

CHAPTER III

HISTORY OF LEGISLATIVE DRAFTING IN INDIA

Centralised agency for drafting Bills in India

It has long been the practice in India to have all Government Bills drafted by a centralised agency. If Bills are left to be drafted haphazardly, as and when the need arises, by lawyers, judges, departmental officials chosen¹ *ad hoc* for the purpose, as was the case in England many years ago and seems to be still prevalent in some parts of the world, the Bills are bound to suffer from many defects, like wide divergence in language, lack of precision and uniformity, conflict of interests between the various departments of the Government concerned with the implementation of the Bill, if turned into law.

LEGISLATIVE DEPARTMENT OF THE GOVERNMENT OF INDIA	The Legislative Department of the Government of India to which was entrusted the drafting of Bills was created as an independent department in 1869 when Sir Henry Maine was the Law Member to the Government of India. Before that, the Legislative Department was subordinate to the Home Department of the Government India.
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BILL DRAFTING IN ENGLAND	In England, official Bill-drafting is entrusted to the office of Parliamentary Counsel to the Treasury. Curiously enough, this office was also created in the year 1869 when the Legislative Department of the Government of India was created into a separate department. In Canada and Australia Bill drafting is in the hands of specialists appointed officially as in India and the United Kingdom.
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A brief reference to the history of legislative drafting in the United Kingdom may not therefore be out of place in this connection. The earliest Acts of Parliament were drawn by one or more judges. Later, Committees of the Privy Council appear to have had a hand in the preparation of Bills. Certain Acts dealing specially with legal topics appear to have been drawn by eminent lawyers; while quite a few Bills were the product of the efforts of private members. Defects inherent in such haphazard legislation are obvious and amongst certain interesting *Papers relating to the drawing of Acts of Parliament* published in 1838, Arthur Symonds observed that "if the laws to be passed were submitted to the draftsmen employed by the Government it would not be difficult with the help of their respective experiences to frame a systematic plan of writing

1. In British Burma, as well as in many of the old Provinces of India, the practice had been to get local Bills prepared by departmental officials.

laws, so as to render them at once intelligible to laymen from their greater plainness and style, and more satisfactory to lawyers themselves from the greater accuracy and completeness and from their affording a recognised standard for the expression of legislative matters.”

Towards the close of the eighteenth century, William Pitt had attempted to secure a more uniform system of drafting by employing a special Parliamentary Counsel, but it was a temporary arrangement and each Government department continued to have its Bills prepared with the aid of legal advisers attached to that department until 1869, when a special office called the Office of Parliamentary Counsel to the Treasury was created which was made responsible for all Government Bills. This arrangement resulted from the proved lack of economy, divergence of form and language in enactments and conflicts of interests between departments.²

The office of Parliamentary Counsel has now grown greatly in size, as is to be expected in the very nature of things, and it is now a rule that in the preparation of every Bill entrusted to the office of Parliamentary Counsel the draftsmen should ordinarily work in pairs for the purposes of discussion and in order that they may pick up each other's mistakes. The senior Counsel take the responsibility for the drafting of Bills, while the juniors 'devil' for them. It is the function of the Parliamentary Counsel to settle all Government Bills but they are in no way responsible for the preparation or criticism of Bills sponsored by private members unless they are referred to them by Government when Government, being favourably inclined to the principle of a private member's Bill, decides to facilitate its passing on condition that it embodies Government amendments. The Parliamentary Counsel are also charged with seeing that where a measure involves public expenditure the attention of the Treasury is drawn; and they are in a position to ensure that the duty of a department proposing legislation affecting another department to consult that department is not overlooked. After the Bill as drafted by him has passed out of his control into that of Parliament, the services of the Counsel may continue to be utilised in advising on alterations proposed and amendments made during the passage of the Bill.³

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2. For the history relating to the establishment of the Office of Parliamentary Counsel in England, see Ilbert, *Legislative Methods and Forms*, pp. 77 *et. seq.*, S. Namasivayam *The Drafting of Legislation* p. 97 (1967),.
 3. For a detailed account of the working of the office of Parliamentary Counsel in England, see *Parliamentary Government in Britain* (a symposium) p. 27; (1949). The Improvement of the Statute Book, *Journal of the Society of Public Teachers of Law*, p. 442 (1951); and a *Memorandum on the Preparation and Passing of Bills* issued for official use in the United Kingdom.

In India, after the attainment of Independence, the Legislative Department came to be known as the Ministry of Law and one section thereof (namely, the Legislative Department)⁴ was put in complete charge of the drafting of all Government Bills. Later this section became a separate Department with a Secretary to Government at its head and a number of draftsmen duly trained are employed in this Department. In view of the enormous increase in the legislative output of the Central Legislature the corps of legal draftsmen (now called Legislative Counsel) in the legislative workshop of that Ministry has had to be increased considerably and the process is still going on. The draftsmen are responsible for the drafting of all Government Bills referred to the Ministry of Law for drafting by other Departments of Government and also for the drafting of Bills the subject-matter of which is the concern of the Ministry of Law itself, and the Secretary who is in charge of the drafting department takes upon himself the task of distributing and supervising the work, he himself undertaking the drafting of the more important Bills.

The draftsman who has drafted a particular Bill attends all meetings of Select or Joint Committees of Parliament appointed to consider the Bill ; he has to be in attendance in the Official Gallery of Parliament to advise the Minister concerned on legal questions which may arise in the course of discussion on the Bill, and on amendments which may be moved in the House. He has also to draft amendments whenever necessary. The draftsmen are also responsible for scrutinising all subordinate legislation in the shape of statutory notifications, rules or regulations. As in England, the draftsmen are not responsible for the drafting of private members' Bills unless the Government decides to accept the principle of any particular Bill and takes charge of it.

The manner in which Bills are drafted and the part played by the draftsmen during the various stages of the Bill are dealt with in greater detail in a later chapter.⁵

Use of Hindi for Bills and Acts

As the Constitution has specified Hindi as the official language of the Union, a word may be said here about Bills and Acts in Hindi.

As to private members' Bills and the work of Parliamentary agents, see May's *Parliamentary Practice* ; P.A. Bromhead, *Private Member's Bills in the British Parliament* (1956).

4. The author had the privilege of heading this section and later the Department from 1948 to 1960. The Ministry of Law is now known as the Ministry of Law, Justice and Company Affairs.
5. See Chapter VI.

The Constitution, after prescribing Hindi in Devanagari script as the Official language of the Union, (art. 343), provides for the continued use of the English language, pending the switch over to Hindi. Thus, article 348(1)(b) states that until Parliament by law otherwise provides, the authoritative texts (i) of the Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State and (ii) of the Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor of a State, shall be in the English language.

It is, however, open to the Legislature of any State to prescribe any language other than English for use in Bills introduced in or Acts passed by the Legislature or in Ordinances promulgated by the Governor, and, where it so does, a translation of the same in the English language published under the authority of the Governor in the Official Gazette shall be deemed to be the authoritative text thereof in the English language. (art. 348(3)).

The Constitution makers felt that the switch over to Hindi could be effected in fifteen years and it was therefore provided in the Constitution that Commissions may be appointed in the meantime who will report on the progressive use of Hindi and the restrictions which may be placed on the English language. Their recommendations would be examined by Committees of Parliament specially constituted for the purpose, and based on the reports of these Parliamentary Committees suitable directions would be issued by the President (art. 344).

The position as it obtains, after the expiration of fifteen years from the commencement of the Constitution, can be traced from the Official Languages Act, 1963, (19 OFFICIAL LANGUAGES ACT, 1963 of 1963) which took effect on the 26th January 1965, with the exception of section 5 which came into force on the 10th January 1965.

Section 3(1) provides that, notwithstanding the expiration of the period of fifteen years specified in the Constitution, the English language may (the use of the word "may" is significant) continue to be used, in addition to Hindi, for the transaction of business in Parliament, among other matters. Bills therefore continue to be drafted in the English language and Acts passed are also in the same language. Section 5, however, provides that a translation in Hindi published under the authority of the President in the Official Gazette on or after the 10th January 1965, of any Central Act or of any Ordinance promulgated by the President shall be deemed to be the authoritative text in Hindi. It is also provided that the authoritative texts of all Bills to be introduced or amendments to be moved in either House of Parliament after the 1st October, 1976 shall be accompanied by a translation thereof in Hindi authorised in the prescribed manner.

An Official Language (Legislative) Commission was constituted by the Central Government in 1961, one of whose duties it was to have all the important Central Acts, Ordinances and Regulations translated into Hindi.

The Official Language (Legislative) Commission was abolished in 1976 and its functions have been taken over by the Official Languages Wing of the Legislative Department of the Ministry of Law. Its functions are :—

- (i) to prepare and publish a standard legal terminology for use, as far as possible, in all official languages ;
- (ii) to prepare authoritative texts in Hindi of all Central Acts and Ordinances and Regulations promulgated by the President ;
- (iii) to prepare authoritative texts in Hindi of all rules, regulations and orders made by the Central Government under any Central Act or any Ordinance or Regulation promulgated by the President ;
- (iv) to arrange for the translation of Central Acts, Ordinances and Regulations promulgated by the President in the respective official languages of the States and for the translation of all Acts passed and Ordinances promulgated in any State into Hindi, if the texts of such Acts or Ordinances are in a language other than Hindi ; and
- (v) to perform such other duties as may be assigned to it by the Government of India from time to time.⁶

In addition it has to undertake the translation of all Bills to be introduced in Parliament. This wing has a number of draftsmen trained in drafting Bills in Hindi and these officers work in close collaboration with the Ministry of Law where the English versions of Bills are prepared.

The Authorised Translations (Central Laws) Act, 1973 (50 of 1973) further provides that a translation in any language (other than Hindi) specified in the Eighth Schedule to the Constitution, published under the authority of the President in the Official Gazette (a) of any Central Act or any Ordinance promulgated by the President or (b) of any order, rule, regulation or bye law issued under the Constitution or under any Central Act, shall be deemed to be the authorised translation thereof in such language. This Act is still to come into force.

6. Vide notification No. A. 45012/3/76-Adm. I (LD) dt. 23rd November, 1976.

Where the Legislature of a State has prescribed a language other than Hindi for use in Acts passed by it or in Ordinances promulgated by the Governor and if a translation of the same in Hindi, in addition to a translation thereof in the English language, is published under the authority of the Governor in the Official Gazette of the State, the Hindi translation will be deemed to be the authoritative text of the Act or Ordinance, as the case may be.⁷

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7. Section 6, Official Languages Act, 1963.