CHAPTER V

THE STRUCTURE OF AN ACT

Structure of Acts generally

Although there may be slight variations in the positioning of certain clauses in Bills drafted in the English language in the various countries employing that language, it can safely be asserted that the structure of Bills is more or less uniform in all such countries.[1]

First, the title of the Bill (which is subsequently to become an Act) is printed at the top. This is for purposes of reference and is short and catches the eye quickly. It is known as the short title. Example, the Transfer of Property Act, the Wealth-tax Act, the States (Reorganisation) Act.

SHORT TITLE

Then follows the long title. This gives an idea of what the Act proposes to deal with in a nutshell. It can be short or long depending upon matters which should be briefly referred to here in order to explain the main purport of the Act. For instance, the long title to the Transfer of Property Act, 1882 (4 of 1882) states simply that it is "An Act to amend the law relating to transfer of property by act of parties".

LONG TITLE

The long title to The Tea Act, 1953 (29 of 1953) is in the following terms. "An Act to provide for the control by the Union of the tea industry, including the control, in pursuance of the Inter-national Agreement now in force, of the cultivation of tea in, and the export of tea from, India and for that purpose to establish a Tea Board and levy a duty of excise on tea produced in India".

In both these cases the long titles are sufficiently explanatory and in the latter case also gives the background.

The long title is followed by the preamble around which a mass of case-law has grown. In most cases the preamble is a redundancy which can safely be eliminated. For instance, in many of the earlier Indian statutes the preambles were mere repetitions of the long titles. The following are illustrations.

PREAMBLE

The Indian Succession Act, 1925 (39 of 1925).

"An Act to consolidate the law applicable to intestate and testamentary succession" (long title).

"Whereas it is expedient to consolidate the law applicable to intestate and testamentary succession" (preamble).

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1. Form of Bills in Ghana and Ceylon, see S. Namasivayam, *Legislative Drafting* (1967) pp 1 *et. seq.* See also Reed Dickerson *Legislaive Drafting*, p. 57 (1954); P.M. Bakshi, *An Introduction to Legislative Drafting* (1972).

The Identification of Prisoners Act, 1920 (33 of 1920).

"An Act to authorise the taking of measurements and photographs of convicts and others" (long title).

"Whereas it is expedient to authorise the taking of measurements and photographs of convicts and others" (preamble).

The Reformatory Schools Act, 1897 (8 of 1897).

"An Act to amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders (long title).

"Whereas it is expedient to amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders" (preamble).

In all the above cases the preambles are a mere surplusage. In addition, the use of the word "expedient" appears to suggest that the Legislature feels somewhat hesitant or apologetic about the passing of the Act.

PREAMBLES A SURPLUSAGE IN MOST CASES

A draftsman should take care to express himself in plain and unambiguous terms and should not seek shelter under a preamble for the construction of his Act. Sometimes the preambles may be used by politicians to give expression to their own political philosophy without their being anything in the body of the Act relevant thereto. That is to say, cases may not be found wanting where there is no exact correspondence between the preamble and the enactment. Sometimes the enactment may go beyond or fall short of the indications given in the preamble. Again there may be cases in which a section, read with the preamble, may have a meaning different from that which it would have if there was no preamble. The legislative intent should really be left to be gathered from the other constituent parts of the enactment.

From all points of view therefore it is best to give up preambles and depend upon long titles for the necessary elucidation where the scope for mischief or ambiguity may be much less.

Occasionally it is argued that in countries like India which have written constitutions guaranteeing fundamental rights, it is advisable to spell out in some detail the background to the enactment through recitals in the preamble so as to render it less vulnerable to attack. As an example of this type of preamble, one may cite The Iron and Steel Companies Amalgamation Act, 1952 (79 of 1952) whose long title and preamble run as follows :—

> "An Act to make special provision in the interests of the general public and the Union, for the amalgamation of certain companies closely connected with each other in the manufacture and production of iron and steel, and for matters connected therewith or incidental thereto." (long title).
>
> "Whereas for the purpose of securing in the interest of the general

public and the Union, the efficient and economical expansion and working of the iron and steel industry in India, it is essential that the Steel Corporation of Bengal, Limited, and the Indian Iron and Steel Company, Limited, which are engaged in the manufacture and production of iron and steel, should be amalgamated ;

And whereas to give effect to the scheme of the Central Government for the expansion of the iron and steel industry and to make available further resources for such expansion, it is necessary that the said companies should be amalgamated with as little delay as possible ;

And whereas the amalgamation of the said companies is also in pursuance of successive recommendations made by the Tariff Board and the Tariff Commission". (preamble).

Even here one may observe that all the relevant matter could easily have been worked into the body of the long title and the body of the Act thus obviating the necessity for a preamble.

The object of the preamble can be served equally well by the long title in almost all cases. Acts in the United Kingdom, Australia and Canada have no preambles and in Republican India also preambles have now been given up with very rare exceptions.

It has also been suggested that the long title and preamble are really old fashioned frills and may be entirely dispensed with. They are said to be a mere formality and of little use provided the Act is drawn in precise terms and does not have to depend upon the above devices. The criticism is not without substance.

The enacting formula comes after the long title and preamble, if any. The form adopted in India since the 26th day of January, 1950, when India became a Republic is as follows "Be it enacted by Parliament in the...year of the Republic of India as follows". The form adopted is an adaptation of the United Kingdom precedent suited to Indian conditions. This form has, however, been criticised in some quarters as not suited to India and it has been suggested that it should be recast to read "It is hereby enacted by Parliament in the...year of the Republic of India as follows". To the author, there seems to be little difference between the two formulae ; if any, the former has a ring of solemnity.

ENACTING FORMULA

The first section in all Indian enactments usually states (*a*) the short title (*b*) the extent of operation of the enactment and (*c*) its commencement.

FIRST SECTION

The short title clause generally runs as follows—"This Act may be called the Transfer of Property Act, 1882". As the Act is and has to be referred to by that name, the use of the word "may", unless it is construed as meaning "shall", would appear to be somewhat inappropriate ; but the word "may" is used in all other countries in this context. The justi-

SHORT TITLE CLAUSE

fication perhaps is that the Act could also be referred to in some other manner so long as the reference is clear.

This clause could also be eliminated if the Interpretation or General Clauses Act of the country concerned included a provision to the effect that every Act of Parliament shall be called (cited) by the name printed at the head thereof.

EXTENT CLAUSE

The extent clause deals generally with the territorial extent of operation of the Act and may be couched in different forms—"This Act extends to the whole of India" or "This Act extends to the whole of India except the State of Jammu and Kashmir" or "This Act extends in the first instance to the States of...and may, by notification in the Official Gazeette, be extended to any other State by the State Government concerned".

Normally, an Act of Parliament is intended to apply to the whole of the country under its legislative jurisdiction. If, therefore, the Interpretation or General Clauses Act of the country concerned included a provision whereby every Act of its Parliament is declared automatically to extend to the territories under its legislative jurisdiction, the extent clause could also be eliminated except in the rare cases where a more limited operation is called for.

COMMENCEMENT CLAUSE

The Interpretation or General Clauses Act usually provides that an Act of Parliament shall commence (unless otherwise stated) on the day the Act is assented to by the authority specified for the purpose under the Constitution of the country or on the day on which such assent is first published in the official gazette. In this context a commencement clause becomes necessary only where the Act is to come into force on a later date or on different dates in different States or with respect to different provisions or retrospectively and so on.

An ordinance which is an emergency measure, has to come into effect immediately on its promulgation and it is therefore customary for the Indian draftsman to say in respect of an Ordinance that it shall come into force at once.

APPLICATION SECTION

There are cases where an Act may have to be given extra-territorial application, that is to say, a law may have to be made applicable to citizens of India even when outside India, or to ships and aircraft registered in India wherever they may be or to territorial waters. In all such cases the practice is to have a separate section spelling out the application of the Act. The Penal Code of India (1860), for instance, provides that its provisions apply also to any offence committed by

(i) any citizen of India in any place without and beyond India,
(ii) any person on any ship or aircraft registered in India, wherever it may be ;

Or take section 2 of the Air Force Act, 1950 which states that the following persons (naming them) shall be subject to this Act "wherever they may be". The Merchant Shipping Act, 1958 in more explicit terms provides in section 2 as follows.

"2(1) Unless otherwise expressly provided, the provisions of this Act which apply to ships which are registered in India or which in terms of this Act are required to be so registered shall so apply, wherever the ships may be ,

(2) Unless otherwise expressly provided, the provisions of this Act which apply to ships other than those referred to in sub-section (I) shall so apply only while any ship is within India, including its territorial waters."

DEFINITION SECTION

The definition section generally finds a place after the short title, extent and commencement section or when there is a special application section, after the application section. In the United Kingdom the definition section is usually placed at the end, the reason given being that the contents of the Bill have first to be settled before the definitions intended to serve the purposes of the Bill could be discussed.[2] Perhaps for the same reason the short title clause also appears at the end in U.K. enactments. In India and in a few other countries like Australia and Canada, the short title and definition clauses appear at the beginning.[2]

The definition clause is framed to suit a particular Act and not, as in the case of the General Clauses Act, for convenience in drafting other Acts. Special definitions would be needed where the draftsman intends to give the words a meaning other than what is given to them in the General Clauses Act or the words have a wider or narrower dictionary meaning than what is intended in the relevant context. If words have received a judicial interpretation the draftsman would be well advised to keep it in mind when framing his definitions. No doubt, he has power to make words have any sense, regardless of their natural, technical or legal meaning but it could be an abuse of this power if he were to give the words a meaning which by no stretch of imagination it can bear having regard to their ordinary usage.

A draftsman would be well advised to have a glossary of terms, including words defined in the General Clauses Act, words which have received judicial interpretation and words which have been used in a certain sense in other Acts.[3] This will enable him to decide whether the words he uses will be taken in the sense which he means or whether a special definition is necessary.

2. It may be mentioned here that the practice followed in the Indian Parliament is to put the long title, preamble and the enacting formula to vote only after all the clauses of the Bill are put to vote and decided upon.
3. The author, while in office in the Ministry of Law, had prepared an index of statutory definitions for use in the office.

The object of the definition section is to make token words represent complicated notions so that such words may be used without repeating the complication. He coins phrases to be used in the Act in order to shorten references to certain matters, but he should take particular care, when using the phrase, to see if its full meaning is suited to all the circumstances in which it will be used.

To illustrate, "Cattle" means cows, bulls, buffaloes and calves" (an exhaustive definition);

"Vessel" includes boats, rafts and other floating conveyances" (not exhaustive, notwithstanding the generality of the last reference).

ARRANGEMENT OF ACT GENERALLY

In the operative or substantive part (if one may give it that name notwithstanding that all parts of an Act are operative or substantive) the main object or purpose of the Act or its principle or its leading motive will be stated in clear terms This generally consists of a small group of sections from which the main object or purpose of the Act can easily be ascertained. The reader should not have to roam about the Act in order to find out its main object. In taxation Acts, for instance, the proposals for taxation will be found in this part.

THE MAIN PART

THE GENERAL PART

Then follows what may be called the general or machinery part in which will be found provisions which are ancillary to, or which are a necessary corollary of, the operative or substantive part to make the Act workable. This part generally includes the agents or authorities administering the law, and the instruments and means necessary to give effect to the law, including sanctions to enforce the law. Sometimes the purpose of the Act is best served by stating the powers conferred on authorities so that not infrequently the constitution of the administering authorities is among the first matters to be dealt with in an Act.

THE MISCELLANEOUS PART

Acts often contain a chapter headed "Miscellaneous" in which are included provisions relating to matters like protection of action in good faith by authorities, exemptions, if any, from the operation of the Act, power to delegate functions or to make rules. Special or exceptional provisions, temporary or transitional provisions, provisions relating to repeal or amendment of other laws are generally placed at the end so that when the time comes they may be repealed without producing any gaps in the body of the Act.

SCHEDULE

Very often a schedule has to be appended to an Act. The term "schedule" is defined in the General Clauses Act, 1897, to mean a schedule to the Act or Regulation in which the word occurs. A schedule is as much a part of the Act in which it occurs as any other section thereof and, unless it is made alterable by executive authority the question whether a particular provi-

sion or set of phrases should appear in the body of an Act or in a schedule is a question of form and parliamentary practice. It goes without staying that the schedule has also to be drawn with the same care as is bestowed on the rest of the Act. In some cases there may be more than one schedule ; the Indian Constitution itself is an example of a law with several schedules.

If an Act is a complex one, like the Companies Act, the Income-tax Act and so on it would be convenient to divide the Act into parts or Chapters. The Indian practice is not to divide an Act into Parts or Chapters if it is a short one, say, of twenty sections or so. In such cases, short headings may be given to groups of sections, dealing with related matters. The Medicinal and Toilet Preparations (Excise Duty) Act, 1955 which consists of twenty sections has the following headings sufficiently explanatory of the provisions included under each head. "Preliminary", "Levy and collection of duties", "Powers and Duties of Officers and Landholders" and "Supplementary Provisions".

Division of an Act into parts and chapters will largely depend upon the length of the Act and the subject matter to be dealt with therein. Although there is no hard and fast rule relating to this matter, common sense would perhaps suggest division into Parts where the subject matter of one group of sections is so different from the subject matter of another group, although forming an integral part of the main Act, that it may be convenient to deal with them as separate units of a composite whole, (e.g. the Merchant Shipping Act, 1958). Parts could also be sub-divided into Chapters. Chapters, on the other hand, may come in handy when the Act is not too large, the subject matter closely linked and requires only separate headings for convenience of classification and reference.

NUMBERING OF SECTIONS ETC.

The sections of an Act are generally numbered by Arabic numerals. A section should be subdivided into sub-sections where they would otherwise be lengthy or complex. Sub-sections are also numbered consequtively by Arabic figures within brackets. For sub-division of a sub-section or even a section into clauses, italicized letters in brackets e.g. (*a*) (*b*) (*c*) may be used, the clauses being indented. If a clause is to have sub-clauses, small Roman numerals in brackets may be used, the sub-clauses being further indented. It would be advisable not to have more than one sentence in a section or a sub-section which does not contain any sub-sections. Avoid illustrations. The practice of giving illustrations to Acts has long been given up. The reasons are not far to seek.[4]

To every section a marginal note or caption is generally attached. Such marginal notes are convenient for purposes of reference and when read together give a fair idea of the contents of an Act. They can also

4. See Chapter VIII, Rules of Interpretation.

serve as tests to determine whether a given subject should be dealt with in one or more sections. For instance, if the marginal note becomes long or cannot be made distinctive without being long, the presumption would be that the subject matter should be dealt with in more sections than one.

MARGINAL NOTES

In India, the practice has grown of having a Table of Contents or "Arrangement of Sections", as it is now called, for every Act containing twenty sections or more. This reproduces the marginal note to every section. Such a table would be useful not only for convenience of reference but also for testing the logical sequence of the arrangement adopted.

TABLE OF CONTENTS OR ARRANGEMENT OF SECTIONS

A word may be said here about certain special types of legislation where an Act merely seeks to amend one or more laws already in force. The Indian practice is to draft the amendments in such a way as to get them incorporated into the principal Acts, and some such form as the following is used for the purpose—"For section 10 of the...Act the following section shall be substituted," or "after section 10 of the...Act the following section shall be inserted," and so on. This practice is more logical and convenient than the one adopted in the United Kingdom, for example, where it is left to the public and the courts to read the principal Act and the amending Act together. Some reform is contempleted in the United Kingdom also after the Renton Committee's Report in 1975.

AMENDING ACTS

When numerous amendments are to be made in an Act, it would be advisable to consider whether it is not better to repeal the original Act and re-enact it with the proposed amendments. This will have the effect of reducing the bulk of the statute book: it also makes it easy for the person applying or administering the law.

RE-ENACTMENT OF ACT IN CERTAIN CASES

Where an Act has been amended several times and the Act has become clumsy (as is generally the case with Tax Acts which are subjected to annual amendments as a matter of routine) a case may arise for rewriting the Act more systematically. But there may be several difficulties to contend with. First, no amendment of substance, however desirable, can be made in such a revision ; secondly the re-enacting legislation may have to speak from different times with respect to its different provisions ; thirdly, there is no knowing whether the Legislature would not subject the redraft to a close scrutiny making amendments of substance therein, a contingency with may not be favoured by Government.

In India, the practice has grown of promoting periodically Repealing and Amending Acts which help to remove from the statute book legislation which is spent or is no longer needed and so on. These Acts at the same time enable inadvertent or obvious errors which may have crept

REPEALING AND AMENDING ACTS

into the statute book, to be corrected. In this connection a broad definition of the types of legislation which could conveniently be included in such repealing and amending Acts may be attempted. Law Revision Acts in some other countries proceed on this basis. Expired enactments, that is, enactments which, having been originally limited endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had for their object the continuance of previous temporary enactments for periods now gone by effluxion of time. Obsolete enactments, as where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances. Spent enactments that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect, or on the happening of some event, or on the doing of some act authorised or required. Superseded enactments where a later enactment effects the same purposes as an earlier one, by repetition of its terms or otherwise. Enactment repealed in general terms : that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts on which it is to operate. Enactment virtually repealed, that is where an earlier enactment is inconsistent with, or is rendered nugatory by a later one, or by a constitutional provision.[5]

VALIDATING OR CONFIRMATORY ACTS·

Validating legislation may have to be undertaken where an existing law has been misunderstood or wrongly applied or a State Legislature has passed a law which is beyond its conpetence but within the competence of the Central Legislature. Such legislation may assume different forms ; some may merely validate action taken ; others may re-enact the provisions or without doing so, may merely provide that the invalid law shall be deemed to have been enacted by the appropriate legislature. The following examples may be cited in this connection. The Marriage Validation Act, 1892 (2 of 1892) ; The Hindu Marriages (Validation of Proceedings) Act, 1960 (19 of 1960) ; The Arya Marriage Validation Act, 1937) (19 of 1979) ; The Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Act, 1958 (56 of 1958) ; The Sales Tax Laws Validation Act, 1956 (7 of 1956) ; The Bar Councils (Validation of State Laws) Act, 1956 (6 of 1956).

The Conference of Commissioners on Uniformity of Legislation in Canada have made certain observations on drafting in general[6] and with suitable modifications they may be adopted for guidance in framing Acts.

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5. See Craies, *Statute Law*, pp. 356, 357, (1963).
6. See Rules of Drafting 26 *Canadian Bar Review*, pp. 1231 *et. seq.* (1948) ; see also Reed Dickerson, *Legislative Style and Grammar*, pp. 61 *et. seq.*

Certain general observations on drafting

Ensure that the meanings of provisions are not made to depend upon titles, marginal notes, headings and such like because, strictly speaking, they should have no special significance.

Use enumerations with caution. It is almost impossible to make the enumeration exhaustive and accidental omission may be construed as implying deliberate omission.

Short sentences are preferable to long or complicated ones. Where ordinary language is unambiguous, avoid use of technical language, that is to say, everyday words may be used wherever possible. Do not use more words than are necessary to make the meaning clear because every superfluous word may raise a discussion in court. Nouns may be used in preference to pronouns even at the cost of repetition. Elegance of style may have to be sacrificed to give way to precision in meaning. Do not use the same word with different meanings.

Structure your sentences in such a way that the meaning is not made dependent on internal punctuation. Punctuations are generally a source of ambiguity.

In general, use active voice which is more forceful than passive. It is better to say that particular person "may do" a particular thing than that a particular thing "may be done" by a particular person: this will avoid any latent ambiguity. There is, however, no real objection to the passive voice if the identity of the legal subject is otherwise clear.

Confine the use of the word "shall" to the imperative.

The present tense is often the clearest and most certain in vesting powers and obligations. The law is considered to be always speaking.[6]

Avoid legislating by reference. It is unjustifiable to resort to this method if the object is to bye-pass detailed consideration of the proposals in the Legislature. The object of drafting is not to save trouble but to make the meaning clear. Difficulties of construction are bound to arise when some other enactment is incorporated in bits or some old procedure is adopted in relation to a new and different subject matter. Difficulties may also arise where the provisions of one enactment are incorporated in another by this referential method and the incorporated enactment undergoes amendment subsequently.[7]

Within strict limits, however, such a device may be both justifiable and expedient as where it is considered fit and proper to utilise an existing

6. The Canadian Interpretation Act, 1927, provides in section 10 that "the law should be considered as always speaking, and, whenever any matter or thing is expressed in the present tense the same shall be applied to the circumstances as they arise". There is, however, no corresponding provision in the Indian General Clauses Act, 1897. See *Radhi Bewa* v. *Bhagwan Sahu*, A.I.R. 1951 Orissa 378 as to the meaning of the expression "a statute is to be regarded as always speaking".
7. See *Bajya* v. *Smt. Gopikabai*, A.I.R. 1978 S.C. 783.

machinery for implementing the Act. Example, utilising the land revenue recovery procedure for collecting other taxes.

Use provisos sparingly. They are a great source of doubt and ambiguity. If needed, they should not be used to state a general rule or statement. If the language of the enacting part is clear and does not contain the provisions which are said to occur in it, one cannot derive those provisions by implication from the proviso.[8] It has been said that the proviso becomes a convenient tool in the hands of a draftsman. If he has neglected to complete the case, or has said too much, he makes a correction by means of a proviso. If he has no clear idea of what he wants to say he adds one or more provisos; if he has forgotten the existence of such simple words as "but", "if" or "except", or has forgotten the expedient of adding a new section or sub-section, he adds a proviso.[9] It has also been said that the proviso is a legal incantation which should be banished from the statute book.[10]

A proviso upon a proviso would make confusion worse confounded. Where there are two provisos, one inconsistent with the other, difficulties of construction are bound to arise.

Indiscriminate use of the non-obstante clause may also cause difficulties as to which enacting paragraph is to be given overriding effect. The Supreme Court had considerable difficulty in deciding between the overriding priority given to two separate pieces of legislation, like the Banking Companies Act and the Displaced Persons (Debts Adjustment) Act.[11]

If such a clause is used, there should be close approximation between that clause and the operative part of the section. It is, however, not necessary that the non-obstante clause is co-extensive with the operative part if it has the effect of cutting down the clear terms of the enactment.[12]

Avoid the use of "and/or", "the said", "aforesaid", "hereinafter" and the like as far as possible for the sake of readability and for ensuring that later rearrangement or amendment does not change the context.

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8. *The Guardians of the Poor of the West Derby Union* v. *Metropolitan Life Assurance Society*, (1897) A.C. 647, 652.
9. E.A. Driedger, Legislative Drafting, *27 Canadian Bar Review* p. 291 at 314 (1949).
10. *Id.* at 307.
11. *Sri Ram Narain* v. *The Simla Banking & Industrial Co. Ltd.*, (1956) S.C.R. 603.
12. *Dominion of India v. Shrimbai A. Irani*, (1955) S.C.R. 206.