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STUDY MATERIAL

"INTERPRETATION OF STATUTES"

WORK SUBMITTED TO

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Submitted by

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INTRODUCTION

"Interpretation is the process by which the courts determine the meaning of a statutory provision for the purpose of applying it to the situation before them." – Statutory Interpretation (3rd Edition, p.34).

"By interpretation or construction is meant the process by which courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed." – SALMOND.

"In common usage interpretation and construction are usually understood as having the same significance." - WHITE, J.

Statutory interpretation is the process of interpreting and applying legislation to decide cases. Interpretation is necessary when case involves subtle or ambiguous aspects of a statute. Generally, the words of a statute have a plain and straightforward meaning. But in some cases, there may be ambiguity or vagueness in the words of the statute that must be resolved by the judge.

NEED FOR INTERPRETATION OF A STATUTE

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used.

"The essence of law lies in the spirit, not its letter, for the letter is significant only as being the external manifestation of the intention that underlies it" – Salmond

The reason for ambiguity or vagueness of legislation is the fundamental nature of language. It is not always possible to precisely transform the intention of the legislature into written words. Interpreting a statute to determine whether it applies to a given set of facts, often boils down to analyzing whether a single word or short phrase covers some element of the factual situation before the judge. The expansiveness of language necessarily means that

there will often be equally good or equally unconvincing arguments for two competing interpretations. A judge is then forced to resort to documentation of legislative intent, which may also be unhelpful, and then finally to his or her own judgment of what outcome is ultimately fair and logical under the totality of the circumstances.

Gray sums up his views on rules, thus:

> 'The State exists for the protection and forwarding of human interests, mainly through the medium of rights and duties. If every member of the State knew perfectly his own rights and duties, and the rights and duties of everybody else, the State would need no judicial organs; administrative organs would suffice. But there is no such universal knowledge. To determine, in actual life, what are the State's and citizens' rights and duties, the State needs and establishes judicial organs, the judges. To determine rights and duties, the judges settle what facts exist, and also lay down rules according to which they decide legal consequences from facts. *These rules are law.*'

To find the meanings of statutes, judges use various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. In common law jurisdictions, the judiciary may apply rules of statutory interpretation to legislation enacted by the legislature or to delegated legislation such as administrative regulations.

Interpretation of Statute is done by the judiciary in order to avoid,

1. Uncertainty,
2. Friction,
3. Hardship,
4. Inconvenience,
5. Injustice,
6. Absurdity,
7. Anomaly,
8. Inconsistency and
9. Repugnancy

that might result in the absence of certainty, clarity, consistency and brevity with regarding to a particular Statute or a statutory provision.

Interpretation is as old as language. Elaborate rules of interpretation were evolved even at a very early stage of the Hindu civilization and culture. The importance of avoiding literal interpretation was also stressed in various ancient text books – "Merely following the texts of the law, decisions are not to be rendered, for, if such decisions are wanting in equity, a gross failure of Dharma is caused."

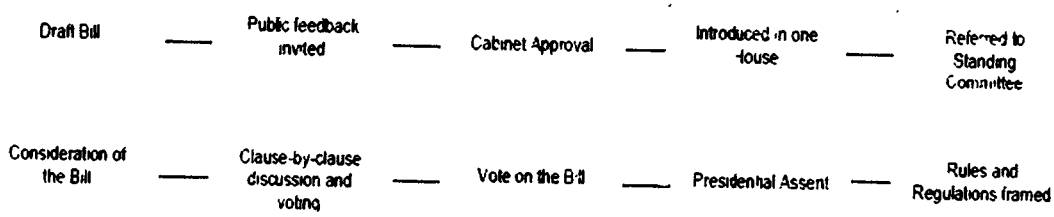
Interpretation thus is a familiar process of considerable significance. In relation to statute law, interpretation is of importance because of the inherent nature of legislation as a source of law. The process of statute making and the process of interpretation of statutes are two distinct activities.

In the process of interpretation, several aids are used. They may be statutory or nonstatutory. Statutory aids may be illustrated by the General Clauses Act, 1897 and by specific definitions contained in individuals Acts whereas non-statutory aids is illustrated by common law rules of interpretation (including certain presumptions relating to interpretation) and also by case-laws relating to the interpretation of statutes.

Lord Denning in Seaford Court Estates Ltd. Vs Asher, "English Knowledge is not an instrument of mathematical precision... It would certainly save the judges from the trouble if the acts of parliament were drafted with divine precision and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold hand and blame the draftsman..." It is not within the human powers to foresee the manifold permutations and combinations that may arise in the actual implementation of the act and also to provide for each one of them in terms free from all ambiguities. Hence interpretation of statutes becomes an ongoing exercise as newer facts and conditions continue to arise.

LAW MAKING

The process of the passage of a Bill includes several stages.



LEGISLATURE, EXECUTIVE AND THE JUDICIARY

The process of law making, in relation to Parliament, may be defined as the process by which a legislative proposal brought before it, and then is translated into the law of the land. It can be broadly divided into three stages / phases –

1. Pre-legislative phase,
2. Legislative phase and
3. Post-legislative phase.

When a Bill is in its draft stage, it may be placed in the public domain for stakeholder feedback. Over the years, a few draft Bills have been published for stakeholder information and feedback. Pre-legislative phase comprises identification of need for a new law or an amendment to an existing legislation, drafting of the proposed law, seeking inputs / comments from different ministries and public, revision of the draft bill to incorporate such inputs, and getting the same vetted by the Law Ministry. It is then presented to the Cabinet for approval.

The Government has issued a Pre-legislative Consultation Policy (PLCP) to ensure efficient pre-legislative scrutiny of a legislative proposal, in consultation with the stakeholders. It includes publishing/ placing in public domain:

- the draft legislation or at least the information that may *inter alia* include brief justification for such legislation, essential elements of the proposed legislation, its

broad financial implications, and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc;

- an explanatory note explaining key legal provisions of the draft legislation or rules, in a simple language;
- summary of feedback/comments received from the public/other stakeholders.

In addition, the Department/Ministry concerned is also required to include a brief summary of the feedback received from stakeholders (including Government Departments and the public) along with its response in the note for the Cabinet along with the draft legislation. The summary of pre-legislative process is also required to be placed before the Department Related Parliamentary Standing Committee by the Department/Ministry concerned when the proposed legislation is brought to the Parliament and is referred to the Standing Committee.

After the Cabinet approves the Bill, it is introduced in the Parliament. On introduction of the Bill, the Minister of the concerned Department may send notice demonstrating the intention that the Bill may be moved, considered and passed; be referred to the Select Committee of the House/ Joint Committee of both Houses or for eliciting public opinion. Once the Bill is taken for consideration, perusal must be made on clause-to-clause basis and the same may be accepted, amended or rejected. Subsequently, the House votes on the Bill with amendments, if any. If the Bill is passed in one House, it is then sent to the other House. In case of a deadlock between the two houses or in a case where more than six months lapse in the other house, the President may summon, though is not bound to, a joint session of the two houses which is presided over by the Speaker of the Lok Sabha and the deadlock is resolved by simple majority. Once the Bill is passed by both the Houses, a copy of the Bill is sent to Legislative Department of Ministry of Law and Justice for scrutiny. Post scrutiny by the Ministry of Law and Justice, it is presented to the President for assent. The President has the right to seek information and clarification about the Bill, and may also return it to the Parliament for reconsideration.

After the President gives assent, the Bill is notified as an Act. Subsequently, the Bill is brought into force, and rules and regulations to implement the Act are framed by the concerned ministry. The same are then tabled in Parliament.

PRINCIPLE OF UTILITY

Bentham's book 'The Theory of Legislation' is a masterpiece in the field of law. Bentham's objective is to educate the legislators and to provide them with a sound philosophy broad-based on the theory of Utilitarianism.

Legislation is a science and an art. It is a science as it contains certain basic principles to do good to the community and it is an art when it provides for the various means to achieve the good. The objective of the legislator mast be to do public good. He may base his reasons on general utility. Utility is the basis of Bentham's theory. The principles of utility form the basis of his reasoning. On an analysis of the principles of utility, we find that all our ideas, judgements and determinations spring from certain motives: pleasure and pain.
It is the duty of the moralists and the legislators to make a great study of these two concepts pleasure and pain.

Utility is an abstract term. It expresses some propensity or tendency of a thing to prevent some evil or to do some good. Evil is pain or the cause of pain. Good is pleasure or the cause of pleasure. Hence, anything which conforms to this utility, brings happiness to the individual. The legislator must have the objective to augment the total sum of the happiness of the individuals that form the community.

Utility is the first principle-the first link in the chain. The legislators reasoning for making a particular law, must be based on this principle. Utility has a commendable logic behind it. In making law, the legislator must calculate or compare the pleasure or the pain that it brings about. Here pleasure & pain are used in the ordinary meaning i.e., what everybody feels when put in a situation it is the experience of the peasant and the prince, the unlearned and the philosopher.

Utility as a principle has its essence in the virtue and the vice. Virtue is good as it brings pleasures, vice is bad as it brings evil. Moral good is good as it brings pleasure to the man, Moral evil is bad as it brings pain to the man.

The legislator who believes in the theory of utility, finds, in the process of law-making, a number of these virtues and evils, that the proposed law may bring about. His objective must be to bring more virtue, He must also distinguish pretended virtues and evils from the real virtues and evils.

These are the facets of the concept of utility and based on this exposition Bentham develops his philosophy of utilitarianism. His works 'the theory of legislation' and

'Introduction to the principles of Morals and Legislation', form a manual of instructions to a legislator. A knowledge of these, makes the legislator appreciate the moral and legal philosophies of Bentham and also to get an insight into the sociology of law.

LAW AND PUBLIC OPINION

Public opinion is considered to be the essential element for successful working of democratic communication in the system. Public Opinion is the expression of the views of citizens. No government can afford to ignore it. A sound and effective public opinion can even shake the structures of dictators. The strength of democratic system lies in respecting the mind power of the people. There should be free and fair interaction of thoughts for solving the collective problems. Public opinion acquires great relevance in realising this democratic goal. It promotes wider awareness and invites citizens to examine issues from different points of view. The significance and role of public opinion can be explained as follows:

(a) Guide to the Government: Public opinion acts as the guide to the government in respect of policy formation. Government functions in general on the basis of mandate received in elections and tries to win over the masses to fulfil the promises made during elections.

(b) Helping in Law Making: Government is always under pressure of public opinion and takes note of the same in formulating laws for the common good. Governmental policies are invariably affected by people's opinion on various issues. Public opinion helps the government to enact laws in the given situation.

(c) Acts as a Watchdog: Public opinion acts as a watchdog. It controls and checks the government from becoming irresponsible. While criticizing the wrong policies of the government, public opinion always keeps the government alert. Government is always concious of the fact that people would not vote for it or bring it back to power again if it goes against the wishes of the people.

(d) Protects the Rights & Liberties: Public opinion acts as the protector of rights and liberties of citizens. In a democratic country, people have the right to criticize or support the government in their own way. More effective and positive use of this right not only encourages or motivates the government but also keeps the government alive towards the rights and liberties of the people.

(e) Acts as a Powerful Force in International Sphere: - Public opinion has acquired worldwide importance. In fact, international relations are influenced by public opinion. In the age of globalization, the issues like promotion and protection of human rights, environment and discrimination based on race, religion or sex, prevention of child labour, terrorism etc. hold international community answerable to public opinion. Therefore, the governments remain conscious of such international public opinion also. Infact, no democratic government can afford to ignore public opinion.

The manner in which policy or legislations are drafted is often questioned by both the experts as well as those who practice. Tthe law making process in India in general includes certain aspects of impact assessment (IA) such as inviting public comments on the draft legislation, consultation with relevant stakeholders, and study of social and financial costs / benefits. However, it seems that the requirement is often not complied with as it is not mandatory and the process has led to certain ambiguities. While the Manual on Parliamentary Procedures in India (Manual) does not mandate any stakeholder consultation *per se,* but the Pre-legislative Consultation Policy (PLCP) requires undertaking stakeholder consultations. Yet neither the Manual nor the PLCP describes the process of conducting these stakeholder consultations and manner in which all interested parties would need to be represented. Lack of availability of information in public domain acted as one of the challenges in determination of quality of public consultation under the legislations under consideration.

The Manual and PLCP mandates the concerned department to invite public comments on draft legislations. But, there are no specific provisions that mandate the relevant department concerned for providing rationale as to acceptance or non-acceptance of any recommendations. A mechanism of feedback to the stakeholders in terms of providing **rationale** is important to ensure transparency and to also ensure a sense of ownership on part of the stakeholders towards the draft legislations.

Cabinet Note is part of the office memorandum that explains objective behind the draft legislation. However, it is not a public document, making it difficult for the stakeholders to ascertain rationale and objective behind the legislation.

The Manual mandates that a bill needs to be referred to a related Standing Committee.

The Manual is the principle document for ascertaining law making process in India that exhaustively explains the process. However, the PLCP has an over-ridding effect over the Manual (to the extent of pre-legislative process) and it is difficult to ascertain the junctures at which provisions under PLCP will be read along with the Manual.

Norman Luttbeg outlines the theoretical models of the political linkages between the public and policy-makers in two broad groups: coercive models and noncoercive models (Luttbeg, 1981). In coercive models, the public applies pressure, either real or potential electoral pressure, to force lawmakers to enact the desired policies. Luttbeg defines these models as:

- **Rational-Activist Model**: Public exerts pressure electorally. Representatives must enact policy demands of the public or the public will elect some else who will enact those policies.
- **Political Parties Model**: The political parties act as an intermediary between the public and the representative. The public holds the party responsible for the policies to be enacted. The parties therefore exert pressure on the lawmakers to follow the party line or to enact policies for the good of the party.
- **Pressure Group Model**: In this model, the public expresses itself to lawmakers by gathering in groups: business groups, labor unions and interest groups. These groups influence lawmakers through money or electorally to support the policy of the group. These pressure groups have more influence than individuals.

It is not necessary for the public to coerce public officials to do their will. Noncoercive models explain how public policy can reflect public opinion without a direct threat to the policymaker. The two noncoercive models offered by Luttbeg are:

- **Believe-Sharing Model**: In this model, policy-makers are not acting to heed the desires of the electorate but are acting on their own beliefs. However, the lawmaker was elected because the lawmaker shares the same beliefs as his or her constituency. This model reflects the theory of some political scientists who maintain that elections are about the candidates' values and not about issues (which would be the rational actor model).

· **Role-playing model**: In this model, representatives act as their constituency's delegate. Lawmakers respond to policy decisions by anticipating the desire of the district. This is differentiated from the rational actor model because the lawmaker is not responding from pressure by the public, but is proactively producing policy that the representative believes his or her constituency desires.

LAW AND SOCIAL CONTROL

Relevance of John Rawls and Robert Nozick

Rawls (b 1921), holder of the chair in philosophy at Harvard, produced, in 1971, *A Theory of Justice,* which called for a new look at the principles of social justice. *Nozick* (b 1938), who had studied under Rawls, and who also held a chair in philosophy at Harvard, produced, in 1974, *Anarchy, State and Utopia,* a plea for social libertarianism, based upon an entirely different approach to that taken by Rawls. Both works aroused considerable interest; both exemplify important facets of the continuing concerns of contemporary American jurisprudence.

Rawls' theory is based upon three elements: a vision of society as it ought to be; a view of moral theory and its significance; and the derivation of principles which will enable an expression of that vision to be enunciated so as to reflect moral theory. He assumes a society whose members wish to decide a set of principles from which to construct a pattern of social justice. Their principal objective is the building of a well-ordered society which will advance the 'good' of its members in accordance with 'a public conception of justice'.

Rawls suggests the initiation of a hypothetical congress of persons who are to choose, as the result of discussion and agreement, the fundamental principles which will guide their society. In this 'original position', persons will select principles which will not take into account any particular interest; they are to define principles which are objectively just.

Nozick is concerned to emphasise individual rights within society and to show how political obligation is derived. ultimately, from consent. Individuals have rights (in property,

for example) which exist independently of social and legal institutions within society. These rights must not be interfered with by the State: indeed, where the State enforces such rights it is merely doing for individuals what they were already entitled to do on their own behalf. Concepts of liberty and equality are incompatible with each other, so that any attempt by the State through its legal and administrative organs to interfere with the pattern of resource distribution within society is to be construed as a violation of rights, in that it necessitates interference with individual liberty.

John Rawls, "A Theory of Justice." Rawls' presents an account of justice in the form of two principles: (1) liberty principle= people's "equal basic liberties" — such as freedom of speech, freedom of conscience (religion), and the right to vote — should be maximized, and (2) difference principle= inequalities in social and economic goods are acceptable only if they promote the welfare of the "least advantaged" members of society. Rawls writes in the social contract tradition. He seeks to define equilibrium points that, when accumulated, form a civil system characterized by what he calls "justice as fairness." To get there he deploys an argument whereby people in an "original position" (state of nature), make decisions (legislate laws) behind a "veil of ignorance" (of their place in the society– rich or poor) using a reasoning technique he calls "reflective equilibrium." It goes something like: behind the veil of ignorance, with no knowledge of their own places in civil society, Rawls posits that reasonable people will default to social and economic positions that maximize the prospects for the worst off– feed and house the poor in case you happen to become one. It's much like the prisoner's dilemma in game theory. By his own words Rawls = "left-liberalism".

Robert Nozick, "Anarchy, State, and Utopia," libertarian response to Rawls which argues that only a "minimal state" devoted to the enforcement of contracts and protecting people against crimes like assault, robbery, fraud can be morally justified. Nozick suggests that "the fundamental question of political philosophy" is not how government should be organized but "whether there should be any state at all," he is close to John Locke in that government is legitimate only to the degree that it promotes greater security for life, liberty, and property than would exist in a chaotic, pre-political "state of nature." Nozick concludes, however, that the need for security justifies only a minimal, or "night-watchman," state, since it cannot be demonstrated that citizens will attain any more security through extensive governmental intervention.

" ...the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their own good or protection."

Differences:

The primary difference between the two is in the treatment of the legitimacy of governmental redistribution of wealth (and even on that issue Nozick eventually flinches — see #1 below). In place of Rawls's "difference principle," Nozick espouses an "entitlement theory" of justice, according to which individual holdings of various social and economic goods are justified only if they derive from just acquisitions or (voluntary) transfers. No safety nets allowed (acquisitions from social programs are not just because they are funded through the involuntary transfer of wealth via taxation and are therefore taboo). No accommodations for free-riders should be made. Problem: Nozick never spells out the criteria of just acquisition.

Nozick critique of Rawls's rationale for his difference principle: it's implausible to claim that merely because all members of a society benefit from social cooperation, the less-advantaged ones are automatically entitled to a share in the earnings of their more successful peers.

Similarities:

Both theories jump off with a sweeping statement of the primacy of justice — Nozick more or less retained Rawls's first principle (liberty) while rejecting the second (difference). But... regarding governmental redistribution of wealth, Nozick seems to admit that his entitlement theory is insufficient to refute demands for a redistributionist state; surely some collective holdings were acquired via some original act of unjust conquest, right?. In response Nozick agrees that a Rawls-like difference principle is morally acceptable after all, what he terms "rectification," on the premise that those currently least-well-off have the highest probability of being descended from previous victims of injustice.

Both shared a view of political philosophy as an exercise in the production of abstract theories, with little regard for the practical grounding of justice in human nature (i.e., of conformity with the likely demands of actual human beings). Therefore both theories rate a society's success by how closely it's laws and procedures adhere to the model rather than

whether those laws produce morally maximized outcomes. Both clearly followed Immanuel Kant's dictum, "let justice triumph, even if the world perishes by it."

LAW AND MORALS

According to Bentham "Legislation has the same centre, but it has not the same circumference. Morality is an art. It directs the acting of men to produce the greatest possible sum of good.

The objective of the Legislature must be the same. Though these two differ in their extent, still the end is the same. All actions, public or private come within Morality and individuals are guided by it throughout their lives. However, legislation cannot do this.

The reasons are :

i) Legislation can have no direct influence over individuals, except by punishment.

ii) There is the possibility of punishing the innocent, in the anxiety of punishing the culprits.

Hence, Bentham vertically divides the area of legislation and suggests the legislators not to interfere with the personal interests of an individual. The reason is the person himself is the best judge and he will correct himself when he finds he is in the wrong, e.g. Temperance. The legislator must look to those areas when a person's actions create evil on others & to legislate there. Then punishment will be effective.

MEANING, OBJECTIVES AND SCOPE OF "INTERPRETATION□, "CONSTRUCTION" AND "STATUTE□

The expression interpretation and construction are used interchangeably. Bennion terms this distinction is trivial because according to him there is no material distinction between the two.

- **Interpretation** connotes more than construction does, the idea of determining the legal meaning of any enactment.
- **Construction** is more concerned with extracting the grammatical meaning.
- A **statute** is an edict of the legislature.

Interpretation is a journey of discovery. It is the process of ascertaining the meaning *at* an Act of Parliament or of a provision of an Act.

PUBLIC OPINION AND LAW MAKING

In 2006, the Select Committee on Modernisation of the House of Commons (UK) observed, that:

> *"Parliamentary scrutiny at the pre-legislative stage can play an important role in improving the law, even where there has already been lengthy and extensive external consultation by government. Whatever its impact on the passage of legislation, the purpose of pre-legislative scrutiny is not to secure an easy ride for the government's legislative program, it is to make better laws by improving the scrutiny of bills and drawing the wider public more effectively into the parliamentary process."*

At present, government departments in India are not obligated to either publish draft bills or elicit public opinion on specific pieces of legislation. At the central and state government levels, laws are drafted by the concerned ministries, often in consultation with one or more ministries. The procedure for the formulation and drafting of legislation is spelled out in the Manual of Parliamentary Procedures. While the Manual advises departments to formulate legislative proposals "in consultation with all the interests and authorities concerned essentially from administrative and financial points of view", there is no specific reference to consulting the public or seeking their views at a pre-legislative stage. Once a draft bill has been formulated by the concerned ministry it is circulated to other ministries for inputs. The comments received are incorporated and then the draft bill is sent to the Law Ministry for whetting and finally submitted to the Cabinet for approval. After receiving Cabinet approval the bill is finally presented in Parliament (or State Legislature as the case may be).

In some cases draft bills may be referred for further review to one of 24 Parliamentary Standing Committees (16 under the Lok Sabha and 8 under the Rajya Sabha). During the review process, such Committees typically issue advertisements in newspapers seeking comments from the public. In many instances, stakeholders are invited to give oral and written submissions stating their views. However, the government is not obligated to accept

the recommendations made by Standing Committees. There are some exceptions. During the drafting of the Right to Information Act for instance, the Parliamentary Standing Committee reviewing the bill received a number of submissions from civil society groups seeking improvements in the draft RTI law. Many of these suggestions were later incorporated into the final text of the RTI Act 2005.

While standing committees do provide an opportunity for citizens to voice their opinions, this form of consultation has several limitations. First, draft bills are referred to Standing Committees after their introduction in Parliament. This limits the scope of citizen influence. Moreover, committees are not obligated to take on board the suggestions and inputs they receive. Second, the proceedings of Parliamentary Standing Committees are closed and the media are barred from reporting the details of consultation. Thus, public debate on the bills is limited. Last, there is little transparency as such committees rarely (if ever) publish details of the comments and suggestions received by them.

The lack of transparency and public consultation in the drafting of legislation has, in recent times, been a subject of intense criticism. For instance, amidst controversy the Civil Liability for Nuclear Damage Bill, a noted journalist criticized the government for trying to push through a "complex legislation with the potential to affect the lives of tens of millions of people" with "stealth, subterfuge and the barest minimum of consultation".

Similarly, bills such as the Prevention of Torture Bill, the Communal Violence Bill and Biotechnology Regulatory Authority Bill have been critiqued for their poor drafting, weak provisions and their failure to address the concerns of civil society groups and other stakeholders.

Internationally, in many countries, pre-legislative scrutiny is an established process through which citizens are encouraged to give their comments and feedback on proposed legislation. Despite the lack of formal channels for pre-legislative scrutiny in India, there are number of ways in which the legislative process can be made more open and participatory.

Public consultation on 'discussion' and 'approach' papers:

In many countries, government departments formulate exploratory 'green papers' or discussion papers that spell out the policy objectives of the government on a specific issue. These papers are intended to stimulate public debate and discussion. "Green Papers" are usually followed by "White Papers" which set out the concrete steps necessary to translate ideas into action. In India, a growing number of ministries have begun to formulate

discussion papers that seek public input on specific policy issues. For example, in October 2010, the Department of Personnel and Training released a discussion paper on a data protection and privacy law in India for public comment. The discussion paper was drafted following a series of meetings between government officials, civil society organizations and other stakeholders. More recently, the Planning Commission has sought inputs from the public in drafting the Approach Paper to the Twelfth Five Year Plan. The Approach Paper spells out the major priorities and targets for the government, key challenges in achieving them and the broad policy approach of the government. Another good example of a ministry taking the lead in consulting with the public is the Department of Industrial Policy and Promotion. Over the last year, the department has released a series of discussion papers on its website seeking views and suggestions on whether foreign direct investment should be allowed into professional service firms. Through these papers the department "hopes to generate informed discussion on the subject, so as to enable the Government to take an appropriate policy decision at an appropriate time." In what is clearly best practice, the Department has also taken the proactive step of publishing scanned copies of submissions received from the public on its website.

***Publishing Draft Legislation*:**

In some cases, ministries have also begun to publish draft bills and amendments to rules and regulations before these are tabled in Parliament. This enables citizens to send in their comments at an early stage in the legislative process and by association allows the government to take on broad different views and perspective. A fine example of this has been the extensive consultation around the draft Direct Taxes Code. In 2009, the Ministry of Finance launched a public consultation on the draft Direct Tax Code (scheduled to replace the Income Tax Act). As part of the consultation process, the Ministry released a draft of the bill and a discussion paper for public comment. On the basis of submissions received the Ministry then released a revised discussion paper. The RTI Act 2005 is another example where the government has taken the proactive step of seeking public inputs on proposed legislation. In December 2010, the Department of Personnel and Training announced its proposal to amend the rules governing the RTI Act 2005. The department published the proposed amendments on its website and invited the public to send in comments by a specific date.

Operationalising Section 4 of the RTI Act:

The Right to Information Act 2005 in addition to placing a legal obligation on the government to provide information, for the first time places an obligation on government departments to proactively publish information when formulating policies. Specifically, Section 4(1) (c) of the RTI Act requires every public authority to "publish all relevant facts while formulating important policies or announcing the decisions which affect public".18 In this way the Act for the first time places a legal obligation on departments to publish draft policies. This has been confirmed by the Central Information Commission which recently ruled that "Section 4(1) (c) of the RTI Act requires proactive disclosure of proposed laws/policies and amendments thereto or to existing/laws/policies to enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing such laws/policies. The CIC's decision follows from a complaint filed by Venkatesh Nayak against the non-disclosure of the draft Delhi Police (Amendment) Bill, 2010 by the Delhi Government. In another decision relating to the non-disclosure of the draft text of the Whistleblower's Bill, the CIC has recommended that the Cabinet Secretariat amend its administrative rules to allow for greater public consultation on draft legislation.

A number of Ministries are now proactively taking steps to engage with the public and seek comments and inputs on draft laws. While there is no formal requirement for pre-legislative scrutiny within the legislative process, there are ways in which the law making process can be made more participatory and open. Exploratory "green" or "discussion papers" enable government departments to frame key policy issues and concerns and put these out for public debate and comment. Proactive disclosure of draft bills on government websites for public comment is another way in which the public can be informed about the government's proposals.

NATURE AND KINDS OF INDIAN LAWS

"A Statute is a formal written enactment of a legislative authority that governs a country, state, city, or county. Typically, statutes command or prohibit something, or declare policy. The word is often used to distinguish law made by legislative bodies from the judicial decisions of the common law and the regulations issued by Government agencies." - [Black, Henry Campbell (1990). Black's Law Dictionary, Sixth Edition]

A statute is a will of legislature conveyed in the form of text. The Constitution of India does not use the term 'Statute' but it uses the term 'law'. 'Law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law. [Article 13 (3) (a) of the constitution].

An Indian Statute is an Act of the Central or State Legislature. Statutes include Acts passed by the Imperial or Provincial Legislature in Pre-Independence days as well as Regulations. Statutes generally refer to the laws and regulations of every sort, every provision of law which permits or prohibit anything.

Statutes are commonly divided into following classes:

(1) *codifying,* when they codify the unwritten law on a subject;

(2) *declaratory,* when they do not profess to make any alteration in the existing law, but merely declare or explain what it is;

(3) *remedial,* when they alter the common law, or the judge made (non-statutory) law;

(4) *amending,* when they alter the statute law;

(5) *consolidating,* when they consolidate several previous statutes relating to the same subject matter, with or without alterations of substance;

(6) *enabling,* when they remove a restriction or disability;

(7) *disabling or restraining,* when they restrain the alienation of property;

(8) *penal/imperative,* when they impose a penalty or forfeiture.

A type of Mandatory Statute is the Imperative Statute. Imperative Statutes are often negative or prohibitory in its terms and makes certain acts or omissions absolutely necessary and subjects a contravention of its provision to a penalty. When the statute is passed for the purposes of enabling something to be done and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the things which are done are called imperative or absolute, but those which are not essential and may be disregarded without invalidating the things to be done are called directory statutes. Imperative Statutes must be strictly observed. Directory Statute may be substantially complied with.

A Statute may generally be classified with reference to its duration, nature of operation, object and extent of application.

A. Classification on the basis of Duration

(i) **Perpetual statutes** - It is perpetual when no time is fixed for its duration and such a statute remains in force until its repeal which may be express or implied.

(ii) **Temporary statutes** - A statute is temporary when its duration is only for a specified time and it expires on the expiry of the specified time unless it is repealed earlier.

B. Classification on the basis of Nature of Operation

(i) **Prospective statutes** – A statute which operates upon acts and transactions which have not occurred when the statutes takes effect, that is which regulates the future is a Prospective statute.

(ii) **Retrospective statutes** – Every statute takes away or impairs vested rights acquired under the existing laws or creates a new obligation into a new duty or attaches a new disability in respect of transactions or considerations already passed are deemed retrospective or retroactive statute.

(iii) **Directory statutes** – A directory statute is generally affirmative in its terms, recommends a certain act or omissions, but imposes no penalty on non-observance of its provisions.

(iv) **Mandatory statutes** – A Mandatory statute is one which compels performance of certain acts and directs that a certain thing must be done in a certain manner or form.

C. Classification with reference to Objective

(i) **Enabling statute** – This type of statute is which enlarges the common law where it is too strict or narrow. It is a statute which makes it lawful to do something which would not otherwise be lawful.

(ii) **Disabling statute** – This type of statute restricts or cuts down rights existing at common law.

(iii) **Permissive statute** – This type of statute allows certain acts to be done without commanding that they be performed.

(iv) **Prohibitory statute** – This type of statute which forbids the doing of certain things.

(v) **Codifying Statute** – It presents and orderly and authoritative statement of the leading rules of law on a given subject, whether those rules are to be found in statute law or common law.

(vi) **Consolidating statute** – The purpose of consolidating statute is to present the whole body of statutory law on a subject in complete form repeating the former statute.

(vii) **Curative or validating Statute** - It is passed to cure defects in the prior law and too validate legal proceedings, instruments or acts of public and private administrative powers which in the absence of such statute would be void for want of conformity with existing legal requirements but which would have been valid if the statute has so provided at the time of enacting.

(viii) **Repealing Statute** – A statute which either expressly or by necessary implication revokes or terminates another statute is a repealing statute.

(ix) **Amending Statute** – It is a Statute which makes and addition to or operates to change the original law so as to effect an improvement or more.

PARTS OF A STATUTE –

Title

The Long Title of a Statute is an internal part of the statute and is admissible as an aid to its construction. Statute is headed by a long title and it gives the description about the object of an Act. It begins with the words- "An Act to ....." For e.g. The long title of the Criminal Procedure Code, 1973 is – "An Act to consolidate and amend the law relating to criminal procedure". In recent times, long title has been used by the courts to interpret certain provision of the statutes. However, its useful only to the extent of removing the ambiguity and confusions and is not a conclusive aid to interpret the provision of the statute.

In Re Kerala Education bill, the Supreme Court held that the policy and purpose may be deduced from the long title and the preamble. In Manohar Lal v State of Punjab, Long title of the Act is relied as a guide to decide the scope of the Act. Although the title is a part of the Act, it is in itself not an enacting provision and though useful in case of ambiguity of the enacting provisions, is ineffective to control their clear meaning.

The short title of an Act is for the purpose of reference & for its identification. It ends with the year of passing of the Act. E.g. "The Indian Penal Code, 1860"; "The Indian Evidence Act, 1872". The Short Title is generally given at the beginning with the words- "This Act may be called....." For e.g Section 1 of The Indian Evidence Act, 1872, says –"This Act may be called, The Indian Evidence Act, 1872". Even though short title is the part of the statute, it does not have any role in the interpretation of the provisions of an Act.

Preamble

Every Act should and has a preamble which must express the scope, object and purpose of the Act. It is the key to open to us the mind of the makers of the law. It is accepted as an aid to the construction of the Act, if the words of the statute are not clear.

In Kashi Prasad v State, the court held that even though the preamble cannot be used to defeat the enacting clauses of a statute, it can be treated as a key for the interpretation of the statute.

Headings and Title of a Chapter

Headings are of two kinds – one prefixed to a section and other prefixed to a group or set of sections. Heading is to be regarded as giving the key to the interpretation and the heading may be treated as preambles to the provisions following them. In Krishnaih V. State of (A.P. AIR 2005 AP 10) it was held that headings prefixed to sections cannot control the plain words of the provisions. Only in the case of ambiguity or doubt, heading or sub-heading may be referred to as an aid in construing provision. In Durga Thathera v Narain Thathera, the court held that the headings are like a preamble which helps as a key to the mind of the legislature but do not control the substantive section of the enactment.

Marginal Notes

Marginal notes are the notes which are inserted at the side of the sections in an Act and express the effect of the sections stated. Marginal notes appended to the Articles of the Constitution have been held to constitute part of the constitution as passed by the constituent assembly and therefore they have been made use of in construing the articles.

In Wilkes v Goodwin, the Court held that the side notes are not part of the Act and hence marginal notes cannot be referred.

Definitional Sections/ Clauses

The object of a definition is to avoid the necessity of frequent repetitions in describing the subject matter to which the word or expression defined is intended to apply.

A definition contained in the definition clause of a particular statute should be used for the purpose of that Act. Definition from any other statute cannot be borrowed and used ignoring the definition contained in the statute itself.

Illustrations

Illustrations in enactment provided by the legislature are valuable aids in the understanding the real scope. In Mahesh Chandra Sharma V.Raj Kumari Sharma, (AIR 1996 SC 869), it was held that illustrations are parts of the Section and help to elucidate the principles of the section.

Proviso

The normal function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. There may be cases in which the language of the statute may be so clear that a proviso may be construed as a substantive clause. But whether a proviso is construed as restricting the main provision or as a substantive clause, it cannot be divorced from the provision to which it stands as a proviso. It must be construed harmoniously with the main enactment." [CIT vs. Ajax Products Ltd. (1964) 55 ITR 741 (SC)]

The normal function of a proviso is to except something out of the enacting clause or to qualify something enacted therein. Normally, it is not construed as nullifying the enactment or as taking away completely a right conferred by the enactment. A proviso, except as to cases dealt with by it, has no repercussion on the interpretation of the enacting part of the section so as to exclude something more by implication. It is construed in relation to the section or sections to which it is appended.

While drafting a proviso in a section having more clauses, the draftsman must take care to see that the proviso is applicable to particular subsections and not generally unless the proviso is intended to apply to all subsections. This can happen if the proviso comes at the end of the clauses.

But, Courts have held that a proviso sometimes contains substantive provisions, which no doubt is not its function and that in such cases, it is necessary to read it as a separate and independent provision. (State of Orissa v. Debaki Debi) (AIR 1964 SC 1413)

Explanations

An Explanation may be added either to make clear the meaning of a definition or the scope of a provision or to include or exclude certain matters from the meaning of certain words or from the operation of a statute or section. It may also be declaratory to retrospectively clarify a doubtful point of law or to serve as a proviso to the main section or may be inserted by way of abundant caution to allay groundless apprehension.

An Explanation is added to a section to elaborate upon and explain the meaning of the words appearing in the section. An Explanation to a statutory provision has to be read with the main provision to which it is added as an Explanation. An Explanation appended to a section or a sub-section becomes an integral part of it and has no independent existence apart from it.

The purpose of an Explanation is not to limit the scope of the main section. An Explanation is quite different in nature from a proviso; the latter excludes, excepts and restricts while the former explains, clarifies or subtracts or includes something by introducing a legal fiction.

Schedules

Schedules form part of a statute. They are at the end and contain minute details for working out the provisions of the express enactment. The expression in the schedule cannot override the provisions of the express enactment.

Schedules are added towards the end and their use is made to avoid encumbering the body of the statute with matters of excessive detail, or with forms for working out the policy underlying the sections. Sometimes, Schedules contain transitory provisions. In the case of conflict between the body of the statute and the Schedules, the former prevail.

Punctuation

Punctuation is a minor element in the construction of a statute. Only when a statute is carefully punctuated and there is no doubt about its meaning can weight be given to punctuation. It cannot, however, be regarded as a controlling element for determining the meaning of a statute.

APPLICABILITY:

Sometimes the statue is made applicable forthwith to certain persons or classes of persons, or territory or goods and it states that the Government could, by notification in Gazette, extend its operation to other persons, classes of persons or territories.

Distinction between a proviso, exception and saving clause:

A distinction exists between provisions worded as 'proviso', 'exception' or 'saving clause'. An 'Exception' is intended to restrict the enacting clause to particular case; a 'proviso' is used to remove special cases from the general enactment and provide for them specially; and a 'saving clause' is used to preserve some rights from the destruction of certain kind of rights, remedies or privileges already existing. For example, 'Saving' clauses are enacted into repealing clauses to safeguard rights which have already accrued during the operation of the statute which is being repealed. It is sometimes customary also to say that sec. 6 of the General Clauses Act, 1897 applies to save such rights or continue certain liabilities notwithstanding the repeal.

Transitional provisions:

A statute sometimes contains transitional provisions which enact as to how the statute will operate on the facts and circumstances existing on the date it comes into operation. It may also contain clauses intended to specify the provisions that may apply for the interregnum before the main provisions of the statute come into operation.

'Non-obstante clause' and words 'without prejudice':

A clause beginning with the words 'notwithstanding anything contained in this Act' or 'notwithstanding anything contained in a chapter or section' is sometimes appended at the beginning of a section, with a view to give the enacting part of that section an overriding effect over the provisions of the Act mentioned in the said clause. Courts have held that sometimes, where the non-obstante clause is very wide, it becomes necessary to restrict its scope to certain limited provisions of the Act with which it is in conflict having regard to the contents of the enacting part of the section which follows the clause.

The words 'without prejudice' have a different meaning. A provision enacted 'without prejudice' to another provision has the effect of not affecting the operation of the

other provision. For example, a provision permitting Rules to be made under delegated legislation generally contains two clauses, the first clause refers to the general rule- making power of the Government for purpose of implementing the Act while a latter clause would say that 'without prejudice' to the generality of the first clause, such rulemaking power shall be deemed to include the power to make rules on specific matters enumerated in the second clause.

'shall' and 'may':

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling.

There are, however, certain exceptions where the word 'shall' may not mean something which is mandatory or where 'may' may still connote something which is mandatory. However, if the same section uses the word 'shall' at one place and 'may' at another place, the former is normally construed as mandatory and the latter is merely directory. Sometimes the word 'shall' is construed as directory where the consequences or penalty of not conforming to the mandate are not specified. In such cases the word 'shall' is treated as used in a directory sense. Where the words 'shall' are used for performing an act within time limits and non compliance of the mandate may cause hardship and the consequences or penalty is not specified, it is treated as directory and as meaning only a fixation of a reasonable period.

'or' and 'and':

The word 'or' is normally disjunctive and the word 'and' is normally conjunctive but, at times, they are read vice versa to give effect to the manifest intention of the legislature as disclosed from the context. If the literal reading of the words produces an unintelligible or absurd result, 'and' may be read as 'or' and 'or' maybe read as 'and'. But, if in such a case, the reading of the word 'and' as 'or' produces a grammatical distortion and makes no sense of the portion following the word 'and', the word 'and' cannot be read as 'or'. In sec 2(1)(d)(i) of the Bombay Lotteries and Prize Competitive Control and Tax Act, 1948, the Supreme Court read 'or' as 'and' to give effect to the legislative intention. But, in another

case, the words 'owner or master' as they occurred in sec 1(2) of the UK Oil in Navigable Waters Act, 1955 were construed by the House of Lords to mean 'owner and master'.

COMMENCEMENT, OPERATION AND REPEAL AND REVIVAL OF STATUTES –

Under sec. 5 of the General Clauses Act, 1897 it is stated that when a Central Act is not expressed to come into operation on a particular day, then it comes into effect on the day on which it receives the assent of the President. Unless the contrary is expressed, a Central Act or Regulation shall be construed as having come into operation immediately on the expiration of the day preceding its commencement.

It is also customary to state that the Act will come into force on the date on which its commencement is notified in the Gazette.

Some Acts state that certain sections will come into force forthwith while some other sections will come into force on the date on which a notification in Gazette is made in respect of the coming into force of those sections.

Sometimes the statue is made applicable forthwith to certain persons or classes of persons, or territory or goods and it states that the Government could, by notification in Gazette, extend its operation to other persons, classes of persons or territories.

Retrospective operation of Declaratory Statutes

In Mithilesh Kumari vs Prem Bihari Khare AIR 1989, Supreme Court held that Benami Transactions Act was declaratory in nature and so Section 4 of the act applies retrospectively on Benami transactions of the past as well.

Substantive rights cannot be affected by new statute.

In Garikapatti vs Subbaiah AIR 1957 it was held that a suit valued at 11,000/- was decided by HC but no special leave to appeal to the SC was allowed on the ground that the minimum value of the suit was increased to 25.000/- for appeal to SC. However, it was contented that the minimum value at the time of filing of the suit was 10,000/- and so the

right to appeal was already vested. SC accepted the contention and held that it is a substantive right and a new legislation cannot affect it unless explicitly stated so by the act.

Retrospective operation of laws regarding procedure and evidence.

In Shriram Durgaprasad vs Director of Enforcement AIR 1987, SC held that Section 113 A, which allows the court to presume that the husband is guilty abetting suicide of his wife, is retrospectively applicable because it is only a matter of evidence and does not affect any substantive right.

In B Prabhakar Rao vs State of AP AIR 1986, it was held that Age of retirement was reduced from 58 to 55 yrs. The govt., after realizing that injustice has been caused, reversed the order. However, the ordinance restoring the previous age of retirement took time to promulgate and the employees who retried before the reversal was passed were excluded from the benefit. SC held that the law reducing the age of retirement was anyway invalid due to arbitrary classification and so the new law must be given retrospectivity.

DEFINITIONS AND THE GENERAL CLAUSES ACT, 1897

Statutes often contain a "definitions" section, which explicitly defines the most important terms used in that statute. However, some statutes omit a definitions section entirely, or fail to define a particular term. The literal rule, which is also known as the plain meaning rule, attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself. According to this rule, when a word does not contain any definition in a statute, it must be given its plain, ordinary, and literal meaning. If the word is clear, it must be applied, even though the intention of the legislature may have been different or the result is harsh or undesirable. The literal rule is what the law says instead of what the law means. This is the oldest of the rules of construction and is still used today, primarily because judges are not supposed to legislate. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording.

Before a draftsman begins drafting a Bill, he must keep in mind the provisions of the General Clauses Act, 1897. The Act contains 'definitions' of some words and also some general principles of interpretation. If the Bill that is being drafted uses words which are defined in the General Clauses Act, 1897 it may become necessary to take note of the

definitions in that Act and find if that definition could apply or if a different definition should be incorporated into the Bill.

Art. 366 of the Constitution of India also contains some 'definitions' which may have a bearing in some cases.

Of course, where words are not defined in the Act or in the General Clauses Act, 1897, the Courts may interpret a word by resorting to dictionaries or by the context or setting in which the words are used, by applying the principle of 'Noscitor A Sociis'. That means that the meaning of the words is to be judged 'by the company it keeps'.

Some definitions contain 'legal fictions' by including certain other things within the meaning of a word to achieve the purpose of the statute. Some times, the definitions contain Explanations or exclusions of certain other things. Some times, they also contain certain provisos.

Some definitions use the word 'means' which shows an intention to given an exhaustive definition while certain definitions use the words 'shall include' or 'shall be deemed to include', which definition is not exhaustive. Again where the definition contains specific words and general words, Courts can resort to the principle of 'egusdem genesis'. That means that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified – such as 'war, disturbance or any other cause'; or 'arms, ammunition or gun powder or any other goods'; or 'bleaching, mercirising, organdie processing or any other process'. But the use of the word 'otherwise' does not attract this principle, as for example in the following definition of workman. 'Workman' means any person who entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work or otherwise.

Some times words which are not defined in the opening part of a statute are defined in the body of the statute or in separate Parts or Chapters of the statute. The general rule of construction is that when any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day it receives presidential Assent.

According to the General Clauses act, 1897, when this act or regulation made after the commencement of this act repeals any enactments hitherto made or hereafter to be made, then unless a different intention appears, the repeal shall not:-

a. revive anything not in force or existing at the time at which the repeal takes effect

b. affect the previous operation of any enactment so repealed or anything duly done or suffered there under

c. affect any rights, privilege, obligation or liability acquired or incurred under any enactment so repealed

d. effect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed

e. affect ant investigation, legal proceedings or remedy in respect of any such right, privilege, obligation liability, penalty, forfeiture, or punishment as foresaid; and such investigation, legal proceeding, or remedy may be instituted, continued or punishment may be imposed as if the repealing Act or regulation had not been passed.

Where any Central Act or regulation made after the commencement of this Act repeals any enactment by which the text of any central act or regulation was amended by the express omission, insertion or substitution of any matter, then unless a different intention appears the repeal shall not affect the continuance of any such amendment.

In any central acts or regulation made after the commencement of this act, it shall be necessary, for the purpose of reviving, either wholly or partially repealed, expressly to state the purpose

IMPORTANCE OF ILLUSTRATIONS OR PRACTICAL EXAMPLES:

In the body of certain statutes, particularly those enacted in the last nearly one hundred fifty years, there has been a practice of giving illustrations below the section, as practical examples. We find a good number of them in the Indian Evidence Act, 1872, the Indian Contract Act, 1872 and the Indian Penal Code, 1860. This practice is now practically out of use. Illustrations are part of the Act but cannot be used to modify the language of the sections. Indeed, sec. 114 of the Evidence Act contains illustrations which refer to various presumptions of fact which are mainly based on human conduct.

RULES OF STATUTORY INTERPRETATION

Legalism and Creativity

Much jurisprudential writing on interpretation in legal reasoning is concerned with how to strike the right balance between the conserving and creative elements in interpretation, and with the constraints which are and/or should be operative upon judges as they undertake this balancing act. Some theorists claim that such concerns about how one ought to interpret the law indicate that it is part of the way that we think about this practice that we regard rival interpretations as subject to objective evaluation as good or bad, better or worse, correct or incorrect. On this view, characterisations of interpretation which attempt to impugn the objectivity of such evaluations are to be understood as revisionist accounts which attempt to persuade us that all is not as it appears to be with our practice of judging interpretations to be good or bad, better or worse, correct or incorrect as we currently understand it.

Legal fiction is defined as:-

1. A legal assumption that a thing is true which is either not true, or which is probably false.
2. An assumption of law that something which is false is true.
3. A state of facts exists which has never really existed.

A legal fiction is a devise by which the law deliberately departs from the truth of things for some reason. E.g. A foreigner was treated to be a Roman citizen for the purpose of jurisdiction. Legal fiction is treated in the provisions of an enactment by using the term "is deemed".

The deeming provision is for the purpose of assuming the existence of fact does not really exist. *In New India Assurance Co. Ltd v Complete Insulation Pvt Ltd,* the Supreme Court held that legal fiction created under S.157 of the Motor Vehicles Act, 1988, the transfer of 3rd party insurance is deemed to have effect from buyer to seller. *In Bengal Immunity Co*

Ltd v State of Bihar, The Supreme Court that the legal fiction should not be extended beyond its legitimate limits.

In Pandurang Vinayak v State of Bombay, the Supreme Court held that for the purpose of legal fiction, the word "ordinance' is to be read as 'enactment'. *In Bombay corporation v CIT Bombay,* S 43 of the Income Tax Act provided that under certain circumstances, an agent is for all the purpose of this Act, deemed to be an agent of a non-resident person. Such agent is deemed to be an assessee. *In Avatar Singh v State of Punjab,* it was held that rules framed in contravention of the Electricity Act, 1910 are separate and hence theft of electricity is not an offence under the IPC. Legal fiction is an important subsidiary rule of interpretation of Statute. It is useful in deciding case where certain things are presumed to exist in fact of their non-existences.

Legal Language, Legal Riddles and Logic

The key to this issue lies in interpretation's dualistic nature, i.e. that it has both a backward-looking conserving aspect and a forward-looking creative one. This dualism would seem to indicate that in interpreting the law, judges both seek to capture and be faithful to the content of the law as it currently exists, and to supplement, modify, or bring out something new in the law, in the course of reasoning from the content of the law to a decision in a particular case. In turn, this would seem to indicate that interpretation, because of its dualistic nature, has a role to play in both legal reasoning in sense (a), i.e. reasoning to establish the existing content of the law on a given issue, and legal reasoning in sense (b), namely reasoning from the existing content of the law to the decision which a court should reach in a case involving that issue which comes before it.

One legal theorist who adopts exactly this approach, and so views interpretation in legal reasoning as 'straddling the divide' between identifying existing law, and developing and modifying the law, is Joseph Raz (see Raz 1996a and 1996b). According to Raz, the fact that interpretation has a role to play in both of these activities assists in explaining why we do not find a two-stage or clearly bifurcated approach to legal reasoning in judicial decisions. Judges do not first of all engage in legal reasoning in sense (a), having recourse only to legal materials, and then, having established what the existing law is and determined how far it can take them in resolving the instant case, then move on to a separate stage of legal reasoning in sense (b) which requires them to look to extralegal materials in order to complete the job,

because much of their reasoning is interpretive and interpretation straddles the divide between legal reasoning in senses (a) and (b).

RULES OF INTERPRETATION

Over time, various methods of statutory interpretation and construction have fallen in and out of favor. Some of the important rules of statutary interpretation are:

Primary Rules (Legislative Intention-rationale)

i. **Literal Rule** (aka Plain Meaning Rule) - It means that statutes are to be interpreted using the ordinary meaning of the language of the statute unless a statute explicitly defines some of its terms otherwise. In other words, the law must be read, word for word, and it should not divert from its true meaning.

When the words of a Statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. In **J.P. Bansal v. State of Rajasthan** 2003, SC observed that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition, substitution, or removal of words or which results in rejection of words as meaningless has to be avoided. This is accordance with the case of **Crawford vs Spooner**, 1846, where privy council noted that the courts cannot aid the legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up for deficiencies which are left there.

In **Kannailala Sur vs Parammindhi Sadhu Khan** 1957, **J Gajendragadkar** says that *if the words used in statute are*

capable of only one construction then it is not open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged objective and policy of the act.

In **M V Joshi vs M V Shimpi**, AIR 1961, relating to Food and Adulteration Act, it was contented that the act does not apply to butter made from curd. However, SC held that the word butter in the said act is plain and clear and there is no need to interpret it differently. Butter is butter whether made from milk or curd.

Advantages:

1. Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues.
2. They also point out that ordinary people and lawyers do not have extensive access to secondary sources and thus depending on the ordinary meaning of the words is the safest route.
3. It encourages precision in drafting.

Disadvantages:

1. Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. Words are imprecise, leading justices to impose their own prejudices to determine the meaning of a statute. However, since little else is offered as an alternative discretion-confining theory, plain meaning survives.
2. Sometimes the use of the literal rule may defeat the intention of Parliament. For instance, in the case of Whiteley vs Chappel (1868; LR 4 QB 147), the court came to the reluctant conclusion that Whiteley could not be

convicted of impersonating "any person entitled to vote" at an election, because the person he impersonated was dead. Using a literal construction of the relevant statutory provision, the deceased was not "a person entitled to vote." This, surely, could not have been the intention of Parliament. However, the literal rule does not take into account the consequences of a literal interpretation, only whether words have a clear meaning that makes sense within that context. If Parliament does not like the literal interpretation, then it must amend the legislation.

3. It obliges the courts to fall back on standard common law principles of statutory interpretation. Legislation is drawn up with these principles in mind. However, these principles may not be appropriate to constitutional interpretation, which by its nature tends to lay down general principles. It is said that it seems wrong to parcel the Constitution as if it were a Finance Act.
4. Clearly, the literal approach has another disadvantage in that one judge's literal interpretation might be very different from another's. CASEY says: "*What may seem plain to one judge may seem perverse and unreal to another.*"
5. It ignores the limitations of language.
6. To place undue emphasis on the literal meaning of the words is to assume an unattainable perfection in draftsmanship.
7. Judges have tended excessively to emphasise the literal meaning of statutory provisions without giving due weight to their meaning in wider contexts.

ii. **Mischief rule** - This rule attempts to determine the legislator's intention. Originating from a 16th century case in the United Kingdom, its main aim is to determine the "mischief and defect" that the statute

in question has set out to remedy, and what ruling would effectively implement this remedy. Smith vs. Hughes [1960] 2 All E.R. 859

The Mischief Rule is used by judges in statutory interpretation in order to discover legislature's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief' that the previous or existing law did not cover and this act covers. This rule was developed by Lord Coke in Sir John Heydon's Case, 1584, where it was stated that there were four points to be taken into consideration when interpreting a statute:

a. What was the common law before the making of the act?
b. What was the "mischief or defect" for which the common law did not provide?
c. What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?
d. What is the true reason of the remedy?

The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. The rule was further illustrated in the case of Smith v Hughes, 1960, where under the Street Offences Act 1959, it was a crime for prostitutes to "loiter or solicit in the street for the purposes of prostitution". The defendants were calling to men in the street from balconies and tapping on windows. They claimed they were not guilty as they were not in the "street." The judge applied the mischief rule to come to the conclusion that they were guilty as the intention ofthe Act was to cover the mischief of harassment from prostitutes.

This rule is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and only when the statute was passed to remedy a defect in the common law. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied. As seen In Smith v Hughes, the mischief approach gave a more sensible outcome than that of the literal approach.

Advantages:

1. The Law Commission sees it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules.
2. It usually avoids unjust or absurd results in sentencing

Disadvantages:

1. It is seen to be out of date as it has been in use since the 16th century, when common law was the primary source oflaw and parliamentary supremacy was not established.
2. It gives too much power to the unelected judiciary which is argued to be undemocratic.
3. In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy, however, such is not the case any more.

iii. **Golden rule** - It is a compromise between the plain meaning (or literal) rule and the mischief rule. Like the plain meaning rule, it gives the words of a statute their plain, ordinary meaning. However, when this may lead to an irrational result that is unlikely to be the legislature's intention, the judge can depart from this meaning. In the case of homographs, where a word can have more than one meaning, the judge can choose the preferred meaning. If the word only has one

meaning, and applying this meaning would lead to a bad decision, the judge can apply a completely different meaning.

> This rule of statutory interpretation allows a shift from the ordinary sense of a word(s) if the overall content of the document demands it. This rule is a modification of the literal rule. It states that if the literal rule produces an absurdity, then the court should look for another meaning of the words to avoid that absurd result. The rule was evolved by Parke B (who later became Lord Wensleydale) in Becke v Smith, 1836 and in Grey v Pearson, 1857, who stated, "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."
>
> It is a very useful rule in the construction of a statute as it allows to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case it allows the language to be varied or modified so as to avoid such inconvenience.
>
> This rule may be used in two ways. It is applied most frequently in a narrow sense where there is some ambiguity or absurdity in the words themselves. For example, imagine there may be a sign saying "Do not use lifts in case of fire." Under the literal interpretation of this sign, people must never use the lifts, in case there is a fire. However, this would be an absurd result, as the intention of the person who made the sign is obviously to prevent people from using the lifts only if there is currently a fire nearby. This was illustrated in the case of Lee

vs Knapp 1967 QB where the interpretation ofthe word "stop" was involved. Under Road Traffic Act, 1960, a person causing an accident "shall stop" after the accident. In this case, the driver stopped after causing the accident and then drove off. It was held that the literal interpretation of the word stop is absurd and that the requirement under the act was not fulfilled because the driver did not stop for a reasonable time so that interested parties can make inquiries from him about the accident.

The second use of the golden rule is in a wider sense, to avoid a result that is obnoxious to principles of public policy, even where words have only one meaning. Bedford vs Bedford, 1935, is another interesting case that highlighted the use of this rule. It concerned a case where a son murdered his mother and committed suicide. The courts were required to rule on who then inherited the estate, the mother's family, or the son's descendants. The mother had not made a will and under the Administration of Justice Act 1925 her estate would be inherited by her next of kin, i.e. her son. There was no ambiguity in the words ofthe Act, but the court was not prepared to let the son who had murdered his mother benefit from his crime. It was held that the literal rule should not apply and that the golden rule should be used to prevent the repugnant situation of the son inheriting. The court held that if the son inherits the estate that would amount to profiting from a crime and that would be repugnant to the act.

Thus, the Golden rule implies that if a strict interpretation of a statute would lead to an absurd result then the meaning of the words should be so construed so as to lead to the avoidance of such absurdity. A further corollary to this rule is that in case there are multiple constructions to effect the Golden rule the

one which favors the assessec should always be taken. This rule is also known as the Rule of Reasonable Construction.

Advantages

1. This rule prevents absurd results in some cases containing situations that are completely unimagined by the law makers.
2. It focuses on imparting justice instead of blindly enforcing the law.

Disadvantages

1. The golden rule provides no clear means to test the existence or extent of an absurdity. It seems to depend on the result of each individual case. Whilst the golden rule has the advantage of avoiding absurdities, it therefore has the disadvantage that no test exists to determine what is an absurdity.
2. This rule tends to let the judiciary overpower the legislature by applying its own standards of what is absurd and what it not.

iv. **Rule of Harmonious Construction** - when there are two provisions in a statute, which are in conflict with each other, they should be interpreted such that effect can be given to both and the construction which renders either of them inoperative and useless should not be adopted except in the last resort. Bengal immunity Co. vs. State of Bihar (1955) 6 STC 446 (SC).

Subsidiary Rules (Legislative Language - ratio)

v. ***noscitur a sociis*** - When a word is ambiguous, its meaning may be determined by reference to the rest of the statute.

In *Foster v Diphwy vs Casson* 1887 18 QBD 428, the case involved a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The

courts had to consider whether a cloth bag was within the definition. Under *noscitur a sociis*, it was held that the bag could not have been within the statutory definition, because parliament's intention was refering to a case or container of the same strength as a canister.

In *State of Assam v. R Muhammad* AIR 1967, SC made use of this rule to arrive at the meaning of the word "posting" used in Article 233 (1) of the Constitution. It held that since the word "posting" occurs in association with the words "appointment" and "promotion", it took its color from them and so it means "assignment of an appointee or a promotee to a position" and does not mean transfer of a person from one station to another.

vi. ***ejusdem generis*** - When a list of two or more specific descriptors are followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them e.g. vehicles in "cars ,motor bikes,motor powered vehicles" would be interpreted in a limited sense and therefore cannot be interpreted as including air planes.

In *UP State Electricity Board vs Harishankar* AIR 1979, SC laid the following conditions for the application of this rule –

1. The statue contains an enumeration of specific words
2. The subject of the enumeration constitute a class or a category
3. The class or category is not exhausted by the enumeration
4. A general term is present at the end of the enumeration
5. There is no indication of a different legislative intent

In *Ishwar Singh Bagga vs State of Rajasthan* 1987, it was held that the words "other person", in the expression "any police officer authorized in this behalf or any other person authorized in this behalf by the State government" in Section 129 of Motor Vehicles Act, were held not to be interpreted *ejusdem generis* because the mention of a single species of "police officers" does not constitute a genus.

vii. ***reddendo singula singulis*** - When a list of words has a modifying phrase at the end, the phrase refers only to the last word, e.g., firemen, policemen, and doctors in a hospital. Here, "in a hospital" only applies to doctors and not to firemen or policemen.

In *Koteshwar Vittal Kamat vs K Rangappa Baliga* AIR 1969, it was held that the construction of the Proviso to Article 304 of the Constitution which reads, "Provided that no bill or amendment for the purpose of clause (b), shall be introduced or moved in the legislature of a state without the previous sanction of the President". It was held that the word introduced applies to bill and moved applies to amendment.

viii. ***expressio unius est exclusion alterius*** The express mention of one person, thing, or consequence implies the exclusion of all others. Variation would be *expressium facit cessare tacitum*. What is expressed puts an end to what is implied. Where a statute is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. Canon of restrictive interpretation states that where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

ix. ***dissimilum dissimilisest ratio*** The courts may distinguish when there are facts and circumstances showing that the legislature intended a distinction or qualification.

x. ***casus omissus*** Casus omissus pro omisso habendus est. A person, object, or thing omitted from an enumeration in a statute must be held to have been omitted intentionally. This needs two laws. In *expressio unius*, it is just the enumeration you are looking at, not another law.

xi. ***ubi lex non distinguit nec nos distinguere debemos*** Where the law makes no distinctions, one does not distinguish. Where the law does not distinguish, courts should not distinguish.

STRICT CONSTRUCTION

Strict construction refers to a particular legal philosophy of judicial interpretation that limits or restricts judicial interpretation. Strict construction requires the court to apply the text as it is written and no further, once the meaning of the text has been ascertained. That is, court should avoid drawing inference from a statute or constitution. It is important to note that court may make a construction only if the language is ambiguous or unclear. If the language is plain and clear, a judge must apply the plain meaning of the language and cannot consider other evidence that would change the meaning. If, however, the court finds that the words produce absurdity, ambiguity, or a literalness never intended, the plain meaning does not apply and a construction may be made. Strict construction occurs when ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implications are made. Strict construction is the opposite of liberal construction, which permits a term to be reasonably and fairly evaluated so as to implement the object and purpose of the document.

Remedial and Penal Statutes

A Penal Statute must be constructed strictly. This means that a criminal statute may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms. It is fundamentally important in a free and just society that Law must be readily ascertainable and reasonably clear otherwise it is oppressive and deprives the citizen of one of his basic rights. An imprecise law can cause unjustified convictions because it would not be possible for the accused to defend himself against uncertainties. Therefore, an accused can be punished only if his act falls clearly into the four corners of the law without resorting to any special meaning or interpretation of the law. For example, in **Seksaria Cotton Mills vs State of Bombay, 1954**, SC held that in a penal statute, it is the duty of the Courts to interpret the words of ambiguous meaning in a

broad and liberal sense so that they do not become traps for honest unlearned and unwary men. If there is honest and substantial compliance with an array of puzzling directions that should be enough, even if on some hyper critical view of the law other ingenious meanings can be devised. If a penal provision is capable of two reasonably possible constructions, then the one that exempts the accused frompenalty must be used rather than the one that does not. Whether a particular construction achieves the intention of the statute or not is not up to the court to think about in case of penal statutes. It is not apt for the court to extend the scope of a mischief and to enlarge the penalty. It is not competent for the court to extend the meaning of the words to achieve the intention of the legislature. If a penal provision allows accused to go scot-free because of ambiguity of the law, then it is the duty of the legislature and not of the courts to fix the law. Unless the words of a statute clearly make an act criminal, it cannot be construed as criminal. **Chinubhai vs State of Bombay, AIR 1960,** is an important case in this respect. In this case, several workers in a factory died by inhaling poisonous gas when they entered into a pit in the factory premises to stop the leakage of the gas from a machine. The question was whether the employer violated section 3 of the Factories Act, which says that no person in any factory shall be permitted to enter any confined space in which dangerous fumes are likely to be present. The Supreme Court, while construing the provision strictly, held that the section does not impose an absolute duty on the employer to prevent workers from going into such area. It further observed that the fact that some workers were present in the confined space does not prove that the employer permitted them to go there. The prosecution must first prove that the workers were permitted to enter the space to convict the accused.

Taxing Statutes and Tax Evasion

Tax is the money collected from the people for the purposes of public works. It is a source of revenue for the government. It is the right of the govt to collect tax according to the provisions of the law. No tax can be levied or collected except by the authority of law. In general, legislature enjoys wide discretion in the matter of taxing statutes as long as it satisfies the fundamental principle of classification as enshrined in Article 14. A person cannot be taxed unless the language of the statute unambiguously imposes the obligation without straining itself. In that sense, there is no reason why a taxing statute must be interpreted any differently from any other kind of statute. Indeed, SC, in the case of **CIT vs**

Shahazada Nand and Sons, 1966, observed that the underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than any notions which be entertained by the Courts as to what is just or expedient. In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.

Lord Russel in **Attorney General vs Calton Ban, 1989,** illustrated categorically as, "I see no reason why special canons of construction should be applied to any act of parliament and I know of no authority for saying that a taxing statute is to be construed differently from any other act."

However, as with any statute, a fiscal or taxing statute is also susceptible to human errors and impreciseness of the language. This may cause ambiguity or vagueness in its provisions. It is in such cases, the task of constructing a statute becomes open to various methods of construction. Since a person is compulsorily parted from his money due to tax, imposition of a tax is considered a type of imposition of a penalty, which can be imposed only if the language of the provision unequivocally says so. This means that a taxing statute must be strictly constructed.

The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement in **Cape Brandy Syndicate v I.R.C.** - "In a taxing statute one has to look merely at what is clearly said. There is no room for any intention. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used." If by any reasonable meaning of the words, it is possible to avoid the tax, then that meaning must be chosen. There is no scope for any inference or induction in constructing a taxing statute. There is no room for suppositions as to "spirit" of the law or by way of "inference".When the provision is reasonably open to only one meaning then it is not open to restrictive construction on the ground that the levy of tax, is oppressive , disproportionate, unreasonable or would cause hardship. There is no room

for such speculation. The language must be explicit. Similarly, penalty provision in a taxing statute has to be specifically provided and cannot be inferred.

In **A. V. Fernandes vs State of Kerala, AIR 1957**, the Supreme Court stated the principle that if the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case does not fall within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter. This does not mean that equity and taxation are complete strangers. For example, in the case of **CIT vs J H Kotla Yadgiri, 1985, SC** held that since the income frombusiness of wife or minor child is includable as income of the assessee, the profit or loss from such business should also be treated as the profit or loss from a businesss carried on by him for the purpose of carrying forward and set-off of the loss u/s. This interpretation was based on equity. However, it does not permit any one to take the benefit of an illegality. This is illustrated in the case of **CIT vs Kurji Jinabhai Kotecha,AIR 1977**, where Section .24(2) of IT Act was constructed as not to permit assessee to carry forward the loss of an illegal speculative business for setting it off against profits in subsequent years. This proves that even a taxing statute should be so construed as to be consistent with morality avoiding a a result that gives recognition to continued illegal activities or benefits attached to it.

The rule of strict construction applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection. Thus, strict construction would not come in the way of requiring a person claiming an exemption. The provisions of exemptions are interpreted beneficially.

JUDICIAL ACTIVISM, JUDICIAL PROCESS AND JUDICIAL RESTRAINT

According to Gray, the judges settle what facts exist 'and also lay down rules according to which they deduce legal consequences from facts. These rules are the rules of law.' Gray cites with approval the words of Bishop Hoadly, preaching in 1727 before George I: 'Whoever hath an absolute authority to interpret any written or spoken laws, it is he who is

truly the law-giver to all intents and purposes, and not the person who first wrote or spoke them'.

Gray was criticised by Cardozo, in *The Nature of the Judicial Process* (1921) on the grounds of the uncertainties inherent in his view that statutes are merely sources of law which judges utilise in the exercise of a law-making function. In that view, says Cardozo, even past decisions are not law. The courts may override them. 'Law never *is*, but is always *about to be*... There are no such things as rules of principle; there are only isolated dooms.

Today legal uncertainty has reached unprecedented levels. The situation is evidenced by the widespread use of such terms as "complexity," "obscurity," "insecurity," "indeterminacy," "instability" and "discontinuity" of the legal order.

After a week or two of classes, first-year law students are rather surprised to learn how indeterminate and unclear the law is; they come to law school assuming that there is a body of knowledge about the law that they are going to learn, and that this knowledge is out there, written down in statutes and judicial decisions. By the end of first year in law school, students come to think that almost nothing is clear about the law, that it all depends on how courts interpret it, and that the best a lawyer can do is make an educated guess about what the relevant courts will do. They tend to think everything is up for grabs. But then, once they start working as lawyers in a firm, the picture reverses. Lawyers quickly learn that most of the litigation is not about the kinds of difficult legal issues they have studied in law school but about humdrum matters of fact—what has really happened, who said this or did that.

The law is much less clear than people tend to think, but it is much more clear than law students are led to believe, because they spend most of their studies focusing on the difficult or problematic cases that tend to reach the appellate courts.

INTERNAL AIDS AND EXTERNAL AIDS OF INTERPRETATION.

An Aid is a device that helps or assists. For the purpose of construction or interpretation, the court has to take recourse to various internal and external aids.

Internal Aids to Construction

Internal aids mean those materials which are available in the statute itself, though they may not be part of enactment. These internal aids include, long title, preamble, headings, marginal notes, illustrations, punctuation, proviso, schedule, transitory provisions, etc. When internal aids are not adequate, court has to take recourse to External aids.

Long Title

Aswini Kumar Ghose vs Arabinda Bose AIR 1952 Petitioner was an advocate in Calcutta High Court as well as Supreme Court. He filed in the registry in the Original side a warrant of authority executed in his favor to appear for his client. On the ground that under the High Court Rules and Orders, Original Side, an advocate cannot act but only plead, the warrant of authority was returned. He argued that since he is also an Advocate of SC, he had a right to act and plead all by himself without any instruction from an attorney. The SC looked at the long title of the Supreme Court Advocates (Practice in High Courts Act, 1951, which said, "An act to authorize Advocates of SC to practice as of right in any High Court" and accepted the contention of the petitioner.

The leading Irish case is *East Donegal Co-operative Marts Ltd* v. *Attorney General*128 in which the Court stressed the importance of the long title to the Act in forming a part of the context and background of the Act, in the light of which its provisions should be construed. Walsh J departed from the more restrictive rule..., in allowing for a determination of ambiguity only after the long title had been considered. He stated:

> *"The long title and the general scope of the Act of 1967 constitute the background and the general scope of the context in which it must be examined. The whole or any part of the Act may be referred to and relied upon in seeking to construe any particular part of it, and the construction of any particular phrase requires that it is to be viewed in connection with the whole Act and not that it should be viewed*

detached from it. The words of the Act, and in particular the general words, cannot be read in isolation and their content is to be derived from their context. Therefore, words and phrases which at first sight might appear to be wide and general may be cut down in their construction when examined against the objects of the Act which are to be derived from a study of the Act as a whole including the long title. Until each part of the Act is examined in relation to the whole it would not be possible to say that any particular part of the Act was either clear or unambiguous."

Preamble

In Kesavanand Bharati vs State of Kerala AIR 1973, SC held that preamble is a part of the constitution. It is in fact a key to the minds of the framers of constitution.

In A C Sharma vs Delhi Administration AIR 1973 it was held that appellant challenged his conviction under Section 5 of Prevention of Corruption Act, 1947 on the ground that after the establishment of the Delhi Special Police Establishment, the anti corruption department of the Delhi Police has ceased to have power of investigating bribery cases because the preamble of the Delhi Special Police Establishment Act pointed out to this effect. SC rejected the contention and held that no preamble can interfere with the clear and unambiguous words of a statue.

Definition or Interpretation clause – It is used for extending the natural meaning of some words.

In Ardeshir vs State of Bombay AIR 1963 it was held that the appellant was working salt mines without a license. He claimed that a salt mine is not a Factory as per Factories Act, 1948 because it is an open space with no building and so it does not fall under the definition of a factory, which requires a factory to have a precinct. SC held that the definition of Factory in S. 2(m), which says, "Factory means any premises including the precincts thereof..." is an inclusive definition and does not delimit the meaning of the word premises but enlarges its scope.

Proviso

In T Devadasan vs Union of India 1958 it was held that the Carry forward rule in reservation under which if SC/ST quota was unfilled it would be carried over, was in question. Due to this rule, the number of reserved posts exceeded 65%, which violated Art 16(1). SC held that unlimited reservation under 16(4) would destroy the spirit of 16(1). Art

16(4) is a sort of proviso to 16(1) and so it could not be interpreted so as to destroy the main provision.

In Dwaraka Prasad vs Dwarak Das AIR 1975, SC held that the lease of a building along with its equipment for cinema business was not an accommodation within the meaning of UP (temporary) Control of Rent and Eviction Act. If the principal enactment in a statue is unambiguous, proviso can neither extend nor restrict its meaning.

Schedule

M/s Aphali Pharmaceuticals Ltd vs State of Maharashtra Air 1989, SC held that in the case of a clash between the schedule and the main body of the act, the main body prevails and the schedule has to be rejected. In this case, SC held that Ashvagandharisht, an Ayurvedic medicinal preparation containing self generated alcohol but not capable of being consumed as ordinary alcoholic beverage would be exempt from excise duty.

Punctuation

In Mohd Shabbir vs State of Maharashtra AIR 1979, One of the provisions of Drugs and Cosmetics Act, 1940 said that "whoever manufactures for sales, sells, stocks or exhibits for sale or distribute..." SC held that mere stocking is not an offence unless it is for sale because there is no comma after stocks and so the words stocks or exhibits both are qualified by "for sale.

External Aids to Construction

External Aids may be parliamentary material, historical background, reports of a committee or a commission, official statement, dictionary meanings, foreign decisions, etc.

B. Prabhakar Rao and others v State of A.P. and others, AIR 1986 SC 120 O.Chennappa, Reddy J. has observed : "Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction." (para 7).

Dictionary

When a word is not defined in the statute itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in the selection of one out of the various meanings of a word, regard must always be had to the scheme, context and legislative history.

In Ramavatar vs Assitant Sales Tax Commissioner AIR 1961 it was held that the question was whether betel leaves are vegetables and therefore exempt from imposition of sales tax. The dictionary meaning of the term vegetable includes betel leaves, however, SC held that the dictionary meaning could not be said to reflect the true intention of the framers and the word vegetable should be interpreted in the same sense in which it is commonly used.

Textbook

In Kesavananda Bharati vs State of Kerala AIR 1973 A large number of text books were quoted. However, observed that in view of many opinions and counter opinions, it was not desirable to follow the opinions in the books and the safest route for the court was to interpret keeping mind always the whole context of the issues.

Historical Background

In State of W B vs Nirpendra Nath AIR 1966, SC held that courts are free to look into the earlier state of the law to find out the true meaning of the enactment.

Parliamentary History, Historical Facts and Surrounding Circumstances

Historical setting cannot be used as an aid if the words are plain and clear. If the wordings are ambiguous, the historical setting may be considered in order to arrive at the proper construction. Historical setting covers parliamentary history, historical facts, statement of objects and reasons, report of expert committees. Parliamentary history means the process by which an act is enacted. This includes conception of an idea, drafting of the bill, the

debates made, the amendments proposed etc. Speech made in mover of the bill, amendments considered during the progress of the bill are considered in parliamentary history where as the papers placed before the cabinet which took the decision for the introduction of the bill are not relevant since these papers are not placed before the parliament. The historical facts of the statute that is the external circumstances in which it was enacted in should also be taken into note so that it can be understood that the statute in question was intended to alter the law or leave it where it stood. Statement of objective and reasons as to why the statute is being brought to enactment can also be a very helpful fact in the research for historical facts, but the same if done after extensive amendments in statute it may be unsafe to attach these with the statute in the end. It is better to use the report of a committee before presenting it in front of the legislature as they guide us with a legislative intent and place their recommendations which come in handy while enactment of the bill.

The Supreme Court in a numbers of cases referred to debates in the Constituent Assembly for interpretation of Constitutional provisions. Recently, the Supreme Court in S.R. Chaudhuri v State of Punjab and others, (2001) 7 SCC 126 has stated that it is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a Constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. (Para 33)

But as far as speeches in Parliament are concerned, a distinction is made between speeches of the mover of the Bill and speeches of other Members. Regarding speeches made by the Members of the Parliament at the time of consideration of a Bill, it has been held that they are not admissible as extrinsic aids to the interpretation of the statutory provision. However, speeches made by the mover of the Bill or Minister may be referred to for the purpose of finding out the object intended to be achieved by the Bill. (K.S. Paripoornan v State of Kerala and others, AIR 1995 SC 1012)

So far as Statement of Objects and Reasons, accompanying a legislative bill is concerned, it is permissible to refer to it for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. But, it cannot be used to ascertain the true meaning and effect of the

substantive provision of the statute. (Devadoss (dead) by L. Rs, v. Veera Makali Amman Koil Athalur, AIR 1998 SC 750.)

Reports of Commissions including Law Commission or Committees including Parliamentary Committees preceding the introduction of a Bill can also be referred to in the Court as evidence of historical facts or of surrounding circumstances or of mischief or evil intended to be remedied. Law Commission's Reports can also be referred to where a particular enactment or amendment is the result of recommendations of Law Commission Report. The Supreme Court in Rosy and another v State of Kerala and others, (2000) 2 SCC 230 considered Law Commission of India, 41st Report for interpretation of section 200 (2) of the Code of Criminal Procedure, 1898.

Legislative History

In A K Gopalan vs State of Madras AIR 1950 SC, while disallowing a speech to be considered as an aid to interpretation observed that a speech made in course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect eh inarticulate mental process lying behind the majority vote which carried the bill.

In Kesavananda Bharati vs State of Kerala AIR 1973 it was held hat speeches made by the members of parliament in course of debates relating to an enactment of a statute cannot be used as aids for interpreting any of the provisions of the statute. However, Justice Shelat, Grover, Reddy, Palekar, and Matthew, were of the opinion that the speeches in the Constituent Assembly could always be used to find out the true intention of the framers of the constitution. It seems that this opinion is limited to the interpretation of the constitution.

In Indra Sawhney vs Union of India AIR 1993 SC held that since the word "backward classes" used in Art 16(4) is not defined anywhere, it is permissible to refer to the speeches of Dr B R Ambedkar to understand the context, background, and objective of the provision.

Social, Political and Economic Developments and Scientific Inventions

A Statute must be interpreted to include circumstances or situations which were unknown or did not exist at the time of enactment of the statute. Any relevant changes in the

social conditions and technology should be given due weightage. Courts should take into account all these developments while construing statutory provisions.

In S.P. Gupta v Union of India, AIR 1982 SC 149, it was stated - "The interpretation of every statutory provision must keep pace with changing concepts and values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirement of the fast changing society which is undergoing rapid social and economic transformation. It is elementary that law does not operate in a vacuum. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. It is here that the Judge is called upon to perform a creative function. He has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivery of justice." (Para 62)

Therefore, court has to take into account social, political and economic developments and scientific inventions which take place after enactment of a statute for proper construction of its provision.

Reference to Other Statutes

In case where two Acts have to be read together, then each part of every act has to be construed as if contained in one composite Act. However, if there is some clear discrepancy then the latter Act would modify the earlier. Where a single provision of one Act has to be read or added in another, then it has to be read in the sense in which it was originally construed in the first Act. In this way the whole of the first Act can be mentioned or referred in the second Act even though only a provision of the first one was adopted. In case where an old Act has been repealed, it loses its operative force. Nevertheless, such a repealed part may still be taken into account for construing the unrepealed part.

For the purpose of interpretation or construction of a statutory provision, courts can refer to or can take help of other statutes. It is also known as statutory aids. The General Clauses Act, 1897 is an example of statutory aid.

The application of this rule of construction has the merit of avoiding any contradiction between a series of statutes dealing with the same subject, it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context. On the same logic when words in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context in a later statute will give rise to a presumption that the legislature intends that the same interpretation should be followed for construction of those words in the later statute.

Judicial Decisions

When judicial pronouncements are been taken as reference it should be taken into note that the decisions referred are Indian, if they are foreign it should be ensured that such a foreign country follows the same system of jurisprudence as ours and that these decisions have been taken in the ground of the same law as ours. These foreign decisions have persuasive value only and are not binding on Indian courts and where guidance is available from binding Indian decisions; reference to foreign decisions is of no use.

Other materials

Similarly, Supreme Court used information available on internet for the purpose of interpretation of statutory provision in Ramlal v State of Rajasthan, (2001) 1 SCC 175. Courts also refer passages and materials from text books and articles and papers published in the journals. These external aids are very useful tools not only for the proper and correct interpretation or construction of statutory provision, but also for understanding the object of the statute, the mischief sought to be remedied by it, circumstances in which it was enacted and many other relevant matters. In the absence of the admissibility of these external aids, sometimes court may not be in a position to do justice in a case.

Loevinger (*Jurimetrics, the Methodology of Legal Inquiry* (1963)), coined the term 'Jurimetrics' to cover the application of communication theory and the use of mathematical logic in law in relation to jurisprudential enquiry. Use of quantitative techniques might enable lawyers to move *beyond* jurisprudence to a truly scientific investigation of the law. Thus, for example, confusion created by syntactic ambiguity in legal discourse might be minimised by the use of symbolic logic in, say, the interpretation of statutes.

INTERPRETATION OF CONSTITUTION

In interpreting a Constitution, it must be borne in mind that it is an organic statute and therefore that construction which is most beneficial to the widest amplitude of its power will be adopted. It will not be construed with the strictness of a private contract.81 That is not to say that different rules of construction apply in the construction of a Constitution. If at all there is a difference, it is in the degree of emphasis that is laid upon the rules. The application of the very rules of construction regarding construction of statutes requires that the court should take into account the nature and scope of the law that it is interpreting - "to remember that it is a Constitution, a mechanism under which laws are made and not a mere Act which declares what that law is to be".

Therefore in the construction of a Constitution a broad and liberal spirit will be adopted. Nevertheless, this does not imply that the courts arc free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory even for the purpose of supplying omissions or of correcting supposed errors. Besides, the courts have to guard themselves against extending the meaning of the words beyond their reasonable connotation. (*Diamond Sugar Mills* v. *State of U.P.*, AIR 1961 SC 652 at 655)

PRINCIPLES AND THEORIES

In Jugmendar Das vs State 1951 SC has held that not only the general definitions given in General Clauses Act, but also the general rules of construction given therein are applicable to the Constitution. Art 367 allows the use of General Clauses Act

The constitution is an organic instrument. It is the fundamental law. The general rule adopted for construing a written constitution is the same as for construing any other statute. The constitution should be interpreted so as to give effect to all its parts.

There are basically three types of interpretation of the constitution.

1. Historical interpretation

Ambiguities and uncertainties while interpreting the constitutional provisions can be clarified by referring to earlier interpretative decisions.

2. Contemporary interpretation

The constitution must be interpreted in the light of the present scenario. The situation and circumstances prevalent today must be considered.

3. Harmonious Construction

The Supreme Court held in *Re Kerala Education Bill* that in deciding the fundamental rights, the court must consider the directive principles and adopt the principle of harmonious construction so two possibilities are given effect as much as possible by striking a balance.

In Qureshi v State of Bihar, The Supreme Court held that while the state should implement the directive principles, it should be done in such a way so as not to violate the fundamental rights.

In *Shajahan v Mrs. Kamala Narayana,* the Supreme Court held that harmonious interpretation of the legislation is justified if it makes effective use of any other provision in the same or another enactment.

In Bhatia International v Bulk Trading SA, it was held that if more than one interpretation is possible for a statute, then the court has to choose the interpretation which depicts the intention of the legislature.

General rules of interpretation of the constitution

1. If the words are clear and unambiguous, they must be given full effect.
2. The constitution must be read as a whole.
3. Principles of Harmonious construction must be applied.
4. The constitution must be interpreted in a broad and liberal sense.
5. The court has to infer the spirit of the constitution from the language.
6. Internal and External aids may be used while interpreting.
7. The Constitution prevails over other statutes.

PREAMBLE AS A TOOL

In Kesavanand Bharati vs State of Kerala AIR 1973, SC held that preamble is a part of the constitution. It is in fact a key to the minds of the framers of constitution. SC identified the basic structure of the constitution that reflects its true spirit and held that nothing that

hurts the basic structure of the constitution is constitutional. In the same case, SC held that one should give the freedom to the parliament to enact laws that ensure that the blessings of liberty be shared with all, but within the framework of the constitution. It is necessary towards that end that the constitution should not be construed in a narrow and pedantic sense.

The preamble cannot override the provisions of the constitution. In *Re Berubari,* the Supreme Court held that the Preamble was not a part of the constitution and therefore it could not be regarded as a source of any substantive power.

INTERPRETATION OF INTERNATIONAL INSTRUMENTS & PRESUMPTION AGAINST VIOLATION OF INTERNATIONAL LAW

Article 51(c) of the Constitution of India states that the State shall endeavour to "foster respect for international law and treaty obligations in the dealings of organized peoples with one another". It may be said that the distinction in article 51(c) between 'international law' and 'treaty obligations' is that the term 'international law' refers to international customary law. The acceptance of such an approach would mean that customary international law is not incorporated into Indian municipal law *ipso facto* (cf. the British and American practice). In league with this approach is the contention that article 51(c) reduces the position of international law in India to a mere directive principle.

Article 372(1) of the Constitution provides that subject to the other provisions of the Constitution, all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. Thus, if there is any irreconcilable conflict between a pre-Constitution law and a provision of the Constitution, the latter shall prevail to that extent. The expression 'law in force' includes not only the enactments of

the Indian Legislature, but also the common law of the land which was being administered by the courts in India, including the rules of English common law. This leads to the conclusion that the common law doctrine is applicable in India. Therefore, international law is enforceable by Indian courts insofar as it is not inconsistent with any clear and unequivocal or unambiguous Indian statutory law.

Rules of international law are not mere ethical rules, although it was otherwise held in *A.D.M., Jabalpur v. Shivakant Shukla* (AIR 1976 SC 1207, 1291); the dissenting judgment of Justice Khanna rightly held the view that if two constructions of the municipal law are possible, the courts should lean in favour of adopting such construction as would make the provisions of the municipal law to be in harmony with the international law or treaty obligations, and that the rule about the construction of municipal law also holds good when construing the provisions of the Constitution, and that a construction of the relevant constitutional provisions was possible as would not bring them in conflict with the Universal Declaration of Human Rights (articles 8 and 9 – right to 'an effective remedy' and 'no arbitrary arrest'). The Declaration, not in itself legally binding, much of its content can now be said to form part of customary international law. Justice Khanna's opinion has been followed in *Vellore Citizens Welfare Forum v. Union of India* (AIR 1996 SC 2715).

International treaties

Article 51 of the Constitution embodies the object of India in the international arena as follows:

"The State shall endeavour to –

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and

(d) encourage settlement of international disputes by arbitration."

But it does not lay down that international treaties or agreements entered into by India shall have the force of municipal law without appropriate legislation. In other words, India's obligations under an international treaty cannot be enforced, unless such obligations are made part of the law of this country by means of appropriate legislation. It is the power of the Executive to enter into treaties, the executive power being coextensive with the legislative power and there being no legislation on the subject, *vide* articles 73 and 246(1) read with Entry 14 of the Union List. The executive power is vested in the President, *vide* article 53, which may be exercised by him through officers subordinate to him. By virtue of article 253, Parliament has exclusive power to make any law for implementing any treaty. Article 253 is in conformity with the object declared by article 51(c). Treaty-making, implementing of treaties, etc., is a subject of Union legislation, under Entry 14 of the Union List. But it would have been difficult for the Union to implement its obligations under treaties or other international agreements if it were not able to legislate with respect to State subjects insofar as that may be necessary for the purpose of implementing the treaty obligations of India. Hence, article 253, by the words "notwithstanding anything in the foregoing provisions', empowers the Union Parliament to legislate on matters included in the State List for the said purpose. These words mean that the distribution of legislative powers between the Union and States shall not restrict the power of Parliament to make laws under article 253. The Diplomatic Relations (Vienna Convention) Act, 1972 was enacted to give effect to the Vienna Convention on Diplomatic Relations, 1961. The question whether a particular treaty calls for an implementing legislation would depend upon its subject matter.

Legislation would be required to give effect to a treaty:

(a) where it provides for payment of money to a foreign power (*Union of India v. Manmull Jain*);

(b) where justiciable rights of the citizens or others are restricted or infringed (*Maganbhai Ishwarbhai Patel v. Union of India* - AIR 1969 SC 783);

(c) where laws of the State are modified (*Maganbhai*).

Even an amendment of the Constitution would be required where implementation of a treaty would involve cession of Indian territory to a foreign power, but nothing is required where it merely involves the settlement of a boundary dispute not involving cession (*Maganbhai*). No cession of territory, no law. The concept of 'self-executing' and 'non-self-executing' treaties is also recognized by the Supreme Court in *Maganbhai*. Legislation may nevertheless be passed in aid of implementation of a 'self-executing' treaty, though not necessary (*Maganbhai*).

International treaties vis-à-vis Statute law

It is well-established in India that in case of conflict between international treaties and clear and unambiguous statute law, courts will give effect to statute law. If statute law is ambiguous, the courts adopt the doctrine of harmonious construction so as to avoid conflict between international treaties and statute law. In other words, Indian courts construe ambiguous statute law in the context of international treaties.

In *Jolly George Varghese v. Bank of Cochin* (AIR 1980 SC 470), the Supreme Court harmonized section 51 of the Code of Civil Procedure (CPC)

(power of court to enforce execution – civil imprisonment) with the International Covenant on Civil and Political Rights. Article 11 of the Covenant provides that "no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation". The words "or has had since the date of the decree, the means to pay the amount of the decree" in section 51, CPC must imply some element of bad faith beyond mere indifference to pay; if the judgment-debtor once had the means but now has not or if he has money now on which there are other pressing claims, he should not be cast in prison as the same would be violative of the spirit of article 11 of the Covenant. (also held violative of article 21 of the Constitution).

Article 9(5) of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". In *Nilabati Behera v. State of Orissa* (AIR 1993 SC 1960), the Supreme Court invoked the said provision for the purpose of granting compensation in a writ petition for violation of the fundamental right under article 21. This holding was reaffirmed and followed in *D.K. Basu v. State of W.B.*(AIR 1997 SC 610) and *People's Union for Civil Liberties v. Union of India* (AIR 1997 SC 1203).

In *M.V. Elisabeth* v. *Harwan Investment & Trading Pvt. Ltd.*(1993 Supp. (2) SCC 433), the Supreme Court referred to certain International Conventions on maritime law and upheld the admiralty jurisdiction of the (Andhra Pradesh) High Court over a foreign vessel in an Indian coastal State's waters, holding that the sovereignty of a state extends over its internal and territorial waters; though a merchant ship is generally governed by the laws of the flag state, it subjects itself to the jurisdiction of a foreign state as it enters its waters.

In *Vellore Citizens Welfare Forum* v. *Union of India*(AIR 1996 SC 2715), the Supreme Court held that "it is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law"; "sustainable development" as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalized by the International law Jurists; "precautionary principle" and "polluter pays principle", two of the salient principles of "sustainable development" are part of the environmental law of the country.

In *M.C. Mehta* v. *Kamal Nath* (1996 (9) SCALE 141, 161), the Supreme Court held that the "public trust doctrine" too was a part of the law of the land.

In *Vishaka* v. *State of Rajasthan* (AIR 1997 SC 3011), the Supreme Court held that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. This is implicit from article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of article 253 read with Entry 14 of the Union List. Under article 73, the executive power of the Union is available till the Parliament enacts legislation. The Supreme Court invoked the 'Convention on the

Elimination of All Forms of Discrimination against Women' (CEDAW), articles 11 and 24, in laying down the guidelines on the subject.

In *Liverpool & London S.P. & I. Assn. Ltd. v. M.V. Sea Success I* ((2004) 9 SCC 512, 540), the Supreme Court held that where no statutory law in India operates in the field, interpretative changes, if any, must be made having regard to the ever-changing global scenario.

In *Pratap Singh v. State of Jharkhand* ((2005) 3 SCC 551, pp. 578-579), the Supreme Court observed that the courts can refer to and follow international treaties, covenants and conventions to which India is a party although they may not be a part of our municipal law. A contextual meaning to a statute is required to be assigned having regard to not only the Constitution but also international law operating in the field. The Court held that the Juvenile Justice (Care and Protection of Children) Act, 2000 should be interpreted in the light of the Universal Declaration of Human Rights as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules).

In *Entertainment Network (I) Ltd. v. Super Cassette Industries* (2008 (9) SCALE 69), the Supreme Court observed that the Court has in number of cases applied the norms of international law, in particular, the International Covenants to interpret domestic legislation if by reason thereof the tenor of domestic law is not breached and in case of any inconsistency the domestic legislation should prevail, and further noted that in interpreting the domestic/municipal laws, the Court has extensively made use of international law, *inter alia*, for the following purposes:

"(i) as a means of interpretation;

(ii) justification or fortification of a stance taken;

(iii) to fulfill spirit of international obligations which India has entered into, when they are not in conflict with the existing domestic law;

(iv) to reflect international changes and reflect the wider civilization;

(v) to provide a relief contained in a covenant, but not in a national law;

(vi) to fill gaps in law."

The Supreme Court also observed that the courts should not be loath to refer to the International Conventions, where the protection of human rights, environment, ecology and other second-generation or third-generation rights are involved.

In *Kesavananda Bharati v. State of Kerala* ((1973) 4 SCC 225, 333), S. M. Sikri, the then Chief Justice of India had observed that in view of article 51 of the directive principles the Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and solemn declaration subscribed to by India. He relied on the observation of Lord Denning in *Corocraft v. Pan American Airways* ((1969) 1 All E R 82, 87) that "it is the duty of these courts to construe our legislation so as to be in conformity with international law and not in conflict with it".

READING DIRECTIVE PRINCIPLES AND FUNDAMENTAL DUTIES WITH FUNDAMENTAL RIGHTS

The Supreme Court held in *Re Kerala Education Bill* that in deciding the fundamental rights, the court must consider the directive principles and adopt the principle of harmonious construction so two possibilities are given effect as much as possible by striking a balance.

In Qureshi v State of Bihar, The Supreme Court held that while the state should implement the directive principles, it should be done in such a way so as not to violate the fundamental rights.

PRESUMPTION ON FAVOUR OF CONSTITUTIONALITY OF A STATUTE.

Words in a constitutional enactment conferring legislative powers would be construed by the courts most liberally and in their widest amplitutude (*Jiyajee Rao Cotton Mills Ld,* v. *State of M.P.,* (1962) Supp. (1) SCR). The omnipotence of the sovereign legislative power will not be limited by judicial interpretation except so far as the express words of the Constitution give that authority. But in order to decide whether a particular legislation offends the provisions of the Constitution and is therefore unconstitutional, the court will examine with some strictness the substance of the legislation for determining what it is that the Legislature has really done. Where in the interpretation of the provisions of an Act two constructions are possible, one which leads towards constitutionality of the legislation would be preferred to that which has the effect of destroying it. (*Atma Ram* v. *State of Bihar,* AIR 1952 Pat. 359)

Where two constructions are possible, the Court will adopt that which will ensure the smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory. (*Chandra Mohan* v. *State of UP.,* AIR 1966 SC 1987at 1993.)

PRESUMPTION AGAINST OUSTER OF JURISDICTION OF COURTS

The ordinary right of recourse to the courts for the trial of any claim is one of the rights which is not to be curtailed except by clear words. So far as the jurisdiction of the High Court and the Supreme Court in respect of the issue of writs under the Constitution is concerned it cannot be taken away by any form of words.

The general presumption is that ordinary courts of law namely the civil courts, criminal courts, high courts and Supreme Court have jurisdiction over people. Any statute which takes away the jurisdiction of ordinary courts must be rarely resorted to, as people have the right to have free access to all the courts. Jurisdiction of civil courts The basic presumption of law is that all civil courts are empowered to decide all suits of civil nature. The basis of this presumption is that civil and criminal court have general jurisdiction over people and they have right to have free access to both civil and criminal court.

Section 9 of CPC

It was emphasized by the Supreme Court that the rule prescribed by section 9 of CPC is that the court shall, subject to provisions contained in the code, have jurisdiction to try al suits of civil nature excepting suits in which their cognizance is either expressly or impliedly barred. The law further presumes that a remedy in the ordinary civil courts must always be available to citizens.

Legal provisions excluding jurisdiction of civil courts and conferring jurisdiction to tribunals must strictly interpreted in such a way that as far as possible, the jurisdiction of civil court are not taken away. If the statute contains two interpretations, then the one conferring jurisdiction will prevail.

Exclusion of jurisdiction must be expressed or clearly implied. Not possible to curtail jurisdiction of High Court and Supreme Court except by an amendment to the relevant provisions in the constitution.

Jurisdiction of other courts

The general presumption is that a statute should not be given such an interpretation as to take away the jurisdiction of the court unless the language of the statute is unambiguous and clear.

Since jurisdiction has been given to court by legislation, it is the legislation alone which can take away the jurisdiction. If any statute provides for an express bar of jurisdiction of a civil or other court, then the scheme of the particular Act must provide adequate alternative remedies.

If the constitutionality of any provision is to be challenged, the writ of certiorari is the only recourse.

There is no sympathy for legislative provisions which oust jurisdiction of courts, because of the fact that the subjects are deprived of a remedy. If jurisdiction is conferred to a tribunal, the intention of the parliament is presumed to have jurisdiction to correct the decision of inferior tribunal.

Finality clause

Many modern statutes contain provisions which attempt to take away the jurisdiction of courts by making the decision of the tribunal final or conclusive.

The remedy by certiorari is never to be taken away by any statute except by the most explicit and clear words.

The word final means without an appeal. It does not mean without recourse to the writ of certiorari. It makes the decision final on fact bu not on law.

In Dhulabhai v State of MP, the Supreme court held that if a statute gives finality to the orders of a special tribunal, the jurisdiction of civil court must be held to excluded only if there is an adequate alternate remedy similar to what civil remedy would be.

In R v Medical Appeal Tribunal, Lord Denning said the word 'final' only means' without appeal' and the remedy of certiorari cannot be taken away because it is not an appeal.

Creating new and enlarging existing jurisdiction It is presumed that a statute does not create new jurisdiction or enlarge existing jurisdiction. Express language is required if an Act is to be so interpreted, as to create new jurisdiction or enlarge existing jurisdiction.

In Heathstar properties Ltd, A statute giving power to grant relief 'on being satisfied' on certain facts, does not confer on it any power to grant interim relief until such fact had been fully ascertained.

In State of UP v Mohammed Nooh, Ina departmental enquiry against the constable, the person holding the trial offered to be a witness and prosecuted the constable. There was a gross violation of the principles of natural justice. The court held that it can issue a certiorari.

PRESUMPTION AGAINST RETROSPECTIVE OPERATION OF LAW

Legislatures have legislative power to legislate retrospectively or to make the entire statute or some provisions to operate prospectively. However, penal statutes cannot create offences retrospectively in view of the prohibition contained in Art 20(1) of the Constitution of India.

It is a well recognized rule that a statute should be interpreted if possible, so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, The prima facie construction of the Act is that it is not to be retrospective.

There is a presumption against retrospective effect being given to a statute. When no contrary intention is shown the courts assume that the statute deals with the future and not with the past. No statute will be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary implication. (*P.Janardhanv. Union of India,* AIR (1970) Mys. 171at179)

Statutes creating substantive rights or liabilities and which are not procedural operate prospectively unless express words are used giving them retrospective effect.

When procedural laws are made or amended, they are retrospective in nature and they affect all pending actions in Courts or Tribunals. One must be very careful and make specific provisions in the Transitory Provisions stating clearly which provisions of the Act or amending statute apply only prospectively. A long list can be found in sec 97 of the Civil Procedure Code (Amendment) Act, 1976 whereby only prospectivity is given several procedural provisions of the amending Act.

Giving retrospectivity to substantive provisions in some cases may offend Art 14 of the Constitution or be quite unfair. Effort should be made to see that undue hardship is not caused.

Then we have declaratory statutes or provisions which are always retrospective in their operation.

Perpetual and temporary statues and rules:

A statute is either perpetual or temporary. It is perpetual when no time is fixed for its duration and such a statute remains in force until it is repealed either expressly or by implication: A temporary statute is one which is enacted to be in force for a specified period, unless it is repealed before that period. Finance Acts which are passed annually are not temporary and they often contain provisions of a general character which are of a permanent operation. The duration of a temporary statute can be extended by a fresh amendment or exercising the power delegated to the Government to extend its life.

When a temporary Act expires, and another is re-enacted, the normal rule is that under sec 24 of the General Clause Act, 1897, any appointment, notification, order, scheme, rule form or bye-law issued under the Act would, unless expressly provided otherwise, shall be deemed to have been made or issued under the provisions so re-enacted.

Validation of a statutory provision declared as ultra-vires and giving Retrospective effect to it:

By far one of the most difficult aspects of drafting concerns validating laws which have been declared ultra vires or validating them retrospectively.

If a statute has been struck down by the Court as being defective in certain respects and, therefore, unconstitutional, the legislature can remove the defect and give retrospectivity to the statutory removal of the defect and thus make the statute valid with retrospective effect. The statute can then validate the provision which has been struck down. It can give retrospective effect to the validation. Of course, it is obvious that where a statute is struck down on the ground of lack of legislative competence as not being within the scope of the subjects listed in the relevant list of the VII Schedule of the Constitution, there is no scope for validating such a law.

Care must be taken, while removing the defect retrospectively, that the judicial decision as such is not overruled by the legislation for that would be ultra vires of the principle of separation of powers between the legislature and the judiciary and as each has its own respective jurisdiction and powers. While a statute cannot be drafted in a manner just to override a judgment, it can, however, rectify the defect pointed out by the Court and remove the defect with retrospective effect. The validating section then uses the words 'Notwithstanding any judgment, decree or order of Court' and if this is properly done, it is permissible in law to validate the provision which is struck down by the Court and this will not amount to encroaching into the field earmarked for the judiciary under the doctrine of separation of powers.

By careless drafting, the legislature has sometimes failed either wholly or partly in trying to achieve validation of a statute. Such cases are many. (see Janapada Sabha Chindwara vs. Central Provinces Syndicate Ltd. (AIR 1971 SC 57) D. Cawasji Co vs. State of Mysore, AIR 1984 SC. 1980; State of Haryana vs. Karnal Coop. Farming Society Ltd: AIR 1994 SC 1; Govt. of A.P. vs. G.V.K. Girls High School AIR 2000 SC 2651. It is rather surprising that in spite of earlier judgments pointing out the manner in which a valid validating law could be passed retrospectively, mistakes have been committed as recently as in the year 2000. Curative legislations have to be carefully drafted. For example, if certain area was not validly included in a municipality, a validating Act which merely declares it to be included would be ineffective unless such area is to deemed to have been always previously included. (Delhi Cloth General Mills Co Ltd. vs. State of Rajasthan: AIR 1996 SC 2930. The same principle is applied in construing the machinery sections of a taxing statute so as to make that machinery workable (CIT vs. Mahaliram Ramjidas: A 19940 PS 124; Guru Sahai vs. CIT (AIR 1963 SC 1062).

LEGISLATIVE DRAFTING

PRINCIPLES AND PROCESS OF LEGISLATIVE DRAFTING

Legislative drafting is done by the legislative departments of Governments and it is legislation that controls and regulates the conduct of citizens. Constitutional provisions deal with human rights and it distributes legislative, executive and judicial power to various institutions and describes their functions, rights, duties and powers and privileges. Legislatures promulgate laws and there can be preceded by Ordinances issued by the Legislatures or Heads of the State and these Ordinances are replaced by statutes. Laws must be within the scope of the legislative powers of the particular legislature, be it Federal or State. The laws must be not violative of the human rights provisions or other provisions of a written Constitution. A written Constitution is not necessary if legislation is to be made and that was and is the position in the United Kingdom even today. The only change in that country in recent times has been that they have now a Human Rights Act, 2000 which came into force on the 2nd October, 2000.

Legislation can also be made by monarchs. Whatever be the nature of the political structure of a country, legislation is necessary to contain executive action and legislative draftsmen are necessary and have to develop the skills of drafting. The draftsman is not the author of the legislative policy, he merely tries to transform the legislative policy into words. The legislative policy is made by the political executive which belongs to the political party which is ruling the legislature or by the monarch who reigns over the country. The draftsman must, therefore, digest the legislative policy fully before he produces the instrument of legislation which can achieve the legislative purpose. This is different from 'interpretation' of legislation.

"The process by which a Judge (or indeed any person, lawyer or layman (who has occasion to search for the meaning of a statute)) construes from the words of a statute book a meaning which he either believes to be that of the legislature, or which he proposes to attribute to it, is called interpretation" (Salmond, Jurisprudence, 11th Ed. p. 152).

Words in any language are not scientific symbols having any precise or definite meaning, and language is but an imperfect medium to convey one's thought, much less of a

large assembly consisting of persons of various shades of opinion. It is impossible even for the most imaginative legislature to forestall exhaustively all the situations and circumstances that may emerge after enacting a statute where its application is called for.

A statute as enacted cannot be explained by the individual opinions of the legislators, nor even by a resolution of the entire legislature. After the enacting process is over, the legislature becomes *functus officio* so far as the particular statute is concerned, so that it cannot itself interpret it. It can, however, amend the statute by introducing Explanations as to the meaning of words in the legislation previously enacted.

Legislative definitions may deviate from reality or dictionary meanings so much that a 'building' may include an open platform having no wall or roof, and a 'brick kiln' may be excluded from the meaning of that word. For example, it is impossible to define when 'maintenance' of a machine ends and 'repair' starts or where 'repair' of a house ends and 'reconstruction' begins. Lord Cranworth LC said: "There is no possibility of mistaking midnight for noon; but at what precise moment twilight becomes darkness is hard to determine" (Jane Straford Boyse v. John T. Rossborough: (1857) 6 HLC 2)

"No draftsman can envisage all the circumstances which may possibly arise in the course of human conduct. From time to time, therefore, events occur which are either within the plain words of the statute or are yet outside its evident purpose or vice versa. This is the battleground on which are fought the battles between the literal constructionists and purposive constructionists" (Lord Millett, Construing Statutes: (1999) 20 Statute Law Review 107 (at 109)). Lord Du Parque stated that 'there is inevitable interaction between the methods of parliamentary drafting and principles of judicial interpretation'.

Statutes like the taxation laws are quite complex and run into very many clauses, provisos, Explanations, exemptions that it makes it extremely difficult for anybody to understand the meaning of the words much less the legislative intention. Thomas Jefferson, one of the founding fathers of the American Constitution said of such laws as follows:

"Statutes, from their verbosity, their endless tautologies, their involutions of case within case, and parenthesis within parenthesis, and their multiplied efforts at certainty, by saids and aforesaids, by ors and ands, to make them more plain, are really rendered more perplexed and incomprehensible, not only to common readers but also to the lawyers themselves."

In his *Decline and Fall of the Roman Empire,* Gibbon has described the attitude of the Locrians to the legal system. If a member of that community proposed an amendment in the

existing law, he had to stand forth in the Assembly with a noose round his neck. " If the law was rejected," said Gibbon, " the innovator was instantly strangled." To quote A. L. Goodhart: " There was, as we must all recognise today, considerable sense in that procedure."

The rule that a law expresses the intention of the legislature applied in the good old leisurely days when laws were few and the legislators had the time to scrutinise the laws carefully before passing them. The draftsman of today is supposed to prepare the maximum of laws within the minimum of time, to express the intention of some anonymous, mythical person whose identity is not easily established and to express that intention in language so clear that not only a reasonable man understands but a malicious man cannot misunderstand it. " It is essential," writes Montesquieu, " that only such words should be used by the law-giver as are bound to produce the same notions in the minds of all men."

Courts have often been severely critical of draftsmen. Says one judge, " This statute is so confused that it could not have been more confused, if confusion had expressly been aimed at." Lord Macmillan said about one section of the Trade Marks Act that it was, " couched in language of fuliginous obscurity." Lord Justice Scrutton in a judgment on the Rent Restrictions Acts regretted that he could not order the costs of a case before him to be paid by the draftsmen of the Acts and the members of the legislature who passed them. Yet, occasionally, one comes across a judge who understands the difficulties of a draftsman. There can be no better defence of a draftsman than the following classic passage from a judgment of Denning L.J. (as he then was) :

"The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. . . . It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give ' force and life ' to the intention of the legislature. . . . A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases." Certain views of Denning L.J.

expressed in this judgment were condemned by Lord Simonds in *Magor and St. Mellons R.D.C.* v. *Newport C o ~ p* .[1 952] A.C. 189 at p. 191.

SIMPLICITY, PRECISENESS, CONSISTENCY, ALIGNMENT WITH EXISTING LAW

Before actually drafting a Bill it is always advisable to prepare a rough " scheme " of the Bill. If the Bill is to be divided into Chapters, the heading of each Chapter and the subject matter of each of the clauses which is to go into each Chapter should be noted. At this stage it is not necessary to draft the clauses. What is necessary is to note down the subject-matter of each clause. The proposed marginal heading of a clause will generally give sufficient indication of the subject-matter of a clause. Care should be taken that the clauses are in a logical sequence, and follow the usual pattern of a Bill. The work of a draftsman is akin to that of an architect. What I have described as a rough scheme should form the plan which should be followed in raising the final structure.

A draftsman should use simple language. An American girl said of the " Ten Commandments " that they confuse your mind because they tell you what not to do but do not tell you what you ought to do. I wonder what that gracious girl would have thought of the bewildering mass of modern laws. It is puerile to contend that laws should be so drafted that everyone can understand them. How can a law relating to patents be drafted so that everyone understands it! There is the story of a judge who was hearing a patent case. An authority was cited to him. The judge inquired, " is that a book of recognised authority in this branch of the law?" Counsel replied in the affirmative. '(Well," the judge said, " I doubted whether the passage you read from it could be part of the Law of Patents because it sounds like common sense." But laws even on technical subjects like patents could be so drafted that they are intelligible to those who have some knowledge of the subject. Each clause of a Bill should contain one idea only. If an idea is complicated, it should be expressed in a series of sub-clauses. A sub-clause should not normally contain more than one sentence. Each clause of the Bill should be drafted on a separate sheet so that there is ample space for making corrections.

A draftsman should bear in mind the maxim laid down by that great parliamentary counsel Lord Thring that, " the same thing should invariably be said in the same words."

A draftsman should provide for all contingencies which are likely to arise. He should have what is called " divine prescience." Failure on the part of a draftsman to foresee certain contingencies has sometimes led the courts to adopt strange interpretations.

Generally, several drafts are prepared. All these drafts should be preserved. They indicate the working of the mind of the draftsman and are useful when any question arises why a particular provision has been put in a particular form in the final draft. No paper, including any paper containing rough notes, connected with the drafting of a Bill should be destroyed. Such papers which may appear to be useless at the time of drafting sometimes prove to be very valuable later on, when a draft Bill is subjected to close scrutiny in the legislature or elsewhere.

There should be an interval of a few days between the preparation of the first draft and its revision. If a draft Bill is revised immediately, the mind of the draftsman is likely to move in the same groove with the result that he may not notice any mistake. But if the draft Bill is revised after an interval of a few days, the draftsman will be able to bring a fresh mind to bear upon the draft and will thus be in a better position to detect any mistakes. The necessity of revising a draft Bill cannot be sufficiently emphasised. As has been said, " What appeared to the tired eye in the watches of the night to be without blemish, may be full of errors and inconsistencies under the cold light of morning." Time permitting, a draft Bill should be given as many readings as possible and it will be found that with each reading new mistakes are discovered.

If a draft Bill is referred to a Select Committee, the draftsman before attending meetings of the Select Committee should go through all relevant papers to refresh his mind since a long interval usually elapses between the preparation of a Bill and its discussion in a Select Committee. He should not rely upon his memory. He should study all the opinions given in connection with the draft Bill and give the draft Bill itself a thorough reading. His grasp over the draft Bill should be so thorough that he should be able to explain all the points that may be raised in the Select Committee.

A draftsman should not place himself in the predicament which confronted Browning who, when asked what his poem " Sordello " meant, replied: " When I wrote ' Sordello,' God and I knew what it meant; now only God knows."

DRAFTING GENERAL LAWS, SPECIAL LAWS, RULES, ORDERS.

The following are thegeneral principles of interpretation which a drafter has to bear in mind. According to Ilbert regard should be had to the general rules for the interpretation of statutes, as laid down in the ordinary textbooks. Among the most important of these are –

1. The rule that an Act must be read as a whole. Therefore, the language of one section may affect the construction of another.

2. The rule that an Act may be interpreted by reference to other Acts dealing with the same or a similar subject matter. The meaning attached to a particular expression in one Act, either by definition or by judicial decision, may be attached to it in another. And variation of language may be construed as indicating change of intention.

3. The general rule that special provisions will control general provisions.

4. The similar rule that where particular words are followed by general words (horse, cow, or other animal) the generality of the latter will be limited by reference to the former ('Ejusdem Generis' rule).

5. The general rule, subject to important exceptions, that a guilty mind is an essential element in a breach of a criminal or penal law. It should, therefore, be considered whether the words 'wilfully' or 'knowingly' should be inserted, and whether, if not inserted, they would be implied, unless expressly negated.

6. The presumption that the legislature does not intend any alteration in the rules or principles of the common law beyond what it expressly declares.

7. The presumption against an intention to oust or limit the jurisdiction of the superior courts.

8. The presumption that an Act of Parliament will not have extra territorial application.

9. The presumption against any intention to contravene a rule of international law.

10. The rule that the Crown is not bound by an enactment unless specially named.

11. The presumption against the retrospective operation of a statute, subject to an exception as to enactments which affect only the practice and procedure of the courts.

12. The rule that a power conferred on a public authority may be construed as a duty imposed on that authority ('may = shall').

OVERVIEW OF INTERPRETATION OF STATUTES

The following extract from the Oxford Dictionary of Law summarises the subject:

"*Interpretation of Statutes [is] the judicial process of determining, in accordance with certain rules and presumptions, the true meaning of Acts of Parliament.*"

The principal rules of statutory interpretation are as follows.

(1) An Act must be construed as a whole, so that internal inconsistencies are avoided.

(2) Words that are reasonably capable of only One meaning must be given that meaning whatever the result. This is called the literal rule.

(3) Ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. This is the golden rule.

(4) When an Act aims at curing a defect in the law any ambiguity is to be resolved in such a way as to favour that aim (the mischief rule).

(5) The *ejusdem generis* rule (of the same kind): when a list of specific items belonging to the same class is followed by general words (as in "cats, dogs, and other animals"), the general words are to be treated as confined to other items of the same class (in this example, to other domestic animals).

(6) The rule *expressio unius est exclusio alterius* (the inclusion of the one is the exclusion of the other): when a list of specific hems is not followed by general words it is to be taken as exhaustive. For example, "weekends and public holidays" excludes ordinary weekdays.

Ambiguities may occasionally be resolved by referring to external sources; for example, the intention of Parliament in regard to a proposed Act, as revealed by ministers during its passage through Parliament.

There are some general presumptions relating to the interpretation of statutes. They are presumed

(1) not to bind the Crown (including the sovereign personally);

(2) not to operate retrospectively so far as substantive (but not procedural) law is concerned;

(3) not to interfere with vested rights (particularly without compensation);

(4) not to oust the jurisdiction of the courts; and

(5) not to derogate from constitutional rights or international law.

But clear words or necessary implication may override these presumptions.

A consolidating statute is presumed not be intended to alter the law. but this does not apply to codifying statutes, which may be concerned with clarifying law that was previously unclear. Penal and taxing statutes are subject to strict construction, i.e. if after applying the normal rules of interpretation it is still doubtful whether or not a penalty or tax attaches to a particular person or transaction, the ambiguity must be resolved in favour of the subject.

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