

Subject: Interpretation of statutes

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Preface

This is a compilation of notes and lectures on the subject titled "INTERPRETATION OF STATUTES". It is a ready-to-use gist for law students and the primary objective of this gist is to enable the reader to understand the in-depths of the subject and to provide exam oriented information.

This has been a new initiative from GOODWORD and we hope that it will definitely be of some use to law students and to others who are interested in this subject.

Suggestions and additions to the compilation are welcomed.

Wishing you all the best!

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CHAPTER 1

GENERAL PRINCIPLES OF INTERPRETATION

Introduction

The term interpretation means “To give meaning to”. Governmental power has been divided into three wings namely the legislature, the executive and the judiciary. Interpretation of statutes to render justice is the primary function of the judiciary. It is the duty of the Court to interpret the Act and give meaning to each word of the Statute.

The most common rule of interpretation is that every part of the statute must be understood in a harmonious manner by reading and construing every part of it together.

The maxim “*A Verbis legis non est recedendum*” means that you must not vary the words of the statute while interpreting it.

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

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.

Kinds of Interpretation

There are generally two kind of interpretation; literal interpretation and logical interpretation.

Literal interpretation

Giving words their ordinary and natural meaning is known as literal interpretation or *litera legis*. It is the duty of the court not to modify the language of the Act and if such meaning is clear and unambiguous, effect should be given to the provisions of a statute whatever may be the consequence. The idea behind such a principle is that the legislature, being the supreme law making body must know what it intends in the words of the statute. Literal interpretation has been called the safest rule because the legislature's intention can be deduced only from the language through which it has expressed itself.

The bare words of the Act must be construed to get the meaning of the statute and one need not probe into the intention of the legislature. The elementary rule of construction is that the language must be construed in its grammatical and literal sense and hence it is termed as *litera legis or litera script*.

The **Golden Rule** is that the words of a statute must prima facie be given their ordinary meaning. This interpretation is supreme and is called the golden rule of interpretation.

In Ramanjaya Singh v Baijnath Singh, the Election tribunal set aside the election of the appellant under s 123(7) of the Representation of People's Act, 1951 on the grounds that the appellant had employed more persons than prescribed for electioneering purpose. The appellant contended that the excess employees were paid by his father and hence were not employed by him. The Supreme Court followed the

grammatical interpretation of S 123(7) and termed the excess employees as volunteers.

In Maqbool Hussain v State of Bombay, the appellant, a citizen of India, on arrival at an airport did not declare that he brought gold with him. Gold, found in his possession during search in violation of government notification, was confiscated under S 167 (8) Sea Customs Act, 1878. He was charged under s 8 of the Foreign Exchange Regulation Act, 1947. The appellant pleaded that his trial under the Act was violative of Art 20(2) of the constitution relating to double jeopardy as he was already punished for his act by way of confiscation of the gold. It was held by the Supreme Court that the sea customs authority is not a court or a judicial tribunal and the confiscation is not a penalty. Consequently his trial was valid under the Act of 1947.

In Madan mohan v K.Chandrashekara, it was held that when a statute contains strict and stringent provisions, it must be literally and strictly construed to promote the object of the act.

In Bhavnagar University v Palitana Sugar Mills Pvt Ltd, it was held that according to the fundamental principles of construction the statute should be read as a whole, then chapter by chapter, section by section and then word by word.

In *Municipal board v State transport authority, Rajasthan*, an application against the change of location of a bus stand could be made within 30 days of receipt of order of regional transport authority according to s 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.

In Raghunandan Saran v M/s Peary Lal workshop Pvt Ltd, the supreme court validated 14 (2) of the Delhi Rent Control Act 1958 and provided the benefit of eviction on account of non payment of rent. The Supreme Court adopted grammatical interpretation.

Exceptions to the rule of literal interpretation

Generally a statute must be interpreted in its grammatical sense but under the following circumstances it is not possible:-

Logical defects

- A) ambiguity
- B) inconsistency
- C) incompleteness or lacunae
- D) unreasonableness

Logical interpretation

If the words of a statute give rise to two or more construction, then the construction which validates the object of the Act must be given effect while interpreting.

It is better to validate a thing than to invalidate it or it is better the Act prevails than perish.

The purpose of construction is to ascertain the intention of the parliament.

The mischief rule

The mischief rule of interpretation originated in Heydon's case. If there are two interpretations possible for the material words of a statute, then for sure and true interpretation there are certain considerations in the form of questions.

The following questions must be considered.

1. What was the common law before making the Act?
2. What was the mischief and defect for which the common law did not provide a remedy?
3. What is the remedy resolved by the parliament to cure the disease of the common wealth?
4. The true reason of the remedy.

The judge should always try to suppress the mischief and advance the remedy. The mischief rule says that the intent of the legislature behind the enactment should be followed.

Rule of *casus omissus*

Generally, the court is bound to harmonize the various provisions of an Act passed by the legislature during interpretation so that repugnancy is avoided. Sometimes certain matters might have been omitted in a statute. In such cases, they cannot be added by construction as it amounts to making of laws or amending which is a function of legislature. A new provision cannot be added in a statute giving it meaning not otherwise found therein. A word omitted from the language of the statute, but within the general scope of the statute, and omitted due to inadvertence is known as *Casus Omissus*.

In Padma Sundara Rao v State of Tamil Nadu it was held that the *casus omissus* cannot be supplied by the court except in the case of a clear necessity and when reason for it is found within the four corners of the statute itself.

Rule of *ejusdem generis*

Ejusdem generis means “of the same kind”. Generally particular words are given their natural meaning provided the context does not require otherwise. If general words follow particular words pertaining to a class, category or genus then it is construed that general words are limited to mean the person or thing of the same general class, category or genus as those particularly exposed.

Eg: if the husband asks the wife to buy bread, milk and cake and if the wife buys jam along with them, it is not invalidated merely because of not specifying it but is valid because it is of the same kind.

The basic rule is that if the legislature intended general words to be used in unrestricted sense, then it need not have used particular words at all. This rule is not of universal application.

In Devendra Surti v State of Gujarat, under s2 (4) of the Bombay shops and Establishments Act, 1948 the term commercial establishment means “an establishments which carries any trade, business or profession”. Here the word profession is associated to business or trade and hence a private doctor’s clinic cannot be included in the above definitions as under the rule of *Ejusdem Generis*.

In Grasim Industries Ltd v Collector of Customs, Bombay, the rule of *Ejusdem Generis* is applicable when particular words pertaining to a class, category or genus are followed by general words.

In such a case the general words are construed as limited to things of the same kind as those specified.

Every clause of a statute must be construed with reference to other clauses of the Act.

CHAPTER 2

INTERNAL AID OF INTERPRETATION

INTRODUCTION

Statute generally means the law or the Act of the legislature authority. The general rule of the interpretation is that statutes must prima facie be given this ordinary meaning. If the words are clear, free from ambiguity there is no need to refer to other means of interpretation. But if the words are vague and ambiguous then internal aid may be sought for interpretation.

INTERNAL AIDS

1. Context

If the words of a statute are ambiguous then the context must be taken into consideration. The context includes other provisions of

the statute, its preamble, the existing state of law and other legal provisions. The intention behind the meaning of the words and the circumstances under which they are framed must be considered.

2. Title

Title is not part of enactment. So it cannot be legally used to restrict the plain meaning of the words in an enactment.

Long title

The heading of the statute is the long title and the general purpose is described in it.

E.g. Prevention of Food Adulteration Act, 1954, the long title reads as follows "An Act to make provisions for the prevention of adulteration of food".

In Re Kerala Education bill, the Supreme Court held that the policy and purpose may be deduced from the long title and the preamble.

In Manohar Lal v State of Punjab, Long title of the Act is relied as a guide to decide the scope of the Act.

Short Title

The short title of the Act is purely for reference only. The short title is merely for convenience. E.g. The Indian Penal Code, 1860.

3. Preamble

The Act Starts with a preamble and is generally small. The main objective and purpose of the Act are found in the Preamble of the Statute. "Preamble is the Act in a nutshell. It is a preparatory statement. It contains the recitals showing the reason for enactment of the Act. If the language of the Act is clear the preamble must be ignored. The preamble is an intrinsic aid in the interpretation of an ambiguous act.

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

4. Headings

A group of Sections are given under a heading which act as their preamble. Sometimes a single section might have a preamble. S.378-441 of IPC is "Offences against property".

Headings are prefixed to sections. They are treated as preambles. If there is ambiguity in the words of a statute, headings can be referred.

In Durga Thathera v Narain Thathera, the court held that the headings are like a preamble which helps as a key to the mind of the legislature but do not control the substantive section of the enactment.

5. Marginal notes

Marginal notes are the notes that are printed at the side of the section in an Act and it summarizes the effect of the section. They are not part of the statute. So they must not be considered. But if there is any ambiguity they may be referred only as an internal aid to the construction.

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

6. Proviso

A proviso merely carves out something from the section itself. A proviso is a subsidiary to the main section and has to be construed in the light of the section itself. Ordinarily, a proviso is intended to be part of the section and not an addendum to the main provisions. A proviso should receive strict construction. The court is not entitled to add words to a proviso with a view to enlarge the scope.

7. Definition/ Interpretation clause

The legislature can lay down legal definitions of its own language, if such definitions are embodied in the statute itself, it becomes binding on the courts.

When the act itself provides a dictionary for the words used, the court must first look into that dictionary for interpretation.

In Mayor of Portsmouth v Smith, the court observed “The introduction of interpretation clause is a novelty.”

8. Conjunctive and Disjunctive words

The word “and” is conjunctive and the word “or” is disjunctive. These words are often interchangeable. The word ‘and’ can be read as ‘or’ and ‘or’ can be read as ‘and’.

9. Gender

Words’ using the masculine gender is deemed to include females too.

10. Punctuation

Punctuation is disregarded in the construction of a statute. Generally there was no punctuation in the statutes framed in England before 1849.

Punctuation cannot control, vary or modify the plain and simple meaning of the language of the statute.

11. Explanations

IN certain provisions of an Act explanations may be needed when doubts arise as to the meaning of the particular section.

Explanations are given at the end of each section and it is part and parcel of the enactment.

12. Exceptions and savings clause

To exempt certain clauses from the preview of the main provisions, and exception clause is provided. The things which are not exempted fall within the purview of the main enactment.

The saving clause is also added in cases of repeal and re-enactment of a statute.

13. Schedules

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

Inconsistency between schedule and the Act, the Act prevails. (*Ramchand textiles v sales tax officer*)

14. Illustrations

Illustrations in enactment provided by the legislature are valuable aids in the understanding the real scope.

15. Meaning of the words

The definition of the words given must be construed in the popular sense. Internal aid to construction is important for interpretation.

CHAPTER 3

AMENDING, CONSOLIDATING AND CODIFYING STATUTE

INTRODUCTION

A Consolidating statute is a statute which collects the statutory provisions relating to a particular topic, and embodies them in a single Act of parliament, making minor amendments and improvements.

CONSOLIDATING STATUTE

The object of a consolidating statute is to present entire body of different statutory laws on a particular subject in a complete form. This is done by repealing all former statutes.

Consolidating statutes are of three types

1. Consolidating statutes without changes
2. Consolidating statutes with minor changes.
3. Consolidating Act with amendment.

RULES OF INTERPRETAION

A) Presumption

In enactment of a consolidating Act, the presumption is that the parliament is intended to alter the existing law. The further presumption is that the words used in the consolidating Act bear the same meaning as that of the enactment for which consolidation is made.

However, if the words have origin in different legislations, then the same meaning cannot be sustained.

B) INCONSISTENCY

In case of inconsistency between the provisions of a consolidating Act, it is pertinent to refer to different previous enactments with reference to dates of enactment in chronological order.

For the purpose of enactment of a consolidating Act it is in order to refer to previous laws, existing laws, judicial decisions, common law etc.

Just because certain terms of a non- repealed statute are used in the consolidating statute, it does not mean that the non-repealed statute and general laws are affected by the consolidating statute.

A consolidating statute is not simply a compilation of different earlier statutes, but enacted with co-ordination and for the changing present social circumstances. In this context a consolidating statute may also be an amendment act.

E.g. Arbitration and Conciliation Act, 1996.

In Galloway v Galloway, it was argued as per a 26 (1) of the matrimonial clauses Act, 1950, the term “children” is limited to legitimate children only.

The interpretation was rejected by Lord Radcliff and gave a liberal interpretation to include illegitimate children also.

CODIFYING STATUTE

A codifying statute is a statute which states exhaustively the whole of the law upon a particular subject. The maker of law incorporates in the enactment both the pre-existing statutory provisions and the common law relating to the subject.

The purpose of a codifying statute is to present uniform, orderly and authoritative rules on a particular subject.

When once the law has been codified, it cannot be modified gradually from day to day, as the changing circumstances of the community. Any modifications to it whether of a minor matter or a major amendment must be made by the legislature (*bank of England v vagliano brothers*)

Lord Hershell interprets a codifying statute as follows:- “ The object of a codifying Act is to end the conflict of decisions .A codifying statute does not exclude reference to earlier case laws on the subject for the purpose of true interpretation of the words. The reference of the previous legislations is for the reason of removal of ambiguity. The aim of a codifying statute is to declare the law on the subject so that the judge, by true interpretation of words decides the meaning within the parameter of such law.

In Subba Rao v Commissioner of Income Tax , the Supreme Court held that the Income Tax Act, 1922 is a self-contained code exhaustive with the matters dealt with therein, and its provisions show An intention to depart from common rule law “*qui facit per alium facit per se*”. The preamble of the Act states it to be an act to consolidate and amend. Therefore the court should try to find out the true scope of the code and matters dealt with exhaustively therein.

To conclude, the difference between a consolidating and codifying statutes are that the aim of a consolidating statute is to enact a

complete code on a particular subject by not only compilation but also by addition but a codifying statute states exhaustively the whole of the law upon a particular subject.

CHAPTER 4

STRICT CONSTRUCTION OF TAXING STATUTES

INTRODUCTION

Statutes imposing taxes or monetary burdens are to strictly construed. The logic behind this principle is that imposition of taxes is also a kind of imposition of penalty which can only be imposed if the language of the statute unequivocally says so.

Any kind of intendment or presumption as to tax does not exist.

TAX AND FEE

In case of a fee, there is a specific service rendered to the fee payer. (*Quid pro quo*), whereas for the tax payer no direct services are rendered but the service assumes the form of public expenditure rendered to the public at large.

Rules of interpretation

1 Charging Section

The section that charges the tax must have clear words. Before taxing any individual it must be clearly established that the person to be taxed falls within the purview of the charging section by clear words.

There is no implication of the law. If a person cannot be brought within the four corners of the law, he is free from tax liability.

In *Calcutta Jute Manufacturing Co. v Commercial Tax officer*, the Supreme Court held that in case of interpreting a taxing statute, one has to look into what is clearly stated. There is no room for searching the intentions, presumptions or equity.

In *Mathuram Agarwal v State of Madhya Pradesh*, the Supreme Court held that words cannot be added or substituted to find a meaning in a statute so as to serve the intention of the legislature. Every taxing statute must contain three aspects; subject of tax, person to be taxed and the rate of tax.

2. Strict and favourable construction

Taxing enactment should be strictly construed and the right to tax should be clearly established. Equitable construction should not be taken into account.

Courts should not strain words and find unnatural meaning to fill loopholes.

If the provision can be interpreted in two ways, then the one favoring the assessee must be taken into consideration.

In Saraswati Sugar mills v Haryana State Board, The Supreme Court held that every Act of the parliament must be read according to the strict natural construction of its words.

3. Clear Intention to impose or increase tax

The intention to impose or increase tax or duty must be clear and in unambiguous language.

4. Prospective operation

The cardinal principle of tax laws is that the law to be applied to assessee is the law in force in the assessment year unless otherwise provided expressly or by necessary implication.

No retrospective effect to fiscal statute is possible unless the language of the language of the statute is very clear and plain.

In Reliance Jute Industries Ltd v Commercial Tax officer, Fiscal Statute are generally not retrospective otherwise expressly provide by necessary implications.

5. Meaning in common parlance.

In finding out the meaning of a taxing statute, the meaning in common usage, parlance special in commercial and trade circles must be considered.

In Annapurna Biscuit Manufacturing Co. v Commissioner of Sales tax, the Supreme Court held that statute imposing a tax should be

construed in the way which they are understood in ordinary language in the area in area in which the law is the force.

In Dunlop India Ltd V Union of India, the Supreme Court held “latex” comes within the meaning of “rubber” for the purpose of tax.

Imposition of Tax by authority of law.

The taxes and assessment can only be imposed by an authority established under a statute. The tax can be levied only by an Act of the parliament.

In Atlas Cycles Industries Ltd v State of Haryana, the Supreme Court held that notification imposing a tax cannot be deemed to be extended to new areas in the municipality.

7. Machinery provision

Machinery provision means the procedure for calculation and collection of tax. The person who claims an exemption has to establish it.

In National Tag Traders v Commissioner of Income Tax, the Supreme Court held that a fiscal statute must be construed strictly.

8. No presumption as to tax

As regards to imposition of tax, no presumption exists. It cannot be drawn by implication or analogical extensions. The presumption for equality and against partiality of taxation exists.

In Mohammed Ali Khan v Commissioner of Wealth Tax, it was held that no tax can be imposed by inference, analogy or probing into the intention of the legislature.

9. Fiscal statute to be read as a whole.

The entire provisions of a fiscal statute has to be read as a whole and not in piecemeal to find out the intent of the legislature.

In Grasian Industries Limited v State of Madhya Pradesh, the Supreme Court held that any exemption notification in a fiscal statute must be read in its entirety and not in parties to find out the meaning.

9. No spirit of law.

A person is no liable to tax on the spirit of law or logic or reason.

10. Substance of matter.

The tax authorities must consider the legal aspect of a particular transaction for levy of tax. This is called 'substance of the matter'.

Court fee Act

If the court fee is high, then it affects the right of the aggrieved person to seek remedy. In interpreting the court fee Act, the benefit of doubt always goes to the assessee.

Double taxation

In interpreting a fiscal statute, if one meaning gives rise to double taxation and other meaning gives rise to single taxation, then the interpretation must be in favour of single taxation.

Delayed payment of tax.

Interest is levied by tax authorities on delayed payment of tax. If provision exists, such delayed payment is valid.

Penalty- no criminal Act

The penalty provision cannot be equated with a criminal statute as a criminal act requires *mens rea*.

In short the general rule of construction is that in case of doubt, it is decided in favour of the tax payer even if such a decision is detrimental to the government.

CHAPTER 5
INTERPRETATION OF THE CONSTITUTION

Q: Enumerate the various principles applied by the judiciary while interpreting the constitution.

Introduction

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

There are basically three types of interpretation of the constitution.

1. Historical interpretation

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

2. Contemporary interpretation.

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

Harmonious Construction.

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

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

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

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

Interpretation of the preamble of the constitution.

The preamble cannot override the provisions of the constitution.

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

In Keshavananda Bharathi's case, 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 full effect.
2. The constitution must be read as a whole.
3. Principles of Harmonious construction must be applied.
4. The constitution must be interpreted in a broad and liberal sense.
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.

CHAPTER 6 **LEGAL FICTION**

Introduction

Legal fiction is defined as:-

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

A legal fiction is a device by which the law deliberately departs from the truth of things for some reason. E.g. A foreigner was treated to be a Roman citizen for the purpose of jurisdiction.

Legal fiction is treated in the provisions of an enactment by using the term "is deemed".

The deeming provision is for the purpose of assuming the existence of fact does not really exist.

In New India Assurance Co. Ltd v Complete Insulation Pvt Ltd, the Supreme Court held that legal fiction created under S.157 of the Motor Vehicles Act, 1988, the transfer of 3rd party insurance is deemed to have effect from buyer to seller.

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

In Pandurang Vinayak v State of Bombay, the Supreme Court held that for the purpose of legal fiction, the word "ordinance" is to be read as 'enactment'.

In Bombay corporation v CIT Bombay, S 43 of the Income Tax Act provided that under certain circumstances, an agent is for all the purpose of this Act, deemed to be an agent of a non-resident person. Such agent is deemed to be an assessee.

In Avatar Singh v State of Punjab, it was held that rules framed in contravention of the Electricity Act, 1910 are separate and hence theft of electricity is not an offence under the IPC.

Legal fiction is an important subsidiary rule of interpretation of Statute. It is useful in deciding case where certain things are presumed to exist in fact of their non-existences.

CHAPTER 7 **STATUTES AFFECTING THE CROWN OF THE STATE**

Introduction

The general English rule is that the “king is above the law’ and all statutes are meant for subject only and the crown is not bound by them. The statutes neither control the crown nor the rights or properties of the crown, unless expressly or by necessity or by implication is named so in the statute.

This presumption extends not only to the crown but also to the Crown’s servants. The basis of this rule is to present an efficient and effective functioning of the ruler and his government for the welfare of the people.

Extent of Application

- a. Sovereign
- b. Sovereign’s servants or agents.
- c. Person’s considered to be consimili casu.

d. Officers of the State with ministerial status.

Illustrations where statutes are not binding on the state

a. Land Transfer Act, 1897.

b. Locomotives Act, 1865.

c. Property Occupied by the servants of the Crown exclusive for the crown.

d. The rule of Common wealth of nations reads that “the executive Government of the State is not bound by a statute unless that intention is apparent.

e. The custodian of enemy property being a Crown, the servant is not liable to tax.

f. The Statutes regarding limitation were formerly held not to bind the crown.

g. It is a prerogative of the Crown not to pay tolls, rates or other burdens in respect of the properties owned in his name.

In Rudler v Franks, the court held that the crown is not bound by Rent Restriction Acts under Order in town and Country Planning Act, 1957. The Crown is not bound to get planning permission in its own interest. In *Cooper v Hawkins*, a army driver drove a vehicle on the crown’s service at a speed exceeding the limit. He was not liable for the breach of the speed limit in the absence of express words in the statute that the Act binds the Crown.

Illustrations of statutes that are binding on the crown

Certain Statutes binds the Crown. E.g. Statutes for the advancement of religion or learning, the statutes for the maintenance of the poor, statutes for the suppression of wrong and statutes to perform the will of the testator or donor.

If an Act is made for public good, then the crown is bound by such an Act.

The crown is not excluded from the operation of a statute even if the statute includes his prerogative or rights and if the statute expressly includes the crown or the intention to include him is clear.

In V.S Rice an oil Mills v State of MP, the Supreme Court held that the state is not bound by a statute unless expressly named therein or included by necessary implications, is applicable to Indian ruler also.

Cases

Kasthuri Lal v State of UP

Vidyavathi v State of Rajasthan

The applicability of a statute to the crown was operative in ancient days where monarchy was in practice. But now, in democracies this concept does not apply.

CHAPTER 8 **EXTERNAL AID TO INTERPRETATION**

Introduction

Other than the internal aid to interpretation which are part of a statute itself there are other aids which are not part of the statute. These are known as external aid to interpretation. The court can consider recourse outside the Act such as historical settings, objects and reasons, bills, debates, text books, dictionaries etc.

Recourse to external aid is justified only to well-recognized limits.

External aids

1. Historical settings

The surrounding circumstances and situations which led to the passing of the Act can be considered for the purpose of construing a statute.

Objects and reason.

The statements and object cannot be used as an aid to construction. The statements of object and reason are not only admissible as an aid to construction of a statute.

Objects and reasons of a statute is to be looked into as an extrinsic aid to find out the legislative intent, only when the language is obscure or ambiguous.

Text books and dictionaries.

The use of dictionaries is limited to circumstances where the judges and Counsels use different words.

In such cases the court may make use of standard authors and well known authoritative dictionaries. Text books may also be referred to for assistance in finding out the true construction of a statute.

International Conventions.

International conventions are generally not resorted to for the purpose of interpretation, but it helps as an external aid for the purpose of resolving ambiguities in the language.

5. Government publications

They are:-

- A) Reports of commissioner or committee
- B) Other documents.

Only if the above documents are expressly referred to in the statute, they can be looked at for the purpose of construction.

6. Bill

Only when the language is ambiguous, bills can be referred.

7. Select Committee Report

To ascertain the legislative intent of a doubtful meaning of a statute, report of legislative committee of the proposed law can be referred.

The report of the Select committee can be looked into from an historical angle to find out what was the previous law, before and at the time of enacting the statute.

8. Debate and proceedings of the legislature.

A speech made in the course of a debate on a bill could be referred to find out the intent of the speaker. Speeches made in the parliament can also be referred.

9. State of things at the time of passing of the bill

10. History of legislation

The history of legislation usually denotes the course of events which give rise to enactments. The court may refer historical facts if it is necessary to understand the subject matter.

11. Extemporaneous exposition

In interpreting old statutes, the construction by the judges who lived at the time of the enactment could be referred to as it is best to understand the intentions of the makers of the statute.

12. Judicial interpretation of words

It is an accepted principle of law that if a word has received clear judicial interpretation, then the word is interpreted according to the judicial meaning.

E.g. Rule in *Ryland v Fletcher*, absolute liability has become a fixed and standing rule.

If definition is not given, popular meaning must be construed.

13. Analogy and legal fiction

Analogy means governed by the same general principle.

14. Previous English law

It is not legal and correct to apply decisions of English acts to the construction of an Indian statute.

Other external aids include interpretation by the executive, foreign decisions which include policy of the legislature and government policy, purpose of the Act, conventions and practices.

Spirit and reason of law.

The purpose of a statute is the reason of enactment, but the spirit or reason of law is connected with the legislative intent.

Acts in *Pari material*

When a statute is ambiguous, the intention of the legislature may be gathered from statutes relating to same subject. The definitions cannot be generally imported.

Other external aids include interpretation of later Acts with the help of earlier Acts and words and expressions used in different Act.

CHAPTER 9

BENEFICIAL CONSTRUCTION

Introduction

Beneficial construction is also known as liberal construction. It means interpretation of a statute in the widest possible meaning of the language permitted. The mischief in the language is remedied by liberal and beneficial construction. Beneficial construction is an interpretation to secure remedy to the victim who is unjustly denied of relief. Such beneficial construction is mainly applicable in social welfare and labour legislations.

Beneficial construction

a. Wider Meaning

In Beneficial construction, wider meaning is given instead of the usual and natural meaning of the language of the statute. Such wider meaning helps the victim secure relief unjustly denied to him.

In Forsdike v Colquhoun, the court held that if an enactment requires that public houses are to be closed at certain hours on Sundays then it means that it does not include Christmas days. Here beneficial construction is to be given to exempt Christmas from Sundays so that on Christmas day public houses need not be closed.

In Re Hale, the words 'soldier being in actual military service' was held to include a territorial officer who has received orders to join his unit".

Statutes granting power are sometimes broadly interpreted.

In M/s Ethiopian Airlines v M/s STIC Travels Pvt Ltd, the Supreme court held that the object of beneficial legislation, in case of ambiguities, is resolved by granting rather than denying the benefit.

In Steel Authority of India v National Union Water Front Workers, the rule of literal interpretation is to be given a go by, only when provisions are vague or obscurely worded.

b. Suppression of mischief

The duty of the judge is to make construction of a statute so as to suppress the mischief and advance the remedy.

In John Calder (Publications) Ltd v Powell, By Sec1 (1) of the obscene publications Act,1959, the court gave a wide interpretation to the term “ depravity” and “ corruption” not merely confining them to sexual matters but to other matters too.

c. Industrial legislation

In Industrial legislations, the application of beneficial construction is more witnessed.

d. Jurisdictional/ procedural requirements

Provisions relating to procedural requirements namely “giving of notice” often receive beneficial construction. Statute relating to the jurisdiction or procedure of the court has received beneficial construction.

e. Genus includes Species

The language of the statute is generally extended to new things which could not have been known at the time of enactment. If the Act deals with ‘genus’, ‘species’ is also included.

E.g. ‘Bicycles were considered to be carriages under the highway Act, 1835.

f. *De minimus non curat lex*

The law does not concern itself with trifles or negligible things or acts. While interpreting trivial acts are ignored. The objectives which the legislature is presumed not to intend must be avoided.

E.g. “To break from prison” would not apply to a prisoner who broke out of prison while it was on fire to save his life.

Beneficial construction or liberal construction has been receiving more attention as most of the legislations are social welfare legislations and hence rules of beneficial interpretation has become an important branch of study.

CHAPTER 10
PRESUMPTIONS AFFECTING JURISDICTION OF THE COURT

Introduction

The general presumption is that ordinary courts of law namely the civil courts, criminal courts, high courts and Supreme Court have jurisdiction over people. Any statute which takes away the jurisdiction of ordinary courts must be rarely resorted to, as people have the right to have free access to all the courts.

Jurisdiction of civil courts

The basic presumption of law is that all civil courts are empowered to decide all suits of civil nature. The basis of this presumption is that civil and criminal court have general jurisdiction over people and they have right to have free access to both civil and criminal court.

Section 9 of CPC

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

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

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

Jurisdiction of other courts

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

Since jurisdiction has been given to court by legislation, it is the legislation alone which can take away the jurisdiction.

If any statute provides for an express bar of jurisdiction of a civil or other court, then the scheme of the particular Act must provide adequate alternative remedies.

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

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

Finality clause

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

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

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

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

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

Creating new and enlarging existing jurisdiction

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

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

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

CHAPTER 11 **RETROSPECTIVE OPERATION OF STATUS**

A. Introduction:

Statutes are either prospective or both prospective and retrospective from the point of its applicability i.e. the period of legal effect of statutes.

All statutes in general have only prospective effect. It means applicability to future transactions.

But certain statutes have to be sometimes both prospective and retrospective. 'Retrospective' means the statute would apply and affect past transaction also.

Two terms

a. Commencement

The term 'commencement' is used with reference to an Act, the day on which the Act comes into force. If not provided, a Central Act comes into force on the day it receives Presidential assent.

b. Retrospective

Retrospective statute contemplates the past and gives effect to previous transactions.

There must be words in a statute sufficient to show that the intention of the legislature is to give the rule or the law the Retrospective effect.

B. General Statute

Every statute is prima facie prospective, unless it is expressed or implied. If the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations, then there must be words in the statute sufficient to show the intention of the legislature.

A statute can be given retrospective effect, only if the statute so directs either expressly or by necessary implications. It is a fundamental rule of the law that no statute shall be construed to have retrospective operation unless such construction appears very clearly in terms of the Act, or arises by necessary or distinct implication.

Conditions for giving retrospective effect

Minute attention must be given to the language of the statutory provision for determining the scope of the retrospection as intended by the Parliament.

The language used in a statute is the most important factor to be considered.

C. Amending statute

An amendment of a substantive law is not retrospective unless laid down or necessarily implied. A vested right cannot be taken away by amending Act except by express language or by necessary intendment.

D. Declaratory statute

A declaratory Act is defined as an Act to remove doubts existing as to the common law, or the meaning or the effect of any statute.

The usual reason for the passing a declaratory act is to set aside what Parliament has considered a judicial error, whether in the statement of the common law or the interpretation of the statute.

The presumption against retrospective operation is not applicable to the declaratory statutes. A declaratory act is an act to remove doubts existing to common law and thus declaratory acts are usually held retrospective.

E. Pending Actions

In the pending suits or actions, the law is that the rights of the parties are decided as per the law as it existed when the action was commenced. If however the Act provides the retrospective operation of a statute, it would be construed accordingly even though the consequences are unjust and hard

IN Smith's Vs National Association of Operative Plasterers.

S4 of the trade dispute act,1906 enacted that ' an action for tort against a trade union shall not be entertained by any court'. It was

held not to affect decisions of an action commenced before passing of the act.

F. Doctrines of prospective overruling

Rule in I.C Golaknath Vs State of Punjab

The doctrine of prospective overruling is a modern doctrine suitable for a fast moving society. It does not affect the past but restricts its scope for the future.

Under this doctrine, the court declares what the law is but does not give retrospectivity. It reconciles the two conflicting doctrines, namely, the Court finds law and that it makes a law for the future by bringing about a smooth transition by correcting the errors in the law without disturbing the impact of errors on the past transactions. In other words, the law for the future corrected and the past transaction as per the law, though invalid, are held valid.

The doctrine of prospective overruling can be invoked only regarding constitutional matters. It can be applied only by the Supreme Court.

G. De Facto Acts

The acts performed by the officers de facto within their assumed official authority, provided such acts are performed in the interest of the public or the third party and not for their own benefits, are generally held as valid and binding, as if they were acts of officers' de jure.

H. General Act and Special Act.

The general rule is that special Acts prevails over the general act in the case of inconsistency. A general act cannot repeal a special act. A Special Act, though earlier in time, deals with special objects and general law even if enacted later cannot repeal it.

Food inspector Vs Suivert and Dholakia Pvt Ltd.

If there is a general law and a special law relating to a particular subjects, the general law must be so applied as to not to affect the special provision. Only if the intention to abrogate the special law can be spelled out, the general law shall prevail.

I.

Statutes dealing with merely matters of procedure are presumed to be retrospective unless otherwise interrupted.

J. Statutes Regulating Succession

Statutes enacted for regulating succession are not applicable to already open succession. Such laws have only prospective effect. It is the same regarding statutes regulating transfers and contracts.

Fiscal and Penal Statutes are prospective Statutes regulating appeals and finality of orders are also prospective.

CHAPTER 12

MANDATORY AND DIRECTORY STATUTES

- This chapter is in the form of a lecture.

Whether an enactment is mandatory or directory depends on the scope and the object of the statute. Where the enactment demands

the performance of certain provision without any option or discretion it will be called peremptory or mandatory.

On the other hand if the acting authority is vested with discretion, choice or judgment the enactment is directory.

In deciding whether the provision is directory or mandatory, one has to ascertain whether the power is coupled with a duty of the person to whom it is given to exercise it. If so, then it is imperative.

Generally the intention of the legislature is expressed by mandatory and directory verbs such as 'may', 'shall' and 'must'.

However, sometimes the legislature uses such words interchangeably. In such cases, the interpreter of the law has to consider the intention of the legislature.

If two interpretations are possible then the one which preserves the constitutionality of the particular statutory provisions should be adopted and the one which renders it unconstitutional and void should be rejected.

Non-compliance of mandatory provisions has penal consequences where as non-compliance of directory provisions would not furnish any cause of action or ground of challenge.

Distinction

It is one of the rules of construction that a provision is not mandatory unless non-compliance with it is made penal (Jagannath v Jaswant singh). Mandatory provisions should be fulfilled and obeyed exactly, whereas in case of provisions of directory enactments substantial compliance is satisfiable.

Test for determining whether a provision in a statute is directory or mandatory.

Lord Campbell observed that there can be no universal applications as to when a statutory provisions be regarded as merely directory and when mandatory.

Maxwell says “that it is impossible to lay down any general rule for determining whether a provision is mandatory or directory’. The supreme court of India is stressing time and again that the question whether a statute is mandatory or directory, is not capable of generalization and that in each case the court should try and get at the real intention of the legislature by analyzing the entire provisions of the enactment and the scheme underlying it. In other words it depends on the intent of the legislature and not upon the language in which the intent is clothed.

The intent of the legislature must be ascertained not only from the phraseology of the provision, but also from its nature, design and consequences which would follow from construing it in one form or another.

‘May’, ‘shall’ and ‘must’.

The words ‘may’, ‘shall’ and ‘must’ should initially be deemed to have been used in their natural and ordinary sense. May signifies permission and implies that the authority has been allowed discretion. In state of UP v Jogendra Singh, the Supreme Court observed that ‘there is no doubt that the word ‘may’ generally does not mean ‘must’ or ‘shall’. But it is well settled that the word ‘may’ is capable of meaning ‘must’ or ‘shall’ in the light of context. It is also clear that when a discretion is conferred upon a public authority coupled with an obligation, the word ‘may’ should be construed to mean a command (Smt. Sudir Bala Roy v West Bengal).

“May” will have compulsory force if a requisite condition has to be filled. Cotton L.J observed that ‘May” can never mean “must” but when any authority or body has a power to it by the word ‘May’ it becomes its duty to exercise that power.

‘Shall’- in the normal sense imports command. It is well settled that the use of the word ‘shall’ does not always mean that the enactment is obligatory or mandatory. It depends upon the context in which the

word 'shall' occurs and the other circumstances. Unless an interpretation leads to some absurd or inconvenient consequences or contradicts with the intent of the legislature the court shall interpret the word 'shall' in mandatory sense.

Must- is doubtlessly a word of command.

Specific Terminologies

99% of negative terms are mandatory; affirmative terms are mostly mandatory where guiding principle for vesting of powers depends on context.

In procedural statutes both negative and affirmative are mandatory. Aids to construction for determination of the character of words can be used.

Time fixation

If time fixation is provided to the executive, it is supposed to be permissive with regard to the issue of time only. However, provisions regarding time may be considered mandatory if the intention of the legislature appears to impose literal compliance with the requirement of time.

Statutes regulating tax and election proceeding are generally considered permissive. However the Supreme Court held in *Manila mohan lal v Syed Ahamed*, whenever a statute requires a particular act to be done in a particular manner and also lays down that failure to comply will have consequence. It would be difficult to accept the argument that the failure to comply with the required said requirement should lead to any other consequence.

CHAPTER 13
INTERPRETATION OF PENAL STATUTES

General principle

The rule that a statute enacting an offence or imposing a penalty is strictly construed is now only of limited application and it serves in the selection of one when two or more constructions are reasonably open.

The rule was originally evolved to mitigate the rigor of monstrous sentences for trivial offences and although that necessity has now

almost vanished, the difference in approach made to a penal statute as against any other statute stick persists.

According to Lord Esher, the settled rule of construction of penal section is that 'if there is reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions can be put upon a penal provision, the court must lean toward that construction which exempts the subject from the penalty rather than the one which imposes penalty.

There are two elements of crime; the Actus Reus and the mens rea.

In *Noakes v Dancaster Amalgamated collieries Ltd*, Maxwell cited that where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result. Then the court must do some violence to the words and so achieve that obvious intention and produce a rational construction.

But the full bench rejected the argument of futility based on *Noakes V Dancaster amalgamated colliery ltd* in *tolaram's* case. On appeal the Supreme Court held that 'court is not competent to stretch the meaning of the expression used by the legislature in order to carry out the intention of the legislature'- Mahajan.J .

Even if one were to disregard the rule of construction based on futilities the only reasonable way of construction is provided by ensuring that the language is not stretched and rule of strict construction is not violated.

In *M.V.Joshi v M.V Shimpi*, it was held that "it is now well settled that in the absence of clear compelling language, the provision should not be given a wider interpretation".

A penal statute must be construed according to its plain, natural and grammatical meaning. (*R v Hunt 1987*)

In deciding the essential ingredients of the offence, substance and reality of the language and not its form will be important. When the

intention is not clearly indicated by linguistic construction then regard must be given to the mischief at which the act is aimed.

Rule of construction in penal statutes does not prevent the court from interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing the statute.

In R v Ireland (1987), Psychiatric injury caused by silent telephone calls was held to amount to assault and bodily harm under the person Act, 1861 in the light of the current scientific appreciation of the link between the body and psychiatric injury.

In applying and interpreting a penal statute, public policy is also taken into consideration. In *R v Brown*, the House of Lords held that consensual sadomasochistic homosexual encounters which occasioned actual bodily harm to the victim were assaults.

Following are some of the propositions important in relation to strict construction of penal statutes.

if the scope of prohibitory words cover only some class of persons or some well defined activity, their scope cannot be extended to cover more on consideration of policy or object if the statute.

Prohibitory words can be widely construed only if indicated in the statute. On the other hand if after full consideration no indication is found the benefit of construction will be given to the subject.

3. If the prohibitory words in their own signification bear wider meaning which also fits in with the object or policy of the statute.

Mens rea in statutory offences.

This principle is expressed in the maxim “ *Actus non facit reum nisi mens sit rea*” which means that the existence of a guilty intent is an essential ingredient of a crime at common law.

Mens Rea is the state of mind stigmatized as wrongful by the criminal law.

Crimes involving mens rea are of two types.

a. crimes of basic intent (does not go beyond Actus Reus)

Crimes of specific intent (foresight of its consequence and has a purposive element).

Words such as 'voluntarily', 'knowingly', 'dishonestly', 'fraudulently' are used to signify the state of mind.]

The modern tendency is in favour of the view that principles of construction do not vary with statutes.

The juristic parlance today uses the expression that a proper construction should be made whether the statute is penal or fiscal.

Normally the words used in the statute are to be construed in their ordinary meaning. However such approach always does not meet the ends of fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words may not provide proper construction. That is why in deciding the true scope and effect of the relevant words in any statutory provision as observed by Halsbury, the words should be construed in the light of their context rather than what may be either their strict etymological sense or their popular meaning apart from the context.

Thus one has to analyze the different parts of a statute and consider what effect they may have on interpretation.

CHAPTER:14

THE GENERAL CLAUSES ACT, 1897

Q: Effect of repeal

A. Introduction

The general rule of construction is that when any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day it receives presidential Assent.

B. Effect of repeal

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

- a. revive anything not in force or existing at the time at which the repeal takes effect
- b. affect the previous operation of any enactment so repealed or anything duly done or suffered there under
- c. affect any rights, privilege, obligation or liability acquired or incurred under any enactment so repealed
- d. effect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed
- e. affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation liability, penalty, forfeiture, or punishment as foresaid; and such investigation, legal proceeding, or remedy may be instituted, continued or punishment may be imposed as if the repealing Act or regulation had not been passed.

6.A Repeal of an act making textual amendment in act or regulation

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

Revival of repealed enactments

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

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CHAPTER 15

Short Notes

1. BYE LAWS
2. CODIFYING STATUTE
3. CONSTRUCTION OF WORD IN BONAM PARTEM R V HULME
4. DEFINITION CLAUSE
 - Restrictive
 - Extensive
 - Ambiguous
 - Unambiguous
 - Contrary context definition

4. DICTIONARIES
5. EQUITABLE CONSTRUCTION
6. LACHES- willful delay in ascertaining ones own rights
7. MORALITY
8. REGULATION

*read Constitutional Doctrines