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Regulatory Framework for Legislative Drafting in Pakistan: Challenges and a Way Forward

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Malik Junaid Arshad (Corresponding Author)

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Ph.D. Law (Scholar), Department of Law, Bahria University
Islamabad, Pakistan. Email: malikjunaidarshad@gmail.com

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Dr. Tauseef Iqbal

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Senior Assistant Professor, Department of Law, Bahria University,
Islamabad Pakistan. Email: tauseef_adv@hotmail.com

Abstract

It is widely accepted that the regulatory framework for legislative drafting addresses many legal challenges, including turning policy into legislation, the intelligibility of legislative expression, interpretation of statutes, and the rule of law. It leads the administration of justice towards achieving desired policy objectives. Without a predictable legislative drafting regulatory framework, the drafting quality causes failure to achieve desired policy objective, lack of rule of law, ambiguity, unintelligibility, and unpredictability of legislation. However, it is equally true that many of these challenges are prevalent to a large extent in Pakistan. The deficiency of legislative drafting regulatory practices, expertise, and deficient legislative expression impedes the enforcement of laws and administration of justice in Pakistan. It is quite apparent that the legislative drafting problems faced in the heterogeneous society of Pakistan appear to be more critical than any other larger county. The article exposes the necessity for Pakistan to adopt, special procedures, policies, and infrastructure based on internationally recognized principles of legislative drafting for intelligible, clear, and predictable legislation.



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1. Introduction

Legislative drafting is the process of constructing the text of the legislation. Legislative drafting means turning policy ideas into legislation suitable for the statute book, literally it is writing the law. It is best described as “prognosis” the subjective application of wisdom (Coremacain, 2017). In a narrow sense, it is law-making (Xanthaki, *Legislative Drafting: a New Sub-Discipline of Law is Born*, 2013, p. 57). Legislative Drafting is the art of expressing in concise and clear language the ideas of people (Hiranandani S. , 1964, p. 1). Legislative drafting involves the endeavor to solve problems faced by society and governments. (Crabbe, 1993). The regulatory framework of legislative drafting comprises techniques justified based on recognized theories and principles adopted in preparing the draft legislation. The regulatory procedure is more crucial to legislative drafting and warrants the rationality, intelligibility, and predictability of a law passed by the parliament (Oigusloome, 2000). The regulatory framework provides a definite consistency and enhances the quality of legislation through recognized drafting principles (Narits, 2004, p. 4). The legislative drafting process is distinguished from the legislation. Legislative drafting regulatory framework based on recognized principles and techniques have been adopted by world parliaments in the form of manuals, guidelines, instructions, and rules, etc. Regulations are implemented to strengthen the legal system and to resolve or avoid technical hitches for the advantage of its inhabitants. These are considered as a part of a legal system implemented and judged through the administrative and judicial process. Therefore, regulations must properly address legal problems and administrative arrangements by keeping in view the socio-economic and political landscape. Best regulatory practices are rational, comprehensible, accessible, and predictable. (Sector for Strategic Planning, 2014, p. 5). The regulatory practices of legislative drafting encompass policy instructions, designing, analyzing, verifying the draft law and includes post-legislative scrutiny. It elaborates a complete procedure from the involvement of drafter in policy, policy instructions to social impact assessment before and after implementation. Want of legislative drafting regulatory framework becomes very problematic to engage lengthy practice involving conversation, drafter expertise, discussion of policy ideas with stakeholders or initiators. The legislative process takes much time and skill of the drafter. Drafter’s efforts to understand policy not involved in policy affect a legislative proposal that may cause an obstruction in the rule of law, defective interpretation, and poor enforcement (Thoronton, 1996). Legislative drafting techniques and procedures have a direct impact on the effectiveness of legislation. A transparent and coherent legislative drafting framework helps to promote public participation in the rule-making process, foster trust in the judicial system, and reinforce the rule of law ((OECD), 2019, p. 8).

An efficient legislative drafting process ensures operative legislation. The efficiency of procedural application of legislative drafting is revealed from policy to implementation of the law. The inadequate application of legislative drafting would result in unintelligible laws (Pakistan, Manual for Legislative Drafting, 2017, p. 8).

Pakistan mainly inherited British laws by Section 18(3) of the “Indian independence Act, 1947” passed by the British Parliament, by the Act the laws of British India with necessary adaptations implemented in Pakistan. These laws remain continuous in force under the Constitution of Pakistan, 1956, and subsequent constitutions. So that healthy legislative drafting practices could not be flourished in Pakistan and discipline of legislative drafting remained in abeyance. The research demonstrated the failure to adopt a regulatory framework for legislative drafting in Pakistan. This research, therefore, intends to prove that a regulatory framework may improve legislation quality and address many legislative challenges in Pakistan. The most applied understanding is to consider a proper evaluation of the legislative drafting regulatory practices to the formulation of a legal framework for the support of the drafter from policy participation to the preparation of the draft bill.

2. Research Questions and Methodology

To prove this hypothesis, this research poses two questions:

1. Whether a legislative drafting regulatory framework backed by recognized principles is likely to enhance intelligibility, predictability, and transparency of legislation?
2. Whether a regulatory framework for legislative drafting is required to replace existed drafting process in Pakistan?

To answer these questions doctrinal legal research methodology is applied by utilizing primary and secondary legal sources. It considers scholarly work led by experts and policymakers, emphasizes the legal provisions implemented in modern democracies and internationally recognized principles and court judgment. The key objective of the research is to explore by explaining, comparing, analyzing, and illustrating in an organized form the facts starting challenges for legislative drafting in Pakistan. The targeted data is to be collected through legal enactments, books, manuals, articles of scholars, and as well as certified reports of national and international institutions.

To prove the hypothesis the study observes G.C Thornton`s five-stage drafting process to find the linkage between properly elaborated drafting regulatory frameworks and the real practice in Pakistan. These universally adopted principles are considered as a tool argument to ascertain how quality legislation may be attained by a proper regulatory framework comprising principles and techniques of legislative drafting.

3. Literature Review

Many researchers have been concerned in this area of research in legislative drafting and policy, by the focus on diverse matters of research, to prove the knowledge and the value of this discipline. Their relevant outcomes and submissions are as under:

Jeremy Bentham's (1789) in his work "An Introduction to the Principles of Morals and Legislation" demonstrated a principled theory that actions are accurate if they possess pleasure or preclude pain, it enlightens a political theory that the object of laws is to make the most of the quantity of pleasure or happiness. Bentham maintains that if the utility is described as the capability to produce pleasure, then the appropriateness of an action is determined by its utility. The principle of utility is regarded as the foundation of morals, no one nowadays will undertake to deny that it is the only safe rule of legislation (Bentham, *An Introduction to the Principles of Morals and Legislation*, Volume 1, 1823). To apply the principle of utility to legislation remained the aim of Jeremy Bentham, which he illustrated in "Theory of Legislation (1802)" he contended that public good out to be the purpose of the legislator. The common utility is out to be the substance of his rationale to identify the accurate good of the public, what constitutes the science of legislation, the skill comprises in finding the means to understand that good (Bentham, *Theory of Legislation*, 1891). Without a proper regulatory framework of legislative drafting how could fair, transparent legislation is possible and how could policy objectives and rule of law be achieved.

OECD (2018) in "Legislation and good governance: the role of legislative drafting manuals" established that ambiguity and insecurity created by poorly drafted legislation, is a hurdle to cost reasonable, cost-effective, and consistent conveyance of envisioned policy objectives. The legislative drafting manuals enhance legislative, regulatory quality, and provides evidence. Xanthaki (2014) as a replacement for proposing rules for legislation, identifies efficacy as the key objective of the performers in the policy, legislative, and drafting practices. It considers effectiveness as a key object of legislative drafting. Utilizing effectiveness as equal to legislative quality, the book discovers the steps of the drafting process, guides logical sequence, and through the structure of sections. As an alternative to coaching, in which drafting rules prevail, it explores the aims of drafting rules, consequently, encourages them to comprehend the goal and application of each rule (Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation*, 2014). Dickerson (1955) in his article 'how to write the law' provided importance to the legislative drafting process. He provided the legislative drafting process in two parts called the "think" the substantive part and the "write" called the stylistic. On substantive sides, there are three steps, the analysis of the problem, exploring the existing legal situation/research, and the sketch of the legislative plan, the next phase comprises 5 steps, the preparing of the draft, revising the draft, consistency check, cross-checking, the readability, and clarity check. Finally,

by reviewing this article we cannot ignore the importance of a legislative drafting regulatory framework (Dickerson R. , 1955). Raul Nartis (2004) in his article ‘Good Law Making Practice and Legislative Drafting Conforming to it in the Republic of Estonia’ emphasizes regulatory practices of legislative drafting to increase the quality of draft legislation. He emphasized that the role of legislation in society necessitates that legislative drafting regulatory rules must be respected, the rules encompass a combination of methods and procedures, reasonable on a theoretical basis, used in organizing drafts of legislation. Regulatory measures form an attached part of the procedure of legislative drafting, support guarantees the rationality and effect of adopted legislation. Dickerson concluded it obligatory to comprehend the rules of good law-making practice as a process commenced done policy (Dickerson R. , 1955). In “Legislative Drafting for Democratic Social Change” Seidman & Seidman (2001) encompasses conceptual tools and specific techniques required to draft legislation. It is likely to carry the institutional transformation required for good governance, it is intended as a useful aid for experts in the development of transitional worlds. It provides the constitutional and other limits for a drafter while drafting a bill, it provides instruction in drafting subordinate legislation, amendments and defines the expertise compulsory to draft viable, unambiguous, and freely interpreted provisions required to achieve policy objectives. A comprehensive research report model based on factual and logical grounds is proposed to rationalize the bills and establish that the responsible agency may implement them effectively (Seidman, Seidman, & Abeyesekere, 2001). Helen Xanthaki (2013) supports normative and contemporary techniques of drafting standard statutory law. Thornton's legislative drafting process is recognized as the prominent professional work in the discipline of law, observed and mentioned by legal experts and drafters worldwide. The research used these five principles to analyze it in Pakistan and to suggest a legal framework. Grant Thornton standardizes the drafting process into different steps (Xanthaki, Thornton's Legislative Drafting, 2013). Helen Xanthaki (2013) further briefly elaborated these principles in 5 stages namely:

- (1) Understanding the proposal.
- (2) Analyzing the proposal.
- (3) Designing the law.
- (4) Composing and developing the draft.
- (5) Verifying the draft (Xanthaki, Legislative drafting: a new sub-discipline of law is born, 2013, p. 58).

Toney Clinton Jaja (2012) in his work “Legislative Drafting: An introduction to theories and principles” defines and introduces the most related theories and principles that are essential for upholding good quality legislation. A “legislative drafting theory” or “legislative theory” is defined by the Seidman's as “the structure of a drafter’s justification for a bill constitutes the operative face of a de facto legislative theory and methodology”. He also defines the Theory of “regulatory framework for legislative drafting” as a standard tool for enhancing the quality of legislation. In legislative drafting principle of effectiveness of legislation is thoroughly linked as the principal objective. The book combined important principles and theories by G.C Thornton and establishes how the quality of legislation be advanced by legislative drafters. It improves rationality by familiarizing principles adopted from legislative drafting practices in the most advanced democracies from different jurisdictions (Jaja, 2012). Mauro Zamboni (2018) defined the idea of legislative effectiveness to help drafters to observe ideas, situations, and results. It is remarkable writing to strengthen the importance of legislative effectiveness to guide drafters and other stakeholders from policy to legislative process (Zamboni, 2018).

The legislative Drafting manual by the Pakistan Institute of Parliamentary Studies (PIPS 2019) explores the role of legislative drafting and different hurdles faced in Pakistan by simply exploring different principles. It made recommendations for refining the existing system of drafting precisely (Ahmed, Legislative Drafting Manual, 2019). Similarly, in Drafting Manual by Mazil Pakistan (2017) a brief overview of legislative drafting in Pakistan is provided. However, both documents have been adopted as guidelines for legislative drafting provided a very primary concept of drafting and remained vague regarding a regulatory framework (Pakistan, Manual for Legislative Drafting-A Primary Guide for Legislative Drafters, 2017). Crabbe (1993) sets a glaring and remarkable review of policy, legislative history, relevant problems, linguistic insight, drafting instructions and legislative schemes, constitutional limitations, and legal sentences. This book has been taken as a guide for analyzing legislative techniques (Crabbe, 1993). The “law drafting manual a guide to the legislative process in Albania” consider the parliamentary legislative process. The manual combines and explains relevant Albanian laws and regulations on legislative functions so that taken as a guide to propose suggestions. The research also considers the “Manual of Legislative Drafting by the Republic of Nauru Department of Justice (2015)” that promoted consistency in the arrangement, style, and philological aspect of laws, to make the resulting laws clear, modest, and easy to understand.

The writings of the aforementioned writers and researchers have been properly taken into consideration, thereafter conclusions have been drawn and recommendations have been made.

4. The Discipline of Legislative Drafting

Legislative Drafting is the most difficult task a lawyer may be asked to do (Dickerson R. , 1955). It is a highly technical discipline outside of mathematics (Dickerson F. R., 1977). Legislative drafting is the art of expressing with clarity, precision, and eloquence the idea of people or expressing public intent through the legislature (Hiranandani S. K., *Legislative Drafting: An Indian View*, 1964, p. 2). It is converting policy ideas into law adequate for the implementation. It is writing the law (Xanthaki, *Drafting Legislation: Art and Technology of Rules for Regulation*, 2014). Legislation drafting is a process by which governments turn their policies effectively into legislation to achieve their policy objectives. An effective regulatory framework of legislative drafting instructions matters for effecting government policies towards fair and true implementation. It is a challenging art of expressing the Govt. policies and the will of people in concise and clear language. It is an extremely practical field of study “most rigorous form of writing outside of mathematics” (Dickerson F. R., 1977). The legislative drafters are the real interpreters and converters of policy into legal text. The significant character of a legislative drafter is to transform advanced policy in a legislative shape. The expertise of a drafter lies in interpreting the government’s intent into legislation. The main and utmost valued task of a drafter is to theme basic policy ideas to a rigorous rational and logical analysis before turning policy into law.

Legislative drafting is the course of constructing a legislative text. It must be differentiated from legislation; law drafting includes drafting a text utilized in the judicial process. In a shorter form, it is the law-making equal to civil law, law-making captures the entire procedure of conceptualizing legislation until its actual enforcement and therefore depicts the legislative process, in comparison to legislative, drafting encompasses only the drafting process. But of course, it cannot be said that the drafting process is wholly distant from the process of legislation. The drafting process is included in the legislation, which in order is a part of the policy process (Stefanou & Xanthaki, 2016).

5. Regulatory Framework for Legislative Drafting and its Importance

In the legislative drafting discipline G.C Thornton (1979), is one of the prominent professionals and innovators who systematizes the legislative drafting process. G.C Thornton’s five principles are internationally recognized patterns for legislative drafting, he states that:

The drafter has skills and knowledge not generally possessed by policymakers. The drafter is an architect, an expert, a specialist. The difference between a legal mechanic and a legal craftsman turns largely on this point (Thornton, 1996).

5.1 G.C Thornton's model

Five principles rationalized the process of legislative drafting as under:

(1) Understanding the proposal

- i. Drafting instructions, reading, and analysis.
- ii. Policy instruction from the relevant department.
- iii. Legislative instructions regulatory framework.

(2) Analyzing the proposal

- i. Compilation of a legislative plan or legislative research report.
- ii. Drafters' response to legislative instructions (bills quality control).
- iii. Exploration of the inevitability of legislation.
- iv. Analysis of possible vulnerable areas (constitutional, legal, practical).
- v. Applied implications of the legislative proposal analysis.
- vi. Analysis of problems requiring framing of secondary legislation to implement the draft law.
- vii. Challenging behaviors identification behind social necessities.
- viii. Initial choices.
- ix. Legislative solutions.
- x. Conformity.
- xi. Effectiveness of the suggested legislative outcome
- xii. An investigation into the estimated cost of a bill and advantage.
- xiii. Evaluation and feedback identification arrangements (for example intervallic assessment of the efficiency of the bill or sunset clause bringing together a temporary arrangement of the bill).

(3) Designing the law

- i. Arranging the legislative text that helps to understand.
- ii. Arrangement of provisions and structure of bills.

(4) Composing and developing the draft

- i. The actual drafting of the text.
- ii. Observing the rules for words and grammar
- iii. Use of ordinary, clear, commonly understood, and unambiguous language. Avoiding needless words, similar words or phrases in changing contexts, jargon, synonyms, passive voice, plural, the language typical of a gender, outdated terms (such as "said" as an adjective), the use of "shall" to elaborate a responsibility, duty or prohibition. Short sentencing, and paragraphing to exhibit constituent parts; a regular system to number any article, paragraph, and tabulation; and Visio-graphic aids, like a diagram, formula, and map.

(5) Verifying the draft

- i. Internal Evaluation.
- ii. External Evaluation.
- iii. Scrutiny of the legislative text (checking the clarity of its practicability).

These principles are a noteworthy contribution to the domain of legislative drafting. These models are important in this study, as they can reveal the importance of legislative drafting regulatory framework, how it helps to govern rule of law and to what extent improvements are necessary. Thornton's Models of Drafting have been utilized in many democracies in the form of Uniform Rules, Regulations, Manual, or other related guidelines for drafting.

The Parliamentary counsel of the United Kingdom (UK) has adopted "drafting guidance (2018)" for members of the office, to help them in their task of making it as comfortable as conceivable for subjects to comprehend the bills that they draft. The primary legislation instructions for government bills are inculcated by relevant Government units. The comprehensive policy is functioned out by the administrators, legal advisors that prepare drafting instructions in close connection with the bureaucrats. The key responsibility of a legal adviser is to discover the required amendments in the law to achieve the objectives of the policy. Comprehensive instructions arranged by legal advisers inside the unit are directed to the office of Parliamentary Counsel (OPC). It is the idea of the "Bill Team". Each Government department has its process and capacity to instruct and drafted delegated legislation (Xanthaki, Legislative drafting: a new sub-discipline of law is born, 2013). In Estonia, the importance of regulatory framework has been well-thought-out, consequently, in 1999 the Government implemented regulation No. 279 the "Regulatory Rules of Draft Legislative Acts" to guarantee regularity and quality of draft legislation by the principle regulatory rules (Good Law Making Practice and Legislative Drafting Conforming to It in the Republic of Estonia, 2004, p. 4).

The council of ministers of Bosnia and Herzegovina (BiH) implemented uniform rules of legislative drafting comprising comprehensive guidelines for the rules and procedures of legislative drafting to all institutions of BiH by the parliamentary assembly of BiH in 2005 (Sector for Strategic Planning, 2014, pp. 5-6). In the United States, states drafted their manuals for legislative drafting and are bound to follow while drafting a law. Under rule 10 of Alaska's "Rules for Good Legislative Practice and Legislative Drafting," the Manual of Legislative drafting must be followed while preparing, processing, and depositing legislative documents. In-state of Massachusetts, Counsel of Senate to the state senate adopted the third edition of drafting manual to help legislative lawyers and other staff for drafting bills. It adopted simplicity, conciseness, consistency, directness as the basic principle for drafting and comprises a

collection of valuable legal information about legislation. It even provided the basic organization of a bill with grammatical issues, sentence structure, legislative statement, and arrangement of sections (Senate, 2003).

In India Ministry of Law & Justice consists of the department of legal affairs and the legislative department. The department of legal affairs advises ministries of the central Government whereas the legislative department has the responsibility of drafting principal legislation for the central Government. To enhance the trained capacity of legislative counsel in the country, the institute of legislative drafting and research (ILDR) was established in 1989. ILDR is functioning to provide legislative drafting training to law officers of the state governments. It is also providing a voluntary internship program for the students of law from recognized universities and institutes. To strengthen its legislative drafting practices the legislative department of the ministry of law and justice India adopted Pre-Legislative Policy 2014 to handle policy issues. The policy initiated a uniform procedure to legislate in the public domain, to gather the feedback of the public, government, and stakeholders (Department, 2014). To strengthen the drafting process a revised and updated manual of parliamentary procedures was adopted in 2018 by the Government of India, it included the modern foundations of legislative drafting from policy instructions to the passing of legislation including a drafting regulatory framework for subordinate legislation.

6. Legislative Drafting Regulatory Framework in Pakistan (Proving the Hypothesis)

6.1 Legislative Procedure in Pakistan

The Parliament (Majlis-e-Shoora) of Pakistan is bicameral comprises National Assembly and Senate. The Parliament of Pakistan is responsible for legislation. Both houses are required to pass a bill with certain exemptions for money bills in which National Assembly has exclusive authority in comparison with Senate. A bill after the approval of both houses required the assent of the President of the Islamic Republic of Pakistan and becomes an “*Act of Parliament*”.

The legislative process in Pakistan involves several steps. Article 70-77 of the Constitution of Pakistan 1973 provided for the legislative process. A bill is introduced after the policy idea of law is comprehended as required for legislation. The policy idea can be comprehended by an emergence, political group, or associations through their representatives in the legislature. The ministers, political parties, or government organizations may also grasp the requirement of a new law. The bill is then presented in the parliament with elaborations on the needs of legislation, ascertaining the public interest, and the rationalizing of the suggested law with the prevailing laws and the Constitution of Pakistan. The copies of the proposed draft bill are required to be

circulated to parliamentarians and published for the public before any further process. A discussion is generated in National Assembly and the proposed legislation is either turned down or accepted for more debate. The proposed bill is also required to be referred to the concerned standing committee for any instruction, changes, additions, or improvements. After finalization of discussion, the proposed legislation either in the present form or with changes, from the concerned standing committee is referred to the Senate, for further process. The Senate follows a similar procedure to scrutinize the draft bill. The senate may suggest modifications in the bill and the bill is mandatory to proceed again with the same process as primarily completed for the introduction of the bill. In the event of the rejection of the proposed legislative bill by the two houses, the proposed bill may be deliberated in the joint sitting of parliament. After the passing of the bill from both houses, it is presented before the president for his assent. The president may either give his consent or return to the house where it is introduced with necessary recommendations. However, the president is required to assent a bill within ten days. In case of assent to the proposed bill or after the expiry of the tenth day, the bill becomes “*Act of Parliament*”. The Act of parliament is required to be published in the official gazette for general information. The principal legislation further, delegate the powers to a specific organization, authority, or Govt. department for subordinate legislation.

6.2 Existing Legislative Drafting Process in Pakistan and Significant Challenges

The section deals with a detailed overview of legislative drafting practices and their challenges since the creation of Pakistan. Pakistan mainly inherited British laws by Section 18(3) of the Indian Independence Act, 1947 enacted by the British Parliament. It was provided that the laws of British India shall be applicable with the necessary adaptations to both dominions till the passing of new constitutions. The first constituent assembly passed the Pakistan Adaptation of Existing Laws Order, 1947, and the Adaptation of Central Acts and Ordinances Order 1949 by which existing laws at that time were adopted with similar effects. The adapted laws remained continuous in force under Article 224(a) of the Constitution of Pakistan 1956, Article 225(1) of the Constitution of Pakistan 1962, Article 280(1) of the Interim Constitution of Pakistan 1972, and Article 268(1) of the Constitution of Pakistan 1973. The author considered the adaptation of laws as the major reason for failure to achieve a healthy legislative drafting regulatory framework in Pakistan. This remained the first cause for not improving any healthy environment for legislative drafting and its legal framework. Despite framing any legislative drafting mechanism following documents are being construed as the process of legislative drafting:

1. Rules of Business 1973 framed under Article 90 and 99 of the Constitution of Pakistan, 1973.
2. Rules of Procedure and Conduct of Business, 2007.

3. Senate Rules of Procedure and Conduct of Business, 2012.

Article 70-77 of the 1973 Constitution only laid down the procedure for legislation. The Rules of Business, 1973 are the only document for guidelines of drafting and policy procedures. Article 5, Sub-Article (1) (2) provides that Prime Minister (PM) shall make policy decisions, Sub-Article (2) states that a minister shall assist PM to take policy decisions. Article (5) Sub-Article (4) provides that “No decisions of policy taken by the PM shall be varied, reversed or infringed without consulting him”. Under Sub-Article (5) policy in a division shall be the responsibility of a minister. Article 14 Sub-Rule (1) clause (c) of the Rules provides that law and justice commission should be consulted before the issuance or approval of any order, rule, regulation, by-law, and notification, etc. in the exercise of statutory powers. Article 16 Sub-Article (1) clause (a) and (b) of the rules provided that official or non-official schemes for legislation, together with money bills, promulgation, or revocation of ordinances shall be placed before the cabinet. Part E of the Rules, Article 27 to 30 deals with legislation. Article 27 provided that the concerned division shall be in charge of defining the contents of legislation. Sub-Article (2) of Article 27 further provided that any division regarding proposed legislation will consult the law and justice division for drafting purposes, then the concerned division shall send the related documents with a memorandum specifying the provisions that are planned to be integrated into the draft bill. The concerned ministry shall provide the statement of objects to allow the law and justice division of the ministry of law to comprehend the true intent of the concerned division. The law and justice divisions were given the effects regarding legislation, proposal, and advice regarding legal problems and drafting of laws. However, only a precise procedure was provided regarding legislative drafting in rules of business 1973. It is apparent in the legislative drafting process that the most important stages of policy instructions, pre-legislation assessment, analyzing, designing, and verifying the proposed legislation are missing. The above provisions of law do not cover any solution for the intelligible and transparent procedure of legislative drafting.

As a principle the drafter will begin his involvement in the lawmaking process after the formulation of policy idea and agreed upon and after he received the drafting instructions (Biribonwoha & Biribonwoha, 2006). A drafter must be familiar with the policy idea of a proposed law, the confused idea causes failure to achieve clarity and intelligibility (Hiranandani S. K., *Legislative Drafting: An Indian View*, 1964, pp. 2-4).

To regulate National Assembly business, as provided in Sub Article (2) of Article 67 of the 1973 constitution, the president made the “Rules of Procedure and Conduct of Business in the National Assembly, 1973”. These rules remained in force for two decades. In 1992 the National Assembly adopted its own rules under Article 67 Clause (1) of the Constitution, after several amendments in the Constitution since 1999, it

passed “Rules of Procedure and Conduct of Business, 2007”. Chapter XIV of the rules of procedure deals with the legislative process in National Assembly. Legislative drafting specifically private bills usually vetted in Parliament whereas Government bills are drafted by the government agencies in Pakistan. Rule 120, 121 deals with the Government bill, after the introduction of a bill the next process is the publication of the bill. Rule 118 to 181 provides the complete process of legislation and committee stages in the National Assembly, but these rules have nowhere provided the process of legislative drafting. The policy instructions, analyzing and designing the law as 2nd and 3rd stage of G.C Thornton models are very crucial involving the compilation of a legislative plan, known as a legislative research report. It contains a brief or longer report based on the drafter’s opinion on the drafting instructions. The National Assembly rules of business however could not provide a procedural solution for drafting capacity.

Likewise, under Article 67 of the Constitution of Pakistan 1973, the Senate of Pakistan framed its own rules for the first time in 1988, as previously the Senate was being regulated by the Rules which were framed by the President on 12th April 1973 in pursuance of Article 67 clause 2 of the Constitution. The 1988 Rules were repealed by the “Rules of Procedure and Conduct of Business in the Senate, 2012”. Chapter XII of the Rules provided for the legislation from originating and introduction of bills in the Senate, Rule 94 and 95 provided for the introduction of a private member bill and its introduction. In Rule 96 the detailed procedure of notice, the introduction of Government Bill is provided and in Rule 97 the procedure of publication of bill before its passing is provided. Hence, the detailed legislative process adopted in the Senate is provided in brief detail. Rule 103 to 117 laid down the legislative process in Senate comprises three readings on a Bill. Rule 127 (c), (d) makes provisions for the committee to scrutinize delegated legislation. The committee is empowered to check whether the powers delegated by the Parliament or conferred by the Constitution to make rules, regulations, bye-laws, schemes or other statutory instruments have been sensibly and appropriately applied within such conferment or delegation. The committee on delegated legislation shall recommend legislation and frame policies for the set of rules, regulations, bye-laws, or another statutory instrument under powers delegated by the Parliament to any statutory authority. Under Rule 127 (e) on the report of the committee, delegated legislative arrangements may be annulled wholly or partially. With all these arrangements these rules also remained silent about the question, who will draft the bill and how consistency may be achieved in the law. Separate and deficient drafting provisions in rules of procedure enacted for both houses caused legislative drafting ambiguous and disseminated between legislative institutions. However, no detailed procedure of legislative drafting is based on recognized principles and theories adopted in the above-referred laws enacted to deal with the legislative process in the country. Without being provided a regulatory framework for designing the law, underlying, and understanding the draft proposal,

how predictable and clear drafting of legislation is possible. To strengthen the argument, the inconsistency and unpredictability of Pakistan Medical and Dental Council (PM & DC) laws are provided as an example. The PM & DC Ordinance promulgated in 1962 was amended in 2012, 2013, 2014, and 2015 by PM & DC (Amendment) Act 2012, the PM & DC (Amendment) Ordinance 2013, the PM & DC (Amendment) Ordinance 2014, and the PM & DC (Amendment) Ordinance 2015. Subsequently, at 2019 PM & DC Ordinance 2019 (II of 2019) was promulgated and the same was repealed by the Pakistan Medical Commission (PMC) Ordinance 2019 (XV of 2019). The PMC Ordinance 2019 was defeated in the Supreme Court of Pakistan, the Court observed that under Article 89 of the constitution the ordinance-making power of the president consequent upon the necessity of speedy action and the non-availability of a session of the Senate of the National Assembly and this power is neither absolute nor an independent source of legislation. Eventually, the Pakistan Medical Commission Act, 2020 (XXXIII of 2020) was passed by the parliament. This inconsistency of policy, deficient legislative capacity, and failure to properly analyze the policy idea disturbed the medical and dental professionals in the country, hundreds of employees lost their jobs and thousands of students could not get admission in MBBS and BDS.

It is apparent from the rules of business 1973, rules of business National Assembly and Senate, no specialized guideline existed for drafting and no procedure provided for drafting instructions that are a foundation stone for legislation. Along with this, no one can set back the importance and skill of a drafter in legislative drafting. The expertise, qualification, and knowledge on the subject of a drafter have a position of backbone in legislative drafting. Without clear ideas, the language of the drafter cannot be clear. To simplify the drafter's and policymaker's concepts, a draftsman should deliberate the legislative proposal with the concerned administrative ministry on updated issues. Such communication should be kept in record properly that may be useful for blame on drafter. Before drafting a law, the draftsman should be satisfied that he has a complete understanding of the subject matter of the recommended legislation. A drafter must help the policymaker to develop ideas, discuss upcoming difficulties and highlight the impact of draft legislation to a policymaker or a responsible ministry (Boeckenfoerde, 2006, pp. 16-18). Since the creation of Pakistan, the country facing a shortage of drafters. The shortage of drafter and lack of his participation in the policy is a serious problem and that could be resolved only by a regulating drafting process.

The importance of a drafter's skill said by S. K. Hiranandani, "The draftsman of today is supposed to prepare the maximum of laws within the minimum of time, to express the intention of some anonymous, mythical person whose identity is not easily established and to express that intention in language so clear that not only a reasonable man understands but a malicious man cannot misunderstand it". Alarming is the drafting of delegated legislation. Institutions, organizations are delegated rulemaking

power in their respective primary legislation. Delegated legislation is more than half of the primary legislation in Pakistan. Every statute passed by the parliament is enforced by the rules, bye-laws, regulations, and statutes framed under the principal Act. However, there is no mechanism to draft subordinate legislation. The National Assembly of Pakistan and provincial assemblies could not establish a well-defined regulatory framework to check and review the authenticity of delegated legislation. Delegated legislation specifically legislation relevant to corporate bodies always drafted without observing constitutional principles. The reason led to litigation, failure to achieve the true spirit of rule of law. Bingham conceived the element of rule of law as accessible, intelligible, clear, and predictable. His hypothesis examines how a defective legislative drafting regulatory framework leads to failure in achieving the rule of law (Bungham, 2011). Accordingly, said by Senator Farhat Ullah Babar the chief advisor to the first manual of legislative drafting by PIPS:

A crucial element of any legislation passed by the Parliament and accented to the Parliament is the subordinate legislation, namely the Rules and Regulations framed under the parent legislation. My experience of the Parliament has shown how poorly informed the members of Parliament are about the need to look into the subordinate legislation to see whether these were framed in accordance with the letter and spirit of the law itself". Senate set up a separate Standing Committee on Delegated Legislation like any other Standing Committee of the Senate. The Rules and Regulations aspect of the legislation has thus been given as a permanent structure in the scheme of the legislative drafting process. Practical drafting of legislation, including subordinate legislation, is a serious business that must be taken seriously. Ignoring it is ignoring the perils of a poorly or inadequately drafted piece of legislation, be it the principal legislation or subordinate legislation (Ahmed, *Legislative Drafting Manual A Handbook for Legislative Drafters*, 2019, p. 10).

It is relatively evident that drafting problems faced in Pakistani seem to be more severe than in other commonwealth or civil law countries. The post-colonial legislative drafting process is called the traditional style that is known for its complexity adopted in Pakistan as last resort. Keeping in view this problem, an effort was made to draft a manual for legislative drafting by Manzil Pakistan in 2017 for support to the Pakistan Institute of Parliamentary Services. It provided only a brief introduction to legislative drafting and its challenges in Pakistan. Another effort to strengthen legislative drafting was made by PIPS in 2019 in the form of a handbook "Legislative Drafting Manual: a handbook for legislative drafters". The handbook just remained a reproduction of the aforementioned work with inadequate ambit. It neither provided any uniform solution nor provided any comprehensive drafting guidelines duly implemented by the

Government. Deficient drafting capacity caused uncertainty, diverse interpretation, which leads to the enacting removal of doubts Acts.

(1) Example:

Punjab Muslim Personal Law (Shariat) Application (Removal of Doubts) Ordinance, 1972.

Punjab Pre-emption (Removal of Doubts) Ordinance, 1972.

7. Conclusion

The foregoing is an effort to focus on the significance of the regulatory framework for legislative drafting. The legislative drafting process must be efficient to ensure that policy objectives will be achieved, legislation will be clear, predictable, intelligible, law enforcement will be as it was envisioned by the Government and there will be no diverse interpretation of the law. The legislation deprived of clarity, precision, and consistency always lacks predictability.

By considering the above discussion, it may be reasonably concluded that the challenges of legislative drafting and policy formulation remained very common throughout the legislative history in Pakistan. Legal framework, specific rules, administrative circle, or comprehensive guidelines are unavailable. This gap has caused a failure to achieve policy objectives, lack of rule of law, unintelligibility, and unpredictability of legislation. It leads to a diverse interpretation of the law, unjustified litigation hence an undue burden on courts. Useful techniques, principles, and theories of legislative drafting could not be accurately utilized. Legislative drafting in the private sector could not flourish. Not a single comprehensive law deals with legislative drafting and policy formulation except the Publication of Laws of Pakistan Act, 2016.

Moreover, under contemporary circumstances, the research reflects the necessity of a regulatory framework for the legislative drafting process to be implemented by incorporating internationally recognized principles and theories as to the most practicable option.

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