UNIT I

INTERPRETATION OF STATUTES

The term interpretation means "To give meaning to". Governmental power has been divided into three wings namely the legislature, the executive and the judiciary. Interpretation of statues to render justice is the primary function of the judiciary. It is the duty of the Court to interpret the Act and give meaning to each word of the Statute. The most common rule of interpretation is that every part of thestatute must be understood in a harmonious manner by reading and construing every part of it together. The maxim "A Verbis legis non est recedendum" means that you must not vary the words of the statute while interpreting it. The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used.

The object of interpretation of statute is to determine the intention of the legislature conveyed expressly or impliedly in the language used in **Santi swarup Sarkar v pradeep kumar sarkar**[1], the Supreme Court held that if two interpretations are possible of the same statute,the one which validates the statute must be preferred.Interpretation is the primary function function of the court. The court interprets the legislature whenever a dispute arises before the court. Since the will of the legislature is generally expressed in the form of statutes, the prime concern of the court is to find out the intentions of the legislature in the language used by the legislature in the statute.

The court is not expected to to interpret arbitarily and consequently there have to be certain principles which have evolved out of the continous exercise by the courts. These principles are sometimes called rules of interpretation. The words interpretation and construction are generally used synonymously even though

[1] AIR 1997 Cal 197

jurisprudentially they are perhaps different. Interpreation means the art of finding out the true sense of an enactment by giving the words in their natural and ordinary meaning whereas construction means drawing conclusion on the basis of the true spirit of the enactment even though the same does not appear if the words used in the enactments are given their natural meaning. To ensure that justice is made available to all, the judicial system has beenevolved in all nations. It is extremely important and infact necessary also that the Courts interpret the law in such a manner that ensures 'access to justice' to the maximum. For this purpose, the concept of 'Canons of Interpretation' has been expounded. The Canons are those rules that have been evolved by the Judiciaryto help Courts determine the meaning and the intent of legislation.

Meaning and Classification of Statutes

Justice A.K. Shrivastava, Delhi High Court[2]

"Words spoken or written are the means of communication. Where they are possible of giving one and only one meaning there is no problem. But where there is a possibility of two meanings, a problem arises and the real intention is to be sorted out. It two persons communicating with each other are sitting together; they can by subsequent conversation clear the confusion and make things clear. But what will happen if a provision in any statute is found to convey more than one meaning? The Judges and the Lawyers whose duty it is to interpret statutes have no opportunity to converse with the Legislature which had enacted a particular statute. The Legislature, after enacting statutes becomes functus officio so far as those statutes are concerned. It is not their function to interpret the statutes. Thus two functions are clearly demarcated. Legislature enacts and the Judges interpret. The difficulty with Judges is that they cannot say that they do not understand a particular provision of an

[2] In an article published in Institute's Journal, Published in July – September 1995. Retrieved on August 14, 2015 at 1800 IST from www.ijtr.nic.in/articles/art21

enactment. They have to interpret in one way or another. They cannot remand or refer back the matter to the Legislature for interpretation. That situation led to the birth of principles of interpretation to find out the real intent of the Legislature. Consequently, the Superior Courts had to give us the rules of interpretation to ease ambiguities, inconsistencies, contradictions or lacunas. The rules of interpretation come into play only where clarity or precision in the provisions of the statute are found missing. Good enactments are those which have least ambiguities, inconsistencies, contradictions or lacunas. Bad enactments are gold mine for lawyers because for half of the litigation the legislative draftsmen are undoubtedly the cause. The purpose of the interpretation of the statute Is to unlock the locks put by the Legislature. For such unlocking, keys are to be found out. These keys may be termed as aids for interpretation and principles of interpretation."

SALMOND has defined it as "the process by which the Courts seek to ascertain the meaning of the Legislature through the medium of authoritative forms in which it is expressed."A Statute is an edict of the Legislature and it must be construed "to the intent of them who make it" and "duty of the judicature is to act upon the true intention of the Legislature- the mens or sententia legis"

Need For Interpretation:

In his The Law-Making Process, **Michael Zander** gives three reasons why statutory interpretation is necessary:

1. Complexity of statutes in regards to the nature of the subject, numerous draftsmen and the blend of legal and technical language can result in incoherence, vague and ambiguous language.

2. Anticipation of future events leads to the use of indeterminate terms. The

impossible task of anticipating every possible scenario also leads to the use of indeterminate language. Judges therefore have to interpret statutes because of the gaps in law. Examples of inderterminate language include words such as "reasonable". In this case the courts are responsible for determining what constitutes the word "reasonable".

3. The multifaceted nature of language. Language, words and phrases are an imprecise form of communication. Words can have multiple definitions and meanings. Each party in court will utilize the definition and meaning of the language most advantageous to their particular need. It is up to the courts to decide the most correct use of the language employed.

Classification Of Statutes:

A statute is a written law passed by a legislature on the state or federal level. Statutes set forth general propositions of law that courts apply to specific situations. A statute may forbid a certain act, direct a certain act, make a declaration, or set forth governmental mechanisms to aid society. A statute begins as a bill proposed or sponsored by a legislator. If the bill survives the legislative committee process and is approved by both houses of the legislature, the bill becomes law when it is signed by the executive officer (the president on the federal level or the governor on the state level). When a bill becomes law, the various provisions in the bill are called statutes. The term "statute"signifies the elevation of a bill from legislative proposal to law. State and federal statutes are compiled in statutory codes that group the statutes by subject.

These codes are published in book form and are available at law libraries. Lawmaking powers are vested chiefly in elected officials in the legislative branch. The vesting of the chief lawmaking power in elected lawmakers is the foundation of a representative democracy. Aside from the federal and state constitutions, statutes

passed by elected lawmakers are the first laws to consult in finding the law that applies to a case. A statute may be generally classified with refernce to its duration, method, object and extent of application.

A. Classification with reference to duration.

Such a mode classifies a statute as:

1) Temporary Statute.

2) Permanent Statute

A temporary statute is one where its period of operation or its validity has been fixed by the statute itself. Such an Act continues in force, unlesss repealed earlier, until the time so fixed. A permanent statute on the other hand, is one where no such period has been mentioned but this does not make the statute unchangeable; such a satute may be ammended or replaced by another act.

B. Classification with references to method.

Such a mode classifies a statute as:

1) Mandatory, imperative or obligatory statute.

2) Directory or Permissive Statute.

A mandatory statute is one which compels performance of certain things or compels that a certain thing must be done in a certain manner or form. A directory statute on the other hand, merely directs or permits a thing to be done without compelling its performance.

C. Classification with reference to object.

A statute may be classified with reference to its object as:

1) Codifying Statute

2) Consolidating Statute.

3) Declaratory Statute
4) Remedial Statute.
5) Enabling Statute.
6) Disabling Statute.
7) Penal Statute.
8) Taxing Statute.
9) Explanatory Statute.
10) Amending Statute.
11) Repealing Statute.
12) Curative or Validating Statute.

Among the above mentioned Statutes, Enabling Statute can be discussed below.

Enabling Statute.

An enabling statute is one which enlarges the common law where it is narrow. It makes doing of something lawful which would not be otherwise lawful. By an enabling act, the legislature enables something to be done. It empowers at the same time, by necessary implications, to do the indespensable things for carrying out the object of the legislation[3]. Acts authorising compulsort acquisition of land for public benefit of, for legalising public or private nuisanceare instances of enabling statutes. The conditions which have been put by an enabling act for the public goodmust be complied with as they are indespensible. Such a statute grants power to make rules etc. to carry out the purposes of the Act and these rules may provide for a number of enumerated matters in particular and without prejudice to the generality of the foregoing provisions. Sections 49-A and 49-A(2) of the Advocates Act as amended by Act 21 of 1964 is an illustration of this kind.

[3]Biddi Leaves and Tobacco Merchant Associationv State of Bonbay, AIR 1962 SC 486.

Meaning & Purpose

A statute which makes it lawful to do something which would not otherwise be lawful is called enacting law. A statute is a formal written enactment of a legislative authority that governs a state or city or country typically, statutes command or prohibit something, or declare policy. The word is often used to distinguish law made by legilative bodies from case laws, decided by courts, and regulations issued by government authorities. Statutes are sometimes referred to as legislations or "black letter law." As a source of law, statutes are considered primary authority (as opposed to secondary law). Ideally all statutes must be in harmony with the fundamental law of the land (constitutional).

This word is used in contradistinction to the commmon law. Statutes acquire their force from the time of their passage, however unless otherwise provided. Statutes are of several kinds; namely, Public or private. Declaratory or remedial. Temporary or perpetual. A temporary statute is one which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. A perpetual statute is one for the continuance of which there is no limited time, although it may not be expressly declared to be so. If, however, a statute which did not itself contain any limitation is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter.

Before a statute becomes law in some countries, it must be agreed upon by the highest executive in the government, and finally published as part of a code. In many countries, statutes are organized in topical arrangements (or "codified") within publications called codes ,as the United Sate Codes. In many nations statutory law is distinguished from and subordinate to constitutional law. One of the principles of law with regards to the effects of an enabling act is that if the legislature enables

something to be done, it gives power at the same time, by necessary implications, to do everything which is indespensable for the purposes of carrying out the purposes in view. This general rule under the law is that whenever the legislature gives any power to a public body to do anything of a "public character", the legislature means also gives to the public body all rights without which the power would be wholly unavailable, although such a meaning cannot be implied in relation to the circumstances arising accidentally only[4].

Thus, if any public body is authorised to make byelaws, it implies that it has also the power to enforce it. When a capacity or power is given toa publi body, there may be circumstances which is coupled with power a duty to exercise it or to exercise it in a manner in which it may only be exercised[5]. In other words, it would mean that if the legislature enables something to be done, it gives power at the same time by necessary implication to do anything which is indespensible for the purpose of carrying out the object in view: ubi aliquid concedetur, conceditur etiam id sine quo res ipsa non esse potest (i.e. where anything is conceded, there is conceded also anything without which the thing itself cannot exist)[5]. The grant of a right to do anything naturally implies the grant of the means of necessary for its exercise. This is wat is called as doctrine of implied powers. Quando lex aliquid concedit Concedere videtur et illud sine que res ipsa non esse potest,i.e, "whoever grants a thing is deemed to have that without whichthe grant itself would be of no effect"[6].

In India, similarly in Bidi Leaves and Tobacco Merchant Association v. St. of Bombay and others[7], the Supreme Court held that the statutory provisions would be a dead letter and cannot be enforced unless a subsidiary power is implied. Therfore, if it is found that a duty has been imposed or a power conferred on an authority by a

[4] In Re Dudley Corporation, (1882) 8 QBD 86 (93, 94), per Brett, LJ
[5] Sardar Govind Rao v. State of M.p., 1964 SC 269.
[6] Clarence v. Great N. of England Rly., (1845) 13 M and W 706 (721)
[7] The same concept has been given by Parke, B in Clarence Rly v. Great N. Eastern Rly. (1845) 13 M and W 706 (721) supra

statute, and it is further found that a duty cannot be discharged , unless some auxiliary power is assumed to have exist, it would be quite legitimate to invoke the doctrine of implied powers.

Construction Of Enabling Statutes:

The enabling words in a statute are to be construed as compulsory, whenever the object of the power is to effectuate a legal right. Thus, the Act which authorise the compulsory accquisation of land for public purposes and deal with public nuisance have a compulsory effect. Similarly, many other things can be done by an ActofParliament effect of an enabling act which gives power to a public body to do an act of public character, it carries with it the power to accomplish it, otherwise the power so given would be meaningless. Another rule is that where legislature lays down in express terms the mode of dealing with the particular matter, it excludes any other mode except as specifically authorised. This rule is expressed in the maxim, Expressio unius est exclusio alterius,i.e. (express enactment shuts the door to further implications)[8].

Whenver the case is clearly within the mischief, the words must be read so as to cover the case, if by any reasonable construction they could be read so as to cover it, though the words may point more exactly to another case. This is to be done rather than make such a case a casus omissus under the statute[9]. When the legislature clearly and distinctly authorises the doing of a thing which is physically inconsistent with the continuance of an existing right, the right is gone, because the thing cannot be done without abrogating the right[10].

[8] AIR 1962 SC 486.
[9] Whiteman v. Sadler, (1910) AC 514(527), per Lord Dunedin
[10] Gopalswami v. Secretary of Sate, AIR 1933 Mad 748.

Rules As To Discretionary Powers Given By Enabling Acts:

It is not necessary that intention of the Legislature should always be expressed in mandatory and directory enactments. Sometimes a statute is passed for the purposes of enabling something to be done – which means that the statute gives a discretionary power to the authorities, to carry out the purpose of the statutre in a manner which they deem fit, after considerationb of the local conditions and other circumstances, as the case may be. Discretionary power thus conferred by the statutes leaves the donee of the power free to use or not to use it, at its discretion[11]. But when an enabling act gives a discretionary power to persons to carry out the purposes of the statutes , discretion is absolute, that is to say. It is the duty of those persons to carry out that purposes . When such discretion has to be exercised by a Court of justice, it must be governed by rules and not by homour; it must not be arbitary, vague and fanciful but legal and regular[12].

However, permissive words are employed by the legislature to confer a power on Court to be exercised in the circumstances pointed out by the stattute, it becomes the duty of the court to exercise that power on proof of those circumstances. The use of the permissive words in such cases is the usual courtsey of legislature in dealing with the judicature[13]. Thus the word"may" is also capable of being contrued as to reffering compellable duty, particularly when it refers to powers conferred on Court[14].

Delegated Legislation In Conformity With Enabling Acts:

Legislation by the executive branch or a statutory authority or local or other body under the authority of the competent legislature is called "Delegated legislation". It permits the bodies beneath parliament to pass their own legislation. It is legislation made by a person or body other than Parliament. Parliament, through an Act of

[11] Craies – On Statute Law, 7th Edn, p, 259
[12] Digraj Kuer v. A.K. Narayan Singh, AIR 1960 SCC 444(449)
[13] R v. Wilkes, (1770) & Burr, 2527 (2539), per Lord Mansfield.
[14] Re Neath & Brecon Rly. Co. (1874) 9 Ch. App. 263 , per James, LJ.

Parliament, can permit another person or body to make legislation. An Act of Parliament creates the framework of a particular law and tends only to contain an outline of the purpose of the Act. By Parliament giving authority for legislation to be delegated it enables other persons or bodies to provide more detail to an Act of Parliament. Parliament thereby, through primary legislation (i.e. an Act of Parliament), permit others to make law and rules through delegated legislation. The legislation created by delegated legislation must be made in accordance with the purposes laid down in the Act. The function of delegated legislation is it allows the Government to amend a law without having to wait for a new Act of Parliament to be passed. Further, delegated legislation can be used to make technical changes to the law, such as altering sanctions under a given statute. Also, by way of an example, a Local Authority have power given to them under certain statutes to allow them to make delegated legislation and to make law which suits their area. Delegated legislation provides a very important role in the making of law as there is more delegated legislation enacted each year than there are Acts of Parliament. In addition, delegated legislation has the same legal standing as the Act of Parliament from which it was created.

Importance:

There are several reasons why “delegated legislation” is important.

Firstly, it avoids overloading the limited Parliamentary timetable as delegated legislation can be amended and/or made without having to pass an Act through Parliament, which can be time consuming. Changes can therefore be made to the law without the need to have a new Act of Parliament and it further avoids Parliament having to spend a lot of their time on technical matters, such as the clarification of a specific part of the legislation.

Secondly, delegated legislation allows law to be made by those who have the relevant expert knowledge. By way of illustration, a local authority can make law in

accordance with what their locality needs as opposed to having one law across the board which may not suit their particular area. A particular Local Authority can make a law to suit local needs and that Local Authority will have the knowledge of what is best for the locality rather than Parliament.

Thirdly, delegated legislation can deal with an "emergency situation"as it arises without having to wait for an Act to be passed through Parliament to resolve the particular situation.

Finally, delegated legislation can be used to cover a situation that Parliament had not anticipated at the time it enacted the piece of legislation, which makes it flexible and very useful to law-making. Delegated legislation is therefore able to meet the changing needs of society and also situations which Parliament had not anticipated when they enacted the Act of Parliament.

Grounds On Which Delegated Legislation Can Be Challenged:

A. Enabling or Parent Act is unconstitutional : In India, there is supremacy of the Constitution and therefore an act passed by the Legislature is required to be in conformity with the constitutional requirement and if it is found to be in violation of the constitutional provisions, the court declares it unconstitutional and void. If enabling or parent act (i.e the act providing for the delegation) is void and subordinate or delegated legislation made under the act will also be declared to be unconstitutional and therefore void. The limits of the Constitution may be express and implied.

Express Limit: Articles 13, 245 and 246 provide the express limits of the constitution. Article 13(1) provides that all laws in force in the territory of India immediately before the commencement of the constitution in so far as they are inconsistent with the provisions of Part III (fundamental rights) shall, to the extent of

the contravention, be void. According to article 13(2), the state shall not make any law which takes away orabridges the rights conferred by part III (i.e the Fundamental Rights) and any law made in contravention of this clause shall, to the extent of the contravention, be void. Article 13(3) makes it clear that for this purpose, unless the context otherwise requires , law includes any ordinance, order, by – law, rule, regulation, notification, custom or usage having in the territory of India, the force of law. The legislature, thus, cannot violate the provisions of part III of the constitution granting the fundamental rights. If the parent or enabling Act is violative of the Fundamental Rights granted by part III of the constitution, it will be declared by the court as unconstitutional and void, and the subordinate or delegated legislation made under the act will also be held to be unconstitutional and void.

Article 245 makes it clear that the legislative powers of the parliament and that of the state legislatures are subject to the provisions of the constitution. Parliament may make laws for the whole or any part of the territory of India and the legislatures of a state make laws for the whole or any part of the state. No law made by the parliament shall be deemed to be invalid on the ground that it would have extra territorial operation. The state legislature can make law only for the State concerned and, therefore, the law made by the state legislature having operation outside the state would be invalid[15]. In the matter of Cauvery Water Disputes Tribunal[16], the Karnataka Cauvery Basin Irrigation Protection Ordinance, 1991 was declared unconstitutional on certain grounds including the ground that it had extra territorial operation in as much as it interfered with the equitable rights of Tamil Nadu and Pondicherry to the waters of Cauvery River.

In short, no law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation. However, the law made by the state

[16] In The Matter Of Cauvery Water ... vs Date Of Judgment22/11/1991 on 22 November, 1991: Equivalent citations: 1992 AIR 522, 1991 SCR Supl. (2) 497

legislature may be challenged on the ground of extra territorial operation. If the parent act is declared to be unconstitutional, then the delegated legislation made under such act would also be declared to be unconstitutional and thus, void. Article 246 makes provisions in respect of the distribution of powers between the powers between the Parliament and the State legislatures. From article 246 and the seventh schedule, it becomes clear that the subjects have been divided into three categories – Union list, State list and Concurrent list. Parliament has exclusive power to make laws with respect to any of the matters or subjects enumerated in the Union list and of the legislature of any state has power to make laws for such state or any part thereof with respect to any of the matters or subjects enumerated in the State list. Parliament and State Legislatures both have power to make laws with respect to any of the matters or subjects enumerated in the Concurrent List, but In the case of conflict between the law made by Parliament and a law made by the State Legislature with respect to such matter or subject, the law made by Parliament shall prevail and the laws made by the State Legislature, to the extent of repugnancy. be void, unless the law made by the State Legislature has received the assent of the President.

Implied limit:

If the Enabling or Parent Act violates the implied limit of the Constitution, it will be ultra vires the Constitution and therefore It will be void and the delegated legislation made under the Act will also be unconstitutional and void. The implied limit of the Constitution Is that essential legislative function entrusted to the legislature by the Constitution cannot be delegated by it. The essential legislative function consists of the determination of the legislative policy and its formulation as a rule of conduct. The legislature delegating its legislative power must lay down the legislative policy and guidelines regarding the exercise of tin delegated power by delegate. The delegation of essential legislative function is taken as abdication of essential legislative function by the Legislature and this is not permitted by the Constitution.

B. Delegated legislation is ultra vires the Enabling Act: The validity of the subordinate or delegated legislation can be challenged on the ground that it is ultra vires the Enabling or Parent Act. If the subordinate or delegated legislation made by the delegate is in excess of the power conferred by the Enabling or Parent Act or is in conflict with the provisions of the Enabling or Parent Act or is made w ithout following the procedure required by the Enabling or Parent Act to be followed by the delegate, the delegated or subordinate legislation will be invalid on the ground that it Is ultra vires the Enabling or Parent Act. The validity of the exercise of power is tested on the basis of the Prussians as it stands currently and not on the basis of that it was before.

C. When it is made in excess of the power conferred by the Enabling Act: The subordinate or delegated legislation is held to be ultra vires the Enabling or Parent Act when it is found to be in excess of the power conferred by the Enabling or Parent Act. If the delegated legislation is beyond the power conferred on the delegated by the Enabling Act, it would be Invalid even if it has been laid before the Legislature. Where an administrative authority Is empowered by the Enabling Act to make by-laws to regulate market and the authority makes by-law which prohibits running of cattle market the by-law will be ultra vires the Enabling Act. In S.T.O. v. Abraham[17] the Act empowered the Government to carry out the purposes of the Act the Government made rule so as to fix the last date for filing the declaration forms by dealers for getting the benefit of concessional rates on inter-State sales. This rule was held to be ultra vires the Enabling Act on the ground that the Act empowered the Government for making rules for prescribing the particulars to be mentioned in the forms and it was not given power to prescribe a time-limit for filling the form.

[17] STO vs. K.I. Abraham [1967] 20 STC 367

D. When delegated legislation is in conflict with the Enabling or Parent Act: When the delegated legislation is found to be directly or indirectly in conflict with the provisions of the Enabling Act or Parent Act, it is held to be ultra vires the Enabling or Parent Act. In Delhi Transport Undertaking v. B.R.I. Hajelay[18] , a rule was declared Invalid on the ground that it was in conflict with the provisions of the Enabling or Parent Act. According to Section 92 of the Delhi Corporation Act. 1957, all persons drawing salary less than 350 rupees per month shall be appointed only by general Manager of the Delhi Transport Undertaking. According to Section 95 of the Act, no person can be dismissed by any authority subordinate to the authority who has appointed him. The rules made under the Act empowered the General Manager to delegate all his powers to the Assistant General Manager. The rule was held to be In conflict with the aforesaid provision of the Parent Act. The effect of the rule was that a person appointed by the General Manager could be dismissed by the Assistant General Manager. i.e. a person could be dismissed by an authority subordinate to the authority who had appointed him while Section 95 of the Act provided that no person can be dismissed by an authority subordinate to the appointing authority. Thus, the rule was in conflict with Section 95 of the Act. Consequently the rule was held to be invalid.

Enabling Statute Is Ultra Vires The Constitution:

The word ‘Ultra' means beyond and ‘Vires' means powers. A simple meaning of this term is ‘beyond powers'; in a strict sense, therefore, the expression is used to mean any act performed in excess of powers of the authority or the person who performs the act. Judicial control of delegated may take different forms. There is rule of Constitutionality of delegated legislation. Doctrine of Ultra vires is another method

[18] 1972 AIR 2452, 1973 SCR (2) 114 ... By the Delhi Municipal Corporation Act, 1957

of such control the courts have formulated yet another doctrine in which they search for legislative policy or guidance for a valid delegation of legislative power.

In a broader sense the ultra vires principle provided the justification for constraints upon the way in which the power given to the administrative agency was exercised. The agency must comply with rules of fair procedure, it must exercise its discretion to attain only proper and not improper purposes, it must act on relevant and not irrelevant considerations and it must not act unreasonably[19].

As per Halsbury's Laws of England, "Ultra vires" in its proper sense denotes some act or transaction on the part of a corporation which although not unlawful or contrary to public policy if done by an individual is yet beyond the legislative powers of the corporations defined by the statue under which it is formed, or the statues which are applicable to it, or by its character or memorandum of association. In V.M. Kurian v .State of Kerala[20], when the State Government of Kerala granted exemption from the operation of the Kerala building Rules 1984 for the construction of a high rise building in Cochin without the recommendation of greater Cochin Development authority and the Chief Town Planner as provided in the rules, the Supreme Court held that the order in ultra vires.

In case of interpretation of statute under which legislative power have been delegated is itself unconstitutional, then the delegated legislation originating from that statute will also be unconstitutional. Unconstitutionality may either be due to excessive delegation or breach of a fundamental right or any other Constitutional provision. For instance, if a statute contains a delegation clause involving the abridgement of fundamental rights, it is ultra vires the Constitution. Similarly, if a state legislature delegates the power to make rules on a subject falling in the union list, it is clearly

[19] P.P. Craig, Administrative Law, (London: Sweet and Maxwell Limited), 2003, p 5.
[20] (2001) 4 SCC 215

beyond the powers of the state legislature and hence unconstitutional. In Chintamon Rao v State of M.P[21], the enabling empowered the Collector to make regulations for regulating or prohibiting the manufacture of bidis during the agricultural season. The purpose of this provision was to induce the laborers to engage in agricultural operations during the season and thus to improve production. The collector totally prohibited the manufacture of bidis during the agricultural season with a view of diverting the entire labour in to the agricultural sector. The statutory provision was struck down by the Court as it amounted to an unreasonable restriction upon the fundamental rights to carry on an occupation guaranteed by Art. 19 (1) (g) of the Constitution. Subordinated legislation was also held invalid because the enabling provision itself was unconstitutional.

Conclusion:

Enabling statutes is important to ensure that provisions are in place which give the program and its representatives clear legal authority to access facilities and records. When problems with access arise, the enabling statutes are used as the tools to resolve these issues quickly. Those tools include the authority of the program or some other entity in the state . Thus, to draw conclusion it can be said that if the subordinate or delegated legislation goes beyond the scope of authority concerned on the delegate or it is in conflict with the Parent or Enabling Act, it is called substantive ultra vires. The validity of the subordinate or delegated legislation may be challenged before the Courts on this ground. It is a mechanism to curb down the exploitation of power by the administrative authority as we all know that “power corrupts and absolute power corrupts absolutely”. However in this field there is lack of development and there is no substantial change in the concept all though the changing nature of the current legislative method has widen the horizon of the power of the authority by giving them power to act according to the need of the time, even sometimes travelling beyond the restrictions.

[21] AIR 1951 SC 118.

UNIT II

AIDS TO INTERPRETATION INTERNAL & EXTERNAL AIDS

Whichever approach the judges take to statutory interpretation, they have at their disposal a range of material to help. Some of these aids may be found within the piece of legislation itself, or in certain rules of language commonly applied in statutory texts - these are called internal aids. Others outside the piece of legislation, are called external aids. Since 1995, a very important new external aid has been added in the form of the Human Rights Act 1998.

Internal Aids

By the virtue of the intrinsic aid the court finds out the real meaning andthe will of the legislature only in case of ambiguity in a statute. If there isno ambiguity, it is not necessary to take help from the intrinsic aids andthe court used to confer the plain meaning of the statutes.

The literal rule and the golden rule both direct the judge to internal aids, though they are taken into account whatever the approach.

- The statute itself: To decide what a provision of the Act means, the judge may draw a comparison with provisions elsewhere in the statute. Clues may also be provided by the long title of the Act or subheadings within it.

- Explanatory notes: Acts passed since the beginning of 1999 are provided with explanatory notes, published at the same time as the Act.

- Rules of language: Developed by lawyers over time, these rules are really little more than common sense, despite their intimidating names. As with the rules of interpretation, they are not always precisely applied.

Examples include:

Ejusdem generis - General words which follow specific ones are taken to include only things of the same kind. For example, if an Act used the phrase 'dogs, cats and other animals', the phrase 'and other animals' would probably include other domestic animals but not wild ones.

Expressio unius est exclusio alterius - Express mention of one thing implies the exclusion of another. If an Act specifically mentioned 'Persian cats', the term would not include other breeds of cat.

Noscitur a sociis - A word draws meaning from the other words around it. If a statute mentioned 'cat baskets, toy mice and food', it would be reasonable to assume that 'food' meant cat food, and dog food was was not covered by the relevant provision.

Presumptions: The courts assume that certain points are implied in all legislation. These presumptions include the following:

(i) Statutes do not change the common law;

(ii) The legislature does not intend to remove any matters from the jurisdiction of the courts;

(iii)Existing rights are not to be interfered with;

(iv) Laws which create crimes should be interpreted in favour of the citizen where there is ambiguity;

(v) Legislation does not operate retrospectively;

(vi) Statutes do not affect the monarch.

It is always open to Parliament to go against these presumptions if it sees fit - for example, the European Communities Act 1972 makes it clear that some of its provisions are to be applied retrospectively. But, unless the wording of a statute

makes it absolutely clear that Parliament has chosen to go against one or more of the presumptions, the courts can assume that the presumptions apply.

Some indication of the weight which judges feel should be attached to presumptions can be seen in the case of ***L'Office Cherifien des Phosphates Unitramp SA v Yamashita-Shinnihon Steamship Co. Ltd. (The Boucraa) (1994),*** which concerned the presumption against retrospective effect. The House of Lords stated that the important issue was 'simple fairness': if they read the relevant statute as imposing the suggested degree of retrospective effect, would the result be so unfair that Parliament could not have intended it, even though their words might suggest retrospective effect? This could be judged by balancing a number of factors, including the nature of the rights affected, the clarity of the words used and the background to the legislation.

What remains unclear is how judges decide between different presumptions if they conflict, and

Why certain values are selected for protection by presumptions, and not others. For example, the presumption that existing rights are not to be interfered with serves to protect the existing property or money of individuals, but there is no presumption in favour of people claiming state benefits.

TITLE

Title can be divided into two heads:

(a) short title and

(b) long title.

Generally a question comes to the mind what is short title?

(i) Short title The short title is a nick name given to the statute for identification only, such as the Indian Evidence Act 1872, the Indian Panel Code, 1860 etc. It identifies an Act but does not describe it. It only

provides a facility of reference[22]. As it is used for references so it can not be treated as an aid of interpretation. Earlier the researcher told about the short title and now the meaning of the long title is given here.

(ii) **Long title** The long title is set out at the head of the statute and gives a fairly full description of the general purpose of the act: for instance, "An Act to make fresh provision with respect to investment by trustees and person having the investment powers of trustees, and by local authorities, and for purposes connected therewith." (Investment Act 1961)[23].

(iii) **History of long title** Earlier the old British practice was that they used to place the Bill before the King and at the answer of the King the Parliament used to make a record and put a title on it. It was the customary practice and at the reign of Henry VI this practice came to an end. ---. Although for several centuries the title of a statute has been to it by Parliament, until quite recently it was not considered a part of the statute and on this ground held to be excluded from consideration in construing statute.

In the case of Claydan v/s Green[24] , Justice Wills deserved that the title of the Bill was mere, "contemporarean expositio" and every matter recording the bill did not change the value of the title and not to be given any importance. He also told it is not the part of the statute. In the case of Salkeld v/s Johnson[25] , the court said that the title is not part of the statute and it ought not to be taken into consideration.

[22]Bhattacharyya, T: The Interpretation of Statutes; 6 th ed., p. 1.
[23]Langar, P. St. J: Maxwell on the Interpretation of Statutes; 12th ed., p. 3.
[24](1868) L.R.3C.P. 511.
[25](1868) 2EX 256.

(iv) **Principle involved** At the present scenario the long title is taken for the purpose of interpretation as and when the statute is in a position of ambiguity and the meaning is not clear in the statute. Various case decisions show that the court takes help from the title in the case of confusion. In case of unambiguity no needs to take help from the title. Long title fully describes the general purpose of the Act. It is the recital of the whole policy of the enactment. In the case of Jones v/s Sherington[26] it is held that the modern view, which seems to have emerged gradually during the nineteenth century, is different and it is now settled law that the title of the statute is an important part of the Act and may be referred for the purpose of asserting its general scope.

In the case of R v/s Bates and Russell[27], as stated by DONOVA, J.: "The long title is a legitimate aid to construction –. When Parliament proclaims for the purpose of the Act is, it would be wrong to leave that out of account when construing the Act – in particular, when construing some doubtful or ambiguous expression. In many cases the long title may supply the key to the meaning. The principle as, I understand it, is that where something is doubtful or ambiguous the long title may be looked to resolve the doubt or ambiguity, but in the absent of doubt or ambiguity, the passage under construction must be taken to mean what it says, so that if its meaning be clear, that meaning is not to be narrowed or restricted by reference to the long title."

(v) **Judicial decision** In a case[28]the court said that the title can be taken as an aid of interpretation of the statute. In Fisher v/s Raven[29] , the House

[26](1908) 2K.B. 539.
[27](1952) 2 All ER 842, p. 844.
[28]Shaw v/s Ruddin.
[29][1964] A.C 210.

of Lords held that the obtaining of credit referred in section 13(I) of the Debtors Act 1869 was the obtaining of credit in respect of payment or repayment of money only. The receipt of money on a promise to render services or deliver goods in the future was not under the scope of section 13(1) of the Debtors Act 1869. Lord Dilhore L.C. interpreted the word, "obtained credit" in the light of long title and its purpose. The long title of the Act reads, "An Act for the Abolition of Imprisonment for Debt, for the punishment of fraudulent debtors and for other purposes." The views of the Lords was that the "obtained credit" in section 13 means, and only means, credit for the payment of money. In Ward v/s Halman[30], a person who had been shouting abuse at another on the highway was charged with insulting behaviour under section 5 of the Public Order Act 1936. It was argued that section 5 was limited in scope to political meetings and the like and did not extend to the case of two neighbours quarrelling on the road, for by the long title the Act was "to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of the public order on the occasion of public processions and meetings and in public places." Lord Parker C.J. refused to accept this argument, and gave a literal interpretation to the wide and "completely unambiguous" words of section 5.

In the case of Vacher & Sons v/s London Society of Compositors[31], Lord Justice Multon observed that the title is the part of the statute itself and it is legitimate for the purpose of the interpretation as a whole. In India, the Supreme Court also accepted the view of England and regarded that title is a part of statute and subject to interpretation of a

[30](1964) 2Q.B. 580.
[31](1930) Act 107.

statute. In the case of Poppatlal Shah v/s State of Madras[32], the Madras Sell Tax Act, 1939 was considered "An Act to provide for the levy of a general tax on the sale of good in the Province of Madras." But here the authority imposed sell tax on good which is entered in the city of Bombay. It was argued that the sell tax was levied or not? The court takes helps from the title and said that the tax is levied on Madras province only and outside of Madras this tax is not used as because the title uses the tax for the province of Madras only.

In the case of Manoharlal v/s State of Punjab[33], the appellant, a shopkeeper, was convicted for contravening the provisions of section 7(1) of the Punjab Trade Employees Act, 1940. Under the Act, he was required to keep his shop closed in a specific day. But he had closen his shop as a "closed day". He contented that the Act did not apply to his shop as he did not employ any stranger but he himself, alone, worked in the shop. In support of the contention he relied on the long title which read: "An Act to limit the hours of work of shop Assistance and Commercial Employees and to make certain regulation concerning their holidays, wages and terms of service." It was held that: The long title no doubt indicates the purpose of the enactment, but it cannot obviously control the express provision of the Act such as Section 7(1). The purpose of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested. It is in the light of the purpose that the provisions of the Act have to be construed. The Act is concerned with the welfare of the worker and seeks to prevent injury to it, not merely from the action of the employer but also from his own.

[32]AIR 1953 SC 274.
[33]AIR 1961 SC 418.

In Aswani Kumar v/s Arabinda Bose[34], the petitioner who was an Advocate of the Calcutta High Court also the Supreme Court filed in the Registry in the Original side a warrant of authority executed in his favour to appear for his client. On the ground that under the High Court Rules and Orders, Original Side, an Advocate could not act but only plead, the warrant of authority was returned. The petitioner argued that he being an Advocate of the Supreme Court had a right to act and plead all by himself without any instructions from an Attorney. The Supreme Court looked at the long title of the Supreme Court Advocate (Practice in High Courts) Act 1951, which said: An Act to authorize Advocates of Supreme Court to practice as a right in any High Court and accepted the contention of the petitioner.

(vi) Conclusion Interpretation is the process by which the courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed. The court finds out the will of the legislature through the mechanism of interpretation as and when the statutes are in ambiguity. A statute which is the will of legislature is constituted with particulars of (i) short title (ii) long title (iii) preamble (iv) marginal notes (v) headings (vi) definition of interpretation clauses (vii) provisos (viii) illustrations (ix) exceptions and saving clauses (x) explanation (xi) schedules (xii) punctuation.

These are the inside of a statute and called the intrinsic aid of interpretation. As and when there is an ambiguity, and then the court takes help from the intrinsic aid for interpreting to find out the real meaning and the intention of the legislature. Specially, the long title determines the main purpose of the Act. It also provides the objective,

[34]AIR 1952 SC 369.

scope, principle and policy of the enactment. The observations of AYYANGER, J: "The long title of the Act – on which learned counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main purposes of the enactment but cannot obviously, control the express provisions of the Act."[35]

PREAMBLE

(i) Meaning

Preamble of an enactment like the long title is a part of the statute.

But it more broadly and comprehensively, denotes the scope, object and purpose of the Act than the long title. Preamble is in the nature of a prefactory statement, setting out thereason, motive and object which are sought to be achieved by theenactment. Preamble has the function to express certain facts. Seeing thepreamble of Indian Constitution it is easily accessible the motive andobject of the founding fathers that they wanted to make India into "Sovereign Socialist Secular, Democratic Republic." They wanted tosecure justice, liberty, equality, fraternity to every citizen.

(ii) Importance

The preamble of a statute is not an enactment buta mere recital of the intent of its framers and the mischiefs to be remedied and it may beconsidered as a key to the construction of the statute whenever theenacting part is open to doubt: but it can not restrict or extend theenacting part when the latter is free from doubt[36].

(iii) Utility of preamble

The help from the preamble can be taken when the answer is in positive sense. It has the function to explain the certain fact.

[35]Supra 32 at p. 274.

[36] Sarathi, Vepa. P: Interpretation of Statutes; 1st ed. p. 250.

It has been unequivocally observed that if the language of anenactment is clear and unambiguous, the preamble as no part to play ininterpretation. But if more than one interpretation is possible of aparticular provision, help can be taken from the preamble of the Act tofind out its true meaning[37].

In a case[38], Lord Hold held that preamble is not the part of thestatute but Lord Coke said that preamble is a key to open the mind of theframer.

In a case[39], Justice Dier observed that preamble is the key to openthe mind of the makers of the act and the mischief, they intended tosuppress.

In Brett v/s Brett[40],the words of SIR JOHN NICHOLL: "It is tothe preamble more specially that we are to look for the reason or spirit ofevery statute, rehearsing this, as it ordinary does, the evil sought to beremedied, or the doubts purported to be removed by the statute, and soevidencing, in the best and most satisfactory manner, the object or theintention of the legislature in making or passing the statute itself."

In Re Berubery case, it is said that the preamble is the part of the statute.

(iv) Case laws

In the case of Att. Gen. v/s H.R.V. Prince Ernest Augustus of Hanover[41] Lord Normand said: "when there is a preamble it is generallyin its recitals that the mischief to be remedied and the scope of the Act aredescribed. It is therefore, clearly permissible to have recourse to it as anaid to construing the enacting provisions. The preamble is not, however,of the same weight as an aid to construction of a section of the Act as areother relevant enacting word to be found elsewhere in the Act or even inrelated Acts. There may be no exact correspondence between preambleand enactment, and the enactment may go beyond, or it may fall short ofthe indications that may be gathered from the preamble. Again thepreamble cannot be of much or any assistance in construing provisionswhich embody qualifications or exceptions from the operation of thegeneral purpose of the Act. It is only when it conveys a clear

[37] Bhattacharyya, T: op.cit., p. 161.
[38] Mills v/s Willam.
[39] Stowell v/s Lord Zouch.
[40] (1826) 162 ER 456, pp. 458, 459.
[41] [1987] A.C. 436

and definitemeaning in comparison with relatively obscure or indefinite enactingwords that the preamble may legitimately prevail. The courts areconcerned with the practical business of deciding his, and when theplaintiff puts forward one construction of an enactment and the defendantanother, it is the court‟s business in any case of some difficulty, afterinforming itself of what I have called the legal and factual contextincluding the preamble, to consider in the light of this knowledge whetherthe enacting words admit of both the rival construction put forward. Ifthey admit of only one construction, that construction will receive effecteven if it is inconsistence with the preamble, but if the enacting words arecapable of either of the constructions offered by the parties, theconstruction which fit the preamble may be preferred."

Eton College v/s Minister of Agriculture[42] was a case in whichthe enacting words were unambiguous and so could not be controlled bythe preamble.

In a case[43] it has been held by the court that preamble legitimatelyrefer to remove any ambiguity, to fixed the meaning of the words whichmay have more than meaning.

The majority judgement in Keshavanand[44] and Minerva Mills[45]strongly relied upon the preamble in reaching the conclusion that thepower of amendment conferred by Article 368 was limited and did notenable parliament to alter the basic structure of framework of theconstitution.

In Burrankur Coal Company v/s Union of India[46], the SupremeCourt was required to interpret Section 4(1) of the Coal Bearing Areas(Acquisition and Development) Act, 1957 according to which (wheneverit appears to the Central Government that coal is likely to be detainedfrom land in any locality, it may be notification in the official gazette,give notice of its intention to prospect for coal therein: The preamble of this Act, however reads, "An Act to establish in the economic interest ofIndia greater public control over the coal mining industry and itsdevelopment providing for the

[42] [1964] ch. 274.
[43] K.P. Keswani v/s State of Madras.
[44] AIR 1973 SC 1461.
[45] AIR 1980 SC 1789.
[46] AIR 1961 SC 954.

acquisition by the State of "unworked land" containing or likely to contain coal deposits or of rights in or oversuch land for the extinguishment or modification of such rights accruingby virtue of any agreement, lease, licence or otherwise, and for mattersconnected therewith. It was argued that on the basic of section 4(1)acquisition of only virgin land could be begun in view of the use of thewords „unworked land" containing or likely to contain coal deposits or ofrights in or over such land for extinguishment or modification of suchrights accruing by virtue of any agreement, lease, licence or otherwise,and for matter connected therewith. It was argued that on the basic ofsection 4(1) acquisition of only virgin land could be begun in view of the use of the word "unworked land" in the preamble could not be taken todistort the clear intention of the legislature found out from theunambiguous language of the provision. Therefore, the provisionempowers the government to issue notification showing its intention toprospect any land including virgin land.

(v)Conclusion

The preamble of a statute is a prefactory statement and it also explains the purpose, reason and motive of the statute. It can be said that preambleis the key which opens the mind of the legislature. The utility of thepreamble diminishes on a conclusion as to clarity of enacting provision.

In Re Chaeko case, the following principles are held by the courts:

The principles are:

(1) The purpose of preamble to indicate in general the object of the legislature.

(2) It cannot invoke to determine the well acquainted Act.

(3) If the enacting words of the statutes are play enough, the preamble cannot limit the enactment.

(4) In case of the unambiguous this principle cannot be utilized.

(5) General term of preamble does not indicate all the mischief which are to be found in the enacting provision, than theenacting provision rule over the preamble.

(6) Where it is clear that the enactment used very general language intend to clear the scope then the preamble cannot be used.

MARGINAL NOTES

Marginal notes is the side notes which catches the eye and generally it is not taken for the interpretation purpose.Although opinion is not uniform the weight of authority is in favourof the view that the marginal not appended to a section cannot be used for construing the section[47].

In the case of Chandler v/s D.P.P. Dub[48],the House of Lord saidthat side not could not be used as an aid of interpretation.

In the case of C.I.T. v/s Ahmedhai Umarbhai & Co.[49],the courtsaid that marginal notes in an Indian statute as an act of Parliamentcannot be referred to for the purpose of construing the statute.

(i) Principles

In the olden times help used to be taken sometimes from the marginal notes when the clear meaning of the enactment is in doubt. Butthe modern view of the courts is that marginal notes should have no roleto play while interpreting a statute. The basis of this view is that themarginal notes are not parts of a statute because they are not inserted bythe legislators nor are they printed in the margin under the instructions orauthority of the legislature. These notes are inserted by the drafters andmany times they may be in accurate too. However, there may beexceptional circumstances where marginal notes are inserted by thelegislatures and therefore, while interpreting such an enactment help canbe taken from such marginal notes. The constitution of India is such acase. The marginal notes were inserted by the Constitution Assembly and,therefore, while interpreting the Indian Constitution, it is alwayspermissible to seek guidance and help from the marginal notes[50].

(ii) Case Laws

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[47] Singh, G.P: Principle of Statutory Interpretation; 9th ed. p. 155.
[48] [1964] A.C. 763.
[49] AIR 1950 SC 134.
[50] Bhattacharyya, T; op.cit., pp. 165-166.

In the case of Bengal Immunity Co. Ltd. v/s State of Bihar[51]marginal notes appended to Articles of the constitution have been held toconstitute part of the constitution as passed by the constituent Assemblyand therefore they have been made use of in construing the Articles, e.g.Art 286, as furnishing Prima facie," "some clue as to the meaning andpurpose of the Article."

In S.P. Gupta v/s President of India[52], the Supreme Court heldthat if the relevant provisions in the body of a statute firmly point towardsa construction which would conflict with the marginal note has to yield.If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid toconstruction.

In P. Aisha Potty v/s Returning Officer, Kollar District Panchayath[53], the High Court of Kerala held that the marginal note of Article 24 of the constitution, namely, "Bar to interference by courts inelectoral matters" can be relied upon for „interpretation of provision onlyif there is ambiguity, the words of the main provision itself lends key toits interpretation and the marginal note cannot control the same. Sinceneither this Article nor section 88 of the Kerala Panchayat Raj Act, 1994,there is no intention to oust jurisdiction of civil court from electionmatter.

(iii)Conclusion

In K.P. Varghese v/s Income Tax Officer[54], it was stated by theSupreme Court that while it is undoubtedly true that the marginal note toa section cannot be referred to for the purpose of construing the section, itcan certainly be relied upon as indicating the drift of the section or toshow what the section is dealing with. It cannot control the interpretationof the words of a section particularly when the language of the section isclear and unambiguous but, being part of the statute, it prima facie furnishsome clue as to the meaning and purpose of the section.Besides this a lot of

[51] AIR 1955 SC 661.
[52] AIR 1982 SC 1922.
[53] AIR 2002 Ker 89.
[54] AIR 19871 SC 1922

cases shows that in case of constitutionalmatter, the marginal note can be taken into consideration to resolve theambiguity in a statute.

Punctuations

Let us take some Illustrations- They form part of the statute and although forming no part of the section, are of relevance in the construction of the text of the Section.

Interpretation Clauses- it is common to find in a statute "definitions" of certain words and expressions used elsewhere in the body of the statute. These definitions are generally very useful while interpreting the meaning of the ambiguous terms.

Proviso- when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subjectmatter of the proviso.

Explanation- an explanation is at times appended to a section to explain the meaning of words contained in the Section.

Schedule- schedules appended to statutes form part of the statute. They are added towards the end and their use is made to avoid encumbering the sections in the statute with matters of excessive details.

EXTERNAL AIDS:

External aids to interpretation of statutes include Parliamentary History, Historical Facts and Surrounding Circumstances, Later Scientific Inventions, Reference toOther Statutes (pari materia) & Use of Foreign Decisions.

Each of the abovementioned constituents of external aids to construction have been dealt briefly in the duecourse of my work.

PARLIAMENTARY HISTORY

The ingredients of Parliamentary History are the bill in its original form or the amendments considered during its progress in the Legislature, Speech of theminister who introduced the bill in the Parliament which is also referred to asStatements of Objects and Reasons, Reports of Parliamentary debates andresolutions passed by

either House of the Parliament and the Reports submitteddifferent Parliamentary Committees.

According to the traditional English view the Parliamentary History of a statute was not considered as an aid to construction. The Supreme Court of India in the beginningenunciated the rule of exclusion of Parliamentary History in the way it was traditionallyenunciated by the English Courts but on many an occasion, the court used this aid inresolving questions of construction[55].

In Indira Sawhney v. Union of India[56], while interpreting Article 16(4) of the Constitution the Supreme Court referred to Dr. Ambedkar's speech in the ConstituentAssembly as the expression backward class of citizens' is not defined. The court held thatreference to Parliamentary debate is permissible to ascertain the context, background andobjective of the legislatures but at the same time such references could not be taken asconclusive or binding on the courts. Thus in the Mandal Reservation Case, the SupremeCourt resorted to Parliamentary History as an aid to interpretation.

In the Ashwini Kumar's Case[57] (1952), the then Chief Justice of India Patanjali Shastri quoted that the Statement of Objects and Reasons should not be used as an aid tointerpretation because in his opinion the Statement of Objects and Reasons is presentedin the Parliament when a bill is being introduced. During the course of the processing ofthe bill, it undergoes radical changes. But in the Subodh Gopal's Case[58] (1954), Justice S.R. Das although he fully supported Chief Justice Patanjali Shastri's views in the Ashwini Kumar's Case[59] but he wanted to use the Statement of Objects and Reasons to protect the sharecroppers against eviction by the new buyers of land since zamindari system was still not abolished and land was still not the property of the farmers. So Justice S.R. Das took the help of Statements of Objects and Reasons

[55]Refer Generally, Singh G.P., Principles of Statutory Interpretation, 221 (Wadhwa and Company, Nagpur, Tenth Edition, 2006)
[56]Indira Sawhney v. Union of India, AIR 1993 SC 477
[57]Ashwini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369.
[58]State of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92.
[59] Supra note 57

to analyse the social, legal, economic and political condition in which the bill was introduced. In Harsharan Verma v. Tribhuvan Narain Singh[60], the appointment of Tribhuvan Narayan Singh as the chief minister of Uttar Pradesh was challenged as at the time of his appointment he was neither a member of Vidhan Sabha nor a member of Vidhan Parishad. While interpreting Article 164(4) of the Constitution, the Supreme Court held that it did not require that a Minister should be a Member of the Legislature at the time of his being chosen as such, the Supreme Court referred to an amendment which was rejected by the Constituent Assembly requiring that a Minister at the time of his being chosen should be a member of the Legislature.

HISTORICAL FACTS AND SURROUNDING CIRCUMSTANCES

Historical facts are very essential to understand the subject matter of the statute or to have regard to the surrounding circumstances which existed at the time of passing of the statute. The rule of admissibility of this external aid is especially useful in mischief rule. The rule that was laid down in the Heydon's Case[61] (1584), has now attained the status of a classic.

The mischief rule enables the consideration of four matters in construing an act:

- What was the law before the making of the Act?
- What was the mischief for which the law did not provide?
- What was the remedy provided by the Act?
- What was the reason of the remedy?

This rule was applied in Bengal Immunity Co. v. State of Bihar[62] in the construction of Article 286 of the Constitution in which the Supreme Court held that a state has the legislative competence to impose sales tax only if all the ingredients of a sale have a territorial nexus. Thus on the same transaction sales tax cannot be imposed by several states. Since the function of the court is to find the meaning of the ambiguous words in a statute, a reference to the historical facts and surrounding circumstances

[60]Harsharan Verma v. Tribhuvan Narain Singh, AIR 1971 SC 1331.

[61]See., Heydon's Case(1584), as available in www.westlaw.com as accessed on August 16, 2015 at 1415 IST.

[62]Bengal Immunity Co. v. State of Bihar, AIR 1955 SC 661.

that led to the enactment assist the courts in efficient administration of speedy justice. The rule permits recourse to historical works, engravings, pictures and documents where it is important to ascertain ancient facts of a public nature. Historical evolution of a provision in the statute is also sometimes a useful guide to its construction[63].

LATER SCIENTIFIC INVENTIONS

The laws made in the past are applied in the present contemporary society in the light ofchanged social, political, legal and economic circumstances taking into consideration theadvancement in science and technology. Statutes must be interpreted in accordance withthe spirit of the Constitution of India even though the statutes were passed beforeindependence of India or before the commencement of our Constitution.

The case State v. J.S. Chawdhry[64] relates to Section 45 of the Indian Evidence Act,1872 which only mentions about handwriting experts and not typewriting experts for thereason that typewriters were invented much later than 1872.In the instant case the statewanted to use the opinion of a typewriting expert as evidence in a murder case. TheSupreme Court then overruled its decision in the case Hanumant v. State of Madhya Pradesh[65] which held that the opinion of the typewriting expert was inadmissible asevidence in the court of law.

State of Maharashtra v. Dr. Prafulla Desai[66] case relates to Section 388 of the IndianPenal Code which deals with gross medical negligence resulting in the death of thepatient. The prosecution wanted to produce the statements of a New York DoctorDr.Greenberg as evidence. The problem arose when Dr.Greenberg refused to appear inthe Indian Court to record his statements. There is no such provision which can compel awitness residing outside the domestic territory of India to come to an Indian court as awitness. Thus in such circumstances video conferencing became the only viable option.

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[63]R. v. Ireland, (1997) 4 All ER 225

[64]State v. J.S.Chawdhry, AIR 1996 SC 1491.

[65]Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343.

[66]State of Maharashtra v. Dr. Prafulla Desai, AIR 2003 SC 2053

But the accused opposed video conferencing under Section 273 of Criminal ProcedureCode which clearly says that evidence can be recorded only in the presence of theaccused. The Supreme Court interpreted presence not merely as physical presence but asa situation in which the accused can see, hear and question the witnesses.

REFERENCE TO OTHER STATUTES

Statutes must be read as a whole in order to understand the words in their context. Problem arises when a statute is not complete in itself i.e. the words used in the statute are not explained clearly. Extension of this rule of context permits reference to other statutes in pari materia i.e. statutes dealing with the same subject matter or forming part of the same system. The meaning of the phrase pari materia was explained in an American Case, United Society v. Eagle Bank (1829) in the following words: "Statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things. The word par must not be confounded with the word similes. It is used in opposition to it- intimating not likeness merely but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject"[67].

In the case, State of Punjab v. Okara Grain Buyers syndicate Ltd., Okara[68], the Supreme Court held that when two pieces of legislation are of differing scopes, it cannot be said that they are in pari materia. However it is not necessary that the entire subject matter in the statutes should be identical before any provision in one may be held to be in pari materia with some provision in the other[69].

In the case State of Madras v. A. Vaidyanath Aiyer[70], the respondent, an income tax officer was accused of accepting bribe. The Trial Court convicted him and awarded a rigorous imprisonment of six months. When an appeal was made in the High Court,

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[67] See., Sigh G.P., Principles of Statutory Interpretation, 275(Wadhwa and Company, Nagpur, Tenth Edition, 2006)
[68] State of Punjab v. Okara Grain Buyers syndicate Ltd.,Okara, AIR 1964 SC 669.
[69]Supra note 67
[70]State of Madras v. A.Vaidyanath Aiyer,AIR 1958 SC 61

the High Court set him free on the ground of a possibility that he might have borrowed the money and not accepted it as bribe. The Supreme Court held the accused guilty and made an observation that the judgement of the High Court was extremely perverse.

In the instant case, the Supreme Court held that Section 4 of the Prevention of CorruptionAct,1947, which directs that on proof that the accused has accepted any gratificationother than legal remuneration, it shall be presumed unless the contrary is established bythe accused that the gratification was accepted as bribe, has been held to be in parimateria with subject-matter dealt with by the Indian Evidence Act,1872; and thedefinition "shall presume" in the Indian Evidence Act has been utilized to construe thewords "it shall be presumed" in section 4 of the Prevention of Corruption Act,1947.

USE OF FOREIGN DECISIONS

Reference to decisions of the English Courts was a common practice in the administration of justice in pre independent India. The reason behind this was that the Modern Indian Legal System owes its origin to the English Common Law System. But after the commencement of the Constitution of India as a result of the incorporation of the Fundamental Rights, the Supreme Court of India gave more access to American precedents. It cannot, however, be doubted that knowledge of English law and precedents when the language of an Indian Act was not clear or express, has often been of valuable assistance.

Speaking about Indian Codes Shri M.C.Setalvad has stated: "Where the language of the code was clear and applicable, no question of relying on English Authority would arise. But very often the general rule in the Indian Code was based on an English Principle and in such cases the Indian Courts frequently sought the assistance of English Decisions to support the conclusions they reached. They could not otherwise

for not only the general rules contained in the codes but some of the illustrations given to clarify the general rules were based on English decisions."[71]

In the case General Electric Company v. Renusagar Power Company[72], the Supreme Court of India held that when guidance is available from Indian decisions, reference to foreign decisions may become unnecessary. Different circumstances may also result in non acceptance of English precedents by the Indian Courts.

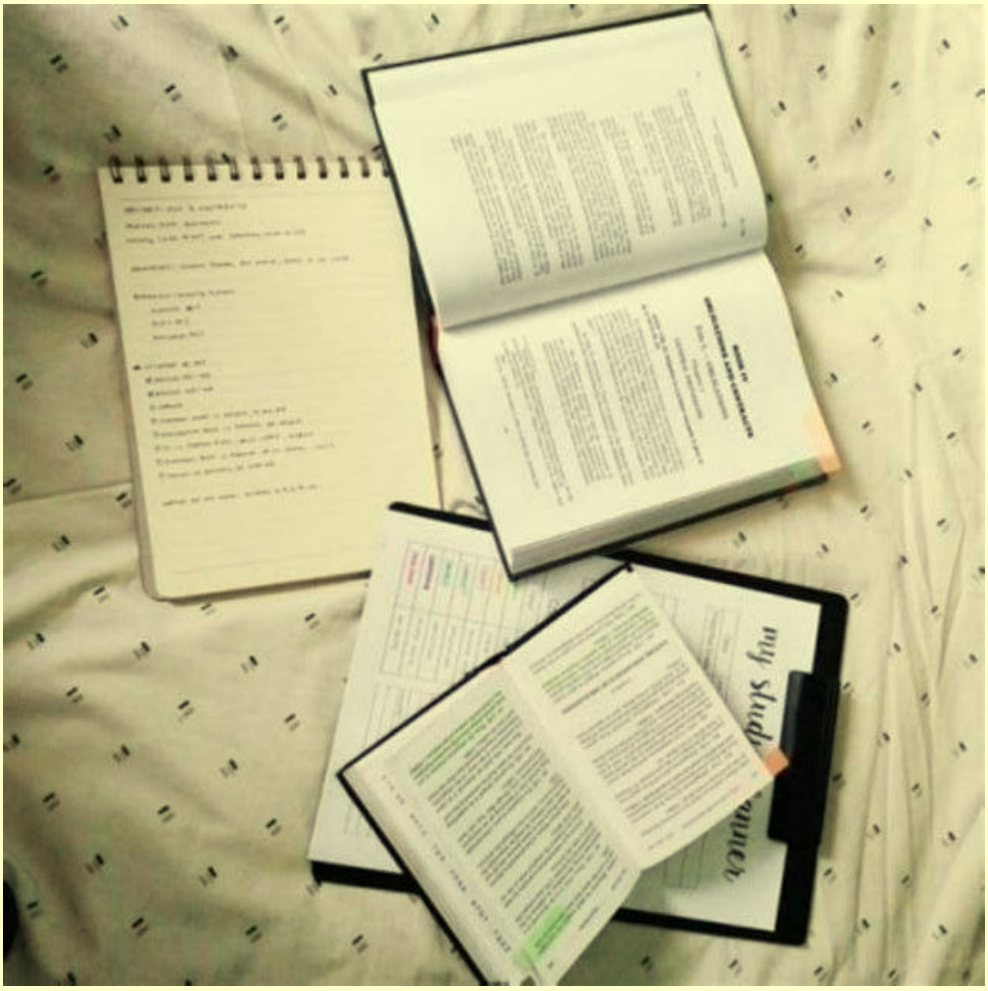
In the case M.V.Elisabeth v. Harwan Investment and Trading Pvt. Ltd.[73], the Supreme Court differed from English decisions and interpreted the words „damage caused by a ship" in Section 443 of the Merchant Shipping Act, 1958 as not limited to a physical damage caused by a ship by reason of its coming into contact with something; it intended to include damage to the cargo carried in a ship. The Supreme Court in this case differed in its opinion because in India there is no other Act covering claim of damages for damage to the cargo carried in a ship but in England this subject is covered expressly by a different Act.

CONCLUSION

The chief source of law is legislation, though there are other sources of law such as precedents and customs. Every source of law finds its expression in a language. Often the language has a puzzling effect, i.e., it masks and distorts. Often it is found that the language of a statute is not clear. The words used in the statute too at times seem to be ambiguous. Sometimes it is not possible to assign the dictionary meaning to certain words used in legislation. Meaning which is to be assigned to certain words in a legislation. Even the dictionary does not give the clear-cut meaning of a word. This is so because the dictionary gives many alternative meanings applicable in different contexts and for different purposes so that no clear field for the application of a word is easily identified. So long as expansion of meaning takes place uniformly, the law

[71]See., Setalvad M.C., The Common Law in India , 61 as cited in Singh G.P., Principles of Statutory Interpretations, 327(Wadhwa and Company, Nagpur, Tenth Edition, 2006).
[72]General Electric Company v. Renusagar Power Company, (1987)4 SCC 137.
[73]M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd., AIR 1993 SC 1014.

will develop along healthy lines. But if one judge takes the narrow view and the other the broad view, the law will mean different things for different persons and soon there will be confusion. Hence, it is necessary that there should be some rules of interpretation to ensure just and uniform decisions. Such rules are called rules of interpretation. There are various aids to the rule of interpretation and in case the ambiguity is not removed even after applying the internal aids, then the external aids can come in handy. They provide various methods by the help of which a statute can be interpreted and used by the judiciary in deciding cases.



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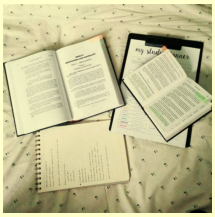

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UNIT-III

PRINCIPLES AND RULES OF STATUTORY INTERPRETATION

The term **statutory interpretation** refers to the action of a court in trying to understand and explaining the meaning of a piece of legislation. Many cases go to appeal on a point of interpretation, Indeed, Lord Hailsham, a senior English judge, once said that "probably 9 out of 10 cases heard by the Court of Appeal and the House of Lords turn upon or involve the meaning of words contained in **statute** or **secondary legislation**."

Why is this the case? First, laws must be **drafted** in general terms and must deal with both present and future situations. Often, a law which was drafted with one particular situation in mind will eventually be **applied** to quite different situations. A classic example is the UK Criminal Justice Act, part of which was originally designed to **curb** illegal warehouse parties but which was later used to crush demonstrations, often involving people from very different backgrounds to those attending the so-called raves.

Legislation is drawn up by **draftsmen**, and a draftsman's capacity to **anticipate** the future is limited. He may not foresee some future possibility, or **overlook** a possible **mis-interpretation** of the original intentions of the legislation. Another problem is legislation often tries to deal with problems that involve different and **conflictinginterests**.

Both legal and general English contain many words with more than one meaning. In fact, some of the terms in TransLegal's Legal English Dictionary have seven or more distinct definitions. With this being the case, even the best drafted legislation can include many **ambiguities**. This is not the fault of the draftsman, simply a reflection

of the fact that where people look at a text from different points of view they will naturally find different meanings in the language used.

Judges in England generally apply three basic rules of statutory interpretation, and similar rules are also used in other common law jurisdictions. The **literal rule**, the **golden rule** and the **mischief rule**. Although judges are not bound to apply these rules, they generally take one of the following three approaches, and the approach taken by any one particular judge is often a reflection of that judge's own philosophy.

The Literal Rule

Under the literal rule (also: the **ordinary meaning rule**; the **plain meaning rule**), it is the task of the court to give a statute's words their literal meaning regardless of whether the result is sensible or not. In a famous judgment, Lord Diplock in Duport Steel v Sirs (1980) said "The courts may sometimes be willing to apply this rule despite the manifest absurdity that may result from the outcome of its application." The literal rule is often applied by orthodox judges who believe that their constitutional role is limited to applying laws as **enacted** by Parliament. Such judges are wary of being seen to create law, a role which they see as being strictly limited to the elected**legislative** branch of government. In determining the intention of the **legislature** in passing a particular statute, this approach restricts a judge to the so called **black letter of the law**. The literal rule has been the **dominant**approach taken for over 100 years.

The Golden Rule

The golden rule (also: the **British rule**) is an exception to the literal rule and will be used where the literal rule produces the result where Parliament's intention would be **circumvented** rather than applied. In Grey v Pealson (1857), Lord Wensleygale said : "The literal rule should be used first, but if it results in absurdity, the

grammatical and ordinary sense of the words may be modified, so as to avoid absurdity and **inconsistency**, but no further."

One example of the application of the golden rule is the case of R v Allen – **Defendant** is **charged** with **bigamy**, an **offence prohibited** in Offences Against Persons Act 1861 which reads "whoever is married, marries another commits bigamy." The court held that the word "marries" need not mean a contract of marriage as it was impossible for a person who is already married to enter into another valid contract of marriage. Hence, the court interpreted it as "going through marriage ceremony".

The Mischief Rule

The final rule of statutory interpretation is the mischief rule, under which a judge attempts to determine the legislator's **intention**; what is the "mischief and defect" that the statute in question has set out to **remedy**, and what ruling would effectively **implement** this remedy?

The classic statement of the mischief rule is that given by the Barons of the Court of Exchequer in Heydon's Case (1854): "…for the sure and true interpretation of all statutes in general, four things are to be discerned and considered:

1. What was the common law before the making of the Act?
2. What was the mischief and defect for which the common law did not provide?
3. What remedy the Parliament hath resolved and appointed to cure the disease of the **Commonwealth**?
4. The true reason of the remedy; and then the office of all the judge is always to make such **construction** or shall suppress subtle inventions and evasions for continuance of the mischief and pro private commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, **pro bono publico**.

This system of relying on external sources such as the common law in determining the true intention of the parliament is now seen as part of the **purposive approach**, the approach generally taken in the civil law jurisdictions of mainland Europe. Although the literal approach has been dominant in common law systems for over a century, judges now appear to be less bound by the black letter of the law and are more willing to try to**determine** the true intention of the Parliament. The task of the judge is now seen as being give effect to the legislative purpose of the statute in question.

As well as these three rules of interpretation, there are a number of rules that are held to apply when determining the meaning of a statute:

1. The statute is **presumed** not to bind the Crown Statutes do not operate retrospectively in respect to **substantive law** (as opposed to **procedural law**)
2. They do not interfere with legal rights already **vested**
3. They do not **oust** the jurisdiction of the courts
4. They do not detract from constitutional law or international law

Finally, there are a number of intrinsic (=interal) and extrinsic (=external) aids to statutory interpretation.

Intrinsic (Internal) Aids to Statutory Interpretation

These are things found within the statute which help judges understand the meaning of the statute more clearly.

- the long and the short title
- the **preamble**
- definition
- sections

- **schedules**
- headings

Extrinsic (External) Aids to Statutory Interpretation

These are things found outside of the actual statute which may be considered by judges to help them understand the meaning of a statute more clearly.

- Dictionaries
- historical setting
- previous statutes
- earlier case law
- **Hansard**
- Law Commission Reports
- International Conventions

RULE OF HARMONIOUS CONSTRUCTION

The principle of harmonious interpretation is similar to the idea of broad or purposive approach. The key to this method of constitutional interpretation is that provisions of the Constitution should be harmoniously interpreted. "Constitutional provisions should not be construed in isolation from all other parts of the Constitution, but should be construed as to harmonize with those other parts." A provision of the constitution must be construed and considered as part of the Constitution and it should be given a meaning and an application which does not lead to conflict with other Articles and which confirms with the Constitution's general scheme. When there are two provisions in a statute, which are in apparent conflict with each other, they should be interpreted such that effect can be given to both and that construction which renders either of them inoperative and useless should not be adopted except in the last resort. This principle is illustrated in the case of Raj Krishna vs Binod AIR 1954. In this case, two provisions of Representation of People Act, 1951, which were

in apparent conflict were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to nominate or second a candidate and forbidding him to assist the candidate it any other manner. Upon looking at various cases, the following important aspects of this principle are evident - The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them. The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible. Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead lumbar, is not harmonious construction. To harmonize is not to destroy any statutory provision or to render it otiose.

STUDIES AS PER CASE LAWS:

CASE 1:

UNNI KRISHNAN, J.P. AND ORS., ETC. V. STATE OF ANDHRA PRADESH & ORS.

The writ petition was filed challenging whether the ‘right to life’ under Article 21 of the constitution guarantees a fundamental right to education to the citizens of India and right to education includes professional education. This was challenged by certain private professional educational institutions and also in respect of regulating capitation fees charged by such institutions. The Supreme Court held that right to

basic education was implied by the fundamental right to life when read with article 41 of directive principle on education. As per article 45 of the constitution, the state is to provide free and compulsory education for all children below the age of 14 years and there is no fundamental right to education for a professional degree that flows from article 21. Several states have passed legislation making primary education compulsory and there is no central legislation to make elementary education compulsory. In addition, the Court held that, in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution: "the provisions of Part III and Part IV are supplementary and complementary to each other". The Court rejected that the rights reflected in the provisions of Part III are superior to the moral claims and aspirations reflected in the provisions of Part IV.

CASE:2

SMT. RANI KUSUM VS SMT. KANCHAN DEVI AND ORS ON 16 AUGUST, 2005

Showing the contexts in which harmonious construction author:A Pasayat appears in the document have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice stress. In the present context, the strict interpretation would defeat justice.

In construing this provision, support can also be had from Order VIII Rule 10 which provides that where any party from whom a written statement is required under Rule

1 or Rule 9, fails to present the same within the time permitted or fixed by the Court, the Court shall pronounce judgment against him, or make such other order in relation written statement under this provision, the Court has been given the discretion either to pronounce judgment against the defendant or make such other order in relation to suit as it thinks fit. In the context of the provision, despite use of the word 'shall', the court has been given the discretion to pronounce or not to pronounce the judgment against the defendant even if written statement is not filed and instead pass such order as it may think fit in relation to the suit. In construing the provision of Order VIII Rule 1 and Rule 10, the doctrine of harmonious construction is required to be applied. The effect would be that under Rule 10 of Order VIII, the court in its discretion would have power to allow the defendant to file written statement even after expiry of period of 90 days provided in Order VIII Rule 1. There is no restriction in Order VIII Rule 10 that after expiry of ninety days, further time cannot be granted. The Court has wide power to 'make such order in relation to the suit as it thinks fit'. Clearly, therefore, the provision of Order VIII Rule 1 providing for upper limit

CASE 3:

STATE OF ORISSA AND ORS VS ARAKHITA BISOI ON 14 APRIL, 1977

Showing the contexts in which harmonious construction appears in the document respondent was allowed by the Orissa High Court by its order dated 15-7-1976 holding that the Additional Magistrate had powers to revise an order of the appellate authority passed u/s 44 by virtue of the powers conferred on him under s. 59 of the Act.

Dismissing the appeal by certificate, the Court, HELD: (i)The language of S. 59(1) of the Orissa Land Reforms Act is wide enough to enable the Collector to revise any order including an appellate order under S. 44 of the Act.

(ii) In applying the rule of harmonious construction with a view to give effect to the intention of the legislature the court will not be justified in putting a construction which would restrict the revisionary jurisdiction of the Collector and the Board of

Revenue. [560E] In the instant case, the Act is of expropratory nature and the determination of the excess lands is done by the Revenue Officer. The legislature intended that any error or irregularity should be rectified by higher authorities like the Collector and the Board of Revenue. [560E] J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. State revise such order. Though the amendment to section 44(3) makes it clear that a right to revision is provided for orders passed under section 44(2), we do not think that this could mean that section 44(2) as it originally stood did not provide for power of revision to the Collector under section59. In our opinion, amendment does not make any difference. The learned counsel for the appellant submitted that section 44(3) is in the nature of a special provision and should be construed as an exception to section 59 on the principle of harmonious construction. In support of this plea the learned counsel referred to the decision in The J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P. & Ors. (1). In construing the provisions of clause 5(a) and clause 23 of the G.O. concerned, this Court held that the rule of harmonious construction should be applied and in applying the rule the court will have to remember that to harmonise is not to destroy and that in interpreting the statutes the court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect, and a construction which defeats the intention of the rule-making authority must be avoided. This decision does not help the appellant for in our view in applying the rule of harmonious construction with a view to give effect to the intention o(the legislature the court will not be justified in putting a construction which would restrict the revisionary jurisdiction of the Collector and the Board of Revenue. It may be noted that the Act is of exproprietory nature and the determination of the excess lands is done by the Revenue Officer and on appeal by the Revenue Divisional Officer. In such circumstances, it is only 13roper to presume that the legislature intended that any error or irregularity should be rectified by higher authorities like the Collector and the Board of Revenue. In our view it will be in conformity with the intention of the legislature to hold that section 59 confers a power of revision of an

order passed under section 44(2) of the Act. The learned counsel next referred to a decision of this Court in The Bengal Immunity Company Limited rule of construction is stated at p. 791 in the following terms by Venkatarama Ayyar, J. speaking for the Court: "It is a cardinal rule of construction that when there are in a Statute two provisions which are in conflict with each other such that both of them cannot 'stand, they should, if possible be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction.

is a law generally dealing with a subject and another dealing particularly with one of the topics comprised therein, the general law is to be construed as yielding to the special in respect of the matters comprised therein." Construing section 59 as conferring a power of revision against an order passed under section 44(2) is not in any way contrary to the principle laid down in the above decision.

CASE 4:

JAGDISH SINGH VS LT. GOVERNOR DELHI AND OTHERS ON 11 MARCH, 1997

Showing the contexts in which harmonious construction appears in the document later. The Registrar, however, committed serious error in interpreting Sub-rule (2) of Rule 25 and directing cessation of membership of the appellant from both the societies. Mr. Bobde also argued that if Sub-rule (2) of Rule 25 is interpreted to mean that on incurring such disqualification by operation of law one ceases to be a member of both societies, then Rule 28 conferring power on the Registrar to give a written requisition to either or both the co-operative societies for cessation of the membership, would become inoperative, and therefore, efforts should be made" for harmonious construction where under both the provisions can operate. Mr. Bobde also argued that under Rule 25(1) the embargo upon a person to become a member of a co-operative society is there if the said person or his spouse or any of his dependent

children is a member of any other housing society. The disqualification in question is thus attached to becoming a member of co-operative society if he is already a member of another society. Under Sub-rule (2) of Rule 25 a deemed cessation accrues obviously in relation to a society in respect of which the disqualification is attached question that arises for consideration is: whether a person who is a member of a housing co-operative society having incurred the disqualification under Rule 25(1)(c)(iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principal of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made there under should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court held in several cases that a construction that reduces one of the provisions to a 'dead letter' is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction. Bearing in mind the aforesaid rules of construction if Sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under Sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred. A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two co-operative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the co-operative societies. If Sub-rule (2) of Rule 25 is

interpreted to mean that deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise .If the interpretation given by the Registrar incurred. In the case in hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Co-operative Housing Society Ltd. as he could not have become a member of the said society as he was already a member of Dronacharaya Co-operative Group Housing Society, and therefore, by operation of Sub-rule (2) he would deem to have ceased to be a member from the Tribal Co-operative Housing Society right from the inception in November, 1983 and not from the Dronacharaya Co- operative Group Housing Society.

SIGNIFICANCE

1. The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.
2. The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
3. When it is immpossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such as way so that effect is given to both the provisions as much as possible.
4. Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead lumbar, is not harmonious construction.
5. To harmonize is not to destroy any statutory provision or to render it otiose.

CONCLUSION

As per this doctrine the courts must try to avoid conflicts between the provisions of the statutes. Thus the provisions must be so interpreted that the conflict between the two is avoided and each of them is given effect and, for that purpose the scope and meaning of one may be restricted so as to give meaning to the other also.

NOSCITUR A SOCIIS

The principle of Noscitur a Sociis is a rule of construction. It is one of the rules of language used by court to interpret legislation. This means that, the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. In other words, the meaning of a word is to be judged by the company it keeps. The questionable meaning of a doubtful word can be derived from its association with other words. It can be used wherever a statutory provision contains a word or phrase that is capable of bearing more than one meaning.

This rule is explained in Maxwell on the interpretation of statutes (12th edition) in following words – When two or more words susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. The words take their colour from and are quantified by each other, the meaning of the general words being restricted to a sense analogous to that of the less general.

Relying on the above, in the case of Commissioner of Income Tax v. Bharti cellular it was held that term 'technical servies' used in section 194J of the Income Tax Act is unclear. The word technical would take colour from the words managerial & consultancy between which it is sandwiched. These terms 'managerial services' & 'consultancy services' necessarily involve a human intervention . So applying noscitur a sociis the word 'technical' would also have to be construed as involving a human element. Thus, interconnection & port access services rendered by the assessee do not involve any human interface & therefore cannot be regarded as technical services u/s 194J of the Income Tax Act.

Coupling of word together shows that they are to be understood in the same sense and where the meaning of particular word is doubtful or obscure or where a particular

expression when taken singly is inoperative, its intention is to be ascertained by looking at adjoining words or at expressions occurring at other parts of the same instrument.

If one could pick out a single word or phrase & finding it perfectly clear in itself, refuse to check its apparent meaning, in the light thrown upon it by the context or by other provisions then the principle of noscitur a sociis would be utterly meaningless. This principle requires that a word or phrase or even a whole provision which standing alone has a clear meaning , must be given quite a different meaning when viewed in the light of its context.

The apex court in Pradeep Agarbatti with reference to the Punjab Sales Tax Act held that the word, "perfumery'' means such articles as used in cosmetics and toilet goods viz, sprays, etc but does not include 'Dhoop' and 'Agarbatti'. This is because in Schedule 'A' Entry 16 of Punjab Sales Tax Act reads as "cosmetics, perfumery & toilet goods excluding toothpaste , tooth powder kumkum & soap." Delhi Tribunal in the case of, Parsons Brinckerhoff India (P.) Ltd. vs. Asstt. DIT (Int. Tax) applying the rule of Noscitur a Sociis held that, the words 'model' and 'design' cannot fall under definition of 'royalty' under Explanation 2 to section 9 (I) (VI) of the Income Tax Act. They have to take colour from the other words surrounding them, such as, patent, invention, secret formula or process or trade mark, which are all species of intellectual property. Noscitur a sociis cannot prevail in case where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.

It can also be applied where the meaning of the words of wider meaning import is doubtful; but, where the object of the Legislature in using wider words is clear and free from ambiguity, the rule of construction cannot be applied.

EJUSDEM GENERIS

Generally speaking, it implies to the meaning – 'of the same kind'. This vital term can more better be explained in the words of Hon'ble Justice Ganguly @ The Supreme Court of India[74]:

The Supreme Court in Maharashtra University of Health and others v. Satchikitsa Prasarak Mandal & Others[75] has examined and explained the meaning of 'Ejusdem Generis' as a rule of interpretation of statutes in our legal system. **While examining the doctrine, the Supreme Court held as under (in its concerning paragraphs);**

26. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication **(See Glanville Williams, 'The Origins and Logical Implications of the Ejusdem Generis Rule' 7 Conv (NS) 119).**

27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context **[See similar**

[74]Retrieved on August 16, 2015 at 1900 IST from: http://www.legalblog.in/2011/10/doctrine-of-ejusdem-generis-supreme.html
[75]MANU/SC/0136/2010

observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of the report]

28. But like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. In instant case, a contrary intention is clearly indicated inasmuch as the definition of 'teachers' under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here 'and' is disjunctive. So, while construing such a definition the principle of ejusdem generis cannot be applied.

29. In this context, we should do well to remember the caution sounded by Lord Scarman in Quazi v. Quazi – [(1979) 3 All-England Reports 897]. At page 916 of the report, the learned Law Lord made this pertinent observation:- "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master."

30. This Court while construing the principle of ejusdem generis laid down similar principles in the case of K.K. Kochuni v. State of Madras and Kerala, [AIR 1960 SC 1080]. A Constitution Bench of this Court in Kochuni (supra) speaking through Justice Subba Rao (as His Lordship then was) at paragraph 50 at page 1103 of the report opined:-

"...The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

31. Again this Court in another Constitution Bench decision in the case of Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others, AIR 1972 SC 1863, speaking through Justice Dua, reiterated the same principles in paragraph 9, at page 1868 of the report. On the principle of ejusdem generis, the learned Judge observed as follows:-

"…The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

32. As noted above, in the instant case, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of teacher under Section 2(35) cannot be read on the basis of ejusdem generis nor can the definition be confined to only approved teachers. If that is done, then a substantial part of the definition under Section 2(35) would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words so that all words in a Statute can be given effect and no word becomes superfluous (See Sutherland: Statutory Construction, 5th Edition, page 189, Volume 2A).

33. It is also one of the cardinal canons of construction that no Statute can be interpreted in such a way as to render a part of it otiose.

34. It is, therefore, clear where there is a different legislative intent, as in this case, the principle of ejusdem generis cannot be applied to make a part of the definition completely redundant.

35. By giving such a narrow and truncated interpretation of `teachers' under Section 2(35), High court has not only ignored a part of Section 2(35) but it has also unfortunately given an interpretation which is incompatible with the avowed purpose of Section 53 of the Act.

CONCLUSION

EJUSDEM GENERIS is (a) In an enumeration of different subjects in an Act, general words following specific words may be construed with reference to the antecedent matters, and the construction may be narrowed down by treating them as applying to things of the same kind as those previously mentioned, unless of course, there is something to show that a wider sense was intended. (b) If the particular words exhaust the whole genus, then the general- words are construed as embracing a larger genus.

This is a rule of language employed by the courts when a situation arises that may not have been foreseen when the statute was being drafted. It will bring within the meaning of the statute things that are of the same class or genus as those mentioned within the statute itself. Thus, if specific items are listed, plus a general term (for example, houses, offices, rooms or other places), the general term of other places will include things only of the same class as the specific list, in this case indoor places.

General words in a statute should be taken ordinarily in their usual sense. General words, even when they follow specific words, should ordinarily be taken in their general sense, unless a more reasonable interpretation requires them to be used in a sense limited to things Ejusdem Generis with those specifically mentioned. If, however, the particular words exhaust the whole genus, the general words must be understood to refer to some larger genus.

The doctrine of Ejusdem Generis is only part of a wider principle of construction, namely, that, where reasonably possible, some significance and meaning should be attributed to each and every word and phrase in a written document. That being the object of the doctrine, it is difficult to see what difference it can make whether the word 'other' is or is not used, provided-and this is essential-that the examples which have been given are referable to a clearly ascertainable genus.

REDDENDO SINGULA SINGULIS

The reddendo singula singulis principle concerns the use of words distributively. Where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech.

A typical application of this principle is where a testator says 'I devise and bequeath all my real and personal property to B'. The term devise is appropriate only to real property. The term bequeath is appropriate only to personal property.

Accordingly, by the application of the principle reddendo singula singulis, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'. This rule has been applied in the case of **Koteshwar Vittal Kamat vs K Rangappa Baliga, AIR 1969,** in 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.

UNIT-IV

INTERPRETATION WITH REFERENCE TO THE SUBJECT MATTER AND PURPOSE

STRICT & BENEFICIAL CONSTRUCTIONS

A general rule of interpretation is that if a word used in a statute excludes certain cases in its common meaning, it should not be constrained unnecessarily to include those cases. An exception to this rule is that when the objectives of the statute are not met by excluding the cases, then the word may be interpreted extensively so as to include those cases. However, when a word is ambiguous i.e. if it has multiple meanings, which meaning should be understood by that word?

This is the predicament that is resolved by the principle of Beneficial Construction. When a statute is meant for the benefit of a particular class, and if a word in the statute is capable of two meanings, one which would preserve the benefits and one which would not, then the meaning that preserves the benefit must be adopted. It is important to note that omissions will not be supplied by the court.

Only when multiple meanings are possible, can the court pick the beneficial one. Thus, where the court has to choose between a wider mean that carries out the objective of the legislature better and a narrow meaning, then it usually chooses the former. Similarly, when the language used by the legislature fails to achieve the objective of a statute, an extended meaning could be given to it to achieve that objective, if the language is fairly susceptible to the extended meaning.

This is quite evident in the case of B Shah vs Presiding Officer, AIR 1978, where Section 5 of Maternity Benefits Act, 1961 was is question, where an expectant mother could take 12 weeks of maternity leave on full salary. In this case, a women who used to work 6 days a week was paid for only 6x12=72 days instead of 7x12=84

days. SC held that the words 12 weeks were capable of two meanings and one meaning was beneficial to the woman. Since it is a beneficial legislation, the meaning that gives more benefit to the woman must be used. It is said by MAXWELL, that Beneficial Construction is a tendency and not a rule.

The reason is that this principle is based on human tendency to be fair, accommodating, and just. Instead of restricting the people from getting the benefit of the statute, Court tends to include as many classes as it can while remaining faithful to the wordings of the statute. For example, in the case of **Alembic Chemical Works vs Workmen AIR 1961**, an industrial tribunal awarded more number of paid leaves to the workers than what Section 79(1) of Factories Act recommended.

This was challenged by the appellant. SC held that the enactment being a welfare legislation for the workers, it had to be beneficially constructed in the favor of worker and thus, if the words are capable of two meanings, the one that gives benefit to the workers must be used. Similarly, in **U Unichoyi vs State of Kerala, 1963**, the question was whether setting of a minimum wage through Minimum Wages Act, 1948 is violative of Article 19 (1) (g) of the constitution because the act did not define what is minimum wage and did not take into account the capacity of the employer to pay. To remove the line, buy a license. It was held that the act is a beneficial legislation and it must be construed in favor of the worker. In an under developed country where unemployment is rampant, it is possible that workers may become ready to work for extremely low wages but that should not happen.

STRICT CONSTRUCTIONS

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.

APPLICABILITY IN 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 from penalty 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.

INTERPRETATION OF PENAL STATUTES[76]

General principle

The rule that a statute enacting an offence or imposing a penalty in strictly construed is now only of limited application and it serves in the selection of one when two or more construction are reasonably open. The rule was originally evolved to mitigate the rigor of monstrous sentences for trivial offences and although that necessity has now almost vanished, the difference in approach made to a penal statute as against any other statute stick persists. According to Lord Esher, the settled rule of construction of penal section is that 'if there is reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions can be put upon a penal provision, the court must lean toward that construction which exempts the subject from the penalty rather than the one which imposes penalty. There are two elements of crime; the Actus Reus and the mens rea.

In Noakes v Dancaster Amalgamated collieries ltd, Maxwell cited that where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result. Then the court must do some violence to the words and so achieve that obvious intention and produce a rational construction. But the full bench rejected the argument of futility based on Noakes V Dancaster amalgamated colliery ltd in tolaram's case. On appeal the Supreme Court held that 'court is not competent to stretch the meaning of the expression used by the legislature in order to carry out the intention of the legislature'- Mahajan.J . Even if one were to disregard the rule of construction based on futilities the only reasonable way of construction is provided by ensuring that the language is not stretched and rule of strict construction is not violated.

[76] Retrieved on August 17, 2015 at 1015 IST from http://sip.ucoz.com/Executive/Module_1/GCL/interpretation_of_statutes

In M.V.Joshi v M.V Shimpi, it was held that "it is now well settled that in the absence of clear compelling language, the provision should not be given a wider interpretation". A penal statute must be construed according to its plain, natural and grammatical meaning. (R v Hunt 1987) In deciding the essential ingredients of the offence, substance and reality of the language and not its form will be important. When the intention is not clearly indicated by linguistic construction then regard must be given to the mischief at which the act is aimed. Rule of construction in penal statutes does not prevent the court from interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing the statute.

In R v Ireland (1987), Psychiatric injury caused by silent telephone calls was held to amount to assault and bodily harm under the person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury. In applying and interpreting a penal statute, public policy is also taken into consideration.

In R v Brown, the House of Lords held that consensual sadomasochistic homosexual encounters which occasioned actual bodily harm to the victim were assaults. Following are some of the propositions important in relation to strict construction of penal statutes. if the scope of prohibitory words cover only some class of persons or some well defined activity, their scope cannot be extended to cover more on consideration of policy or object if the statute. Prohibitory words can be widely construed only if indicated in the statute.

On the other hand if after full consideration no indication is found the benefit of construction will be given to the subject. 3. If the prohibitory words in their own signification bear wider meaning which also fits in with the object or policy of the statute. Mens rea in statutory offences. This principle is expressed in the maxim "

Actus non facit reum nisi mens sit rea" which means that the existence of a guilty intent is an essential ingredient of a crime at common law. Mens Rea is the state of mind stigmatized as wrongful by the criminal law. Crimes involving mens rea are of two types. a. crimes of basic intent (does not go beyond Actus Reus) Crimes of specific intent (foresight of its consequence and has a purposive element). Words such as 'voluntarily', 'knowingly', dishonestly', 'fraudulently' are used to signify the state of mind.]

The modern tendency is in favour of the view that principles of construction do not vary with statutes. The juristic parlance today uses the expression that a proper construction should be made whether the statute is penal or fiscal. Normally the words used in the statute are to be construed in their ordinary meaning. However such approach always does not meet the ends of fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not provide proper construction. That is why in deciding the true scope and effect of the relevant words in any statutory provision as observed by Halsbury, the words should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from the context. Thus one has to analyze the different parts of a statute and consider what effect they may have on interpretation.

APPLICABILITY IN TAXING STATUTES

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 from business 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.

PRESUMPTION[77]

The main body of the law is to be found in statues, together with the relevant statutory instruments, and in a case of law as enunciated by judges in the courts. But the judges not only have the duty of declaring the common law, they are also frequently called upon to settle disputes as to the meaning of words or clauses in a statute.

Parliament is the supreme law-maker, and the judges must follow statutes. Nevertheless there is a considerable amount of case law which gathers round Acts of Parliament and delegated legislation since the wording sometimes turns out to be obscure. However, the rules relating to the interpretation of statutes are so numerous, have so many exceptions, and several are so flatly contradictory, that some writers hold view that there are in effect no rules at all.

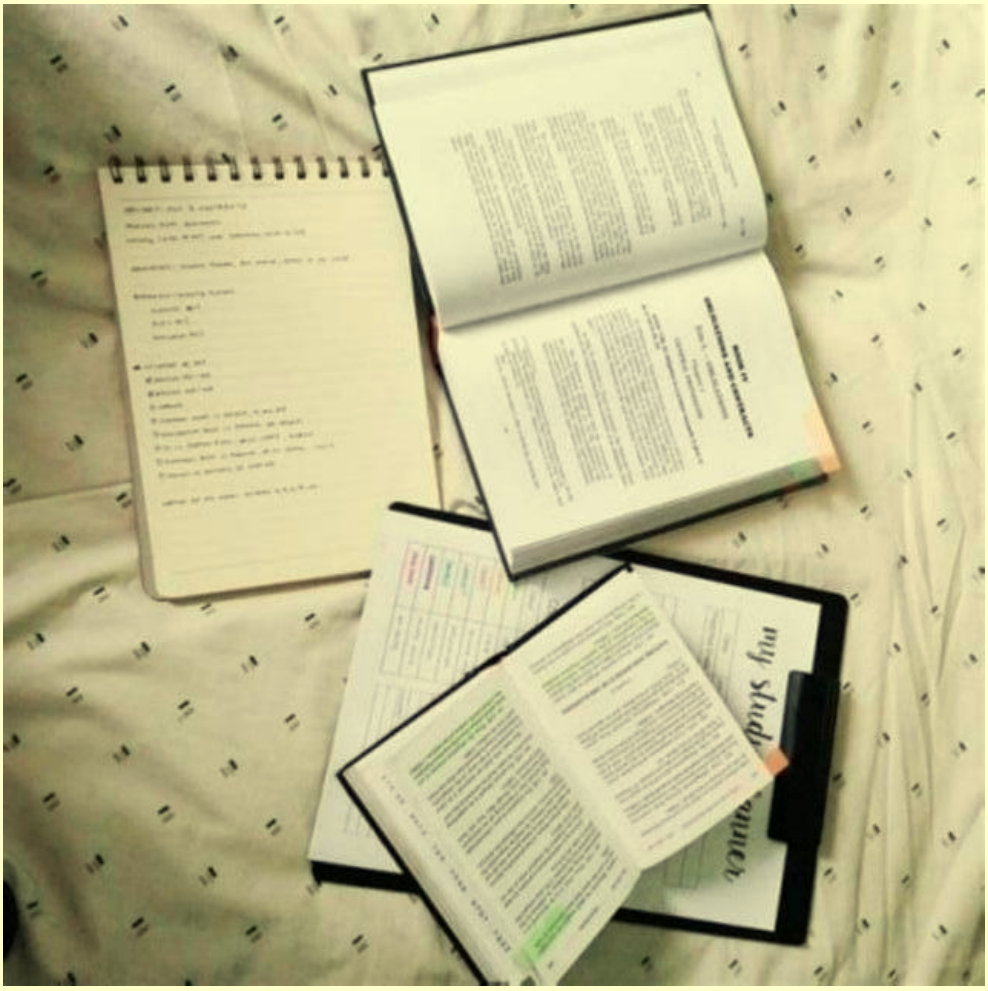
Statutes are extremely complex legal documents and no parliamentary draughtsman can anticipate future contingencies; neither can they always accommodate the natural ambiguities of our language. As a result, judges are often called upon to interpret a word or phrase which can be crucial to the outcome of a case.

To aid interpretation there are several presumption which guide the judiciary in interpreting Acts.

[77] Retrieved on August 16, 2015 at 1920 IST from : http://www.lawteacher.net/free-law-essays/administrative-law/statutory-interpretation-and-presumptions-administrative-law-essay.php#ixzz3izB2HqhH

There are presumptions that the Act applies to the whole of the United Kingdom but no further, that the Crown is not bound, that the statute is not retrospective and that the common law is not altered.

A statute is resumed not to alter the existing law unless it expressly states that it does. When a statute deprives a person of property, there is a presumption that compensation will be paid. Unless so stated it is presumed that an Act does not interfere with rights over private property.



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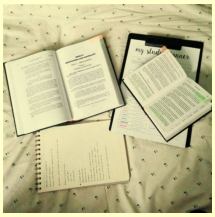

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UNIT-V

PRINCIPLE OF CONSTITUTIONAL INTERPRETATION

CONSTITUTIONAL INTERPRETATION

Executive Summary[78]

The purpose of this memorandum is to identify theories and principles of constitutional interpretation used to determine the meaning of a constitution or specific constitutional language. Constitutional interpretation is the process of determining the meaning of the constitution. Theories of constitutional interpretation generally include originalism, pragmatism, and natural law theory, which continuously evolve and encompass numerous sub-theories. Originalism focuses on the original meaning and intention of the constitutional drafters, as determined by the interpreter.

Pragmatism, however, emphasizes the judge's role in the process and conveys the philosophy that there is no constitutional meaning apart from the interpretation given by the institutions that enforce the constitution. Natural law theory refers to constitutional interpretation based on an unwritten moral code or "higher law," such as equality, human rights, and privacy. When interpreting the constitution, some states strictly apply the principles of statutory interpretation. For instance, states often consider the plain meaning of the text when interpreting the constitution. Where the original text is unclear, states may look to the intent of the authors, prior interpretations, and history in interpreting the constitution. Other states support a more creative approach that reaches beyond domestic sources to interpret constitutional text.

[78]Retrieved on August 17, 2015 at 0933 IST from http://www.mreza-mira.net/wpcontent/uploads/Constitutional-Interpretation-Memo-Jan-2013.pdf

The degree to which these principles apply is influenced by the theory of interpretation being used. States also take into consideration the unique characteristics of the constitution as a foundational law of the state. States seek to keep consistency and harmony among different provisions in the constitution. States recognize the court's duty to read the constitution as one consistent document, with a common objective shared across all provisions. States also recognize the importance of interpreting the constitution in a manner that upholds the governing structure provided by the constitution. In addition, states may use international and foreign law as sources in interpreting their own constitutions. States may adopt principles and standards of international law or refer to foreign interpretation of similar provisions in other constitutions.

HARMONIOUS CONSTRUCTIONS

1st amendment came in the case of Sankari Prasad before SC. The court unanimously decided to resolve the conflict between Fundamental Rights and Directive Principles by placing the reliance of the line of doctrine of harmonious construction. The court held that the FRs impose limitation over the legislature and executive power. They are not inviolable and parliament can amend them to bring in conformity to directive principles. The result was generally all law providing for the acquisition of state and interest therein and specially certain state including land reform acts of U.P., Bihar and M.P. were immune from the attack based on article 13 read with other provision of part III.

DOCRTINE OF HARMONIOUS CONSTRUCTION

It is a sound canon of interpretation that courts must try to avoid a conflict between the provisions of Statute. The rule of reconciliation on the Entries was propounded for the first time in the case of in re C.P. and Bare Act.

It is the province of the courts to determine the extent of the authority to deal with subjects falling within the legislative purview of each legislature. To avoid conflict,

the Courts should read Entries of two Lists together and the language of one Entry can be interpreted, and modified too, with the help of another Entry. Interpreting Entries 24 and 25 of the State List harmoniously, the Supreme Court held that 'gas and gas works' being in Entry 25 would not fall in the general Entry 24'Industry' and observed.

It is also well settled that widest amplitude should be given to the language of Entries but some of the entries in the different Lists…may overlap and sometimes may also appear to be in direct conflict with each other, it is then duty of this court to reconcile the entries and bring about harmony between them. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain and to give effect to all of them. In Tika Ramji v. State of Uttar Pradesh, the position of the industries was clarified by Supreme Court. In the instant case the vires of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 was involved. It was contended that sugarcane being 'controlled' industry fall within the jurisdiction of the Union List by virtue of Entry 52 of List I falls within the legislative purview of Parliament. The Supreme Court, therefore, had to explain the Inter-relation between Entries 52 of List I, 24 and 27 of List II and 33 of List III. Entry 24 of List II and 52 of List I establish that except 'controlled' industries, the industries generally fells within the State Sphere. Entry 27 of List II gives power to State to regulate the production, supply and distribution of 'goods' subject to provisions of Entry 33 of List III.

DOCTRINE OF PITH AND SUBSTANCE

Explaining one of the key doctrines to test the validity of legislation challenged on grounds of lack of competence, the Supreme Court in a recent decision has revisited the doctrine of pith and substance as a time tested test for interpretation of Schedule VII of the Constitution which delineates the legislative subject-matter between Centre and States.

Applied as test to examine whether the impugned law in question actually breaches (rather encroaches) the subject-matter vested in another legislature, the doctrine of pith and substance as come as a key determinant of thrust area covered under the legislation. Applying the same to examine the validity of MCOCA, the Bench explained the doctrine in the following terms;

35. One of the proven methods of examining the legislative competence of a legislature with regard to an enactment is by the application of the doctrine of pith and substance. This doctrine is applied when the legislative competence of the legislature with regard to a particular enactment is challenged with reference to the entries in various lists. If there is a challenge to the legislative competence, the courts will try to ascertain the pith and substance of such enactment on a scrutiny of the Act in question. In this process, it is necessary for the courts to go into and examine the true character of the enactment, its object, its scope and effect to find out whether the enactment in question is genuinely referable to a field of the legislation allotted to the respective legislature under the constitutional scheme. This doctrine is an established principle of law in India recognized not only by this Court, but also by various High Courts. Where a challenge is made to the constitutional validity of a particular State Act with reference to a subject mentioned in any entry in List I, the Court has to look to the substance of the State Act and on such analysis and examination, if it is found that in the pith and substance, it falls under an entry in the State List but there is only an incidental encroachment on any of the matters enumerated in the Union List, the State Act would not become invalid merely because there is incidental encroachment on any of the matters in the Union List.

36. A Constitution Bench of this Court in A.S. Krishna v. State of Madras [AIR 1957 SC 297], held as under:

"8. … But then, it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the

Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial Legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was intra vires, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be intra vires, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within it competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the vires of the law even as regards the area of encroachment."

37. Again, a Constitutional Bench of this Court while discussing the said doctrine in **Kartar Singh v. State of Punjab [(1994) 3 SCC 569]**observed as under:

"60. This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in

the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."

38. It is common ground that the State Legislature does not have power to legislate upon any of the matters enumerated in the Union List. However, if it could be shown that the core area and the subject-matter of the legislation is covered by an entry in the State List, then any incidental encroachment upon an entry in the Union List would not be enough so as to render the State law invalid, and such an incidental encroachment will not make the legislation ultra vires the Constitution.

39. In **Bharat Hydro Power Corpn. Ltd. v. State of Assam [(2004) 2 SCC 553],** the doctrine of pith and substance came to be considered, when after referring to a catena of decisions of this Court on the doctrine it was laid down as under:

"18. It is likely to happen from time to time that enactment though purporting to deal with a subject in one list touches also on a subject in another list and prima facie looks as if one legislature is impinging on the legislative field of another legislature. This may result in a large number of statutes being declared unconstitutional because the legislature enacting law may appear to have legislated in a field reserved for the other legislature. To examine whether a legislation has impinged on the field of other legislatures, in fact or in substance, or is incidental, keeping in view the true nature of the enactment, the courts have evolved the doctrine of 'pith and substance' for the purpose of determining whether it is legislation with respect to matters in one list or the other. Where the question for determination is whether a particular law relates to a particular subject mentioned in one list or the other, the courts look into the substance of the enactment. Thus, if the substance of the enactment falls within the Union List then the incidental encroachment by the enactment on the State List would not make it invalid. This principle came to be established by the Privy Council when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. This doctrine came to be established in India and derives its genesis from the approach adopted by the courts including the Privy Council in dealing with controversies arising in other

federations. For applying the principle of 'pith and substance' regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions.

For this see **Southern Pharmaceuticals & Chemicals v. State of Kerala [(1981) 4 SCC 391], State of Rajasthan v. G. Chawla [AIR 1959 SC 544], Amar Singhji v. State of Rajasthan [AIR 1955 SC 504], Delhi Cloth and General Mills Co. Ltd. v. Union of India [(1983) 4 SCC 166] and Vijay Kumar Sharma v. State of Karnataka [(1990) 2 SCC 562].**

In the last-mentioned case it was held:

'(3) Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.'"

COLOURABLE LEGISLATION

The Doctrine of colourable legislation means "if the constitution of a state distributes the legislative spheres marked out by specific legislative entries or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case has not, in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of the constitutional power. The doctrine does not involve any question of bonafides or malafides intention on the part of the legislature. If the legislature is competent enough to enact a particular law, then whatever motive which impelled it to act are irrelevant. Colourable legislation i.e. indirectly doing something which cannot be done directly. What is pivotal is the fact that the legislature (usually this is associated with state legislature) does not possess the power to make law upon a particular aspect but nonetheless indirectly makes one.

Doctrine of Colorable Legislation states, "Whatever legislature can't do directly, it can't do indirectly". By applying this principle the fate of the impugned legislation is decided. This has been provided by Article 246 which has demarcated the legislative jurisdiction of the parliament and the state assemblies by outlining the different subjects under List I for the Union, List II for the State and List III for both, as given in the seventh schedule to the Indian Constitution.

" In a recent case the supreme court rejected that the Armed Forces Special Powers Act,1958 enacted by the parliament is colourable legislation and held that "the use of the expression 'colourable legislation' seeks to convey that by enacting the legislation in question the legislature is seeking to do indirectly what it can not do directly. But ultimately the issue boils down to the question whether the legislature had the competence to enact the legislation because if the impugned legislation falls within the competence of the legislature the question of doing something indirectly which cannot be done directly does not arise."

Colourable Legislation in India : In India 'doctrine of colourable legislation' signifies only a limitation of the law making power of the legislature. It comes to know while the legislature purporting to act within its power but in reality it has transgressed those powers. So, the doctrine becones applicable whenever a legislation seeks to do in an indirect manner what it cannot do directly.

In India legislative powers of Parliament and the State Legislatures are conferred by **Article 246** and distributed by **Lists I, II,**and **III,** in the **Seventh Schedule** of the Indian Constitution. The Parliament has power to make law respect to any of the matters of the **List II** and the Parliament and the State Legislatures both have power to make laws with the respect to any of the matters of the **List III** and the residuary power of legislation is vested in the Parliament by virtue of **Article 248** and entry **97,List I.** For making any law or for that law's validity legislative competency is an issue that relates to how legislative power must be shared between the Centre and the States or it focuses only on the relationships between both of them. The main

point is that the legislature having restrictive power cannot step over the field of competency. It is termed as the **" fraud on the Constitution."**

Case laws on Colourable Legislation:

***K.C gajapti vs state of Orissa ;** while explaining the doctrine held that "if the constitution of a state distributes the legislative spheres marked out by specific legislative entries or if there are limitations on the legislative authority in the shape of fundamental rights, questions do arise as to whether the legislature in a particular case in respect to the subject matter of the statute or in the method of enacting it, transgressed the limits of the constitutional power or not. Such transgression may be patent , manifest and direct, but may also be distinguished, covered and indirect and it is the latter class of cases that the expression 'colourable legislation' has been applied in certain judicial pronouncements."

* **K.C. Gajapati Narayan Deo AIR 1953 SC 375** approved : "……..The doctrine of colourable legislation does not involve any question of bona fides and mala fides on the part of the Legislature." If the law is settled that no malafides could be attributed to the Legislature, an argument that the amendment has been passed only with a view to punish the ,first respondent is not available to the first respondent. The legislature as a body cannot be accused of having passed a law for an extraneous purpose. Therefore, no malafides could be attributed to the legislature.A legislature does not act on extraneous consideration. But for lack of legislative competence or for being arbitrary, a legislative action cannot be struck down on ground of mala fide.

* **MOHAN LAL TRIPATHI Vs.DISTRICT MAGISTRATE, RAE BAREILLY AND ORS., 1993 AIR 2042; 1992 SCR (3) 338;** A Legislature does not act on extraneous consideration. Ordinance issued in 1990 was replaced by Act 19 of 1990. The Act came into force on 24th July 1990 but it was made retrospective with effect from 15th February 1990, the date when the ordinance was issued. But for lack of

legislative competence or for being arbitrary a legislative action cannot be struck down on ground of malafides.

* **STATE OF BIHAR Vs. KAMESHWAR SINGH;** This is the only case where a law has been declared invalid on the ground of colourable legislation. In this case the Bihar Land Reforms Act,1950, was held void on the ground that though apparently it purported to lay down principle for determining compensation yet in reality it did not lay down any such principle and thus indirectly sought to deprive the petitioner of any compensation.

Conclusion: In the sense that, when the legislature had the power to make a law with respect to any subject it had all the ancilliary and incidental power to make that law effective, So, the colourable legislation is needed to fix the legislative accountability with references to some modifications in legislative functions.

Principle of Incidental or Ancillary Powers

This principle is an addition to the doctrine of Pith and Substance. What it means is that the power to legislate on a subject also includes power to legislate on ancillary matters that are reasonably connected to that subject. It is not always sufficient to determine the constitutionality of an act by just looking at the pith and substance of the act. In such cases, it has to be seen whether the matter referred in the act is essential to give affect to the main subject of the act. For example, power to impose tax would include the power to search and seizure to prevent the evasion of that tax. Similarly, the power to legislate on Land reforms includes the power to legislate on mortgage of the land. However, power relating to banking cannot be extended to include power relating to non-banking entities. However, if a subject is explicitly mentioned in a State or Union list, it cannot be said to be an ancillary matter. For example, power to tax is mentioned in specific entries in the lists and so the power to tax cannot be claimed as ancillary to the power relating to any other entry of the lists.

As held in the case of **State of Rajasthan vs G Chawla AIR 1959**, the power to legislate on a topic includes the power to legislate on an ancillary matter which can be said to be reasonably included in the topic.

The underlying idea behind this principle is that the grant of power includes everything necessary to exercise that power. However, this does not mean that the scope of the power can be extended to any unreasonable extent. Supreme Court has consistently cautioned against such extended construction. For example, in **R M D Charbaugwala vs State of Mysore, AIR 1962**, SC held that betting and gambling is a state subject as mentioned in Entry 34 of State list but it does not include power to impose taxes on betting and gambling because it exists as a separate item as Entry 62 in the same list.

RESIDUARY POWER

The constitution vests the residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the three lists in the union legislatures (Act. 248).

It has been left to the courts to determine finally as to whether a particular matter falls under the residuary, power or not.

It may be noted, however, that since the three lists attempt an exhaustive enumeration of all possible subjects of legislation, and courts generally have interpreted the sphere of the powers to be enumerated in a liberal way.

The scope for the application of the residuary powers has remained considerably restricted.

DOCTRINE OF REPUGNANCY[79]

INTRODUCTION :

[79]Retrieved on August 17, 2015 at 0959 IST from http://www.grkarelawlibrary.yolasite.com/resources/FM-Jul14-CL-2-Malini.pdf

Part XI of the Indian Constitution describes the legislative relations between the States and Centre. Article 254 to establish the doctrine of Repugnancy is one of the laws laid down under the Indian Constitution as a safeguard to solve disputes arising between the states and the Union. 'Repugnancy' is meant to express 'conflict', whereby there is an expressed inconsistency between the State-made law and the Union-made law.

OBJECTIVE : The objective of this article is to explain the distribution of legislative powers between centres and states in general and its main object is deals with the Doctrine of Repugnance under Article 254 of the Indian Constitution. The Constitution of India the lawmaking power between the Union Parliament and State Legislatures in terms of its various provisions read with Schedule VII. It therein distributes the subject-matters over which the two are competent to make laws; List I being the fields allocated for the Parliament, List II being those within the exclusive domain of the State Legislatures and List III represents those areas where both carry concurrent powers to make laws. The Constitution, however, itself provides [vide Article 254] that a law on a subject-matter prescribed in List III enacted by the State Legislature would be valid only in the absence of or not being contrary to a law made by the Parliament on the same subject-matter. Thus has developed the doctrine of repugnancy which is employed to test as to when and where a State law turns repugnant to the Parliamentary legislation. Repugnancy between a central Law and State Law (Art. 254) Article 254 (1) says that any provision of law made by the Legislature of the state of the is repugnant to any provision of a law made by Parliament which is competent to enact or to any provision of the existing law with respect to one of the matters enumerated in the concurrent list then the law made by the parliament, whether passed before or after the law made by the legislature of such stage or as the case may be, the existing law shall prevail and the law made by the legislature of the state shall, to the extent of the repugnancy be void.

Art. 254(1) only applies where there is inconsistency between a Central Law and State Law relating to the subject mentioned in the concurrent list. But the question is how the repugnancy is to be determined? In M. Karunanidhi v. Union of India , Fazal Ali J., reviewed all his earlier decisions and summarised the text of repugnancy. According to him a repugnancy would arise between the two statues in the following situations:- 1. It must be shown that there is clear and direct inconsistency between the two enactments [Central Act and State Act] which is irreconcilable, so that they cannot stand together or operate in the same field. 2. There can be no repeal by implication unless the inconsistency appears on the face of the two statues. 3. Where the two statues occupy a Parliament field, but there is room or possibility of both the statues operating in the same field without coming into collision with each other, no repugnancy results. 4. Where there is no inconsistency but a statue occupying the same field seeks to create distinct and seperate offences, no question of repugnancy arise and both the statues continue to operate in the same field. The above rule of repugnancy is, however, subject to the exception provided in clause (2) of this article according to clause (2) if a State Law with respect to any of the matters enumerated in the concurrent list contain s any provision repugnant to the provision of an earlier law made by Parliament, or an existing law with respect of that matter, then the state law if it has been reserved for the assent of the President and has received his assent, shall prevail notwithstanding such repugnancy. But it would still be possible for the Parliament under the provision to clause (2) to override such a law by subsequently making a law on the same matter. If it makes such a law the State Law would be avoid to the extent of repugnancy with the Union Law. In M. Karunanidhi v. Union of India, the appellant challenged the validity of the Tamil Nadu Public Men (Criminal Misconduct) Act. 1947, as amended by the Act of 1947 on the ground that it was inconsistent with the Central Act and Prevention of Corruption Act, 1947 and hence void. A CBI inquiry was instituted against the appellants who were alleged to have abused their official position in the matter of purchase of wheat from Punjab. As a result of the inquiry a prosecution was launched against the appellant under the IPC

and the Prevention of Corruption Act. The state Act was passed after obtaining the assent of the President. The State Act repealed and the question arose whether action could be taken under the Central Laws i.e. the IPC, the Corruption Act and Criminal Law Amendment. The appellant contended that even though the State Act was repealed it was repugnant to the Central Laws, i.e. the IPC and the Corruption Act. It was argued that by virtue of Art. 254 (2) the provision the Central Act stood repealed and could not be revived after the State Act was repealed. He argued that even though the State Act was repealed the provisions of the Central Act having themselves been pro tanto repealed by the State Act when it was passes could not be applied for the purpose of prosecuting the appellant unless they were re-enacted by the Legislature. Thus the question before the court was whether there was any inconsistency between the State Act and the Central Act that the provisions of the Central Act stood repealed and unless reenacted could not be invoked even after the state Act was itself repealed. The Supreme Court held that the State Act was not repugnant to the Central Acts and therefore it did not repeal the Central Act which continued to be in operation even after the repeal of the State Act creates distinct and seperate offences with different ingredients and different punishments and does not in any way collide with the Central Acts. The State Act is rather a complimentary Act to the Central Act. The State Act itself permits the Central Acts to come to its aid after an investigation is completed and a report is submitted. The State Act provides that the 'public man' will have to be prosecuted under the Central Acts. The question of repugnancy between the Parliamentary legislations and State legislation arises in two ways. First, where the legislations are enacted with respect to matters allotted in their fields but they overlap and conflict. Second, where the two legislations are with respect to the matters in the concurrent list and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first by virtue of non-obstance clause in Article 246 (1) and in the second by reason of Article 254 (1) In Deep Chand v. State of U.P., the validity of U.P. Transport Service (Development) Act was involved. By this Act the State Government was authorised to make the scheme for

nationalisation of Motor Transport in the state. The law was necessited because the Motor Vehicles Act, 1939 did not contain any provision for the nationalisation of Motor Transport Services. Later on, in 1956 the Parliament with a view to introduce a uniform law amended the Motor Vehicle Act, 1939, and added a new provision enabling the State Government to frame rules of nationalisation of Motor Transport. The Court held that since both the Union Law and the State Law occupied the same field, the State Law was void to the extent of repugnancy to the Union Law. In Zaverbhai v. State of Bombay Parliament enacted the Essential Supplies Act 1946, for regulating production supply and distribution of essential commodities . A contravention of any provision of the above Act was punishable with imprisonment up to 3 years or fine or both. In 1947, considering the punishment in adequate, the Bombay Legislature passed an Act enhancing the punishment provided under the Central Law.

The Bombay Act received the assent of the President and thus prevailed over the Central Law and become operative in Bombay. However, in 1950 Parliament amended its Act of 1946 and enhanced the punishment. It was held that as both occupied the same field (enhanced punishment) the State law became void as being repugnant to the Central Law. In State of Kerala v. Mar Apparaem Kuri Co. Ltd. the question involved was whether the Kerala Chities Act, 1975 became repugnant to the Central Chit Funds Act, 1984 upon the enactment of Central Act i.e. when the President assented to the Bill or when a notification was issued under the Act bringing the Act in force in the State of Orissa. The Supreme Court held that the repugnancy arises on making of the law and not on its enforcement. The reason given by the Court is that the verb “made” in past tense finds place in the Head Note to Article 245. The verb “make” in the present tense exists in Article 245 (2) and the verb “made” finds place in Article 246. The word “made” has also been used in Article 250(2). The word “make” and not “commencement” has a specific legal connotation meaning thereby “to legislate”. In a recent decision, dealing with the issues relating to the constitutional validity of MCOCA (a State legislation), the

Supreme Court revisited the doctrine and explained its nuances in its decision in Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra and Ors. in the following terms: Chapter I of Part XI of the Constitution deals with the subject of distribution of legislative powers of the Parliament and the legislature of the States. Article 245 of the Constitution provides that the Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.

The legislative field of the Parliament and the State Legislatures has been specified in Article 246 of the Constitution. Article 246, reads as follows:- "246. Subject-matter of laws made by Parliament and by the legislature of States.— 1. Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union list'). 2. Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Concurrent List'). 3. Subject to clauses (1) and (2), the legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List'). 4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List." Article 254 of the Constitution which contains the mechanism for resolution of conflict between the Central and the State legislations enacted with respect to any matter enumerated in List III of the Seventh Schedule reads as under: "254. Inconsistency between laws made by Parliament and laws made by the legislatures of States.—

1. If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void. 2. Where a law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the legislature of the State." We may now refer to the judgment of this Court in M. Karunanidhi v. Union of India, [(1979) 3 SCC 431], which is one of the most authoritative judgments on the present issue. In the said case, the principles to be applied for determining repugnancy between a law made by the Parliament and a law made by the State Legislature were considered by a Constitution Bench of this Court. At para 8, this Court held that repugnancy may result from the following circumstances:

1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy. 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254. 3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State

List entrenches upon any of the Entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential. 4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only. Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254."

In para 24, this Court further laid down the conditions which must be satisfied before any repugnancy could arise, the said conditions are as follows:- 1. That there is a clear and direct inconsistency between the Central Act and the State Act. 2. That such an inconsistency is absolutely irreconcilable. 3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other. Thereafter, this Court after referring to the catena of judgments on the subject, in para 38, laid down following propositions:- 1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field. 2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes. 3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results. 4. That where there is no inconsistency but a statute occupying

the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

In Govt. of A.P. v. J.B. Educational Society, [(2005) 3 SCC 212], this Court while discussing the scope of Articles 246 and 254 and considering the proposition laid down by this Court in M. Karunanidhi case (supra) with respect to the situations in which repugnancy would arise, in para 9, held as follows:- 9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule. 10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List. 11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

Thereafter, this Court, in para 12, held that the question of repugnancy between the parliamentary legislation and the State legislation could arise in following two ways: 12. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations,

parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation." In National Engg. Industries Ltd. v. Shri Kishan Bhageria [(1988) Supp SCC 82], Sabyasachi Mukharji, J., opined that the best test of repugnancy is that if one prevails, the other cannot prevail.

CONCLUSION : In Article 245, they laid down that parliament might make laws for the whole or any part of the territory of India, and the Legislature of the State might make laws for the whole or any part of the State. Article 246 provided that parliament had exclusive power to legislate with respect to matters included in the Union list, that State Legislatures had exclusive power to make laws with respect to subjects in the State list, and that parliament and State Legislatures were laws with respect to matters in the concurrent list. Article 254 provided that the law made by parliament, whether passed before or after the law made by the Legislature of a State, shall prevail, and the law made by the Legislature of the State shall to the extent.

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A

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Att. General v/s H.R.V. Prince Earnest Augustus of Hanover

B

Bengal Immunity Co. Ltd. v/s State of Bihar

Brett v/s Brett

Burrakur Coal Company v/s Union of India

C

Chandler v/s D.P.P

Claydan v/s Green

C.I.T. v/s Ahmadhi Umarbhai & Co

E

Eton College v/s Minister of Agriculture

F

Fisher v/s Raven

K

Keshavanand v/s State of Kerala

K.P. Keswani v/s State of Madras

K.P. Varghese v/s Income Tax Officer

M

Manoharlal v/s State of Punjab

Mills v/s Willam

Minerva Mills v/s Union of India

P

P. Aisha Potty v/s Returning Officer, Kollar District Panchayat

Popat Lal Shah v/s State of Madras

R

R v/s Betes and Russell

Re Berubery case

Chacko case

S

Salkeld v/s Johnson

Shervington v/s Jones

Show v/s Ruddin

S.P. Gupta v/s President of India

Stowell v/s Lord Zouch

V

Vacher v/s London Society of Compositors

W

Ward v/s Halman