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Doors a Legislation has to go through in India

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ABSTRACT

This research paper, as the name suggests, talks about various steps that are included in the process of making of legislation. The laws or the acts (legislations) that act as the rules of a country for maintaining peace, order and rights of the people has a very important and interesting process of its origination. This research paper talks about how the policy line of a bill is prepared and how it is legally scrutinized by the ministry of law in its initial stages which goes on further to the preparation of first draft by junior legislative counsel. The researcher in his paper also discusses an important aspect of legislative impact assessment in the preparation of a bill which is not a necessary step in India that is to be followed but needs to be followed as it is done by countries like Finland etc. The researcher in his paper goes further to discuss various other doors that a legislation has to go through till it gets the assent of the president of India to become the law of the land. This research paper also highlights some of the views that are given by our Hon'ble Supreme Court for understanding the true aspect behind the statement of object and reasons. This paper will help the readers to understand all the aspects of the legislation making process minutely.

Keywords: Legislation, Legislative Impact Assessment, Scrutiny, Junior Legislative Counsel

I. INTRODUCTION

Legislative drafting is an art of drafting of legislation or any piece of writing which comes from the legislation. It can be considered a well cultivated art in most civilized country in the modern era with less number of theoretical writings on it.³ Due to which, persons other than draftsman does not know the joy and sorrows involved in this discipline, the thrills, the preliminaries and fruitions of the process.⁴ The main element involved in drafting is language and its mode of communication. It is for the prime importance of the draftsman, the language he uses to convey the meaning for the particular legislation so that it could be understood without confusion. The regulation of society is the field in which the legislative drafter toils;

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³ P.M. Bakshi, *The Discipline of Legislative Drafting*, 34 JILI 1,1 (1992).

⁴*Ibid.*

the task is to frame the communication of policy decisions having legal consequences to members of the society.⁵ The contrast and differences between speech and written language is both striking and of the important nature to the drafter.⁶ Language differs from time and place and thus, the language used cannot be referred as an exact science with no variations. Despite the riches of the immense vocabulary of the English language,⁷ it can have vagueness, ambiguity, inaccuracy and indeed all the horrors that can be dreamt of by the legislative drafter.⁸ So, the draftsman needs every available help and an inestimable value in the study of (a) the kind and the working of the language that is used; (b) the type of words and how they should be combined into sentences and (c) linguistic changes, hereby, meaning the change in usage of the language with the passage of time and its influence in the social forces.⁹ A continuous interest in the linguistics portion by a draftsman is desirable and one of the most important qualities involved in legislative drafting as the language and the words involved that will be used in the legislation keeps on changing with time and then.¹⁰

Though drafting legislation involves a complex form of efforts for a proper draft to be prepared starting from the idea of the legislation with the language that is to be used to end product in the form of legislation, but just going through these hard efforts does not approve a draft to be law or well – implemented legislation. This draft has to go through many stages to be passed as well-established law or to be implemented after the assent of the president. A bill before becoming a law passes through the ‘long chain of standardized motion’ which must be adopted by the house before it becomes a law.¹¹ In India, bill for legislation is first drafted by Legislative Department of the Ministry of Law and Justice which later goes for presentation in parliament which after heavy discussion gets passed and goes for the assent of the president.

II. PREPARATION OF LEGISLATIVE POLICY

In India, Legislative department in the ministry of law and justice is primarily concerned with drafting of all the principle legislations through bills that are introduced in the parliament; ordinances that ought to be promulgated by the president; measures to be enacted as

⁵ G.C. THORNTON, LEGISLATIVE DRAFTING 1 (Tottel Publishing, 4th ed., 2008).

⁶ DAVID CRYSTAL THE CAMBRIDGE ENCYCLOPEDIA OF ENGLISH LANGUAGE (The Cambridge University Press, 1st ed., 1995).

⁷ JOHN SIMPSON, THE OXFORD ENGLISH DICTIONARY (The Oxford University Press, 2nd ed., 1989).

⁸ *Supra* note 4 at 2.

⁹ *Supra* note 4 at 3.

¹⁰ *Supra* note 4 at 3.

¹¹ Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, THE HOUSE OF COMMONS CHAMBRE DES COMMUNES CANADA [https:// www. Ourcommons .ca /marleaumontpetit /DocumentViewer.aspx?DocId=1001&Sec=Ch16&Seq=6&Language=E](https://www.Ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?DocId=1001&Sec=Ch16&Seq=6&Language=E)

president's act for the state under president's rule and all the regulations by the president form the union territories.¹² The first step in drafting of bill is the formation of legislative policy. This stage involves more of the administrative, financial or the political considerations rather than legal considerations and these are looked upon by the officials in the administrative ministry concerned.¹³ All the other ministries concerned whether of state government or of central government are asked for their advice on the policy concerned. Respective ministry under which the particular legislation is concerned is responsible to address the policy considerations. Legislative policy is basically for the purpose of highlighting the objectives of the particular legislation. Legislative policy comes in handy to mark the ideas for which legislation is being drafted.¹⁴ Clarity of idea behind the policy and legislation is important in order to avoid any confusion and in order to obtain this clarity, policy makers, many times, while preparing this policy participates in the heavy discussion with the officers of the administrative ministry to clear up the obscure points, if there are any.¹⁵ It is this policy upon which bill will mostly lie upon. So, it should be the first priority of the drafter to clearly understand the object or the concept of the legislative proposals.¹⁶

Example: Legislation for Bio-diversity

*The main objective for this legislation will be to protect bio-diversity for the benefit of humanity and meeting people's need while at the same time, also ensuring long term sustainability of ecology to protect earth's biotic wealth.*¹⁷

It is important for the policy maker to keep in mind that the policy of the required legislation needs to incorporate the remedies for the issues that the proposed legislation intends to provide.¹⁸ There are many instances where the subject matter of the policy deviates from its original purpose. So, this legislative policy, itself, helps in avoiding any such ambiguities from the bill or legislation concerned. Development in the legislation could be analyzed by the quality of decisions and the policy in question.¹⁹ The scholars need to adopt the system of policy evaluation through the impact of policy in the society with respect to socio-economic

¹²*Functions of Legislative Department*, <http://legislative.gov.in/about-us/functions>

¹³T.K VISWANATHAN, *LEGISLATIVE DRAFTING: SHAPING THE LAW FOR NEW MILLENNIUM* 191, (Indian Law Institute, 2nd ed., 2007).

¹⁴S.K. Hiranandani, *Legislative Drafting: An Indian View*, 27 MLR 3, 3 (1964).

¹⁵*Ibid.*

¹⁶B.R. ATRE, *LEGISLATIVE DRAFTING: PRINCIPLES AND TECHNIQUES* 82 (Universal Law Publishing, 5thed., 2017)

¹⁷*Ibid.*

¹⁸*Id.* at 83.

¹⁹G. Palanithurai, *Legislative Institutions in India: Decline or Change* 51 IJPS 428, 428 (1990)

change and development to analyze the quality of the policy or legislation being made.²⁰ Also, legislative impact assessment is needed to be done in order to analyze the impact of legislation and the changes that could be observed before and after the implementation of particular legislation.

Legislative Impact Assessment

Though the legislation or policies in our country is passed by scrutiny and assessment, there are increasing number of chances that ‘Rush for a Law’ to quickly fix the current and complex problem of the land often leads to blind side of both policy makers and citizens, the unanticipated impact of the legislation after its implementation.²¹ In India, however, it is largely seen that law making is usually conducted in silos with little eye on how the particular law may impact, either directly or indirectly, different aspects of economy, ecology as well as existing law of the land in a way that framers of this policy or law never intended.²² So, in order to avoid these unintended impacts as far as possible, the idea of this legislative impact assessment is slowly and gradually taking its steps as a process of legislative drafting as it has been observed that it is necessary to analyze the laws and policies prior to their enforcement to identify and minimize the negative impact of the policy in question.²³ Countries like Kenya and Finland have their impact assessment mechanism as a regular step of legislative process and it is necessary for every country to at least go through impact assessment of the policies or legal framework before they are passed and enacted.²⁴ Legislative impact assessment is a part of that informed law making process under which political, social, economic, biological impacts of legislative proposals are made and also helps in realizing the object behind the policy or law one way or the other.²⁵ Some of the key elements of legislative impact assessment are identifying the policy problem with potential policy options; analysis of the problem with the policy being made; consulting the stakeholders for indentifying the impact of the implementation of the policy; analyzing the policy through cost-benefit method and then reporting the overall observation of the process. This process will let the policy makers to identify the key areas where the particular policy will leave its negative impact and thus, will automatically guide them on how to reduce this negative impact during its proper

²⁰*Ibid.*

²¹Shalini Iyengar, Balakrishna Pisupati and Anirudh Chakradhar, *The Imperative of Impact Assessment*, THE HINDU (Oct. 15, 2018), <https://www.thehindu.com/opinion/op-ed/the-imperative-of-impact-assessment/article25221657.ece>

²²*Ibid.*

²³*Ibid.*

²⁴*Ibid.*

²⁵*Parliamentary Panel starts on Legislative Impact Assessment*, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/india/parliamentary-panel-starts-work-on-legislative-impact-assessment/articleshow/73232113.cms>

implementation. From the past some time, it has been observed in India that the laws made by the central government passes through the immense pre-legislative process so as to address the issue with least number of flaws in the law being made. So, it becomes necessary for the country like ours that these policies are analyzed in detail before its actual enactment as expensive and irreversible mistakes can't be afforded by the country with limited resources and large population. Legislative impact assessment should be built in a way so that it could easily fit in the current process of law making as legislative impact assessment just analysis the impact of the policies or legislations before they are enacted.²⁶ Legislative impact assessment will help in two ways: firstly, it will help in enactment of better laws that will improve the governance and secondly, it will also act as a tool to prepare a list that will be needed as support system for implementing the laws.²⁷

Legal Consideration by Ministry of Law

After the preparation of draft policy, the document is sent to Ministry of law and justice for taking legal considerations on it. This process is also known as legal scrutiny. Once the matters in the legislative policy are decided, the proposal for the legislations is referred to the ministry of law and justice for their regards on feasibility from the legal and constitutional point of view.²⁸ These proposals are considered by Ministry of Law and Justice under their advisory function and advices are given on the importance of such legislation with the light on existing set of laws.²⁹ Whether the parliament is competent to legislate on the subject as per the constitution or not and broad lines under which this legislation can be initiated is also indicated in this process.³⁰ However, the advice of legality which is rendered here is general in nature and is kept reserved for the draftsmen to consider it in detail at the time of drafting of bill.³¹ Areas of prime attention for the legislative counsel in not doubt, surely is the constitutionality of the bill including the form, wordings (linguistic portion) and the arrangement of the bill, but many other considerations are also taken into account for the preparation of the bill which requires equal attention of the legislative counsel.³² It is the duty of the legislative counsel to give the solution for the all the anticipated problems and situations that are likely to arise.³³ It is the duty of the legislative counsel to check the current

²⁶Balakrishna Pisupati, *The need for Legislative Impact Assessment in India*, THE MONGABAY, (June 6, 2019), <https://india.mongabay.com/2019/06/the-need-for-legislative-impact-assessments-in-india/>

²⁷*Ibid.*

²⁸*Supra* note 12 at 192.

²⁹*Supra* note 12.

³⁰*Supra* note 12.

³¹*Supra* note 12 at 192.

³²*Supra* note 12.

³³*Supra* note 12.

and existing statutes on the subject matter and the relevant provision of the constitution that are concerned with the legislation being drafted.³⁴ There is a great responsibility on the shoulders of the legislative counsel as they have to make substantial contributions in analyzing the policy and filling in the details as many a times, it is not possible to foresee the additional policy matters until the drafting process begins.³⁵ It is the role of the legislative counsel to ensure all the sanctions and legal provisions that will be needed to make the legislation effective and complete.³⁶

Preparation of First Draft of the Bill

After going through the process of legal scrutiny, the proposal is being forwarded by the department of legal affairs to legislative department where the first draft of the bill is attempted in consultation with the officials of administrative ministry. Concerned ministries are regularly contacted by the legislative department while the bill is being drafted. Coincidentally, Ministry of Law itself plays the role of originating ministry in certain kinds of bill like bills related to marriage, divorce, evidence and all those bills which from their very nature falls within the pursuit of this ministry.³⁷ After receiving the instructions for drafting the bill, the very first attempt to the process of drafting is made by junior legislative counsel which is later examined and finalized by the senior legislative counsel and gets the collaboration of the legislative counsel who was the first one to draft the bill.³⁸ These consultations and collaborations are for the purpose to reduce the mistakes in the bill drafted. The process of drafting may take a long time, sometimes a number of months when it comes to draft complex forms of bill.³⁹ The process of drafting and revising of bill continuous till the time both the legislative counsel and sponsors of the bill are satisfied with the terms, condition, content and form of the bill.⁴⁰

Note for the Cabinet

This is one of the processes of legislative drafting where cases involving legislation needs to be brought in front of the cabinet for taking the decision and moreover, when it is decided that legislation on that particular topic has to be undertaken by the minister who is in charge of an administrative ministry and, after due diligence with the ministry of law, a self-contained summary is prepared by the concerned minister stating the facts related to that case and the

³⁴*Supra* note 15 at 86.

³⁵*Supra* note 12 at 192.

³⁶*Supra* note 12 at 192.

³⁷*Supra* note 12.

³⁸*Supra* note 12 at 193.

³⁹*Supra* note 12 at 193.

⁴⁰*Supra* note 12 at 193.

legislative measure which is being proposed.⁴¹ Both the advisory as well as drafting wings views that summary which is later submitted to the cabinet for approval.⁴² Very often, department of legal affairs along with the legislative department revises that summary to state the legislative proposals more clearly in order to avoid any confusion and ambiguity.⁴³ Sometimes, that summary is often accompanied by the bill drafted but this practice is to be deprecated as this cause many problems for the draftsman in one way or the other.⁴⁴ Problem as if the proposal gets denied by the cabinet, than the time draftsman spent drafting the bill gets wasted and if modification comes from the side of the cabinet in the proposal, than draftsman has to start from the scratch to draft the bill again.⁴⁵ If the cabinet with their approval attaches some sanctity to the bill, than the draftsman loses his opportunity to improve the language of the bill and even, his hands get tied in the matter of positive changes in the drafting.⁴⁶ The concerned ministry requests the legislative department to finalize the bill once the approval is being obtained from the cabinet.⁴⁷ Sometimes, if necessary, legislative counsel seeks the consultation of the administrative ministry to finalize the bill in accordance with the approval sought from the cabinet.⁴⁸ Earlier draft bill was prepared only after the approval of the cabinet but since 1999, the summary that is sent to the cabinet for obtaining its approval is attached with the draft bill to seek its consideration.⁴⁹

Statement of Object and Reasons

After the bill gets finalized and approved by the ministry and all the sponsors, statement of objects and reasons is prepared by the concerned ministry indicating the intention and reasons behind the bill. The statement of objects and reasons can be used only for the limited purpose and that too for reflecting the intentions behind the bill.⁵⁰ It must be kept in mind that this statement of objects and reasons seeks only to explain the reason why the particular ministry initiated this bill and what all things is expected to be achieved after the implementation of this bill.⁵¹ This statement of objects and reasons is prepared after consulting the draftsman of

⁴¹G.R. RAJAGOPAL, THE DRAFTING OF LAWS 52 (The Indian Law Institute, 1sted., 1980)

⁴²*Ibid.*

⁴³*Supra* note 12 at 193.

⁴⁴*Supra* note 40.

⁴⁵*Supra* note 40.

⁴⁶*Supra* note 40 at 53.

⁴⁷*Supra* note 12 at 193.

⁴⁸*Supra* note 12 at 193.

⁴⁹*Supra* note 12 at 193,194.

⁵⁰*Statement of Objects and Reasons of the Statue*, [https:// taxpublishers.in /Ency_CM /CM_Judg_Show ?CMV01006100?a0](https://taxpublishers.in/Ency_CM/CM_Judg_Show?CMV01006100?a0)

⁵¹*Ibid.*

the bill or approval is being sought from him.⁵² As far as statement of objects and reasons is concerned, this is accompanied by the legislative bill, it is allowed to take it for the purpose of understanding the bill and the surrounding circumstances, the antecedents of the state affairs and the problem that bill address but true meaning and the substantive nature of the provisions cannot be ascertained through this statement.⁵³ The Supreme Court held that it is true that statement of object and reason of a particular legislation or statute cannot be used to understand the meaning of that particular legislation, if the words used in it are clear enough but it was laid that this statement could be used to understand or analyze the situation under which it was felt the need to introduce this particular legislation.⁵⁴ The interpretation of bill through statement of objects and reasons may have undergone a radical change and it cannot be said that its introduction and the subject it sought to achieve remained same as bill passes from the house as the act of parliament and this is so because this statement do not form the part of the legislation because it is not debated or voted upon in either house of the parliament.⁵⁵

Additional Memorandum

If the bill involves certain proposals that an additional approval is required for the proper enactment of the bill, then it becomes necessary to attach an additional memorandum with the bill. As if the bill requires approval over the expenditure, then an additional financial memorandum with the bill should be attached rounding the recurring and non-recurring expenditure if the bill gets passed and becomes a law. In the same manner, if a proposal is put forth in the bill seeking approval for a particular legislation to be delegated, then a suitable memorandum should be provided explaining the objective and the scope of this power that is being delegated and also notifying the character of the legislation which is being delegated. So, all the provisions requiring an additional approval should be presented in the form of additional memorandum explaining the ambit and nature of that provision.

Bills Requiring Previous Sanction of the President

Certain bills require previous sanction of the president before they are introduced in the parliament. No bill can be brought on the floor of either house of the parliament regarding the matter concerning the formation of new states, altering the boundary or areas or changing the

⁵²Supra note 12 at 195.

⁵³*Devadoss (dead) by L.Rs v. Veera Makali Amman Koil Athular*, AIR 1998 SC 750.

⁵⁴*S.C Prashar v. Vasantsen Dwarkadas*, (1963) 49 ITR 1 (SC).

⁵⁵*Aids to Interpretation*, https://shodhganga.inflibnet.ac.in/bitstream/10603/130519/11/11_chapter%203.pdf

name of the existing states without the recommendation by the President of India.⁵⁶ No bill can be introduced in the either house of the parliament without the recommendation of the president regarding certain financial matters as per article 117(1) of the Indian Constitution.⁵⁷ Alteration, remission, abolition, regulation or imposition of tax; regulations regarding the borrowing of money, giving any type of guarantee by the government of India or amendments regarding the financial obligation undertaken or to be undertaken by the government of India; matters regarding consolidated and contingency funds of India and receipt of money on account of consolidated funds of India or the public account of India or matters regarding the issue of such money or audit of the accounts of union or the state are some of the matter that are covered under the purview of these financial matters as under Article 117(1) of the Indian Constitution.⁵⁸ Bill involving expenditure from the consolidated funds of India, if enacted and brought into operation, will not be passed by either of the house of the parliament until the president provides a recommendation for the consideration to the bill.⁵⁹ The reason for these procedures can simply be understood as they are for the purpose of providing adequate attentions of the government when it comes to the bills like money bill and this ensures that sufficient amount of attention is paid to the consequences of that bill, when passed and enacted.⁶⁰

Who may Introduce the Bill?

As the main function of the parliament is to make laws, bill is the form in which all legislative proposals are brought in the parliament and this bill does not become a law until it is passed from both the houses of the parliament and gets the assent of the president.⁶¹ Either a minister or member other than the minister can introduce the bill in the parliament and if a bill is introduced by the minister, then it is referred as Government bill and if bill is introduced by the member other than the minister, then it is referred as private member bill.⁶²

Notice and Circulation of Bill

Seven days' notice in writing has to be given by the concerned minister showing the intention to move for the leave for the introduction of the bill.⁶³ Speaker on his own discretion may

⁵⁶*Supra* note 40 at 54.

⁵⁷*Supra* note 40 at 54.

⁵⁸*Supra* note 12 at 195,196.

⁵⁹INDIA CONSTI, art. 117 cl. 3.

⁶⁰*Supra* note 40 at 56.

⁶¹*Passage of Legislative Proposals in the Parliament*, <http://164.100.47.194/Loksabha/Legislation/Legislation.aspx>

⁶²*Ibid.*

⁶³*Government Bills- Legislative Process*, http://164.100.47.194/loksabha/writereaddata/Abstract/legislative_process.pdf

allow the motion for the introduction of the bill to be moved on a shorter notice.⁶⁴ After receiving the notice for introduction and proof copies of the bill by the Bill office, central bill register for the government bills records the entire set and particular assistant is assigned to the work of that particular bill.⁶⁵ There is no time limit prescribed for giving the notice for the introduction of the government bills.⁶⁶ A bill is only included in the list of business once the copies of the bill has been made available to the members two days prior to the introduction of the bill in the house.⁶⁷ However, it should be noted that the house has the authority to waive this requirement for introduction of the bill.⁶⁸ The introduction of the bill may be permitted by the speaker even without prior circulation or after the circulation, within a period shorter than two days if the minister is able to provide with adequate reasons in the memorandum to seek speakers consideration as to why the bill that is proposed needed to be introduced without prior circulation or earlier than two days of circulation of copies.⁶⁹ For the circulation of bill in the Rajya Sabha, the receipt of copies “To be introduced in Rajya Sabha”, 275 copies in English along with 75 in Hindi along with errata, is sent to distributive wing for the circulation, unless the chairman directs otherwise, these copies are circulated two days prior of its introduction.⁷⁰ The bills that are not included in the list of business like finance bill, appropriation bill and all those bills which are secretive in nature does not require prior circulations of it.

First Reading of the Bill

The bill can be introduced in the either house of the parliament and the concerned member responsible for that bill asks for a leave to introduce the bill and if the leave is granted by the respective house, then the bill is introduced by that concerned member.⁷¹ This introduction of the bill by the member in the house is known as first reading of the bill. If any member opposes the introduction of the bill on the general grounds or on the grounds that proposed bill is outside the legislative power of that house, then a notice has to be moved clearly mentioning the objections by that respective member who opposes the introduction of that bill and that notice has to be made by 10:00 hours on the day on which the desired bill is to

⁶⁴*Ibid.*

⁶⁵*Part D: Bill Office*, <http://rsintranet.nic.in/intrars/manual2002/bill.htm>

⁶⁶*Ibid.*

⁶⁷*Supra* note 62.

⁶⁸Apoorva Shankar and Shreya Singh, *Parliamentary Procedures: A Premier*, IPRS 11, 11 (PRS Legislative Research, 2015), also see, https://www.Prindia.org/sites/default/files/parliament_or_policy_pdfs/1425009754_Rajya%20Sabha%20Primer-%20Final.pdf

⁶⁹*Supra* note 60.

⁷⁰*Supra* note 64.

⁷¹*How Bill becomes an Act*, <http://164.47.194.our%20parliament/How%20a%20bill%20become%20an%20act.pdf>

be introduced. If a member does oppose the introduction of the bill, then the speaker has the authority to allow the member opposing the bill as well as the member-in charge of the bill for the brief explanatory statements by them.⁷² In cases, where a member opposes the bill on the ground that the particular bill initiates a legislation which falls outside the legislative power of the house, then speaker under his authority may allow the house to discuss on the matter and after the discussion, the question of legislative competence is put to vote of the house.⁷³ However, the leave for the introduction of the finance and appropriation related bills are immediately put to vote of the house.⁷⁴

Publication of Bill in the Gazette

After the bill gets introduced in the house, it gets published in the Gazette of India and moreover, if the speaker allows, the bill can be published in the Gazette of India even before it gets introduced in the house.⁷⁵ If the bill is published before its introduction, then it cannot raise objections on its introduction in house. Even after the publication, if there arise modifications in the bill, then the same bill will be treated as new one and motion for the grant of leave to introduce the bill will be forwarded as in the case of new bill. Department of publication publishes the Gazette of India and are printed by Government of India Printing Press and the concerned printing press uploads all the parts, sections and subsections on the egazette website which can be assessed by general public also.⁷⁶

Reference of Bills to Standing Committee

Each standing committee, till 13th Lok Sabha, consisted not than of 45 members out of whom 30 were nominated by the speaker of the Lok Sabha and rest 15 by the chairman of the Rajya Sabha, but after 13th Lok Sabha, departmentally related standing committee got restructured where total strength got down to 31 from 45 out of which 21 were nominated by the speaker of the Lok Sabha.⁷⁷ Consideration of demands for grants; examination of bills which gets referred by the speaker of the Lok Sabha and by the chairman of Rajya Sabha; Consideration of the annual reports and long term policy documents which are referred to this very committee the speaker of Lok Sabha and chairman of Rajya Sabha are some of the functions of departmentally related standing committees.⁷⁸ Once a bill is referred to this committee, it's

⁷²*Ibid.*

⁷³*Ibid.*

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶ *The Gazette of India*, [http://egazette.nic.in/\(S\(lh4no5gh0303ncejehpynyzy\)\)/Aboutus.aspx](http://egazette.nic.in/(S(lh4no5gh0303ncejehpynyzy))/Aboutus.aspx)

⁷⁷ *Parliamentary Committees Introduction*, http://164.100.47.194/loksabha/Committee/Comm_Introductionnew.Pdf #page=3

⁷⁸*Ibid.*

their role to make on the report on the general principles and clauses referred to them by the house.⁷⁹ At least a time of three months is given to the committee to present this report.⁸⁰ Normally all bills are referred to these standing committees except the bill relating to financial matter, bills replacing ordinances, appropriation bill etc.⁸¹ Advice from the experts as well as from the general public can be considered by the committee who are involved in the measures.⁸² These reports are persuasive in nature and can be considered of advisory value to the house by the committee.⁸³ If the governments find any recommendations by the committee worthy enough to be incorporated in the bill, then they can amend the bill at the consideration stage or may even withdraw the current bill and move forward a new bill containing those recommendations made by the committee.⁸⁴

Second Reading of the Bill

The bill is considered to be in the stage of second reading when it comes in either of the house, any member who wishes to move the amendments could forward those in this process by keeping in mind the subject matter of the clause in which the member requires amendment and also the scope of that bill.⁸⁵ The process of second reading of the bill comprises of two stages. First stage is where the house discusses the principles on which bill has been laid and at this very stage, house has the option to refer the bill to the joint committee or the select committee and even circulate it for taking considerations and opinions.⁸⁶ If the bill, in case, has been referred to joint committee, then the members of the joint committee discusses and analyses that bill clause by clause and moves the amendments in the clause they fit necessary.⁸⁷ The committee also takes into consideration the suggestions made by the experts and opinion of the general public who are concerned with the measures.⁸⁸ After analyzing the bill clause by clause, the committee thus, then, makes the report and submits it to the house. The bill in the first stage may also be circulated to obtain public opinions through the governments of the state and Union Territories and the opinions thus, obtained are put on the table of the house and then the bill is referred to the joint committee for considerations.⁸⁹ The

⁷⁹*Supra* note 70.

⁸⁰*Supra* note 70.

⁸¹*Supra* note 62.

⁸²*Supra* note 70.

⁸³*Supra* note 70.

⁸⁴*Supra* note 62.

⁸⁵*Supra* note 12 at 200.

⁸⁶*Supra* note 70.

⁸⁷*Supra* note 70.

⁸⁸*Supra* note 70.

⁸⁹*Supra* note 70.

motion of consideration is usually not allowed at this stage until the speaker allows so.⁹⁰ After this comes, the second stage of second reading of the bill where clause by clause consideration of the bill which was introduced or was reported by the joint committee takes place.⁹¹ Amendments to the clauses can be initiated at this stage as the clause by clause discussion moves forward and voting also takes place on all those amendments which were moved but not withdrawn.⁹² If those amendments are passed by the majority of the house, then it becomes part of bill and as the clauses, schedules (if any), clause1, long title, and enacting formula of the bill has been adopted by the house with or without amendments, the second reading process is deemed to be over.⁹³

Third Reading of the Bill

Third reading stage is the process where discussions take place on the bill or the amended bill to be passed.⁹⁴ Only the arguments in favor or against the bill are focused in this stage without any reference to any details in it.⁹⁵ This stage only allows verbal, formal and consequential amendments to be moved further, and a simple majority of the members present in the house and participating in voting is required when it comes to ordinary bills but, in case of constitutional amendments, the bill must be passed by special majority with total strength of the house and at least 2/3rd of the members present and voting in both the houses of the parliament.⁹⁶

Bills in the Other House of the Parliament

When the bill is passed from one house of the parliament, it is sent to the other house of the parliament for concurrence with a message to that effect.⁹⁷ When the bill is received by the Rajya Sabha and laid it on the table for the first time, it is known as the first reading of the bill in that house. Rajya Sabha then goes through all the same processes as that of Lok Sabha. Second reading in Rajya Sabha is same as that of Lok Sabha where the bill may be sent to joint committee or opinions may be asked from the general public through state or UT government. Rajya Sabha in its third reading argues in favor or against the bill or the amended bill to be passed and then can either pass the bill same as Lok Sabha did or may send back the bill to Lok Sabha with certain amendments for their agreement. There are some

⁹⁰Supra note 70.

⁹¹Supra note 70.

⁹²Supra note 70.

⁹³Supra note 70.

⁹⁴Supra note 40 at 59.

⁹⁵Supra note 70.

⁹⁶Supra note 70.

⁹⁷Supra note 40 at 59.

bills where Rajya Sabha does not have power over it. Bills like money bill are necessarily introduced in the lower house of the parliament and when it is sent to the upper house, then Rajya Sabha can only make suggestions or considerations in the bill and that too in 14 days, if Rajya Sabha do not revert back the bill within 14 days. Then it is deemed that money bill has been passed from the parliament. There may be instances that Rajya Sabha or Lok Sabha does not agree with the proposals of each other, so in this situation article 108⁹⁸ provides the provision of joint sitting of both the houses of the parliament for resolving the differences.

Assent of the President

After the bill is passed from both the houses of the parliament, the bill is reprinted to obtain its final form by the parliament secretariat.⁹⁹ Two copies of the final form on the thick paper are, then, send by the concerned presiding officer of the house to the ministry of Law and Justice which is later send for obtaining the assent of the president.¹⁰⁰ When it comes to money bill or bills which are passed at the joint sitting of the parliament, then Lok Sabha Secretariat is the responsible authority to obtain the assent of the president. There may be instances where the president can hold on his assent and send back the bill in the house with its considerations except money bills.¹⁰¹ If the house, in any case, passes the bill without making any changes, then the president is bound to give his presidential assent.¹⁰² But the constitutional power of the president does not put any time limit within which he has to sign the bill, so the president can withhold the bill with him for as long as he wants, this is also known as pocket veto of the president. Once the presidential assent is obtained on the bill, then that bill becomes the act after its final publication in the official gazette as the acts of the parliament.¹⁰³

III. CONCLUSION

For making of new legislations in the form of acts of parliament, the very first step is the formation of legislative policy where social, economic and political considerations are taken into account. The main essence of this process is to understand the objective behind the required legislation. It also helps in analyzing what all spheres of life and what corners this particular legislation can impact. For understanding the impact of the legislation, the tool of legislative impact assessment comes in handy for the law makers in which they are able to

⁹⁸The Constitution of India

⁹⁹*Supra* note 12 at 201.

¹⁰⁰*Supra* note 40 at 60.

¹⁰¹*Supra* note 70.

¹⁰²*Supra* note 70.

¹⁰³*Supra* note 70, also see *Supra* note 40 at 60.

analyze various aspects of the bill. This tool also helps us to know various parts where the legislation in question can leave a negative impact. This tool helps in curbing these types of issues even before the bill becomes an act and reduces the burden over the available resources by minimizing the risk factor in the earlier stages. Legal scrutiny of the bill is the next process in legislative making where department of law affairs analyze this bill with the current existing laws and check the legality and constitutionality of the legislation being made. However, legal advice in this stage is of general in nature and draftsman have to look at these aspects in detail while actual drafting the bill. The bill is then passed to the legislative department for attempting the first draft of the bill. Junior legislative counsel is responsible of the drafting the first draft which is later finalized by the senior legislative counsel. A summary is then prepared and send to the cabinet by the concerned minster containing the facts of the case and outline of the legislation for obtaining their approval. The cabinet at this stage may either approve the bill or send some recommendations from their side. Then, statement of objects and reasons is prepared by the concerned ministry highlighting the objects and various reasons behind the bill. This statement could not be considered a part of the bill. Later, an additional memorandum is attached with the bill which seeks the additional approval, like additional financial memorandum should be attached with the bill containing provisions specifying expenditure. There are also certain bills that cannot be introduced without the prior recommendation and consideration of the president. Bills like altering the boundary of state or changing the current name of the state comes under these types of bills. Next step is to introduce the bill in the house which can be done either by the minister or the member other than the minister. Then, a motion of leave to introduce the bill is moved in the house where both the member opposing the introduction as well as the member in charge of the bill makes there statement and after the heavy discussions on the legislative competency of the house, the question is voted by the house. This introduction of the bill in the house is also known as first reading in the house. After the first reading, the bill is sent to the standing committee to seek its consideration and to analyze the bill based on its report. Then comes the second reading of the bill which is divided into two stages where at first, discussion on general principles of the bill takes place or is recommended to the joint committee for its analysis or the bill may be circulated to seek public opinion through state or UT government and in the second stage, clause by clause discussion on the bill takes place. At the third reading of the bill, the arguments in favor and against the bill take place in the general sense. After the bill is passed from one of the parliament, it is send to the other house of the parliament where first reading of the bill is known to happen when the bill gets laid on the

table of Rajya Sabha. Rajya Sabha goes through all the process same as that of Lok Sabha till it passes the bill or sends the bill back to Lok Sabha with recommendation for their concurrence. If both the houses are not able to resolve their differences, our constitution gives the provision for joint sitting for both the houses of the parliament. Once the bill is passed by both the houses of the parliament, the bill is then sent to the president to get his assent. As the president gives his assent, the bill becomes an act after publication in official gazette as the acts of parliament. There are two things to understand: First, it must be noted that process of legislation drafting is not universal, each and every country has their own way of drafting the laws and process of legislative drafting of one country can't be intermixed with the other country. This is so because the constitutional provisions in every country are different and the way their parliament works is also different. Secondly, each country has their own departments which suits the demography and population of their land. As the bill passes through many steps and stages before becoming a law, it can be said that there are least number of loopholes or negative impact that is left by that bill. Legislative impact assessment along with legal scrutiny and continuous debate and discussion on the bill helps in curbing as many loopholes as possible. But even if there arises any dispute regarding the same, our judicial system is well established to resolve those disputes and even re check the constitutionality of that bill by keeping in mind that bill should not violate the basic doctrine structure of our constitution.
