

P.A SANGMA FELLOWSHIP

FOUNDATIONS OF GOOD DRAFTING SESSION-2

COMPLETE NOTES ON DAY OF THE TRAINING-2

BY: PULAK SYMON

RESEARCH FELLOW

P.A SANGMA FELLOWSHIP

SUBMITTED TO:

DEBU LYNGDOH

DEPUTY SECRETARY, LAW DEPT

GOVT OF MEGHALAYA

The first agenda of the presentation was divided into 5 parts which are as follows:

1. Organising the law
2. Drafting provisions of law
3. Delegated legislation
4. Leveraging technology
5. Way forward

ORGANISING LAW

- It was mentioned that legislative drafting can be compared to an art, science and skill
- A well drafted law equalizes to a well written story
- It needs to comprise of an Introduction, Main Story and Conclusion
- Code of Hammurabi was stated that 282 laws are been inscribed in Stone by the King of Babylon

DRAFTING AS AN APPROACHABLE LAW

It becomes approachable when the following steps are included:

- ANALYSIS includes the mandatory research of policy requirements

- DESIGN focuses on the legislative approach and outline of law
- COMPOSE comprise of draft, revise and revise
- SCRUTINISE checks the accuracy, certainty and consistency of drafting
- MANAGE means deadlines, monitor progress in law

The provisions of law are made in such a way so that it is feasible. Likewise, say IPC, if it is not grouped properly it will be a problem to search ‘Offences against human’ as the sections will be scattered and haphazard. The indexing and table of contents are efforts of creating an easy reference.

WHY IS IT A NECESSARY TO STRUCTURE THE LAW?

- It forms the basis of the final product
- Each provision is a link in the statutory chain
- Prioritizing and arranging provisions. Through it the prime message of law is clear.

TYPICAL STRUCTURE OF LAW

Preliminary includes

- Title
- Preamble
- Enactment

- Commencement

- Definitions

Substantive includes

- Rights, duties, obligations

- Administrative provisions

- Non-compliance

Final includes

- Repeal

- Transitional

- Savings

DRAFTING PROVISIONS OF THE LAW

The quintessential requirement of drafting provisions includes:

- Using the language of drafting effectively
- Choosing appropriate provisions which are applicable to multiple scenarios

Ma'am gave an illustration ,“Thou shall not kill” is a commandment (Mosaic law) which in the IPC requires various sections to explain what is murder and what is not murder.

FREQUENTLY APPEARING SECTIONS: PRELIMINARY & FINAL

- They are mandatory set of provisions
- They have different goals from substantive provisions
- It acts as a quick reference guide
- The relevance is for most of the readers
- Drafting goals has clarity, access and simplicity

PRELIMINARY PROVISIONS

The preliminary provisions are divided into two parts i.e. purpose and benefit. It is done to know how it will be beneficial to the people.

Preliminary	Purpose	Benefit
Title	How can the law be cited and referenced?	Introduces the law to a reader to gauge its relevance
Preamble	Why is the law needed? What is the purpose it seeks to fulfil?	Sets out the statement of policy or intent of the legislation. It can be useful for the draftsman to draft within the scope of the preamble
Enacting	Has the law been enacted through proper law-making process?	Declared the legislative authority's agreement to the law
Commencement	When does the law come into force? Is there any condition that needs to be fulfilled?	Expresses the duration or expiry of the law
Application	What is the coverage of the law? Are there any exemptions?	A reader can quickly assess whether the law regulates them or their circumstances
Definitions	How should the words/phrases used be understood?	Enables more reader-friendly law. Allows draftsmen to avoid lengthy expressions in the substantive provisions

UNDERSTANDING TITLE

- Ma'am explained that the title should have acronyms such as POCSO, POSH, SARFAESI etc so that it is not difficult to understand.
- The title of the act should be deliberating and the intent of the law should be clear.

PREAMBLE: WHY IS THE LAW?

- Preamble provides a legislative intent.
- The background explanatory statement should set out the objects of the law
- The preamble should not be too broad or too vague

The main usage of the Preamble should be to understand the background of the statute, its surrounding circumstances and mischief it seeks to remedy.

PREAMBLE PROVIDES A CHECKLIST

- Why is this law being introduced?
- What is the mischief the law is seeking to remedy?
- What are the goals of the law?

- What are the results the regulation is intending to achieve?
- What is the obligation that the law introduces?
- What does the law prohibit, prevent or criminalise?

WHAT IS THE NECESSITY TO DEFINE A TERM?

- It is done so that there is no repetition
- It acts as a tool against ambiguity and uncertainty

An exercise to check out sec 7 of the MV Act was initiated by ma'am. The exercise was to check what can be probable words that we can figure through the Act which needs definition.

Motor vehicle, Maxi Cab, motor cab were the words.

The purpose of preliminary provisions is for informational purpose.

UNDERSTANDING FINAL PROVISIONS

Final	Purpose	Benefit
Repeal	Does the new law repeal any existing legislation or makes them redundant?	Quick reference to all earlier laws that are no longer relevant
Transitional arrangements	How do we move from the earlier legislation to the new one? How do we deal with cases in the pipeline when a new regime is introduced?	Helps readers to understand which regime is applicable to them and deal with the passage between the two regimes
Savings	Does the law 'save' any provision from the repealed law?	Allows draftspersons to retain relevant clauses.
Non-compliance	What are the consequences of non-compliance?	Lays out the varied penalties/fines/sanctions for non-compliance
Amendments	Does the law substitute an earlier law or set of provisions?	Readers can view, at one place, all the changes the law has had over the years

REPEALING LAWS

- These laws are impossible to legislate in vacuum
- It is the duty of the drafter to identify the laws which are affected

DELEGATED LEGISLATION

It allows different bodies to make bye laws, guidelines, regulations, rules.

WHAT ARE THE TECHNOLOGIES USED FOR DRAFTING?

It is divided into 3 parts i.e.

- Access
- Organisation
- Drafting

There should be free access to law. Access means accessibility which means easy to read and easy to find.

Some loopholes of Meghalaya website relating to Meghalaya Acts are highlighted as it is not updated in the database.

INFORMATION TECHNOLOGY ACT 2000

Ma'am mentioned that there needs to be an authentication of electronic records.

The process should not include

Type -print- sign – scan – upload rather it should be type – authenticate – upload

SHORT-TERM AND EASY SOLUTIONS

- Internal processes across departments
- Formal structures
- Use of checklists, forms, templates and manuals