

LEGISLATIVE DRAFTING MANUAL

A HAND BOOK FOR LEGISLATIVE DRAFTERS



**PAKISTAN INSTITUTE FOR
PARLIAMENTARY SERVICES**

DEDICATED TO PARLIAMENTARY EXCELLENCE



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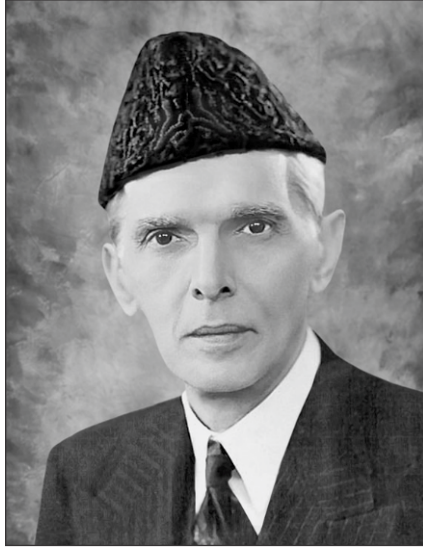
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January 2019

Quaid's Perspective on Legislative Drafting



When Bills arrived for him to sign, the Quaid-e-Azam, would go through them sentence by sentence. "Clumsy and badly worded," he would complain. He would tell his Secretary, "Split it up into more clauses!" "This should go back and be rewritten!" When the Secretary pleaded, "Sir, you will be holding up a useful piece of legislation," he would relent. But his vigilance did not weaken. "They can't hustle me," he would say, "I won't do it."

H. Bolitho (1948): Jinnah, Creator of Pakistan

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Foreword

Islamabad, Thursday, Jan 3, 2019

The Legislative Drafting Manual is an exciting guide for practioners engaged in drafting new legislative proposals or suggest improvements and amendments in the existing laws. This manual unravels the web of confusion and technical detail that surrounds legislative drafting and presents drafting in an easy-to-understand way. In so doing, legislative drafting is shown to be an intellectually engaging effort, which requires a holistic approach and intense deliberations. In short, this concise, user-friendly book seeks to clarify legislative drafting in more comprehensive way.

This book is designed to provide insights of key drafting skills to parliamentary and legislative drafters in National Parliament and Provincial assemblies as well as staffers working in law ministries and departments. It is equally pertinent to all who read or write legislation to better understand the basic techniques of legislative drafting and the important role that well written legislation plays in promoting the rule of law. To this end, this book may be used as a quick reference tool for Drafters to understand the pre-drafting essential requisites and modern drafting techniques.

The Pakistan Institute for Parliamentary Services (PIPS) always strives to contribute in enhancing the knowledge and capacity of parliamentary drafters to stream line the standards of drafting in all legislatures of the country. Since 2012, PIPS has published more than 45 books and manuals on broad range of Parliamentary issues including but not limited to Drafting and Assessing Legislation. The Institute has also conducted various training on Legislative Drafting for Parliamentarians and Parliamentary functionaries. The idea of this monograph emerged during a training that PIPS held in collaboration with Manzil Pakistan.

We are grateful to the Honourable Senator Farhatullah Babar for his kind review and generous appreciation to contextualize the publication from the perspective of the Parliament. We hope that the Legislative Drafting Manual authored by one of PIPS Adjunct faculty Mr. Sheikh Sarfraz Ahmed, Addl. Draftsman, Ministry of Law, Government of Pakistan, will prove to be an absorbing addition to the Institute's comprehensive professional curriculum devised over the period of its decade since creation in 2008 in addition to being a relevant and focused technical support to draft a coherent and technically sound Legislation.

We wish the Readers a happy and lasting reading experience; please do not hesitate to send any feedback at: legislation@pips.gov.pk

Zafarullah Khan
(Executive Director)

A PERSPECTIVE ON LEGISLATIVE DRAFTING

Ex-Senator Farhatullah Babar

As Senator for three terms I learnt that having an idea about a new legislation or an amendment legislation howsoever brilliant or essential is one thing but the ability to reduce that idea into draft legislation quite another.

The former is a function of politics, political acumen and political necessity. The latter is a function of professional competence of a legislative drafter in the various elements that go into drafting a law and of which the legislator himself may not even be aware, let alone having any expertise in it.

The two namely the legislator and the legislative draftsman have complimentary but distinctly separate and different roles to play in the legislative process. It is a grave folly for any legislator to assume that since he has a brilliant idea about a needed piece of legislation he is also competent enough to draft the appropriate legislation itself. A legislator must disabuse himself or herself of this erroneous notion.

Driven by a passion to see his ideas quickly translated in to an Act of Parliament Members of Parliament sometimes have little patience for the time taken by an expert draftsman in drafting legislation. This rush and impatience is a major cause of poorly drafted legislation resulting in lengthy and expensive litigation and drawing adverse comments from the legal fraternity and the public.

A legislator who wishes to bring in a new legislation may be unaware that a law on the subject already exists but has been forgotten due to it not been put to use for a long time. At one point of time I moved a Bill

prescribing unique punishments to those guilty of abrogating or suspending the Constitution and abetting in the crime under article 6 of the Constitution only to discover, much later, that legislation actually existed but had not been put to use.

It is also assumed that legislation moved by the government would have been drafted by expert draftsmen after careful deliberations over a period of time. Contrary to this assumption however even the government moved legislations have been prepared hurriedly without adequate thought that must go into it. The 25th Constitutional Amendment of FATA merger passed in May this year a few weeks ahead of the general elections illustrates this.

On Friday 18 May the National Security Committee, not the cabinet, first decided to merge FATA with the Khyber Pakhtunkhwa province. Within days on May 22 the cabinet endorsing the decision announced that a constitutional amendment bill will be prepared for this purpose.

The very next day a summary was moved by the Ministry of States and Frontier Regions through the Law Division to the Prime Minister."A Constitutional amendment to the effect has also been finalized", it stated among other things.

Amazingly the Constitutional Amendment Bill was not only prepared in just one day but on May 24, it indeed was tabled in the National Assembly. The National Assembly passed it with just one vote more than the required two third needed. Less than a week later the term of the National Assembly itself expired.

On May 25 the Senate also passed it with just two more votes than the required two third majority.

As it involved change in boundaries of KPK it was mandatory that the provincial Assembly also passed it. Two days later Sunday May 27, a

holiday, the KPK Assembly also passed it as its last act just a day before its five year term ended the next day. Finally the President assented to it on May 31.

Now as the time for putting into effect the Constitutional Amendment and the accompanying Regulation has come difficulties have surfaced and questions raised whether and how to implement it. A hurriedly prepared legislation threatens timely implementation of FATA reforms.

A crucial element of any legislation passed by the Parliament and accented to the Parliament is the subordinate legislation, namely the Rules and Regulations framed under the parent legislation.

My experience of the Parliament has shown how poorly informed the members of Parliament are about the need to look into the subordinate legislation to see whether these were actually framed in accordance with the letter and spirit of the law itself.

In almost all cases every legislation provides that Rules or the subordinate legislation under it will be framed by the government. However, Parliamentarians have seldom bothered to look into it primarily because of lack of emphasis and appreciation of what goes into legislative drafting, the Rules and Regulation being an integral, but less obvious, part of it. As a result the bureaucracy also is not forthcoming to place before the Parliament the Rules framed by it.

A member of the Defence Committee of the previous Senate asked for a copy of the Rules and Regulations framed under the National Command Authority Act 2010 to find out whether in delegating powers the law had been followed or not. For 18 months as long as the Senator remained on the Defence Committee he was not provided copy of the Rules. Such is the apathy of bureaucracy towards this crucial aspect largely because it has been ignored in the scheme of legislative drafting by the Parliament itself.

Mindful of the need to go into subordinate legislation, the previous Senate set up a separate Standing Committee on Delegated Legislation like any other Standing Committee of the Senate. The Rules and Regulations aspect of legislation have thus been given as a permanent structure in the scheme of legislative drafting process.

Practical drafting of legislation, including subordinate legislation, is a serious business that must be taken seriously. Ignoring it is ignoring the perils of a poorly or inadequately drafted piece of legislation, be it the principal legislation or subordinate legislation.

PIPS and its Executive Director Mr. Zafarullah Khan deserve to be complimented for appreciating the critical importance of practical legislative drafting and endeavoring to address the issues involved. Realization of an issue is the first critical step towards resolving it.

Members of Parliament owe a debt of gratitude to Sheikh Sarfraz Ahmed Legislative Draftsman in the Ministry of Law and Justice for putting together, in this publication, his lifelong experience in legislative drafting. A must read for any Parliamentarian who wishes to play a constructive and positive role in advancing the state and society through practical legislation

Farhatullah Babar

Former Senator, Senate of Pakistan
Former Member, PIPS Board of Governors

Islamabad, January 07, 2019

Author's Note

This handbook is not a conventional one and is quite different from the books and manuals written on legislative drafting. At the same time I do not claim it to be a full-fledged book on legislative drafting because it deals with practical experiences which I as a legislative draftsman have come across during my professional duty of drafting and vetting of legislative instruments. The handbook is not theoretical at all and can be appreciated by those who know that for swimming one has to jump in the pool; knowing rules of swimming is not everything.

2. This manuscript is the outcome of motivation gained from the talks at the Pakistan Institute for Parliamentary Services (PIPS) as a resource person where my main audience were officers of Provincial Assemblies, National Assembly and Senate in addition to few sessions with Members of the Parliament, the Honourable Speaker and Ministers of Gilgit-Baltistan Legislative Assembly. Hence scope of this study includes primarily two main legislative instruments i.e. Bills and Amendment Bills. Aspects of drafting an Ordinance and Presidential Orders have not been touched upon in this booklet because the officers of Assemblies and Senate are not engaged in drafting of Presidential Orders or Ordinances. Again drafting of subordinate legislation involves different parameters as compared to drafting of principal legislation, but these parameters of drafting subordinate or delegated legislation have not been dilated upon in this manuscript as the officers of Assemblies and Senate are not entrusted with the job of drafting of delegated legislation. It would always be the feedback, the criticism and the appreciation which I am going to get in response of this booklet that would provide me a fillip for expanding this booklet to include some special techniques and principles while drafting an Ordinance, Presidential Order and quite distinctive parameters for drafting delegated legislation and amending delegated legislation.

3. In learning the art and techniques of Legislative Drafting, I will always be indebted to two Draftsmen of the Government of Pakistan, Muhammad Azam Warraich and Malik Hakam Khan. I shall ever be grateful for the skill they have transferred to their junior colleagues. I have had the privilege of working under both of them who are my mentors as well. They have served in the Ministry of Law and Justice for decades and their retention in the Ministry of Law and Justice after retirement as legislative consultants is a blessing for us as well as the Government. At the same time I cannot skip to acknowledge PIPS because writing this maiden handbook was a gigantic task for me for which apart from prolific writing skills and command over legislative drafting techniques, some motivation was also required and this impetus was provided by PIPS who through their audience so much appreciated my lectures that I was immensely encouraged to write down this handbook. In this regard I am grateful to Executive Director, Pakistan Institute for Parliamentary Services, Mr. Zafarullah Khan, Director General, Ms. Samer Awais and Assistant Director Mr. Taj Muhammad.

4. Still I cannot absolutely rule out the benefit of this book for the officers of the Government in addition to the officers of the Assemblies and Senate. In fact, Ministry of Law and Justice floated the idea of Federal Legal Service before the Establishment Division on the lines of Indian Legal Service. This idea was floated over a decade ago and Establishment Division is pondering over it. The idea was that just like Deputy Financial Advisors and Assistant Financial Advisors deputed by Finance Division in each and every Division, there should be legislative drafters deputed in each and every Division under auspices of Law Division so that a legislative proposal initiated by a Division confines to legislative drafting principles and techniques and a legislative proposal which is unconstitutional or which cannot stand the test of judicial scrutiny is killed at its inception stage. Since the idea

has not been materialized as yet, therefore, the Section Officers and Deputy Secretaries of all the Divisions initially draft legislative proposals for principal legislation and subordinate legislation and forward it to Law Division for vetting or re-drafting. Hence this handbook will lend a hand to all those officers of the Government who initiate a drafting proposal in the form of a Bill or amend a Bill on behalf of their Division / Department / Organization, etc.

5. I am unable to conclude without referring to a very interesting episode that took place in one of the Standing Committees of Parliament where one of the members of the Committee was insisting on drafting a provision as per his wording and to be incorporated at a place suggested by him. On my reluctance to do that the honorable member got a bit annoyed and said that he was a Legislator and I was bound to obey his wording and the place of incorporation suggested by him. At this moment I very humbly submitted that Legislator and Legislative Drafter are two different fields; job of Legislator is to give policy and thought and job of legislative drafter is to translate that thought into suitable words incorporated / inserted at a suitable place after keeping in mind the pre-drafting elements and drafting techniques succinctly discussed in this handbook. By referring to this episode, I intend to convey to my readers that just as a legislative drafter is not a legislator; a legislator might not be acquainted with the art and techniques of legislative drafting.

6. I was overjoyed and this episode flashed across my mind when last year I was presented a short book titled “Practical Legislation” based on practical experiences and memoirs of Lord Thring, the first Head of Parliamentary Counsel Office London, presented to me by Ms. Madeleine Mackenzie, Parliamentary Counsel UK since 1990. In this book, the Author Lord Thring states that once a discussion took place in a meeting as to the arrangement of a Bill and it was the Irish

Disestablishment Bill. Lord Thring wished to put in one short clause at the very commencement – a sentence disestablishing the Irish Church. Mr Gladstone, the then Prime Minister disapproved and Lord Thring was about to accept his instructions to postpone the provision when Lord Granville intervened by saying:

“Had you not better pay attention to the draftsman's suggestions?”

Mr Gladstone gave way and the proposed clause appeared at the beginning of the Bill.

Sheikh Sarfraz Ahmed

Additional Draftsman

Ministry of Law & Justice

Islamabad, January 01, 2019

*This counsel's lament is from the Bill Drafting Manual of
the State of Oregon, USA.*

Counsel's Lament

I'm the Legislative Counsel,
I compose the sundry laws,
And of half the litigation
I'm supposedly the cause.
If I employ the kind of English
Which is hard to understand,
The members do not like it,
But the lawyers think it's grand.
I'm the Legislative Counsel,
And they tell me it's a fact,
That I often make a muddle
Of a simple little Act.
I'm a target for the crisis,
And they wish to see me fried
Oh, how nice to be a critic
Of a job you've never tried.

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**CHAPTER 1:
PRE-DRAFTING REQUISITES
OF A BILL**

PRE-DRAFTING REQUISITES OF A BILL

This stage is the soul of legislative drafting and provides a cemented base over which the whole superstructure is built up. For a legislator, a Bill has to be drafted on his thoughts and policy by a legislative drafter and legislator's thoughts have to attain the form of words in black and white in the form of a Bill and then it becomes his mission to get the Bill passed. Legislative drafting may be a child's play if the following enumerated elements are ignored while preparing a piece of legislation. Ignorance of these essentials will result into a mere piece of writing just as writing an essay or editorial in a newspaper which would not in my view be at all legislative drafting. This also explains the difference between a Government/Parliamentary Drafter and a Private Drafter of any consultancy service or an autonomous organization who has to obey his chain of command in reducing their thoughts and whims into words without caring for the pre-requisites enumerated below.

2. This Chapter would also clear misconception of those who assume that whenever a legislative drafter is asked to draft a Bill, he is supposed to start drafting at once by following the scheme of Bill i.e. long title, enacting formula, preamble, short title, definitions, enacting provisions and so on and so forth. Lord Thring who became the first Head of the Office of the Parliamentary Counsel in London and served at this post from 1869 till 1886 was well aware of this desire of a legislator and he summed up his wisdom in a very simple and terse manner by saying:

“A Bill is made to pass as razors are made to sell.”

3. This epithetical saying by Lord Thring paved my way for

expounding the pre-drafting requisites of a Bill which are enumerated as below:-

- (1) **The foremost is the Constitutionality of the Bill.** It is the duty of a legislative drafter to ensure that the contents of the Bill are not inconsistent or ultra vires the provisions of the Constitution. A drafter has to keep in his mind the fundamental rights enshrined in Constitution of Pakistan wherein Article 8 states that laws inconsistent with or in derogation of fundamental rights shall be void. Certain articles like Article 74 are also to be taken into account which is reproduced as below:

*“74. **Federal Government's consent required for financial measures.**— A Money Bill, or a Bill or amendment which if enacted and brought into operation would involve expenditure from the Federal Consolidated Fund or withdrawal from the Public Account of the Federation or affect the coinage or currency of Pakistan or the constitution or functions of the State Bank of Pakistan shall not be introduced or moved in Parliament except by or with the consent of the Federal Government”.*

A legislative drafter has to have a mastery over the legislative subjects provided in the Legislative List of the Constitution which would determine the legislative competence of Parliament or a Provincial Assembly to legislate upon a particular subject of legislation. Once there was a debate that Parliament can enact on the subjects provided in the principles of policy of the Constitution because to ensure observance of the principles of policy is the duty of State, therefore, Parliament has the legislative competence in those matters to legislate for whole of Pakistan. The definition of “State”

provided in Article 7 of the Constitution resolved the matter which includes inter alia not only Parliament but Provincial Assemblies as well and the demarcation of legislative competence of a Provincial Assembly and Parliament is provided in the Legislative List. So the determining factor is the Legislative List and not the fact that observance of principles of policy have to be ensured by State so should be legislated upon by Parliament for whole of Pakistan. Same misconception is regarding the Fundamental Rights enshrined in the Constitution that since State has to enforce these rights so on the contents of these rights, Parliament can legislate for the whole of Pakistan. The Constitution has to be construed like any other document by reading it as a whole and giving to every segment a meaning consistent with the other provisions of the Constitution.

- (2) **A legislative drafter has to have knowledge of the Pakistan Code** which contains all Pakistan Laws enacted by Parliament. The purpose of knowing Pakistan Code is to avoid preparing a Bill on the laws which already exist in Pakistan but because of their non-implementation, they wash out from the memory or remain in hibernation. At the same time, if such a Bill is not identical with the already existing law and only some of its provisions are in conflict with the already existing law; it results in impracticability of implementation and also leads to litigation in courts. Not only existing laws, but pending legislation is also to be kept in mind. Like the repealed Companies Ordinance, 1984 has been referred in a bundle of laws and at the time when Companies Act, 2017 was passed, it was drafter's duty to have it substituted for the expression of Companies Ordinance 1984 used in the Bills before Parliament. Furthermore, one should be very careful and not

overambitious for this type of substitution because there is many a slip between the cup and the lip. It is very dangerous to presume that Companies Bill, 2017 is likely to pass within no time so let's substitute the expression Companies Act 2017 for the expression Companies Ordinance 1984 in a Bill under discussion in Parliament. In addition to this, a legislative drafter must keep in mind an uncommenced legislation waiting for notification by the Government because notification can be issued any time to bring that law into force thus having an impact on a relevant Bill under discussion. Hence the contingency of a relevant uncommenced legislation shall also be kept in mind. A cardinal principle of legislative drafting is that statute shall be read as a whole and not in piecemeal but a legislative drafter has to go miles further to this principle to ensure that compendium of statutes when read as a whole must supplement and complement each other rather than being destructive, derogatory and disrespectful to each other. When a drafter is cognizant of the fact that a law already exists on a particular subject on which he is drafting a Bill, he can avoid unnecessary use of non obstante clauses and can suitably draft overriding provisions. The knowledge of legislative drafter of existing laws also rules out the possibility of friction among those agencies or authorities who have to implement the laws when same provisions in different laws have to be implemented by different agencies or authorities.

- (3) **General Clauses Act, 1897**, commonly known as Interpretation Act in world jurisdictions, is legislative drafter's dictionary. The command over the General Clauses Act saves a drafter from reproducing the provisions in a Bill which are already present in the General Clauses Act. Despite this, it has become a trend to write down the effects of repeal in a Bill

which is mere reproduction of General Clauses Act but the argument given is that it saves the reader from reverting to General Clauses Act for reading the effects of repeal. For instance, clause (a) of section 6 of the General Clause Act, 1897 puts a bar on the revival of repealed enactment if the enactment repealing is repealed itself. The distinctive judgments of the Lahore High Court and the Sindh High Court on the issue as to whether Industrial Relations Act, 1969 holds the field or Industrial Relations Ordinance, 2002, has revived after the repeal of Industrial Relations Act, 2008 on the 30th April, 2010 (the date of sunset clause given in the Act of 2008), was resolved by Supreme Court and before Supreme Court By Law Division on the basis of section 6 of General Clauses Act to conclude that the repeal of Industrial Relations Act, 2008 by sunset clause does not revive the Industrial Relations Ordinance, 2002, or the Industrial Relations Act, 1969.

- (4) **Updated knowledge of case law or judicial legislation** is very important for a legislative drafter who always has to keep in mind how his drafted provisions will be interpreted by Courts on the touchstone of judicial interpretations already given by them to various expressions and provisions. The judiciary has always claimed that it has the rights to interpret the provisions of Constitution even if it is a provision seeking to oust its own jurisdiction. A legislative drafter must take into consideration the ambiguities revealed by judicial decisions on similar provisions so that while drafting a Bill these ambiguities are removed. If certain expression has been interpreted by Courts and the drafter intends not to use that expression within the meaning interpreted by Courts then he should find its suitable alternative but not at the cost of clarity and the purpose desired to be achieved.

- (5) **Rules of Business, 1973 are Constitutional rules** and have to be adhered to for uniform, smooth and efficient working of the Government. The violation of these rules is a serious violation and ignorance of these rules on the part of legislative drafter is felt when an enactment comes in conflict with these Constitutional rules which leads to distinctive implementation of laws administered by different departments. In linkage of Rules of Business, 1973 with the drafting of a Bill, I refer to one common misconception about the Rules of Business of the Federal Government that whatever subject is present in Schedule-II to the Rules of Business, it is a Federal subject because Rules of Business are of Federal Government and further that since the subject is Federal so it can be legislated upon by Parliament for whole of Pakistan and Federal Government can propose legislation on it to the extent of whole of Pakistan. In this regard it is stated that it is a glaring misconception because legislative competence is determined by Federal Legislative List contained in Fourth Schedule to the Constitution of Pakistan and not by Rules of Business. Rules of Business, 1973 demarcates and divides subjects among different Divisions and whether legislation on those subjects would extent to Islamabad Capital Territory or whole of Pakistan, it can only be determined by the Legislative List of the Constitution.
- (6) **A legislative drafter has to have knowledge of International Conventions, Treaties, Protocols, Memorandums of Understanding, etc.** to which Pakistan is a signatory so that while drafting a provision nothing goes against the covenant which Pakistan has signed or ratified at the International level. Pakistan is a dualistic State where the International covenants are entered into by the

Government and thereafter they have to be translated into the domestic legislation by Acts of Parliament, therefore, a legislative drafter has to keep himself abreast of the International Conventions, Treaties, Protocols, Memorandums of Understanding, etc. to which Pakistan is a signatory.

- (7) **Principles of statutory interpretation** and legislative drafting are hand and glove with each other. A legislative drafter should have mastery over rules of statutory interpretation, the principles of statutory interpretation evolved through case law and the legal maxims understood and practised world over. His Bill after becoming an Act will be read by lawyers, students of law, court officers, consumers, stakeholders, a layman, judges of subordinate and superior judiciary, International Organizations, NGOs, analysts, media persons, etc. Thus he has to keep in mind that his legislative product will be read by different strata of society- from rudimentary level of law students to the level of legal stalwarts and all those whose job is to find loopholes and intentionally misunderstand and twist the law in their favour.

4. When all the above enumerated elements and requisites have been taken into account, only then a legislative drafter shall dare to commence the drafting of a Bill on a particular subject. However, some practical difficulties are faced by legislative drafters world over because my study of different books and manuals of legislative drafting written by authors of different jurisdictions shows that legislation all over the world is a hasty process and enough time is not given to a legislative drafter whether it be a Government Bill or a Private Member Bill.

**CHAPTER 2:
TECHNIQUES OF LEGISLATIVE
DRAFTING**

TECHNIQUES OF LEGISLATIVE DRAFTING

Writing a book or manual or manuscript on legislative drafting has never been an easy task because legislative drafting is a constantly evolving discipline and unlike mathematics the hard and fast rules fail to apply to legislative proposals due to situations and circumstances under which they are made. Say for instance, drafting in martial law regime or when Constitutional emergency is imposed or when a State has both the settled and unsettled or disputed territories or when a decision of superior judiciary has to be circumvented or when legislation is politically motivated without caring for the consequences or when Assembly is going to complete its term in near future and before its completion bulk of legislation has to be passed and so on.

2. Despite all this and knowing the fact that all Bills are distinct and require different approach, it is still possible to suggest the common practices. According to Driedger:

“It takes about ten years to train a competent Parliamentary Counsel. One can learn all the rules of swimming but that does not make one a swimmer, one has to get into the water. That is where the test is.”

3. When we speak of techniques of legislative drafting, particularly in Pakistan, where English is the official language but not native language, we often stress upon the right use of word, the right use of preposition, the right use of word liable to be confused (commonly known as pair of words), the strong expression of English language, avoidance of proverbial or idiomatic language, avoidance of colloquial or hackneyed expressions, and we tend to include the felicity

of expression and proficiency of English language in the techniques of legislative drafting thus basing our legislative drafting techniques by mainly emphasizing upon coherence, brevity, syntax, etc. I take a strong exception to it and cannot convince myself that these ingredients do form part of legislative drafting techniques. Legislative drafting is the finest piece of composition and it is only possible when you have command over the English language if drafting in English. A legislative drafter with poor English would always divert his attention in taking English language lessons for drafting a piece of legislation and at the end of the day if he succeeds in improving his English, his piece of legislation will be a good English essay rather than a good Bill. Let alone English composition, even experts of conveyancing, pleading, commercial contract drafters ought not claim that they could draft a good Bill. To me, command over English language is the first step to be achieved by a legislative drafter before plunging into the depth of legislative drafting techniques. With this prelude, I start jotting down the points which will be of immense help to a legislative drafter in drafting of a Bill and a Bill for amending an existing law:-

- (1) A legislative drafter must be able to conversate with the past, present and future. He shall always keep in mind that whatever he is drafting will have effect on the existing legislation in the form of Bills and when his Bill is passed whether it will replace and repeal an existing Act of the past in totality or to the extent of certain provisions. Furthermore, one day his Bill/Act will have to be amended in future for which he will be requiring suitable references for the provisions, Tables, Forms, Schedules, etc to be amended.
- (2) The long title of the Bill used to be a simple one but after the Constitution (Eighteenth Amendment) Act, 2010, for devolved laws, the long title of amending Bills has been used

to include the phrase “in its application to Islamabad Capital Territory”. This is because there is generally no extent clause in the amending Bill and rightly so because the extent of amendment is the same as the extent of the principal Act. After Eighteenth Amendment since many laws have been devolved which before that extended to whole of Pakistan but now extend to ICT, therefore, the extent of amendment is written in the long title. Sometimes it is deliberately not written because the question of a certain law is pending in the court as to whether it is a devolved law or not. In this case it is not written so that it can be accordingly construed after the decision of the court and till the decision status quo is maintained.

- (3) Extent clause may be subject wise or territorial. For instance, it may say that this Act extends to whole of Pakistan or it may say that this Act applies to all civil servants of Federal Government, wherever they may be. The subject wise extent is given when the subject is Provincial but cannot be confined to Islamabad Capital Territory because the subjects for which the law is being made are scattered all over the country in the form of individuals or offices or departments.
- (4) If the extent clause is subject wise there may not be any need of application clause because on whom the law is applicable, they have already been indicated as subjects of extent.
- (5) Very few instances are available in Pakistan where in the extent clause it has been written that this Act extends to the whole of Pakistan including Federally Administered Tribal Areas (FATA). A long reasoning of writing FATA or not in the

extent clause, I would have discussed here but it will be of no use now because FATA stands merged in the mainstream through the Constitution (Twenty-Fifth Amendment) Act, 2018 (XXXVII of 2018).

- (6) The issue of FATA stands resolved but there may be a question whether or not it could be written that this Act extends to Pakistan including Azad Jammu Kashmir (AJK) and Gilgit Baltistan (GB). The answer is that both AJK and GB have their own supreme law under which laws are enacted there or the laws of Pakistan are adapted by them. Since their laws are not enacted or adapted by Parliament, therefore, the extent clause cannot include AJK or GB in it.
- (7) In legislative drafting parlance, the headings of sections are called marginal notes so it is appropriate to use the same expression. If section 1 of the Act i.e. commencement clause uses the marginal note “Short title, extent, commencement and application” then the sub-sections of section 1 should follow the same sequence, that is to say, sub-section (1) giving title, sub-section (2) giving extent, sub-section (3) giving commencement and sub-section (4) giving application.
- (8) Very often the commencement is at once or immediate but sometimes it states that this Act shall come into force on such date as the Federal Government may specify in this behalf and different dates may be appointed for coming into force of different provisions of this Act. Hence the commencement of Act is contingent upon the notification. Such notification once issued cannot be withdrawn because Act has come into force and withdrawal of notification would

amount to repeal of the law and repeal is the prerogative of Parliament.

- (9) In case of drafting a new law, the number in Roman to be given to that law is unknown till the time it is passed by both Houses of Parliament and in case of a money Bill till passed by National Assembly. Hence the space for number is left and is filled in by the Secretariat of Parliament which last passes the Bill. Their omission to do so can be made good by the Government at the time of obtaining assent of the President. In case no number has been inadvertently allotted at the time of sending to President for assent then after the assent, at the time of its publication in the official Gazette, number must be entered. It is useless to give number when the Bill is being made because too many Bills are introduced in Parliament and one never knows that which Bill will be passed first. It often happens in Constitutional amendments that on Government side, the number of amendments is different from the number of amendments going on in the Parliament and later when an amendment is passed, the number allotted to it is different from both the numbers running in Government and Parliament.
- (10) While amending an Act, the Roman number of the Act to be amended is essential to write in the short title. For instance, in case of Contempt of Court Ordinance 2003 (IV of 2003) and Contempt of Court Ordinance 2003 (V of 2003), the apex Court had to decide through judgment that which of the two Acts is a valid Act in the light of Article 270 AA of the Constitution.

- (11) When an Act say Endowments Act, 1890 is amended through a Bill for the first time in a year, it is sufficient to be called it as Endowments (Amendment) Act, 2018, but if in the same year it is amended again then the second amendment would read as Endowments (Second Amendment) Act, 2018. If both amendments are passed in year 2018 then same nomenclature shall continue but if first amendment is passed in 2018 and second amendment is not passed till the time year 2019 comes then it shall not be called as Second Amendment and it will be named as Endowments (Amendment) Act, 2019 because the first amendment and the second amendment have two different years to make them distinct from each other.
- (12) Repetition of the same word is not weak expression in law because change in language means change in intention. Unlike an English composition, where lack of vocabulary and use of same words is a negative point, same is not the case in legislative drafting. The terms “attach, confiscate, impound, freeze, seize, forfeit, etc” may be synonymously used in English language to show the strength of vocabulary but in legal parlance they would carry different meanings assigned to them by internal and external sources of law.
- (13) Remembering dates of enactments including Constitutional enactments, emergency periods, martial law periods is very important. In addition to this, knowing the sunset dates of a few laws having such dates is also important. When say some Presidential Order was issued for a particular law, it is not necessary that it is amended by Presidential Order because it was to be made by Parliament but at that time Constitution was suspended or held in abeyance. Now when Parliament

exists and the subject is borne on legislative list of Constitution, that Order will have to be amended as an Act of Parliament.

- (14) Technique of amending a single law and two or more laws is different. In the former case, each clause of the amending Bill speaks of a distinct amendment of that single law but in the latter case, the title of laws to be amended form clauses of amending Bill and the sections of those laws to be amended are enlisted as sub-clauses of the respective clauses of the amending Bill. For instance, Finance Bill of a financial year.
- (15) It is a common blunder that while substitution a section, the marginal note of that section is not amended. Sometimes, an amendment to a section also requires amendment in its marginal note.
- (16) The provisions of Constitution and Presidential Orders are called articles whereas provisions of Acts and Ordinances are called as sections. However, if any Presidential Order calls its provisions as paragraphs then while amending that Order through a Bill, the provisions shall be referred to as paragraphs and not articles and also in the substituted provisions, the term paragraph shall be used otherwise when the Amendment Act gets incorporated in the principal Order, it would erroneously contain two nomenclatures , that is, both paragraphs and articles.
- (17) Sometimes a principal Bill, later becoming an Act, pairs itself up with an existing Act and almost every provision speaks of the existing Act. In this case, the existing Act shall be defined in definition clause with its full title and then in

the body of the Bill, the distinction between the two will be made as “the Act” and “this Act”. This hairline difference shall be carefully carried along throughout the Bill. “the Act” would mean the Act so defined and “this Act” would mean the Act being enacted. For instance, while drafting law on futures trading, one might have to repeatedly refer to the Companies law.

- (18) In an amending Bill, again the terms “the Act” and “this Act” may be frequently used but in an absolutely different connotation than is discussed in the preceding paragraph. Many a times, to amend an Act is difficult than to draft a new law. It is probably because it is difficult to run the electricity wires, gas and drainage pipes in a house if they were not initially catered for various reasons when the house was built for the first time or else it is always easier to buy a new sofa set than to replace foam in the existing one. These colloquial examples I have deliberately given to tell my readers that a legislative drafter has to be a keen social observer. While drafting an amending Bill, immense care shall be taken in using the terms 'the Act' and 'this Act'. It is very confusing and painstaking for a beginner to get accustomed to the difference between the two. Amending legislation contains both substantive provisions as well as amending provisions. For substantive provisions which would remain in the amending Act, the expression “this Act” will be used and the expression “the Act” will be used while referring to the Act which is being amended and for this reason the term “Act” is defined while drafting an amending Bill. The provisions which have to be incorporated in the principal Act will use the term “this Act” only when the purpose is to refer to the principal Act and if the purpose is otherwise then the title of

the amending Act will be used in place of the term “this Act”.

- (19) Referential legislation, as far as possible, shall be avoided. It is not fair to expect from a reader that he takes the pain of finding the copy of Acts referred to in a Bill for reading certain definitions or provisions which could easily have been reproduced in the Bill. There may be exceptions for long provision like definition of “public servant” in Pakistan Penal Code which is a lengthy one. When legislation is done by reference, one has to keep a record of such and when the referred legislation is amended sometimes in future, the legislation referring to it is also required to be amended which is a cumbersome process.
- (20) While amending an Act, the consequences of the amendments on the Act shall be kept in view. Sometimes, a provision which is the soul of the law and prevailing over the whole law is omitted by a legislative drafter. For instance, if the provision of making scheme (a special nomenclature used for a legislative instrument of delegated legislation) for dockworkers is omitted from a social welfare law, it would render the whole law meaningless no matter there would be hundred other sections left in the law.
- (21) Bringing consistency in the provisions of a Bill is necessary. Same goes for uniformity in the use of words, case, etc. A Bill or an Act is a woven fabric and the knit of the law should not be loose from any point so as to make it clumsy or unintelligible.
- (22) Overriding courts judgments and ousting court's jurisdiction are two different types of provisions. The

judgments of courts may be overridden where necessary by a non obstante provision, which may again come under judicial scrutiny. The jurisdiction of court even if ousted will not have much effect as writs will be entertained or superior judiciary will declare it as unconstitutional. Whatever the case may be, both the overriding and ouster provisions shall be sparingly used to make the law court friendly rather than one raising confrontations.

- (23) A legislative drafter shall not leave room for arbitrariness or discretion in his Bill. The discretion should be a structured one. If rules are to be made by the Government for efficient working or enforcement of the provisions of a law then that rule making power may be stipulated with a period of one year or so to state that the rules shall be made within one year of the date of commencement of this Act.
- (24) If the descriptive or controlling sentence is followed by a number of clauses and after the last clause it is intended to add a proviso, the basic question of the reader would be whether the proviso stands for all the clauses or only the last clause. In this case, the correct use of punctuation is very important. If the proviso is intended to go only with the last clause then a colon shall be added at the end of the last clause and if the proviso is intended to be read with all the clauses then the last clause shall bear comma at the end.
- (25) Brackets shall not be used in a Bill unless extremely inevitable. Instead of brackets, commas shall be used. Brackets disturb the flow of reading a provision and also something written in brackets is deemed to have come out of the context and may be regarded as not substantial. By

brackets I do not mean the brackets used in the title of the law or used for roman numbers of the law.

- (26) It is a misconception that since law likes commas so commas shall be lavishly used in a law. Commas shall be used wherever necessary and the basic principle shall be kept in mind that the part of a sentence before the first comma should find a fluent connectivity with the part of the sentence after the second comma.
- (27) These days legislative drafting demands gender-neutral terms like Chairperson for Chairman, etc. The manuals of legislative drafting on a lighter note very interestingly state that even if it is taken care of, the allegation would be that while using the pronouns “he/she”, 'he' still precedes 'she'. The designations should be gender-neutral and in a provision instead of using the pronoun 'he' for a designation, the gender-neutral designation shall be repeated. For instance, while referring to “Director General” which is a neutral term, one destroys it later by using the pronoun 'he' or 'him'. “The Director General shall pass an order and in case of violation he shall impose penalty”. This provision if read without “he” makes an equally good sense.
- (28) Always avoid saying “in the provision or section below or above” or “in the proceeding or preceding provision or section”. The proper method is referring to the section by its number because in future if the section below or above is omitted or substituted, the purpose will be defeated.
- (29) When the term “prescribed” has been defined in the definition clause of a law to mean as prescribed by rules or

regulations then it shall be carefully used in the body of the law because wherever it will be used, the implementing agency will have to make rules or regulations though the rules or regulations making may not be possible or required for that purpose. Hence where necessary, the synonyms of “prescribed” as “determined” or “specified” may be used to emancipate oneself from the clutches of making rules or regulations in a case where only an office memorandum or circular or executive order may be sufficient.

- (30) While drafting the removal of difficulty clause, in my personal opinion, the powers shall not be vested in the Federal Government or Provincial Government, as the case may be. This power shall be vested in the President or Governor, as the case may be. The reason is that although it is also a form of enabling provision containing delegation but is different from enabling provisions of delegated legislation where the subordinate legislation making powers are given to the Federal or Provincial Governments. Since it is a dangerous delegation therefore closed period of one or two years should also be mentioned in it. This provision shall be very carefully and sparingly used by a body other than the Federal Government or Provincial Government. In other words, this provision will be invoked by the Government when the matter cannot be resolved through delegated legislation, therefore, a separate body should have this power to ensure that the Government is not overstepping or transgressing from its mandate of delegated legislation. Hence removal of difficulty clause power should vest in the President or Governor, as the case may be.
- (31) If section 10 refers to section 25 for excluding or including

certain conditions or for giving exceptions or granting exceptions then section 25 should also refer to section 10 so that the readers reading section 10 or section 25 in isolation have a clear understanding of the co-relation of the two sections.

- (32) If an amendment is to be incorporated in an existing law and that amendment is intended to run through the whole law then it shall be made as definition and also be included in the body of law at suitable places. Inclusion in any one section would mean exclusion for the purposes of other sections. For instance, if ample rights are to be given to a transgender under Pakistan Penal Code then the inclusion of the term “transgender” in the section of acid throwing would wrongly confine transgender's rights to that provision.
- (33) Sometimes for a small amendment, the whole provision is substituted instead of amending that provision. This thing has its benefits as well as problems. The benefit is that one at once grasps the substituted provision without referring to the text of provision desired to be substituted. The problem is that sometimes it raises hue and cry because the provision is sensitive and people assume that the provision is being substituted for certain ulterior motives. It all depends upon the nature of provision and the sensitivity and utility of the law in which that provision is present but generally the amendments shall be made in long provisions and if provision is small and number of amendments are more than two then it shall be wholly substituted.
- (34) All clauses following a preposition should be compatible with that preposition. When there is a list of items or sub-

clauses, all those items and sub-clauses shall be compatible with opening/descriptive/main sentence. For instance,

“A swimmer must wear the swimming costume at the time of,-

- (i) entering the pool area;
- (ii) waiting for his turn for shower; and
- (iii) queuing up for a high jump in the pool.

Here we see that the first word of each clause goes accurately with the preposition “of” at the end of opening sentence.

- (35) While amending an Act, certain provisions are to be substituted, added, inserted or omitted, but the words “inserted” and “added” are often confused while giving the command in an amending Bill. The golden rule is that if something is sandwiched in the same genre then it would be inserted and if genre is not same then added. For instance, if one more sub-section is added after the last sub-section then it would be added because after last sub-section, new section starts hence the genre changes.
- (36) While amending a law, if a certain provision is amended to add e.g. a sub-clause (iii) and in the next command if this sub-clause (iii) is to be referred, only then use the phrase “added as aforesaid”. This phrase is often unnecessarily used even by expert drafters. The purpose of this phrase is to tell the reader that for the instant amendment, he shall take into consideration the development that has taken place in the same Bill.

- (37) If in a section containing proviso, only the segment governing the proviso is to be substituted then the colon at the end may determine the fate of the proviso. Say if full stop is added at the end instead of colon, it will be an indication that the proviso stands omitted and if colon remains there then it is an indication that the proviso would remain there. In order to weed out the possibility of any controversy arising out of it, the proviso may be re-written or reproduced in the substituted provision if the intention is of retaining the proviso of a section.
- (38) Foreign language words are to be written in italics. By foreign language words I mean to say that if the Bill is being drafted in English then the words not of English language used in the Bill will be termed as foreign language words and their font in italics will indicate such. This is done with the purpose of telling the reader that in case of true, ordinary or literal meanings of these words, recourse shall be had to that foreign language in which they are being used.
- (39) Non obstante clause should be sparingly used. The clauses starting with 'Notwithstanding' are called non obstante clauses. Instead of repeatedly using this clause in a Bill, the provisions shall be harmonized without its use. Since the Bills are often made in haste which results in excessive use of "Notwithstanding" because its avoidance requires harmonization which is time consuming.
- (40) When a provision is struck down by Court, it remains part of the statute but is ineffective hence not enforceable. A legislative drafter must keep this fact in mind while drafting an amending Bill.

- (41) Sometimes it is declared by superior judiciary that the amendments in a statute could not have been brought about as a money Bill hence all such amendments shall be placed before Parliament for passage by both the Houses. This involves a peculiar drafting where a provision is substituted with the verbatim provision to be passed again by both Houses of Parliament. Someone from the Committee or in the House may ask what is the use of substitution when substituting with verbatim of the clause? The drafter should know the answer to it that when declared ultra vires, the provision is not effaced from the statute book; it is rendered ineffective though.
- (42) Whenever drafting a Bill, always keep in mind the fate of existing employees, existing Chairman, Director-General, Members, etc. and when their qualifications are changed, the remaining period of their tenure, etc.
- (43) Section 24 of the General Clauses Act protects the existing subordinate legislation under the repealed Act if the existing subordinate legislation is not inconsistent with the provisions of the Act re-enacted. It is for this reason that sometimes the Act is of the year 2018 but its rules or regulations are of year 2010.
- (44) If a particular section (say 10) is omitted at some point of time and later it has to be restored verbatim, it can be numbered as section 10 again but if not restored verbatim then numbering it as section 10 may have serious legal consequences because it may have been used at other places in the law or its reference may be present in certain other laws. Even if it is restored verbatim, it is always safe not to

number it as section 10 because it may mislead the reader as regards the cut-off date of transition. So it is always safe to insert it as section 10A.

- (45) Difference between rules and regulations is to be kept in mind while drafting a Bill. The distinction between the two expressions can only be made on case to case basis as per the language used in various Acts and Ordinances containing provisions of making rules and regulations. This viewpoint is supported by the definition of 'rule' contained in the General Clauses Act, 1897, reproduced below:-

'rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a regulation made as a rule under any enactment".

- (46) Whenever in a statute both the 'rules making' and 'regulations making' powers are given then the distinction and similarity between the two is on the following grounds:-
- (i) The rule making authority is different from the regulation making authority;
 - (ii) The rules are made for the external working of the organization and regulations are made for the internal working of the organization and for this reason the rule making authority is superior to the regulation making authority;
 - (iii) Owing to the distinction made in clauses (i) and (ii) above, always regulations are made on service matters and not rules because service matters of employees pertain to the internal working of the organization.
 - (iv) Both the rules and regulations are issued under some

- enabling power conferred under a statute hence both 'Rules' and 'Regulations' are statutory instruments.
- (v) Rules will be superior to regulations when the Act is silent on this point or expressly states that regulations shall not be inconsistent with the rules.
 - (vi) If an Act contains only rule making power then for all purposes of the Act, whether external or internal, rules shall be made.
 - (vii) If an Act contains only regulation making power then for all purposes of the Act, whether external or internal, regulations shall be made.
- (47) It is said that the mission with which a legislative drafter ought to work is to minimize litigation. On lighter note it is also said that the drafters' faults are just the things that keeps the courts in work. Drafting a Bill with the mission to minimize the possibility of any future litigation arising out of the interpretation of any provision will definitely lead to quality draft.
- (48) There is concept of “previous publication” in General Clauses Act, 1897. The concept is based on the point that whenever on an important legislative issue public opinion is required then the draft of subordinate legislation will be published in the official gazette as previous publication to elicit public opinion. This provision of previous publication if not present in the law, cannot be invoked. Hence at the time of drafting of law it has to be decided as to whether the provision of previous publication has to be incorporated in the enabling provision of delegated legislation or not. Caring for consequential amendments is very important. If a section is repealed then the Schedule which is governed by

that section also requires to be repealed. If that section is amended then Schedule may also require amendments.

- (49) The case and structure of the word has to be mentioned verbatim while referring to it as a reference for omission or substitution, etc. For instance, if the words “TAX RETURN” appear in this capital case then they shall not be referred to as “tax returns”.
- (50) Sometimes a word say “authority” is present in a provision twice but with different cases i.e. “Authority” and “authority”. In this case when this word is referred to for omission or substitution then it shall be made as case sensitive and also there is no need of writing, occurring for the first time, or occurring for the second time, etc. The difference in case is enough to draw a distinction.
- (51) A legislative drafter, being meticulous, names every word, comma, brackets, symbols separately while omitting or substituting the contents of a provision. This is ideal but for complex contents and when time is too short, the term “expression” for the whole content may be used.
- (52) Never interfere with “full stop” at the end. If certain words before the full stop are to be substituted then just substitute those words. The full stop will remain at its place to serve its purpose after the words so substituted. In case proviso is to be added thereafter then, of course, the full stop will also be have to be substituted for a colon.
- (53) When an Ordinance is laid in the form of a Bill, the carefree substitution of the expression “this Ordinance” or “the

Ordinance” with “this Act” or “the Act” may sometimes lead to glaring consequences.

- (54) If a section contains a proviso or an explanation and the body of the provision is intended to be amended then unless the proviso or explanation are categorically referred to, they will not be amended.
- (55) Whenever any sub-division of a provision is to be referred to, it shall always be referred to in expanded form. Say never write section 27(3)(a), but write clause (a) of sub-section (3) of section 27. This formal way may be exempted in Schedules, Forms, etc.
- (56) The symbols and numerical shall be avoided in the body of the law. For instance, instead of '%' write 'percentage', instead of '10' write 'ten', instead of '3rd' write 'third'. This formal way of writing may be exempted in Tables, Schedules, etc.
- (57) If a section is to be substituted as a whole then it will be substituted along with its provisos and explanations.
- (58) While amending a particular expression or word in a provision, it is important to know the number of times that expression or word is occurring in that provision. In case, all such expressions or words are not intended to be amended then their identification shall be made as “occurring for the first time”, or “occurring for the second time”, or “occurring at the end”, if the provision is too long for the reader to take him time to reach at the end.

- (59) If the expression to be amended in a provision is intended to be amended throughout the provision then if it is occurring two times, use the term “occurring twice”; if occurring three times, use the term “occurring thrice”; and if occurring more than three times, use the term “wherever occurring”.
- (60) If a certain law to be amended contains Parts, Chapters, sub-Chapters, etc and certain provision of that law is intended to be amended then directly refer to the section purported to be amended because every section is distinct from the other by its number. Reference to Part or Chapter is immaterial.
- (61) The positive tone or negative tone of a law depends upon the nature of the provision and the consequences of its violation provided in the law. For instance, “dogs shall be dropped while entering the bus” and “don't bring dogs along in the bus” have different tones.
- (62) If any clause is to be added before clause (a) in an Act then re-lettering the existing clause as clause (aa) will give reader the impression that it was inserted sometimes later not knowing that the actual situation is reverse of it. In this case it may be wise to re-letter all the clauses or compromise on the principle of lexical/dictionary order and insert the clause as clause (aa) even if according to dictionary it has to precede the existing clause (a).
- (63) In making a reference to an existing Table, use the expression “tabular form” if heading of 'Table' is missing. Same goes for columns of the Table. If columns are missing then they shall be referred to as first, second column, etc. but

if they are numbered as (1), (2), (3), then use the expression “in column (1)”, in column (2), etc.

- (64) In definition clause, the phrase “unless the context otherwise requires” is not redundant and has great value when the words defined are intended to be used in a different meaning than is expressed in the definition clause. Sometimes instead of “means”, it is written “means and includes”. The word 'includes' broadens the restrictive meaning put forward by the word “means”.
- (65) Sequence of terms given in the definition clause should be in the order in which they would appear in the dictionary for the convenience of the reader.
- (66) Case of terms used in definition clause is important. The terms should carry the same case in which they appear in the body of the draft Bill.
- (67) It doesn't matter whether the naming of clauses is alphabetical or numerical but if more than 26 in number or close to 26 then numbering should be numerical as (i), (ii), (iii), otherwise (a), (b), (c) may be used.
- (68) The terms defined should also appear in the body of the draft Bill otherwise they will be standing in isolation and will likely to become substantive provisions and will trigger a debate that substantive provisions cannot be part of definitions.
- (69) Acronyms occurring in the definition clause should be written in their full form and then the acronyms in bracket.

For instance, “Pakistan International Airlines (PIA)” means xyz

- (70) If a word say “transform” has to be defined and in the body of the law , the word “transform” has been used as transformatory, transformation, transformed, transforming, etc then instead of defining all these separately, in the definition clause write:
[“transform” with all its cognate expressions or derivatives means such and such.]
- (71) Some drafters define the term “section” to mean as “section of this Act”. This definition is absolutely unnecessary because it is settled principle of legislative drafting technique that section 20 say would always mean section 20 of the Act in which it is present.
- (72) A sub-section of a section referring to another sub-section of the same section shall only refer to the sub-section instead of saying e.g. sub-section (3) of section 20.
- (73) While amending an Act, an umbrella amending provision should be avoided. Even if same word is used in different sections then those different sections shall be separately amended rather than amending by an omnibus provision.
- (74) In principal legislation, the term “repeal” shall be used. Sometimes a drafter uses the term rescission or rescinded which is appropriate for subordinate or delegated legislation.
- (75) The repeal clause has to be carefully drafted and if the

subject of law has become Provincial after the Eighteenth amendment, the repeal clause shall categorically state that the xyz Act shall be repealed to the extent of ICT or the respective Province whose Assembly is drafting the Bill.

- (76) Sometimes saving clauses have to state something different from the savings provided in the General Clauses Act. These different intentions shall be provided in the law otherwise the general provisions will apply. In case of inconsistency between an Act and General Clauses Act, the provisions of the Act would prevail.
- (77) The Statement of Object and Reasons are drafted at the time of introduction of the Bill, but later at Standing Committee stage or in the House of Parliament some amendments are made in the Bill but the Statement of objects and reasons are not accordingly revised. Although Statement of Objects and Reasons cannot control the provisions of the body of law, in case of inconsistency, as held by Superior Courts but still they have their significance in understanding the objects of the law.
- (78) This is the computer age but some features of the computer shall not be utilized while drafting a Bill. Auto-numbering of clauses shall be deactivated because the computer does not understand the legislative scheme and without giving you a caution, the auto-numbering changes the number of your clauses, sub-clauses, paragraph, sub-paragraph etc.
- (79) Similarly it is not good to replace any word or expression throughout the law by a single command of “find and replace” in the computer. This non use of couple of

computer features may apply to lengthy and complex laws having so many divisions and sub-divisions of clauses in the body of the law or in the schedule, etc.

- (80) It is a common confusion that if some clause is to be inserted after clause (a) whether it should be named as clause (aa) or (ab). In this regard it is stated that it is the prerogative of drafter but he has to take into account the fact whether the provisions of the law are likely to be amended or inserted or added frequently or once in a blue moon. In the laws amended frequently, the insertion of clause (aa) would mean that the next insertion would be clause (aaa) and the next one clause (aaaa).
- (81) While amending an Act, it shall be kept in mind that provisions of the Act shall be amended in the sequence in which they appear in the body of the Act. Since the Schedule is at the end so it has to be amended after all the provisions have been amended.
- (82) While amending a single Act, the marginal note of amending Bill shall clearly state whether the provision is being amended or substituted or inserted or omitted. It has often been seen that a drafter makes a mistake that even in substitutions and insertions, he uses the word “amendment” in the marginal note of an amending Bill.
- (83) The schedules are very much integral part of the Act but still it shall be kept in mind that sometimes in a social welfare law or in a law imposing, tax fee, fine, etc. the schedule and form has to be affixed by the relevant authorities at certain conspicuous places for the convenience of public. Hence the

use of words “this Act” used repeatedly in the body of the law shall not be used in the schedules and forms. In other words, the schedules and forms should be complete in themselves so that if they have to be segregated and pasted somewhere, the reader is not troubled by looking for the body of the Act.

- (84) Since the schedule, form, annexure are integral part of the law, therefore, it shall be looped into the law by cross referencing. Meaning thereby that say if section 3 refers to the contents of the Schedule then in the Schedule under its heading it shall be written “see section 3”. Similarly if under the Schedule, “see section 3” is written, the body of section 3 should also refer to the Schedule thus showing that it is the governing section of that Schedule.
- (85) It is often asked by drafters to indicate the sequence of division of a Schedule into sub-divisions of annexure, appendix, form, table, etc. It shall be kept in mind that it all depends upon the nature of material to be divided. If material is in the shape of a Form, it shall be called as such. Appendix may be sub-division of an annexure, of a Form or of a Table.
- (86) In a Bill, if Schedules are not attached then they do not form part of the Bill. Since they are an integral part of the law so the clause by clause reading should also refer to Schedule and this is only possible when the Schedule is before the Chair and Members.
- (87) The purpose of the Schedule, form, annexure, etc is to remove clutter from the body of the law so that the flow of the law and the reader is not disturbed.

- (88) The other reason of making a Schedule is to make it separate from the body of law because its amending authority is not legislature but the Government. If it is not written in the law that Government has the powers to amend the Schedule then these powers will not be assumed by the Government and Schedule will have to be amended by the legislature
- (89) Always define schedule, form, annexure, etc as schedule, form, annexure “to this Act”. In this way, one will not have to repeat the phrase “in this Act” whenever reference is made to schedule, form, annexure, etc in the body of the Bill.
- (90) While amending an Act, attention is normally paid to the provision sought to be amended but the legislative drafter should always care for the consequential amendment not only in that particular law but also if required in other laws. For instance, if Pakistan Penal Code is being amended then amendments may also be required in the Code of Criminal Procedure. Within the law if a section is substituted or omitted, its cross referencing in other provisions of the law including the schedule shall be catered for .
- (91) Index, glossary and footnotes are not part of the law, therefore, while amending a law, provisions for the amendment in the index, glossary and footnotes shall not be made in the Bill. However, index, glossary, footnotes are significant for the reader, therefore, the publisher or a person assigned the duty of updating the law shall definitely amend the index, glossary and footnotes accordingly.
- (92) In a law when a certain provision has been amended in the past, the amended or substituted content is written in

parenthesis with or without the use of asterisks. Later, when that provision is amended again, the beginner of legislative drafting includes those parenthesis in the text of the law and also refers to omit or amend those parenthesis.

- (93) When amendment is made at Committee stage or House stage, parliamentary draftsman should have already read the law at least thrice so that he is attentive to every amendment and can respond on the spot. Even in an amending Bill, he shall not limit his scope to the proposed amendments but should have read the principal Act thrice in order to assist the Minister on the floor whether to oppose or support any new amendment or an amendment to a proposed amendment.

Conclusion

Seven pre-drafting requisites and ninety-three drafting techniques sum up to make a century of points to be remembered while drafting or amending a Bill. Legislative drafting is an unfathomable ocean in which these cent points may just be the tip of an iceberg. This is all, what I could extract from my memory built up through hands on experience in the vast field of legislative drafting out of which a small segment of drafting and amending a Bill has been discussed in this handbook.

About the Author

The Author of this handbook is Sheikh Sarfraz Ahmed who is a Legislative Draftsman by profession and is working in the Ministry of Law and Justice on Legislative Drafting side since January, 2003. His present designation is Additional Draftsman. During his stay in Law Ministry, he has had the opportunity to visit United Kingdom, United State of America, Malaysia etc. on legislative drafting courses and attachments and during his stay in UK and Washington he has closely worked in the Justice Department of these jurisdictions and has also had the opportunity of attending Standing Committee meetings of British Parliament and USA Congress. The Author is also a resource person for lectures on legislative drafting in the Pakistan Institute for Parliamentary Services (PIPS) and Secretariat Training Institute (STI). Apart from LLM, the Author holds Masters in English degree and combination of English and Law has paved his way in understanding the legislative techniques and drafting of complex legislative instruments which include Ordinances, Bills, Presidential Orders, Presidential Regulations, Rules, Regulations, Bylaws, Notifications, Orders, Schemes, Warrants, etc. On Parliamentary business side, the author is an active participant of almost all Standing Committees of Parliament.

Editor's Profile

Ms. Saadia Bashir

Ms. Saadia Bashir is serving as Deputy Director Legislation in Pakistan Institute for Parliamentary Services PIPS. She has served as Legislative Officer for more than five years in PIPS. She has vast experience in Parliamentary Business; she has been an active member of Women Aid Trust for 06 years providing free legal aid to needy and deserving women/juveniles. She served as a member of Islamabad Bar Association and has rendered legal services in Civil Criminal and family cases, corporate firm and Service Matters. She has also provided legal service to i) Law, Justice and Parliamentary Affairs Division, ii) CDA, iii) IESCO, iv) SECP, v) OGDCL, vi) FGEHF. She received LLB (Hons) Shariah & Law degree from International Islamic University Islamabad.

Geoffrey Bowman who became the First Parliamentary Counsel of London explained the arduous responsibilities of a legislative drafter in a humorous manner at the time of his dinner speech delivered as President of the Conference of Commonwealth Association of Legislative Counsels held in 2005 (CALC 2005) stating:

“I have spent nearly 35 years as a legislative drafter, and the job certainly produces some strange effects. One effect is that I have become quite unable to understand even the simplest sentence. Everything seems to have several meanings or none at all. I often have to rely on my family (mainly my wife, Carol). I am glad to say that she takes a very robust line, and generally has no problem.”

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