

## PREFACE

Life in any organised society anywhere in the world runs its course on a path of set habits, customs and mores which ultimately come to be laid down as laws. And, in the world of today, right from the first breath of life, which has to be recorded, to the last whimper of death which has to be certified, there is practically no portion of our existence that goes unaffected or untouched by some law or the other. Added to this is the fact that, in a Parliamentary democracy straining every nerve to bring about a change in society from the social and economic points of view in the shortest possible time, such laws tend to proliferate in all directions and with irritating rapidity. The common man is forced to regulate his life in the light of the manifold laws so made and his chagrin and disgust can well be imagined if the laws regulating his life are couched in language not easily comprehensible.

The task of a legal draftsman, which has never been easy even in the best of times, tends to become even more difficult and unenviable in such circumstances. He must have the ability to understand what exactly the politician of the day wants; he must have the competence to give legal shape to the requirements in an intelligible form; he must take care to see that when the law he has drafted comes out of Parliament it is still intelligible, notwithstanding the many onslaughts made on it in the shape of amendments, many of which may be ill-digested and out of tune with the scheme of the Bill and which the Minister-in-charge had been forced to accept as a matter of political expediency; above all he has to satisfy himself that the scheme he has helped to produce will be workable.

The draftsman has to bear in mind that incomprehensible laws tend to annoy the administration and estrange the citizen at a time when quick justice and less sterile legislation are the desiderata. The command of the law can claim the allegiance of the lay only by its simplicity.<sup>1</sup>

In an oft repeated jingle, it has been stated that the draftsman is responsible for half the litigation in a country, to which an equally ill-disposed soul has added the frustration of the people as well. The quality of draftsmanship should therefore be such as to show that this accusation is ill-founded and unjust and is really attributable to some disgruntled litigant who has rightly lost his case in a court of law.

It is as impossible to write the perfect statute as it is to dole out perfect justice. The path of the draftsman is beset with many difficulties. At the outset, he is confronted with the limitations of language. Next,

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1. *The Aluminium Corporation of India v. The Union of India*, A.I.R. 1975 S.C. 2279.

the legislative process, not always an unmixed blessing, works under such stress and ad hoc haphazardness, that the whole piece of legislation, albeit it has been drafted by an experienced hand, when it emerges from Parliament ultimately, might make him blush.<sup>2</sup> More importantly, the rules of construction regarding statutes, which the Courts have evolved over a period and are still evolving, sit like millstones round the necks of Judges with the result that the draftsman quite often does not know what particular rule of construction will be applied to his draft. In many cases, the application of such rules evolved under different sets of circumstances may tend woefully to misinterpret the legislation and mores of today.<sup>3</sup> Until these rules (which often serve merely to provide the lawyer with ammunition to frustrate the intention or object underlying the legislation) are abolished, the draftsman has to keep them constantly in mind in framing his drafts.

Reform in the system of law-making, inherited from our former British rulers, has been suggested in some quarters for saving the time of the Courts and for reducing litigation; but until such reform is given proper shape, the aim of the draftsman, as circumstances now exist, should be to surmount all obstacles in his path as best as he can and to ensure that the ultimate legislative product is simple, intelligible, free from pitfalls, is not ambiguous and is sufficiently precise.

In this little book of mine, an attempt has been made to deal briefly with all matters which may be of interest to persons wishing to shape their career as legal draftsmen. Although written with an Indian background, it is hoped that the book will be of equal interest to legal draftsmen in all parts of the British Commonwealth where English continues to be the language of the law, particularly as the problems involved are similar. From this point of view, references to case-law and precedents from other countries have been included to some extent.

“Devilling” for several years as junior to the first Advocate-General of British Burma (the late Sir Arthur Eggar, himself an eminent draftsman) I obtained some grounding in the art or science of legal drafting and was subsequently called upon by the Government of Burma to draft some of their laws during and after the second world war. From 1948 to 1960, I was in charge of the legislative wing of the Ministry of Law, Government of India, during which period an enormous number of laws, far-reaching, novel and complex in character, had to be put through a democratic Parliament bent on quick social and economic reform. Subsequent to 1960, as a Member of the Law Commission of India, I was in charge of the implementation of the legislative proposals of that body. Later, I was called upon to draft some special laws.

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2. *Balakrishna v. Sada Devram*, A.I.R. 1977 S.C. 894,897.

3. *D.R. Venkatachalam v. Transport Commissioner*, A.I.R. 1977 S.C. 842, 847.

During all this period, a certain amount of material on the subject of drafting came within my knowledge and I felt that I should share it with others in the field.

Another source of inspiration for this book has been the excellent treatise on the General Clauses Act, 1897, written by a predecessor in office (the late Sir John Bartley, Additional Secretary and Chief Draftsman to the Government of India) which was clamouring for revision and amplification. I have made ample use of the material contained in that treatise.

Shri Justice Krishna Iyer of the Supreme Court of India, in many of his judgments, has been conducting a crusade, so to say, for simplicity and clarity in drafting and reform in the law-making methodology. He has been good enough to offer a few valuable suggestions in the preparation of this book. Shri P.M. Bakshi, Member-Secretary of the Law Commission, agreed at my request to go through the manuscript and he has made some critical comments. Shri Bakshi is himself the author of a hand-book entitled "An Introduction to Legislative Drafting." My profound thanks are due to them. But I must hasten to add that I have the sole responsibility for the pitfalls, if any, in the book.

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