

PLAIN LANGUAGE AND LEGAL DRAFTING

Speech by Shri Dinesh Goswami,
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Mr Chairman:

I wish to express my appreciation to the Commonwealth Secretariat for bringing before us a subject which is important not only to the Commonwealth countries, but to the international community as a whole.

There cannot be two views on the need to write legal documents in plain language so as to make the law understandable to the man the street. This need is specially felt in developing countries where a vast majority of people are not familiar with legal language. Most of their laws were drafted in the colonial period. The language of these laws is legalistic and circumlocutious, requiring a special expertise in order to measure their meaning. The tortuous language used in drafting legal documents makes them incomprehensible even to those who are most familiar with the subject matter of legislation. The precious time of the courts, which are otherwise burdened with heavy a load of work, is also wasted in trying to explain the so-called legislative intent.

On several occasions the Supreme Court of India also commented adversely on the drafting of our statutes. Recently, while interpreting a provision in a statute, a Supreme Court judge observed that "the section has been drafted in a jaw-breaking fashion and its cumbersomeness could have been simplified had a different type of legislative drafting skill been brought to bear upon the subject". He then commented that the section reminds one of the old British jingle:

I'm the parliamentary draftsman
I compose the country's laws
And of half the litigation
I'm undoubtedly the cause.

The adoption of simple language in the drafting of our laws would contribute to a greater clarity and universal understanding. We may recall here what Lord Denning said:

"If you were seeking to see what different principles should be applied, the first would be to recommend simpler language and shorter sentences. The sentence which goes into ten lines is unnecessary. It could be split up into shorter ones anyway, and couched in simpler language. Simplicity and clarity of language are essential."

What is said of municipal enactments will apply with equal force to the legal documents adopted under the auspices of the United Nations and its related Specialised Agencies. Legislation enacted to give effect to such documents within the municipal sphere generally reproduce the English text of the international treaty.

Laws are intended to regulate human conduct and promote social welfare. In the present day world, there is not a single aspect of human life which is not regulated by some legislation or the other, whether principal or subordinate. What is more, in developing countries, a growing number of socio-economic enactments are being adopted with a view to promoting the interests of the weaker sections of the people and protecting them from social injustice and all forms of exploitation. A vast majority of people in any society generally consists of laymen, and they need to know law as much as any other section of

the society. If these laws are to have any relevance to them, they have to be drafted in plain language. They require adaptation to suit contemporary requirements of our social life. The common man wants to know his rights and obligations under the law.

Since any legal text has to satisfy the test of effectiveness in communication, if the language or style of such communication is deficient, it will, to that extent, fail to serve its purpose. Whether the language used for such communication is English or any other language, the function of the law can be said to be properly served only if consumers of the law understand its scope and reach.

The movement for the use of "plain English" in legislation, which has been gaining momentum in recent years in several Commonwealth countries, has not gone unnoticed in India. It is certainly a welcome development.

However, in the Indian context, the problem is not confined to the simplification of legal English. While English continues to be widely used in India in the legal field, the demand for increased use of the national language as also other local languages in the legal sphere has also been growing. The Authoritative Texts (Central Laws) Act, 1973, was enacted in India to provide that the translation of any Central Law or the subordinate legislation made thereunder in any of the fifteen Indian languages, specified in the Eighth Schedule to the Constitution of India shall be the "authoritative text" of that Central Law etc. in such language. It has brought about a qualitative change in the matter of language of the law in India and conferred on the Indian language texts the same authoritative status as was hitherto enjoyed by the English and Hindi texts of Acts of Parliament. The amendment has opened the door for the Indian languages to acquire the same status as English in respect of legislation and all other legal matters. The situation in India is thus somewhat different from that obtaining in other Commonwealth countries where, perhaps, the English texts of enactments alone need simplification.

The process of transition from English to the various national languages in India is not without its problems. It is not uncommon to find that many of the subtle legal concepts and expressions do not lend themselves easily to straightforward translation of English text into other languages. Very often, new expressions and phrases require to be coined to bring out the correct meaning of the original English text of a legislation or any other legal document. In finding a satisfactory answer to these problems, linguists and legal experts are sometimes forced to adopt words and phrases which are less intelligible than the English text itself.

While, in certain cases, it is only a question of finding suitable language to describe a well-understood concept, in others, it is a question of introducing the concept itself. For facilitating the switch over from English to the national languages, one of the important tasks initiated in India is the compilation of Legal Glossaries in various languages giving Indian language equivalents to English legal expressions and to standardise them, to the extent possible, for use in all Indian languages.

We are, at present, on the threshold of a new phase in the field of drafting Indian laws in various Indian languages. We are hopeful that our draftsmen will be able to avoid the pitfalls and shortcomings common to drafting in the English language, while drafting the laws in Indian languages.

Though the ideal is to bring the language of the law as close to the language of the common man as possible, it is often easier said than done. While we are aware of the difficulties involved in this regard, we need to make a beginning somewhere and let it be now rather than later. Towards this end, we welcome the proposals made by Mr Mark Adler in his paper. Thank you.