

# **A Logical Structure: The Base to An Effective Legislation**

**Devansh Choudhary**

Himachal Pradesh National Law University

B.B.A. LL.B. (hons.) Student

## **Abstract**

Legislation drafted in customary legal English is regularly hard to comprehend and the people who draft legislation in plain language try to defeat these shortfalls by utilizing the construction, of the regulation to impart to the interest group. The customary design has consistency because of long haul use by different areas and thusly decreases vulnerability. Yet, in the beyond twenty years there has been protests about legislation, which incorporates the design, and there is a new pattern of individuals needing to peruse the laws that oversee them which is made troublesome by the customary construction of legislation. The construction of legislation truly does really support availability whenever drafted according to the point of view of the mass, the mass is viewed as those whose privileges are impacted by the legislation. The audience is considered in light of the fact that the people decides the point of view and association of the construction deciding the crowd is the worst thing about the drafter whose fundamental objective is conveying the approach aim and drafting powerful regulation that would accomplish its motivation. Remote legislation clears a path for issues of viability, indiscriminate execution and an encouragement to Judge made law. Making the legislation clear is about the language alone however about the plan and design additionally; how the structure of the legislation can be introduced in a manner that is useful to the people in understanding the legislation.

Keywords: legislation, audience, structure, drafting, effectiveness.

## **INTRODUCTION**

A legislation is needed by the government to properly govern the country. Government officials and politicians often consider the legislation to be a method to achieve policies on political, economic, and cultural matters and an instrument for the advancement and cultivating a proper administrative system in the society.

As legislation supervises all the aspects of a life in the society. That makes it very important that the audience comprehend it to raise effectiveness, consistency, and reasonability of the given legislation.

The legislation is proclamation of privileges, duties and rights which is a kind of message in this way, when the drafter is in the process of drafting a piece of legislation, they have a duty of converting the policies into a legislation, also translating proposals into effective and legally sound law. Drafter also has the obligation to communicate the ideas of policy makers to the audience of the legislation clearly and unambiguously to ensure effectiveness and compliance.

The previous 20 years have seen a developing enthusiasm for the format of legal texts. Some portion of this interest originates from the demand for easily comprehensible and clear legal records. The content of legislation is needed to be ordered logically; from the audience's point of view, to empower the audience to utilize it effectively.

Every legislation has an immeasurable effect into the lives of the audience. That makes it important for the legislation to be of value and quality and easy for the audience to interpret without ambiguity.

## **Literature review**

- Onoge, E., Structure of Legislation: A Paradigm for Accessibility and Effectiveness. *Eur. JL Reform*, 2015.

Here the author focuses on the effectiveness and availability of the legislation which can be achieved by a proper and logical structure. Then he gives some approaches to different types of structures. Also the author looks upon different factors affecting the effectiveness of legislation.

- Xanthaki, H., *Drafting Legislation: Art and Technology of Rules for Regulation*.

Bloomsbury Publishing 2014.

Here the author looks upon the approaches to the structure of a bill. She also talks about the importance of unambiguity and clarity in a legislation. Then she also talks about the significance of communication of the intent of policy makers to the audience through structure as a tool.

- Brian Hant, 'Plain Language in Legislative Drafting: Is It Really the Answer? Statute Law Review 2001.

Here the author talks about plain language or clear unambiguous language and its importance in a legislation. He explains what plain language is and states some historical context in relation to law. He states some steps taken by drafters from various countries to increase the clarity and accessibility of legislation. At last, he gives some illustrations of techniques that are used in plain language drafting.

## **Effectiveness and Quality of the Legislation**

Quality of legislation is a topic for many debates in recent time. "Quality legislation" is defined by Xanthaki. He defines it as one that can enable the law framers and drafters to get the desired outcomes. A legislation which can make the citizens abide by the law and give greater compliance of law (Burki, A., 2016).

It is debated that higher quality of legislation would prompt effectiveness and accessible to all. Simple, effective, and clear legislation can be considered good quality. The drafter uses the concept of effectiveness, cost efficiency, accuracy, clarity, and unambiguity while the process of drafting. Effectiveness can be explained as degree of impact of the legislation on the topic that it deals with in an ideal way.

Effectiveness can be accomplished by using of Clarity, or clearness, in this way by ensuring the utilization of a proper and sensible format, which is clarified and is easy to comprehend for the readers. Consequently, to raise effectiveness, the legislation can be made easier to interpret using plain language. This will ensure that the citizens will abide by the law and provisions of the law, which ultimately results in the increased quality of legislation.

The primary goal is the accessibility to all. To achieve this, the drafter must choose a format for the law in a logical and effective manner which can be easily interpreted by the audience.

## **Accessibility of Legislation**

The main component of the rule of law is the availability of the legislation. First individuals must understand that it is to their greatest advantage, to live as per the suggested manner in the rules and all the rules must be followed. Also, they should realize what those rules are and how they benefit themselves.

Accessibility goes above the fact that whether the legislation is obtainable to the audience. It also includes the prospect of understanding of the rules and objectives by the audience, whether they can interpret it in the way proposed by the policymakers.

## **Audiences of Legislation**

Communication of the legislation is a challenge often neglected by the drafters of the legislation. Without considering the targeted audience of the legislation, the drafters cannot draft it in a proper way or know how to propose the intended idea. So, it makes the audience an important factor in the effectiveness of the legislation and the structure to be adopted.

### **The question arises, who is the real audience?**

Duncan Berry stated that those people who would read the law and the people who will have an effect in their lives because of that law can be considered as the audience (Berry, D., 2000). Now this can include several groups of people as the audience. It is the duty of the drafters to consider all these groups simultaneously and find a way to make the legislation clear to the complete audience.

According to Dennis Murphy the intended audience are and should be the common citizens (Murphy, D, 1995).

This highlights the audience's analysis in the drafting of a legislation as an important aspect. This is a challenge to the drafter to identify the real audience of the legislation, to whom it intends to affect. The analysis is a subject matter to the given legislation and the targeted audience.

It becomes the duty of a drafter to make the legislation in a logical structure which can be interpreted properly by readers of the law. A variety of audience means various levels of understanding and interpretation of the law. The drafter should keep this fact in consideration while creating a structure for the legislation.

## **Structure and format of a Legislation**

Structure is a complicated creation or a logical pattern; a way and means or foundation of construction.

The structure, design and layout of a legislation is as vital as clear and unambiguous language. A logical and clear design can deliver the message more effectively.

If a legislation is properly arranged in a logical order, then it helps the reader to navigate around quickly and efficiently. This results in the increase in the accessibility.

The readers can easily navigate and search for the part required by them if there is a proper structure. A greatly designed format or structure can help the reader to reach the desired part or section within the legislation and raises the accessibility.

Peter Butt says the format and layout of legislation is not just about the aesthetic and good looks but also for improving the experience of the reader and help them navigate around. It has been seen that the interpretation of the document is better when there is a proper, logical, and well-arranged structure, which also helps in finding, understanding and the using of the data provided.

The readers of the text are a significant part of the process of communication. The audience includes the people who get some benefit and have some duty imposed on them and the people who administer it. So, the structure should be proposed keeping in mind all these people so that they can interpret it with ease.

The process of forming a structure involves assembling and arranging the provisions in an orderly fashion. Assembling refers to the integration of various chapters to make parts and integration of separate sections into chapters. The arrangement refers to the order in which these parts are to be put in the document, the order of the chapters of a particular part and section inside the chapter.

It has been seen design and format of the legislation has the same significance as the selection of words. The readers expect the legislation to be logically arranged and easy to navigate so that not much effort is put in by the reader to interpret it. In other words, the laws are needed to be drafted from the perspective of the targeted audience.

The structure has no regular or fixed pattern, different countries follow different patterns as demanded by the situation. For instance, in UK the definition part is included at the ending of the document, whereas in countries like India and USA the definition are put in the start of the legislation. The short title is implanted in the starting of the text in India as well as USA, but in the end part in the UK.

The Bergeron Rule which was given by Robert Bergeron says that there must be a clear and logical order and format for the legislation (Bergeron, R., 1999).

## **The traditional structure of legislation**

There is a base form of a structure which is mostly followed with some minor changes as per the requirement.

**Preliminary provisions:** this includes the introduction part of the legislation. This is not the most significant part but still is necessary to complete the document.

- **Long title:** it can be seen as the official heading for the statute, which serves the purpose of giving a summary or scope of the given law.
- **Preamble:** it is the introducing statement to the law which intends to explain the purpose and thinking behind the statute.
- **Enacting clause:** it talks about the legal authority of the law and includes the sources from where the authorization is said to be taken.
- **Short title:** it is sort of a short name for the law given for the ease in labelling and identification of the statute. This is given since the long title is sometimes difficult to mention as it gets too long.
- **Commencement:** it states when and how the act or law will come into effect. An act may be passed on one day but not enacted on that same day.
- **Extent Clause:** it states the territorial extent of the law i.e., the area of operation or the territory where this is applicable.
- **Duration/Expiry:** this part is included if an act is made for a temporary duration. It is used to set a fixed point in time when the act will cease to have an effect.
- **Application provision:** this part is included when an act or law is to be given some extraterritorial application. For example, in the IPC, 1860 it states that its provisions also apply to any person on any ship or aircraft registered in India.
- **Purpose clause:** this part includes the primary goal or purpose of the law. It tends to convey the message and intentions of the policy makers to the audience. It also tends to deliver what the law wants to accomplish.
- **Definitions:** this part includes the standard definition or the meaning of the words that the drafter intends to convey, of the words that the reader might come by frequently in the document.
- **Interpretation clause:** this part is added to avoid any uncertain or ambiguous interpretation from the reader. It states what the drafter intends it to mean.

## **Principal provisions**

- **Substantive provisions:** it includes the rights, powers, privileges, and immunities of persons to benefit or be regulated.
- **Administrative provisions:** it includes the department, department head, appointment and removal, compensation, powers and duties, classification of employees, rules, civil service status, reports, and relationship to local government.

## **Final Provisions**

- **Savings clause:** this part protects those provisions which can be deleted or stop being in effect due to some new law or any other reason.
- **Repeals Provisions:** it includes the revocation of any enactment, act, part, subpart, section, etc.
- **Schedules:** schedules are used to give information on the working of the act to achieve its purposes.
- **Sunset provisions:** it specifies that the certain law or a part of the law will have no further effect from a fixed date if no legal step is taken to extend the part further.
- **Review provisions:** it is similar to sunset provisions, but here the parliament has to review the specified part after a fixed time.

## **Chapterization**

When a document is divided into parts it makes it easy to read and understand it properly and hence makes the interpretation easy.

A document of law is divided into parts to help in better communication and conveyance of facts to the readers. The best way to decide how this division is to be made is to look upon all the main points that have been recognized and selected to be included in the legislation. When the drafters have all the main topics in front of them, it is easier to divide them according to a logical fashion.

When the arrangement is done logically, it makes easy for the reader to know the intended theme. This makes the reader comprehend the statute in an improved manner. Dividing gives the legislation increased accessibility.

## **Organisation and ordering of provisions**

Organization refers to the integration of various chapters to make parts and integration of separate sections into chapters. The ordering refers to the order in which these parts are to be put in the document, the order of the chapters of a particular part and section inside the chapter (Onoge, E., 2015).

The arrangement must be done keeping in mind the usage and significance of the concerned part. Organizing of the legislation is an important part as it makes the navigation around the text easier.

The intensions of the policy makers and the main aim of the legislation is clearer and more comprehensible when the document is logically arranged, and the text is simple to understand. Format of the law must have a fitting and defined pattern to make the readers interpret it properly.

## **Types of structure**

The traditional form of structure is often changed a little as per the requirements of the law. Some of the commonly used types of structures are given below:

### **Telescoping structure**

This type of structure uses front loaded approach, where the more important information is placed before the less important. It begins with the main data which is the key for the subject matter to the audience. Then it further broadens the topic with less important material which is still vital for matters like policy intent. After that the broader information related to the topic is given.

The readers often suppose that the more significant data is given at the initial stage of the text. Now, using the front-loading method, the readers assumption is made true and ultimately improving the experience of the reader.

It has been proved that a human's mind has short time span when it comes to focusing on something important. To use this information while drafting a legislation the drafters put the most significant data in the beginning so that the reader is focused while reading the important part (Pillay, S., 2017). So, this approach helps the audience to access the important data effortlessly.

Michele M Asprey has supported the telescoping structure. He says that the most significant data must be added in the beginning so that it does not get lost in the parts containing administration and procedures of the given law. To make the law in this way, the draftsman needs to see the things from the point of view of the audience.

### **Thematic structure**

This type of format focuses every key subject matter and theme, by taking one subject after another in a regular and logical order. In this approach not all the important topics are placed in the starting, but it focuses on the strategy to take every theme and matter and merge them to present them in a systematic and logical way.



Thematic format tends to bring all the related material together, leading to easy understanding of the legal text. This method involves some fixed sets based on each major topic or theme. These sets include those parts which tend to be related to the subject matter.

The readers for this type of format need to read the entire text carefully as it contains important provisions in each of the thematic division.

## **Chronological structure**

This type of format includes the arrangement of topics relating to the law in a certain logical order. Now, this order is determined according to the progression of the law.

This format demands constant consideration towards the text because it contains crucial data in all parts within text applicable to the readers and compels the readers to read the text with care throughout the text.

Peter Butt contends that a draftsman can attain more effectiveness if they draft the document with the readers viewpoint. This will also increase the accessibility of the text. He also acknowledges the fact that only one structure cannot be fit for all legislations but according to Butt, the audience favour the telescoping format over the two others. This is due to the reason that the primary and main data is accessible at the initial stage unlike the rest where the audience needs to be devoted deeply in reading the text to find the important aspects. Therefore, some part of the crucial data is left unnoticed by the audience which affects the understanding of the law. However, the chronological structure can also prove to be effective in certain cases, which include procedural legislations. The logical ordering in those helps in easier accessibility.

## **Important factors affecting the effectiveness of the legislation**

- **Accessibility**

It is a crucial factor which affects the reliability of the system. Reliability leads to constancy, faith, and assurance which further raises the financial condition.

Accessibility is not only limited to the availability of a physical copy of the text, it also includes the aspect of the understanding of the law by the readers and targeted audience and to what extent they can apply it to themselves.

With greater understanding of law, the citizens will accept the law easily and there will be fewer disagreements.

The accessibility of the document can be increased by the proper use of structure.

- **Comprehensibility**

The legislation's primary audience is the common people, so it is crucial that they can easily interpret the law in the same way that the policy makers want them to. It becomes the duty of the drafter to keep the text simple and use plain language so that it can be understandable by those who are being affected by that law.

Now the use of a clear and prearranged structure can help in increasing the intelligibility of law. Telescoping format can be used to raise the comprehending ability of the reader as it serves the most important content at the beginning of the document.

- **Clarity**

Drafting of laws clearly will allow the people affected by the law and those who are the targeted audience to be aware of their duties and benefits resulting from the law. The audience will not be able to grasp the necessary information from a legislation written in a complicated language (Salembier, P., 2018).

The transparency and understanding of law can be enhanced by the clear language used in drafting. It is also dependent on how the sentences are framed and how they are organized. A crucial element of law is the clarity in it, if the clarity is absent then the goal of reaching the legality can never be met (Fuller, L.L., 1964).

Clarity leads to better communication between the reader and the policy framers as well as it makes the legislation more effective.

## **Benefits of an effective structure**

When a legislation designed and layout in a proper structure taking in consideration all the important factors such as availability, clarity, effectiveness, etc. it leads to some benefits.

An effective structure of legislation would lead to:

- (i) Increase in compliance rates: if the document is written in proper manner with a logical structure, it will surely result in increase of compliance rate. This is because more people will be able to comprehend it correctly and will understand their duty.
- (ii) Greater efficiency: a good structure is one where the reader is able to navigate properly not only once but every next time it is read.
- (iii) Greater respect for the rule: when a good rule is written, it will surely be understood better. This way the rules will have greater reliability.
- (iv) Decrease in the managerial expenses: properly framed laws will make the requirement for illustrative data go down and the number of questions raised will be decreased.

Better accessibility to the legislation: with proper structure the law can be understood easily and prevent any delay that can occur due to difficulty in understanding.

It will lead to the decrease in the unwanted contravention of law and will respect the rule of law.

Among other benefits, it is also cost effective for administration because it would be unambiguous and clearly understood by the readers. The audience will also participate in the process if they understand the laws clearly and will follow the objectives set by the legislation, which will make it more effective.

## **Conclusion**

The laws which are drafted in the traditional legal language are mostly problematic to comprehend for the readers. So, to get better of this difficulty, the drafters use simple language and the proper use of structure and format.

While drafting a legislation a drafter must keep in mind who the audiences are, the point of view of the readers, the overall quality of the text, the availability of text, the level of understanding of audience and the other important aspects. These all play a crucial role in the general effectiveness of the law. As discussed earlier the structure and format, if framed properly can take care of most of these hurdles and will lead to an effective legislation.

Now it is up to the drafter to choose what type of layout and design they may choose for preparing the structure. The drafter must choose a structure which best communicates the desired information to the audience exactly as the policy makers intend to. Most drafters consider the telescoping method as it is the most capable of making the reader understand the text properly and with ease.

The laws that are framed must be framed in a simple manner, thus increasing the accessibility, and making sure the desired results are obtained. Complex and complicated laws create problems for the readers to comprehend them in the right way and thus hindering the compliance of the laws.

Constructed on the fact that the structure and format of legislation can to a great degree develop and cherish accessibility and effectiveness of the law.

## References

1. Asprey M.M (2003), Plain Language for Lawyer, 3rd Edn The federation Press.
2. Bennion, F., (1988). Legislative Drafting. By GC Thornton. [London: Butterworths. 1987 xxix+ 376 pp.£ 38]. International & Comparative Law Quarterly, 37(1), pp.232-233
3. Bergeron, R., (1999). Rules of legislative drafting–letters to Ukrainian drafters. Department of Justice Canada and Ministry of Justice of Ukraine, Kiev.
4. Berry, D., (2000). Audience analysis in the legislative drafting process. The Loophole.
5. Burki, A., (2016). Quality of Welsh Legislation (Doctoral dissertation, Institute of Advanced Legal Studies, School of Advanced Study, University of London).
6. Crabbe VCRAC (1993), Legislative Drafting, Cavendish Pub, Limited.
7. Dennis. Murphy(1995), ‘Plain Language in a Legislation Drafting Office’ 33 Clarity, 3.
8. Fuller, L.L., (1964). The morality of law.
9. Hant, B. (2001), Plain Language in Legislative Drafting: Is it Really the Answer? Statute Law Review, 22, pp.25-27.
10. Krongold, S., (1992). Writing laws: Making them easier to understand.
11. Onoge, E., (2015). Structure of Legislation: A Paradigm for Accessibility and Effectiveness. Eur. JL Reform, 17, p.440.
12. Pillay, S., (2017). Your Brain Can Only Take So Much Focus. Harvard Business Review, 12.
13. Radcliffe, L., (1950). Some Reflections on Law and Lawyers<sup>1</sup>. The Cambridge Law Journal, 10(3), pp.361-374.
14. Salembier, P., (2018). Legal and legislative drafting. LexisNexis.
15. Xanthaki H(ed) (2013), ‘Thornton’s Legislative Drafting’ 5th Edn, Butterworths.