

**PRACTICAL
APPROACH
TO
LEGISLATIVE
DRAFTING**

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FOREWORD

The Legislative Drafting is gradually developing in Pakistan but we have not been able to record our drafting practices and traditions with useful techniques and skills in black and white in a systemic way for use of our future generations adopting Legislative Drafting as a profession. In our legislative system and process by and large the legislation remained within the domain of the Government and resultantly the Legislative Drafting in private sector could not progress. But now due to different parliamentary initiatives and the interest of some foreign donors the subject of legislative drafting is gaining importance and its need is being felt both by the Legislators and other persons in the legal field.

Although few books on Legislative Drafting by some foreign authors are available but in Pakistan no serious attempt has been made so far to make research in this field and no written and publish work in legislative drafting in Pakistan is available providing the details on different techniques and skills in the field of Legislative Drafting about Pakistan experience which is mainly based on British pattern and style of legislative drafting.

Mr. G.M. Chaudhary has worked in the Drafting Wing of the Ministry of Law, Justice and Human Rights. He also remained associated with the parliamentary business and had the opportunity to see the Parliament at work. He is perhaps the first person in Pakistan who has undertaken this important task and record in writing experience, techniques, skills and practices in the field of Legislative Drafting.

“Practical Approach to Legislative Drafting” is a tremendous research work in legislative drafting supported with extensive examples from different existing laws of Pakistan. This research work has a potential to be adopted as a text book for legislative drafting and an excellent guide for learners, beginners and drafters in the field of legislative drafting in Pakistan to develop and strengthen their techniques, skills and capabilities in the Legislative Drafting.

Part – I of the book deals with basic principles of legislative drafting which are explained in detail with examples highlighting different aspects of legislative drafting. Elaboration of communication process for legislative drafting and development of Legislative Research Model (LRM) is quite useful for drafting to successfully achieve the aims and objectives of a proposed legislation and ultimate its enactment.

Similarly, other concepts developed and presented in a scientific manner have the capability to satisfy modern scientific mind having different doubts and questions about law-making and legislative drafting.

Part – II is purely a technical discussion and review about drafting a Bill which is main objective to learn basic principles of legislative drafting. It is the most comprehensive research elaborating drafting a Bill in a logical and schematic way while dealing separately about different parts of a Bill.

Statement of Objects and Reasons is the part of every Bill introduced in either House of the Parliament to highlight and briefly explain the basic philosophy and need for a legislation in ordinary language but no systematic instructions are available on the topic and the book provides very comprehensive insight about necessity and drafting techniques of Statement of Objects and Reasons.

In this work he has also discussed different measures relating to accountability, transparency, monitoring, evaluation and good governance which would provide valuable feedback and awareness about checking and prevention of this menace in the society.

Lastly, I appreciate the initiative and contribution of Mr. G.M. Chaudhary for the development of Legislative Drafting in Pakistan and it is hoped that this Book will prove a good reference and useful work on the subject for all concerned.

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PREFACE

I had joined the Drafting Wing of the Ministry of Law, Justice, Human Rights and Parliamentary Affairs in the year 2001, as an Assistant Draftsman quite enthusiastically to learn the world's rarest field of intellectual excellence and to contribute in legislative drafting process. Immediately after joining the profession, I was ambitious to learn expeditiously the art of legislative drafting to perform my duties efficiently. However, I was unable to find a book which may help me learning our national perspective of legislative drafting forcing me to depend on a few books written on legislative drafting by foreign authors or experts in the field. Those books were explaining legislative experience of those countries or some other countries whereat authors of those books performed their professional duties in the field of legislative drafting. There is not a single book which may explain and guide Pakistan is experience and tradition of legislative drafting.

It was a big gap in an important field of learning and intellectual pursuits. However, this gap was filled by able guidance of my worthy senior colleagues and Draftsmen of the Drafting Wing of the Ministry of Law, Justice, Human Rights and Parliamentary Affairs (now Law, Justice and Human Rights), who are not only having versatile experience but also higher learning in the field of legislative drafting from foreign institutions. As I have inherent capability to learn which was further boosted up due to encouragement by Mr. Muhammad Azam Warraich, Draftsman, with his critical style. There is no doubt that he always tolerated my errors and guided for hours discussing and explaining different techniques and skills for better legislative drafting which I have noted down for my guidance and explained in this book under different headings and chapters. I hope all those techniques and skills will be equally useful for the readers and users of this research work without undue loss of time.

This book is divided into two parts. Part – I is devoted to Basic Principles of Legislative Drafting explaining different aspects relating to composition, legislative sentence, legislative drafting, policy issues in legislative drafting, communication process and communication model for legislative research, basic steps, designing and scheming a proposed legislative Bill, clarity and readability.

Punctuation is an important aspect for ordinary users of a language and particularly for legislative drafting in that language. Thus,

general use of punctuation marks in ordinary language and legislative drafting is explained with examples.

Similarly, issues relating to good governance and providing in-built mechanisms for accountability, transparency, monitoring, evaluation and avoiding corruption through legislative measures have been discussed in detail which are a new aspect of legislative drafting due to rampant corruption within the limits of law or exceeding the mandate of law. However, it is the modern tendency that legal provisions should be drafted in such a manner to reduce or eliminate administrative discretion and make all processes transparent, open and accessible to general public through different means like participation in important decision-making. All possible means and strategies have been briefly discussed with necessary best drafting practices to incorporate such concepts and strategies in legislative solutions i.e. principal and subordination legislation.

Part – I is concluded with constraints and limitations of legislative drafter with basic tools and rules for legislative drafting in brief discussed in different chapters of this book for review and revision purposes.

Part – II is exclusively relating to practical techniques and skills regarding drafting a Bill i.e. legislative proposal. It is a detailed part wherein examples from existing enactments are used extensively for the benefit of users particularly other than professional users. Extensive reproduction of different provisions may be quite useful for observing the difference that how draftsman in different period of legislative history were thinking and behaving to incorporate different ideas into legislative domain. A keen learner may learn a lot from these detailed provisions of different laws, however, it may be causing boredom to professional drafters. But serious approach and study of these selective provisions may also prove useful for their future benefit. It is not the all, the entire statute book i.e. Pakistan Code or relevant Provincial Codes, are there for an enthusiastic and ambitious beginner and learner. Careful examination and study of each and every provision will prove useful exposing different patterns and styles to express the different ideas or same ideas in different styles. Thus, the purpose of selection of these texts is to provide the reader and user of this book an in-depth insight in different laws without arranging or due to non-availability of different enactments.

Part – II is separately dealing with Bills, different kinds of Bills, logical arrangement in a Bill with main parts of a Bill. Detailed explanation with rules and best drafting practices about different clauses

in a Bill i.e. preliminary, substantive, administrative, procedural, financial, good governance, penal, supplementary, miscellaneous and final clause, with extensive examples from existing enactments will be useful for learning by examples.

A chapter is reserved on drafting Schedules and Tables. There is in detail discussion on drafting amending Bills. At the end, different principles regarding drafting of Statement of Objects and Reasons are explained with extensive specimens from existing enactments and Bills pending consideration or at different stages of consideration in the Senate and National Assembly are also the parts of this book to explain latest trends in drafting. Statements of Objects and Reasons from Private Members' Bills are specially included to show the expertise of non-professional or drafters providing services in private sector to the Members of National Assembly and the Senate.

It particularly to point out that I am highly indebted to Malik Hakam Khan, now Acting Secretary and Draftsman for his patient and composed manner during performance of different assignments under his guidance and supervision. I had learnt very useful techniques of legislative drafting, parliamentary and legislative process from him because I had supervised the Drafting and Legislation Section of the Ministry of Law, Justice and Human Rights under his immediate supervision and guidance in different matters relating to drafting and legislation within Ministry and in coordination with National Assembly and the Senate Secretariats. During this period I had also remained attached with Minister and Minister of State for Law, Justice and Human Rights for coordination relating to legislative and parliamentary business in the Parliament i.e. National Assembly and the Senate. It had proved a true exposure to legislative and parliamentary business for me at the highest level during a period of turbulent legislative history of Pakistan during which important legislative business had been done having far reaching impact. Thus, during my stay in Ministry, I got the opportunity to deal with all aspects of legislation from principal to subordinate legislation in addition to coordination with all other Ministries and Divisions of the Federal Government and Secretariats of both Houses of the Parliament i.e. National Assembly and the Senate. Coordination and participation in the meetings of different Standing Committees of the Senate and National Assembly was a tremendous exposure for me to real legislative process during the consideration of different Bills referred to those Standing Committees.

My all drafting knowledge, in addition to study of all available books and materials on legislative drafting, is based on the legislative drafting experience of these two legendary personalities in the field of legislative drafting in Pakistan. I may easily claim that I had benefited

from their long experiences with all my constraints and limitations. I may have learnt more if I had continued to work even today under their able guidance and supervision.

I am specially thankful to Mr. Mujahid Parvez Bajwa, Librarian of the Ministry who always very kindly assisted and guided me about different books on the subject without any reservation and warmly as well as other staff members of Library. I cannot ignore cooperation of Mr. Saadat Iqtidar Alam and Mr. Muhammad Rafique, Assistants of Drafting and Legislation Section for their untiring cooperation and assistance during my stay in Ministry and performance of my duties relating to legislative drafting and parliamentary business.

It is also to mention that there is repetition of few legal and other texts but to increase the utility of relevant points by re-emphasizing and not to increase volume of book unnecessarily.

In this publication, efforts have been made to provide an upto date version of the different laws or their relevant sections to help the reader to understand their true legislative perspective and nature. Other texts have been proof-read carefully to make the text error-free but after all we are humans and there is possibility of errors and omissions but all it will be without any bad intention. However, I shall be thankful if you point out about such errors or omissions for rectification in future editions and for the benefit of others. Your cooperation, guidance and assistance will be of tremendous benefit for me.

All suggestions and comments will be welcomed for improvement of quality of this work. I shall also be ready and available for all guidance and advice in different legislative drafting matters. You can also send me your messages electronically at my e-mail address given in this page. Your questions and queries will be answered and advice about any aspect of the subject or topic will also be provided.

Rawalpindi,
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to
Ahmad Yar, Hamid Yar and Sultan Bano,
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reproduced from their valued works, although with proper references and
recognition for the benefit of readers and users of this publication.

Practical Approach to Legislative Drafting

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Annex

The General Clauses Act, 1897 (Act No. X of 1897)

Roman Numerals and Use of Roman Numerals

The following are the primary Roman Numerals :

<i>Roman</i>	<i>Arabic</i>	<i>Roman</i>	<i>Arabic</i>
I	1	V	5
X	10	L	50
C	100	D	500
M	1000		

The above are the primary symbols. If a primary symbol is placed to the right of another primary symbol of greater value, the value of the primary greater symbol is added to the greater symbol. Conversely, if a primary symbol placed to the left of another primary symbol of greater value, the value of the primary greater symbol is reduced or subtracted by that lesser symbol. However, small subtractions from large values are avoided i.e. 99 is XCIX not IC.

The following are first one hundred Roman and Arabic numerals for the facilitation of users :

<i>Roman</i>	<i>Arabic</i>	<i>Roman</i>	<i>Arabic</i>
I	1	XVIII	18
II	2	XIX	19
III	3	XX	20
IV	4	XXI	21
V	5	XXII	22
VI	6	XXIII	23
VII	7	XXIV	24
VIII	8	XXV	25
IX	9	XXVI	26
X	10	XXVII	27
XI	11	XXVIII	28
XII	12	XXIX	29
XIII	13	XXX	30
XIV	14	XXXI	31
XV	15	XXXII	32
XVI	16	XXXIII	33
XVII	17	XXXIV	34

<i>Roman</i>	<i>Arabic</i>	<i>Roman</i>	<i>Arabic</i>
XXXV	35	LXVIII	68
XXXVI	36	LXIX	69
XXXVII	37	LXX	70
XXXVIII	38	LXXI	71
XXXIX	39	LXXII	72
XL	40	LXXIII	73
XLI	41	LXXIV	74
XLII	42	LXXV	75
XLIII	43	LXXVI	76
XLIV	44	LXXVII	77
XLV	45	LXXVIII	78
XLVI	46	LXXIX	79
XLVII	47	LXXX	80
XLVIII	48	LXXXI	81
XLIX	49	LXXXII	82
L	50	LXXXIII	83
LI	51	LXXXIV	84
LII	52	LXXXV	85
LIII	53	LXXXVI	86
LIV	54	LXXXVII	87
LV	55	LXXXVIII	88
LVI	56	LXXXIX	89
LVII	57	XC	90
LVIII	58	XCI	91
LIX	59	XCII	92
LX	60	XCIII	93
LXI	61	XCIV	94
LXII	62	XCV	95
LXIII	63	XCVI	96
LXIV	64	XCVII	97
LXV	65	XCVIII	98
LXVI	66	XCIX	99
LXVII	67	C	100

Miscellaneous Roman Numerals

CC	200	CCC	300
CD	400	D	500
DC	600	DCC	700
DCCC	800	CM	900
M	1000	MC	1100
MCC	1200	MCCC	1300
MCD	1400	MD	1500

MDC	1600	MDCC	1700
MDCCC	1800	MCM	1900
MM	2000		

Punctuation Marks

The following are different punctuation marks :

<i>Name of Punctuation Mark</i>	<i>Symbol</i>
Full Stop or Period	.
Comma	,
Semicolon	;
Colon	:
Colon-Dash	:—
Hyphen	-
Dash	—
Apostrophe	'
Quotation Marks or Inverted Commas	‘ ’ “ ”
Brackets or Parentheses	(), []
Oblique	/
Question Mark	?
Exclamation Mark	!

PART – I

BASIC PRINCIPLES OF LEGISLATIVE DRAFTING