

5. FUNDAMENTALS OF LEGISLATIVE DRAFTING

5.1 Introduction

The societies of the world did not begin with legislation however in practice they have done. Legislation derives its origin from the Latin combination of the terms 'legis' as means to law and 'latum' as to mean making. Thus it is law making or creation of laws. No doubt. It is not manufacturing of laws. As law making is for a societal cause. In most of the democratic societies the legislators or the parliament is known for law making, however they do not. It is only deliberated and institutionalised. The art of drafting is done by set of experts known as legislative drafters representing the department of legislative drafting howsoever they are addressed by the national legal systems. Due to the multiplicity factors, societal requirements and geographical and political fabric, in the modern times, experts in this field comprise both legal as well as non-legal personalities.

5.2 Legisprudence

The concept of law making and its knowledge is attributed as *legisprudence*. The concept of law making or creation of laws is an art as well as science. It includes systematic study and research adopting multi-disciplinary approaches. Legislating drafting differs from legal writing as the former deals about public documents whilst the latter relates to private affairs. Hence legal writing is not legislative drafting. It can be said legislative drafting is one of the most difficult kinds of legal writing. Legislation determines the happiness of the society at large. It relates to codification of the available body of law in to enacted format.

5.3 Scope and Development

In democratic societies written laws or statutes have attained the status of major or principal source of law. As the statute law derives its life forms from of the will of the people, it becomes binding on the Government and its Agencies. Law making is done by the branch of the government. It also to be understood that the impact of society by way of public participation, work of the civil societies and other selfless actors have a large imprint on the legislative process as such. In the Indian context it is attributed to the Department of Legislative Drafting working under the auspices of the Ministry of Law and Justice, involving both the Central and that of the State Governments. The centre for legislative drafting and research in India caters the need of the Indian drafters in terms of the imparting the requisite training. Technically the drafters are first lawyers to interpret the statutes. Even though they are outnumbered by the legal practitioners, less visible and perform a non-traditional role in the legal profession, in terms of qualitative output they receive great respect and response universally. Drafters are also called as Parliamentary and Regulatory Counsels. Traditionally they were identified as draftsmen. However, it refers only the male masculine. Legal philosophy neither is one person nor one gender world. In every sphere it fosters pluralism. Due to the success of the plain language movement, at present the correct usage is Drafters, which restores gender neutrality. The functions of the drafters are primarily to protect, preserve and communicate the statutes. They are the custodians of the statutes in terms of creation.

The challenge in the science of law making is maintaining the concept of current law. The legislation has to be contemporarily relevant. However, the contentions for the Afro-Asian and other similar societies has been the dream of developing original or indigenous legislations. As most of the prevailing laws or colonial or does not represent the real needs of such societies. Modern schools of drafting aim at native jurisprudence. Stated differently, it is de-colonisation of legislations and respect towards the self-awakening movement.

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