
FROM LEGISLATIVE PROSE TO JUDICIAL PROSE: WHO WRITES MORE CLEARLY?

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ABSTRACT

Indian legislation frequently becomes complex through amendments, incorporation, provisos, cross-references, and attempts at exhaustive precision. Courts confronted with such texts must translate them into rules that can be applied. This paper compares legislative and judicial prose through three case studies: Section 89 of the Code of Civil Procedure, 1908; the arrest provisions of the Code of Criminal Procedure, 1973; and the tribunal provisions of the Companies Act, 2013. It argues that Indian judges have, in specific contexts, become effective second-stage plain-language drafters. Decisions such as *Afcons Infrastructure*, *Arnesh Kumar* and the *Madras Bar Association* cases reorganise dense statutory material into principles, categories and operational directions. Judicial prose nevertheless carries its own problems of length, fragmentation and precedential uncertainty. The paper, therefore, proposes a limited conclusion: judges often write the applicable rule more clearly because interpretation forces them to expose connections that legislative drafting leaves embedded in statutory architecture.

Keywords: legislative drafting, judicial writing, plain language, statutory interpretation, legal clarity

I. Introduction

Law depends on language twice. The legislature first converts policy into statutory text. Courts later convert that text into rules capable of deciding actual disputes. The two exercises are usually studied separately. Legislative drafting scholarship asks whether statutes are precise, coherent and accessible. Scholarship on judgments is more concerned with interpretation, precedent and judicial reasoning. Yet the reader encountering Indian law often experiences them sequentially. A statutory provision is read, produces uncertainty, and is then understood through the judgment explaining what it requires.

This sequence raises an unusual question. Who writes more clearly, the legislature that creates the rule or the judge who later explains it?

India offers particularly useful material for answering it. Several of its central procedural and regulatory statutes have accumulated amendments, substitutions, provisos and judicial glosses over decades. The Code of Civil Procedure, 1908 (“CPC”) has been repeatedly amended to address delays and procedural inefficiencies. The Code of Criminal Procedure, 1973 (“CrPC”) acquired increasingly detailed restrictions upon arrest before its replacement by the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”). The Companies Act, 2013, contains an elaborate regulatory structure that emerged in part from earlier constitutional litigation over tribunalisation and has subsequently undergone successive legislative amendments.¹

The resulting prose is often technically precise yet difficult to distil into an immediate answer to a practical question. Section 89 CPC asks courts to identify possibilities of settlement, formulate terms, obtain observations, reformulate those terms and then select among several alternative dispute resolution mechanisms. Sections 41 and 41A CrPC attempted to regulate when arrest was necessary through layered conditions and exceptions. Sections 408 to 412 of the Companies Act set out rules governing the creation, composition, qualifications, and selection of members of the National Company Law Tribunal across several provisions. Each provision seeks to control discretion through detail. Each has also required the Supreme Court to explain how that detail should work.

Plain-language drafting is concerned with more than substituting common words for technical

¹ Code of Civil Procedure, No. 5 of 1908 (India); Code of Criminal Procedure, No. 2 of 1974 (India); Companies Act, No. 18 of 2013 (India).

ones. The Government of India's own drafting guidance now emphasises clarity, logical arrangement, appropriate sentence construction and the ability of a reader to identify who must do what and when.² Indian scholarship has similarly connected statutory accessibility to the rule of law, while pointing to sentence structure and organisation as recurring weaknesses in legislation.³ On that account, clarity has at least four dimensions. Syntactic clarity concerns the intelligibility of individual sentences. Structural clarity concerns the organisation of related rules. Operational clarity asks whether an official can determine what must actually be done. Justificatory clarity explains why a rule takes the form that it does.

This paper applies those dimensions to selected statutory provisions and the judgments interpreting them. Its argument is qualified. Judges do not consistently write better than legislatures, and many judgments reproduce the very verbosity that plain-language movements criticise. Legislatures also perform a harder *ex ante* task. They must construct generally applicable rules before the disputes governed by them are known. Courts write after ambiguity has revealed itself and with concrete facts before them. The comparison is therefore structurally unequal.

That inequality, however, is part of the argument. Judicial interpretation increasingly performs a drafting function precisely because legislation cannot always make its rules operational at the first stage. In the three case studies considered here, the Supreme Court does more than assign meaning to disputed words. It reorganises legislation, separates conditions, supplies sequences, develops categories and occasionally corrects drafting errors. The judge becomes a second-stage draftsman.

II. What Does It Mean for Law to Be “Clear”?

Legislative prose serves several audiences simultaneously. It must guide officials, constrain courts, notify citizens, survive hostile interpretation and remain applicable to factual circumstances that its drafter cannot fully anticipate. Precision therefore encourages qualification. A simple rule acquires an exception; the exception receives a proviso; an explanation follows to prevent unintended readings; another provision supplies a definition.

² Legislative Dep't, Ministry of Law & Justice, Gov't of India, *Drafting Guide for Simplification of Laws* 7–13 (2024).

³ Niharika Bapna, *Plain Language Drafting: A Study of the Laws of India (2009–17)*, 41 Statute L. Rev. 348, 348–77 (2020).

Cross-references connect the parts.

Much statutory complexity grows from this pursuit of precision. The Indian Legislative Department's *Drafting Guide for Simplification of Laws* recognises the tension. It describes clarity, precision and unambiguity as core drafting objectives, while cautioning that excessive precision can itself create complexity and obscurity.⁴ Legislative prose cannot depend upon atmosphere, rhetorical elaboration or explanatory repetition in the manner of an essay. The enacted words must carry the legal command.

Judicial writing works under different conditions. The judge knows the factual dispute that exposed the difficulty. Counsel have identified competing readings. Earlier interpretations can be examined. Most importantly, a judgment may explain the statutory object and then restate the provision in another form. Legislation ordinarily cannot append several pages explaining how every sentence should be read. A judgment can.

This gives judicial prose an explanatory advantage. It also permits what might be called functional redrafting. The statutory text remains unchanged, but the judgment supplies a clearer version of the rule for practical use. An administrator or trial judge may eventually work from the judicial formulation rather than repeatedly reconstruct the statute.

That phenomenon should be distinguished from ordinary interpretation. Every interpretation attaches meaning to text. Functional redrafting occurs when a court restructures the text into a form that performs a different communicative function. A nested statutory sentence may become a checklist. Several sections may be combined into a single sequence of steps. A badly matched definition may be judicially switched with another. Broad criteria may become categories of cases that ordinarily fall inside or outside the provision. In these situations, the judicial opinion acts almost like an official user manual for legislation.

There is an obvious constitutional concern. Legislative drafting belongs to Parliament. Courts are not authorised to repair every defect merely because another formulation would be clearer. The familiar line between interpretation and legislation remains relevant. Yet difficult statutory prose creates pressure at the boundary. Courts must decide cases even when the drafting is inelegant, internally inconsistent or incomplete. Refusal to explain the provision would itself

⁴ Legislative Dep't, Ministry of Law & Justice, Gov't of India, *Drafting Guide for Simplification of Laws* 8–13 (2025).

defeat its operation.

The constitutional demand for legal certainty reinforces the importance of intelligibility. In *Shreya Singhal v. Union of India*, while dealing with Section 66A of the Information Technology Act, the Supreme Court treated vagueness as constitutionally significant because uncertain language can leave citizens without adequate guidance and permit arbitrary enforcement.⁵ The degree of uncertainty in the provisions examined below varies. They are not examined here as unconstitutional on vagueness grounds. The broader point remains useful: clarity affects how power is constrained. A rule that becomes comprehensible only after litigation imposes an interpretive cost upon those expected to follow it.

III. Amendment and the Accumulation of Legislative Prose

Heavy amendment produces a particular form of complexity. Statutes rarely receive a complete linguistic redesign every time policy changes. New text is inserted into old architecture. Terms drafted for one regulatory environment remain alongside provisions introduced for another. Cross-references multiply. The policy may change faster than the structure used to express it.

The CPC illustrates this process well. Its modern form combines the architecture of a colonial procedural code with repeated post-independence attempts to reduce delay. The 1999 and 2002 amendments introduced substantial procedural reforms and gave rise to constitutional challenges in *Salem Advocate Bar Association v. Union of India*.⁶ The Supreme Court upheld the amendments, but the Court's decision did not resolve how several provisions were supposed to operate. A committee headed by Justice M. Jagannadha Rao was subsequently used to formulate modalities for implementation.⁷

This history exposes an important distinction between legislative intention and legislative expression. Parliament may have a clear objective, while the enacted language remains difficult to administer. Section 89 CPC is perhaps the most striking example because its objective is simple: civil disputes suitable for settlement should be directed toward an appropriate alternative dispute resolution mechanism. The statutory route chosen to achieve that objective

⁵ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India).

⁶ Code of Civil Procedure (Amendment) Act, No. 46 of 1999 (India); Code of Civil Procedure (Amendment) Act, No. 22 of 2002 (India); *Salem Advocate Bar Ass'n, T.N. v. Union of India*, (2003) 1 S.C.C. 49 (India).

⁷ *Salem Advocate Bar Ass'n, T.N. v. Union of India*, (2005) 6 S.C.C. 344 (India).

became far less simple.

A similar pattern arose in criminal procedure. Parliament sought to reduce unnecessary arrests by amending Section 41 CrPC and introducing Section 41A through the Code of Criminal Procedure (Amendment) Act, 2008, followed by further amendments in 2010.⁸ The policy was reasonably apparent. Arrests for offences carrying sentences of up to seven years should depend on necessity, with reasons recorded and notice given when an arrest was unnecessary. Yet the rule was embedded within several statutory conditions.

Company law presents another version of accumulation. The Companies Act, 2013, was itself a major replacement statute, but its tribunal provisions carried forward a constitutional controversy that had already developed under the Companies Act, 1956. Sections 408 to 412 established an institutional design through a series of rules governing judicial members, technical members, and the selection committee.⁹ Those rules were subsequently tested against principles earlier articulated by the Supreme Court.

The complexity of these statutes cannot be reduced to bad grammar. Their difficulty is architectural. The reader must understand how different textual components relate to one another. This is exactly where judicial prose becomes most significant.

IV. Section 89 CPC and *Afcons*: When Interpretation Becomes Editing

Section 89 CPC provides a rare example in which the Supreme Court effectively acknowledged that it was dealing with defective legislative prose. Introduced through the Code of Civil Procedure (Amendment) Act, 1999 and brought into force in 2002, the provision seeks to facilitate settlement outside court.¹⁰ Its first subsection provides that when a court perceives elements of a settlement acceptable to the parties, it shall formulate terms, submit them to the parties for observation, and may thereafter reformulate the terms before referring the dispute to arbitration, conciliation, judicial settlement, or mediation.

Read superficially, the sequence seems manageable. In practice, it creates several questions. Why should the court formulate the terms of a settlement before sending parties to a mediator

⁸ Code of Criminal Procedure (Amendment) Act, No. 5 of 2009, §§ 5–6 (India); Code of Criminal Procedure (Amendment) Act, No. 41 of 2010, §§ 2–3 (India).

⁹ Companies Act, No. 18 of 2013, §§ 408–412 (India).

¹⁰ Code of Civil Procedure, No. 5 of 1908, § 89 (India); Code of Civil Procedure (Amendment) Act, No. 46 of 1999, § 7 (India).

whose function is to assist them in producing those terms? Does referral to arbitration require consent even though the language of Section 89 appears to place arbitration within the court's referral powers? What precisely distinguishes “judicial settlement” from “mediation” under subsection (2)? How does Section 89 interact with Order X Rules 1A to 1C?

The first *Salem Advocate Bar Association* decision upheld the amendment. The latter decision addressed implementation and adopted model approaches to make the provision workable.¹¹ Yet the most remarkable translation occurred in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*¹²

Justice R.V. Raveendran's judgment begins from the practical difficulty created by the section. The Court examined Section 89 alongside the Arbitration and Conciliation Act, 1996 and the Legal Services Authorities Act, 1987. It found that the drafting had produced anomalies. The description attached to “mediation” and the description attached to “judicial settlement” did not sit comfortably with the mechanisms to which they purported to refer. The Court accordingly treated the two as requiring an interpretive interchange.¹³

More importantly, the Court dismantled the statutory sequence and rebuilt it in operational terms. It explained that courts need not undertake a detailed exercise of formulating settlement terms before reference. What was necessary was identifying the possibility of settlement and selecting a suitable ADR process. Consent was required for arbitration and conciliation because those mechanisms derive their authority from consensual foundations. Other processes could be considered differently. The judgment then identified categories of disputes that are ordinarily suitable for ADR and those that are ordinarily unsuitable for such referral.¹⁴

The communicative difference is considerable. Section 89 speaks principally through a single statutory sequence. *Afcons* speaks through distinctions. It separates the question of whether settlement is possible from the question of which ADR mechanism is appropriate. It separates consensual from non-consensual referral. It then places typical disputes into usable categories. For a trial judge, this version of the law is far easier to operate.

The Law Commission of India later devoted its 238th Report to Section 89. Its assessment was

¹¹ *Salem Advocate Bar Ass'n, T.N. v. Union of India*, (2005) 6 S.C.C. 344 (India).

¹² *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd.*, (2010) 8 S.C.C. 24 (India).

¹³ *Id.* at 39–40.

¹⁴ *Id.* at 42–44.

unusually direct: the language of the provision had made it difficult to give effect to its purpose, and the Commission recommended that the section be recast.¹⁵ It recorded the drafting problems identified in *Afcons* and proposed a statutory formulation designed to reflect more accurately how ADR referral should function.¹⁶

Section 89 thus offers the strongest evidence for the proposition developed in this paper. The judiciary did not merely clarify an inherently vague concept. It supplied the structural clarity missing from the enacted provision. The judicial text became more useful than the statutory text in explaining how the statutory system worked.

There is a deeper institutional irony here. Courts are often criticised for rewriting statutes under the language of interpretation. In *Afcons*, a degree of rewriting was almost unavoidable because a literal reading generated an impractical sequence. The judgment consequently demonstrates how poor legislative clarity expands the interpretive role of judges. Every ambiguity left unresolved by drafting gives courts another opportunity to determine how the statute will actually function.

The case also shows why sentence-level simplification alone would be insufficient. Replacing “formulate” or “reformulate” with easier words would not solve the basic problem. The problem lies in the order of legal tasks. Plain-language reform, therefore, has to address architecture as much as vocabulary.

V. Arrest Under the CrPC: From Nested Conditions to the Judicial Checklist

The CrPC arrest provisions present a different drafting problem. Here, Parliament did attempt to specify the decision-making criteria in considerable detail. The issue was less one of obvious drafting error and more one of converting detailed conditions into police practice.

Section 41 CrPC, following the 2008 amendment, limited the power of arrest in cases involving cognisable offences punishable with imprisonment up to seven years. A police officer required reason to believe that the person had committed the offence. The officer also had to be satisfied that an arrest was necessary for one or more specified purposes, including preventing further offences, facilitating a proper investigation, preventing disappearance or tampering with

¹⁵ Law Comm'n of India, Report No. 238, *Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions* 5–9, 25–26 (2011).

¹⁶ *Id.* at 19–26.

evidence, preventing inducements or threats to persons acquainted with the case, or ensuring the accused's presence before the court. Reasons were to be recorded.¹⁷

Section 41A complemented this architecture. Where an arrest was unnecessary, the police officer was required to issue a notice of appearance. Compliance with the notice ordinarily protected the individual from arrest unless reasons were subsequently recorded for taking that step.¹⁸

As legislation, this is much more detailed than the original broad power-of-arrest. The difficulty lies in the decision tree's density. An officer has to move from the nature of the offence to the existence of reasonable belief, then to necessity, then through several possible necessity grounds, then to a recording requirement, and finally toward notice if arrest is unwarranted. The legal rule is present, yet its practical form has to be extracted.

The constitutional background already contained simpler judicial formulations. In *Joginder Kumar v. State of Uttar Pradesh*, the Supreme Court stressed that the lawful existence of a power to arrest did not establish that arrest ought to be made in every case.¹⁹ *D.K. Basu v. State of West Bengal* later translated constitutional protection against custodial abuse into a series of concrete procedural requirements.²⁰ These judgments established a style that would become important after the statutory amendments: constitutional principle was expressed through operational instructions.

Arnesh Kumar v. State of Bihar is the clearest example. The case arose under Section 498A of the Indian Penal Code, but the Court deliberately framed its directions more broadly to cover offences within the relevant sentencing range. It read Sections 41 and 41A together and emphasised that the existence of a reasonable belief that an accused committed an offence does not complete the inquiry. The officer must separately be satisfied that an arrest is necessary for one of the statutory purposes.²¹

The judgment then converts the legislation into a compliance mechanism. Police officers were directed to use a checklist containing the statutory grounds. They were required to forward the

¹⁷ Code of Criminal Procedure, No. 2 of 1974, § 41(1)(b) (India) (repealed 2024).

¹⁸ *Id.* § 41A.

¹⁹ *Joginder Kumar v. State of Uttar Pradesh*, (1994) 4 S.C.C. 260 (India).

²⁰ *D.K. Basu v. State of West Bengal*, (1997) 1 S.C.C. 416 (India).

²¹ *Arnesh Kumar v. State of Bihar*, (2014) 8 S.C.C. 273 (India).

checklist and supporting reasons to the magistrate. Magistrates authorising detention had to examine the material and record satisfaction. Notice under Section 41A was to be served within the prescribed framework, where arrest was unnecessary. Departmental action and contempt consequences were attached to non-compliance.²²

The significance of drafting is easy to miss because the Court largely repeats what Parliament had already enacted. Yet repetition in another form is the entire point. Section 41 expresses conditions through legislation. *Arnesh Kumar* expresses them through workflow. The statute tells the officer the legal requirements of arrest. The judgment tells the officer how to demonstrate compliance.

This difference is a form of plain-language translation. A checklist reduces cognitive load by converting embedded criteria into discrete questions. “Is an arrest necessary to prevent another offence?” “Is it required for proper investigation?” “Is there a risk of interference with evidence?” The underlying law remains the same, but its communicative form changes.

Satender Kumar Antil v. Central Bureau of Investigation continued this process. The Supreme Court noted persistent non-compliance with Sections 41 and 41A and reiterated that both “reason to believe” and satisfaction concerning the necessity of arrest had to exist.²³ The judgment also organised bail situations into categories and supplied directions intended to produce more consistent treatment across criminal courts.²⁴

The persistence of non-compliance complicates any easy claim that judicial language solves legislative complexity. A clearly stated judgment may itself fail to change institutional practice. Clarity is therefore distinct from compliance. Yet the latter judgment remains evidence that courts perceived the statutory rule as requiring repeated translation into more direct instructions.

The CrPC has since been repealed and replaced by the BNSS, effective from 1 July 2024.²⁵ Its treatment here is accordingly historical rather than a statement that Sections 41 and 41A remain current statutory law. The history, nevertheless, remains important because it reveals a recurring drafting problem. Detailed legislation sought to restrict arrest, but constitutional

²² *Id.* at 280–81.

²³ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 S.C.C. 51 (India).

²⁴ *Id.* at 86–92.

²⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, §§ 1, 531 (India).

adjudication had to transform statutory conditions into an intelligible sequence of institutional duties.

The contrast with Section 89 CPC is useful. *Afcons* corrected and rearranged the drafting that the Court considered structurally problematic. *Arnesh Kumar* dealt with a provision whose policy and conditions were considerably clearer. Its contribution lay in transforming legislative detail into a format that officials could use. Judicial plain-language drafting can therefore operate at more than one level. Courts may repair deficient architecture or repackage technically sound legislation into operational form.

VI. The Companies Act and the Judicial Drafting of Institutional Design

The Companies Act case study presents the greatest challenge to a simple comparison between legislative and judicial prose because the relevant dispute concerns constitutional institutional design. The legal question is not merely what a phrase means. It concerns how an adjudicatory body must be structured to exercise powers previously associated with courts.

The creation of the National Company Law Tribunal developed through a long legislative and judicial history. Under amendments to the Companies Act, 1956, Parliament sought to transfer a substantial body of company-law adjudication to the NCLT and NCLAT. The constitutional validity of that architecture reached a Constitution Bench in *Union of India v. R. Gandhi, President, Madras Bar Association*.²⁶

The Court accepted Parliament's competence to create the tribunals and transfer jurisdiction to them. It nevertheless found defects in aspects of their proposed structure. Judicial independence and separation of powers required attention to who could sit as a judicial member, who qualified as a technical member, how selection committees were constituted and how benches were composed.²⁷ This reasoning sat within the broader constitutional understanding that tribunals exercising judicial functions remain subject to structural safeguards and judicial review.²⁸

The form of the Court's response is relevant here. Instead of leaving “judicial independence” at a high level of abstraction, *R. Gandhi* converted it into design instructions. Only specified

²⁶ *Union of India v. R. Gandhi, President, Madras Bar Ass'n*, (2010) 11 S.C.C. 1 (India).

²⁷ *Id.* at 33–35, 58–65.

²⁸ *L. Chandra Kumar v. Union of India*, (1997) 3 S.C.C. 261 (India).

categories of persons could function as judicial members. Technical expertise had to bear a real relationship to the tribunal's work. Officers of insufficient rank could not acquire the constitutional equivalence required merely because the statute labelled them technical members. The selection committee had to preserve an appropriate judicial role. Benches exercising adjudicatory authority required judicial representation.²⁹

The judicial opinion, therefore, converts a constitutional value into a drafting specification.

The Companies Act, 2013, subsequently created the NCLT through Section 408. Section 409 sets out the qualifications for its President, Judicial Members, and Technical Members. Section 410 created the Appellate Tribunal; Section 411 dealt with its membership; and Section 412 structured selection.³⁰ Read together, the provisions form a statutory design. Read separately, each contains only part of the institutional picture.

When these provisions were challenged in *Madras Bar Association v. Union of India*, the Supreme Court compared the 2013 Act with the requirements already laid down in *R. Gandhi*.³¹ The judgment is especially revealing because it places legislative drafting and judicial drafting almost literally side by side. The Court reproduced the corresponding provisions of the earlier and later Acts and asked whether Parliament had actually implemented the constitutional directions.

Its conclusions again took the form of direct institutional rules. Certain qualifications for technical members were held to be inconsistent with the earlier judgment. Section 412(2)'s selection committee structure was found defective because it gave the administrative branch a predominant role inconsistent with the judicial safeguard identified earlier. The Court directed that the statutory system be brought into conformity with the rules articulated in the 2010 judgment.³²

From a clarity perspective, the striking feature is the relative ease with which the judicial rule can be stated: if adjudicatory functions equivalent to those of courts are transferred to a tribunal, the persons exercising those functions must possess appropriate judicial standing, technical members must have genuine relevant expertise, and the appointment structure must preserve

²⁹ *Union of India v. R. Gandhi, President, Madras Bar Ass'n*, (2010) 11 S.C.C. 1, 65–68 (India).

³⁰ Companies Act, No. 18 of 2013, §§ 408–412 (India).

³¹ *Madras Bar Ass'n v. Union of India*, (2015) 8 S.C.C. 583 (India).

³² *Madras Bar Ass'n v. Union of India*, (2015) 8 S.C.C. 583 (India).

judicial independence. The statute necessarily expresses these ideas through qualifications, years of experience, offices held, committee membership and appointment procedures.

The judgment is clearer at the level of principle because constitutional reasoning can state the design objective openly. The statute has to encode that objective into eligibility criteria.

This reveals an important advantage enjoyed by judicial prose: it can explain **why**.

Legislative provisions traditionally state rights, duties, powers and conditions. They seldom contain extended explanations for the policy or constitutional logic behind each drafting choice. The Government's drafting guidance itself observes that plain legislation generally focuses upon who must do what, when, where and how, while the “why” may remain outside the operative provision.³³ Judgments have the opposite obligation. A reasoned decision has to justify the rule it applies.

Justification can itself improve clarity. A reader who knows that the purpose of a selection rule is to protect judicial independence can understand why a particular committee composition is problematic. A reader who sees only a sequence of statutory qualifications must infer that relationship.

The Companies Act example, therefore, supports a broader concept of clear legal writing. Clarity does not reside exclusively in easy sentences. A technically simple sentence can remain opaque if its place within a larger design is invisible. Judicial opinions often reveal that design by connecting provisions to constitutional objectives.

At the same time, the Companies Act litigation demonstrates the limitations of judicial drafting. *R. Gandhi* and the *Madras Bar Association* are substantial constitutional judgments. A lay reader seeking to know the qualifications of an NCLT member would hardly prefer to read hundreds of paragraphs of tribunal jurisprudence rather than the bare provision. Judicial prose is clearer only at a particular level: it makes the governing constitutional principle and the relationship between provisions more intelligible. It does not necessarily make the law shorter or easier to locate.

³³ *Id.* at 612–17.

VII. Have Judges Become Better Plain-Language Drafters?

The three case studies support a qualified answer. Judges often become better **second-stage** plain-language drafters because adjudication forces them to convert statutory architecture into an applicable rule.

Three institutional features produce this result.

First, courts write after the uncertainty has become visible. Parliament enacts Section 89 before knowing exactly which combinations of arbitration, conciliation, mediation, and judicial settlement will give rise to interpretive disputes. *Afcons* is written after those disputes have emerged. The judge, therefore, knows which portions require explanation.

Second, courts write through facts. Abstract statutory language is tested against an actual decision. Should these parties be sent to arbitration? Was this arrest necessary? Can this category of officials constitutionally serve as technical members? Concrete questions force prose toward usable answers.

Third, judgments can justify their distinctions. The legislature can say that a Judicial Member must possess certain qualifications. The Court can explain that adjudicatory independence requires those qualifications because the tribunal is exercising powers removed from a court. Judicial prose, therefore, possesses a form of explanatory space that legislation structurally lacks.

These advantages explain the recurring conversion of statutes into judicial lists, tests and categories. *Afcons* reorganises ADR mechanisms. *Arnesh Kumar* produces a checklist. *R. Gandhi* and the *Madras Bar Association* turn judicial independence into institutional specifications. In each instance, the court reduces the distance between a legal rule and the action it expects of its reader.

That conclusion should not become a celebration of judicial prose generally. Indian judgments can be extremely long. Multiple concurring opinions may produce uncertainty over the controlling proposition. An extensive quotation from a precedent can interrupt the progression of an argument. The relevant rule may appear deep within the factual history, submissions, and extracts from earlier cases. Plain language requires information design as well as attractive sentences, and judgments frequently perform poorly on information design.

Judges also possess a luxury unavailable to legislative drafters. A judgment can preserve exceptions for another day. Legislation must often anticipate them immediately. Judicial reasoning may announce a broad principle while leaving later benches to determine its boundaries. A statute that adopted the same technique could expose administrators to uncertainty.

The apparent superiority of judicial prose, therefore, arises partly from the division of labour. Legislatures create a durable general framework. Courts resolve the friction generated when that framework meets facts. The second writer benefits from seeing the first writer's work fail in a particular way.

This produces the paper's central claim. Judges have not become superior legislative drafters. They have become indispensable translators of legislative prose. Where that translation repeatedly produces a clearer and more usable rule than the enacted provision, however, the distinction becomes uncomfortable. A legal system committed to accessibility should ask why the citizen or official had to reach the judgment before the statutory obligation became intelligible.

The strongest example is Section 89. The Law Commission's subsequent recommendation that Parliament recast the provision confirms that judicial clarification can reveal a legislative drafting defect rather than merely resolve an unusual case.³⁴ In such situations, leaving the judicial repair in precedent creates an unnecessary two-text system. The bare statute states one formulation; the law as actually administered exists in the statute plus its judicial reconstruction.

VIII. From Judicial Translation Back to Legislative Drafting

The solution is not to make statutes read like judgments. Legislative prose should remain disciplined. Lengthy moral reasoning, factual narrative and case-specific explanation would make codes harder to use.

A better approach is to incorporate the techniques that make the successful judicial translations effective.

³⁴ Law Comm'n of India, Report No. 238, *Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions* 25–26 (2011).

First, heavily amended legislation should undergo periodic consolidation and structural review. An amendment should be assessed against the readability of the provision as it will exist after the amendment, rather than only against the words technically required to alter it.

Second, procedural statutes should be tested as decision trees. If a police officer, registrar or trial judge must perform five sequential inquiries, those inquiries should be visible in the statutory structure. Numbered conditions, direct verbs and clearer separation between threshold requirements and exceptions can reduce the need for judicial checklists.

Third, Parliament should respond more systematically when the Supreme Court identifies a drafting error. The *Afcons* interpretation, followed by the Law Commission's 238th Report, demonstrates the inefficiency of allowing a judicial correction to function indefinitely as a substitute for legislative repair.

Fourth, official explanatory material can provide a bridge between precision and accessibility. Plain-language summaries cannot replace enacted text, but they can present statutory procedures in flowcharts, tables and checklists. The statutory rule would retain legal precision while its users receive an authoritative operational account.

India's recent *Drafting Guide for Simplification of Laws* is important in this respect because it expressly treats clarity and precision as compatible aims and places attention on audience, structure and accessibility.³⁵ The case studies in this paper suggest that judicial experience should become an additional drafting resource. When courts repeatedly have to reorganise a provision before it can be administered, that history should inform the next legislative revision.

IX. Conclusion

The difference between legislative and judicial prose is ultimately a difference in position. Legislatures write before the dispute. Judges write after it. Legislatures must accommodate the uncertain future; judges can concentrate upon the precise point at which general language failed to guide conduct.

That difference explains much of the apparent superiority of judicial clarity. Yet it does not

³⁵ Legislative Dep't, Ministry of Law & Justice, Gov't of India, *Drafting Guide for Simplification of Laws* 7–14 (2024).

make the comparison irrelevant. Section 89 CPC required the Supreme Court to reorganise the relationship between ADR mechanisms. Sections 41 and 41A CrPC became more operational when *Arnesh Kumar* translated them into a checklist. The Companies Act's tribunal provisions became constitutionally intelligible through judgments that explained the institutional principles behind qualifications, appointments and composition.

These decisions demonstrate that judicial interpretation frequently has a drafting dimension. Judges arrange, simplify, classify and sequence legal propositions so that legislation can work. At their best, they produce a plain-language version of legal architecture without claiming to replace the enacted text.

The more important question is what should happen after that judicial translation succeeds. A legislature that leaves clearer judicial formulations scattered throughout precedent transfers the cost of understanding the law to lawyers, officials, and citizens. Judicial clarity should instead operate as feedback. Where a court has found the words, structure or sequence through which a statutory policy becomes intelligible, legislative revision should learn from it. Judges may therefore write more clearly in particular cases. Their advantage comes from necessity and hindsight. The long-term measure of good legislative drafting is whether that judicial translation remains necessary.