Ahmednagar Jilha Maratha Vidya Prasarak Samaj's

NEW LAW COLLEGE

Ahmednagar

LL.M I Semester II[2014 Pattern]

LAW MAKING IN INDIAN POLITY AND STATUTORY INTERPRETATION

Asst.Prof.Punam Umesh Vaddepalli

B.A.,LL. M.(SET)

(Paper -7)

Compulsory Paper **Credits: 4**

LAW MAKING IN INDIAN POLITY & STATUTORY INTERPRETATION

I) Introduction:

a) Significance, utility, scope and objective of the course, its theoretical and practical relevance

II) Law Making Processes:

a) Constitutional Law making

b) Statutory Law making &general scheme of legislative drafting.

c) Objectives of civil, criminal, commercial and international law.

d) Sub-ordinate Law making.

e) Judicial Law making.

(Its interrelation and significance in delivery of justice and social mobilization)

III) Anticipated Goals and Obstacles in implemention of law:

a) Law and morals.

b) Law and Public Opinion.

c) Law and Politico-Economic structure.

d) Law and administrative machineries.

IV) General Principles of Statutory Interpretation:

a) Primary rules, literal rule Golden rule, Mischief rule, rule of harmonious construction,

b) Secondary Rules – Noscitur a sociis, Ejusdem generis, Reddeno singular singulis.

V) External sources and Internal aids

a) Dictionaries, statutes in para materia, contempornea position, debates, inquiry commission reports and law commission reports.

b) Title, Preamble, Headings, Marginal notes, section and subsections,

punctu ation marks, illustrations exceptions, provisos, savings clauses, schedules and non obstante clause.

VI) C lassification of Statutes and Subject wise Interpretat ion

a) Interpretation of Constitutional Law, International La incorporated in municipal Law, Penal statutes and Tax Laws

VII) Other Ru les of Inter pr eta t ion

a) Presumption in statutory interpretation, Maxims and statutory interpretation.

b) Leading cases relating to interpretation of Statute

Topic No 1

Introduction, Meaning and Nature of Interpretation

Introduction

Enacted laws, especially the modern acts and rules, are drafted by legal experts and it could be expected that the language used will leave little room for interpretation or construction. But the experience of all those who have to bear and share the task of application of the law has been different.[1]

Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. It is the process of ascertaining the true meaning of the words used in a statute. The Court is not expected to interpret arbitrarily and therefore there have been certain principles which have evolved out of the continuous exercise by the Courts. These principles are sometimes called 'rules of interpretation'.

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. As stated by SALMOND, "by interpretation or construction is meant, 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."
Elaborate rules of interpretation were evolved even at a very early stage of Hindu civilization and culture. The rules given by 'Jaimini', the author of Mimamsat Sutras, originally meant for srutis were employed for the interpretation of Smritis also.[2]

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

[1] Keshav Mills Co. Ltd. v. CIT. AIR 1965 SC 1636, p. 1644
[2] Law Commission of India, 60th Report, Chapter 2, para 2.2

Meaning and Definition of Interpretation

According to Salmond interpretation or construction is 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."[3] It has been said that there is a distinction between the two expressions. As explained by Cooley: "Interpretation differs from construction in the sense that the former is the art of finding out the true sense of any form of words; i.e. the sense that their author intended to convey. Construction on the other hand, is the drawing of conclusions, respecting the subjects that lie beyond the direct expression of the text.[4] This distinction has been widely criticized.

Interpretation of statute is the process of ascertaining the true meaning of the words used in a statute. When the language of the statute is clear, there is no need for the rules of interpretation. But, in certain cases, more than one meaning may be derived from the same word or sentence. It is, therefore, necessary to interpret the statute to find out the real intention of the statute.

Interpretation of Statutes is required for two basic reasons:-

1. Legislative Language – Legislative language may be complicated for a layman, and hence may require interpretation; and
2. Legislative Intent – The intention of the legislature or Legislative intent assimilates two aspects: a. the concept of 'meaning', i.e., what the word means; and b. the concept of 'purpose' and 'object' or the 'reason' or 'spirit' pervading through the statute.

Some Important points to be taken care of in the context of interpreting Statutes:

- Intention of the legislature.
- Statute must be read as a whole in its Context.
- Statute should be Construed so as to make it Effective and Workable – if statutory provision is ambiguous and capable of various constructions, then that construction must be adopted which will give meaning and effect to the other provisions of the enactment rather than that which will give none.
- If meaning is plain, effect must be given to it irrespective of consequences.

[3] Salmond, Jurisprudence, 11th Edition, p. 152

[4] Cooley, Constitutional limitations, Vol. 1, p. 97

- The process of construction combines both the literal and purposive approaches. The purposive construction rule highlights that you should shift from literal construction when it leads to absurdity.

Nature and Scope

Necessity of interpretation would arise only where the language of a statutory provision is ambiguous, not clear or where two views are possible or where the provision gives a different meaning defeating the object of the statute.

If the language is clear and unambiguous, no need of interpretation would arise. In this regard, a Constitution Bench of five Judges of the Supreme Court in R.S. Nayak v A.R. Antulay[5], has held:

"… If the words of the Statute are clear and unambiguous, it is the plainest duty of the Court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the Statute would be self-defeating."

Again Supreme Court in Grasim Industries Ltd. v Collector of Customs, Bombay[6], has followed the same principle and observed:

"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for court to take upon itself the task of amending or altering the statutory provisions."

The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient.

The correct is one that best harmonises the words with the object of the statute[7]. As stated by Iyer J. "to be literal in meaning is to see the skin and miss the soul. The judicial key of construction is the composite perception of the deha and the dehi of the provision."[8]

According to **Blackstone** the fairest and rational method for interpreting a statute is by exploring the intention of the Legislature through the most natural and probable signs which are

[5] AIR 1984 SC 684
[6] (2002) 4 SCC 297
[7] Justice GP Singh, Principles of Statutory Interpretation, Lexis Nexis, 14th Edition, 2016, p. 21
[8] State of Punjab v. Qaisar Jehan Begum, AIR 1963SC 1604, p. 1606

'either the words, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law'.[9]

TOPIC NO. 2

LAW MAKING PROCESSES

Legislative Law making procedure in India

Government

Laws are made separately at different levels, by the Union Government/Federal Government for the whole country and by the State Governments for their respective states as well as by local municipal councils at district level. The **Legislative procedure in India** for the Union Government requires that proposed bills pass through the two legislative houses of the Parliament of India, i.e. the Lok Sabha and the Rajya Sabha. The legislative procedure for states with bicameral legislatures requires that proposed bills be passed, at least in the state's Lower House or the Vidhan Sabha and not mandatory to be passed in the Upper House or the Vidhan Parishad. For states with unicameral legislatures, laws and bills need to be passed only in the state's Vidhan Sabha, for they don't have a Vidhan Parishad.

Constituent power of parliament

The process of addition, variation or repeal of any part of the constitution by the Parliament under its constituent powers, is called amendment of the constitution.-The procedure is laid out in Article 368. An amendment bill must be passed by each House of the Parliament by a majority of the total membership of that House when at least two-thirds members are present and voted. In addition to this, certain amendments which pertain to the federal and judicial aspects of the constitution must be ratified by a majority of state legislatures. There is no provision for joint sitting of the two houses (Lok Sabha and Rajya Sabha) of the parliament to pass a constitutional amendment bill. Basic structure of the Indian constitution cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court. After the 24th amendment, parliament in its constituent

[9] Blackstone, Commentaries on the Laws of England, Vol. 1, p.59

capacity can not delegate its function of amending the constitution to another legislature or to itself in its ordinary legislative capacity.

Proclamation of emergency per Article 352 (6) shall be ratified by the Parliament similar to its constituent power. When President's rule is invoked in a state using Article 356 (c) and its proclamation contains such incidental and consequential provisions suspending in whole or in part the operation of any provisions of the constitution relating to any body or authority in the State for giving effect to the objects of the proclamation, the proclamation needs to be approved by the Parliament under its constituent power (i.e. not by simple majority) after the 24th amendment

Legislative Powers

The legislative power of the states and the Centre are defined in the constitution and these powers are divided into three lists. The subjects that are not mentioned in any of the three lists are known as residuary subjects. Subject to the provisions in the constitution elsewhere, the power to legislate on residuary subjects, rests with parliament or state legislative assembly as the case may be per Article 245. Deemed amendments to the constitution which could be passed under legislative powers of Parliament, are no more valid after the addition of Article 368 (1) by 24th amendment

Union List

Union list consists of 100 items (previously 97 items) on which the parliament has exclusive power to legislate.

State list

State list consists of 61 items (previously 66 items) where state legislative assembly can make laws applicable in that state. But in certain circumstances, the parliament can also legislate temporarily on subjects mentioned in the state list, when the Rajya Sabha has passed a resolution with 2/3rd majority that it is expedient to legislate in the national interest per Articles 249 to 252 of the constitution.

Concurrent List

Concurrent list consists of 52 (earlier 47) where both parliament and a state legislative assembly can make laws in their domains subject to Articles 254 of the constitution

Nature of peoples' mandate

The powers of a ruling party/co-alliance of the union is depending on the extent of the mandate it receives from the elections at central and state levels. These are

1. commanding simple majority in the Lok Sabha only capable to run the government by passing money bills only. President can not issue ordinances on advise of the union cabinet alone as there is possibility of Rajya Sabha not according its approval.

2. commanding simple majority in the Lok Sabha and Rajya Sabha (together or separately) capable to run the government by its legislative powers only. With simple majority in Rajya Sabha, ruling party/co-alliance can remove the vice president and elect a new vice president per Article 67(b)

3. commanding two - thirds majority in both Lok Sabha and Rajya Sabha separately capable to run the government by its constituent and legislative powers. Ruling government has full powers to impeach the President and Judges of Supreme Court / High Courts when charges of violating the constitution are established by judicial enquiry.

4. commanding two - thirds majority in either house of parliament capable to run the government by its legislative powers only. As per the procedure given by Article 61(3) or124(4 & 5) or 217(1.b), the President and Judges of Supreme Court / High Courts can be removed after charges of misbehavior or incapacity are established by means of judicial inquiry.

At state level, simple majority in the legislative assembly (Vidhan Sabha) is enough to exercise all its constitutional powers except for deciding to have or abolish Legislative Council per Article 169. Per Article 252, approval of state legislative council, if existing, is also required to permit the parliament in making laws which are exclusively reserved to state legislative assembly.

Difference between a Bill and an Act

tLegislative proposals are brought before either house of the Parliament of India in the form of a bill. A bill is the draft of a legislative proposal, which, when passed by both houses of Parliament and assented to by the President, becomes an Act of Parliament. As soon as the bill has been framed, it has to be published in the news papers and the general public is asked to comment in a democratic manner. The bill may then be amended to incorporate the public opinion in a constructive manner and then may be introduced in the Parliament by ministers or private members. The former are called government bills and the latter, private members' bills. Bills may also be classified as public bills and private bills. A public bill is one referring to a matter applying to the public in general, whereas a private bill relates to a particular person or corporation or institution. The *Orphanages and Charitable Homes Bill* or the *Muslim Waqfs Bills* are examples of private bills. A bill introduced in Lok Sabha pending for its approval, lapses when the Lok Sabha is dissolved.

How a Bill becomes an Act in Parliaments

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament. There are three stages through which a bill has to pass in one House of Parliament. The procedure is similar for the Legislative Assemblies of States.

First Reading

The legislative process begins with the introduction of a Bill in either House of Parliament, i.e. the Lok Sabha or the Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is necessary for a member-in-charge of the Bill to ask for the leave of the House to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow a brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter, the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.

Money/Appropriation Bills and financial bills can be introduced only in Lok Sabha per Articles 109, 110 and 117. Speaker of Lok Sabha decides whether a bill is Money Bill or not. Chairman of Rajya Sabha decides whether a bill is finance bill or not when the bill is introduced in the Rajya Sabha.

Publication in the official Gazette

After a Bill has been introduced, it is published in *The Gazette of India*. Even before introduction, a Bill might, with the permission of the Speaker, be published in the *Gazette*. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straight away introduced.

Reference of Bill to the Standing Committee

After a Bill has been introduced, the Presiding Officer of the concerned House (Speaker of the Lok Sabha or the Chairman of the Rajya Sabha or anyone acting on their behalf) can refer the Bill to the concerned Standing Committee for examination and to prepare a report thereon. If a Bill is referred to a Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make a report thereon. The Committee can also seek expert opinion or the public opinion of those interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being of persuasive value, shall be treated as considered advice.

Second Reading

The Second Reading consists of consideration of the Bill which occurs in two stages.

First stage

The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straight away take it into consideration.

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee. If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill.

Second Stage

The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses, the Schedules if any, clause 1, the Enacting Formula and the Long Title of the Bill have been adopted by the House, the Second Reading is deemed to be over.

Third and the last Reading

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required in each House of Parliament. If the number of votes in favour and against the bill are tied, then the

Presiding officer of the concerned House can cast his/her vote, referred to as a Casting Vote Right.

Passing a bill

If at any time during a meeting of a House there is no quorum which is minimum one-tenth of the total members of a House, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum. The bills taken up under legislative power of parliament are treated as passed provided majority of members present at that time approved the bill either by voting or voice vote. It is also right of a member to demand voting instead of voice vote.[10] In case of passing a constitutional amendment bill, two-third of the total members present and voted in favour of the bill with more than half(50%) of the total membership of a house, is required per Article 368.

Bill in the other House

After the Bill is passed by one House of the parliament, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above, except the introduction stage.[7] If a Bill passed by one House is amended by the other House, it is sent back to the originating House for approval. If the originating House does not agree with the amendments, it shall be that the two houses have disagreed. The other House may keep a money bill for 14 days and an ordinary Bill for three (3) months without passing (or rejecting) it. If it fails to return the Bill within the fixed time, the Bill is deemed to be passed by both the houses and is sent for the approval of the President.

At state level, it is not mandatory that a bill shall be passed by the legislative council (if existing) per Articles 196 to 199. There is no provision of conducting joint session of both Houses to pass a bill.

Joint session of both Houses

In case of a deadlock between the two houses or in a case where more than six months lapse in the other house, the President may summon, though is not bound to, a joint session of the two

houses which is presided over by the Speaker of the Lok Sabha and the deadlock is resolved by simple majority. Until now, only three bills: the *Dowry Prohibition Act* (1961), the *Banking Service Commission Repeal Bill* (1978) and the *Prevention of Terrorist Activities Act* (2002) have been passed at joint sessions.

President's approval

When a bill has been passed, it is sent to the President for his approval per Article 111. The President can assent or withhold his assent to a bill or he can return a bill, other than a money bill which is recommended by president himself to the houses. However Article 255 says that prior recommendation of president or governor of a state wherever stipulated is not compulsory for an Act of parliament or of the legislature of a State but the final consent of president or governor of a state is mandatory. President may be of view that a particular bill passed under the legislative powers of parliament is violating the constitution, he can send back the bill with his recommendation to pass the bill under the constituent powers of parliament following the Article 368 procedure. President shall not withhold constitutional amendment bill duly passed by parliament per Article 368. If the President gives his assent, the bill is published in The Gazette of India and becomes an Act from the date of his assent. If he withholds his assent, the bill is dropped, which is known as absolute veto. The President can exercise absolute veto on aid and advice of council of ministers per Article 111 and Article 74. The president may also effectively withhold his assent as per his own discretion, which is known as pocket veto. The pocket veto has only been exercised once by President Zail Singh in 1986, over the postal act where the government wanted to open postal letters without warrant by amending the Indian Post Office Act, 1898. If the president returns it for reconsideration, the Parliamentmust do so, but if it is passed again and returned to him, he must give his assent to it. If parliament is not happy with the president for not assenting a bill passed by it under its legislative powers, the bill can be modified as a constitutional amendment bill and passed under its constituent powers for compelling the president to give assent. In case a constitutional amendment act is violating the basic structure of the constitution, constitutional bench of Supreme Court would quash the act. When parliament is of the view that the actions of the president are violating the constitution, impeachment proceedings against president could be taken up to remove him under Article 61 where at least two - thirds of total membership of each house of parliament should vote in

favour of the impeachment when charges against the president are found valid in an investigation.

In case of a bill passed by the legislative assembly of a state, the consent of that state's Governor has to be obtained.[14] Some times the governor may refer the bill to the president anticipating clash between other central laws or constitution and decision of the president is final per Articles 200 and 201.

All decisions of the union cabinet are to be assented by the president for issuing gazette order (GO). In case the cabinet decisions are not in the purview of the established law, president shall not give assent to the cabinet decisions. He may indicate union cabinet to pass the necessary legislation by the parliament to clear the cabinet decision. A minister is not supposed to take any decision without being considered by the council of ministers per Article 78(c).

The purpose of framing the Indian constitution is to serve with honesty, efficiency and impartiality for the betterment of its citizens by the people who are heading or representing the independent institutions created by the constitution such as judiciary, legislature, executive, etc. When one or more institutions are failing in their duty, the remaining shall normally take the lead in correcting the situation by using checks and balances as per the provisions available in the constitution.

Coming into force

Generally most Acts will come into force, or become legally enforceable in a manner as prescribed in the Act itself. Either it would come into effect from the date of assent by the President (mostly in case of Ordinances which is later approved by the Parliament), or a specific date is mentioned in the Act itself (mostly in case of Finance Bills) or on a date as per the wish of the Central or the State Government as the case may be. In case the commencement of the Act is as made as per the wish of the government, a separate Gazette notification is made, which is mostly accompanied by the Rules or subordinate legislation in another gazette notification.

SUB ORDINATE LAW MAKING (Delegated Legislation)

Delegated legislation is a kind of subordinate legislation. Generally, the 'delegated legislation' means the law made by the executive under the powers delegated to it by the Supreme legislative authority. It comes in the form of orders, bye-laws etc. The Committee on Minister's power said that the term delegated legislation has two meanings-

1. Firstly, it means the exercise of power that is delegated to the executive to make rules.

2. Secondly, it means the output the output or the rules or regulations etc. made under the power so given.

Sub-Delegation is also a case in Indian Legal system. The power to make subordinate legislation is derived from existing enabling act. It is fundamental that the delegate on whom such power is conferred has to act within the limits of the enabling act. Its purpose is to supplant and not to supplement the law. Its main justification is that sometimes legislature does not foresee the difficulties that will come while enacting the law.

Therefore, delegated legislation fills in those gaps which are not seen while the formulation of the enabling act. Delegated Legislation gives flexibility to law and there is ample scope for adjustment in the light of experiences gained during the working of legislation.

Reasons for Delegated Legislation

In modern times, delegated legislation has become imperative and inevitable due to the following reasons:-

1. Time factor – The parliament is so much occupied with matters concerning foreign policy and other political issues that it has no time to enact social legislation in all its details. Therefore, the

Parliament frames only the broad rules and principles, and the department is left to make rules and to fill in details.

2. The technicality of the matters – With the progress of the society, things have become more complicated and technical. All the legislators may not know them fully and, hence, they cannot make any useful discussion on it. Therefore, after framing of the general policy by the Parliament the government departments or other bodies who know its technicalities are given the power to lay down the details.

3. Emergency – During the time of emergency quick and decisive action is very necessary, and at the same time, it is to be kept confidential. The Parliament is not at all fit to serve this end. Therefore, the executive is delegated the power to make rules to deal with situations. In England, the defense of Realm Act, 1914-15, the Emergency Powers Act, 1920 and the Emergency Powers Act, 1939-40 are examples of such delegation during the First and Second world wars.

4. Flexibility- To adapt the law according to future contingencies or any other adjustments which are to be made in the in future can be done efficiently and effectively only when a small body is given the powers to do so. Otherwise amending acts will become necessary and that would cost wastage of time and money. Therefore, delegation to the departments becomes necessary.

5. Local Matters- These are matters which concern only a particular locality or a particular group of the profession. Any legislation on these matters needs a consultation with the people of that particular locality, group or profession. Thus regarding such legislation, the departments are given powers to make changes and rules in consultation with the person acquainted and with interested in it.

6. Experimentation- Some Acts of Parliament provides for their coming into operation in different localities on different dates according to their inability, and as a matter of experiment. For this purpose, the ministers are given the power to make orders about the date of its application.

The danger of Delegated Legislation

Prof. Keith has, in great detail, described the dangers of the delegated legislation. Some important ones are:-

1. Legislation may be passed in a skeleton form and thus wide powers of action to make new laws and to impose the tax is given;
2. Parliament gets inadequate time to scrutinize the regulations;
3. Some of the regulations attempt to deprive the subjects of recourse to the law courts for protection;
4. The procedural advantages of the Crown against the subject (Crown Proceedings Act, 1947) has improved the position to some extent but renders it difficult for him to obtain redress for illegal actions done under the authority of delegated legislation.

Keeton has summarized the dangers under two heads:

1. Excessive power may be delegated.
2. The Governments Department may assume a wider legislative competence than what the Parliament has granted.

Safeguard against Delegated Legislation

The following safeguards have been generally suggested by jurists against the delegated legislation:-

Parliamentary Control

In England when a bill that provides for the delegation of power is before the house, the house may modify, amend or refuse altogether the power proposed to be delegated in the bill. The Government has set up a Select Committee on statutory instrument since 1944 to examine every instrument laid down before the house of commons with a view to determining whether the special attention of the house should be drawn to it certain specified grounds.

An act was also passed in 1946, i.e. 'Statutory instrument act which provides that copy of the Instrument shall be laid before the house before it comes into operation. Apart from these, there are other methods also through which the parliament can exercise control. It is submitted that in practice these safeguards have not proved much effective and thus, substantial control is not exercised.

Judicial Control

To some extent, judicial control is also exercised over the delegated legislation. In England, as the parliament is supreme, it can delegate any amount of power. Therefore, the judicial control is confined within very narrow limits. The courts in these matters interfere under the doctrine of ultra vires or under their writ jurisdiction. The main ground on which this interference is made is that the authority to whom the power is delegated has exceeded it.

The grounds on which courts declare bye-law ultra vires are that it is unreasonable or repugnant to the fundamental laws of the country, or is vague, or it has not been made and published in accordance with the rules prescribed for the same. But in modern times, there is a tendency to oust the jurisdiction for the court and this is expressly provided in the statute which delegates the power. Thus the courts to have not remained very much effective in controlling delegated legislation.

Publicity

It is necessary that due publicity should be given to the delegated legislation because without such publicity it may be declared ultra vires.

Other Controls and safeguards

Certain other safeguards which have been suggested and to some extent have been adopted in practice also are: the delegation should be made only to trustworthy bodies expert device should be taken and the persons whose interests to be affected by the concerned delegated legislation should be consulted before making any rule regarding them. Authors, lawyers, and judges have often vigorously attacked delegated legislation in their writings, opinions, and judgments respectively, which have to some extent, discouraged delegated legislation.

DELEGATED LEGISLATION

What is delegated legislation?

Delegated legislation has been defined by: Salmond as "**that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority**". In simple terms it means – when the function of legislation is entrusted to organs other than the legislature by the legislature

itself the legislation made by such organs is called delegated legislation. Here we may give some instances of delegation viz., the Northern India Canal and Drainage Act, 1873, the Opium Act, 1878; the Advocate Act, 1961, the Export & Import Act, Essential Commodities Act, 1955, the Indian Medical Council Act, the Right to Information Act, 2005 etc.

Need for delegated legislation or reasons for the growth of delegated legislation

The causes for the growth of delegated legislation are discussed below:

(a) Pressure upon Parliamentary Time

The legislative activity of the State has increased in response to the increase in its functions and responsibilities. The legislature is preoccupied with more important policy matters and rarely finds time to discuss matters of detail. It therefore formulates the legislative policy and gives power to the executive to make subordinate legislation for the purpose of implementing the policy.

(b) Filling in Details of Legislation

The legislature has to make a variety of laws and the details required to be provided in each of these laws require knowledge of matters of technical or local or specialized nature. The executive in consultation with the experts or with its own experience of local conditions can better improve these. There is no point in the legislature spending its time over such details and therefore the power to fill them in is often delegated to the executive or local authorities or expert bodies.

(c) The Need for Flexibility

A statutory provision cannot be amended except by an amendment passed in accordance with the legislative procedure. This process takes time. It may however be necessary to make changes in the application of a provision in the light of experience. It is therefore convenient if the matter is left to be provided through subordinate legislation. Delegated legislation requires less formal procedure and therefore changes can be made in it more easily.

(d) Administration through Administrative Agencies

Modern government is pluralistic and functions through a number of administrative agencies and independent regulatory authorities, which have to regulate and monitor activities in public interest. These agencies such as the Election Commission or the Reserve Bank of India or the Board for Industrial and Financial Reconstruction (BIFR) or the Electricity Commission or the Telecom Regulatory Authority of India (TRAI) etc. have to perform ongoing regulation and control of various activities. Each of these agencies is required to make rules or regulations in pursuance of its regulatory function.

(e) Meeting Emergency Situations

In times of emergency, the government may have to take quick action. All its future actions cannot be anticipated in advance and hence provisions cannot be made by the legislature to meet all unforeseeable contingencies. It is safer to empower the executive to lay down rules in accordance with which it would use its emergency power.

Classification of Delegated legislation

Delegated legislation can be classified on the basis of the nature of the power conferred on administrative authorities.

- Appointment Day Clause: Empowers executive authority to determine the day for the commencement of the Act
- Skeleton Legislation: Legislature enacts the skeleton and administration has to provide the flesh through subordinate legislation
- Power of inclusion and exclusion: Application of the Act can be expanded or restricted by making additions or deletions in the schedule through delegated legislation
- Power of extension and application of existing laws: Some statute confers powers on the Government to adopt and apply laws existing in other states with incidental changes to a new State.
- Power of suspension: Power delegated to the Government to suspend or to make exemption from all or any of the provisions of the Act
- Power of modification: Power on the executive to modify the statute itself.
- Delhi Laws Act case: Power of modification should not be used in such a manner so as to change the essential policy of the Act in question

- Power to remove difficulties: Nicknamed "Henry VIII Clause", power to modify a statute may be conferred on the Government by a removal of difficulties clause. The King is regarded popularly as the impersonation of executive autocracy.
- Power to prescribe punishment: In US, the penalty for violation of rules can be fixed by the legislature and not by the authority. However, in England, the power to impose penalty has been delegated in some statute.
- Power to impose tax.

CONSTITUTIONAL LAW MAKING

For the purposes of amendment the provisions of the constitution fall under three categories. The procedure of each category is laid down in the constitution.

Firstly, those that can be affected by a simple majority, required for passing of an ordinary law. These amendments contemplated in articles 4,169 and 239-A and paras 7 and 21 of the fifth and sixth schedules respectively 239-A fall within this class. They are specifically excluded from the purview of Article 368.

Secondly, those that can be affected by a special majority as laid down in Article 368(2). All constitutional amendments other than those referred to above come within this category and must be affected by a majority of the total membership of each house of parliament as well as by majority of not less than two-thirds of the members of that House present and voting.

Thirdly, those that require, in addition to the special majority as described above, ratification by resolution passed by not less than one- half of the State legislatures. This class comprises amendments which seek to make any change in the provisions referred in the proviso to article 368(2).

Amendments in the following provisions require such ratification:

The election and manner of election of the president

The extent of the executive power of the union

The extent of the executive power of a state

Provisions dealing with the Supreme Court

Provisions dealing with the High Courts in the States

High Courts for union territories

Distribution of legislative powers between the union and the states

The representation of states in parliament

Seventh schedule of the constitution

Article 368 i.e. the power and procedure of amendment of the constitution

In khiloto hollohan v. Zachillhu para 7 of the Tenth Schedule to the constitution, which bars the jurisdiction of the courts in respect of any matter connected with the disqualification of a

member of a house under that schedule, has been invalidated by the court because it has the effect of amending the powers of the supreme court and the high courts without following the procedure required in the proviso to article 368(2).

The amending bill can be introduced in either House of Parliament , but it must be passed by each house by the special majority prescribed in article 368. The bill, after it has been passed by both houses and , if the amendment is such as requires ratification by the states, after it has been ratified by the required number of states must be presented to the president for his assent. After the assent of the president to the bill, the constitution shall stand amended. In other respects, the normal procedure of each House of Parliament is to be followed so far as that may be applicable consistently with the express provisions of Article 368 [1] .

AMENDMENT OF THE FUNDAMENTAL RIGHTS

The question whether an amendment of fundamental rights guaranteed by part III of the constitution is permissible under Article 368 came before the supreme court as early as in 1951 in Shankari Prasad Deo v. Union of India. In that case, validity of the constitution (first amendment) Act ,1951, especially the inclusion of Articles 31-A and 31-B was challenged in a petition under article 32. It was alleged under, inter alia, that as Article 13(2) prohibited making of laws under abridging fundamental rights, it prohibited such abridgment even by an amendment because an amendment was also a law. Rejecting the argument , the court held that the power to amend the constitution including the fundamental rights, was contained in Article 368 and that the word law in Article 13(2) did not include an amendment of the constitution which was made in the exercise of constituent and not legislative power. Later several other amendments were made in the constitution of which the fourth and the seventh amendments related to part III of the constitution. The seventeenth amendment which added several legislations to the Ninth Schedule making them immune from attack on the ground of violation of fundamental rights was challenged in the case of Sajjan Singh v. State of Rajasthan. Though three of the five judges (Ganjendragadkar C.J,&Wanchoo&Dayal JJ.) in that case fully approved the sankari Prasad case, two of them(Hidyatullah and Mudholkar,JJ.) in their separate but concurring opinions expressed serious doubts whether fundamental rights created no limitation on the power of amendment. In Golak Nath v. State of Punjab, the supreme court by a majority of six to five dissented from Sankari Prasad and Sajjan Singh and held that the fundamental

rights were outside the amendatory process, if the amendment took away or abridged any fundamental right.

In Golak Nath case, three writ petitions were involved. One was filed by the son, daughter , and grandfathers of Golak Nath. In this petition, the inclusion of the Punjab Security of Land Tenures Act,1953 in the Ninth Schedule was challenged on the ground that the seventeenth amendment by which it was so included as well as the First and Fourth amendments abridging fundamental rights were unconstitutional. In other two petitions , inclusion of Mysore Land Reforms Act(10 of 1962 as amended by Act 14 of 1965) had been attacked on the same grounds. Most of the contentions raised on behalf of the petitioners and respondents summarised in the judgment had already been raised before the Supreme Court in Sankari Prasad and Sajjan Singh cases. The case was heard by an eleven- judge bench of the supreme court which by a majority of 6:5 held that the fundamental rights were outside the amendatory process if the amendment took away or abridged any of the rights and that Sankari Prasad case and Sajjan Singh case conceded the power of amendment over part III on an erroneous view of Article 13(2) and article 368 and to that extent they were not good law. The judgment was however given a prospective effect and therefore, it did not invalidate any of the amendments disputed court in the case.

This decision led to the passing of the constitution (twenty –fourth amendment) Act, 1971, which made significant changes in Article 368. Some of the significant changes made were.

Power and procedure to amend was put in the marginal note. The name of the power was constituent power. The amendment could be done by (a) alteration (b) variation (c) repeal

It took away president’s power to negate any sort of amendment.

Nothing in article 368 shall apply to article 13. In short article 368 was kept above article 13. Fundamental rights could be easily amended.

Year: 1973- Keshvanandabharti case

Article 368 provides for procedure+power{golaknath’s criticism}

F.R. may be amended {golaknath’s criticism}

The S.C. developed the doctrine of “basic structure” or basic provisions of the constitution. According to Justice H.R. Khanna , F.R. relating to property is not part of basic structure.

Consequences of Keshvananda Bharti decision:

So far as “basic structure” is concerned ,amendment of the constitution is not possible.

Supremacy of judicial review was affirmed.

42nd amendment act

Article 368(4): no constitutional amendment before or after 1976 shall be taken away by the judiciary in any court on any ground.

Article 368(5): constituent power is unlimited and is subject to no limitation whatsoever.

Consequences

Parliamentary power supreme.

Constituent power unlimited

Year: 1980-Minerva Mills case

Recognition of separation of power; between executive , judiciary and legislature.

Result

Declared articles 368(4) and 368(5) unconstitutional. Reaffirmed the power of judicial review

TOPIC NO.3

ANTICIPATED GOALS AND OBSTACLES IN IMPLEMENTATION OF LAW

Law and Public Opinion:-

According to A.V. Dicey "Public opinion is one of the subsystems that operates in society and regulates the conduct of social behavior".

In India, since independence, there has been a number of legislation which has been passed having a novel character.

It is important to trace the connection between development of law and the force of public opinion

This task of taking public opinion is very difficult. The aim is to study the close dependant of legislation and even the absence of legislation and even the absence of legislation upon varying current of public opinion and sometimes undue importance is attached to public opinion. It is true that the existence and alterations of human institutions must always depend on beliefs and feelings upon me opinion of society in which the institution flourish.

According to Hume, “As force is always on the side of the governed, the govern have nothing to support them, but opinion"

Therefore, the government is Founded only on opinion, this maxim extends to the most despotic and military government and as well as to free and popular government.

Example :- In west, the whites ruled in virtue of opinion entertained by their salves no less than by themselves that the slave owners possess qualities which gave myth and right to be master.

In India, The four Varna system, This only shows that Hume doctrine holds good in most extreme cases that the opinion of governed is the real foundation of all government but, this does not mean that, law is a result of public opinion this term of when used in reference to legislation is mean a short way of describing the belief or convert, prevent in a given society that certain law are beneficial and therefore ought to be maintained and if harmful they need to be repealed or modify.

If we say public opinion governs legislation then it means that laws are maintained or repealed in accordance with opinion or wishes of in inhabitants.

This statement may not true in all countries because,

1] Public opinion may be a speculative view to the alteration or improvement of institutions.

2] Members of social are influenced by habits rather than thoughts.

3] The mode of the life of people is based on customary rules.

It is only in the advance civilization that opinion reflects legislative change.

In view, eastern countries, the opinion is tradition and is hostile to change and favorable to habits and this keeps society within limits of tradition action.

In England, during the 19th and 20th century, public opinion demanded constant improvement in the law sometimes; we find that, law has not changed because of public opinion but due to conventions of an individual a small group of people who happened to be place in the position of authority no ruler can stand completely alone for example :- In Russia, it was not a public opinion but the convention of the great which molded the law and the institution of country.

In British India legislation was the work of English specialists who followed the current English opinion They where guided by their own experience and practical knowledge of India than the English sentiments. Law may fail to reflect public opinion due to want of a legislative body with the power and will to carry out reforms..Sometimes effective legislative machinery has lessened the immediate influence of opinion which may result in legislative stagnation. There is no parallel to the existing relation between law and public opinion.

In England, it has been public opinion if public opinion governs the country. then it may be opinion of the sovereign or the opinion of the people this has got certain resolutions, because people may not participate in the public offence public opinion which finds expression in legislative is a complex phenomena.

It is mostly a compromise of a conflict between ideas of government and feeling or habit of the governed. The interest of a few or selfish interest not necessarily for the benefit of a few but, it is believed that such law will benefit all including nation

Characteristics of public opinion:-

1] Existence of predominant, current, legal opinion-

They exist at any given time a body of belief, conventional, sentiments, accepted principles or firmly rooted prejudices which taken together makes some public opinion which determines the course of legislation.

2] The opinion may originate from individual thinker-

The opinion which affects the development of law may have originated from a single thinker.

Eg. Anna Hazare - Anticorruption movement, Rajaram Mohan Roy - Sati.

3] The development of public opinion is gradual, slow and continuous process.

Eg. Factories Act..

4] The Dominant legislative opinion is never despotic. The resigning legislative opinion during the 19th century exerted absolute or despotic authority.

Power is diminished by existence of cross currents and counter currents of opinion, which may not be in harmony with the prevalent opinion.

The counter current is opinion which is opposite to the dominant opinion.

Example :- Ideals of young citizens of country. The cross current is a strong belief as opposed to the dominant opinion.

e.g. :- Shah bano case, triple talaq case.

5] Law creates public opinion :-

Law fosters or creates law making opinion. Every law lays down some general principle which must be supported by public opinion to result into legislature opinion.

eg :- The divorce law.

The meaning of Industry given by Justice Krishna Iyyer in

Bangalore water supply sewerage board

V.

A. Rajapa.

6] The law passed in an emergency often introduced ideas which would not be accepted if it is brought before the Parliament.

Example :- Anti defection Law In India, Law has been governed by tendency towards democracy.

Law and Morals:-

A study of various legal system will make it crystal clear that law and morals have along union with associated desertion and judicial separation but never completely divorced.

The term "Morals" refers to ethics or principles by which life of an individual is governed. Morals lay down the rules for molding the character of an individual. However, the morals are purely the matter of individual conscience and impose no obligation on individual to observe them.

 Relationship between morals and law:-

The morals and law are so blended with each other that sometimes it becomes difficult to draw a line of distinction between them. Morals have deeply penetrated into Fabric of law in the name of justice, equity, good faith and conscience. Moral contributions are vital while making law and while exercising judicial discretion. Morals put a restraint on the law making put a restraint on the law making power of legislature in the sense that no legislature can make a law which is opposed to the morals of society. The human conduct and social relations can't be governed by law alone. Many relations are left to be regulated by morals.

 The relationship of Morals and Law are as follows:-

1) Morals are the basis of Law-

In the initial stage of the social system, there was no distinction between law and morals. All the rules found their origin from the common source. The fear of supernatural power worked as sanction behind those rules. Subsequently, the state came into existence; they enforced those rules which are important from social point of view. Such a rules come to be called as a law thus, law and morals have a common origin but they came to differ in course of development owing to this reason, many rules are common to both law and morals. Yet law and morality are two different things. Many things may be immoral but not illegal. There are several legal rules which are not founded on morals.

For instance, vicarious liability is provided in law but the morals do not hold a man vicariously liable some of the legal rules are even opposed to morals.

2) Morals are the test of law-

Many jurists maintain that law must conform to morals during 17th and 18th centuries, it was contended that, any law which didn't conform to natural law must be disobeyed and the government which made that law was to be overthrown. In the modern times, a law is to be considered to be valid and binding even if it is not inconformity with morals. Ordinarily laws conform to morals.

3) Morals are end of law-

Morals are often considered as the end of the law. The reason is that, the purpose of law is to secure justice and the justice is based on morals.

Law is aimed to the welfare of society and to secure social interests. Morals are evaluations of such interests.

4) Morals are the part of law-

Many authors believe that even if law and morals are distinguishable, morality is an integral part of law. Their argument is founded on the fact that, the law in action is not mere system of rules. But, involves the use of equitable goods and the good.

□ Distinction between morals and laws:-

Sr. No.	MORALS	LAWS
1	Morals related to the individual and not to the society	Law is focused on the society as a whole.
2	In morality, an individual is subject to the dictates of his own conscience	In law, an individual submit to the will of organized society.
3	Moral give guidance to a man irrespective of whether be lives in community or in isolation.	Law considers man only in so far in he lives in community or in isolation.
4	Morals lay down rules for molding of	Law provides the rules of relationship of an

	character of an individual.	individual with each other and with state.
5	Morals are an end in themselves. They should be followed because they are good in themselves.	Laws are for the purpose of conscience and expediency. Its chief aim is to help smooth running of society.
6	Morals look to the inherent value of conduct to proper intension or motive and not external conduct.	Law looks to the external conduct or the act of individual for which it lays down standard.
7	Morals have universal value. Generally they do not vary from society, time, to time and place to place.	Law varies from society to society, time to time and place to place.
8	Morals are applied after taking into consideration the individual cases	Application of law is uniform.

TOPIC NO 4

RULES OF INTERPRETATION

There are certain general principles of interpretation which have been applied by Courts from time to time.

Primary Rules of Interpretation are discussed hereunder.

Rule of Literal Interpretation

In construing Statutes the cardinal rule is to construe its provisions literally and grammatically giving the words their ordinary and natural meaning. This rule is also known as the **Plain meaning rule**. The first and foremost step in the course of interpretation is to examine the language and the literal meaning of the statute. The words in an enactment have their own natural effect and the construction of an act depends on its wording. There should be no additions or substitution of words in the construction of statutes and in its interpretation. The primary rule is to interpret words as they are. It should be taken into note that the rule can be applied only when the meanings of the words are clear i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.

In **Municipal board v. State transport authority**, Rajasthan, the location of a bus stand was changed by the Regional Transport Authority. An application could be moved within 30 days of receipt of order of regional transport authority according to section 64 A of the Motor vehicles Act, 1939. The application was moved after 30 days on the contention that statute must be read as "30 days from the knowledge of the order". The Supreme Court held that literal interpretation must be made and hence rejected the application as invalid.

Lord Atkinson stated, 'In the construction of statutes their words must be interpreted in their ordinary grammatical sense unless there be something in the context or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.'

Meaning

To avoid ambiguity, legislatures often include "definitions" sections within a statute, which explicitly define the most important terms used in that statute. But some statutes omit a definitions section entirely, or (more commonly) fail to define a particular term. The plain

meaning rule attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself.

If the words are clear, they must be applied, even though the intention of the legislator may have been different or the result is harsh or undesirable. **The literal rule is what the law says instead of what the law means.**

A literal construction would not be denied only because the consequences to comply with the same may lead to a penalty. The courts should not be overzealous in searching for ambiguities or obscurities in words which are plain. (Tata Consultancy Services v. State of A.P[10]

The literal rule may be understood subject to the following conditions –

- Statute may itself provide a special meaning for a term, which is usually to be found in the interpretation section.
- Technical words are given ordinary technical meaning if the statute has not specified any other.
- Words will not be inserted by implication.
- Words undergo shifts in meaning in course of time.
- It should always be remembered that words acquire significance from their context.

When it is said that words are to be understood first in their natural ordinary and popular sense, it is meant that words must be ascribed that natural, ordinary or popular meaning which they have in relation to the subject matter with reference to which and the context in which they have been used in the Statute. In the statement of the rule, the epithets 'natural, "ordinary", "literal", "grammatical" and "popular" are employed almost interchangeably to convey the same idea.

For determination of the meaning of any word or phrase in a statute, the first question is what is the natural and ordinary meaning of that word or phrase in its context in the statute but when that natural or ordinary meaning indicates such result which cannot be opposed to having been the intention of the legislature, then to look for other meaning of the word or phrase which may then convey the true intention of the legislature.

Another important point regarding the rule of literal construction is that exact meaning is preferred to loose meaning in an Act of Parliament. In the case of Pritipal Singh v. Union of

[10] (2005) 1 SCC 308

India[11], it was held that there is a presumption that the words are used in an Act of Parliament correctly and exactly and not loosely and inexactly.

Rationale for this Rule

Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues. They also point out that ordinary people and lawyers do not have extensive access to secondary sources. In probate law the rule is also favored because the testator is typically not around to indicate what interpretation of a will is appropriate. Therefore, it is argued, extrinsic evidence should not be allowed to vary the words used by the testator or their meaning. It can help to provide for consistency in interpretation.

Criticism of this rule

Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. In fact, words are imprecise, leading justices to impose their own prejudices to determine the meaning of a statute. However, since little else is offered as an alternative discretion-confining theory, plain meaning survives.

This is the oldest of the rules of construction and is still used today, primarily because judges may not legislate. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording.

The Mischief Rule

The mischief rule is a rule of statutory interpretation that attempts to determine the legislator's intention. Originating from a 16th-century case (Heydon's case) in the United Kingdom, its main aim is to determine the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. When the material words are capable of bearing two or more constructions the most firmly established rule or construction of such words "of all statutes, in general, be they penal or beneficial, restrictive or enlarging of the common law is the rule of Heydon's case. The rules laid down, in this case, are also known as Purposive Construction or Mischief Rule.

[11] AIR 1982 SC 1413, P. 1419

The mischief rule is a certain rule that judges can apply in statutory interpretation in order to discover Parliament's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief" that the previous law did not cover?

Heydon's case

This was set out in Heydon's Case[12] where it was stated that there were four points to be taken into consideration when interpreting a statute:

- What was the common law before the making of the act?
- What was the "mischief and defect" for which the common law did not provide?
- What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth?
- What is the true reason for the remedy?

The office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato 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.

The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. It can be argued that this undermines Parliament's supremacy and is undemocratic as it takes lawmaking decisions away from the legislature.

Use of this Rule

This rule of construction is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and, strictly speaking, only when the statute was passed to remedy a defect in the common law. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied.

In the case of Thomson v. Lord Clan Morris, Lord Lindley M.R. stated that in interpreting any statutory enactment regard should not only be paid to the words used, but also to the history of the Act and the reasons which lead to its being passed.

[12] [1584] 3 CO REP 7

In the case of **CIT v. Sundaradevi** [13], it was held by the Apex Court that unless there is an ambiguity, it would not be open to the Court to depart from the normal rule of construction which is that the intention of the legislature should be primarily to gather from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and considered on surrounding circumstances and constitutionally proposed practices.

The Supreme Court in **Bengal Immunity Co. v. State of Bihar**[14] applied the mischief rule in construction of Article 286 of the Constitution of India. After referring to the state of law prevailing in the province prior to the constitution as also to the chaos and confusion that was brought about in inter-state trade and commerce by indiscriminate exercise of taxing powers by the different Provincial Legislatures founded on the theory of territorial nexus, Chief Justice S.R. Das, stated "It was to cure this mischief of multiple taxation and to preserve the free flow of interstate trade or commerce in the Union of India regarded as one economic unit without any provincial barrier that the constitution maker adopted Article 286 in the constitution".

A principle to be valued must be capable of wider application than the mischief which gave it existence. These are designed to approach immortality as nearly as human institutions can approach it'. Mischief Rule is applicable where language is capable of more than one meaning. It is the duty of the Court to make such construction of a statue which shall suppress the mischief and advance the remedy.

Advantages

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

Disadvantages

- It is considered to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
- It gives too much power to the unelected judiciary which is argued to be undemocratic.
- In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy.
- It can make the law uncertain.

[13] (1957) (32 ITR 615) (SC)
[14] (AIR 1995 SC 661)

Golden Rule of Interpretation

The Golden rule, or British rule, is a form of statutory interpretation that allows a judge to depart from a word's normal meaning in order to avoid an absurd result.

It is a compromise between the plain meaning (or literal) rule and the mischief rule. Like the plain meaning rule, it gives the words of a statute their plain, ordinary meaning. However, when this may lead to an irrational result that is unlikely to be the legislature's intention, the judge can depart from this meaning. In the case of homographs, where a word can have more than one meaning, the judge can choose the preferred meaning; if the word only has one meaning, but applying this would lead to a bad decision, the judge can apply a completely different meaning.

This rule may be used in two ways. It is applied most frequently in a narrow sense where there is some ambiguity or absurdity in the words themselves.

For example, imagine there may be a sign saying "Do not use lifts in case of fire." Under the literal interpretation of this sign, people must never use the lifts, in case there is a fire. However, this would be an absurd result, as the intention of the person who made the sign is obviously to prevent people from using the lifts only if there is currently a fire nearby.

The second use of the golden rule is in a wider sense, to avoid a result that is obnoxious to principles of public policy, even where words have only one meaning. Example: The facts of a case are; a son murdered his mother and committed suicide. The courts were required to rule on who then inherited the estate, the mother's family, or the son's descendants. There was never a question of the son profiting from his crime, but as the outcome would have been binding on lower courts in the future, the court found in favour of the mother's family.

Rule of Harmonious Construction

When there is a conflict between two or more statues or two or more parts of a statute then the rule of harmonious construction needs to be adopted. The rule follows a very simple premise that every statute has a purpose and intent as per law and should be read as a whole. The interpretation consistent of all the provisions of the statute should be adopted. In the case in which it shall be impossible to harmonize both the provisions, the court's decision regarding the provision shall prevail.

The rule of harmonious construction is the thumb rule to the interpretation of any statute. An interpretation which makes the enactment a consistent whole should be the aim of the Courts

and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statute should be adopted. The Courts should avoid "a head on clash", in the words of the Apex Court, between the different parts of an enactment and conflict between the various provisions should be sought to be harmonized. The normal presumption should be consistency and it should not be assumed that what is given with one hand by the legislature is sought to be taken away by the other**.** The rule of harmonious construction has been tersely explained by the Supreme Court thus, "When there are, in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted, that if possible, the effect should be given to both". A construction which makes one portion of the enactment a dead letter should be avoided since harmonization is not equivalent to destruction.

It is a settled rule that an interpretation which results in hardship, injustice, inconvenience or anomaly should be avoided and that which supports the sense of justice should be adopted. The Court leans in favour of an interpretation which conforms to justice and fair play and prevents injustice.[15]

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 v. Binod[16][7]. 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 in any other manner.

The important aspects of this principle are –

- The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.

[15] Union of India v. B.S. Aggarwal (AIR 1998 S.C. 1537)
[16] AIR 1954

- 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 loose.

Secondary Rules of Interpretation are discussed hereunder.

1. Ejusdem Generis

According to the **Black's Law Dictionary (8th edition, 2004)** the principle of **Ejusdem Generis** is where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. It is a canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

The expression Ejusdem Generis means of the same kind. Normally, general words should be given their natural meaning like all other words unless the context requires otherwise. But when a general word follows specific words of a distinct category, the general word may be given a restricted meaning of the same category. **The general expression takes it's meaning from the preceding particular expressions because the legislature by using the particular words of a distinct genus has shown its intention to that effect.** This principle is limited in its application to general word following less general word only. If the specific words do not belong to a distinct. Genus, this rule is inapplicable. Consequently, if a general word follows only one particular word, that single particular word does not constitute a distinct genus and, therefore, Ejusdem Generis rule cannot be applied in such a case.

Exceptional stray instances are, however, available where one word genus has been created by the courts and the general word following such a genus given a restricted meaning. If the particular words exhaust the whole genus, the general word following these particular words is construed as embracing a larger genus. **The principle of Ejusdem Generis is not a universal application.** If the context of legislation rules out the applicability of this rule, it has no part to play in the interpretation of general words. The basis of the principle of Ejusdem Generis is that if the legislature intended general words to be used in unrestricted sense, it would not have bothered to use particular words at all.

2. Noscitur a Socis

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.

3. Reddendo Singula Singulis

Reddendo singula singulis is a Latin term that means by referring each to each; referring each phrase or expression to its corresponding object. **In simple words "reddendo singula singulis" means that when a list of words has a modifying phase at the end, the phrase refers only to the last. It is a rule of construction used usually in distributing property.** Where there are general words of description, following a record of particular things,

such general words are to be construed distributively, and if the general words will apply to some things and not to others, the general words are to be applied to those things to which they will, and not to those to which they will not apply; that is to say, each phrase, word or expression is to be referred to its suitable objects.

The best example of reddendo singula singulis is quoted from **Wharton's law Lexicon**, "If anyone shall draw or load any sword or gun, the word draw is applied to sword only and the word load to gun only, the former verb to former noun and latter to latter, because it is impossible to load a sword or to draw a gun, and so of other applications of different sets of words to one another." • 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 provide 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.

TOPIC NO 5

EXTERNAL SOURCES AND INTERNAL AIDS

INTERNAL AIDS TO CONSTRUCTION

[Laws enacted by the legislatures are interpreted by the judiciary. Their are internal aids to construction as well as external aids.]

Introduction

Laws enacted by the legislatures are interpreted by the judiciary. Enacted laws, specially the modern Acts and Rules, are drafted by legal experts and it could be expected that the language will leave little room for interpretation or construction. But the experience of all who have to hear and share the task of application of law, has been different. It is quite often observed that courts are busy unfolding the meaning of ambiguous words and expressions and resolving in consistencies. The age old process of the application of the enacted laws has led to formulation of certain rules of interpretation or construction.

The object of interpretation of statutes is to determine the intention of the legislature conveyed expressly or impliedly in the language used. *In* ***Santi swarup Sarkar v. pradeep kumar sarkar***, the Supreme Court held that if two interpretations are possible of the same statute, the one which validates the statute must be preferred.

Broadly speaking, there are two kinds of interpretation:

1. Literal Interpretation
2. Logical Interpretation

Internal Aids of Interpretation are:-

A. Long Title

It is now settled that Long Title of an Act is a part of the Act and is admissible as an aid to its construction. The long title which often precedes the preamble must be distinguished with the short title; the former taken along with the preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act, whereas the latter 341 being only an abbreviation for purposes of reference is not a useful aid to construction.

B. Preamble

The preamble of a statute like the long title is a part of the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied or the doubts which may be intended to be settled. In the words of SIR JOHN NICHOLL : It is to the preamble more specifically that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself.

C. Preamble to Constitution

The Preamble of the Constitution like the Preamble of any statute furnishes the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The Preamble is a part of the Constitution The Preamble embodies the fundamentals underlining the structure of the Constitution. It was adopted by the Constituent Assembly after the entire Constitution has been adopted.

The true functions of the Preamble is to expound the nature and extend and application of the powers actually confirmed by the Constitution and not substantially to create them. The Constitution, including the Preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives stated in the preamble. But the Preamble can neither be regarded as the source of any substantive power nor as a source of any prohibition or limitation.

D. Headings

The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to in construing an Act of the Legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. A Heading• , according to one view, is to be regarded as giving the key to the interpretation of the

clauses ranged under it, unless the wording is inconsistent with such interpretation; and so the headings might be treated as preambles to the provisions following them.

E. Marginal Notes

In the older statutes marginal notes were not inserted by the legislature and hence were not part of the statute and could not be referred to for the purpose of construing the statute. If they are also enacted by the legislature they can be referred to for the purpose of interpretation. In the case of the Indian Constitution, the marginal notes have been enacted by the Constituent Assembly and hence they may be referred to for interpreting the Articles of the Constitution. If the words used in the enactment are clear and unambiguous, the marginal note cannot control the meaning, but in case of ambiguity or doubt, the marginal note may be referred to.

F. Punctuation

Punctuation means to mark with points and to make points with usual stops. It is the art of dividing sentences by point or mark. Is the Court entitled to use punctuation also while interpreting the statutes? Punctuation is considered as a minor element in the construction of statutes.

G. Illustrations

Illustrations appended to a section from part of the statute and although forming no part of the section, are of relevance and value in the construction of the text of the section and they should not be readily rejected as repugnant to the section. It would be the very last resort of construction to make this assumption. The great usefulness of the Illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.

H. Definition Section

These do not take away the ordinary and natural meaning of the words, but as used: (i) to extend the meaning of a word to include or cover something, which would not normally be

covered or included; and (ii) to interpret ambiguous words and words which are not plain or clear.

I. Proviso

The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. Normally, a proviso does not travel beyond the provision to which it is a proviso. It craves out an exception to the main provision to which it has been enacted as a proviso and to no other.

J. Explanation

The object of an Explanation to a statutory provision is –

1. to explanation the meaning and intendment of the Act itself,
2. where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
3. to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
4. an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment, and
5. it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

EXTERNAL AIDS TO CONSTRUCTION

Introduction

When internal aids are not adequate, court has to take recourse to External aids. External Aids may be **parliamentary material**, **historical background**, **reports of a committee or a commission**, **official statement**, **dictionary meanings**, **foreign decisions**, etc. **In Prabhakar Rao and others v. State of A.P. and others**[17], O. Chennappa, Reddy J. has observed : Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction.•

A. Parliamentary History, Historical Facts and Surrounding Circumstances

Historical setting cannot be used as an aid if the words are plain and clear. If the wordings are ambiguous, the historical setting may be considered in order to arrive at the proper construction. Historical setting covers parliamentary history, historical facts, statement of objects and reasons, report of expert committees. Recently, the Supreme Court in **R. Chaudhuri v State of Punjab and others**[18], has stated that it is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a Constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution.

B. Social, Political and Economic Developments and Scientific Inventions

A Statute must be interpreted to include circumstances or situations which were unknown or did not exist at the time of enactment of the statute. Any relevant changes in the social conditions and technology should be given due weightage. Courts should take into account all these developments while construing statutory provisions.

[17] *AIR 1986 SC 120*
[18] *(2001) 7 SCC 126* [4]

In **P. Gupta v. Union of India**[19], it was stated – The interpretation of every statutory provision must keep pace with changing concepts and values and it must, to the extent to which its language permits or rather does not prohibit, suffer adjustments through judicial interpretation so as to accord with the requirement of the fast changing society which is undergoing rapid social and economic transformation

C. Reference to Other Statutes:

In case where two Acts have to be read together, then each part of every act has to be construed as if contained in one composite Act. However, if there is some clear discrepancy then the latter Act would modify the earlier. Where a single provision of one Act has to be read or added in another, then it has to be read in the sense in which it was originally construed in the first Act. In this way the whole of the first Act can be mentioned or referred in the second Act even though only a provision of the first one was adopted.

In case where an old Act has been repealed, it loses its operative force. Nevertheless, such a repealed part may still be taken into account for construing the unrepealed part. For the purpose of interpretation or construction of a statutory provision, courts can refer to or can take help of other statutes. It is also known as statutory aids. The General Clauses Act, 1897 is an example of statutory aid. The application of this rule of construction has the merit of avoiding any contradiction between a series of statutes dealing with the same subject, it allows the use of an earlier statute to throw light on the meaning of a phrase used in a later statute in the same context.

On the same logic when words in an earlier statute have received an authoritative exposition by a superior court, use of same words in similar context in a later statute will give rise to a presumption that the legislature intends that the same interpretation should be followed for construction of those words in the later statute.

D. Dictionaries

When a word is not defined in the statute itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in the

[19] *AIR 1982 SC 149*

selection of one out of the various meanings of a word, regard must always be had to the scheme, context and legislative history.

E. Judicial Decisions:

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

F. Other Materials

Similarly, Supreme Court used information available on internet for the purpose of interpretation of statutory provision in **Ramlal v. State of Rajasthan**[20]. Courts also refer passages and materials from text books and articles and papers published in the journals. These external aids are very useful tools not only for the proper and correct interpretation or construction of statutory provision, but also for understanding the object of the statute, the mischief sought to be remedied by it, circumstances in which it was enacted and many other relevant matters. In the absence of the admissibility of these external aids, sometimes court may not be in a position to do justice in a case.

[20] *(2001) 1 SCC 175*

TOPIC NO 6
CLASSIFICATION OF STATUES AND SUBJECT WISE INTERPRETATION

Principles of Constitutional Interpretation

Introduction

The letters of the constitution are fairly static and not very easy to change but the laws enacted by the legislature reflect the current state of people and are very dynamic. To ensure that the new laws are consistent with the basic structure of the constitution, the constitution must be interpreted in a broad and liberal manner giving effect to all its parts and the presumption must be that no conflict or repugnancy was intended by its framers. Applying the same logic, the provisions relating to fundamental rights have been interpreted broadly and liberally in favor of the subject. Similarly, various legislative entries mentioned in the Union, State, and Concurrent list have been construed liberally and widely. There are basically three types of interpretation of the constitution.

- **Historical interpretation**

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

- **Contemporary interpretation**

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

- **Harmonious Construction**

It is a cardinal rule of construction that when there are in a statute two provisions which are in such conflict with each other, that both of them cannot stand together, they should possibly 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.

The Supreme Court held in ***Re Kerala Education Bill***[21] that in deciding the fundamental rights, the court must consider the directive principles and adopt the principle of harmonious construction so two possibilities are given effect as much as possible by striking a balance.

[21] 1959 1 SCR 995

In ***Qureshi v. State of Bihar*** [22], The Supreme Court held that while the state should implement the directive principles, it should be done in such a way so as not to violate the fundamental rights.

In ***Bhatia International v Bulk trading SA[23]***, it was held that if more than one interpretation is possible for a statute, then the court has to choose the interpretation which depicts the intention of the legislature.

Interpretation of the preamble of the Constitution

The preamble cannot override the provisions of the constitution. In ***Re Berubari [24]***, the Supreme Court held that the Preamble was not a part of the constitution and therefore it could not be regarded as a source of any substantive power.

In ***Keshavananda Bharati's case[25]***, the Supreme Court rejected the above view and held the preamble to be a part of the constitution. The constitution must be read in the light of the preamble. The preamble could be used for the amendment power of the parliament under Art.368 but basic elements cannot be amended.

The 42nd Amendment has inserted the words "Secularism, Socialism, and Integrity" in the preamble.

General rules of interpretation of the Constitution

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

[22] 1958 AIR 731
[23] (2003) 5 SCC (Jour) 22
[24] AIR 1960 SC 845
[25] AIR 1973 SC 1461

Principles of Constitutional Interpretation

The following principles have frequently been discussed by the courts while interpreting the Constitution:

1. Principle of colourable legislation
2. Principle of pith and substance
3. Principle of eclipse
4. Principle of Severability
5. Principle of territorial nexus
6. Principle of implied powers

Principle of Colourable Legislation

The doctrine of colourability is the idea that when the legislature wants to do something that it cannot do within the constraints of the constitution, it colours the law with a substitute purpose which will still allow it to accomplish its original goal.

Maxim: *"Quando aliquid prohibetur ex directo, prohibetur et per obliqum"* which means what cannot be done directly cannot also be done indirectly.

The rule relates to the question of legislative competence to enact a law. Colourable Legislation does not involve the question of bonafides or malfides. A legislative transgression may be patent, manifest or direct or may be disguised, covert or indirect. It is also applied to the fraud of Constitution.

In India 'the doctrine of colourable legislation' signifies only a limitation of the law-making power of the legislature. It comes into picture while the legislature purporting to act within its power but in reality, it has transgressed those powers. So the doctrine becomes applicable whenever legislation seeks to do in an indirect manner what it cannot do directly. If the impugned legislation falls within the competence of legislature, the question of doing something indirectly which cannot be done directly does not arise.

In our Constitution, this doctrine is usually applied to Article 246 which has demarcated the Legislative competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under list I for the Union, List II for the States and List III for the both as mentioned in the seventh schedule.

This doctrine comes into play when a legislature does not possess the power to make law upon a particular subject but nonetheless indirectly makes one. By applying this principle the fate of the Impugned Legislation is decided.

Principle of pith and substance

Pith means 'true nature' or essence of something' and substance means 'the most important or essential part of something'. The basic purpose of this doctrine is to determine under which head of power or field i.e. under which list (given in the seventh schedule) a given piece of legislation falls.

Union & State Legislatures are supreme within their respective fields. They should not encroach/ trespass into the field reserved to the other. If a law passed by one trespass upon the field assigned to the other—the Court by applying Pith & Substance doctrine, resolve the difficulty &declare whether the legislature concerned was competent to make the law.

If the pith & substance of the law (i.e. the true object of the legislation) relates to a matter within the competence of the legislature which enacted it, it should be held intra vires—though the legislature might incidentally trespass into matters, not within its competence. The true character of the legislation can be ascertained by having regard—to the enactment as a whole — to its object – to the scope and effect of its provisions.

Case: State of Bombay v. FN Balsara [26]

Bombay Prohibition Act, 1949 which prohibited sale & possession of liquors in the State, was challenged on the ground that it incidentally encroached upon Imports & Exports of liquors across custom frontier – a Central subject. It was contended that the prohibition, purchase, use, possession, and sale of liquor will affect its import. The court held that act valid because the pith & substance fell under Entry 8 of State List and not under Entry 41 of Union List.

Principle of eclipse

The Doctrine of Eclipse says that any law inconsistent with Fundamental Rights is not invalid. It is not dead totally but overshadowed by the fundamental right. The inconsistency (conflict) can be removed by a constitutional amendment to the relevant fundamental right so that eclipse vanishes and the entire law becomes valid.

[26] AIR 1951 SC 318

All laws in force in India before the commencement of the Constitution shall be void in so far they are inconsistent with the provisions of the Constitution. Any law existing before the commencement of the Constitution and inconsistent with the provision of Constitution becomes inoperative on commencement of Constitution. But the law does not become dead. The law remains a valid law in order to determine any question of law incurred before the commencement of the Constitution. An existing law only becomes eclipsed to the extent it comes under the shadow of the FR.

Case: Keshavan Madhava Menon v. The State of Bombay [27]

In this case, the law in question was an **existing law** at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed to the citizens of India by article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) **as it then stood** and consequently under article 13(1)[28] that **existing law** became void "**to the extent of such inconsistency**".

The court said that the law became void not *in to* or for all purposes or for all times or for all persons but only "**to the extent of such inconsistency**", that is to say, **to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights of the citizens**.

Thus the Doctrine of Eclipse provides for the validation of Pre-Constitution Laws that violate fundamental rights upon the premise that such laws are not null and void ab initio but become unenforceable only to the extent of such inconsistency with the fundamental rights. If any subsequent amendment to the Constitution removes the inconsistency or the conflict of the existing law with the fundamental rights, then the Eclipse vanishes and that particular law again becomes active again.

[27] [1961] S.C.R. 288

[28] **Article 13 (1)** – All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

Principle of Severability

The doctrine of severability provides that if an enactment cannot be saved by construing it consistent with its constitutionality, it may be seen whether it can be partly saved. Article 13 of the Constitution of India provides for Doctrine of severability which states that-

All laws in force in India before the commencement of Constitution shall be void in so far they are inconsistent with the provisions of the Constitution.

The State shall not make any law which takes away/ shortens the rights conferred by Part III of the Constitution i.e. Fundamental Rights. Any law made in contravention of the provisions of the Constitution shall be void and invalid. The invalid part shall be severed and declared invalid if it is really severable. (That is, if the part which is not severed can meaningfully exist without the severed part.) Sometimes the valid and invalid parts of the Act are so mixed up that they cannot be separated from each other. In such cases, the entire Act will be invalid.

Case: AK Gopalan v. State of Madras [29]

In this case, the Supreme Court said that in case of repugnancy to the Constitution, only the repugnant provision of the impugned Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the Act. If the omission of the invalid part will not change the nature or the structure of the object of the legislature, it is severable. It was held that except Section 14 all other sections of the Preventive Detention Act, 1950 were valid, and since Section 14 could be severed from the rest of the Act, the detention of the petitioner was not illegal.

Principle of Territorial Nexus

Article 245 (2) of the Constitution of India makes it amply clear that 'No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation'. Thus a legislation cannot be questioned on the ground that it has extra-territorial operation. It is well-established that the Courts of our country must enforce the law with the machinery available to them, and they are not entitled to question the authority of the Legislature in making a law which is extra-territorial. The extra-territorial operation does not invalidate a law. But some nexus with India may still be necessary in some of the cases such as those involving taxation statutes.

[29] AIR 1950 SC 27

The Doctrine of Territorial Nexus can be invoked under the following circumstances-

- Whether a particular state has extra-territorial operation.
- If there is a territorial nexus between the subject- matter of the Act and the state making the law

It signifies that the object to which the law applies need not be physically located within the territorial boundaries of the state, but must have a sufficient territorial connection with the state. A state may levy a tax on a person, property, object or transaction not only when it is situated within its territorial limits, but also when it has a sufficient and real territorial connection with it. Nexus test was applied to the state legislation also

Case: Tata Iron & Steel Company v. Bihar State [30]

The State of Bihar passed a Sales Tax Act for levy of sales tax whether the sale was concluded within the state or outside if the goods were produced, found and manufactured in the state. The court held there was sufficient territorial nexus and upheld the Act as valid. Whether there is sufficient nexus between the law and the object sought to be taxed will depend upon the facts and circumstances of a particular case.

It was pointed out that sufficiency of the territorial connection involved a consideration of two elements- a) the connection must be real and not illusory b) the liability sought to be imposed must be pertinent to that connection.

Principle of Implied powers

Laws which are necessary and proper for the execution of the power or incidental to such power are called implied powers and these laws are presumed to be constitutional. In other words, constitutional powers are granted in general terms out of which implied powers must necessarily arise. Likewise, constitutional restraints are put in general terms out of which implied restraints must also necessarily establish.

This is a Legal principle which states that, in general, the rights and duties of a legislative body or organization are determined from its functions and purposes as specified in its constitution or charter and developed in practice.

Conclusion

The Constitution is the supreme and fundamental law of our country. Since it is written in the form of a statute, the general principles of statutory interpretation are applicable to the

[30] AIR 1958 SC 482

interpretation of the constitution as well. It is important to note that the constitution itself endorses the general principles of interpretation through **Article 367(1)**, which states that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of this constitution as it applies to the interpretation of an act of the legislature.

INTERPRETATION OF PENAL STATUTES

INTRODUCTION

In a penal law if there appears to be a reasonable dubiety or ambiguity, it shall be decided in favour of the person who would be liable to the penalisation. If a penal provision fairly be so construed as to avoid the punishment, it must be so interpreted. If there can be two reasonable interpretations of a penal provision, the more lenient should be made applicable.

Punishment can be meted to one only if the plain words extension of the meaning of the word is allowable. A penalty cannot be imposed on the basis that the object of the statute so desired. According to Maxwell [1], "the prerequisite of express language for the creation of an offence, in interpreting strictly words setting out the elements of an offence in requiring the fulfilment to the letter of statutory conditions precedent to the infliction of punishment; and in insisting on the strict observance of technical provisions concerning criminal procedure and jurisdiction."

Unless the words of a statute clearly made an act criminal, it shall not be construed as criminal. If there is any ambiguity in the words which set out the elements of an act or omission declared to be an offence, so that it is doubtful whether the act or omission falls within the statutory words, the ambiguity will be resolved in favour of the person charged.[2] The court will inflict punishment on a person only when the circumstances of the case fall unambiguously fall under the letter of the law. Legislation which deals with the jurisdiction and the procedure relation to imposition of the penalties will be strictly construed. Where certain procedural requirements have been laid down by a statute to be completed in a statute dealing with punishments, the court is duty bound to see that all these requirements have been complied with before sentencing the accused. In case of any doubt the benefit has to go to the accused even up to the extent of acquitting him on some technical grounds.[3]Penal provision cannot be extended by implication to a particular case or circumstances. The rule exhibits a preference for the liberty of the subject and in a case of ambiguity enables the court to resolve the doubt in favour of the subject and

against the Legislature which has failed to express itself clearly, but this rule is now-a-days of limited application.[4] The rule was originally evolved to mitigate the rigours of monstrous sentences of trivial offences and although the necessity and that strictness have now vanished, the difference in approach made to penal statute as against any other statute still persists.[5]

GENERAL RULE

If a statute laid a mandatory duty but provided no mode for enforcing it, the presumption in ancient days was that the person in breach of the duty could be made liable for the offence of contempt of the statute.[6] This rule of construction is obsolete and now has no application to a modern statute. Clear language is now needed to create a crime. "A penal provision must be definite"[7]. It is a basic rule of legal jurisprudence that than an enactment is void for vagueness if its prohibitions are not clearly defined.[8] Pollock, CB said: "whether there be any difference left between a criminal statute and any other statute not creating offence, I should say that in criminal statute you must be quite sure that the offence charged is within the letter of the law."[9]

In the case of Feroze N. Dotivalaz v. P.M Wadhwani and co.,[10] this court stated: "Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined."

In Anup Bhushan Vohra v. Registrar General, High Court of Judicature at Calcutta on (16 September, 2011)[11] the Apex Court held that the contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities; equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and

surmises. As observed above, the contempt proceeding being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings.

A man should not be goaled on ambiguity. Lord Esher, MR in formulating "the settled rule of construction of penal sections" observed "if there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions then we must give the lenient one.[12] The rule has been stated by Mahajan, CJI in similar words: "If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards the construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature."[13]

A Three-Judge Bench of this Court in the case of The Assistant Commissioner, Assessment-II, Bangalore and Ors. v. Valliappa Textiles Ltd. and Ors.[14], laid down:- "...Though Javali (supra) also refers to the general principles of interpretation of statute the rule of interpretation of criminal statutes is altogether a different cup of tea. It is not open to the court to add something to or read something in the statute on the basis of some supposed intendment of the statute. It is not the function of this Court to supply the casus omissus, if there be one. As long as the presumption of innocence of the accused prevails in this country, the benefit of any lacuna or casus omissus must be given to the accused. The job of plugging the loopholes must strictly be left to the legislature and not assumed by the court.

So when a statute dealing with criminal offence impinging upon the liberty of citizens, a loophole is found, it is not for judges to cure it, for it is dangerous to derogate from the principle that a citizen has a right to claim that howsoever his conduct may seem to deserve punishment, he should not be convicted unless that conduct falls fairly within definition of crime of which he is charged.[15] The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in the meaning broader than that they would ordinarily bear.[16] There is all the more reason to construe strictly a drastic penal statute which deals with crimes of aggravated nature which could not be effectively controlled under the ordinary criminal law[17].

While interpreting penal statutes, it is clear that any reasoning which is based on the substance of the transaction has to be discarded.[18]It is the duty of the courts to apply the purpose enshrined

in the unambiguous language used by the Legislature irrespective of the fact that the statute to be interpreted is a penal law.[19] The courts are not allowed to give a wider meaning when the legislature has already provided a comprehensive provision in the statute itself.

In a very recent matter of State of Rajasthan v. Vinod Kumar(on 18 May, 2012)[20] the Apex Court has observed: - "awarding punishment lesser than the minimum prescribed under Section 376 IPC, is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable.[21]"

In this matter the sentence of the respondents was reduced by the Hon'ble Rajasthan High Court to a lesser punishment than that prescribed under Section 376 as mandatory unless the exception is strictly complied with. The Apex Court observed that awarding punishment lesser than the minimum sentence of 7 years was permissible only for adequate and special reasons. However, no such reasons have been recorded by the court for doing so, and thus, the court failed to ensure compliance of such mandatory requirement but awarded the punishment lesser than the minimum prescribed under the IPC. Such an order is violative of the mandatory requirement of law and has defeated the legislative mandate. Deciding the case in such a casual manner reduces the criminal justice delivery system to mockery.

PURPOSIVE INTERPRETATION APPROACH

It is not necessary that courts must always favour the interpretation which is favourable to the accused and not the prosecution but it may also chose to go for the interpretation which is consistent with the object provided in the law. In State of Maharashtra v. Tapas D. Neogy[22] the expression 'any property' in section 102 of Cr.P.C. was interpreted to be inclusive of a 'bank account' and hence a police officer who was investigating the matter was justified in seizing the same. This principle was first explained by James, L.J. who stated: "No doubt all penal statutes are to be construed strictly, that is to say that the court must see that the thing charged as an offence is within the plain meaning of the word used, and must not strain the words on any notion that there has been a slip; that there has been a casus omissus; that the thing is so clearly within the mischief that it must have been included if thought of.

In the case of Union of India v. Harsoli Devi[23], a Constitution Bench of this court laid down: - "Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of statute. The rule stated by Tindal, CJ in Sussex Peerage case, (1844) 11 Cl & p.85, still holds the field. The aforesaid rule is to the effect: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver.""

It is a cardinal principle of construction of statute that when language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

In Kirkness v. John Hudson & Co. Ltd.[24], Lord Reid pointed out as to what is the meaning of 'ambiguous' and held that – "a provision is not ambiguous merely because it contains a word which in different context is capable of different meanings and it would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning." It is no doubt true mat if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look

into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute.

Although, the person charged has a right to say that the thing charged although within the words, is not within the spirit of enactment. But where the thing is brought within the words, and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of the penal statute, where such a doubt or ambiguity would clearly not be found or made in the same language in any other enactment."[25] Subbarao, J., has observed: "the Act (Prevention of Corruption Act, 1947) was brought in to purify public administration.

When the legislature used the comprehensive terminology- to achieve the said purpose, it would be appropriate not to limit the content by construction when particularly the spirit of the statute is in accord with the words used there."[26] On the same lines Hon'ble Supreme Court had widely interpreted the Food Adulteration Act, 1954, while expressing the strong disapproval of the narrow approach of construction to ensure that the adulterators do not exploit the loopholes in the Act.[27] Similarly, such pedantic interpretation has not been given in the cases relating to section 498A of Indian Penal Code[28], section 12(2) of Foreign Exchange Regulation Act, 1947[29] etc. The laws which have been framed for supporting the cause of offences against women have to be sternly implemented to set an example before the others which may deter the prospective criminals.[30]

SUPPRESSION OF THE MISCHIEF

The language of the penal statute can also be interpreted in a manner which suppresses the lacuna therein and to sabotage the mischief in consonance with the Heydon's Case.[31] For instance in Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab[32], while interpreting the section 60(3) of Narcotic Drugs and Psychotropic Substances Act, 1985, the word 'owner' was given a wider meaning for the purpose of confiscation of the vehicle used in furtherance of the offence mentioned therein i.e. inclusive of the registered owner where the vehicle was purchased under a hire purchase agreement when all the instalments were not paid by him.

In the matter of Manjit Singh @ Mange vs C.B.I.[33](25 January 2011), Hon'ble Supreme Court discussed the interpretation of Terrorist and Disruptive Activities (Prevention) Act, 1987 in light of the aforesaid principle. It was argued by Senior Advocate Mr. K.T.S. Tulsi, that prior approval was required to be taken from the Superintendent of Police of the District, as required under Section 20-A[34] of the TADA Act, to try the accused for the offences under the TADA Act and the Superintendent of Police, CBI was not the competent authority to give such permission. Learned senior counsel submitted that the confessional statement of the co- accused because no prior approval from the prescribed authority, as required under Section 20A of the TADA Act, had been obtained. He also submitted that the penal provisions require to be strictly construed. Shri P.P. Malhotra, learned Additional Solicitor General, submitted that when the investigation is transferred to the CBI, with the consent of the State, the CBI takes over further investigation of the case. Therefore, Superintendent of Police, CBI, was competent to record the confession made by a person and the same is admissible in the trial of such person for an offence under the TADA Act. He further submitted that the confessional statement of co-accused recorded before S.P., C.B.I., was admissible in evidence vide Section 15 of the TADA Act, which provides for the recording of the confessional statements before the police officer, not lower in the rank than Superintendent of Police, and it is made admissible even against co-accused, abettor or conspirator and the bar under the Evidence Act and Criminal Procedure Code will not come into play.

The Hon'ble Court observed that confessional statement is a substantive piece of evidence and can be used against the co- accused by following the interpretation provided in S.N. Dube vs. N.B. Bhoir[35], where the Apex Court observed that "Section 15 of the TADA Act is an important departure from the ordinary law and must receive that interpretation which would achieve the object of that provision and not frustrate or truncate it and that correct legal position is that a confession recorded under Section 15 of the TADA Act is a substantive piece of evidence and can be used against a co- accused also, if held to be admissible, voluntary and believable."

Mr. Tulsi used various judgments of the Apex Court including Dadi Jagganadhan v. Jammulu Ramulu and Ors.[36], where a Constitution Bench of this court observed: - "...The settled principles of interpretation are that the Court must proceed on the assumption that the legislature

did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.The learned counsel contended that under Section 20A of the TADA, the sanction of the District Superintendent of Police is required to be obtained before the police record any information about the commission of an offence under the TADA. Since the same has not been obtained, the conviction of the accused cannot be sustained. In the instant case, according to the learned counsel, the sanction was obtained from the S.P., C.B.I.

But the Hon'ble Court held that the phrase "District SP" has been used in order to take the sanction of a senior officer of the said district, when the prosecution wants to record any commission of a offence under the Act, the reason appears to be that the Superintendent of Police of the District is fully aware of necessity to initiate the proceedings under the stringent criminal law like the TADA Act. In the instant case, the State Government, in exercise of the power conferred by Section 3 of the Delhi Police Special Establishment Act, 1946, has handed over the investigation to CBI. The Hon'ble Court was inclined to hold that in matters concerning national security, as is the case of terrorist acts, the Centre and an autonomous body functioning under it would be better equipped to handle such cases. Therefore, `prior approval' by the SP of CBI would adequately satisfy the requirements under Section 20A (1).

Similarly in the leading matter of Reema Aggarwal v. Anupam Aggarwal[37], a broader meaning was attributed to the application of sections 304B and 498A of the Indian Penal Code, in light of the broader purpose which was sought to be achieved through these provisions and the mischief which was required to be cured. It was also made applicable to the case where the legitimacy of the marriage itself was in question to bring the accused within the purview of the word 'husband' as used in the said provisions.

In Abhay Singh Chautala vs C.B.I. (on 4 July, 2011)[38] the learned Senior Counsel Shri Mukul Rohtagi as well as Shri U.U. Lalit arguing for the appellants, urged that on the day when the

charges were framed or on any date when the cognizance was taken, both the appellants were admittedly public servants and, therefore, under the plain language of Section 19 (1) of The Prevention of Corruption Act, the Court could not have taken cognizance unless there was a sanction from the appropriate government. The learned senior counsel analyzed the whole Section closely and urged that in the absence of a sanction, the cognizance of the offences under the Prevention of Corruption Act could not have been taken. It was also urged that a literal interpretation is a must, particularly, to sub- Section (1) of Section 19. But the Apex Court observed- : "...we, therefore, reject the theory of litera regis while interpreting Section 19(1)... However, as per the interpretation, it excludes a person who has abused some other office than the one which he is holding on the date of taking cognizance, by necessary implication. Once that is clear, the necessity of the literal interpretation would not be there in the present case we specifically hold that giving the literal interpretation to the Section would lead to absurdity and some unwanted results ... hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19."

CONCLUSION

After the detailed analysis of various methods of interpreting a penal statute in the paper we can broadly categorize the method of interpretation by concluding that firstly the basic rule of interpreting such laws is to strictly adhere to the language of the statute since it is the will of the legislature and the court should restrain itself from stretching the meaning of the words causing unnecessary hardships to the subjects. Secondly it must be always kept in mind that what is the purpose for which the enactment seeks to achieve and if a strict adherence is done will it be able to achieve that purpose or object.Thirdly and lastly whether by such an interpretation the mischief which was sought to be suppressed by the penal law was suppressed and if not then it is the duty of the court to ensure that it is done and just because of the Legislature's omission, the injustice to the society should not be administered.

---

[1] Interpretation of Statute, Twelfth edition, pp. 239-240

[2] N.K. Jain v. C.K. Shah, AIR 1991SC 1289.

[3] T. Bhattacharya, Interpretaion of Statutes, V Ed., Cental Law Agency, 2003.

[4] G P Singh, Principles of Statutory Interpretation, XIII Ed., Lexis Nexis Butterwoths Wadhwa, 2012, p. 845.

[5] Ibid.

[6] R. v. Horseferry Road Magistrate's Court, (1986) 2 All ER 666.

[7] State of Kerela v. UNNI AIR 2007 SC 819.

[8] Kartar Singh v. State of Punjab AIR 1994 SC 569.

[9] A.G. v. Sillem, (1864) 33 LJ Ex 92, p.110.

[10] (2003) 1 SCC 14.

[11] http://indiankanoon.org/doc/625813/.

[12] Tucker and Sons v. Priester (1887) 19 QBD 629.

[13] Tolaram v. State of Bombay, AIR 1954 SC 496.

[14] AIR 2004 SC 86.

[15] Spicer v. Holt (1976) 3 All ER 71, pp. 78, 79 (HL)

[16] R. v. Cuthbertson (1980) 2 All ER 401, p. 404.

[17] NIranjan Singh Karan Singh Punjabi v. Jitendra Bhimraj Bijia, AIR 1990 SC 1962.

[18] Balaram Kumawat v. Union of India

[19] Thomson v. His Honour Judge Byrne, (1999) 73 ALJR 642.

[20] http://indiankanoon.org/doc/194417701/.

[21] Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236.

[22] (1999) 7 SCC 685.

[23] (2002) 7 SCC 273.

[24] 1955 (2) ALL ERa 345.

[25] Dyke v. Elliot (1872) LR 4 PC 184.

[26] M. Narayan Nambiyar v. State of Kerala AIR 1960 SC 1116.

[27] Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929.

[28] State of Kerela v. M. Verghese, AIR 1987 SC 33.

[29] M.G. Wagh v. Jay Engineering Works Ltd., AIR 1987 SC 670.

[30] K.P.S. Rao v. Yadla Srinivasa Rao AIR 2003 SC 11.

[31] Standard Chartered Bank v. Directorate of Enforcement, (2005) 4 SCC 530.

[32] AIR 2000 SC 499.

[33] http://indiankanoon.org/doc/659925/

Interpretation of Taxing (Fiscal) Statutes

Should courts interpret laws according to a uniform set of rules, or should they use different tools for interpreting different statutes? This simple question is increasingly at the heart of statutory interpretation scholarship and jurisprudence. If the latter position is correct--if different laws require different interpretive methods--generalizations about statutory interpretation may be of only limited value and the search for a unified theory of interpretation may be a misguided quest. But the lure of uniformity remains great, particularly for appellate courts, which must interpret a multiplicity of statutes and need at least some guiding principles to do so. This project is being divided into two parts, the first part deals with the interpretation of tax statutes & the second part deals with the interpretation of tax treaties

THE THREE basic rules for the interpretation of statutes are the primary rule of construction, secondary rule of construction and the rule of harmonious construction. Primary rule of construction:

The steps to be followed while applying this rule are:

* Read and analyze a section

* Ascertain the primary meaning of the words used

* Ascertain the grammatical, literal and plain meaning of the words used in the section.

Maxwell terms this rule as the Golden Rule. Secondary rule of construction:

This rule is concerned with the application of the eleven canons of theory of interpretation of statutes. These are: The preamble to a statute is a part of the statute and should be read together with the object of the Act, title, marginal notes and legislative history and cannot control or restrict the operation of a main section but they can be used as a guiding factor to know the general drift of a section.

The main part of the section lays down the substantive law and reflects the intention of Parliament. For example, section 12 of the Companies Act, 1956 provides for the mode and manner of forming an incorporated company by laying down a detailed procedure. A proviso is appended to a main section which restricts the main section. It cannot travel beyond the domain of main section to which it is appended.

In the case of CIT v Indo Mercantile Bank, the Supreme Court has explained, "the territory of a proviso, therefore, is to carve out an explanation to the main enactment and exclude something which otherwise would have been under the section."

The definition defines the meaning of the words used. It could be a 'mean type' or an 'inclusive type'. If when defining, the word 'means' is used and the word is restricted to the scope indicated in the definition, it is the 'mean type'.

An example of this kind of definition is found in the definition of "company" given in section 2 (17) of the Income Tax Act, 1961 (I-T Act). The 'inclusive type' is when defining, the word 'includes' is used. It can include items other than those enumerated in the section. Example of this type is found in the definition of 'person' given in section 2(31) of the I-T Act.

An explanation section does not enlarge the scope of the main section but explains it. The I-T Act contains a plethora of explanations. An example is the four explanations to section 43B, which provides that certain deductions are to be allowed only on actual payment. In the case of a conflict between a special provision and a general provision, then the special section would override the general section. A special section confers a special power and a general section confers a general power.

The striking example of general and special, is found in the definition of `body corporate' given under section 2(7) of the Companies Act, 1956 and that given for the purposes of section 43A(1). There can be a `deeming fiction, where the Legislature can deem something to be something else. In the case of CIT v Express News Papers I , the Supreme Court held that-"It (the deeming clause in section 12 (B) only introduces a limited fiction, namely that the capital gains accrued will be deemed to be income of previous year, in which the sale was effected. The fiction does not make them the profits and gains of business." It is well settled that a legal fiction is limited to the purpose for which it is created and should not be extended beyond its legitimate fields.

An example of deeming fiction is found in section 115 J of the I-T Act which was operative for assessment years ?88-89 to ?90-91, where if the company's total income is less than 30 per cent of its book profit, 30 per cent of the book profits deemed to be the total income. Retrospective operation and prospective operation is another indicator. All statutes are prospective in nature. But an Act or a particular section can be given retrospective effect by express statement or by necessary implication.

If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be constructed as prospective only. It must be borne in mind that the rule regarding retrospective operation governs substantive sections only and not procedural sections. The example with regard to retrospective operation of a procedural law was Rule 1 BB of the Wealth Tax Rules, 1957, laying down the manner of valuation of a house.

The Supreme Court in the case of CWT v Sharvan Kumar Swarup & Sons has held that Rule 1BB is procedural in nature and, therefore, applicable to all pending proceedings.

The transforming amendments of substantive sections are always prospective in nature except where they are made retrospective in operation by specific statement or by necessary implication. Again, a procedural amendment can be retrospective in operation. Further, the classificatory amendments are used only in those cases to find out the meaning of earlier sections.

When there is a provision that has two possible interpretations, the one which casts a lesser burden on the subject must be adopted. In the case of CIT v M K Vaidya , the Karnataka High Court held that "...if reasonably two meanings are attributable to a word used in the fiscal law, the meaning which is more beneficial to the tax payers will be applied, specially it is so, when the state itself at one point of time clearly acted as if the wider meaning was not attributable without adding further words". In the case of CIT v New Shorrock Spinning & Manufacturing, the Bombay High Court held that "the question of accepting the principle of beneficial interpretation would arise only in case where two views are reasonably possible in the opinion of the court deciding the point at issue. If this is not the case, the court should not tilt in favour of the assessee.

Another interpretational canon is reference to the speech in Parliament, at the time of introduction of the bill and is only permissible when the court finds the provisions of the Act vague and ambiguous Another tool for interpretation is reference to the memorandum, explaining the provisions of the Finance Act or a circular issued by a competent authority, like the Central Board of Direct Taxes. Generally, the memorandum explaining the provisions of the Act or such circular can not be relied upon for interpreting a particular provision of the Act as they can not curtail or modify the clear provisions of law.

The statement of objects and reasons in the Bill, can not be relied upon to interpret a particular provision of the Act. The recent decision of the Karnataka High Court in the case of Union Home Products v Union of India supports this view.

Rule of harmonious construction: It is true that every statute must be interpreted on the basis of aforesaid primary and secondary rules of construction.

However, they should not conflict with the principle of harmonious construction. Every effort should be made to ensure that all the three rules are simultaneously satisfied.

Maxwell in "Interpretation of Statutes (Twelfth Edition)" states that the words of statute, when there is doubt about their meaning are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the legislature had in view. An interpretation of fiscal statute which has been reiterated in a recent judgment by the Supreme Court in the case of Commissioner of Customs v Tullow India Operations Ltd is that no interpretation should lead to absurd results. It is strange that the Supreme Court had to once again repeat this fundamental proposition, but this was necessary because a decision by the commissioner of Customs in this particular case had led to an absurd conclusion. An importer was denied an exemption because he was not able to produce a certificate, which was necessary at the time of import. The certificate was, however, produced at a later stage. The Supreme Court set aside the order of the commissioner of Customs on the ground that it would lead to an absurd result, besides many other reasons. Even earlier, on a similar issue of how to understand the expression, at the time of importation, the tribunal had given a decision that if this was interpreted too

literally, it would lead to absurd results.

The tribunal said at the time of importation literally meant at the time when the ship entered India. It would lead to an absurd situation since nobody could claim exemption at that time. The tribunal extended the meaning of at the time of importation to at the time of clearance of goods. The crux of the matter is that depending on the situation of importation, the meaning must lead to a practical result and not an absurd situation. The same principle was reiterated by the Supreme Court in the case of ACC v Commissioner of Customs in this case, the question was about valuation of a drawing and design. The Supreme Court observed that it would be absurd to value such articles or similar articles like paintings for the purpose of Customs duty merely on the basis of the cost of the canvass or the cost of the oil paints.

In another judgment, in CCE v Acer India Ltd. the Supreme Court observed in relation to the value of operating software that the principle of purposive construction should be adhered to when a literal meaning may result in absurdity. In the case of TCS v State of Andhra Pradesh , where the issue was chargeability of computer software in canned form to sales tax, the Supreme Court quoted the above judgment of ACC v Commissioner of Customs with approval. In one of the latest judgments in the case of Compack Pvt Ltd v CCE , the Supreme Court observed in

relation to availing of Modvat credit that if it was not written very clearly in a notification that the final product had to be made only or purely from certain inputs, the exemption cannot be denied because it has used other inputs as well. That sort of interpretation would create an absurd situation. The Supreme Court, therefore, observed that a notification had to be construed in terms of the language used, unless the literal meaning led to an anomaly or absurdity. If there is no such absurdity in the literal interpretation, there is no need to go for the intention or the purpose of the notification.

The conclusion is that we have to first resort to literal interpretation of the statute or expression. However, if that leads to an absurd result, we have to look for the intention or the purpose of the legislation so that the legislation itself does not become invalid. The high courts and the Supreme Court have always chosen interpretations which do not lead to an anomaly over the one which leads to an anomaly or an absurdity.

Conclusion:

The interpretation of tax statutes, emphasizing the role of legislative purpose in the interpretive process. Although conceding the importance of legislative purpose, upon close examination, most tax cases are--and should be--decided by a practical reason method, balancing text, legislative history, and practical considerations in a manner not terribly different than that used to interpret other statutes. The question of specificity is particularly acute for tax statutes. Scholars have long suggested that the unique features of tax law, including its high level of detail, frequent revision, and largely self-contained nature, require a special set of interpretive tools. In particular, scholars have argued that the underlying structure or "purpose" of the Code may dictate results that are difficult or impossible to reach using non-tax interpretive methods.

TOPIC NO. 7

OTHER RULES OF INTERPRETATION

What a Legal Maxim is!

A legal maxim can be defined as an established set or principle.

Many of the legal maxims developed are in Latin. This is mainly because most of the legal maxims were developed in the medieval era in European Countries that used Latin as the language of law and for the courts.

- **Ut Res Magis Valeat Quam Pereat:**

The maxim "Ut Res Magis Valeat Quam Pereat" is a rule of construction which literally means the construction of a rule should give effect to the rule rather than destroying it .i.e., **when there are two constructions possible from a provision, of which one gives effect to the provision and the other renders the provision inoperative, the former which gives effect to the provision is adopted and the latter is discarded.** It generally starts with a presumption in favor of constitutionality and prefer a construction which embarks the statute within the competency of the legislature. But it is to be noted that when the presumption of constitution fails, then the statutes cannot be rendered valid or operative accordingly. The landmark case of **Indra Sawhney**(2000), where the Supreme Court struck down the state legislation as it was violative of constitution and ultra-vires of the legislative competency.

- **Contemporanea Exposito Est Fortissima In Lege**

Meaning Contemporaneous exposition is the best and strongest in law. It is said that the best exposition of a statute or any other document is that which it has received from contemporary authority. This maxim has been confirmed by the Apex Court in **Desh Bandhu Gupta v. Delhi Stock Exchange Asson. Ltd. AIR 1979 SC 1049, 1054.** Contemporanea exposito is a guide to the interpretation of documents or statutes. It is one of the important external aids for interpretation. How ever great care must be taken in its application. When a document was executed between two parties, there intention can be known by their conduct at the time and after the execution of the instrument.

Where the words of the deed are ambiguous, the court may call in the acts done under it as a clue to the intention of the parties. Their acts are the result of usages and practices in the society. Therefore their acts are useful as an external aid to interpretation of the deed. This principle may also be applied in case of statutes. ***"Contemporanea expositio est optima et fortissinia in lege"*****means usage or practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion.** The maxim Contemporanea expositio as laid down by Lord Coke was applied to construing ancient statutes, but usually not applied to interpreting Acts or statutes which are comparatively modern.

The meaning publicly given by contemporary or long professional usage is presumed to be true one, even where the language has etymologically or popularly a different meaning. It is obvious that the language of a statute must be understood in the sense in which it was understood when it was passed, and those who lived at or near that time when it was passed may reasonably be supposed to be better acquainted than their descendants with the circumstances to which it had relation, as well as with the sense then attached to legislative expressions. Usages and practice developed under a statute is indicative of the meaning ascribed to its words by contemporary opinion and in case of an ancient statute, such reference to usage and practice is admissible.

He said a uniform notorious practice continued under an old statute and inaction of the legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. According to Lord Ellenborough, Communis opinio is evidence of what the law is. When the practice receives judicial or legislative approval it gains additional weight and is to be more respected.

- **Expresssio Unius Est Exclusio Alterius**

Expressio unius est exclusio alterius is a Latin phrase that means express mention of one thing excludes all others. This is one of the rules used in interpretation of statutes. **The phrase indicates that items not on the list are assumed not to be covered by the statute.** When something is mentioned expressly in a statute it leads to the presumption that the things not mentioned are excluded. This is an aid to construction of statutes.

- **Actionable Per se**

The very act is punishable, no proof of damage is required

actions that do not require the allegation or proof of additional facts to constitute a cause of action. Such a tort is actionable simply because it happened

- **Assentio Mentium**

The meeting of minds

Latin definition for a meeting of minds. The moment when a contract is complete.

- **Pacta sund servanada**

Treaties are legally binding

A Latin word for agreements are binding. It is a basic principle of civil law, international law, and canon law

- **Bona Vacantia**

Goods without an owner

Bona Vacatia is a legal concept associated with the property that has no owner. It exists in various jurisdictions, but with origins mostly in English law.

- **Persona non-grata**

Person non-wanted

refers to a foreign person whose entry or remaining in a country is prohibited by that country's government

- **Alibi**

At another place

A claim or a piece of evidence when an act, typically a criminal one, is alleged to have taken place

- **Ipso facto**

By the very fact itself

Ipso Facto is a Latin Phrase, which means that a specific phenomenon is a direct consequence of the action in question, instead of any previous action.

- **Actio personalis moritur cum persona**

A personal right of action dies with the person

A maxim stating that actions of tort or contract are destroyed by the death of the injured or the injuring party.

- **Actus non facit reum nisi mens sit rea**

The act does not make one guilty unless there is a guilty intent

an act does not make one guilty without a guilty mind. This Latin phrase is often given as the pinnacle of the English common law criminal justice system and is usually in the context of mens Rea.

- **Jus cogens**

The peremptory norm of general international law

refers to certain fundamental principles of international law, from which no derogation is ever permitted

- **Pari passu**

On an equal footing

Is a Latin phrase that describes situations where two or more assets, securities, creditor or obligation are equally managed without situations

- **Non- sequitur**

An inconsistent statement

a conclusion or a statement that does not logically follow from the previous argument or statement

- **Ubberime Fide**

In utmost good faith

utmost good faith- it is a legal doctrine that governs most insurance contracts

- **Vox populi**

Voice of the people

this phrase is used in English to mean voice of the people.

- **Corpus Delicti**

The body of crime

material substance (such as the body of the victim of a murder) upon which a crime has been committed.

1. *Corpus delicti* literally means "body of the crime".
2. In its original sense, the body in question refers not to a corpse but to the body of essential facts that, taken together, prove that a crime has been committed.
3.

- **De Minimis Lex non Curat**

The law does not notice trifling matters

a common law principle whereby the judges will not sit in the judgment of extremely minor transgressions of the law.

- **Volenti non fit injuria**

To a willing person, injury is not done

Is a common law doctrine that states that if someone willingly places themselves in a position in which harm might result, knowing that some degree of harm might result, they are able to bring a claim against the other party in tort.

- **Ubi Jus Ibi remedium**

Where there is a right, there is a remedy

for every wrong, there is a remedy. Further, when one’s right is denied, the law affords a remedy of an action for its enforcement.

- **Qui facit per alium facit per se**

He who acts through another acts by himself

It is a fundamental legal maxim of the law of agency. It is a maxim often stated in discussing the liability of an employer for the act of the employee

- **Jus naturale**

Natural law

natural law is a philosophy that ascertains that certain rights are inherent by human nature, traditionally by god and something that can be understood universally through human reason.

- **Per Curium**

In the opinion of the court

denoting decision of the appellate court in unanimous agreement written anonymously.

- **Obiter Dicta**

Reason for being a part of the judgment

a judge's expression of opinion uttered in court or in a written judgment, but not essential to the decision and therefore not legally binding as a precedent.

- **Ration decidendi**

None of the above

the reason or the rule of law on which a judicial decision is made

- **Res Judicata**

A case which has already been decided

a matter that has been adjudicated by a competent court and therefore may not pursued further by the same parties.

- **Quantum Merit**

As much as deserved

a reasonable sum of money to be paid for the services rendered or work done when the amount is due as not stipulated in a legally enforceable contract.

- **Actori Incumbit Onus Probandi**

The burden of proof lies on the plaintiff

is a Latin phrase derived which means that the burden of proof lies on the plaintiff.

- **In Limine**

On the threshold

A motion in limine is a motion that is tabled by one of the parties at the very beginning of the legal procedures and seeks to pull the rug out from under the feet of the other party. This motion is decided by the judge in both civil and criminal proceedings.

- **Inter Vivos**

between living persons

Is a legal term referring to a transfer or a gift made during one's lifetime, under the subject of trust.

- **Respondent Superior**

Let the principle answer

is a doctrine of law that states that a party is responsible for the vicarious acts of its agents. This common law doctrine was established in the seventeenth century.

- **Quo Warranto**

By whose authority

a writ or a legal action requiring a person to show by what warrant an office or a franchise is held, claimed, or exercised.

- **Injuria Sine Damnum**

Injury without damage

the meaning of the above maxim is the infringement of an absolute private right without any actual loss or damage. This was first established in the Gloucester grammar school case.

- **Caveat emptor**

Let the buyer beware

it is the principle that states that the buyer alone is responsible for checking the quality and the sustainability of the goods before a purchase is made.

Ignoria Juris non Excusat

Ignorance of a law is not an excuse

Is a legal principle holding that a person who is unaware of a law may not escape the liability for violating the law merely because one was unaware of its content.

- **A fortiori**

'From stronger argument' – Used to express a conclusion for which there is stronger evidence than for a previously accepted one

- **Ab initio**

'From the beginning' – If a contract is void (say for mistake) ab initio, this has the consequence that no innocent third parties can acquire rights under any subsequent contract (*Bell v Lever Bros* [1932] AC 161 (HL) (Lord Atkin).

- **Actus reus**

'*A guilty act'* – The prohibited conduct or behaviour that the law seeks to prevent. Although commonly referred to as the "guilty act" this is rather simplistic, as the actus reus includes all the aspects of the crime except the accused's mental state (see mens rea). In most cases the actus reus will simply be an act (e.g. appropriation of property is the act of

theft) accompanied by specified circumstances (e.g. that the property belongs to another). Sometimes, however, the actus reus may be an omission to act (e.g. failure to prevent death may be the actus reus of manslaughter: *R v Stone and Dobinson* [1977] QB 354) or it may include a specified consequence (death resulting being the consequence required for the actus reus of murder or manslaughter). In certain cases the actus reus may simply be a state of affairs rather than an act (*Winzar v Chief Constable of Kent* (1983) The Times 28 March 1983).

- **Ad hoc**

'To this' – Created or done for a particular purpose as necessary:

- **Ad idem**

'*Towards the same'* – Indicates that the parties to a transaction are in agreement.

- **Ad litem**

'As regards the action'

- A grant *ad litem* is the appointment by a court of a person to act on behalf of an estate in court proceedings, when the estate's proper representatives are unable or unwilling to act.
- A guardian *ad litem* is the former name for a litigation friend responsible for the conduct of legal proceedings on behalf of someone else.

- **Ad referendum**

'*Subject to reference'* – Denoting a contract or other matter that is subject to agreement by other parties and finalisation of the details

- **Alibi**

'Elsewhere' – A defence to a criminal charge alleging that the defendant was not at the place at which the offence was committed at the time of its alleged commission and so could not have been responsible for it. If the defendant proposes to introduce alibi evidence, details of his alibi should be provided to the prosecution.

- **Alieni juris**

'Of another's right' – Describing the status of a person who is not of full age and capacity

- **Aliunde**

'From elsewhere' – From a source outside the document currently under consideration. Evidence aliunde
may be considered where the meaning of a document (e.g. a will) is otherwise unclear.

- **Amicus curiae**

'Friend of the court or tribunal' – A non-party who gives evidence before the court so as to assist it with research, argument, or submissions. For example, in the House of Lords decision on whether to allow the extradition of General Pinochet their lordships sought an independent expert opinion on the matter of diplomatic immunity. For that purpose they called upon an expert in this field, David Lloyd Jones QC, to assist the court.

- **Animus**

'Intention' - The term is often used in combination; for example:

• animus furandi – the intention to steal;
• animus manendi – the intention to remain in one place (for the purposes of the law relating to domicile);
• animus donandi: – the intention to transfer property.

- **Ante**

'Before'

- **Bona vacantia**

'Empty goods' – Property not disposed of by a deceased's will and to which there is no relation entitled on intestacy. Under section 46 of the Administration of Estates Act 1925, such property passes to the Crown, the Duchy of Lancaster, or the Duke of Cornwall.

- **Bona fide**

'With good faith' – Genuine; real

- **Caveat**

'Let him beware' – A notice, usually in the form of an entry in a register, to the effect that no action of a certain kind may be taken without first informing the person who gave the notice (the caveator).

- **Caveat emptor**

'Let the buyer beware' – A common-law maxim warning a purchaser that he could not claim that his purchases were defective unless he protected himself by obtaining express guarantees from the vendor. The maxim has been modified by statute: under the Sale of Goods Act 1979 (a consolidating statute), contracts for the sale of goods have implied terms requiring the goods to correspond with their description and any sample and, if they are sold in the course of a business, to be of satisfactory quality and fit for any purpose made known to the seller.

- **Certiorari**

'To be informed'

- **Cf (confer)**

‘Compare'

- **Compos mentis**

‘Possessed of mind’ – Of sound mind: sane. A valid contract must be made by someone who is compos mentis.

- **Cor (coram)**

'In the presence of the people'

- **Corpus delicti**

‘The body of the offence’ – The proof that the crime has been committed. Originally this referred literally to the corpse of a murdered person. It now refers to the factual evidence of the crime.

- **Cur. adv. vult/Curia Advisari vult**

The court wishes to consider the matter before giving judgment, as when time is needed to consider arguments or submissions made to it.

- **De bene esse**

‘Of well-being’ – Denoting a course of action that is the best that can be done in the present circumstances or in anticipation of a future event.

- **De facto**

'In fact' – Existing as a matter of fact rather than of right.

- **De jure**

'Of law' – As a matter of legal right; by right.

- **De lege ferenda**

'Of (or concerning) the law that is to come into force' – A phrase used to indicate that a proposition relates to the law as it is.

- **De lege lata**

'Of (or concerning) the law that is in force' – A phrase used to indicate that a proposition relates to the law as it is.

- **De minimis (non curat lex)**

'The law is not concerned with trivial matters'

- **Dictum**

'A saying' – An observation by a judge with respect to a point of law arising in a case before him.

- **Dissentiente**

'Differing in opinion' – Dissenting from one's brother judges and making a speech to this effect. It is often
abbreviated to 'diss' in citations of cases.

- **Doli (in)capax**

'(In) capable of wrong' – A child under the age of 10 is deemed incapable of committing any crime. Above the age of 10 children are doli capax and are treated as adults, although they will usually be tried in special youth courts (with the exception of homicide and certain other grave offences) and subject to special punishments.

- **Erratum**

An error in printing or writing.

- **Ex gratia**

Done as a matter of favour – An ex gratia payment is one not required to be made by a legal duty.

- **Ex officio**

By virtue of holding an office – Thus, the Lord Chief Justice is ex officio a member of the Court of Appeal.

- **Ex parte**

1. On the part of one side only – An ex parte hearing is defined in the Glossary to the Criminal Procedure Rules as a hearing where only one party is allowed to attend and make submissions. However, the term ex parte is no longer generally used in civil proceedings, having been replaced by the phrase without notice.
2. On behalf of – This term is used in the headings of law reports together with the name of the person making the application to the court in the case in question, for example in applications for judicial review.

- **Ex post facto**

'In the light of subsequent events' – Describing any legal act, such as a statute, that has retrospective effect

- **Habeas corpus**

'You shall have the body (in court)' – A prerogative writ1 used to challenge the validity of a person's detention, either in official custody (e.g. when held pending deportation or extradition) or in private hands. Deriving from the royal prerogative2 and therefore originally obtained by petitioning the sovereign, it is now issued by the Divisional Court of the Queen's Bench Division, or, during vacation, by any High Court judge. If on an application for the writ the Court or judge is satisfied that the detention is prima facie unlawful, the custodian is ordered to appear and justify it, failing which release is ordered.

- **Ibid**

'In the same place' – Used to save space in textual references to a quoted work which has been mentioned in a previous reference.

- **Ignorantia juris non excusat**

'Ignorance of the law does not excuse' – i.e. no defence against criminal or other proceedings arising from its breach.

- **In camera**

'In the chamber' – In private. A court hearing must usually be public but the public may be barred from the court or the hearing may continue in the judge's private room in certain circumstances; for example, when it is necessary in the interests of national security or to

protect the identity of a witness unwilling to give evidence in public. Part 39 of the Civil Procedure Rules and Part 16 of the Criminal Procedure Rules deal with in camera hearings.

- **In curia**

'In open court'

- **In limine**

'Preliminary' – Used, for example, to describe an objection

- **In loco parentis**

'In place of a parent' – used loosely to describe anyone looking after children on behalf of the parents, e.g. foster parents or relatives. In law, however, only a guardian or a person in whose favour a residence order is
made stands in loco parentis; their rights and duties are determined by statutory provisions.

1 An order issued by a court in the sovereign's name directing some act or forbearance. Originally, a writ was an instrument under seal bearing some command of the sovereign.
2 The special rights, powers, and immunities to which the Crown alone is entitled under the common law. Most prerogative acts are now performed by the government on behalf of the Crown. Some, however, are performed by the sovereign in person on the advice of the government (e.g. the dissolution of Parliament) or as required by
constitutional convention (e.g. the appointment of a Prime Minister). A few prerogative acts (e.g. the granting of
certain honours, such as the Order of the Garter) are performed in accordance with the sovereign's personal wishes.
3 A court order.

- **In personam**

'Against the person' – Describing a court action or a claim made against a specific person or a right affecting a particular person or group of people (compare in rem). The maxim of equity "equity acts in personam" refers to the fact that the Court of Chancery issued its decrees3 against the defendant himself, who was liable to imprisonment if he did not enforce them.

- **In re**

'In the matter of' – A phrase used in the headings of law reports, together with the name of the person or thing that the case is about (for example, cases in which wills are being interpreted). It is often abbreviated to re.

- **In rem**

'Against the thing'

1 Describing a right that should be respected by other people generally, such as ownership of property, as distinct from a right in personam.

2 Describing a court action that is directed against an item of property, rather than against a person or group of people. Actions in rem are a feature of the Admiralty Court.

- **Inter alia**

'Among other things' – The phrase is used to make it clear that a list is not exhaustive.

- **In situ**

'In the original place'

- **Intra**

'Inside'

- **Intra vires**

'Within the powers' – Describing an act carried out by a body (such as a public authority or a company) that is within the limits of the powers conferred on it by statute or some other constituting document (such as the memorandum and articles of association of a company).

- **Inter vivos**

'Between living people' – If a trust is created inter vivos it is created during lifetime, as distinct from upon death.

- **Ipso facto**

'By that very fact or act'

- **Locus in quo**

'The place in which' – The place where an event took place. Fact finders may visit the locus in quo in order to understand the evidence and the judge and jury may inspect it as part of court proceedings.

- **Mens rea**

'A guilty mind' – The state of mind that the prosecution must prove a defendant to have had at the time of committing a crime in order to secure a conviction. Mens rea varies from crime to crime; it is either defined in the statute creating the crime or established by

precedent. Common examples of mens rea are intention to bring about a particular consequence, recklessness as to whether such consequences may come about (*R v Cunningham* [1957] 2 QB 396), and (for a few crimes) negligence. Some crimes require knowledge of certain circumstances as part of the mens rea (for example, the crime of receiving stolen goods requires the knowledge that they were stolen). Some crimes require no mens rea; these are known as crimes of strict liability. Whenever mens rea is required, the prosecution must prove that it existed at the same time as the actus reus of the crime (coincidence of actus reus and mens rea: *R v Le Brun* [1992] QB 61). A defendant cannot plead ignorance of the law, nor is a good motive a defence. He may, however, bring evidence to show that he had no mens rea for the crime he is charged with; alternatively, he may admit that he had mens rea, but raise a general defence (e.g. duress) or a particular defence allowed in relation to the crime.

- **Non est factum (suum)**

'It is not my deed' – A plea that an agreement mentioned in the statement of case was not the act of the defendant. It may be applicable where the person signing a document had no real understanding of the character or effect of that document.

- **Obiter dictum**

'A remark in passing' – Something said by a judge while giving judgment that was not essential to the decision in the case. It does not form part of the ratio decidendi of the case and therefore creates no binding precedent, but may be cited as persuasive authority in later cases.

- **Onus (probandi)**

'Load or burden' – Something that is one's duty or responsibility (burden of proof).

- **Pari passu**

'With equal step' – Proportionally, without preference. The principle that where there are competing claimants, (e.g. in bankruptcy proceedings) assets should be distributed on a pro rata basis, in accordance with the size of the claim.

- **Per**

'Through, by means of'

- **Per curiam (per. cur.)**

'By the court' – A proposition per curiam is one made by the judge (or, if there is more than one judge, assented to by all).

- **Per incuriam**

'Through lack of care' – A decision of a court is made per incuriam if it fails to apply a relevant statutory provision or ignores a binding precedent.

- **Per se**

'By or in itself or themselves; intrinsically'

- **Post**

'Subsequent to; after'

- **Prima facie**

'At first appearance' – on the face of things

- **Quasi**

'As if, almost'

- **Qui facet per alium facit per se**

'He who acts through another, acts through himself' – The traditional basis of vicarious liability. It means, for example, that an employer is liable for the consequences of any act done by employees in the ordinary course of their duties and responsibilities.

- **Ratio decidendi**

'The reason for deciding' – The principle or principles of law on which the court reaches its decision. The ratio of the case has to be deduced from its facts, the reasons the court gave for reaching its decision, and the decision itself. It is said to be the statement of law applied to the material facts. Only the ratio of a case is binding on inferior courts, by reason of the doctrine of precedent.

- **Res judicata**

'A matter that has been decided' – The principle that when a matter has been finally adjudicated upon by a court of competent jurisdiction it may not be reopened or challenged by the original parties or their successors in interest. It is also known as action estoppel. It does not preclude an appeal or a challenge to the jurisdiction of the court. Its justification is the need for finality in litigation.

- **Res ipsa loquitur**

'*The thing speaks for itself*' – A principle often applied in the tort of negligence. If an accident has occurred of a kind that usually only happens if someone has been negligent, and the state of affairs that produced the accident was under the control of the defendant, it

may be presumed in the absence of evidence that the accident was caused by the defendant's negligence (*Scott v London and St Katherine Docks Co* (1865) 3 Hurl. & C. 596).

- **Sic**

'So, thus' – Used in brackets after a copied or quoted word that appears odd or erroneous to show that the word is quoted exactly as it stands in the original.

- **Stare decisis**

'To stand by things decided' – A maxim expressing the underlying basis of the doctrine of precedent, i.e. that it is necessary to abide by former precedents when the same points arise again in litigation.

- **Sub judice**

'In the course of trial' – The sub judice rule:

1 A rule limiting comment and disclosure relating to judicial proceedings, in order not to prejudge the issue or influence the jury. See contempt of court.

2 A parliamentary practice in which the Speaker prevents any reference in questions or debates to matters pending decision in court proceedings (civil or criminal). In the case of civil proceedings, he has power to waive the rule if a matter of national interest is involved.

- **Sui generis**

'Of its own kind' – Forming a class of its own; unique.

- **Ultra vires**

'Beyond the powers' – Describing an act by a public authority, company, or other body that goes beyond the limits of the powers conferred on it. Ultra vires acts are invalid (compare *intra vires*). The ultra vires doctrine applies to all powers, whether created by statute or by a private document or agreement (such as a trust deed or contract of agency). In the field of public (especially administrative) law it governs the validity of all delegated and sub-delegated legislation. This is ultra vires not only if it contains provisions not authorized by the enabling power but also if it does not comply with any procedural requirements regulating the exercise of the power.

The doctrine also governs the validity of decisions made by inferior courts or administrative or domestic tribunals and the validity of the exercise of any administrative power. The decision of a court or tribunal is ultra vires if it exceeds jurisdiction, contravenes procedural requirements, or disregards the rules of natural justice (the power conferring jurisdiction being construed as requiring the observance of these). The exercise of an administrative power is ultra vires not only if unauthorized in substance, but equally if (for example) it is procedurally irregular, improperly motivated, or in breach of the rules of natural justice (substantive vs. procedural ultra vires). The remedies available for this second aspect of the doctrine are quashing orders, prohibiting orders, declaration, and injunction (the first two of these are public remedies, not available against decisions of domestic tribunals whose jurisdiction is based solely on contract).

- **Volenti non fit injuria**

'No wrong is done to one who consents' – The defence that the claimant consented to the injury or (more usually) to the risk of being injured. Knowledge of the risk of injury is not sufficient; there must also be (even if only by implication) full and free consent to bear the risk (Simms v Leigh Rugby Football Club Ltd [1969] 2 All ER 923). A claimant who has assumed the risk of injury has no action if the injury occurs. The scope of the defence is limited by statute in cases involving business liability