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Plain Language Movement: A Bid to Make Democracy More Accessible

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ABSTRACT

In today's world, where the right to information is a fundamental right protected under Article 19 of the Constitution, the flow of information has also become a much smoother and faster process. The wide reach of the internet and other means of accessing information doesn't guarantee that everyone will know what they should know. The focus should also be on the language of the information so that everyone who reads understands its object. This article critically analyses such a movement that fosters the need for plain language in our laws and relevant legal documents to make them more accessible.

Keywords: Plain Language, Plain Language Movement, Jargon, Simple Language, Easy Language.

I. INTRODUCTION

The plain language movement generally refers to the call for doing away with jargon particularly in the drafting of legal documents and making democracy more inclusive, especially for laypersons, people with disabilities and those with lower levels of education.

The movement started in the 1960s in the US with the publication of the book *Language of Law*, by David Mellinkoff wherein he argued that traditional *legalese* (formal and technical language specific to the field of law) furthers ambiguity in legal documents which makes it tough for laypersons to comprehend what they read. Later, in 1979 Richard Wydick's book *Plain English for Lawyers* also called for using a simpler, clearer and concise language in legal documents which further promoted the movement to discard the complex traditional legal language. The paramount contention behind all this effort was to make documents, especially those having legal validity, accessible to the people for whom that document was meant, and not only for those belonging to the field of law.

By the late 1980s, the movement was so hyped that then US President Jimmy Carter passed *Executive Order 12044*², directing each federal agency to improve existing and future

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² *Executive Order 12044—Improving Government Regulations* / *The American Presidency Project*, WELCOME TO THE AMERICAN PRESIDENCY PROJECT | THE AMERICAN PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/executive-order-12044-improving-government->

legislations while making them as simple and clear as possible. Though the order was later repealed by President Ronald Reagan, it set a precedent for *Periodic Retrospective Review* i.e., the process by which agencies assess existing regulations and decide whether they need to be revisited.

Further, in 1996 United Kingdom set up the *Tax Law Rewrite Project (TLRP)*³ which aimed at making tax laws clearer and easier to use. The aim was to make the language of the law simpler by using modern language and shorter sentences while preserving the effect of the actual legislation. One of the key advantages of the project was that it introduced various tax laws in a simpler language which brought benefits to the teachers, students and tax professionals who were not an expert in legalese.

The movement spread further and this time it was Canada. *Plain Language Association International (PLAIN)* was incorporated as a non-profit organization in July 2008⁴. Its primary objective is to promote the use of plain language in Canada and internationally. It strives to encourage the use of simple language among institutions like government, businesses, legal professions and various other organizations to provide better accessibility to information to the public in a simple and easy language.

Meanwhile, the developments on the issue were going on in the US. In 2010, President Barack Obama implemented the *Plain Writing Act, 2010* which calls for revising all government documents into plain English Language. It was done to improve public understanding and usefulness of government communications. In return, it saves time, personnel resources, and money needed for clarification. In short, the act aims to enable public to⁵ –

- find what they need,
- understand what they find, and
- use what they find to meet their needs

Following in the footsteps of the US and the UK, New Zealand also took its bid to make democracy accessible to its people. In 2022, the head of the state gave assent to the *Plain Language Act*.⁶ Section 5 of the act defines plain language as something *appropriate to the*

regulations (last visited Nov. 12, 2023).

³ *Review of Rewritten Income Tax Legislation*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/344921/report104.pdf (last visited Nov. 12, 2023).

⁴ *Who we are - Plain Language Association International (PLAIN)*, PLAIN LANGUAGE ASSOCIATION INTERNATIONAL (PLAIN), <https://plainlanguagenetwork.org/plain/who-we-are/> (last visited Nov. 12, 2023).

⁵ *The Plain Writing Act of 2010*, U.S. FOOD AND DRUG ADMINISTRATION, <https://www.fda.gov/about-fda/plain-writing-its-law/plain-writing-act-2010> (last visited Nov. 12, 2023).

⁶ Plain Language Act, No. 54, Oct. 21, 2022 (New Zealand).

intended audience, and; clear, concise and well-organised. It also lays down a comprehensive list of documents which must use plain language. One of the contentions behind the said legislation was that most of the information shared by the government for the public uses complicated language, jargon and unnecessary acronyms and the Plain Language Act will make engaging with the public simpler.

II. CONDITION IN INDIA

India is yet to be struck by the wave of the Plain English Movement. We still have colonial-era laws which are there to regulate all our lives. They are often very complex in their language as it is drafted in passive voice, and contain traditional legalese and Latin terms. These things make it tough for common people to make something meaningful out of the information they read and that is a grave injustice to them. Naturally, we Indians are not native English speakers. English was introduced to us only after the Britishers came to India, while our legal system dates back to the ancient concept of *Dharma* and *Nyaya* which means Law and Justice. The concept of law and justice is not new to us but the language in which it is present today is not at all native to us. The legalese in our laws only complicates the situation for the people who are subject to those legislations.

For instance, in *Shakuntala Shukla v. State of Uttar Pradesh*⁷, the two judges bench of the Supreme Court said that the judgement need not only to be accurate, it must also be reasonable, logical and easily comprehensible. Similarly, in the case of *State Bank of India and Another v. Ajay Kumar Sood*⁸, the apex court declared the judgement of the High Court of Himachal Pradesh to be incomprehensible as they found it too difficult to navigate through the judgement. It was stated that the judgements are primarily meant for the people whose cases are decided in the courts and the complex language used in them defeats the purpose of judicial writing. Further, they added that a judgement must make sense to those whose lives and affairs are affected by it. Time and again, the courts have stated that judicial writings must be written in the type of language that is understandable not only to the people of the legal fraternity but also to the general public who have no technical knowledge of the field.

Talking about the efforts made by the government to make the laws accessible to all, a digital repository for all the central and state acts i.e., *India Code* was set up. It has been jointly developed by the Ministry of Law and Justice and the National Informatics Centre. The portal aims to help one navigate through all the active, repealed and spent central, state and subordinate

⁷ *Shakuntala Shukla v. State of U.P.*, 2021 SCC OnLine SC 672

⁸ *State Bank of India and Another v. Ajay Kumar Sood*, 2021 SCC OnLine SC 216

legislations in a simplified manner. As of now, the portal can be browsed only in English and Hindi languages, which is a major drawback of it. However, various central legislations in about 21 regional languages can be accessed on the website of Legislative Department of the Ministry of Law and Justice. The data on the website is also being updated gradually.

Furthermore, in 2018 the government introduced *The Drafting of Law in Plain Language Bill, 2018*⁹. It aims to draft bills and acts using plain, clear and concise language to remove ambiguity and enhance citizens' access and understanding of the laws. The bill would have set one of the objectives for the drafter to provide such language in the legislation which can be understood easily by everyone, but unfortunately, there were no further discussions around it.

III. WAY FORWARD

Culminating the journey of the movement in the Indian context, the precedent has already been set by countries like the US, the UK and New Zealand. They have already implemented the laws regarding the use of clear, concise and easily understandable language in their legal documents. Now is the time that we embark upon the footsteps of these countries and have a law of our own that mandates the use of plain language. There might be contention that the complex language of the laws is only to achieve precision in the provisions. The words we use in our day-to-day lives have different meanings in our legislation; the complex language only helps us understand them in a better and more comprehensive manner. But, this can't be a reason to keep going with a language which is not suited to everyone. The government should strive to make the use of plain language an inherent part of *PART XVII, CHAPTER IV (Special Directives)* of the Constitution of India. It should be done because the constitution being the supreme legislation of the state has the value equal to that of a *grundnorm*, based on which other norms derive its validity.

Laws are something that touches everyone's lives and it must be the duty of the state to ensure that Article 14 of the constitution i.e., *equality before the law or the equal protection of the laws* is enforced properly and no person is at a disadvantage because of the legalese and jargon in our laws. In addition, the government should formulate a comprehensive manual to lay down the principles and guidelines for using plain language while drafting a law. It will help in retaining the essence of the legislation while also making its language simple and clear.

As rightly pointed out by George Eliot –

⁹ THE DRAFTING OF LAW IN PLAIN LANGUAGE BILL, 2018
<http://164.100.47.4/billtexts/lbills/asintroduced/2322as.pdf> (last visited Nov. 12, 2023).

“All meanings, we know, depend on the key of interpretation”

Finally, law is something that governs all our lives and it should be known and rightly understood by everyone. If the complexity of the language makes the interpretation of the law tougher, then the people subject to that law will be at a great disadvantage.
