

Explanatory Memorandum: A Way to Increase Legal Literacy in Pakistan

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A law or statute that is made for the people should be understandable to the people it governs. Whenever a new law is framed or any existing law is amended, it is the duty of the concerned institutions to explain the details or features of such entry to the people so that the people can lead their lives in accordance with the new framework. Any kind of miscommunication regarding the conveyance of any statute on account of the government or law enforcement institutions can prove to be critical to the stability of relationship between the government and the people. It can cause a magnitude of turmoil and anarchy in the state concerned.

The absence of explanatory memorandum creates a void of misinterpretation and misunderstanding between the government and the people. Even judges and judicial officers are often found overwhelmed by complex legal language and they often misinterpret the statutes. Advocates and solicitors are forced to intervene and bridge that gap. That gap is often misused and exploited by some people in the field to achieve judgments of their own interests. Crooks have been observed to reap the benefits of the disability our legal system has in shape of lack of understanding.

To obviate the chances of misunderstanding, many legal systems around the world have adopted the concept of explanatory memorandum. Explanatory memorandum is a document given along with every legislation, where the concerned minister or ministry explains the characteristics of the new legislation to the people in the most non-technical and mainstream words possible. Explanatory Memoranda can be a valuable tool in terms of understanding why a law was enacted, what it was designed to achieve, and what it actually means. In United Kingdom and Australia, with every legislation, the ministry of law releases a press release kind of a document that is aimed towards the common people and the purpose of which is to explain the effects and properties of the new statute. This helps the common people of the country to better understand the laws.

In United Kingdom, the explanatory memorandum consists of different headers relating to the different aspects of the statute concerned. It contains the purpose of the instrument, legislative context, policy background (which explains what is being done and why), impact of the instrument, contact (for further details), etc. More aspects are added according to the nature and need of the statute. Explanatory memoranda are also available in a PDF form in concerned parliamentary websites so that a common man can benefit from them.

Explanatory Memorandum sets out a brief statement of the purpose of a Statutory Instrument and provides information about its policy objective and policy implications. They aim to make the Statutory Instrument accessible and understandable to readers who are not legally qualified. In United Kingdom, it is in practice from June 2004 onwards to laid Statutory Instrument or Draft Statutory Instrument before Parliament from June 2004 onwards.

In Pakistan, a paragraph named Statement of objects and reasons is though given in the end of every instrument. But that paragraph extends to the maximum of 4-5 lines or 1-2 small paragraphs. Those few lines are often crawling with technical legal language and terminology that is not suitable for the understanding of a common man. It states the motive of the ministry regarding the introduction of

the instrument in an extremely abstract manner. The statement of objects and reasons does not prove to be sufficient for the needs of the people who intend to understand the statute.

Even in the commonwealth, the explanatory memorandum was not used from the beginning. The explanatory memorandum has been employed in every instrument in United Kingdom after June 2004. The idea of this memorandum rose from the lord Woolf's Access to justice report 1996. The report highlighted the encumbrances in the legal system of the United Kingdom and among the problems highlighted; the aspect of understanding was of high importance. According to a survey conducted in United Kingdom, 2 out of 3 people who had been involved in civil litigation were not satisfied by the legal procedure of the country. That survey led to the appointment of Lord Woolf's appointment by the Lord Chancellor for the investigation of the legal system.

Above discussion gives a lead that such an instrument is highly recommended and needed in Pakistan as many of our legal issues arise out of lack of understanding. Provision of explanatory memorandum will prove to be extremely helpful for the common people of Pakistan to understand the laws and also our judges and advocates to interpret them.

(The writers are associated with Manzil Pakistan (www.manizpakistan.org). Manzil Pakistan is a national non-profit think tank dedicated to developing and advocating public policy that contributes to the development of Pakistan. Under the recent initiatives, Manzil Pakistan is working on legal reforms for the improvement of old Statutes of Pakistan.)

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