for persuasion. The main question of the present study is how the concept of persuasion is reflected in the conversations of lawyers in court discourse. The results showed that lawyers express their client's strengths and rival's weaknesses using backgrounding and foregrounding. So, in order to persuade judges to defend their client, lawyers use backgrounding to express rival's weakness with the negative bias, and also they use foregrounding to provide their clients strengths with the positive bias.

Keywords: Critical discourse analysis, Forensic linguistics, Laclau and Mouffe, Persuasion

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1. Introduction

Language is not only a means of communication between human beings, but also as a social act that encompasses speech and writing. It's worth noting that every text is produced in special situations and with different degrees of selection and in a ratio of power and ideology. Thus, no text can be found that is devoid of the author's personal views, etc., and just as there is no pure social reality, there is no neutral discourse. Since forensic linguistics is also a process of examining language in law discussions, it finds an inextricable link with discourse analysis, and in this regard, critical discourse analysis can also be mentioned. Forensic linguistics is a branch of applied linguistics that deals with the application of linguistic knowledge and methods in the context of law, legal language, crime, interrogation, trial, and judicial procedure. The present study aims to investigate the methods of using persuasion in court and law processes using the critical discourse analysis approach.

It should be noted that the research on persuasion methods can be fully examined based on the approach of Laclau and Mouffe (1985, 2001, 2002). From this perspective, it is most used in the discourse of lawyers to persuade judges based on the component of opposition (foregrounding and backgrounding) as well as the signifier and signified component that Laclau and Mouffe (1985, 2001, 2002) have dealt with. Therefore, lawyers try to persuade the judge by using their client's discourse factors such as expressing remorse, confession, lack of proper physical condition, participation with the court in the case process.

On the other hand, if we look closely at the environment in which we live, we can easily see persuasive efforts. In fact, persuasion has become an integral part of our lives. Advertisers who use mass media to sell their products usually use this linguistic tool. A political candidate who buys newspaper ads or the health organization that encourages people to quit smoking through a radio station. Also, in general, persuasion is the basic and ultimate goal of all types of communication behaviors. And also, individuals'

thoughts, judgments, and memories are strongly formed by their current feelings, by their different behaviors and biases, by their initial perceptions of the main participants (lawyers, defendants, judges), as well as by a set of social factors.

The present study consists of six sections. In the first part, we will discuss the introduction and generalities of the research. In the second part, we will get acquainted with the background of research and related studies. In the third section, we will introduce legal linguistics and the category of persuasion. In the fourth section, we will discuss the research methodology. In the fifth section, we will examine the lawyers' discourse in criminal cases and the category of the investigator's persuasion, and in the sixth section, we will discuss the findings and results of the research.

2. Literature Review

For decades, we have witnessed a growing methodology and an increasing number of linguists appearing in court as expert witnesses. Nevertheless, not even the name of this new science has been heard in the Iranian judicial system, which makes the need to study and introduce this science in the field of the Iranian judicial system important. Accordingly, the present study is one of those researches that can be used in this field and can be helpful. In the following, the authors intend to introduce some of the research related to the forthcoming research.

Baghinipour (2004) in an article entitled "Persuasion and some of its measures: a discussion in critical discourse" examines the process of persuasion and considers it a phenomenon that can be used to overcome the mind and create the discussion of power. Findings have shown that different speech structures can be effective in shaping and changing mental models and social representations.

Kia and Saeedi (2004) in a study entitled "The principles of communication, propaganda and persuasion" have stated that persuasion is a

mutual linguistic factor whose purpose is to respond to the needs of the persuaded person, and generally in persuasion there is a two-way communication.

Motavali (2005) in his research entitled "Public Opinion and Methods of Persuasion" has tried to make us familiar with the issues that deal with public opinion in such a way.

Nami (2009) has also stated that in foreign language teaching academies in Iran, writing English with proper cohesion, coherence and suitable persuasiveness is a major challenge for those language learners who are studying English. This is because, writing is usually considered a secondary skill and is pushed to the margins of language classes due to its time consuming nature.

Studies show that so far no research has been done on the methods of persuading judges based on the ideas of Laclau and Mouffe (1985, 2001, 2002). Therefore, in this article, we will address the question of what are the linguistic strategies and factors involved in the lawyers' discourse to persuade judges based on the approach of Laclau and Mouffe discourse analysis.

3. Research Methodology

The methodological nature of this research is descriptive-analytic and the authors have collected the data by referring to courts, Tehran courts, and lawyers' offices, by studying hundreds of cases and observing dozens of interrogations in 1397, then analyzed 50 excerpts of conversations of participants (10 cases) based on Laclau and Mouffe's approach (1985,2001,2002).

4. Results

The tool of the lawyer is word, sentence and discourse and s/he uses this tool in the form of speech and writing. Therefore, the lawyer must have cognitive and behavioral components that make his/her speech and writing expressive,

effective, logical and effective in order to convince the judges. It is clear that these cognitive and behavioral components must be compatible with the law system in which the lawyer works, as well as with the social, moral, and cultural structure of the lawyer's workplace. Therefore, there are similarities between advocacy, teacher, sermon and some other professions, but in attorneyship, expressing or creating special concepts in the mind of the addressee is not the goal. Rather, it is important to use these characteristics, such as clauses and utterances, to prove the claimant and to prove right or wrong. This is where the presence of linguists in legal and judicial matters can be helpful. In general, the findings indicate that in the analysis of Laclau and Mouffeh's discourse, backgrounding is the expression of one's own weaknesses and strengths of the rival, and foregrounding is also the expression of one's own strengths and weaknesses of the rival. Thus, the results showed that lawyers express their client's strengths and rival's weaknesses using backgrounding and foregrounding. So, in order to persuade judges to defend their client, lawyers use backgrounding to express rival's weakness with the negative bias, and also they use foregrounding to provide their clients strengths with the positive bias.

Finally, among the fifty lawyers' interviews in the court discourse to convince the judges based on the components of Lacla and Mouffe (1985, 2001, 2002), the authors have stated the most common use of the available components as follows:

Components	Percentage
Foregrounding	48%
backgrounding	44%
Signifier & Signified	8%

