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Critical Analysis of the Plain English Movement

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Abstract: The Plain English Movement refers to the efforts to make legal documents more accessible to the general public by simplifying the language used. This paper analyses the practicality of its objectives of this movement. It studies this practicality in two areas: the first being the simplification of languages used in legal statutes while the other half focus on the practicality of replacing legalese for plain English inside the courtrooms. The value of legalese which has been used for generations cannot be disregarded; but there is a need for simplifying the language used in statutes especially when the statute requires direct participation of the people. However, in courtrooms the lawyers must have utmost freedom to rely on legalese as all concerned are trained in this language. Moreover, legal terms are often built on a history of legal doctrines and case laws, so when a lawyer uses a specific term, he summons the relevancy of these doctrines and case laws to make his point. The plain English language generally lacks these legal implications and if the lawyers want to make these legal implications with the use of plain language, it often results in a vague and time consuming task. But legal language must be used with due care as the excessive use may render any document incomprehensible.

Index Terms - Plain English movement, legalese, legal language, jargons, plain English, law.

Introduction

The Plain English Movement refers to the efforts to make legal documents more accessible to the general public by simplifying the language used. The main aim of this movement is to do away with the use of legal language or legalese in these documents and use plainer and more comprehensible language. This struggle to make legal documents more comprehensible is not new. Even the great philosopher Jeremy Bentham detested the legal language, he even went as far as calling it “literary garbage”¹, according to him “until the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained.”² It is therefore evident that the problems of the legal language have been recognized from a long time ago. The first major shift towards making the language of law simple could perhaps be dated back to the “Statutes of Pleading (1362)”. In the Norman French occupied England, the language of the law was Latin (and later on French) even though the language of the people was old English or Anglo Saxon. Therefore, when the Statute of Pleadings required that all pleas be pleaded in the English tongue,³ perhaps it can be considered to be the first major step towards simplification of legal language. However, the complexities of the English language used in the legal profession poses another problem; consequently, even in the present day and age, the general public still desire for the simplification of the legal English.

¹ 1. JEREMY BENTHAM, THE WORKS OF JEREMY BENTHAM (John Browning (ed), William Tait, 1843).

² Ibid.

³ The Statutes of Pleading, 1362.

Modern Plain English Movement

The modern plain English movement began in the 1970s with David Mellinkoff's book, "the Language of the law". The book is a massive examination of the failure of law language by either criterion.⁴ It directed towards the fact that the profession of law is one which is so genetically in sync with the trade of communication; therefore the use of legalese is a critical and serious indictment.⁵ Although the problems that comes with the complexities of the legal language has been recognised since before the rinderpest, this book made a significant impact in voicing this problem and initiating the modern plain English movement. This movement was further popularized by Richard Wydick's 1979 book "Plain English for Lawyers". This book took a more practical route in addressing the problem; it has been widely used to teach law students the art of legal writing.⁶ This book had a prominent affect so much so that plain English principles have been incorporated into the writing curriculum of most law schools. Therefore, the movement for employment of plain English in the legal profession made a few but prominent changes in the law especially in the Consumers laws of America during this time period.

It is a well-established fact that law should be understood by all, as it affects every life. However, legalese still exists in this day and age for a reason. Due to prolong use of legalese in the legal profession, it has become the stronger language as compared to plain English within the legal community. Contrary to popular understanding, legalese is precise as it leaves less room for interpretation. When a lawyer uses a legal maxim in the court room, the message is clearly communicated to the judge. In fact, not using such maxim and stating it in plain language would prove to be more time consuming and vague. Therefore, there is still a need for legalese in the legal profession, although substituting it for plain English will make the law more inclusive. Accordingly, the following question arises:

1. Whether plain English should be used in statutes?
2. Whether plain English should replace legalese in court rooms?

Plain English in statutes

Law defines and enforces the rights and obligation of all and therefore must be drafted in a way in which it is easily understood by all. Law is inclusive in nature and therefore should be inclusive in the type of language used as well. However, laws are often written in complex sentences and legalese which makes it difficult for the general public to understand.

In order to understand why law is written this way, one must trace all the way back to the origin of legal English. Legal English is the use of the English language in the legal profession. The English Language itself dates back to around 450 AD and along with it Legal English developed as well, it developed through the influence of many other languages such as Latin, French and Anglo Saxon. Latin is one of the earliest languages to have influence over legal English and it also has the most prominent influence. As a result, Latin words and phrases are used habitually in the legal profession and also in making of the laws. Furthermore, other languages such as Anglo Saxon have influenced the style of writing in the legal language by introducing some writing styles such as the use of conjoined words and alliterations. These contributions did not help in making the legal languages easier to understand for the general public. However, they have enriched the language and one cannot argue against the fact that the use of such Latin phrases or conjoined words makes legal communication clearer and more precise for the people within the legal community. But law is not only for the people in the legal profession.

As already mentioned, Richard Wydick's 1979 book "Plain English for Lawyers" was incorporated into the writing curriculum of most law schools. But the contribution of this book to the plain English movement did not stop there. The need for simplification of law was recognised, laws were starting to be made in plain and simple English. In the United States, the Federal government made efforts to improve legal language. By the late 1980s President Carter had signed an order that required Federal regulations to be "as simple and clear as possible."⁷ These requirements were mainly imposed on laws relating to consumer transactions. Influenced by this consumer movement, the states also initiated action towards simplifying the laws; New York enacted America's first general plain language law in 1978. It is important for laws to be in plain

⁴ Ronald L. Goldfarb, Mellinkoff: The Language of the Law, 63 MICH. L. REV. 180 (1964). Available at: <https://repository.law.umich.edu/mlr/vol63/iss1/11>

⁵ Ibid.

⁶ Peter Tiersma, *The Plain English Movement*, <http://www.languageandlaw.org/PLAINENGLISH.HTM>]

⁷ Supra at 6

language as long as it concerns the people and therefore the use of plain language is of utmost importance making laws concerning itself with the people directly, such as the criminal law or consumer protections laws.

The main aim of the plain English movement is to make the laws easily understood by the people. In the English speaking countries, this means converting legalese into simple English. However, simplifying the law means something totally different in a country like ours where over 121 languages are spoken. Therefore, in India laws needed to be translated into local languages for the people to have a better understanding and access to them. Putting the question of whether translating law from legal English to a region language is within the scope of the plain English movement aside; it is clear that initiatives have been taken towards making law accessible to the citizens of India. In accordance to the President's order in 1960, the Official Language (Legislative) Commissions were given the tasked of translating Central laws in regional languages which are listed in the VIIIth Schedule. This is a clear cut example of making laws more accessible to the people. However, only 22 languages are recognised under this schedule, leaving a huge gap for the states using languages not recognised by it.

It is therefore agreed that statutes need to be made more accessible to the people especially when they are laws that have direct connection or demand direct participation from the people. The United States have moved towards simplifying the legal English used in statutes to protect consumers whereas India have taken step towards translating statutes written in legal English to regional languages. Although the approach may be different, the goal is the same. Hence, the plain English movement have reached great heights in achieving its objectives but simplifying the law is a formidable task as legalese too has so much to contribute to the better understanding of law within the legal community. However, one cannot argue against the fact that there is a need for plain English to be used in statutes as law is for all.

Plain Language in Court Rooms

Lawyers and Judges understand legalese as they have spent many hours learning and pondering over it during their time as law students. 'Legal language' as a subject is a part of the curriculum in every law school; it must be learnt as most laws are written in such a language. Additionally, the reading of legal documents has sharpened their skills to the point that the use of legalese has become part and parcel of their basic vocabulary.

It is often said that lawyers used legalese sound sophisticated and smart. This statement is not totally untrue. In 2020 a Delhi based lawyer Subhash Vijayran filed a Public Interest Litigation regarding this very problem. In this writ petition he stated that "the writing of most lawyers is: (1) wordy, (2) unclear, (3) pompous and (4) dull. We use many words to say what can be said in two. We use arcane phrases to express commonplace ideas."⁸ In response to this, the Supreme Court has requested the Ministry of Law and Justice and Bar Council to take action.⁹ Moreover, this problem is not limited to the lawyers alone. In 2017, the Supreme Court had to set aside a judgment of Himachal High Court due to the excessive use of legal jargons rendering the judgment incomprehensible¹⁰. The Himachal Pradesh High Court ruled:

*"Even if assumingly no efficacious evidence nor any evidence of cogent worth may stand adduced qua the defendants raising any obstruction upon the suit land yet the decree of permanent prohibitory injunction dehors any obstructive act done by the defendants during the pendency of the suit before the learned trial Court or during the pendency of the appeal before the first appellate Court also dehors no scribed relief in consonance therewith standings prayed for by the plaintiffs would not estop this court to permit the executing court to carry the mandate of the conclusively recorded decree of permanent prohibitory injunction pronounced qua the plaintiffs, conspicuously when thereupon the mandate of the conclusively recorded decree pronounced qua the suit land would beget consummation besides would obviate its frustration."*¹¹

⁸ Dr. Subhash Vijayran vs Union Of India on 15 October, 2020

⁹ Bidek Debroy, Legal Language in India is filled with jargon, The Indian Express, 12/11/20, 8:39am.

<https://indianexpress.com/article/opinion/columns/supreme-court-legal-jargon-india-legislature-bar-council-law-education-7048306/>

¹⁰ Apoorva Mandhani, "SC sets aside HC Judgment because of poor English", LiveLaw, 19/4/17, 9:36pm.

¹¹ Supra at 9

Thus, it is clear that some within the legal community uses legalese to such an extent of making a document incomprehensible. However, the use of legalese or legal terms in a correct amount can help in precision in their language, so that the point they are trying to make is clear. Legal terms are often built on a history of legal doctrines and case laws, so when a lawyer uses a specific term, he summons the relevancy of these doctrines and case laws to make his point. The plain English language generally lacks these legal implications and if the lawyers want to make these legal implications with the use of plain language, it often is a time consuming task with a vague outcome. Therefore, the excessive use of legalese unnecessarily must be controlled or totally done away with. But the riches of legal language cannot be dismissed and replaced by the use of plain language.

Conclusion

It is concluded that although the value of legalese which have been used for generations cannot be disregarded, there is a need for simplifying the language used in statutes especially when the statute requires direct participation of the people. This includes laws like commercial law and criminal law. But as every law has some connection to the common people, all laws should be simplified to some extent. However, in courtrooms the lawyers must have utmost freedom to rely on legalese as all concerned are trained in this language. Moreover, legal terms are often built on a history of legal doctrines and case laws, so when a lawyer uses a specific term, he summons the relevancy of these doctrines and case laws to make his point. The plain English language generally lacks these legal implications and if the lawyers want to make these legal implications with the use of plain language, it often results in a vague and time consuming task. But legal language must be used with due care as the excessive use can render any document incomprehensible.

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