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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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“ACCESS TO JUSTICE IN INDIA: THE CRUCIAL ROLE OF LEGAL LANGUAGE SIMPLIFICATION”

AUTHORED BY - DR. NAMRATA TIWARI

Assistant Professor

Career College of Law, Bhopal

Abstract:

Legal language is a determining factor for access to justice in India. Legal language often includes such complex terms and archaic expressions as to be a disabler to self-help justice for those who are untainted with legal gobbledeygook. It has indeed created a widening chasm between lawyers and litigants. In such scenarios, the rights of an individual cannot even be expressed succinctly. With such challenges in mind, reforms have sought to write in ordinary language and make the law more accessible. Such efforts include the plain language movement, advocating for clear drafting and simple language usage, and initiatives by the Indian judiciary and government that sensitize the courts to effective communication. The E-Courts project enhances accessibility further, besides reforms in legal education, where new lawyers are trained on technology and given the chance to write in plain language. Effective are such legal outreach programs and legal aid clinics in bridging the gap between technical legal language and public comprehension. Emphasis, thereby, is put on both the judicial decree and the controversial decisions of the Supreme Court regarding the need for clear and easy understanding of the law. The development reflects an increased acknowledgment that lawyer's language should be made simple for the sake of fairness, equality, and justice in this legal field. This paper therefore discusses the relationship between legal language and the access to justice in India, done with an analysis of how the legislative reforms and judicial decisions as well as specific case studies have dealt with the problems created by complex legal language.

Keywords: Access to justice, language of law, complexity, legal language simplification, legal reform

Introduction

Legal language is, by its very nature, technical and technical and is used for communicating specific meaning in the judicial system. In this process, it becomes inaccessible to the non-law trained masses and thus denies them their right to justice. Because of this, it carries with it a very limited meaning under the legal system. However, this removes all claims to being able to understand legal provisions to persons other than lawyers and barristers to access justice. This is particularly so in the Indian legal system that has its origins in the British colonial days.¹ The continuation of this language post-independence has maintained the dissociation between the legal community and the public. Latin phrases generally, lengthy drafting, and formalistic expressions distance non-legal people even further from the legal world. The "habeas corpus," "prima facie" and "mens rea" are the most frequently used terms for legal parlance but cannot be conceived without training in law. Such terminology is not only difficult to decipher by the common man but also laden with historical connotations that will make it unclear exactly what is relevant to contemporary times. For example, it makes it difficult to comprehend the average citizen who is supposed to operate within this system, devoid of their attorney's guidance.

The inaccessibility of legal language affects directly an individual's ability to seek and obtain justice.² A litigant, in many instances, heavily relies on legal representation, which is a complex description and a limitation imposed on legal language and can make litigants over-rely on lawyers and increase legal costs. It can also be characterized as highly formalistic, which may only make it seem inaccessible or intimidating. The heavy use of passives, nominalizations, and other formalistic features can make it obscure in meaning about legal texts and makes it difficult for people to deeply engage with legal content.

Indian legal system is founded upon the principles of 'fairness, equality and justice'. On one hand, 'rule of law' stands supreme: everybody has to obey the law; 'ignorantia juris non-excusat' that ignorance of the law is no excuse. On the other hand, the laws are undoubtedly highly complex; difficult to access, and impossible fully to understand. But this is overshadowed by the fact that legal language is simply not accessible to the average citizen. While it serves as a good communication tool among legal practitioners, legal language is also crucial in the delivery of justice. Unavailability of legal language only throws into jeopardy the foundations

¹ Gupta, R., *Colonial Legacies in Indian Law: Language and Access to Justice*, 12 Indian J. Legal Stud. 101, 101-120 (2020).

² Ghosh, A., *Legal Language: An Obstacle to Access to Justice?*, 10 J. Indian L. & Soc'y 45, 45-67 (2019).

of justice by not allowing persons the ability to participate properly in proceedings.

Impact on Access to Justice in India

Barriers to Understanding Legal Rights: These convoluted legal terms make it impossible for most Indians to get an actual understanding of what their rights are under law. For example, a person getting a legal notice or a summons from the court may not understand what the paper would imply or what he has to do about it. It might lead to such a situation that unknowingly people might forfeit their rights under law or violate legal procedures. Legal language is particularly obtuse for marginalized communities, whose main complaint would be in accessing legal information and resources. Such communities more often face legal problems in topics such as land disputes, labor rights, and access to public services and are the least well-equipped with respect to navigating the legal system.

Problems with Court Proceedings: In India, vast portions of the population cannot afford lawyers and therefore have to appear personally before the courts. But the technical legal language of the courts may weigh heavily against self-represented litigants while presenting their case. Therefore, they will suffer from unequal treatment and injustice since these individuals are at a disadvantageous position when compared to litigants who can afford to have a lawyer. The language being used in courts, especially in the higher courts, is often above what an average citizen will understand. Consequently, the situation arises that people cannot be any further away from engaging in their own judiciary processes, greatly undermining the principle of equality before the law.

Impacts on Marginalized Communities: It impacts most disproportionately the vulnerable marginalized communities of India, including poor or low-income individuals, rural people, and linguistic minorities. This is partly because such groups hardly raise enough money to recruit lawyers or acquire legal education hence making it difficult for them to understand how to maneuver their case in circles of law. The marginalized groups are also likely to have legal issues in the form of land rights issues, labor disputes as well as access to public services, and they are always the lowest on the rung to understand and defend their rights legally. This just perpetuates cycles of poverty and inequality, given that the people cannot access justice nor protect their own interests.

Legal Reforms and Simplification of Legal Language

In recent years, it has become increasingly clear that simplification of the "legalese" of court pleadings is essential for improving access to court. There are different levels of the Indian court and legislative authorities which have taken steps for legal reforms such that simple language drafting techniques, streamlined legal processes, and modernized legal terminology may be promoted.³ According to Chief Justice of India (CJI) D.Y. Chandrachud, the continued legal reforms for easy access to the justice system are a necessity. His latest declarations reflect the most up-to-date opinions about the infinite process of law language improvement and the betterment of access to justice in India, considering, above all, the recent criminal laws and actual development of court processes in digitization.⁴

In recent years, reforms have recognized the barriers that sophisticated legal terminology creates to access to justice by making the language of law more accessible and more comprehensible to the nonlawyer. By these, attempts are made at opening up access to justice by ensuring such that terminology in use should be accessible to non-lawyers and intelligible, clear, concise, and easy to understand.

Plain Language Movement: Legal drafting of all cumbersomeness and elaborate language and jargons: let them argue publicity must cooperate minimizing the legalese head. Its core aim is to enable not only legal practitioners but even lay person's understanding of legal language in a manner wherein no specialized paraphernalia is required.

In India, the plain language writing movement is yet to make any meaningful inroads. It is said India law is non consultable or comprehensible for the layman, and at some times it does not even befits a lawyer.

In 2018, MP Rajeev Shankar Rao Satav moved the Drafting of Law in Plain Language Bill in the Lok Sabha with the objective to 'provide a legal structure which will require all Government Bills and Acts to be drafted in simple clear and short language.' Such a Bill is still pending but in its provisions there is the indication of the need to prepare a Drafting Manual for Legislative Drafting and the setting up of a Legislative Drafting Agency. In addition to this,

³ Mukherjee, S., *Decoding Legalese: The Language of Law and Its Implications*, 15 Legal Rev. 78, 78-92 (2018).

⁴ Chandrachud, D.Y., *Access to Justice: The Role of Language in Law*, Speech at National Law Conference (New Delhi, 2021).

another case was filed by Dr. Subhash Vijayran at the Supreme Court in the year 2020 asking for the plain language to be adopted in all the government's communication, along with legal handbooks that are in bronze also to the laymen.

Addressing the nation after the appointment of the Attorney General, Narendra Modi first addressed the issue of the 'legal language' and how to make it easier to understand. The reason why laws are thus so complicated, he highlighted, lies to the fact that their language is obscured. He argued that Laws must be made in such a manner so that even the poorest persons in the country understand the same. In this regard, it was in response that the government came up with the India Code portal seeking to publish the laws digitally in a bid to make them available to the people but the efforts have been minimal.

Notably, however, some Indian states have undertaken initiatives to audibly announce the language that is used to fill legal forms, as well as government documents. For example, Maharashtra is one of those states that have apparently made improvements in the area of using simplified language for filling and presenting legal forms and documents as a part of the general plain language movement. In 2010, particularly, the Maharashtra government embarked on the mission to do away with the thorny language in many of the standard legal forms including those used in property transactions where the language was known as plain Marathi. The aim was to ensure that such extended or broadened thorough legal documents' cover was made rather easy to read to the general public who are not likely far from cinema watching English movies and reading legal documents. It resulted in the simplification of more than two hundred legal forms including property transfer forms. The outcomes were huge, especially among rural people as they understood more clearly the documents that they endorsed.⁵ By simplifying legal documents, middlemen might profit off the public's confusion and reliance on them. This reform helped lessen that dependency.

Judicial Efforts to Promote Accessibility: The Indian judiciary has of late begun to realize the need to make the legal language accessible. In recent times, there have been endeavors to present judgments, particularly pronounced by the Supreme Court and the High Courts in an easier and concise language. It has been urged that their judgments would not carry heavy legal jargon and skewed sentence structures, especially in litigations where litigants do not appear

⁵ Gov't of Maharashtra, *Simplification of Legal Language in Government Documents* (2010).

with any lawyer before the court. These efforts help make the law and its processes into understandable projects to everyday human life.

In addition, courts are taking steps to ensure that people involved in cases fully understand the proceedings. Some judgments are written in plainer, simpler words and sentences today, avoiding obscurity and brevity. Lastly, courts are now beginning to render brief summaries of judgments in regional languages, making a judgment more accessible to a larger people.

Government Initiatives- The E-Courts Project: Increased deployment of technology can help make access to justice even easier by breaking the legal jargon barrier and resources. And increasingly, in India, online resources in plain legal language and translation tools for legal documents are resorted to so as to overcome the language gap. The Indian judiciary, too, is embracing technology-on the lines of e-courts and digital legal resources-such that legal information can become more accessible. The Indian government's E-Courts project, launched way back in 2005, marks a significant technological intervention for enhanced access to justice.⁶

One major aspect of the project is that judgments and orders issued by courts are made available digitally in local languages through the employment of plain language summaries to facilitate greater accessibility to legal information. The Ministry of Law and Justice also conducted an evaluation of E-Courts in the year 2020, and it further noted the positive impact these reforms are generating. The evaluation reported that the availability of judgments in regional languages, coupled with plain language summaries, has substantially improved public understanding of court decisions.⁷ Legal resources are usually scarce in the region, hence the project has proved highly beneficial especially in rural areas. These technological interventions could democratize access to legal language and lead to an improvement in general public understanding.

Reforms in Legal Education: India has also seen initiatives in the direction of plain language implementation in legal education. The University of Hyderabad along with the Indian Law Society's Law College in Pune started courses and workshops on plain legal language. These programs are intended to instruct future lawyers in the preparation of technically accurate but readable legal documents. The empirical data generated from such programs indicate that law

⁶ Ministry of Law and Justice, *E-Courts Project: An Evaluation* (2020).

⁷ Satav, R.S., *Drafting of Law in Plain Language Bill*, Lok Sabha Proceedings (2018).

students who are trained in drafting legal documents in plain language are better positioned to serve a broader section of the population. Graduates are making adjustments to these programs and applying the practices of plain language to professional work, slowly over time to help bring more accessible legal documentation to India.⁸

Chief Justice of India Justice Dhananjaya Y Chandrachud said law students should be aware of the local language and rules of laws associated with the regional problems so that the legal system may be made more accessible to people. This, he also underlined, is part of taking legal education in a simple language; he said that it was the deficiency in the legal profession at present.⁹

Legal Outreach Programs: Legal aid clinics and outreach programs are another important way to narrow the gap between legal language and public understanding. These programs mainly give legal information in clear, understandable terms so people know their rights and hence also navigate legal procedures. The Indian government and other NGOs have initiated programs to improve legal literacy among marginalized segments. Such programs have been designed to empower people with knowledge and tools required for understanding and taking control of their legal rights.

Legal Aid Clinics and Literacy Programs: There are few empirical studies on the outcomes of legal aid clinics and legal literacy programs, which would otherwise be tantamount to indirect methods for studying the effectiveness of language reforms in law. NLSIU, in 2015, had a study in which it conducted evaluation of legal aid clinics in rural Karnataka. The study determined that the success of clinics using plain language in their legal advice and documentation was far greater in enabling clients to understand their problems and the steps to resolve them. As the data show, simplified translation support made a real lot of people able to do legal affairs independently.

More generally, an extensive study conducted by the Commonwealth Human Rights Initiative (CHRI) of West Bengal in 2018 showed that with legal literacy programs applied through more accessible contents in local languages, participants actually achieve higher degrees of

⁸ Indian Law Society, *Legal Literacy Initiatives in India* (2022).

⁹ CJI D.Y. Chandrachud, *Future of Legal Language and Access to Justice*, Address at Judicial Reforms Conference (2023).

awareness about their rights in the legal process.¹⁰ Indeed, this increased participants' level by 30 percent to identify and express their respective rights about laws on issues such as land disputes, labor rights, and others.

Judicial Decisions: Toward A Plain Language Mandate for the Supreme Court

The Indian judiciary has also acknowledged the necessity of the use of simple language in the legal realm. Several landmark judgments have been promoted as being clear-cut and 'user-friendly'. The present case can be visualized as one of them in this context, when in the judgment of *Rajbala v. State of Haryana*¹¹ passed in 2014 judgment was categorically opined that judgments should be penned in simple, crystal plain language. It was the perception of the Court that using very technical and obscure legal phrases and tortuous sentences might actually hinder the lay public's comprehension of judgments. The case was an important stride towards the use of plain language in judgments of courts.

Among such cases is that of *Anuradha Bhasin v. Union of India*¹² in 2020, wherein the Supreme Court advocated for the clarity of the transmission of the decisions and orders of the government, especially those which essentially touch upon people's fundamental rights. The Courts asserted that any order hindering a person's fundamental rights should be conveyed to the public in a clear manner, reiterating that it should not be kept secret, thereby being readily available for persons to examine.

Conclusion

Indian legal language remains dauntingly inaccessible for many today. While judicial reforms and efforts by recent, progressive judges to achieve simplicity in language have shown improvement, much is yet to be achieved. Reforms are ongoing, as emphasized by CJI D.Y. Chandrachud, which means doing so with ever-increasing critical importance to make the system as accessible to all citizens as it is to legal experts. The future of legal language in India would probably be marked by continuous efforts toward rebalancing the precision required in legal documents with the accessibility that marks full justice and true inclusiveness.

¹⁰ Commonwealth Human Rights Initiative, *Legal Literacy Programs in West Bengal: A Study* (2018).

¹¹ *Rajbala v. State of Haryana*, (2014) 10 SCC 473.

¹² *Anuradha Bhasin v. Union of India*, (2020) 3 SCC 637.

Of course, in the Indian context, with great diversity in language, education, and socio economy, simplification of legal language is not only a matter of legal reform but also a fundamental issue of human rights. With India moving closer to the constitutional promise of justice for all, it can continue on the strategy of prioritizing simplification of legal language and promoting legal literacy. This calls for concerted action by the judiciary and legal professionals, policymakers, and civil society to ensure that legal language no longer poses a barrier but instead acts as a bridge to justice. It is a question not only of legal reform but also of the very fundamental human right: access to justice is instrumental for the protection and realization of all other rights. These reforms contribute not only to better access to justice but also serve for greater transparency and accountability in the legal system. It is quite obvious that professions like law, engineering, physics, and philosophy have specific terminology that cannot be replaced easily.

However, since law essentially deals only with the relationship between individuals and their communities or government, it does not require the use of French or Latin terms. Although the historical importance of legal jargon, in use for centuries, cannot be simply overnight dismissed, the need for streamlining language used in statutes is apparent, especially when statutes demand direct participation from people.

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