PLAIN ENGLISH MOVEMENT AND ITS IMPACT ON INDIAN STATUTE

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ABSTRACT

D Mellinkoff once said ***"Plain English is the best hope of a profession whose writing, for better and for worse, lies at the heart of the rule of law."***[1]

The plain English movement is a much-needed global campaign to rewrite all legal documents in simple English that any ordinary person can understand. It has been around for more than five decades and has seen numerous ups and downs. Several countries have taken a step ahead in developing and implementing strategies to increase the use of in legal documents, use straightforward English. The Plain English Movement, which began in the 1970s, is a movement towards use of plain, simple, and comprehensible English by lawyers, legal scholars, and judges. It aims to make the legal language easily comprehensible to an average person who may not hold required technical and legal knowledge. French and Latin expressions are commonly used in legal writing by lawyers, legal scholars, judges and even law students. The reason for the popularity of these expressions in the Middle Ages can be traced back to the victory of King William of Normandy in the Battle of Hastings. Even after Henry VI became the King in the 15th Century, the influence of Latin and French prevailed. This paper focuses on the criticism that has been made and how it has been addressed. It will potentially offer ideas for some of the concerns that apply in simple English movement. This movement began as a result of the drawbacks and criticism that arose from the use of complicated legal English. People wanted a plain English movement to ensure that they could know the information in a clear and simple way because legal documents and consumer related information had more complex terms and the public lacked clarity and conveyance of perfect applied information was not delivered by the current legal English.

[1] 'Plain English and the Law' (1994) Michigan Bar Journal 73, 22–5, 25.

Introduction

According to Kimble, "plain language has to do with clear and effective communication– nothing more or less. It does, though, signify a new attitude and a fundamental change from past practices. If anything is anti-literary, drab, and ugly, it is traditional legal writing – four centuries of inflation and obscurity."

One of the oppressive movements around the world, The Plain English Movement, began by focusing on consumer law concerns. It was the first step in making a change in an already large are by drafting every legal document in a way that everyone can comprehend and in which all details are provided in a clear manner. The Plain English movement aims to improve access and understanding of the legal documents that are typically loaded with comprehensible legalese terms by demanding an active transition to a simpler and clearer style of drafting these documents, so that any prudent man in all rationality can easily understand them.

The year 1930 marked the beginning of a movement in which the usage of legalese became a contentious topic among the United Kingdom's former colonies. People, with the help of represntative lawmakers of the period, urged that the difficulty of English in various legal papers be reduced so that ordinary people may benefit from the advantage of comprehending. Then it gradually began to alter insurance policies by enacting legislation in simple English.

The Plain English Movement is a campaign against specialised words that can be found in a variety of disciplines, including legal fields. Its goal is to replace difficult and legalese phrases with simple and plain terms that everyone can understand. People from all over the world participated in this movement, with a focus on the United Kingdom, New Zealand, and Australia. This movement has been going on for decades. As part of the movement, many researchers and academics began to convey their views to legislators and authorities as a voice of the people. On the other hand, the plain English movement is having an impact on many aspects of society.

Objective of the study

The main objective of this study is to find out what The Plain English Moment is and what was its aim and significance. And also to find out the impact of The Plain English Movement on the statues of India.

Literature Review

'The Language of the Law', by David Mellinkoff, exposed the many flaws in traditional legalese. Many legal terms, according to D. Mellinkoff, are direct imports from other languages, and those words have no meaning to someone who only speaks English. The proponents of this complicated and confusing writing make the point that these terms are often more exact than English. However, according to Mellinkoff, just because an expression is old, or has been in use for a long time, or comes from an ancient language, does not guarantee it is better suited to bringing precision to writing than expressions in modern languages. In the book the 'The Language of the Law' says that the using needlessly lengthy terminology is harming the legal profession itself.

According to him, ***"when the juror is told that he must follow the law as laid down by the judge, and he cannot follow the words – let alone the law – this frustration does not promote respect."***[2]

"when the harried businessman is overwhelmed with the language confusions of the government he is taxed to support and of the professionals he pays to help him, his feelings for the law and for lawyers are not properly described as respectful."[3],

"Respect for law is no mere matter of words; neither intelligibility nor precision nor ritual will sell bad law indefinitely. But bad language usage can hurt good law; good language usage can promote respect for good law. And for the rest of this language-conscious century, an important part of the layman's attitude toward the law will be determined by what the profession does with its language."[4]

He is referring to the reality that the intelligibility of the law, whether in a statute or otherwise is the source of its suffering, and not its prestige. In the same book, He uses the example of a jury in the same book to show how obsolete words and complicated legal jargons cause duplication not only in the administration of justice but also in overall legal understanding.

The aim of the Plain English Movemnt is to encourage legal professionals to write clearly, avoiding awkward and complex language, and taking into consideration the lay reader. It seeks

[2] Mellinkoff, D. (1963). *The Language of Law.* p. 453.
[3] Mellinkoff, D. (1963). *The Language of Law.* p. 453.
[4] Mellinkoff, D. (1963). The Language of Law. p. 453.

to achieve a style of legal writing that is neither overly and unnecessarily lengthy, but that is easily understood by both lawyers and common people. Bearing this in mind and in order to modernise and simplify the language of the law, they propose a series of linguistic principles to be followed in the drafting of legal documents. Though several reformers, such as Jeremy Bentham or George Coode, had criticised traditional legal language during the 19th century, it was not until the second half of the 20th century that more generalised protests began to be heard, especially in the USA.

Research Methodology

The author's research method in this paper is doctrinal in nature with specific readings, statutory analysis, significant viewpoints and critical opinions analysed from a variety of sources. Furthermore, the author included personal opinions and opinions of friends on the resources and information as considered appropriate for the objective.

Analysis

Historical Background

The plain language drafting movement is a movement to draught legal documents in a way that is devoid of legalese and jargon, and that is understandable and accessible to both individuals who are technically trained in the legal profession and laypeople who read the law.

The movement began in the United States of America (the USA) in 1963, with the release of David Mellinkoff's book Language of the Law. Richard Wydick's book Plain English for Lawyers, published in 1979, promoted the idea. The famous promissory notes issued by Nationwide Mutual Insurance and Citibank in the 1970s followed, and President Richard Nixon said in 1972 that the "Federal Register" should be written in layman's terms. This movement gathered traction, and in 1978, the state of New York passed the plain language law (sometimes known as the "Sullivan Law" after the legislator who proposed it), requiring that all residential leases and consumer contracts be written in plain language. Similarly, ten additional states followed suit. The Paperwork Reduction Act of 1980 was enacted in the United States in 1980 to promote clear English government forms for public discourse.

The Plain English Movement, which lasted from 1975 to 1980, can be seen as a part of a larger trend in consumer protection. Consumers have always existed, and regulations safeguarding

them may be traced all the way back to the Code of Hammurabi's anti-usury clauses. The idea of consumer protection through information flow is most likely a 20th century concept. A number of regulations established in recent half-century have reinforced the idea that "the best-equipped customer is the well informed customer." The securities regulations of the 1930s required a corporation in which a person could invest to fully disclose operations to the public.

Plain English Movement in India

Generally, Indian laws are difficult to comprehend for ordinary people since they contain complex phrases that induce misunderstanding. There are much less capacity for readers to understand in India since the plain English movement is not taken seriously. In comparison to other countries, India has made no progress in accomplishing the movement. The trend has yet to gain traction in India. It is well known that Indian laws are inaccessible and incomprehensible to the ordinary people and, at times, even lawyers. The government, for example, has set up a webpage called IndiaCode in order to publish legislation digitally.

However, this portal has severe flaws, including poor readability, limited search tools, and a lack of legislation updates to reflect modifications; these inadequacies, when combined, have resulted in a lack of access to Indian Law. Many non-governmental organisations, on the other hand, are taking this plain English drafting movement seriously in order to avoid legalese. When it comes to the chronology, the current scenario has seen many advancements in modern technology, making it easier to obtain and understand the rules.

However, when thinking of India, there are several states and regional languages to consider. Giving people access to laws in clear English, which may also be concentrated in their regional language, is the best way to make them easily engageable. For example, judgments handed down in every Indian case are not easy to comprehend since they involve jargon and Latin terminology. The fundamental goal might thus be attained by occluding the intricate legal terms. As a step forward in this movement, the Lok Sabha passed the Drafting of Law in Plain Language Bill, 2018 in order to employ clear, clean, and simple language when drafting legal documents, acts, and legislation.

This bill primarily describes each phrase linked to the topic and mentions the procedure for writing in plain English with instruction so that any citizen may understand it with all relevant facts. The fundamental reason behind this in India was that people couldn't endure the penalties

of misinterpreting the law and having to pay for it. There must be a compelling rationale, and this bill is required for a successful transformation to allow citizens in the country to participate easily.

Comparative Analysi

In countries such as New Zealand, United Kingdom (UK), Germany, Australia and Hong Kong have made clear language a priority when creating legislation. The tax law review project (TLRP) in the UK, for example, intends to rewrite tax legislation in a simple, accessible manner by reorganising it, using modern language and shorter phrase, and providing consistent definitions and simpler signposting. Furthermore, the plain writing act of 2010 was established in the United States, requiring federal agencies to employ straightforward government communication that the general public can comprehend and use.

In recent decades, there have been considerable campaigns in the United Kingdom, the United States, Australia, Canada, and others to promote plain English. Plain English and plain language movements refer to all efforts to use simpler language in official, legal, and commercial writing (such as forms, contracts, business letters, and product descriptions) as well as medical usage (including labels on medicinal products).

Campaigning in the United Kingdom tends to be bottom-up, with grass-roots activism receiving some official support; in the United States, it has tended to be top-down, with government-initiated measures receiving widespread approval. The Plain English Campaign is a pressure organisation based in the United Kingdom that advocates for plain English while simultaneously providing commercial and other services to keep its momentum and money going. These services help government, businesses, and individuals write and proof plain-English texts (including public-use forms and flyers) and design documents that make information communication easier. The Plain Language Commission is another UK-based organisation. In the United States, the NCTE (National Council of Teachers of English Double-speak) Committee presents yearly Doublespeak Awards, humorous honours to unsatisfactory and evasive language, particularly as used by government (first awards, 1974).

In the United Kingdom, the Plain English Campaign and the National Consumer Council provide annual awards to both encourage and criticise organisations who fail to meet their criteria in the use of plain English, using Golden Bull Awards to highlight particularly bad

writings (first awards, 1982). PEC has also created a programme that allows companies to request approval for the content and design of their documents. The Crystal Mark is a logo-like symbol that appears on leaflets, products, and other materials.

Impact of Plain English Movement on Indian Statute

Whistleblowers against the government, Sexual Harassment of Women at Workplace, households without enough food, mentally ill persons, and juvenile delinquents are all vulnerable categories of persons. . The laws influencing their rights must be understood by these people first, so that they do not have to depend on professionals to understand their rights to seek protection from exploitation. The plain language movement has instilled in people 'a false assumption that the law can speak directly to its subjects simply by simplifying its language.' The use of simplified sentence patterns and jargon free vocabulary does not guarantee that a layperson will understand the complexities of legal principles. The public's impression of law and legal practitioners improves when documents are written in straightforward and simple language. Lawyers speak in a language that is alien to public, clients of all kinds and educated English speakers, surprisingly, it is alien to lawyers themselves.

A statute's arrangement of provisions isn't merely for indexing. It also establishes the act's structure, its importance to prioritize the information so that the reader get the main idea of the act. Dividing the provision into different categories and subjects gives clarity and it makes it easy to identify the specific piece of information. When an Act is long and bulky, it is especially useful to divide it into Chapters or Parts. The categorical organisation of sections under different chapter names increases the readability of an Act's many provisions, which would otherwise be disorganised. But there are some flaws in the Indian Acts.

In the Juvenile Justice Act of India, it has One hundred and twelve sections divided into nine chapters in a proper sequence, but the arrangement of the section is quite confusing. Let us look at the Juvenile Justice Board, in the Juvenile Justice Board's constitution is laid forth in the first portion of this chapter, section 4. The next two sections, sections 5 and 6, follow the constitution and deal with determining the age of a kid who matures throughout the Board's inquiry process. Section 8, which deals with the Board's powers, activities, and responsibilities, is discussed later. As a result, the specificity of sections 5 and 6 in challenging the Act's applicability to specific offenders comes before the enumeration of the Board's basic powers and tasks. This goes against the fundamental rule of legal drafting, which states that general

provisions should come before specialised ones. Prioritizing the protection of the child's rights during apprehension, investigation, aftercare, and rehabilitation is one of the Board's roles and obligations. Section 8 governs the protection of children who are listed in sections 5 and 6, hence it should have come before those provisions.

The placing of section 7 before section 8 is another discrepancy in the chapter III of the Juvenile Justice Act. Section 7 discusses the Board's procedure, specifically in regards to meetings, member absences during proceedings, and conflict of ideas. Section 7's administrative nature qualifies it for placement following section 8's substantive elements. Because substantive sections confer authorities that are critical to the Act's success, they take precedence in the order of provisions. The sections of Chapter III of the Juvenile Justice Act should be rewritten so that substantive provisions come first, administrative provisions come second, general provisions come first, and section 9, which is an exemption to the Board's procedure, comes last.

The arrangement of provisions under chapter IV of the Juvenile Justice Act is inconsistent. Chapter IV deals with the procedure for children who have broken the law. The sections below the chapter title spell out a specific technique, as the title suggests. The reader can expect the portions in this chapter to be organised according to the procedure's chronology. The order of the sections in Chapter IV, on the other hand, is not chronological. Section 13 states that as soon as a child is apprehended, the information on the child must be given to the parent, guardian, or probation officer. Section 13 must be placed after section 11 to maintain the logical flow of sections in this chapter. This change combines the roles of persons in charge of a child who are in violation of the law (section 11) with the responsibility of authorities in providing information to the kid (section 13). Same way, section 16 (Review of Pendency of Inquiry) must be placed after the main inquiry provision under section 14 (Inquiry by the Board).

The Mental Health Care Act was passed to protect the rights of mentally ill people and to provide mental health services. The fundamental goal of this Act is to protect the rights of mentally ill people. These rights, on the other hand, are specified in the fifth chapter. Administration procedures include the creation of an advance directive and the appointment of a nominated representative. These provisions assist in achieving the Act's goal. Nonetheless, they come before the rights of mentally ill people. Because substantive provisions must come before administrative, the chapters on 'advance directive' and 'selected representative' must

come after the chapter on rights of the mentally ill. The introductory group of provisions in an Act must speak of the general theme of the Act.31 The admission, treatment, and discharge of mentally ill persons are dealt with in chapter XII. Since the procedures under chapter XII directly affect the main subject of this Act—mentally ill persons—the information under it must be made accessible to the reader before the reader reads the chapters that establish the administrative authorities and delve into financial matters.

Another change concerns the authority's responsibilities. Chapter VI on the duty of the appropriate government and chapter XIII on the duties of police officers must be put next to each other, followed by Chapter V on the rights of mentally ill people. The authorities' responsibilities are to protect the rights of mentally ill people. The government must implement programmes to promote mental health, ensure mental health awareness, and train mental health officers, among other things, and police officers must safeguard mentally ill people who are homeless or discovered wandering. For the reader, knowing duties the authorities must perform complements the awareness of their rights. So, chapters V, VI, and XIII must be grouped together.

Finally, the chapters on mental health establishments and review boards, as well as the chapters establishing central and state mental authorities, must be combined together. Cross-references to federal and state authorities37 in Chapter X would be easier to find and understand. Similarly, the State authority-established mental health review board would be grouped with the chapter creating State authority.

This act was enacted to ensure food security for weaker sections of the society (as defined under the Act). The disorganized arrangement of provisions and the unnecessary chapter divisions in this Act make it difficult to understand the fragmented structure of the Act. Chapter III is unusual in that it only has one portion. Section 8 specifies that if food grains are not given to qualified people, they are entitled to a government food security allowance. The purpose of splitting provisions into chapters is to gather sections that deal with comparable topics together. The reader will have an easier time finding the information they need with such a well-organized layout. There is no justification to split section 8 from the previous chapter on "food security provisions" and place it under Chapter III on its own. The given food security allowance is one way to assure food security. It is an exception to the general rule of subsidised food grain supply. In that case, it should be placed at the end of Chapter II rather than as the

lone section in its own chapter.

The needless creation of a chapter is there in case of chapter XII which has two provisions for advancing food security under it. One provision obligates the government to ensure food security to eligible households in remote areas, the other provision obligates the government to advance food security through agrarian reforms. Both these provisions could find a place under chapters VIII and IX which discuss the obligations of the Central and State government. The creation of a separate chapter on advancing food security is unnecessary. Similarly, The two 'women empowerment' sections of Chapter VI can be moved to Chapter IV, which deals with identifying qualified families. The eldest lady in an eligible household will be granted ration cards, according to the two parts of Chapter VI. As a result, the two portions might be combined under the fourth chapter. A bloated table of contents results from unnecessary chapter headings with only one or two sections. The position of chapter XI is revised, and it is placed after chapter V to group similar subject matter and maintain chronology between reforms under the Targeted Public Distribution System and accountability for these reforms.

Section 3 follows the introductory provisions and outlines the right of qualified households to obtain subsidised food grains. Only section 9 of the fourth chapter defines these households as eligible. As a result, the Act begins by discussing rights without mentioning the Act's applicability. A reading of section 3 reveals the requirement to explain the Act's applicability before discussing the rights. Section 3 of the first substantive section contains a cross-reference to section 10 of the document, which lists the eligible households. It is possible to avoid this cross-reference. Cross-references make reading an Act 'frustrating' and 'distracting,' because the reader must go through multiple steps. This Act also does not guarantee food security to everyone, the reader must be told at the outset if they are covered by it. By withholding information regarding the Act's eligibility for benefits until later.

The marginal note of section 5 of the Whistleblowers Protection Act reads as ‘powers and functions of competent authority on receipt of public interest disclosure’. Important to note here are two things—section 5 has nine subsections and the chapter heading of the immediate next chapter is ‘powers of competent authority’. There is scope to draft more specific marginal notes. This can be done if section 5 is divided further and the newly created sections have accompanying marginal notes. Emphasis of each subsection has been underlined and used as a guide to draft the marginal note. There is scope to draft more specific marginal notes. This can

be done if section 5 is divided further and the newly created sections have accompanying marginal notes. Emphasis of each subsection has been underlined and used as a guide to draft the marginal note.

Section 9 of the Sexual Harassment of Women at Workplace Act is foundational to the Act as the provision lays down the procedure for filing a complaint of sexual harassment. A reading of the section demonstrates the lack of directness in the drafting of this section. Simplicity is compromised. The use of two provisos makes comprehension difficult. Provisos are generously used not only in this section but across all Indian laws. Driedger remarks that a proviso is a 'legal incantation'. Imagine the difficulty of an ordinary person to comprehend provisos when its myriad forms leave its function in a provision speculative. The role of a proviso could be exclusionary or qualifying or explanatory.

Latin maxims are frequently used. The terms prima facie, ab initio, mutatis mutandis, and suo motu are commonly employed. Their use makes it difficult for the reader to comprehend the section because they will have to halt and deduce the meaning of the maxim. It is unnecessary to employ these maxims. The same concept may be simply related in plain English to the Latin maxims. Furthermore, the phrase structure lacks important linguistic properties of simplicity. There is a lack of economy in word usage, more indirect writing, and disorganised information organisation. The use of archaic terms like 'notwithstanding' and 'whereas' to establish distance between the law and the reader for whom the law is meant, as well as the use of 'shall' instead of 'must' as the preferred auxiliary to generate obligation.

Future of Plain English Movement

One may fairly anticipate that the number of statutes requiring, in one form or another, the use of plain English will increase. Whether legislation will go much beyond the seven states which have already passed laws is difficult to say. One can also anticipate that the use by business of better language, better analysed substance and better designed contracts will also increase. Perhaps the most interesting question is what the effect of all of this upon the consumer body will be.

Plain English's ultimate purpose should be to change behaviour. If the clearer, shorter, and more appealing contracts merely result in the same customer behaviour as the older, more difficult-to-understand versions, the game isn't worth the candle. It must be admitted that the new forms

have so far resulted in little change in customer behaviour. However, this may be too much to expect at this time. However, there have been other noticeable outcomes.

The older contracts tended to contain provisions that even the businesses using them, upon examination, agreed were excessive. Displayed in plain English they had to go.

Businesses that nurtured their images through carefully written advertisements and customer programmes could not risk those images through the now visible terms of their agreements. The most important single effect of the plain English movement has, therefore, probably been the general amelioration of consumer contracts. When it comes to the language of the law, technological advancements are equally essential. Reproduction of sections has become more widespread since technology has made the drawing process easier. The way long Indian judgements are written with replicas of written arguments and legislation is an example. The readability of online content is critical for rising audience who accesses soft copies of the law as well as virtual assistants like 'Alexa' and 'Siri'.

Limitations and Scope for Further Research

Understanding the history and operation of the Plain English Movement, idealism aside, one of the primary problems impeding widespread influence is the movement's pace. Due to substantial church influence and Latin integration, which remains engrained in a majority of legislations globally, especially the legal end of the same, the movements haven't been supported enough during their infancy. Furthermore, the Plain English Movement has always been described as an ideal condition, and it is often based on recommendations rather than mandates, despite popular demand. Unfortunately, the tone of the Drafting of Law in Plain English Language Bill 2018 reflects this. It is essentially suggestive in nature and while it calls for mandatory use, there is little incentive for legislators to actually do so. In regards to the bill, the guidelines are only foundational in nature and they will need to be updated on a regular basis to keep up with current relevance and applicability. It is currently more of a directing statute in its infancy and required amendments to be effective in the redundant domain in which it exists.

Conclusions

This paper concludes that Indian Legislative drafting has yet to embrace plain language, based

on an examination of Indian statutes. Flaws in the construction of provisional arrangements, marginal notes, and sentence structures are nothing new. Despite the significant success of the plain language movement in many other nations, such as the United States, Canada, and Australia, similar problems continue to occur in law even in the last decade. The article discusses the quality of crafting the three factors identified in order to stress that Indian Law remains difficult to comprehend.

The laws described in this paper have an impact on some of India's most disadvantaged citizens. Their rights are in dispute since they are still vulnerable to exploitation. Most people in these marginalised groups may lack the financial means to seek justice through legal specialists. The distant language of law would fail to communicate the people's rights to them even before they attempted to access justice. The expression of authority is made possible by knowledge of rights, which is especially crucial for vulnerable populations. Because India's Constitution includes the right to peaceful protest, rights can be sought not only through the courts, but also through activism. However, in order for the law to be used by the people to enforce their rights, it must be understandable.

The examples of incongruent arrangement of provisions, verbose marginal notes, and convoluted provisos are not limited to the ones mentioned in this article. They are the most common flaws in Indian law. Rectifying these flaws results in shorter, clearer, and direct statutes. The alterations suggested in this article used to redraft earlier arrangements, marginal notes, and sentences in sections can be used to improve other laws as well as serve as a guide for legislative drafters.

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