

# THE PRUDENCE IN LEGISLATIVE SENTENCES: THE ESSENTIAL ROLE OF LEGISLATIVE EXPRESSION

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## Abstract

The National Conference of Commissioners on Uniform State Laws says: 'The essentials of good bill drafting are accuracy, brevity, clarity and simplicity. Choose words that are plain and commonly understood. Use language that conveys the intended meaning to every reader. Omit unnecessary words.' As the laws and statutes are government writings so it must be dignified. So, the style of legislation cannot be compromised at any cost and the use of every single word in the regulation must be properly analyzed as it might be interpreted differently by different person. Furthermore, the drafters of 21<sup>st</sup> century should not neglect the importance of subject, verbs and modifiers in drafting the legislation. Keeping this in mind, the author focuses on the usage of subject, verbs and modifiers with respect to the statutes, its importance in today's world. In addition to, author stresses on the importance of plain language in legislation and reviewed the two existing research work and stated some principles to make legislative drafting more effective. The research is based on doctrinal approach. As it focuses on the legislative expression, legislative sentences, statutes, legal concepts and principles.

Realistically, the idea of producing legal documents that everyone can understand on a single reading is unlikely, but not impossible. The law is the most important example of how words affect people's lives.

**Keywords:** simplicity, interpretation, plain language, drafting, legislation, clarity, statutes.

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**INTRODUCTION:**

Drafting of legislation is an art not a science. It is an art of expressing the ideas and views in a concise and clear language. Because it need some specialized skills, thorough knowledge of subject and careful attention to the single detail to draft a legislation.

*“The language of law must not be foreign to the ears of those who are to obey it.”- learned hand<sup>1</sup>*

Which means that language must be plain and simple in the legislation/Act so that people can comply with that. Language must not be convoluted or confusing, it should be clear and unambiguous. In English, it is good to use the jargon or vocabulary but can sometimes be misunderstood by some people, and failed to convey the intended meaning, but that has to be kept in mind while drafting a legislation that the sentence must not be misunderstood and must convey the same meaning as stated in the draft by avoiding jargon or vocabulary. It must be clear and precise.<sup>2</sup> The more usage of the English language in the modern world contributes more pitfalls in the drafting. Even the experts can sometimes be caught by them. As one judge said ". . . it is not enough to attain a degree of precision which a person reading in good faith can understand, but it is necessary to

attain if possible, to a degree of precision which a person reading in bad faith cannot misunderstand".<sup>3</sup>

Legislative expression includes the Subject, Verbs and modifiers. Although it seems to be an easy topic and we all have studied that in our school, i.e. the reason we ignore these small things and that creates huge trouble while drafting.

**LITERATURE REVIEW:****1. THE PLAIN LANGUAGE MOVEMENT AND MODERN LEGAL DRAFTING BY ANNA SOBOTA<sup>4</sup>**

Anna Sobota is a plain language activist which aims to build a common platform of basic principles which would serve as guidelines for those who draft official documents. The first person who started the fight for clear and simple official writing was Chrissie Maher, who actively took part in introducing plain language rules.

This study gives the viewpoint, thoughts and ideas of all the activists who were involved in this movement. This study also recommends for plain writing that what things to be keep in mind while writing a regulation like grammatical recommendation, structural and lexical recommendation. This study says that there must be reasonable behavior to save common sense &

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<sup>1</sup> Irving Dilliard, *The Spirit of Liberty* (Learned Hand, 1959)

<sup>2</sup> Cynthia Adams , *The Move Toward Using Plain Legal Language*, AMERICAN BAR ASSOCIATION [https://www.americanbar.org/groups/young\\_lawyers/publications/tyl/topics/writing/the\\_move\\_toward\\_using\\_plain\\_legal\\_language/](https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/writing/the_move_toward_using_plain_legal_language/)

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<sup>3</sup> Stephen J . *in In ré Castioni* , 1 Q.B . 147, 167(1891)

keep the balance between precision and plainness, providing the recipient with an efficient, coherent and accurate message. The plain language movement should be supported in its efforts to achieve clear texts deprived of archaic expressions such as, hereinafter or notwithstanding the foregoing, the modal verb shall or pronominal adverbs and wordiness to equip modern documents with more fresh and natural-sounding language, however, there is a thin line between ease and expertise which should not be crossed.

## 2. NOTHING PLAIN ABOUT PLAIN DRAFTING BY CARYN GOOTKIN<sup>5</sup>:

People have such belief that lawyers always use the technical words/ jargon, exaggerating things on their own, and making the sentences more complex which is beyond the knowledge or understanding of common people. As Reed Dickerson, professor of law at Indiana University said: „the price of clarity, of course, is that the clearer the document the more obvious its substantive deficiencies. For the lazy or dull, this price may be too high.<sup>6</sup>“ This article demonstrated how to use plain language to improve drafting. Do“s and don“ts while drafting

<sup>5</sup> Is Plain Legal Language the Future?, THE LAW BOUTIQUE (Dec 17, 2018)

<https://medium.com/@thelawboutiquelondon/is-plain-legal-language-the-future-a3e5513cf1c2>

<sup>6</sup> Caryn Gootkin, Nothing plain about plain drafting, SAFLII, (April 2013)

<http://www.saflii.org/za/journals/DEREBUS/2013/59.html>

a regulation. Lawyers used to draft an agreement that is not in simple or plain language despite the fact that their client wants to be communicated in an easy and simple language. Practitioners should change their way of writing so that it would be easy for the non-professional to understand it.

## USAGE OF SUBJECT, VERB AND MODIFIERS:

### SUBJECT:

The subject of any sentence is always a noun or the counterpart of a noun. In English, the subject is the person, place or a thing which is being discussed. In legislative drafting the subject is always a person on whom the duty is imposed or the doer of action. So, it will be fair to differentiate grammar in sentences from that of legal drafting. Any statutory provisions that influence more than one class of subject must specify the desirable relationship between those subjects. Legislative counsel try to avoid drafting a sentence that imposes different rules on different classes of subject. Sometimes situation may arise when the same rule must be applied to various subjects. Both “**and**” and “**or**” can be used to link the subjects in those situations:

- “**and**” shows that cases are joined or combined in some way (*conjunctive*);
- “**or**” shows that cases are in some way separated or alternatives (*disjunctive*).

Unluckily, both conjunctions are ambiguous:

- “**and**” can be joint or joint and several: a joint “and” is used to refer **both a and b**;
  - a joint and several “and” is used to refer to **both a and b or either of them**.
  - “**or**” can be inclusive or exclusive. an inclusive “or” is used to refer to **a or b or both** an exclusive “or” is used to refer to **a or b, but not both**.
- For example: under the section 2(1)(d) of Consumer Protection Act 2019-

In the definition of consumer

"Consumer" means any person who—

(i) buys any goods for a consideration which has been paid **or** promised **or** partly paid **and** partly promised, **or** under any system of deferred payment **and** includes any user of such goods other than the person<sup>7</sup>...

Due to maximum usage of “or” and “and” leads to ambiguity and might confuse the reader. So, this thing must be kept in mind while drafting instead of convoluting the sentence drafter can use the plain language.

Like in the above example the drafter can reframe it by:

“Buys any goods for a consideration which is either paid **or** promised to pay **or** under any system of deferred payment **and** includes any user of such goods other than the person.....”

The less the usage of “and” and “or” the more it will be easier for the reader to understand.

If a single adjective is used for the several subjects then it may be argued that does the single adjective applies to only to that subject which is nearest or does it apply to all the subject?

Example: An unemployed man or woman can apply for the new scheme of the government.

In the above example even if the modifier is attached with the noun, then also it can be said that it is apply to both. Until the context is clarified, this makes the sentence ambiguous and that must be simplified.

Accordingly, unless the context is clarified:

- If the adjective applies to all the subject then it is advised to repeat that adjective before each subject.
- If the adjective applies to only one subject then it is advised to reorder the subject due to which the subject with adjective comes last.

In first case this example can be written as follows,

- An unemployed man or unemployed woman can take the benefit of the scheme provided by the government.

If the adjective applies to one noun/subject only, it can be re-written as follows:

<sup>7</sup> Consumer Protection Act, 2019(CPA), Acts of Parliament, 2019 (India)

- A woman or an unemployed man can take the benefit of the scheme provided by the government.
- A woman, or a man who is unemployed, can take the benefit of the scheme provided by the government.
- If several adjectives are used for several subjects, it may be not clear whether those several adjectives are for only one subject or all of them.

For example: *Governmental and non-governmental* universities or hospitals must adhere to the new laws of the country. It can have three possible meanings, each of which can be expressed less ambiguously:

- All universities and hospitals that are both governmental and non-governmental;
- Hospitals, governmental universities and non-governmental universities;
- Every university or hospital that is either governmental or non-governmental.

In this type of situation:

- If a pair of adjectives is modifying the single noun/subject, check that the placement of the modifiers is correct and did not interpreted as modifying other nouns in the sentence; and if you want to modify other nouns, check that the placement of the modifier is such that it brings the same results that you wanted to.

- While choosing the placement of modifiers, use the same devices.

**Pronouns** These are the short way of repeating the subject that has already been used in the earlier part. Also, in longer sentences, it can help to avoid the irritating repetition of the same noun. So, there we can use pronouns like (he, she, it, they)

Example: under section 83 of Indian Penal Code-

83. Act of a child above seven and under twelve of immature understanding. --Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Here in this example, it is bit confusing that the usage of “his” pronoun at the end of the sentence is referring whom a child or a judge. So this type ambiguity might face by the readers.

However, legislative counsel avoid uses of pronouns for two main reasons:

- Pronouns increases ambiguity because of more than one noun present in the sentence it is confusing as to which noun they are referring to.
- Some pronouns are “gender specific” (“he” and “she”), and are not considered as suitable for those rules and laws which are

apply equally to men and women. Their it is advisable to use gender neutral pronouns.

Like under section 8 of Indian Penal Code, 1860 it is clearly mentioned that for any gender the pronoun “he” will be used.

*“Gender. -The pronoun "he" and its derivatives are used of any person, whether male or female”.*<sup>8</sup> So, to avoid such type of ambiguity every legislation drafter should mention clearly about pronouns they use in it.

Here are some points to keep in mind about pronoun usage:

- Avoid excessive use of pronouns and prefer gender-neutral pronouns (like it, they, them).

Eg: under section 153(b) of Indian Penal Code 1860

(b) asserts, counsels, advises, propagates or publishes that any class of persons by reason of their being members of any religious, racial, language or regional group or caste or community be denied, or deprived of their rights as citizens of India.

Here pronoun their (gender neutral) has been used to refer both men and women.

When using a pronoun:

- make sure that it refers explicitly to the correct noun;

<sup>8</sup> Indian Penal Code, 1860(IPC), Acts of Parliament, 1860

- There must be proper usage of pronoun singular pronoun for singular noun and plural pronoun for plural noun.
- According to the noun used in the earlier part of the sentence the usage of pronoun must be based on that.

The usage of pronoun with several subject or with single subject must be properly done. Because the single pronoun can confuse the reader that the pronoun is referring to whom in case of existence of several subject in the sentence.

#### **VERBS:**

A basic, but rarely discussed, aspect of legislative drafting is the tense and mood of verbs. One of the few texts that deals with this question is Legislative Drafting Conventions of the Uniform Law Conference of Canada, which says:

**24.** (1) “Verbs should appear in the present tense and indicative mood unless the context requires an exception”<sup>9</sup>.

The usage of present tense in legislation is specified in section 10 of the Interpretation Act, which says:

10. “The law shall be considered as always speaking, and where a matter or thing is expressed within the present, it shall be applied to the circumstances as they arise, so effect is also

<sup>9</sup> Subsection 24(1) legislative drafting conventions of the Uniform law conference of Canada

given to the enactment consistent with its true spirit, intent and meaning”<sup>10</sup>.

This rule reflects the view of somebody fascinated by how the legislation applies to them within the present. This view is preferred over the future (which would reflect the view of the legislator considering whether the legislation should be enacted) and therefore the past (which would reflect the view of a court applying the law to facts that have already occurred). Tenses reflecting these other viewpoints should only be utilized in subordinate clauses expressing actions that happen either before or after the action within the principal clause.

For eg: • A judge may make a probation order if the judge is satisfied that the accused will suits the terms of the order.

• A judge may issue a restraining order against someone who has harassed the person applying for the order.

Note that within the second example, the tense is that the present perfect tense, which is used to precise past action that will continue up until this. This tense is usually utilized in legislation due to its temporal range and therefore the consequent "indefiniteness which makes it an appropriate verbal expression for introducing a subject of discourse."<sup>11</sup>

<sup>10</sup> Interpretation Act 1889, Act of Parliament 1889(India)

<sup>11</sup> R. Quirk and S. Greenbaum, A University Grammar of English 43-44 (1973).

English uses certain verb forms as adjectives. They are used to modify a person or class of persons by describing actions being taken by them or in relation to them (for example, “a person **possessing**”; “a person **accused**”). These are known as **participles** (“possessing” is a present participle; “accused” is a past participle)<sup>12</sup>.

A past participle can be used both as an adjective and as part of a verb. For example, “an **accused** person” describes a characteristic of the person; “if a person is **accused**” indicates action against the person. In most circumstances the same word is used and there is no confusion as to whether a verb or adjective is intended. Unfortunately, that is not always the case.<sup>13</sup>

to avoid such kind of ambiguity, we are told to use present tense.

### **MODIFIERS:**

The modifier must be nearest to the noun, or verb to whom they modify. If not, then the meaning of the sentence might become vague or changes.

For example: section 156 of Indian penal code 1860

Liability of agent of owner or occupier for whose benefit riot is committed. —

<sup>12</sup> LED 027 legislative style, syntax and Expression, National Open University of Nigeria.

<sup>13</sup> *Id.* at 10

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.<sup>14</sup>

If we read this section properly, we might find that the usage of modifiers was done very appropriate. And due to that the readers can connect the noun with that of modifier to bring out the meaning out of it.

In case of any error:

- Replace the phrase with a *relative clause* (such as “who” or “which”).
- In some cases, add or change the words to make the sentence make sense.
- Use of active voice while changing the sentence.

Modifiers are of two types: Misplaced Modifier & Dangling modifier“

- Misplaced Modifiers

- A misplace modifier is a modifier which is being separated from the word it describes.

Eg: Being deranged, the employer asked his employee be admitted in the mental hospital.

In the legislative drafting you must be very careful about the usage of words. Less ambiguity will make the sentence easier to understand and will be easy to make it comprehensible.

Who Is deranged? The structure of this sentence suggests the employer is the one with mental problems. More likely, the employer is fine, but the writer has a placement problem.

The rather humorous confusion results because we logically attach the modifying phrase *being deranged* to the first noun we encounter. Here, it’s the employer rather than the employee. There are two fixes. First, move *deranged* closer to the employee than to the employer.

*The employer asked that his deranged employee be admitted to a mental hospital.*

A second possibility is to explain up front who is deranged. This fix requires repeating the reference to the employee, so the modifying phrase has a clear attachment point.

*Because his employee was deranged, the employer asked that his employee be admitted to a mental hospital.*

- Dangling Modifier

<sup>14</sup> Id. at 8

- A **dangling modifier** is a word or phrase that modifies a word which is not stated in the sentence.

For eg: *After completing the whole syllabus, the exam based on it will surely be easy.*

Again, we are left wondering exactly who completed the syllabus. The phrase can't possibly be modifying the exam. A subject must be added so the modifier has something to describe, change or limit. It can be re-written as:

*After completing the whole syllabus, Ana thought the exam based on it will surely be easy.*

Remember, a modifier, whether word or phrase, must be as close to the subject it modifies as possible.

#### **IMPORTANCE OF SIMPLE AND PLAIN LANGUAGE:**

- It will avoid ambiguity because the simpler the message, the better the chance people will understand the message easily.
- Save time for drafters as it will take less time to explain it to other people,
- There will be no vagueness and misunderstanding because of clear and precise language.
- In case of contractual agreements, parties agreeing to it need to understand what they are signing.

- Those lawyers who possess good drafting skills will automatically attract more clients, hence more profitability.

#### **TOOLS TO MAKE LEGISLATIVE DRAFTING MORE EFFECTIVE:**

**1. Write in the active voice.** Active voice eliminates ambiguity and confusion. And that makes the sentence clear and precise. Because passive voice makes the sentences lengthy and convoluted

Passive: A bill was drafted.

Active: Draftsman drafted a bill. Active sentences always focus on actors, but passive ones are incomplete without them.

**2. Omit useless and surplus words:** That only makes the sentences lengthy and ambiguous.

**3. Avoid double words with same meaning:** for example, until and unless, null and void.

**4. Use action verbs:** for example: performs an assessment can be written as assesses, conducts a review can be written as reviews etc.

**5. Use short sentences:** to make the sentence more comprehensible.

**6. Write the sentence in an order** like first the subject of the sentence will come, then verb will come and then the object of the sentence will come. Follow this chronology to avoid ambiguity.

**7. Use the present tense instead of past tense.**

**8. Always write in an optimistic manner.**

Always express your idea positively. Avoid the usage of several negatives in one sentence.

**9. Avoid use of exceptions in the drafting:**

instead of writing the regulation first and then stating its exception, directly write the regulation where it applicable without any exception.

**10. Use the singular noun rather than the plural noun.**

**11. Be consistent.** Don't use dissimilar words to signify the identical things, and vice-versa.

**12. Prefer simple words-** administration works must be simple, clear and precise. Because it belongs to every section of the society. So, it must not be very pompous or exaggerated.

**13. Use familiar concrete words.**

Administration text often concerns abstract subjects. But abstract words can be vague and have different interpretations. write the regulation in simple concrete words. For example: "tasked with" can be written as required to, "subsequent to" can be substituted with "after".

**14. Avoid gender-specific words.** Avoid the gender-specific language like "he" or "she" instead we can use gender-neutral words (they, Them, it etc)

**15. Write short sentences.** Readable sentences are **simple, active, precise, affirmative, and declarative.** The more a sentence diverge from this structure, the tougher the sentence is to comprehend and grasp it correctly.

**16. Use short paragraphs.** A drafter may improvise the clarity of a regulation by using short, and clear paragraphs. There must be cohesiveness in the paragraphs. Lengthy, complex, or technical writings should be presented in a sequence of paragraphs.

**17. While drafting make sure you use the punctuation marks and capitalization properly<sup>15</sup>.** These are some of the principles which we must focus on while drafting the regulation.

**LEGISLATION STYLE:**

➤ Legislative style depends on the nature of the legislation. Like if it is a general legislation, we will notice that the draft would be in the plain, simple and precise language. If it is a specific legislation then there is full liberty to use the technical jargon and their we must choose the words accordingly and that must be special technical language. Pattern or Style depends on the objective of the act, vision of the legislation and other existing policies or the type of legislation.

We can find different styles for different types of legislation:

Like if we go through Criminal Procedure Code 1973, Indian Contract Act 1872 etc they are the general legislation and it will be easy to read and

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<sup>15</sup> Drafting Legal Documents, *Principles of Clear Writing*, NATIONAL ARCHIVES(Aug. 15, 2016) <https://www.archives.gov/federal-register/write/legal-docs/clear-writing.html>

understand what is written even by the non-professional. There are some specific legislations like POCSO<sup>16</sup> Act, 2012 and Surrogacy Act 2020 we will find that their style of legislation is different from the other general legislation and there we have to carved out the exception.

Another example is of essential commodities Act 1955 where the too much discretion of legislation is allowed and again the style would be different from all the other legislation.

This is how a draftsman can draft the bill according to the nature or the type of the bill, he must be clear with the objectives, vision and existing policies of the bill. So this is not necessary to use the plain or simple language always it depends accordingly and can use the technical language too in the drafting of legislation.

#### **CONCLUSION:**

As I have mentioned earlier that drafting is an art not a science. An art to draft a bill in an organized manner, an art of clarity, an art to write in simple and plain language so that the followers can interpret it correctly.

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<sup>16</sup> Protection of Children from Sexual Offences (POCSO) Act, 2012.