Simplifying Legal Documents: Need of the times

1. Introduction

Simple, effective and clear communication is the need of the hour in the age of globalization and the speed of the digital age. All forms of written and spoken communication should be as clear and effective as possible in order to facilitate the domestic and international trade agreements and cross-border financial commitments.

Conventional lawyers might have kept the legal documents complex by choice. The reasons might be to create confusion or loopholes. Also, it is obvious that if legal documents are clear and to the point, further legal assistance could be limited. A general practice in almost all legal systems has developed over hundreds of years.

Not only in India, internationally also, lawyers show great affinity towards complicated language. I quote a well-known 'Nuts Order' as a case in point:

In the Nuts (underground) (other than ground nuts) Order, the expression nuts shall have reference to such nuts, other than ground nuts, as would but for this amending Order not qualify as nuts (underground) (other than ground nuts) by reason of their being nuts (underground).[1]

2. Principles of Plain Language Drafting

The need to make the law (including legal documents) more accessible and easier to understand applies to both written and spoken communication, and gives rise to the plain language movement. In essence, plain language refers to legal communication that is clear, understandable, accessible, and also user-friendly. When a legal document is in plain language, communication is improved, information is shared more effectively, and all the role players are better informed of what is expected of them. To ensure that legal documents are drafted in plain language - dedication, exceptional reading and writing skills and the application of various drafting techniques are required. Over the years the following common plain language principles have been identified[2]:

2.1 Structure of the Legal Document

It is imperative that before a legal document is drafted the author(s) should consider its most applicable structure. The final document should not appear unwieldy and cumbersome, and should be divided into chapters and parts. In other words, the overall design and layout should be user-friendly and attractive, including (where necessary) a comprehensive table of contents, an index and bibliography.

[1] F Viljoen and A Nienaber (eds) Plain Legal Language for a New Democracy (Protea Book House Pretoria 2001) 62
[2] Ibid 24 and 71-75

Chapters should have appropriate headings and subheadings, and clear and chronological numbering is required. Difficult or technical and foreign words should be used sparingly, and where used should be highlighted in italics with explanations in footnotes, schedules, or definition sections. The text should be well spaced and the font must be legible. To avoid confusion, all role players should be clearly identified and the entire document should be arranged carefully according to central theme and chronological requirements.

2.2 Structure within Chapters or Parts

Chapters and other related parts of a document should be subdivided further in order to ensure that their content is understandable and clear. The most important issues should be explained at the beginning and basic principles should be clarified before comprehensive detail is provided, progressing from known facts to new information.

2.3 Sentence Construction and Language

Some rules that help in simplifying the language:

1. Where possible, sentences and paragraphs should be kept short: the general rule is that one theme, one paragraph, and one sentence should be used to explain one concept.

2. Sentences should be in the active voice, and should be positive rather than negative or neutral.

3. Clear and simple language must be used, with the emphasis on clarity, recognizability, intelligibility and accuracy.

4. Unnecessary, difficult or overly technical words should be avoided where possible.

5. The final product should be gender-neutral.

6. Cross-references should be minimized, or at least be simplified.

7. The use of mandatory words such as 'must' is preferred, and 'shall' or 'can' should be avoided.

8. Unknown or foreign words or expressions should be used sparingly, and if possible, be excluded altogether.

9. Sentences should be as short as possible and the first or second person should be used rather than the third person.

10. Emphasis on the verb (rather than on the noun) in a sentence is to be encouraged.

3. Plain Language: The International Perspective

3.1 Plain Language in Australia

During 1990, a Centre for Plain Legal Language was established as a joint project between the Law Foundation of New South Wales and the law faculty of the University of Sydney. The aim of the Centre was to do research about (and to promote) the use of plain language in the drafting of legislation and other legal documents.[3] The Centre has made a huge contribution to the development of plain language in both the public and private domains.

3.2 Plain Language in the United Kingdom

In UK in 1980, a Plain Language Commission was set up to get involved in the promotion of plain language principles. More recently, it has become accepted practice for legal documents to be drafted (as far is possible) in plain language. Almost all legislatures, many practitioners, and even some judicial structures support the idea of plain legal language. Many lawyers, who in the past were criticized for drafting legal documents in verbose language and ambiguous legalese to generate litigation, have now adopted the plain language approach.[4]

3.2 Plain Language in the United States

In 1978, Document Design Project was launched with the aim to improve clear writing skills and to promote practical design criteria for the drafting of public documents. Since 1990, a strong drive towards plain language was initiated. A number of states have since adopted laws which require documents to be prepared in plain language.[5] Former president Bill Clinton gave specific executive directives to use plain language in the Federal Administration. According to two presidential executive orders (in 1993 and 1998 respectively), government documents had to be drafted in plain, simple, and understandable language.[6] These initiatives have since filtered through to some state administrations and private law firms.

4. Conclusion

Being an LPO, it becomes all the more imperative upon us to understand and follow the global practices. Even though, at the end of the day, an LPO will do only what its client will ask it to do, I strongly feel that the LPOs are today in a position to affect the legal policies worldwide.

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[3] Viljoen and Nienaber, n 8 at 32

[4] Viljoen and Nienaber, n 8 at 42-44. The authors mention that most English judges still do not actively encourage plain language and still write judgments in the same legalese as in the past

[5] See the New Jersey Plain Language Act of 1980.

[6] Viljoen and Nienaber, n 8 at 48.

Intellextra is privileged to be associated with UK law firms that advocate use of plain English. Here it is important to note that in practice, writing plain English requires more efforts than writing the English that has ingrained in our system through years of usage.

Quotes

"Writing in plain English is now an international movement. The author has emphasized the need of plain English in legal drafting for a long time now. Through this article, various projects launched by government or public authorities worldwide for propagating use of plain English in law have been discussed. In addition, the author has also explained the basic principles of plain English legal drafting."

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