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MANUAL ON PLAIN LANGUAGE DRAFTING



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Manual on Plain Language Drafting

A. Introduction

“Whereas the objects of the institution known as the Regional Centre for Biotechnology are such as to make the institution one of national importance, it is hereby declared that the institution known as the Regional Centre for Biotechnology is an institution of national importance” -

Section 4 of the Regional Centre for Biotechnology Act, 2016

Legal vocabulary, including the law itself has been critiqued for being archaic.¹ The unwillingness to depart from traditional practices of drafting has resulted in legalese which is inaccessible not only to everyday readers, but also many lawyers.² Legalese takes longer to draft, read and understand, and often does not achieve the drafter’s primary aim of precision.³

Discontent with legalese witnessed the birth of a plain English movement in the 1970s - a movement whose objective was to make legal documents, particularly those used by consumers, accessible to them.⁴ The movement which started off with a few insurance companies issuing their policies in simple language⁵ has now expanded beyond the contractual terrain.

Several jurisdictions now advocate a plain language approach in drafting laws. These include Australia, New Zealand, Scotland and the United Kingdom (‘UK’) where there are Manuals dedicated to plain language drafting. In the UK, the Tax Law Rewrite Project (‘TLRP’) whose objective was to rewrite direct tax legislations in a simple and accessible format by using modern language and shorter sentences⁶ is a good illustration of the practice of plain language drafting. The TLRP intended to make tax law clearer while preserving the effect of the law.⁷ Further, most contemporary UK

¹ Joseph Kimble, *Lifting the fog of legalese* (Carolina Academic Press, 2006) xi.

² *Ibid.* at p. xii.

³ Stephen Hunt, ‘Drafting: Plain English versus Legalese’, (1995) *Waikato Law Review*, 166 (“Hunt”).

⁴ Carl Felsenfeld, ‘The Plain English Movement’ (1981) <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1475&context=faculty_scholarship> accessed on Nov 24, 2016 (“Felsenfeld”).

⁵ Ian Turnbull, ‘Drafting Simple Legislation’, (1995) *12 Australian Tax Forum*, 249 (“Turnbull”).

⁶ Social Research Institute, ‘Review of Rewritten Income Tax Legislation’ (2011) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/344921/report104.pdf> accessed on January 12, 2017.

⁷ *Ibid.*

legislations demonstrate that laws are drafted more simply than before.⁸ In the United States ('US'), Presidential Executive Orders that require regulations to be better drafted also incorporate techniques of plain language drafting.⁹ While the approaches in these jurisdictions are varied, their objective is the same: to simplify official writing by reducing unnecessary obscurity and complexity.¹⁰

A plain language approach to drafting has deeper meaning in a democracy. The principle of Rule of Law presupposes that those who are affected by a law should be in a position to ascertain its meaning and effect.¹¹ An incomprehensible legal discourse which is accessible only to a few has authoritarian implications.¹² Conversely, the making of clear, simple laws is a democratic ideal worth pursuing.

Despite these laudable aims, the case for plain language drafting is still the subject matter of academic debate. The fundamental premise of clear drafting is perhaps not a point of disagreement. However, a number of reasons have been advanced suggesting caution in shifting to plain language drafting. Some of these reasons are considered below.

Precision vs. Clarity

A common objection to plain language drafting is that simplicity of expression and certainty of content are not always compatible. The argument is as follows: precision requires that a statute accurately gives effect to policy decisions.¹³ Since legalese has developed with the law, it is more precise and is better suited to deal with the complexities of the subject.¹⁴ This precision should not be sacrificed for simplicity, since the simplest form of expression often results in ambiguity.¹⁵ Complex drafting, thus, is merely an unintended result of prioritising certainty.¹⁶

This claim is not uncontested. Joseph Kimble¹⁷, the author of *Lifting the Fog of Legalese* and a strong proponent of the plain language movement suggests that the premise that clarity and precision are

⁸ Office of the Scottish Parliamentary Counsel, 'Plain Language and Legislation' (2006) <<http://www.gov.scot/Resource/Doc/93488/0022476.pdf>> accessed on January 12, 2017.

⁹ Felsenfeld, *Supra* note 4.

¹⁰ Turnbull, *Supra* note 5 at p. 257.

¹¹ TK Viswanathan, *Legislative Drafting: Shaping the Law For the New Millennium* (The Indian Law Institute) 111.

¹² *Ibid.* at p. 110.

¹³ Turnbull, *Supra* note 5 at p. 249.

¹⁴ Hunt, *Supra* note 3 at p. 171.

¹⁵ Turnbull, *Supra* note 5 at p.249, 251.

¹⁶ Viswanathan, *Supra* note 11 at p. 113.

¹⁷ Professor Joseph Kimble is an Emeritus Professor teaching writing at the West Michigan University, Cooley Law School. He is the author of *Writing for Dollars*, *Writing to Please* and *Lifting the Fog of Legalese*. He is a strong proponent of the plain language writing.

fundamentally incompatible is a myth.¹⁸ Precision and clarity, in his view, are not competing goals. He argues that plain language is usually more precise than the traditional legal style - it is just that the imprecision of legalese is harder to spot.¹⁹ It is the job of the drafter to ensure that plain English drafting has the same legal effect as traditional drafting. Thus, there is no impediment in using plain English to write text that is leaner, cleaner, and more accessible provided the meaning of the text is unchanged.²⁰

The inherent complexity of the subject matter

Another powerful argument in this debate is that the inevitable barrier in communication arises because of the complex subject matter of the law which cannot be attributed to drafting defects.²¹ Greenberg in his article '*The three myths of plain English drafting*' argues that the task of writing legislation is compounded by the need to do two things simultaneously: making the law, as well as communicating the law.²² Of these, the first step can be achieved only by engaging with concepts of which the law is composed i.e. concepts which are technical and complex, and which cannot always be expressed using simple English.²³ Thus, confusing the goal of simplicity with effective communication is a folly since issues covered by policy expressed in legislation cannot be abandoned for the sake of simplicity.²⁴

Lack of objective standards

There is no agreement on what constitutes plain language. Amongst the arguments against simplicity is the claim that one cannot define a language standard with sufficient clarity to measure compliance.²⁵ Here again, Greenberg argues that there is no objective gold standard of plain language: such standard is set depending on the fashion which influences literary standards outside the legislative context at the time.²⁶

¹⁸ Joseph Kimble, 'The great myth that plain language is not precise', (2000) *Business Law Today*, 48 ("Kimble").

¹⁹ *Ibid.* at p. 50.

²⁰ Turnbull, *Supra* note 5 at p. 257.

²¹ David St.L. Kelly, 'Legislative Drafting and Plain English', (1985-1986) *Adelaide Law Review*, 419 ("Kelly").

²² Daniel Greenberg, 'The three myths of plain English drafting' <http://www.calc.ngo/sites/default/files/paper/Greenberg_Feb2011.pdf> accessed on Nov, 22, 2016 ("Greenberg").

²³ *Ibid.*

²⁴ Turnbull, *Supra* note 5 at p. 251, 252.

²⁵ Felsenfeld, *Supra* note 4.

²⁶ Greenberg, *Supra* note 22.

The approach of this Manual

The objections to plain language drafting discussed above are formidable. However, the Indian context does not demand an immediate resolution of these issues. The main affliction that ails drafting in India is something else: the continued use of archaic practices.

Almost all drafting practices followed in India have been inherited from the UK. The legal fraternity's obsession with precedent has ensured that some of these practices are now considered the "correct" way to draft laws. Thus, modern Indian laws continue to have long titles which insist that the law in addition to its subject matter covers "matters connected therewith or incidental thereto". It is unclear in law as to what purpose such a provision serves. Similarly, it is difficult to find an Indian law which does not contain a proviso - a peculiar clause which is hardly more than a legal incantation.²⁷ Perhaps, most egregious is the fact that Indian laws continue to use gendered language.

This Manual is a calibrated attempt to introduce plain language drafting to India. Clarity should be a prime concern of the drafter. The drafter must bear in mind that the primary audience for a law is the citizen. An ordinary reader without any training in law is as likely to read the law as a professional. This provides the basis for a new framework for evaluating common Indian drafting practices. Using this framework, the Manual suggests guidelines for both structuring a Bill and for the kind of language that is to be used. In developing these guidelines, we have relied on plain language Drafting Manuals of jurisdictions such as New Zealand, Australia, Germany, Hong Kong and the UK.²⁸

Each guideline is accompanied by illustrations from Indian laws. A majority of the illustrations are negative in nature, i.e. practices to avoid. However, there have been some positive changes in drafting practices in India as well. The Manual also incorporates examples from Indian laws which reflect these changes.

The Manual is based on the belief that a shift to plain language drafting is not to be achieved at the cost of precision or by stripping concepts of any inherent complexity. It demonstrates that precise, plain language drafting is possible as imprecise legalese is currently prevalent. At the same time, it recognises that there might be genuinely complex concepts in fiscal or taxing statutes that may not be amenable to easy simplification. In these cases, the Manual advocates a pivot to relatively simpler drafting conventions, in order to ensure best efforts are made to make statutes intelligible.

²⁷ E.A. Driedger, "Legislative Drafting", (1914) Canadian Bar Review, 291.

²⁸ See, New Zealand Parliamentary Counsel Office, Drafting Manual (<http://www.pco.govt.nz/assets/Uploads/pdf/clear-drafting.pdf>); German Federal Ministry of Justice, Manual for Drafting Legislation (http://www.bmfv.de/SharedDocs/Downloads/DE/PDF/Themenseiten/RechtssetzungBuerokratieabbau/HandbuchDerRechtsfoermlichkeit_eng.pdf?__blob=publicationFile&v=4) ; United Kingdom Office of Parliamentary Counsel, Drafting Guidance (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454628/guidancebook_August_2015.pdf); Australia Office of Parliamentary Counsel, Plain English Manual (https://www.opc.gov.au/about/docs/Plain_English.pdf); Hong Kong Law Drafting Division, Department of Justice, A Guide to Styles and Practices (http://www.doj.gov.hk/eng/public/pdf/2012/Drafting_book.pdf).

Further, to demonstrate the advantages of employing plain language drafting, the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007 has been redrafted by applying the guidelines in the Manual. This provides a clear understanding of what a plain language version of a poorly drafted legislation might look like.

Finally, the Manual is not intended to be a comprehensive guide for plain language drafting in India. The authors will be re-drafting 6 laws over the next 12 months by applying simple language guidelines, and will update the Manual further by drawing from their experience.

B. Guidelines

The first section sets out guidelines which deal primarily with the structure of the Bill. Apart from the ordering of Chapters and clauses, this section also deals with the various structural elements of a Bill such as preliminary clauses, definitions, substantive clauses, procedural clauses, etc. This section also contains plain language versions of common clauses in Indian legislations.

The second section addresses issues of language. This section identifies commonly used foreign words, archaic words and vague words which are to be avoided. It also sets out guidelines for grammar and sentence construction aimed at the use of simple and clear language in Bills.

Drafting Guidelines

1. PRELIMINARY CLAUSES

(a) Short Title

- The short title of a Bill is the name by which the Bill is most likely to be referred.
- It is important that the name of a Bill is not too complex. In case of legislation that is likely to be widely used it may be helpful to have a name which can be reduced to a user-friendly acronym. See, *Illustration 1*.

Illustration 1.

Short titles to the Right to Information Act, 2005 and the Land Acquisition Act, 2013

<p>Compare the title,</p> <p>✓ RIGHT TO INFORMATION ACT, 2005 (RTI Act)</p> <p>with the title,</p> <p>✗ RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 (RFCTLARR Act)</p> <p>The 2013 Act is rarely referred to by its actual name or an acronym of the name. It is most commonly referred to by the name of the Act it replaced, The Land Acquisition Act (of 1894).</p>

- Often the clause in a Bill describing the short title is needlessly archaic. The common formulation used is “This Act may/ shall be called _____”. A neater expression is to say “This is the _____”. See, *Illustration 2*.

Illustration 2.

Short Title to the National Green Tribunal Act, 2010

✘ Original Provision	✔ Re-drafted Provision
This Act may be called the National Green Tribunal Act, 2010.	This is the National Green Tribunal Act, 2010.

- Finally, the short title should instantly and accurately convey the primary objective of the law.

For instance, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is often referred to as the Sexual Harassment Act which is a misnomer. Ideally, the words “Prevention, Prohibition and Redressal” should have preceded the words Sexual Harassment in the title. However, given the primary objective of the law is to deter sexual harassment at the workplace, the use of the word “Prevention” is sufficient. See, *Illustration 3*.

Illustration 3.

Misnomers in Short Titles.

✘ Original Provision	✔ Re-drafted Provision
Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.	The Prevention of Sexual Harassment of Women at the Workplace Act, 2013

(b) Long Title

- The long title gives the reader a brief idea of the subject matter of the Bill.
- The long title of the Bill should be used to draw the attention of the reader at the outset, to important purposes and salient features of the Bill.
- The current practice is to draft a long title which sets out a number of features of the Bill. Such an unwieldy long title that combines too many features will fail to serve its purpose. Further, they end with the wordy phrase “and matters connected and incidental thereto”.

For instance, the long title of The Coal Mines (Special Provisions) Act, 2015 is an example of unnecessarily detailed and verbose drafting. It can be re-drafted simply as demonstrated. See, *Illustration 4*.

Illustration 4.

The Coal Mines (Special Provisions) Act, 2015

✘ Original Provision	✔ Re-drafted Provision
An Act to provide for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure together with mining leases to successful bidders and allottees with a view to ensure continuity in coal mining operations and production of coal, and for promoting optimum utilisation of coal resources consistent with the requirement of the country in national interest and for matters <u>connected therewith or incidental thereto</u> .	An Act to promote optimum utilisation of coal by providing for a rational procedure for allocation of coal mines and vesting of the right, title and interest in and over the land and mine infrastructure.

- The long title should be drafted in a clear, direct, and brief fashion.

For instance, the long title of the Right of Children to Free and Compulsory Education Act, 2009 is short and crisp and points to the primary objective of the Act. See, *Illustration 5*.

✔ Illustration 5.

Long Title in the Right of Children to Free and Compulsory Education Act, 2009

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION, 2009

An Act to provide free and compulsory education to all children of the age of six to fourteen years.

The long title was used as an interpretative aid by the Supreme Court in *Society for Unaided Private Schools of Rajasthan v. Union of India*, (2012) 6 SCC 1

(c) Preamble

- The preamble sets out the reasons for enacting the law.
- Preambles are often used to assert the legitimacy of the law or the law-making exercise. Eg. A reference to international instruments by Parliament while legislating to enforce international obligations; to justify any measure in an Act which may be regarded as constitutionally suspect; and to state policy objectives in anticipation of any constitutional challenge.
- Unless there are special reasons for enacting a law, which must be mentioned in the Bill, it is unnecessary to include a preamble.
- Generally, preambles begin with the superfluous word “Whereas”. This word can be avoided.
- Further, preambles often suffer from an information overload. Straightforward statements of policy objectives instead serve the purpose succinctly.

Illustration 6 demonstrates how a preamble can be re-drafted by applying the above guideline. The re-drafted provision uses the active voice to bring focus to the objective of the Act, and does away with superfluous words including the characteristic “Whereas”.

Illustration 6.

Preamble to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

✘ Original Provision	✔ Re-drafted Provision
Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;	Sexual harassment violates the fundamental right to equality and the fundamental right to life of a woman. Sexual harassment at workplace also violates the fundamental right of a woman to practice any profession or to carry on any occupation, trade or business. This right includes a right to a safe environment free from sexual harassment.
And whereas the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the	International conventions and instruments such as the Convention on the Elimination of all forms of Discrimination against Women recognise

<p>Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;</p> <p>And whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace;</p>	<p>the right to protection against sexual harassment and the right to work with dignity.</p> <p>The Convention on the Elimination of all forms of Discrimination against Women has been ratified by the Government of India on 25th June 1993. It is necessary to make provisions to give effect to the Convention to prohibit and prevent sexual harassment at the workplace.</p>
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(d) Enacting Formula

- The enacting formula introduces the main provisions of the statute.
- Currently the enacting formula reads “Be it enacted by Parliament in ...”. This form of the enacting formula is a remnant of old drafting practices. The first two words of this formula can be omitted without loss to the reader.
- Further, the year of enactment is superfluous in enacting formulas since the title of the Bill contains the year. See, *Illustration 7*.

Illustration 7.

Plain language drafting of an enacting formula

✘ Original Provision	✔ Re-drafted Provision
BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:	Enacted by Parliament as follows:

(e) Commencement Clause

- An Act or provision ordinarily commences on the date on which it receives assent of the President or the Governor. This is indicated via the commencement clause.
- In some cases, commencement is deferred and the Central/State Government is given the power to notify a date on which the Act or provision will come into force.
- A further qualification is often added permitting the Central/State Government to fix different dates of coming into force for different parts of the Act.
- At present all these conditions are clubbed into one bulky paragraph thus diluting readability. Ideally, a separate clause must indicate each commencement condition.

The commencement clause in the Companies Act, 2013 (Section 1(3)) contains all the above-mentioned features and has been re-drafted to demonstrate the benefits of plain language drafting. See, *Illustration 8*.

Illustration 8.

Commencement Clause, Companies Act, 2013

✘ Original Provision	✔ Re-drafted Provision
<p>(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</p>	<p>(3) This section comes into force at once.</p> <p>(4) The Central Government may appoint a date by notification in the Official Gazette on which the remaining provisions will come into force.</p> <p>(5) The Central Government may appoint different dates for different provisions of this Act coming into force.</p> <p>(6) Any reference in a provision to the commencement of the Act is a reference to the coming into force of that provision.</p>

2. STRUCTURE OF THE BILL

The structure of a Bill plays an important role in enabling readability. The arrangement of Chapters primarily determines the structure, and within Chapters the arrangement of individual clauses.

- The Chapters of the Bill must be arranged in a logical order.
- The order must be such that the readers of the Bill must be able to understand the substance of the legislation without difficulty.

A coherent structure can be created by combining a few principles. Some of these principles are set out below.

(a) Coherent Arrangement of Chapters

- The Chapters of a Bill should be arranged in a coherent manner so that the reader can grasp the scheme of the Bill without much difficulty. The arrangement of clauses within Chapters must follow the same rule.
- The general principle is that Chapters which contain the substantive provisions are placed at the beginning, and the rest follow a logical order.

The ordering of Chapters in a Bill can be determined by applying the following principles²⁹:

- ✓ Chapters with substantive clauses precede those with procedural clauses.
- ✓ Chapters with general clauses precede those with more specific clauses.
- ✓ Chapters with clauses which have universal application precede those with limited application.
- ✓ Chapters with important clauses precede those with less important clauses.
- ✓ Chapters with frequently used clauses precede those with less used clauses.
- ✓ Chapters on obligations precede those on sanctions.

Illustrations 9 and 10 demonstrate bad and good arrangements of Chapters in Indian laws respectively.

²⁹ See, New Zealand Parliamentary Counsel Office, Drafting Manual (<http://www.pco.govt.nz/assets/Uploads/pdf/clear-drafting.pdf>); German Federal Ministry of Justice, Manual for Drafting Legislation (http://www.bmju.de/SharedDocs/Downloads/DE/PDF/Themenseiten/RechtssetzungBuerokratieabbau/HandbuchDerRechtsfoermlichkeit_eng.pdf?__blob=publicationFile&v=4) and Hong Kong Law Drafting Division, Department of Justice, A Guide to Styles and Practices (http://www.doj.gov.hk/eng/public/pdf/2012/Drafting_booke.pdf).

✖ Illustration 9.**The Prevention of Money Laundering Act, 2002**

The Prevention of Money Laundering Act, 2002 makes money laundering an offence. The property of a person accused of money laundering can be attached by authorities under the Act pending criminal trial. The Act, thus, contemplates both civil and criminal procedures.

The Chapters of the Act are arranged in the following order:

Chapter 1 - Preliminary

Chapter 2 - Offence of Money Laundering

Chapter 3 - Attachment, Adjudication and Confiscation

Chapter 4 - Obligations of Banking Companies, Financial Institutions and Intermediaries

Chapter 5 - Summons, Searches and Seizures etc.

Chapter 6 - Appellate Tribunal

Chapter 7 - Special Courts

Chapter 8 - Authorities

Chapter 9 - Reciprocal Arrangements for Assistance in certain Matters and Procedure for Attachment and Confiscation of Property

Chapter 10 - Miscellaneous

While this structure adheres to the technique that general or substantive provisions must be placed at the beginning, a coherent method of arranging the Chapters could have been to demarcate the civil and criminal procedure.

✔ Illustration 10.**The Limited Liability Partnership Act, 2008**

The Limited Liability Partnership ('LLP') Act, 2008 follows a chronological order. The Chapters immediately after definitions clause deal with the nature of an LLP and the incorporation of LLPs. The last chapter prior to the Chapter containing Miscellaneous provisions deals with winding up.

Chapter 1 – Preliminary

Chapter 2 – Nature of Limited Liability Partnership

Chapter 3 – Incorporation of Limited Liability Partnership and Matters Incidental thereto

Chapter 4 – Partners and their Relations
 Chapter 5 – Extent and Limitation of Liability of Limited Liability Partnership and Partners
 Chapter 6 – Contributions
 Chapter 7 – Financial Disclosures
 Chapter 8 – Assignment and Transfer of Partnership Rights
 Chapter 9 – Investigation
 Chapter 10 – Conversion to Limited Liability Partnership
 Chapter 11 – Foreign Limited Liability Partnerships
 Chapter 12 – Compromise, Arrangement or Reconstruction of Limited Liability Partnerships
 Chapter 13 - Winding up and Dissolution
 Chapter 14 - Miscellaneous

Illustrations 11 and 12 show bad and good arrangements of clauses in Indian laws.

✘ Illustration 11.

The Food Safety and Standards Act, 2006

The Food Safety and Standards Act, 2006 was enacted to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India. In the Act, immediately after the definitions, sections 4 to 18 describe the establishment of the Food Safety and Standards Authority in great detail. These include provisions relating to employees of the Authority, Committees and Panels, procedure to be followed by the Authority, Committees and Panels etc. The provisions prescribing food standards resultantly start at Section 19 of Act.

✔ Illustration 12.

The Real Estate (Regulation and Development) Act, 2016

The Real Estate (Regulation and Development) Act, 2016 is a good example of how a Bill could be structured. Though one of the objects of the Act is to set up the Real Estate Regulatory Authority, the details of establishment of the Authority are in Chapter V. The Act sets out the rights, duties and obligations of builders and allottees immediately after the preliminary provisions and definitions.

(b) Short and precise headings

- Short and precise headings should be used to convey the substance of each Section to the reader.
- The reader should be able to gather a map of the Bill from a perusal of the headings.

For instance, the heading of Section 3 of the National Food Security Act, 2013 is needlessly long and reproduces almost the entire Section. The addition of the words “by persons belonging to eligible households under Targeted Public Distribution System” in the heading does not add any value to the reader as such a qualification is provided elsewhere. See, *Illustration 13*.

Illustration 13.**Section 3 of the National Food Security Act, 2013**

✘ Original Provision	✔ Re-drafted Provision
<p>3. Right to receive foodgrains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System –</p> <p>(1) Every person belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of foodgrains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System.</p>	<p>3. Right to receive foodgrains at subsidised prices -</p> <p>(1) Every person belonging to priority households, identified under section 10(1) is entitled to receive five kilograms of foodgrains per person per month from the State Government under the Targeted Public Distribution System.</p> <p>(2) The foodgrains will be at the subsidised prices specified in Schedule I.</p>

Rule 22 of the Drugs and Cosmetics Rules, 1945 does not have a heading. This is reflected in multiple provisions across the said Rules (Rules 41, 43, 43-A, 43-B etc.). Such practice should be avoided. See, *Illustration 14*.

Illustration 14.**Absence of headings in the Drugs and Cosmetics Rules, 1945**

✘ Original Provision	✔ Re-drafted Provision
22. [No heading]	22. Delegation of powers by licensing authority

<p>The licensing authority may with the approval of the Central Government by an order in writing delegate the power to sign licences and [Registration Certificates and] such other powers as may be specified in the order to any other person under his control.</p>	<p>The licensing authority by an order in writing, may with the approval of the Central Government, delegate to any person under its control, the following powers:</p> <p>(a) Power to sign licences and Registration Certificates;</p> <p>(b) such other powers as may be specified in the order.</p>
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- Headings should accurately convey the essence of the clause. They should not be misleading/misnomers.

Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 has the heading “Penalties”. While sub-sections (1), (2), (3), (4), (4-A) and (6) are in the nature of penalties, sub-section (5) is in the nature of compensation (*Illustration 15*). This misnomer was noted by the Supreme Court in the judgement *Karnataka Rare Earth v. Dept. of Mines & Geology*³⁰.

✘ **Illustration 15.**

Headings which are misleading

21. Penalties.—

.....

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

Prior to the 2016 amendment³¹, Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (‘SARFAESI Act’) had the heading “Right to Appeal”. This heading was noted to be a misnomer by the Supreme Court in the landmark judgement *Mardia Chemicals Ltd. v. Union of India*³². The Court

³⁰ (2004) 2 SCC 783.

³¹ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.

³² (2004) 4 SCC 311.

observed that the proceedings under Section 17 were in the nature of an initial action and not an appeal, and thus the heading was misleading.

Illustration 16.

Heading to Section 17 of SARFAESI Act

✘ Prior 2016 amendment	✔ Post 2016 amendment
17. Right to appeal.	17. Application against measures to recover secured debts.

3. DEFINITIONS

Definitions serve the purpose of indicating the meaning of terms used in the Bill. They serve as important tools of interpretation. Despite performing an explanatory role, they also lend weight to the substantive provisions of a Bill by determining their application and interpretation. The following are guidelines for drafting an effective definition:

- Definitions must be clear and precise.
- They must avoid using vague words/expressions.

For instance, the definition of “food additive” in the Food Safety and Standards Act, 2006 (*Illustration 17*), by using phrases such as “technological purpose”, “organoleptic purpose”, “may be reasonably expected to result”, “directly or indirectly” ends up convoluting the term instead of bringing clarity. Further, these phrases not only require interpretation, but are tests in themselves which must be satisfied for an article to pass as a food additive.

Illustration 17.

Definition of “food additive” in The Food Safety and Standards Act, 2006

(k) “food additive” means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food but does not include “contaminants” or substances added to food for maintaining or improving nutritional qualities;

Sections 2(d) and 2(e) of the Legal Metrology Act, 2009 use the expression “with its grammatical variations and cognate expressions”. This phrase is vague and does not add any value to the definition. Any grammatical variation or cognate expression would in any case be included within the meaning of the term. In the example below, even in the absence of the phrase, “with its grammatical variations and cognate expressions” the use of a grammatical variation say, “exporting” would be in the same sense as the defined term “export”. See, *Illustration 18*.

*** Illustration 18.****Vague expressions in definitions**

2.

(d) “export” with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(e) “import” with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

- Definitions should not give a meaning to a word which it does not ordinarily possess. They could end up being inaccurate in the process.
- Further, where a term has a settled meaning, it would be advisable to use the term in the same sense, unless it becomes necessary to re-define it.

For instance, Section 3(j) of the Land Acquisition Act, 2013 defines a “company” as including a society (*Illustration 19*). The Companies Act, 2013 defines the term differently. The former definition thus runs contrary to general practice and perception since companies and societies are two different kinds of legal entities in the eyes of the law. See, *Illustrations 20, 21*.

*** Illustration 19.****Definition of “company” in the Land Acquisition Act, 2013**

(j) “company” means—

(i) a company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), other than a Government company;

(ii) a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any corresponding law for the time being in force in a State;

Illustration 20.**The definition of “company” in the Companies Act, 2013**

3(20) company means a company incorporated under this Act or under any previous company law;

Illustration 21.**The definition of “company” in The Companies Act, 1956**

2(1) In this Act, unless the context otherwise requires, the expressions “ company ”, shall have the meanings specified below:

(i) " company " means a company formed and registered under this Act or an existing company as defined in clause (ii);

- Definitions should be explanatory and not substantive.

Section 2(r) of the Consumer Protection Act, 2006 comprises not only the definition of the term "unfair trade practices" but also contains a non-exhaustive list of practices which would qualify as an "unfair trade practice", a provision on burden of proof and an explanation. Such a provision is better placed in the substantive part of the Bill as opposed to the definitions section. See, *Illustration 22*.

✳ Illustration 22.

Definition of 'unfair trade practice' in the Consumer Protection Act, 2006

2(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely; –

(1) the practice of making any statement, whether orally or in writing or by visible representation which, –

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, reno-vated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsor-ship, approval, performance, characteristics, accesso-ries, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a spon-sorship or approval or affiliation which such seller or supplier does not have;

(vi) makes a false or misleading representation concern-ing the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be –

- (i) a warranty or guarantee of a product or of any goods or services; or
- (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation. - For the purposes of clause (1), a statement that is—

(a) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

- Definitions should ideally be placed at the beginning of the Bill. However, definitions which are applicable to only one Chapter or clause, may be placed at the beginning of such Chapter or such clause, as the case may be.

Chapter V-A of the Narcotics Drugs and Psychotropic Substances Act, 1985 which deals with the “Forfeiture of property derived from, or used in illicit traffic” has a set of definitions applicable for terms used specifically in that Chapter. These definitions, instead of being placed in the general definitions section of the Act, are placed at the beginning of Chapter V-A in Section 68-B. See, *Illustration 23*.

✓ *Illustration 23.***A snippet of section 68-B, Chapter V-A of the Narcotics Drugs and Psychotropic Substances Act, 1985****68B. Definitions.**

In this Chapter, unless the context otherwise requires,

(a) Appellate Tribunal means the Appellate Tribunal for Forfeited Property constituted under section 68N;

(b) associate in relation to a person whose property is liable to be forfeited under this Chapter, means.....

- If a definition is excessively lengthy, it can be placed as a separate clause in the relevant Chapter of the Bill. A reference to the definition can be contained in the Interpretation/Definitions section.

The definition of the term “fringe benefits” runs over two pages in the Income Tax Act, 1961. Instead of defining it in the Definitions section, a reference to the provision has been made. See, *Illustration 24.*

✓ *Illustration 24.***Section 23B of the Income Tax Act, 1961**

(23B) “fringe benefits” means any fringe benefits referred to in section 115WB;

4. CLAUSES

(a) Drafting an accessible clause

- Each clause should deal with one legislative idea.
- In some cases, it may be appropriate to combine a set of ideas in one clause if such ideas form part of one intelligible set.
- Long and detailed clauses should be divided into sub-clauses. This ensures that important details are not difficult to locate.
- The number of sub-clauses must be kept to a minimum.

(b) Paragraphs

- Paragraphs must be kept short. It is difficult to read long unbroken paragraphs. Often, clauses which are in the form of one long sentence forming a large paragraph unnecessarily complicate statutory provisions.
- Long paragraphs can be broken into short paragraphs, which may be converted into new sub-clauses.

(c) Cross-References

- Cross-referencing must be employed only when necessary. Ideally, the idea should be repeated. This ensures clarity as it does not require the reader to switch between various parts of the same clause or the Bill.
- Cross-referencing may be employed when the repetition of an idea renders the provision overly bulky.
- Generally, cross-references use the format “sub-clause () of sub-section () of section ()”. Such construction is bulky and can be replaced as demonstrated in *Illustration 25*.

Illustration 25.

Simplifying cross-references

The construction,

✘ clause (b) of sub-section (3) of section 5,

can be replaced with,

✔ section 5(3)(b)

(d) Provisos

- Provisos are remnants of archaic drafting practices. They do not serve any specific function and often create ambiguity.
- Provisos must be completely avoided and in place of provisos, new sub-clauses must be drafted.

Applying guidelines to construct plain language clauses:

Section 25C of the Industrial Disputes Act, 1947 is an example of a provision which is poorly drafted. It contains multiple concepts in long bulky paragraphs and a large number of complicated provisos. The section can be re-drafted by dividing different ideas into distinct clauses, breaking down each clause, and re-drafting provisos into sub-clauses. See, *Illustration 26*.

Illustration 26.**Section 25C of the Industrial Disputes Act, 1947**

✘ Original Provision	✔ Re-drafted Provision
<p>25C. Right of workmen laid-off for compensation</p> <p>Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid-off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid-off:</p> <p>Provided that if during any period of twelve months, a workman is so laid-off for</p>	<p>25C. Right of laid off work-person to compensation</p> <p>(1) A work-person who is laid-off, will be compensated by the employer for all days during which such work-person is so laid-off.</p> <p>(2) The compensation payable under subsection (1) must be equal to fifty per cent, of the total of the basic wages and dearness allowance that would have been payable if the work-person was not laid-off.</p> <p>(3) The work-person referred to in subsection (1) must,</p> <p style="padding-left: 40px;">(a) have their name in the muster rolls of such industrial establishment, and</p>

<p>more than forty-five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty-five days, if there is an agreement to that effect between the workman and the employer:</p> <p>Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty-five days of the lay-off and when he does so, any compensation paid to the workman for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.</p> <p>Explanation.--"Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purposes of this section, if he has completed one year of continuous service in the establishment.</p>	<p>(b) have completed not less than one year of continuous service under such employer.</p> <p>(4) The lay-off may be continuous or intermittent.</p> <p>(5) The days for which the work-person will be paid compensation does not include weekly holidays.</p> <p>Explanation -</p> <p>(1) Work-person does not include a badli work-person or a casual work-person.</p> <p>(2) "Badli work-person" means a work-person who is employed in an industrial establishment in the place of another work-person whose name is borne on the muster rolls of the establishment.</p> <p>(3) A badli work-person will cease to be regarded as such for the purposes of this section, if the work-person has completed one year of continuous service in the establishment.</p> <p>25CC. Right to compensation waived by agreement</p> <p>A work-person who is laid off for more than forty-five days during any period of twelve months may be paid compensation only for the first forty-five days, if there is such an agreement between the work-person and the employer.</p> <p>25CCC. Retention of work-person laid off</p> <p>(1) An employer may retrench a work-person laid-off as per section 25CC in accordance with section 25F at any time</p>
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	<p>after the expiry of the first forty-five days.</p> <p>(2) The compensation paid to the work-person retrenched under sub-section (1) for having been laid-off during the preceding twelve months may be set off against the compensation payable for retrenchment.</p>
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Section 21 of the Right to Education Act, 2009 provides for the establishment of the School Management Committee, its composition, and its powers. Further the Section contains multiple provisos. This Section can be divided into three clauses, each dealing with one idea, and provisos can be drafted as new sub-clauses. See, *Illustration 27*.

Illustration 27.

Section 21 of the Right of Children to Free and Compulsory Education Act, 2009

✗ Original Provision	✓ Re-drafted Provision
<p>21. School Management Committee.</p> <p>(1) A school, other than a school specified in sub-clause (iv) of Clause (n) of Section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:</p> <p>Provided that at least three-fourth of members of such Committee shall be parents or guardians:</p> <p>Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:</p>	<p>21. School Management Committee.</p> <p>A school, other than a school specified in section 2(iv)(n), must constitute a School Management Committee.</p> <p>21.A. Composition of School Management Committee.</p> <p>(1) The School Management Committee will consist of elected representatives of the local authority, parents or guardians of children admitted in such school and teachers.</p> <p>(2) Parents or guardians will compose a minimum of three-fourths of the members of the Committee.</p>

<p><u>Provided</u> also that fifty per cent. of Members of such Committee shall be women.</p> <p>(2) The School Management Committee shall perform the following functions, namely:</p> <p>(a) monitor the working of the school;</p> <p>(b) prepare and recommend school development plan;</p> <p>(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and</p> <p>(d) perform such other functions as may be prescribed.</p>	<p>(3) Parents or guardians of children belonging to disadvantaged group and weaker sections will have proportionate representation on the Committee.</p> <p>(4) Fifty percent of the members of the Committee will be women.</p> <p>21B. Functions of School Management Committee.</p> <p>(1) The School Management Committee must perform the following functions:</p> <p>(a) monitor the working of the school;</p> <p>(b) prepare and recommend school development plan;</p> <p>(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and</p> <p>(d) perform such other functions as may be prescribed.</p>
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5. COMMON CLAUSES IN BILLS

(a) Setting up authorities

- It is common for statutes to have provisions that set up regulatory or administrative authorities.
- Ideally, if feasible, a new Chapter must be dedicated to setting up of an authority.
- Instead of clubbing various aspects of such authority into one large bulky clause, individual clauses dedicated to each feature of such authority must be drafted.
- Substantive clauses must precede others.

✗ *Illustration 28.*

Establishment of the National Financial Authority under Companies Act, 2013

Section 132 of the Companies Act, 2013 which establishes the National Financial Reporting Authority clubs clauses on establishment, composition, functions, powers, restrictions, accounts, appeal, composition of appellate authority, etc. into one large bulky section. Such practice must be avoided.

Chapter IV (Unique Identification Authority of India) of The Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 provides a good framework for the establishment of authorities. (*Illustration 29*). However, in an ideal framework the substantive clauses (clause on powers, functions) precede others.

✓ *Illustration 29.*

Framework for establishment of Authority under the Aadhaar Act, 2016

- ✓ Section 11 - Establishment of Authority
- ✓ Section 12 - Composition of Authority
- ✓ Section 13 - Qualification for appointment
- ✓ Section 14 - Terms of Office and other conditions of service
- ✓ Section 15- Removal of Chairperson and Members
- ✓ Section 16 -Restrictions on employment after cessation of office
- ✓ Section 17 - Functions of Chairperson
- ✓ Section 18 - Chief Executive Officer
- ✓ Section 19 - Meetings of Authority
- ✓ Section 20 - Vacancies etc., not to invalidate proceedings
- ✓ Section 21 - Officers and other employees of Authority
- ✓ Section 22 - Transfer of assets, liabilities of Authority
- ✓ **Section 23 - Powers and functions of Authority**

**** Ideally, Section 23 (a substantive clause dealing with powers and functions) should have preceded the others.**

(b) Offences

- An offence must be clearly defined.
- The act that is criminalised must be clearly stated.
- If the object is to create an offence which combines elements of *mens rea* and *actus reus*, these elements should be clearly spelt out.
- The words used to describe the offence should not be vague or unduly broad. It is not sufficient for a statute to convey a sense of the prohibited activity. Such drafting may result in provisions that are unconstitutional. It is well settled that vague provisions which are not clear on the prohibition that it enacts are unconstitutional. See, *Illustration 30*.
- Penalties should be graded and have guiding principles to decide them.

Section 66A of the Information Technology Act, 2000 was declared unconstitutional by the Supreme Court of India in *Shreya Singhal v. Union of India*³³. Terms such as “grossly offensive or has menacing character”, “persistently” “annoyance” were found by the Court to be vague.

✘ Illustration 30.

Section 66-A of the Information Technology Act, 2000

66-A. Punishment for sending offensive messages through communication service, etc.—Any person who sends, by means of a computer resource or a communication device—

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

³³ (2015) 5 SCC 1.

- An omnibus offence clause ought to be avoided. An omnibus offence clause generally criminalises contravention of any provision under the Bill and is bound to be vague and unclear. It also contains punishments in a wide range since there is inadequate clarity on the exact nature of the action sought to be criminalised. See, *Illustration 31*.

✘ Illustration 31.

Section 24 of the Securities and Exchange Board of India Act

24. Offences.—

(1) Without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the Adjudicating Officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.

- Another formulation of the same strain which is to be avoided is the method of combining several breaches in one offence clause.

For instance, Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 combines several breaches that are distinct in nature. Participation in a prize chit is clearly an offence of a different order when compared to the organisation of a prize chit. Yet, sidestepping such distinctions, the entire range of activities associated with a prize chit to be penalised are combined in a single offence clause. See, *Illustration 32*.

✘ Illustration 32.

Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978

3. Banning of prize chit and money circulation schemes or enrolment as members or participation therein.

No person shall promote or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme, or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme.

(c) Offences by companies

- The clause on offences by companies seeks to pin liability on responsible natural persons in an organisation for an offence committed by such organisation in its legal capacity.
- Section 2(20) of the Companies Act, 2013 defines a company in the following manner - *““company” means a company incorporated under this Act or under any previous company law.”* Since the clause on offences by companies covers entities other than those defined as company under the 2013 Act, the term is often redefined in such clauses.
- At present, such a clause is drafted in a convoluted and complex fashion.
- By changing the name of the clause, and applying the guidelines on drafting accessible clauses, this clause can be substantially simplified. See, *Illustration 33*.

Illustration 33.**Simplifying the clause on offenses by companies**

✘ Original Provision	✔ Re-drafted Provision
<p>Offences by Companies -</p> <p>(1) Where any offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:</p> <p>Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> <p>(2) Notwithstanding anything contained in sub-section (1), where an offence</p>	<p>Offence by Entities other than individuals -</p> <p>(1) The following persons are liable to be proceeded against for offences committed under this Act by entities other than individuals:</p> <p style="padding-left: 40px;">(a) The entity;</p> <p style="padding-left: 40px;">(b) Persons who were in charge of and were responsible for the conduct of the business of such entity at the time of the commission of the offence.</p> <p>(2) A person will not be liable under this Act, if the person proves that such offence was committed:</p> <p style="padding-left: 40px;">(a) without the person’s knowledge; or</p> <p style="padding-left: 40px;">(b) the person exercised all due diligence to prevent the commission of the offence.</p>

<p>under this Act has been committed by a company, and it is proved that the offence was committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.</p> <p>Explanation.- For the purposes of this section-</p> <p>(a) "company" means any body corporate and includes a firm or other association of persons;</p> <p>(b) "director" in relation to a firm means a partner in the firm</p>	<p>(3) Where an offence is committed under this Act, the director, manager, secretary or other officer of the entity shall be deemed guilty of such offence if it is proved -</p> <p>(a) that such person had consented or connived in the commission of such offence; or</p> <p>(b) such offence was attributable to any negligence on part of such person.</p> <p>Explanation -</p> <p>For the purposes of this section, "director" in relation to a firm means a partner in the firm.</p>
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(d) Power to make rules/rules to be laid before Parliament

- The Central Government, State Government and in some cases, statutory authorities are given powers to make rules under several statutes.
- As a check on delegated legislative power, a laying provision is standard in such statutes.

In *Illustration 34*, the commonly used complex version of the laying provision is re-drafted in plain language.

Illustration 34.

Plain language drafting of the laying clause

✘ Commonly used provision	✔ Re-drafted version
(1) The Central Government may, by notification in the Official Gazette,	(1) The Central Government may make rules for carrying out the provisions of this Act.

<p>make rules for carrying out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:</p> <p>.....</p> <p>(3) Every rule made under this section and every regulation made by Securities and Exchange Board under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.</p>	<p>(2) The rules will be notified in the Official Gazette.</p> <p>(3) The rules may provide for the following:</p> <p>.....</p> <p>(4) Rules, and regulations made by the Securities and Exchange Board made under this Act will be laid before each House of Parliament.</p> <p>(5) Rules and regulations will be laid for a period of 30 days while the Parliament is in session.</p> <p>(6) The 30 days may extend over one or more successive sessions.</p> <p>(7) After the rules and regulations have been laid as per subsection (6), if before the expiry of the next session, both Houses agree:</p> <p style="padding-left: 40px;">(a) to make any modifications; or</p> <p style="padding-left: 40px;">(b) that such rule or regulation should not be made or issued</p> <p style="padding-left: 40px;">the rule or regulation will have effect only in the modified form or no effect respectively.</p> <p>(8) Any change in the rules or regulations under sub-section (7) will not affect the validity of anything previously done under the rule or regulation.</p>
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(e) Power to remove difficulties

- A limited statutory power to remove difficulties is another feature of several statutes. This clause authorises the Executive to amend the Act to enable its full operation without having to go through the Parliamentary process.

Illustration 35 redrafts the commonly used version of this clause in plain language.

Illustration 35.**Plain language drafting for power to remove difficulties**

✘ Commonly used provision	✔ Re-drafted version
<p>Power to remove difficulties -</p> <p>(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:</p> <p>Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.</p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament</p>	<p>Power to remove difficulties -</p> <p>(1) If a difficulty arises in giving effect to the provisions of this Act, the Central Government may make necessary provisions for removing the difficulty.</p> <p>(2) Such provisions must be –</p> <p>(a) consistent with this Act;</p> <p>(b) made by order published in the Official Gazette; and</p> <p>(c) laid before each House of Parliament on publication.</p> <p>(3) No order will be made under this section after the expiry of two years from the commencement of this Act.</p>

(f) Repeals and Savings

- The repeals clause is used to indicate what statute, or provisions of a statute, are repealed by the Bill.
- The savings clause protects certain actions taken prior to the commencement of the statute (which would otherwise become invalid post commencement of the new Bill) from becoming invalid.

Illustration 36 redrafts the repeals provision in Section 43 of the Bureau of India Standards Act, 2016 in plain language.

Illustration 36.

Plain language drafting of the repeals and savings clause

✘ Commonly used provision	✔ Re-drafted provision
<p>43. Repeals and Savings -</p> <p>(1) The Bureau of Indian Standards Act, 1986 is hereby repealed.</p> <p>(2) Notwithstanding such repeal, anything done or any action taken or purported to have done or taken including any rule, regulation, notification, scheme, specification, Indian Standard, Standard Mark, inspection order or notice made, issued or adopted, or any appointment, or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or direction given or any proceedings taken or any penalty or fine imposed under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.</p> <p>(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.</p>	<p>43. Repeals and Savings -</p> <p>(1) The Bureau of Indian Standards Act, 1986 is repealed.</p> <p>(2) Despite such repeal, the following actions under the repealed Act are deemed to have been done under the corresponding provisions of this Act:</p> <p>(a) any rule, regulation, notification, scheme, specification, Indian Standard, Standard Mark, inspection order or notice made, issued or adopted, or</p> <p>(b) any appointment, or declaration made, or</p> <p>(c) any licence, permission, authorisation or exemption granted, or</p> <p>(d) any document or instrument executed, or</p> <p>(e) any direction given or any proceedings taken, or</p> <p>(f) any penalty or fine imposed.</p> <p>(3) The above actions are deemed to have been done under the corresponding provisions of this Act only to the extent they are consistent with the provisions of this Act.</p>

	(4) Section 6 of the General Clauses Act, 1897 applies to the repeal.
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(g) Protection of action taken in good faith

- The clause on protection of action taken in good faith, seeks to largely protect public servants from prosecution if such action was not *mala fide*.

Illustration 37 demonstrates plain drafting of this clause.

Illustration 37.

Plain language drafting of protection clause

✗ Commonly used provision	✓ Re-drafted provision
<p>Protection of action taken in good faith</p> <p>-</p> <p>No suit, prosecution or other legal proceeding shall lie against the Government or any other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.</p>	<p>Protection of action taken in good faith</p> <p>-</p> <p>No legal proceeding will be maintainable, in respect of any action taken in good faith under this Act, its rules, or orders and directions issued under the Act, against:</p> <p>(a) the Government;</p> <p>(b) any employee of the Government;</p> <p>(c) any authority under this Act;</p> <p>or</p> <p>(d) any employee or member of any authority under this Act.</p>

(h) Effect of other laws/overriding clause

- This clause is used to make clear that the provisions of a statute will prevail in the event they are inconsistent with provisions of any earlier law.

Illustration 38 demonstrates plain drafting of such a clause.

Illustration 38.**Plain language drafting of overriding clause**

✘ Commonly used provision	✔ Re-drafted provision
<p>The provisions of this Act to override other laws.—</p> <p>The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.</p>	<p>Act to override other laws.—</p> <p>The provisions of this Act will have effect despite anything inconsistent in any other law in force or any instrument under any such law.</p>

(i) Civil Court to have no jurisdiction/jurisdiction of other Courts barred

- This clause seeks to bar the jurisdiction of civil courts in matters arising under the respective statute.

Illustration 39 demonstrates the plain drafting of Section 34 of the SARFAESI, 2002.

Illustration 39.**Plain language drafting of Section 34 of SARFAESI**

✘ Original provision	✔ Re-drafted provision
<p>34. Civil court not to have jurisdiction.—</p> <p>No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.</p>	<p>34. Civil court not to have jurisdiction.—</p> <p>(1) No suit or proceeding will be maintainable in a civil court in any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered to determine under this Act.</p> <p>(2) No court or authority will grant an injunction in respect of any action under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.</p>

6. OTHER TOOLS

(a) Formulae and Method Statements

- Using formulae to express a relation between various quantities is preferable since the use of words has the potential to render the clause lengthy and confusing.
- Using symbols to represent the initial letters of the variables is recommended since it makes the formula easy to remember and apply. However, to avoid any ambiguity the symbols must be explained in the provision itself.

For instance, Section 163-A³⁴ of the Motor Vehicles Act, 1988 provides for the payment of compensation on a structured formula basis. The Act does not contain a formula for calculation of compensation and instead makes a reference to Schedule 2 of the Act (*Illustration 40*). The Schedule contains only variables such as age, annual income, multiplier etc. to allow determination of compensation.

In this case, while the method for calculation of compensation can be logically inferred from the Schedule, an express mention of the formula is recommended since it removes ambiguity. The Supreme Court in *Sarla Verma & Ors. vs. Delhi Transport Corporation and Anr.*³⁵ prescribed the formula. This formula should have been ideally mentioned in the concerned provision. See, *Illustration 41*.

Illustration 40.

A snapshot of Schedule 2 of the Motor Vehicles Act, 1988

Annual Income		Rs. 3000	Rs. 4200	Rs. 5400	Rs. 6600	Rs. 7800	Rs. 9000	Rs. 10200	Rs. 11400
Age of Victim	Multiplier	Rupees in thousands								

³⁴163-A. Special provisions as to payment of compensation on structured formula basis.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation.— For the purposes of this sub-section, “permanent disability” shall have the same meaning and extent as in the Workmen’s Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

³⁵ (2009) 6 SCC 21.

Up to 15 yrs.	15	60	84	108	132	156	180	204	228
Above 15 yrs. but not exceeding 20 yrs.	16	57	79.8	102	125.4	148.2	171	193.8	216.6
Above 20 yrs. but not exceeding 25 yrs.	17	54	75.6	97.2	118.8	140.4	162	183.6	205.2
Above 25 yrs. but not exceeding 30 yrs.	18	51	71.4	91.8	112.2	132.6	153	173.4	193.8
.....										
NOTE: The amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive.										

✓ *Illustration 41.*

Formula for calculation of compensation under 163-A of the Motor Vehicles Act, 1988

For Section 163-A, compensation is calculated as:

$$2/3 * AI * M$$

Where,

AI = Annual Income

M = Multiplier applicable to the age of the deceased

- In some cases, a sequence of steps/instructions (“method statement”) may prove to be more effective. This may be the case when there are multiple or complex steps involved in a calculation.
- Method statements must be employed where a complicated and lengthy determination or calculation is involved. Each step must be clear, and must be laid down in a chronological order in the same clause or the same section of the Bill. See, *Illustration 42.*

(b) Tables

- Tables can be used to represent provisions which are data heavy and are difficult to express in a clause of the Bill.

- Usually, tables are placed in a schedule.

The table in Schedule I of the Land Acquisition Act, 2013 contains the method for calculating compensation. It is also a good example of a method statement (See, 6(a)). See, *Illustration 42*.

✓ *Illustration 42.*

A snippet of Schedule I of the Land Acquisition Act, 2013

THE FIRST SCHEDULE [See Section 30(2)]			
Compensation for Land Owners			
Sl. No.	Component of compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
1	2	3	4
1.	Market value of land	To be determined as provided under Section 26.	
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (One) to 2.00 (Two) based on the distance of project from urban area, as may be notified by the appropriate Government.	
3.	Factor by which the market value is to be multiplied in the case of urban areas	1 (One).	
4.	Value of assets attached to land or building	To be determined as provided under Section 29.	
		

Language Guidelines

1. RULES FOR WORDS

(a) Archaic Words

- Archaic words are usually those that are no longer in everyday usage. In Indian laws, these take the form of words such as “hereinafter”, “wherein”, “thereto” and so on.
- Archaic English should not be used in any form.
- Most are either unnecessary (and can be removed altogether) or can be replaced by substitutes in modern English.

Illustration 43 is a sample list of archaic words from the Real Estate (Regulation and Development) Act, 2016.

Illustration 43.

Archaic words in the Real Estate Act, 2016

Aforesaid
Amongst
Hereby
Herein
Notwithstanding
Thereafter
Therein
Thereof
Thereto
Thereunder
Therewith
Wherein

(b) Vague Words

- Certain words used often in legislative texts can be unclear and vague. Such words, in turn, can be the source of frequent litigation precisely because of their vagueness.
- Ideally, the use of such words should be avoided, or such words should be qualified in the text of the law itself, wherever possible.

Illustration 44 demonstrates commonly used vague words in legislation.

*** Illustration 44.****Vague Words**

As soon as possible/practicable
 Best efforts / Best possible
 Endeavour
 Fair
 Immediately
 Material
 Proper
 Reasonable
 Satisfactory
 Usual
 As it may deem fit

An illustration of use of vague words is Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*Illustration 45*). The discretion of when it may be “proper” to arrest a person is left to the concerned officer.

*** Illustration 45.**

42. Power of entry, search, seizure and arrest without warrant or authorisation.
 (1)(d) detain and search, and, if he thinks *proper*, arrest any person whom he has reason to believe to have committed any offence punishable under this Act...

Illustration 46 (Section 4 of the Airports Authority of India (Lost Property) Regulations, 2003) is a good example of a provision that uses the phrase “as soon as possible”, but also qualifies it with the time period of “not later than twenty-four hours”.

✓ Illustration 46.**Qualify vague words when used in clauses**

4. Delivery of lost property to the Lost Property Office -
 (1) Subject to the provisions of the Customs Act and of the rules and regulations made thereunder, Duty Airport Manager or Duty Officer Control Tower as the case may be, to whom lost property is handed over under regulation 3, or who himself finds any lost

property, shall, *as soon as possible*, but in any case *not later than twenty-four hours*, deliver such property for safe custody...

The use of the term “best possible” in *Illustration 47* leaves a lot to subjective interpretation of the Counsellor and as suggested such words should be avoided, or qualified.

✘ *Illustration 47.*

Rule 14 of the Protection of Women from Domestic Violence Rules, 2006

14. Procedure to be followed by Counsellors.–

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the *best possible* redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(c) **Foreign Words**

- Avoid the use of foreign, including Latin words.

Illustration 48 is an indicative list of words that are used often in Indian legislation, along with possible alternatives.

Illustration 48.

Foreign words and their substitutes

✘ Foreign words	✔ Substitutes
inter se	between or among themselves
inter vivos	between living persons
mutatis mutandis	apply with necessary modifications
inter alia	among other things
ab initio	from the beginning
bona fide	in good faith

mala fide	in bad faith
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(d) Modal words

- Modal words are words which are commonly used before verbs to indicate modality. These verbs express meanings such as permission, likelihood, certainty, necessity, obligation etc.
Examples include can/could, may/might, must, will/would, and shall/should.
- In legal English, the most commonly used modal verb was “shall” (or its variants, such as “should”) to indicate some type of obligation (or prohibition), or authorisation, or declaration.
- In the plain English language movement this verb has been the subject of immense criticism.³⁶ One of the primary reasons being, on account of its multiple meanings tied to its frequent use in legal English, the verb has become an ambiguous term open to many judicial interpretations. For instance, although when used in statutes, “shall” generally indicates something that is mandatory, but depending on circumstances, it could suggest an exercise of discretion.³⁷
- Indian laws tend to use “shall” liberally, but in different contexts, the word can be understood to mean either “may”, “must” or “will”.
- To avoid confusion, it is best to not use the word “shall” at all. General principles for the use of may, must and will, in place of shall, are as follows:
 - ✓ Use “must” in place of “shall” in case of mandatory obligations.
 - ✓ Use “may” whenever discretion of the use of powers is intended.
 - ✓ Use “will” for operation of law.

Illustrations 49, 50 and 51 demonstrate the replacement of modal words in various provisions of different laws.

Illustration 49.

³⁶Christopher Williams. ‘Changes in the verb phrase in legislative language in English’ <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.468.7560&rep=rep1&type=pdf>> accessed on Feb, 17 2017.

³⁷P Ramanatha Aiyar, *Advanced Law Lexicon* (LexisNexis Butterworths Wadhwa, 2013) 4446.

The commencement clause of a legislation

✘ Original Provision	✔ Re-drafted Provision
This Act <u>shall</u> come into force on such date as the Central Government <u>may</u> , by notification in the Official Gazette, appoint.	This Act <u>will</u> come into force on the date notified by the Central Government in the Official Gazette.

Illustration 50.

✘ Original Provision	✔ Re-drafted Provision
<p>Section 8 - Protection and Safety</p> <p>(1) The persons with disabilities <u>shall</u> have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.</p> <p>(2) The National Disaster Management Authority and the State Disaster Management Authority <u>shall</u> take appropriate measures to ensure inclusion of persons with disabilities in its disaster management activities as defined under clause (e) of section 2 of the Disaster Management Act, 2005 (53 of 2005) for the safety and protection of persons with disabilities.</p>	<p>Section 8 - Protection and Safety</p> <p>(1) The persons with disabilities <u>must</u> have equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters.</p> <p>(2) The National Disaster Management Authority and the State Disaster Management Authority <u>will</u> take measures to ensure inclusion of persons with disabilities in its disaster management activities for the safety and protection of such persons.</p> <p>Explanation:- Disaster management activities are those defined under section 2(e) of the Disaster Management Act, 2005.</p>

Illustration 51.

Rights of Persons with Disabilities Act, 2016

✘ Original provision	✔ Re-drafted provision
Section 51 - Application and grant of certificate of registration	Section 51 - Application and grant of certificate of registration



<p>(1) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.</p> <p>(2) On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and on being satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder, it shall grant a certificate of registration to the applicant within a period of ninety days of receipt of application and if not satisfied, the competent authority shall, by order, refuse to grant the certificate applied for:</p> <p>Provided that before making any order refusing to grant a certificate, the competent authority shall give the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in writing.</p>	<p>(1) Every application for a certificate of registration must be made to the competent authority in the form and manner prescribed by the State Government.</p> <p>(2) On receiving an application, the competent authority may make enquiries as it considers necessary to determine if the applicant has complied with this Act and its rules.</p> <p>(3) If the competent authority is satisfied with its enquiries, it must grant the certificate to the applicant within 90 days after receiving the application.</p> <p>(4) If the competent authority is not satisfied with its enquiries, the competent authority may, by order, refuse to grant the certificate.</p> <p>(5) Before making any order refusing to grant a certificate, the competent authority must give the applicant a reasonable opportunity of being heard.</p> <p>(6) Every order of refusal to grant a certificate will be communicated to the applicant in writing.</p>
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(e) Simple words

- It is best to avoid unnecessary words and phrases, where fewer words (sometimes no words at all) will convey the same meaning.
- Laws tend to use longer, complicated, words, where shorter, simpler equivalents exist.
- Ideally, the simpler, shorter, plainer, more common or familiar the word, the more likely that it will be understood better by the reader. However, this should not include words that are informal or slang.

Illustration 52 is a selection of long, complicated words taken from the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. The simple substitutes are also indicated.

Illustration 52.
Simple Substitutes

 Word /phrase used	 Substitute
for the purpose of	For
increase, reduce or alter such limits	change such limits
having experience in dealing with	experienced in
from amongst the cadre of	from the
as per the provisions of	as per
in the event that	If
in the manner contemplated in	according to
Where the subject-matter of an arbitration is ...	Where an arbitration is about ...
under the provisions of the	under the
is other than	is not
arising out of	From
in respect of	for/where (as relevant)
within a period of sixty days from the date of..	within 60 days from...
Endeavour	Try
in order to	To
as may be necessary for a	For
in the manner as	As

subsequent to	After
after the expiry of a period of	After
prior to	before/earlier
tender as evidence	offer as evidence
Furnished	shown/stated/given
the party shall not be permitted to rely on	the party cannot rely

2. RULES FOR SENTENCES

(a) Simple sentences

- Generally, sentences must be simple to understand. There are many ways to craft simple sentences. One way to do this is to use simpler words, as discussed in the guidelines above.
- Another way to draft simpler sentences is simply by keeping the sentences short. As mentioned in the guidelines on clauses, this can be achieved by ensuring one clause deals only with one legislative idea, and long paragraphs are broken into sub-clauses where possible.
- Another technique to write simpler sentences is to use verbs instead of the noun-forms of the verb. *Illustration 53* is a list which contains examples of such words from the Bureau of Indian Standards Act, 2016.

Illustration 53.

Replacing noun forms with verbs

✘ Word /phrase used	✔ Substitute
for compliance with	to comply with
the efficient discharge of its functions	efficiently perform its functions
for promotion, monitoring and management of	to promote, monitor, and manage
by creating awareness among the consumers and the industry	by making the consumers and the industry aware of
identification of	identify
coordination of	coordinate

(b) Positive sentences

- Positive sentences must be treated as the rule, and negative sentences as the exception, since the former are simpler to read.

Illustrations 54 is an example of a negative sentence from the Payment of Gratuity, 1972 and its substitute.

Illustration 54.

Translating negative sentences into positive

✘ Original Provision	✔ Re-drafted Provision
<p>11. Cognizance of offences.—</p> <p>(1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government:</p> <p>Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a Magistrate having jurisdiction to try the offence</p> <p>(2) No court inferior to that of a [Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act.</p>	<p>11. Cognizance of offences.—</p> <p>(1) A court may take cognizance of any offence punishable under this Act only on complaints made or authorised by the appropriate Government.</p> <p>(2) If the gratuity remains unpaid, or is not recovered, for six months after the prescribed time expires:</p> <p>(a) the appropriate Government must authorise the controlling authority to make a complaint against the employer; and</p> <p>(b) within fifteen days after receiving authorisation, the controlling authority must make a complaint to a Magistrate having jurisdiction to try the offence.</p> <p>(3) A Metropolitan Magistrate or a Judicial Magistrate of the first class or above has the power to try any offence punishable under this Act.</p>

(c) Active sentences

- The active voice is preferred since it immediately brings the attention of the reader to the person who is responsible for discharging the obligation. See, *Illustration 56, 57*.

Illustration 55.

I. Translating passive voice into active

✘ Original Provision	✔ Re-drafted Provision
<p>Section 20 - Case before High Court to be heard by not less than two Judges</p> <p>(1) An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or if the Bench is of more than two Judges, by the majority of such Judges.</p> <p>(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.</p>	<p>Section 20 -Two judge Benches of High Court to hear cases</p> <p>(1) A Bench of two or more Judges of the High Court will hear an appeal filed before the High Court.</p> <p>(2) The appeal must be decided by majority.</p> <p>(3) Where there is no majority, the Judges must state the point of law upon which they differ.</p> <p>(4) One or more of the other Judges of the High Court must hear the case upon that point only, which will be decided by majority of the Judges who have heard the case, including those who first heard it.</p>

Illustration 56.

II. Translating passive voice into active

✘ Original Provision	✔ Re-drafted Provision
<p>Section 39 - Recovery by suit or under other law not affected</p> <p>(2) It shall be lawful for the Assessing Officer, or the Government, to have recourse to any such law or suit, notwithstanding that the tax arrears are being recovered from the assessee by any mode specified in this Chapter.</p>	<p>Section 39 - Recovery by suit or under other law not affected</p> <p>(2) The Assessing Officer, or the Government, may have recourse to any such law or suit, even if the tax arrears are being recovered from the assessee by a mode specified in this Chapter.</p>

(d) Subject and Predicate

- Keeping the subject and predicate close together allows for instant identification of the person who has to discharge an obligation, and the obligation to be discharged.

Illustrations 57 and 58 redraft Sections 23 and 29 of the Regional Centre of Biotechnology Act, 2016 by applying the above guideline.

Illustration 57.**I - Placement of Subject and Predicate**

✗Original Provision	✓Re-draft Provision
<p>Section 23(4) -</p> <p>The Executive Director may, if he is of the opinion that immediate action is necessary on any matter, exercise any power conferred on any authority of the Regional Centre by or under this Act and shall report to such authority at its next meeting the action taken by him on such matter.</p>	<p>Section 23(4) -</p> <p>(1) The Executive Director may exercise any power conferred on any authority of the Regional Centre under this Act, if the Executive Director believes that immediate action is necessary on any matter.</p> <p>(2) The Executive Director must report the action taken on the matter to the authority under sub-regulation (1) at its next meeting.</p>

Illustration 58.**II - Placement of Subject and Predicate**

✗Original Provision	✓Re-drafted Provision
<p>29. Grants and loans to Regional Centre-</p> <p>The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Regional Centre grants and loans of such sums of money and in such manner as that Government may consider necessary for being utilised for the</p>	<p>29. Grants and loans to Regional Centre-</p> <p>After Parliament makes due appropriation by law for this purpose, the Central Government may, to fulfil the objects of this Act, give the Regional Centre such sums of grants and loans in such manner as it considers necessary.</p>

fulfilment of the objects and purposes of this Act.	
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3. GENDER

Section 13(1) of the General Clauses Act, 1897 says - “words importing the masculine gender shall be taken to include females”. This presumption operates on the belief that the norm of humanity is male and is recognised as an archaic practice by progressive jurisdictions. Gender-neutral drafting is now seen as the essence of the hour when it comes to reforming legislative drafting.

The following are guidelines for gender neutral drafting:

(a) Pronouns

Avoid using the male pronoun. Instead repeat the relevant noun (*Illustration 60*). While repetition of the noun has the potential to render the provision relatively bulkier, there are two advantages:

- Repeating the noun can help avoid ambiguity in a provision where there are two or more nouns to which a pronoun could refer to, and
- It is a more egalitarian form of drafting since it allows for gender neutrality.

Illustration 59.

Section 10 of the Indian Succession Act, 1925

✗ Original Provision	✓ Re-drafted Provision
<p>10. Acquisition of new domicile.-</p> <p>A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.</p>	<p>10. Acquisition of new domicile.-</p> <p>A person acquires a new domicile by taking up fixed habitation in a country which is not such person’s domicile of origin.</p>

- Ideally, all provisions should be drafted such that the need to use pronouns does not arise at all. See, *Illustration 60*.

Illustration 60.

Section 7 of the Indian Succession Act, 1925

✗ Original Provision	✓ Re-drafted Provision
<p>7. Domicile of origin of person of legitimate birth</p>	<p>7. Domicile of origin of person of legitimate birth</p>

<p>The domicile of origin of every person of legitimate birth is in the country in which at the time of his birth his father was domiciled; or, if he is a posthumous child, in the country in which his father was domiciled at the time of the father's death.</p>	<p>(1) The domicile of origin of every person of legitimate birth is in -</p> <p>(a) the country in which at the time of such person's birth the father was domiciled; or,</p> <p>(b) if such person is a posthumous child, in the country in which the father was domiciled at the time of the father's death.</p>
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- If pronouns are completely unavoidable, use - “he/she/ze” - Respective possessives are “his/her/hir”. However, as mentioned already, provisions should be re-drafted to completely avoid the use of the pronoun.

Breaking the Binary

It should be noted that the landmark judgement of *National Legal Services Authority vs. UOI (2014) 5 SCC 438* has recognised that transgender persons have fundamental rights under Part III of the Constitution. As an implication, *NALSA* has affirmed that genders exist outside the binary of the male-female. Since a commonly accepted pronoun for persons who do not identify in the binary is ze, legislative drafting must reflect the same.

(b) Words which end with “man”

- Avoid words that end with “man”.
- Instead use the word “person”. See, *Illustration 61*.

Illustration 61.

Section 104 of the Companies Act, 2013

✘ Original Provision	✔ Re-drafted Provision
Section 104. Chairman of meetings	Section 104. Chairperson of meetings

<p>1) Unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands.</p>	<p>1) Unless the articles of the company provide otherwise, the members personally present at the meeting will elect one of themselves to be the Chairperson of the meeting by a show of hands.</p>
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C. Redrafting the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007

Background

The monopolisation of broadcasting signals of sporting events across platforms by a few dominant entities has the consequence of denying access to important sporting events to viewers and listeners. This is particularly true for persons who do not have access to satellite or cable television. The Policy Guidelines for Downlinking of Television Channels (dated 11th November 2005) and the Policy Guidelines for Uplinking from India (dated 2nd December 2005) attempted to address this issue by directing that entities having broadcasting rights for sporting events of national importance will share their feed with Prasar Bharti. However, enforcement was a challenge since these instruments lacked statutory flavour.

The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharti) Act, 2007 seeks to address this by creating a statutory obligation on broadcasters/content rights owners or holders to share the live broadcasting signal of sporting events with Prasar Bharti. Prasar Bharti, as the public service broadcaster of the country, has exclusive control over terrestrial rights of broadcasting. Its platforms All India Radio and Doordarshan reach about 98 per cent of the Indian population, thus making it the ideal entity for broadcasting sports to the public.

While the Act has a simple objective and is brief (10 Sections across 4 Chapters), it suffers from various drafting inadequacies. They are as follows:

- (1) The definitions are long and convoluted. They have been substantially simplified while preserving their legal meaning. However, since most of the definitions are terms of art, the extent of simplification is limited.
- (2) Some definitions which were redundant or have been defined in the Acts specified in Section 2(2) have been removed. For instance, the word “broadcaster” does not feature anywhere in the Act. Similarly, the term “cable television network” is defined in the Cable Television Networks (Regulation) Act, 1995. They have been removed.
- (3) Provisions take the form of long and winding paragraphs. An instance of this is Section 4, which deals with penalties. This has been addressed by creating new sub-sections where possible.
- (4) Multiple legislative ideas are expressed in a single provision. For instance, Section 3 which deals with mandatory sharing of sports broadcasting signals has been divided into new sections - each addressing one issue.
- (5) Some provisions, such as Sections 6(2) and 7, are drafted in archaic language and are thus incomprehensible. These sections have been re-drafted in simple language.

Apart from the above, judgements which have interpreted the Act were accounted for while re-drafting certain sections. The relevant judgements and the consequent redrafts are as follows:

(1) *Star Sports India Private Limited vs. Prasar Bharti and Ors.*³⁸

The word “its” has been removed from the phrase “without its advertisements” from Section 4(2) of the re-drafted Act (Section 3(1) of the original Act) since it was a source of contention in this judgement. The issue was whether “its” related to only to the broadcaster or to the other entities mentioned in Section 3(1). The Court clarified that the word “its” applies to all entities including the contents rights owner, contents holder and the broadcasting service provider. Thus, there is an absolute prohibition on sharing of advertisements irrespective of the entity which has placed the same in the live broadcast. The word “its” has been deleted to clarify that irrespective of which entity placed the advertisement on the live broadcast, there is a duty to ensure that the broadcast is shared without advertisements.

(2) *BCCI vs. Prasar Bharti and Ors.*³⁹

The words “only” and “its” have been inserted before the phrases “on its terrestrial networks” and “direct-to-home” respectively, in Section 4(1) of the re-drafted Act (Section 3(1) of original Act). This is to clarify that Prasar Bharti can broadcast the shared feed only on its platforms and not others. The issue in this case was whether Prasar Bharti could re-transmit the live broadcasting signals to networks other than its own terrestrial networks or Direct-To-Home networks. The Court ruled that Prasar Bharti was not permitted to do the same. By inserting the words “only” and “its” the intent has been clarified.

³⁸ AIR 2016 SC 2586.

³⁹ 2015 (148) DRJ 342.

Re-drafting the Sports Signals (Mandatory Sharing with Prasar Bharti) Act, 2007

Original Provision	Re-drafted Provision
The Sports Signals (Mandatory Sharing with Prasar Bharati) Act, 2007	The Sports Broadcasting Act, 2007
<p>An Act to provide access to the largest number of listeners and viewers, on a free to air basis, of sporting events of national importance through mandatory sharing of sports broadcasting signals with Prasar Bharati and for matters connected therewith or incidental thereto.</p> <p>Be it enacted by Parliament in the Fifty-eighth Year of the Republic of India as follows:</p>	<p>An Act to increase access to sporting events of national importance, through sharing of sports broadcasting signals with Prasar Bharati.</p> <p>Enacted by the Parliament as follows:</p>
Chapter I Preliminary	
<p>1. Short title, extent and commencement.-</p> <p>(1) This Act may be called the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007.</p> <p>(2) It extends to the whole of India.</p> <p>(3) Save as otherwise provided, it shall be deemed to have come into force on the 11th day of November, 2005.</p>	<p>1. Short title, extent and commencement.-</p> <p>(1) This is the Sports Broadcasting Act, 2007.</p> <p>(2) It extends to the whole of India.</p> <p>(3) It is deemed to have come into force on 11th November 2005.</p>

1. Definitions.-

(1) In this Act, unless the context otherwise requires,-

- (a) **“broadcaster”** means any person who provides a content broadcasting service and includes a broadcasting network service provider when he manages and operates his own television or radio channel service;
- (b) **“broadcasting”** means assembling and programming any form of communication content, like signs, signals, writing, pictures, images and sounds, and either placing it in the electronic form on electro-magnetic waves on specified frequencies and transmitting it through space or cables to make it continuously available on the carrier waves, or continuously streaming it in digital data form on the computer networks, so as to be accessible to single or multiple users through receiving devices either directly or indirectly; and all its grammatical variations and cognate expressions;
- (c) **“broadcasting service”** means assembling, programming and placing communication content in electronic form on the electro-magnetic waves on specified frequencies and transmitting it continuously through broadcasting network or networks so as to enable all or any of the multiple users to access it by connecting their receiver devices to their

2. Definitions -

(1) In this Act, unless the context requires otherwise-

- (a) **“broadcasting”** means assembling and programming any form of content and transmitting it as a set of electronic signals or as digital data for reception by users.
- (b) **“broadcasting service”** means broadcasting in electronic form which enables users to access content through broadcasting networks. It includes content broadcasting services and broadcasting network services.
- (c) **“broadcasting networks”** means a network of cables or transmission devices for carrying broadcasting content.
- (d) **“broadcasting networks service”** means a service providing a broadcasting network. It includes the management or operation of the following:
 - i. Teleport/Hub/Earth Station;
 - ii. Direct-to-Home (DTH) Broadcasting Network,
 - iii. Multi-system Cable Television Network,
 - iv. Local Cable Television Network,
 - v. Satellite Radio Broadcasting Network,
 - vi. any other network service as may be prescribed by the Central Government;

respective broadcasting networks and includes the content broadcasting services and the broadcasting network services;

- (d) **“broadcasting networks service”** means a service, which provides a network of infrastructure of cables or transmitting devices for carrying broadcasting content in electronic form on specified frequencies by means of guided or unguided electro-magnetic waves to multiple users, and includes the management and operation of any of the following:
- i. Teleport/Hub/Earth Station,
 - ii. Direct-to-Home (DTH) Broadcasting Network,
 - iii. Multisystem Cable Television Network,
 - iv. Local Cable Television Network,
 - v. Satellite Radio Broadcasting Network,
 - vi. any other network service as may be prescribed by the Central Government;
- (e) **“cable television channel service”** means the assembly, programming and transmission by cables of any broadcasting television content on a given set of frequencies to multiple subscribers;
- (f) **“cable television network”** means any system consisting of closed transmission paths and associated signal generation, control and distribution equipment, designed to receive and

- (e) **“cable television channel service”** means the assembly, programming and transmission by cables of broadcasting television content on a set of frequencies to subscribers;
- (f) **“community radio service”** means terrestrial radio broadcasting intended for and restricted to a specific community within a specified territory;
- (g) **“content”** means any sound, text, data, picture, other audio-visual representation, or signal of any nature capable of being created, processed, stored, retrieved or communicated electronically.
- (h) **“content broadcasting service”** means assembling and programming any form of content in electronic form and transmitting or retransmitting it as a set of electronic signals on a broadcasting network for reception by users.
It includes the management or operation of any of the following:
- i. terrestrial television service,
 - ii. terrestrial radio service,
 - iii. satellite television service,
 - iv. satellite radio service,
 - v. cable television channel service,
 - vi. community radio service,

<p>re- transmit television channels or programmes for reception by multiple subscribers;</p> <p>(g) “community radio service” means terrestrial radio broadcasting intended and restricted only to a specific community and within specified territory;</p> <p>(h) “content” means any sound, text, data, picture (still or moving), other audio-visual representation, signal or intelligence of any nature or any combination thereof which is capable of being created, processed, stored, retrieved or communicated electronically;</p> <p>(i) “content broadcasting service” means the assembling, programming and placing content in electronic form and transmitting or retransmitting the same on electromagnetic waves on specified frequencies, on a broadcasting network so as to make it available for access by multiple users by connecting their receiving devices to the network, and includes the management and operation of any of the following:</p> <ul style="list-style-type: none"> i. terrestrial television service, ii. terrestrial radio service, iii. satellite television service, 	<p>vii. any other content broadcasting service as may be prescribed by the Central Government.</p> <p>(i) “Direct to Home (DTH) broadcasting service” means a service for multi-channel distribution of programmes directly to a user without any intermediary such as a cable operator;</p> <p>(j) “multi-system cable television network” means a system for multi-channel downlinking and distribution of television programmes by a land-based transmission system using a cable for reception by subscribers;</p> <p>(k) “Prasar Bharati” means the Prasar Bharati (Broadcasting Corporation of India) established under section 3(1) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990;</p> <p>(l) “prescribed” means prescribed by rules made under this Act;</p> <p>(m) “satellite television service” means a television broadcasting service provided by using a satellite. It does not include Direct-to-Home delivery service;</p> <p>(n) “satellite radio service” means a radio broadcasting service provided by using a satellite and directly receivable through receiver sets by subscribers in India;</p>
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- iv. satellite radio service,
- v. cable television channel service,
- vi. community radio service,
- vii. any other content broadcasting services as may be prescribed by the Central Government;

(j) **“Direct-to-Home (DTH) broadcasting service”** means a service for multi-channel distribution of programmes direct to a subscriber’s premises without passing through an intermediary such as a cable operator by up linking to a satellite system;

(k) **“Guidelines”** means the Guidelines issued under section 5;

(l) **“multi-system cable television network”** means a system for multi-channel downlinking and distribution of television programmes by a land-based transmission system using wired cable or wireless cable or a combination of both for simultaneous reception either by multiple subscribers directly or through one or more local cable operators;

(m) **“Prasar Bharati”** means the Corporation known as the Prasar Bharati (Broadcasting Corporation of India) established under sub-section (1) of section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990);

(n) **“prescribed”** means prescribed by rules made under this Act;

(o) **“specified”** means specified under the guidelines issued under section 8;

(p) **“sporting events of national importance”** means national or international sporting events in India or abroad which are notified by the Central Government in the Official Gazette to be of national importance;

(q) **“terrestrial television service”** means a television broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public;

(r) **“terrestrial radio service”** means a radio broadcasting service provided over the air by using a land-based transmitter and directly received through receiver sets by the public.

(2) Words used and not defined in this Act but defined in the following Acts will have the respective meanings assigned to them in these Acts:

- (a) The Cable Television Networks (Regulation) Act, 1995;
- (b) The Telecom Regulatory Authority of India Act, 1997;
- (c) The Indian Telegraph Act, 1885; and
- (d) The Indian Wireless Telegraphy Act, 1933.

- (o) **“satellite television service”** means a television broadcasting service provided by using a satellite, and received with or without the help of a local delivery system but does not include Direct-to-Home delivery service;
- (p) **“satellite radio service”** means a radio broadcasting service provided by using a satellite and directly receivable through receiver sets by multiple subscribers in India;
- (q) **“service provider”** means provider of a broadcasting service;
- (r) **“specified”** means specified under the Guidelines issued under section 5;
- (s) **“sporting events of national importance”** means such national or international sporting events; held in India or abroad, as may be notified by the Central Government in the Official Gazette to be of national importance;
- (t) **“terrestrial television service”** means a television broadcasting service provided over the air by using a landbased transmitter and directly received through receiver sets by the public;
- (u) **“terrestrial radio service”** means a radio broadcasting service provided

<p>over the air by using a land-based transmitter and directly received through receiver sets by the public.</p> <p>(2) Words and expressions used and not defined in this Act and defined in the Cable Television Networks (Regulation) Act, 1995 (7 of 1995), the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Indian Telegraph Act, 1885 (13 of 1885), the Indian Wireless Telegraphy Act, 1933 (17 of 1933) shall have the meanings respectively assigned to them in those Acts.</p>	
<p>Chapter II Sharing of Sports Broadcasting Signals with Prasar Bharti</p>	
<p>3. Mandatory sharing of certain sports broadcasting signals</p> <p>(1) No content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or Direct-to-Home network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable them to re-transmit the same on its terrestrial networks and Direct-to-Home networks in such manner and on such terms and conditions as may be specified.</p>	<p>3. Mandatory sharing of sports broadcasting signals - A content rights owner or holder or a broadcasting service provider will:</p> <p>(1) share the live broadcasting signal of sporting events of national importance with Prasar Bharti; and</p> <p>(2) carry its live broadcast only if it fulfils the condition under sub-section (1).</p> <p>4. Terms and conditions for sharing of signals:</p> <p>(1) Prasar Bharti will re-transmit the signal only⁴⁰ on its terrestrial networks and its⁴¹ Direct-to-Home networks on the terms and</p>

⁴⁰ See, *BCCI vs. Prasar Bharti and Ors. 2015 (148) DRJ342* and explanation on Page no. 58.

⁴¹ *Ibid.*

<p>(2) The terms and conditions under sub-section (1) shall also provide that the advertisement revenue sharing between the content rights owner or holder and the Prasar Bharati shall be in the ratio of not less than 75:25 in case of television coverage and 50:50 in case of radio coverage.</p> <p>(3) The Central Government may specify a percentage of the revenue received by the Prasar Bharati under sub-section (2), which shall be utilised by the Prasar Bharati for broadcasting other sporting events</p>	<p>conditions which may be specified.</p> <p>(2) The live broadcasting signal will be shared without advertisements.⁴²</p> <p>(3) When advertisements are shared as a part of the live broadcast, the terms and conditions will specify revenue sharing between the content rights owner or holder and Prasar Bharati.</p> <p>(4) Revenue sharing under sub-section (3) will be in the ratio of not less than:</p> <p>(a) 75:25 in case of television coverage; and</p> <p>(b) 50:50 in case of radio coverage.</p>
	<p>5. Broadcasting of other sporting events by Prasar Bharti</p> <p>The Central Government may specify a percentage of the revenue received under section 4 which is to be utilised by Prasar Bharati for broadcasting of other sporting events.</p>
<p>4. Penalties</p> <p>The Central Government may specify penalties to be imposed, including suspension or revocation of licence, permission or registration, for violation of</p>	<p>6. Enforcement of the Act</p> <p>(1) The Central Government may impose a penalty on a content rights owner or holder or a broadcasting service provider for violation of the terms and conditions specified under sections 3 and 4.</p>

⁴² See, *Star Sports India Private Limited vs. Prasar Bharti and Ors.* AIR 2016 SC 2586 and explanation on Page no. 58.

<p>various terms and conditions as may be specified under section 3, subject to the condition that amount of a pecuniary penalty shall not exceed one crore rupees:</p> <p>Provided that no penalty shall be imposed without giving a reasonable opportunity to the service provider:</p> <p>Provided further that no act or omission on the part of any person after the 11th November, 2005 and before the date of promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 (Ord 4 of 2007), shall be subjected to penalties.</p>	<p>(2) The Central Government may impose any of the following penalties proportionate to the breach:</p> <p>(a) revocation of any broadcasting license, permission or registration; and</p> <p>(b) financial penalties which may extend to 1 crore.</p> <p>(3) Any breach prior to the date of promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007, will not be subject to a penalty under this section.</p>
	<p>7. Reasonable opportunity to be heard</p> <p>The Central Government must grant the content rights owner, holder or a broadcasting service provider a reasonable opportunity to be heard while determining whether there is a breach of the terms and conditions and while imposing a penalty under section 6.</p>
<p>Chapter III</p> <p>Power of Central Government to Issue Guidelines</p>	
<p>5. Power of Central Government to issue guidelines -</p> <p>The Central Government shall take all such measures, as it deems fit or expedient, by way of issuing guidelines for mandatory sharing of broadcasting signals with Prasar Bharati relating to sporting events of national importance:</p> <p>Provided that the Guidelines issued before the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007</p>	<p>8. Power of Central Government to issue guidelines -</p> <p>(1) The Central Government may issue guidelines under this Act.</p> <p>(2) The guidelines, issued before the promulgation of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007, are deemed to be issued under this section.</p>

(Ord 4 of 2007), shall be deemed to have been issued validly under the provisions of this section.	
Chapter IV Miscellaneous	
<p>6. Validation</p> <p>(1) The provisions of the Guidelines issued by the Central Government for Downlinking of Television Channels on the 11th November, 2005 and for Uplinking from India on the 2nd December, 2005 for mandatory sharing of the sports broadcasting signals shall be deemed to be valid as if they have been issued under this Act.</p> <p>(2) Notwithstanding anything contained in any judgement , decree or order of any court, tribunal or other authority, any action taken by the Central Government or the Prasar Bharati in pursuance of the Guidelines referred to in sub-section (1) shall be deemed to be and to have always been for all purposes in accordance with the law, as if the Guidelines had been validly in force at all material times and notwithstanding anything as aforesaid and without prejudice to the generality of the foregoing provisions, no legal proceeding shall be maintained or continued in any court for the enforcement of any direction given by any court or any decree or order which would not have been so given had the Guidelines been validly in force at all material times.</p>	<p>9. Validation</p> <p>(1) The following guidelines issued by the Central Government are deemed to be issued under this Act:</p> <p>(a) Guidelines for the Downlinking of Television Channels (11th November 2005); and</p> <p>(b) Guidelines for the Uplinking from India (2nd December 2005).</p> <p>(2) Despite any judgement, decree or order passed by a Court, tribunal or other authority, any action taken by the Central Government or Prasar Bharti under the guidelines mentioned in sub-section (1) is deemed to be in accordance with the law.</p> <p>(3) No legal proceeding will be maintained or continued for the enforcement of any direction, or order or decree passed on the ground that the guidelines were not validly in force.</p>
<p>7. Power of Central Government to make Rules</p>	<p>10. Power of Central Government to make Rules</p> <p>(1) The Central Government may make rules for this Act.</p>

<p>The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.</p>	<p>(2) The rules will be notified in the Official Gazette.</p>
<p>8. Rules and Guidelines to be laid before the Parliament</p> <p>Every rule and Guidelines made and issued, as the case may be, under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or Guidelines, or both Houses agree that the rule or Guidelines should not be made, the rule or Guidelines shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or Guidelines.</p>	<p>11. Rules and Guidelines to be laid before the Parliament</p> <p>(1) Rules and guidelines made or issued under this Act will be laid before each House of Parliament.</p> <p>(2) Rules and guidelines will be laid for a period of 30 days while the Parliament is in session.</p> <p>(3) The thirty days may extend over one or more successive sessions.</p> <p>(4) After the rules have been laid as per subsection (3), if before the expiry of the next session, both Houses agree:</p> <p style="padding-left: 40px;">(a) to make any modifications; or</p> <p style="padding-left: 40px;">(b) that such rule or guideline should not be made or issued</p> <p style="padding-left: 40px;">the rule or guidelines will have effect only in the modified form or no effect respectively.</p> <p>(5) Any change in the rules or guidelines made or issued under subsection (4) will not affect the validity of anything done previously under such rule or guideline.</p>

<p>9. Saving</p> <p>The relevant provisions under the Guidelines for Downlinking of Television Channels issued on the 11th November, 2005 and the Guidelines for Up linking from India issued on the 2nd December, 2005 for mandatory sharing of sports broadcasting signals with Prasar Bharati, shall continue to remain in force till fresh Guidelines are issued under this Act.</p>	<p>12. Repeals and Savings -</p> <p>(1) The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 is repealed.</p> <p>(2) Despite such repeal, any actions under the repealed Ordinance, are deemed to have been taken under the corresponding provisions of this Act.</p> <p>(3) The guidelines mentioned in section 9(1)(a) and 9(1)(b) will remain in force till fresh guidelines are issued under this Act.</p>
<p>10. Repeal and Saving</p> <p>(1) The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 (Ord. 4 of 2007) is hereby repealed.</p> <p>(2) Notwithstanding the repeal of the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Ordinance, 2007 (Ord 4 of 2007), anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act</p>	



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