

Interpreting Taxing Statutes # 3 – Preparation of Bill

The preparation of a Bill involves forming legislative policy, seeking legal and constitutional feasibility advice, Cabinet approval, and attaching necessary memoranda. ^{^1}

SYNOPSIS

Formation of legislative policy

Feasibility advice

Cabinet approval

Statement of objects and reasons

A financial memorandum; a memorandum with respect to delegation of legislative powers; and the recommendation of the executive head.

Formation of legislative policy

The Legislative Department of the Ministry of Law, Justice and Company Affairs, Government of India, exists primarily for the purpose of drafting all Government Bills. Bills sponsored by private members in Parliament are for the time being drafted by the members themselves, but, if any Bill is acceptable to the Government, care is generally taken by the Government draftsman to see that it is in proper form.

The first stage in the preparation of a Bill is the formation of the legislative policy. At this stage administrative, financial or political considerations are more likely to be involved than legal considerations and these have to be sorted out by the officials in the administrative ministries concerned.

Feasibility advice

Once legislative policy is settled, rules of business framed under article 77(3) of the Constitution require that proposals for legislation be referred to the Ministry of Law for advice as to

~~~~~

their feasibility from the legal and constitutional points of view. Such proposals are considered by the Ministry of Law in its Advice Section and advice is also tendered on the necessity or desirability of such legislation in the light of existing laws. The competency of Parliament to legislate on the subject under the Constitution is also considered at this stage, and the broad lines on which legislation may be undertaken are likewise often indicated.

### **Cabinet approval**

Under the rules of business, cases involving legislation have to be brought before the Cabinet for decision, and consequently, where a Minister in charge of an administrative Ministry decides, after consulting the Ministry of Law as stated earlier, that legislation on a specified topic should be undertaken, he causes to be-prepared a self-contained summary setting out the facts of the case and the legislative measures proposed. This summary, after being seen by the Ministry of Law in both the advice and drafting wings is submitted to the Cabinet for approval.

### **Statement of objects and reasons**

After obtaining Cabinet approval, the administrative ministry is expected to prepare an office memorandum setting out in precise terms the lines on which it has been decided to legislate on the basis of which the Ministry of Law in the Legislative Section will draw up a Bill. A great deal depends upon the care and skill with which instructions to the draftsman are drawn. The summary to the Cabinet in most cases would be no substitute for this office memorandum for the summaries are invariably general in character.

---

<sup>1</sup> Based on Rajgopaul 1980

~~~~~

When a Bill is finalised and is approved by the Ministry sponsoring it, that Ministry attaches to the Bill a statement of objects and reasons relating thereto which is signed by the Minister in charge of the Bill. This statement has to be drawn carefully so that it does no more than indicate the intention behind the Bill and the reasons which have led up to it in a calm and judicial tone; very often such statements are drawn in consultation with the draftsman or is shown to him for approval.

Accompaniment of a financial memorandum; a memorandum with respect to delegation of legislative powers; and the recommendation of the executive head.

The Rules of Procedure of either House of Parliament require that -

- a) a Bill involving expenditure shall be accompanied by a financial memorandum inviting particular attention to the clauses involving expenditure and giving an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law;
- b) clauses or provisions in Bills involving expenditure from public funds shall be printed in thick type or in italics;

The Rules of Procedure of either House of Parliament also require that a Bill involving proposals for delegation of legislative power shall be accompanied by a memorandum explaining the proposals and drawing attention to their scope and stating also whether they are of a normal or exceptional character. Parliament would ordinarily require that unless the subject matter of a Bill is of a special nature, exceptional types of delegated legislative power are confined within the narrowest

~~~~~

possible limits. Where the delegation is of an exceptional nature, care has to be taken to explain why it is so.

Under article 3 of the Constitution, no Bill for the formation of new States or for the alteration of areas, boundaries or names of existing States can be introduced in either House of Parliament except on the recommendation of the President. Under article 117(1), no Money Bill shall be introduced in the House of the People (Lok Sabha) except on the recommendation of the President. Under article 274, no Bill which imposes or varies any tax or duty in which States are interested shall be introduced in either House of Parliament except on the recommendation of the President.