SYNOPSIS

Standard form of Act

The structure of an Act is generally in a standard form. [*Bennion 2020 s 2.3*].

Every modern Act has a short title by which it may be cited. This is followed by a number of components which are descriptive in nature and which for the most part owe their existence to the procedure by which an Act is enacted. The short title is followed by: serial number; date of passing; long title; preamble, if any; and enacting formula; and these descriptive parts are commonly referred to as preliminary matters and are put to vote only after all the clauses of the Bill are put to vote and decided upon.^[1]

The operative part of an Act consists of the sections and any Schedules. Section of an act may be grouped together in numbered Parts or Chapters.

Short title

[1] Rajgopaul 1980

All modern Acts have a short title which is a brief label by which an Act may be cited or referred to in other documents.

The short title should be short and informative: its purpose is not as a political slogan. The short title is usually devised by the drafter who strives to keep it brief and informative. If the short title is too long then it ceases to be a convenient label and thus defeats the purpose.

If a Bill with an inappropriate short title is introduced into Parliament, the Speaker may rule on it. [*Bennion 2020 p 33 citing Erskine May's Parliamentary Practice*]

The short title invariably ends with the word 'Act' followed by a comma and calendar year; in usage, however, comma is usually dropped while citing or referring the Act. Eg:

> Income Tax Act, 1961 (or Income Tax Act 1961)

Placement in the Act: The short title is printed on the cover and at the beginning of the Act and is usually christened by the first section. Eg, Section 1(1) of the Income Tax Act 1961 reads as follows:

> "This Act may be called the Income-tax Act, 1961".

As the Act is and has to be referred to by that name, the use of the word 'may', unless it is construed as meaning 'shall', would appear to be somewhat inappropriate. The justification perhaps is that the Act could also be referred to in some other manner so long as the reference is clear. An Act may be cited by reference to the number and year also. [*GCA 28(1)*]

The first section declaring the short title could even be eliminated if the Interpretation or General Clauses Act included a provision to the effect that every Act of Parliament shall be called (cited) by the name printed at the head thereof. [*Rajgopaul 1980*]

Cited even after repeal: The Act continue to be cited by its short title even after its repeal. For example, Central Excise Act 1944 which was repealed by Section 174(1) of the Central Goods and Services Tax Act 2017 is still being cited as Central Excise Act 1944 while referring to its provisions.

Renaming: Short title is rarely amended or renamed. Amendments made to an Act may require it to be renamed by changing its short title. But it is not usually desirable to rename an Act since it falsifies the history and may create confusion over reference which use the previous short title because they date from before the change. However, there may be occasions where amendments render the original short title unhelpful so that it need amending. For example, Central Excise and Salt Act, 1944 was renamed as Central Excise Act, 1944 vide Section 71 of the Finance (No.2) Act, 1996 (33 of 1996) which deleted the word ‘and Salt’ because this has become redundant for post-independence the manufacturing of salt did not attract any duty.

Serial number

Every Act is assigned a serial number. The numbering runs from the beginning of each calendar year. For example, Income Tax Act 1961 carries the serial number 43 of 1961, where 43 is the serial number of the Income Tax Act out of the total number of Acts enacted during the year 1961. The serial number is usually put in parenthesis after the short title such as Income Tax Act 1961 (43 of 1961) for citing the Act.

Significance of numbering: The significance of serial number is in determining which of two Acts receiving presidential assent on the same date is to be treated as first in time. Where two Acts passed on the same day are inconsistent, the serial number indicate which of them, being deemed the later, is to prevail.

Citation by serial number: Usual method of citing an Act is by the short title followed by its serial number. GC 28(1) prescribes that –

> "…any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the **number and year** thereof, and any provision in an enactment may be cited by reference to the section or subsection of the enactment in which the provision is contained."

Date of passing

Date of passing is the date of assent given to the Act by the President or Governor of State. It is mentioned in an Act in square brackets.

Long title

The long title begins with the words 'An Act to …' and sets out in general terms the content or purpose of the Act.

It is a remnant from the Bill which on presidential assent became the Act and its true function relates to the Bill rather than the Act. Under the rules of parliamentary procedure, the long title must cover everything in a Bill. If the Bill is amended so as to go wider than the long title, the long title is required to be amended to correspond. The long title for modern Act tends to be relatively short. Eg, Long title of the Central Goods and Service Act 2017:

> "An Act to make a provision for levy and collection of tax on intra-State supply of goods or services or both by the Central

> Government and for matters connected therewith or incidental thereto."

Preamble

It begins with the word 'Whereas'. In early times 'Albeit' was also used. A preamble is an optional feature for public general Acts and is rarely included. IT Act 1961 and CGST Act 2017 does not contain any preamble. Central Excise Act 1944, now repealed, contains the preamble which reads as follows.

> 'Whereas it is expedient to consolidate and amend the law relating to central duties of excise on goods manufactured or produced in certain parts of India.'

The Preamble states the main objective and purpose behind the enactment of the law. It contains the background or reasons that led to the passing of the statute. But if the words in the Act are already clear and unambiguous, then the Preamble has no role to play and should be ignored.

Enacting formula

The enacting formula or purview of an Act is the verbal formula expressing the Act's nature as a command of the sovereign legislature, eg the President in Parliament or the Governor in legislative assembly.

It immediately follows the long title unless there is a preamble, in which case it follows the preamble. It is now purely formal, with no direct significance in interpretation.

The form adopted in India since 26th January 1950, when India became a Republic is as follows:

> "Be it enacted by Parliament (or Legislature of State) in the (calendar) year of the Republic of India as follows".

Section

An Act may be considered as a series of declarations of the Legislature enforcing certain rules of conduct, or conferring certain rights upon or withholding them from certain persons or classes of persons. The separate declaration of the Legislature contained in an Act is called a section or enactment. [*Thring 2015 p 43*]

Enactment: GCA 3(19) states that an enactment shall include a Regulation and shall also include any provision contained in any Act or in any such Regulation as aforesaid. But the definition of enactment given by GCA 3(19) is wide enough to include an Act along with the provisions of the Act. But for our purpose an enactment will mean a provision of the Act ie a section. In other words, each section is a substantive enactment.

Section of an Act: A section is described as being a section 'of' an Act. Section is referred to as clause while the Act is in the shape of a Bill and is yet to be passed. The word 'section' is usually given a lower case 's'. Every section has its own heading. In modern Acts, sections bear Arabic numerals unbracketed. Unless the section is subdivided, the usual practice is to draft it as one sentence.

Subsections: A section may be divided into subsections. Each bear an Arabic numeral in brackets (sub-s (1), (2), etc). The subsections are related to the theme of the section, but each is drafted independently. Like the undivided section, the subsection usually consists of a single sentence. A subsection fully independent of the section or other subsection is often referred to as clause eg under definition section several terms are defined which are independent from each other and so may be referred to as clause.

Paragraphing: A section or subsection containing a single sentence may be paragraphed to assist with readability. Paragraphs are given bracketed small letters (paragraph (a), (b), etc). These may be divided into smaller divisions bearing Roman numerals in brackets (sub-paragraph (i), (ii), etc). Judges take notice of the paragraphing as a guide to what are intended to the units of sense.

Opening and closing words: Where a subsection has opening words before paragraphs the words before the paragraphs are referred to as the 'opening words' or '**chapeau**'. Similarly, words after the paragraphs are referred to as 'closing words', the words after paragraph x' or '**full-out words**'.

Section headings or sidenotes or marginal notes: The function of the heading is to give a short indication of the content of the section. It is a brief description, not a summary, and will not necessarily cover everything dealt with in the section. Lord Thring said that the section headings, when read together in the arrangements of sections at the beginning of the Act, should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act. Earlier the content of each section was indicated by a note in the margin rather than by a heading placed above the section. These were referred to as sidenotes or marginal notes. Headings have not always been amended to reflect changes to the text so older headings should be treated with particular caution. At one stage the headings were viewed as a purely editorial matter so drafters were reluctant to amend them (perhaps reflecting practice in relation to Bills where clause headings cannot be formally amended). Nowadays the practice is to amend headings where appropriate.

22.10 Schedule

The term 'schedule' is defined in the General Clauses Act 1897, to mean a schedule to the Act or Regulation in which the word occurs. It is a convenient device for including matters of detail, the segregation of which not only relieves congestion in the main body of the Act but also frees it from any possible complaint of untidiness. [Rajgopaul 1980]

Appear after the sections: If an Act contains Schedules they come at the end of an Act after the sections. A Schedule is described as being to a Schedule 'to' and Act. The word Schedule is always given a capital S. The Schedules are numbered with Arabic numerals, unless there is only one in which case it is referred to simply as 'the Schedule to the Act'.

Convenience of drafter: The division of material between sections and Schedules is usually a matter of judgment for the drafter. There are no hard and fast rules and it is a question of how best to present the material. No significance is attached to whether material appears in a section or Schedule. A Schedule in an Act is mere question of drafting, a mere question of words. The Schedules is as much a part of the statute, and is as much an enactment, as any other part. [A-G v Lamplough (1878) 3 Ex D 214 at 229]

Paragraphing: A Schedule may be paragraphed or sub-paragraphed with Arabic numerals bearing a close resemblance to paragraphing of sections. As with sections there are no absolute rules when it comes to the internal structure of a Schedule. Additional headings may be added and other drafting devices such as formulae, method statements, and tables may be used.

Documents as Schedules: Schedules are usually reserved for lengthy, detailed or technical matters that it is convenient to hive off and place at the end so as not to break up the flow of the sections. But this does not mean that they are unimportant. But another use of the Schedule is to set out some document, such as a treaty or convention, which is referred to in the sections.

Inducing word: A Schedule is introduced by wording in one of the sections. These words are sometimes referred to technically as 'inducing' word. For example, IT Sec 44 specifies that the profits and gains of any business of insurance shall be computed in accordance with the rules contained in the First Schedule. If by mischance the words introducing a Schedule were omitted, the Schedule would still form part of the Act if that was evident intention. The inducing words play a useful role in signposting the existing of the Schedule and in Act divided into Part and Chapters the location of the Schedule. A Schedule may be introduced by more than one sections, for example, the Second Schedule to the Income Tax Act 1961 has been introduced by Section 222 and also referred to in Section 276. The section introducing a Schedule is usually specified in the margin at the beginning of the Schedule (sometimes known as a 'shoulder note'). Occasionally an error is made in doing this but that does not affect the validity of the Schedule.

Location of Schedules: A Schedule takes its location from the section introducing it. So, it is regarded as being in the same Part or Chapter as the section introducing it. If a Schedule is introduced by two or more section in different Part or Chapter then it is presumably treated in each Part so far as relevant to the purposes of each section introducing it.

Parts of section

A section, in its most complicated form, is made up of the following parts: (i) Statutory declaration; (ii) Case; (iii) Condition; (iii) Exception; (e) Proviso.

Statutory declaration

A section or enactment in its simplest form is a declaration of the legislature, directing or empowering the doing or abstention from doing of a particular act or thing. Such an enactment consists of legal subject and legal predicate.

Legal subject: The legal subject denotes either the person directed or empowered to do or prohibited from doing, or when the passive form is used the thing to be done or left undone. [Thring 2015 p 73]

Legal predicate: The legal predicate expresses what the person is to do or leave undone, or when the passive form is used what is enacted with respect to the thing to be done or to be left undone. [Thring 2015 p 73]

Auxiliary: If the law is imperative, the proper auxiliary verb of the predicate is "shall" or "shall not" if permissive, "may". The inclination of the Courts to construe "may" as sometimes imperative in an Act of Parliament requires that in doubtful cases the draftsman should add words such as "The Court may in its discretion" or " may if it thinks it expedient" and so forth. [Thring 2015 p 74]

Case

Little difficulty would arise in framing Acts of Parliament if the law were, as a general rule, meant to apply universally. It is, however, usually limited to special cases, and the first duty of a draftsman is to state clearly the **nature of the case to which the law applies.** Where the case is simple it should be introduced at the beginning of the section with the words " where " or " when," "in the event of" or "if," with the indicative. [Thring 2015 p 79]

Condition

The law frequently confers a benefit or imposes an obligation on certain conditions; a condition is aptly introduced by " If, &c.," or (where it follows a negative sentence) by " unless " or " until." Where the conditions are numerous it is best to state them in separate subordinate sentences. [Thring 2015 p 84]

Exception

The word "except" may generally be used in introducing exceptions ie **to restrain** the legal rule to particular cases. But care must be taken to avoid its use where it is likely to lead to ambiguity. Where exceptions are numerous, they should be placed in separate members of the section or even in a separate section. Where the enumeration of the exceptions is short, compared with the enumeration of the particulars not excepted, it is often convenient to state the exceptions first. [Thring 2015 p 86]

Proviso

A proviso is used **to remove** special cases from the general legal rule **and provide** for them **specially**. Proviso should never be used to define the case or the condition or the legal subject; their proper function is to make a special exemption from a general statutory declaration, and they should be exclusively confined to that function. The rules with respect to the grouping of conditions and exceptions apply to proviso also where they are numerous. [Thring 2015 p 89]

Qualifying phrases

The legal rule of a section may be qualified by use of certain phrases such as – '**notwithstanding anything contained**' is used to make that rule an overriding one; '**subject to**' is used when the rule of the subjected-section is to yield (give way) to the rule of another master-section in case of conflict between these two; '**without prejudice to**' is used to make the legal rule of that section independent of the rule in the other named sections. Certain words and phrases in the section have got legal significance such as – '**be deemed**' is used to create legal fiction by assuming existence of a fact which does not really exist; '**deems fit**' is used to confer discretion; '**have regard to**' means taking into consideration the matters referred to.

Grouping of sections

The sections may be grouped together into numbered Parts which may further be subdivided into Chapters. [Bennion 2020 s 2.8]

Sections are generally grouped in numbered **Parts** and / or **Chapters** and sometimes in *fasciculus,* the italic heading without any number. Each section being titled by a Section **Heading** or Short/side Note). A long Section may be broken into **sub-sections** and / or **paragraphs**. An independent sub-section is often referred to as **clause**, though this term is used generally to refer sections of a Bill.

In longer Acts there may be Parts as well as Chapters such that the Parts are subdivided into Chapters. Very occasionally Parts are themselves grouped together into larger divisions – '**Groups of Parts'**.

'Part' and 'Chapter' are always given a capital letter.

Each Part or Chapter is given a number and has a short heading.

A Part or Chapter is referred to by its number. For example, Part V (The Union) of the Indian Constitution has following Chapters: Chapter I (The Executive); Chapter II (Parliament); Chapter III (Legislative powers of the President); Chapter IV (The Union judiciary); Chapter V (Comptroller and Auditor-General of India).

Bases of division: Division of an Act into parts will largely depend upon the length of the Act and the subject matter to be dealt with therein. Although there is no hard and fast rule relating to this matter, common sense would perhaps suggest division into parts where the subject matter of one group of sections is so different from another group, although forming an integral part of the main Act, that it may be convenient to deal with them as separate units of a composite whole. The Indian practice is not to divide an Act into parts if it is a short one, say, of twenty sections or so. In such cases, short italic headings may be given to groups of sections, dealing with related matters. For example, the General Clauses Act 1897 which consists of thirty sections has the following italic headings (fasciculus) sufficiently explanatory of the provisions included under each head: Preliminary, General definitions, General rules of construction, Powers and functionaries, Provisions as to orders, rules, etc. made under enactments, and Miscellaneous. [Rajgopaul 1980]

Italic heading: Italic headings are sometimes used to group sections together in small divisions, whether or not there are also

Parts or Chapters. A group of sections under this kind of heading is sometimes known as a ***fasciculus.*** These groupings are not numbered and are not usually cross-referred in the text. For example, Chapter IV of Income Tax Act 1961 has the following italic headings or fasciculus: Heads of income; Salaries; Income from house property; Profits and gains of business or profession; Capital gains; Income from other sources.