Subject :

Interpretation of Statutes and Principles of Legislation

Paper : 5.4

10 YEARS CELEBRATION +

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SUBJECT TOPICS

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Meaning of Interpretation and Construction: -

Meaning of Interpretation: -

Interpretation means the art of finding out the true sense of an enactment by giving the words their natural and ordinary meaning. Interpretation is the process of ascertaining the true and exact meaning of the words used in statutes, contracts, or legal documents. It is focused on understanding what the text actually says, often by applying established rules or canons of interpretation. These rules help judges or lawyers clarify ambiguous or unclear language and understand the intent behind the words.

Meaning of Construction: -

Construction means drawing conclusions on the basis of true spirit of the enactment even though the same does not appear if the words used in the enactment are given their natural meaning.

Construction means the process by which courts or legal professionals apply the meaning derived from interpretation to specific facts or situations. It involves logical reasoning and sometimes judicial discretion to fill gaps, reconcile inconsistencies, or resolve uncertainties that arise in applying the legal text.

Difference Between Interpretation and Construction: -

Understanding the difference between interpretation and construction is essential, as these concepts operate at different stages and with different objectives in the legal process.

1. Object: -

Interpretation aims to discover the true meaning of the words used in the legal text.

Construction aims to apply that meaning to specific facts or situations, often requiring the law to be adapted or clarified.

2. Main Focus: -

Interpretation concentrates on the text itself—words, grammar, and immediate context.

Construction considers the broader context including social, legal, and policy considerations.

3. Application; -

Interpretation is the initial step undertaken when the language is ambiguous, unclear, or disputed.

Construction is employed when ambiguity persists or when the text is silent or inadequate on certain issues.

4. Judicial Role and Discretion: -

Interpretation limits judicial discretion, encouraging fidelity to the text and legislative intent.

Construction allows for greater judicial discretion, as judges may have to balance competing interests and ensure justice.

5. Mode of Operation: -

Interpretation may address specific words or clauses within a statute or contract.

Construction tends to address the document as a whole, reconciling inconsistencies and creating a workable framework.

6. Outcome: -

Interpretation produces the meaning or rule embedded in the legal text.

Construction results in a legal conclusion, judgement, or application that resolves the particular case or dispute.

7. Sequence of Coming: -

Interpretation is generally the first step, as courts must understand what the law says before deciding how it applies. Construction follows interpretation and deals with the law's practical effect.

CLASSIFICATION OF STATUTE

Types of classifications of Statutes may be elaborated as follows-

A. Classification with reference to basis of Duration

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

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

B. Classification with reference to Nature of Operation

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

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

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

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

C. **Classification with reference to Objective**

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

(ii) Disabling statutes – These statutes restrict or cut down rights existing at common law.
(iii)Permissive statute – This type of statute allows certain acts to be done without commanding that they be performed.

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

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

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

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

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

(ix) Amending Statute – It is a Statute which makes and addition to or operates to change the original law so as to effect an improvement or more effectively carry out the purpose for which the original law was passed.

INTENTION OF THE LEGISLATURE

A statute is an edict (Proclamation by sovereign state or government official) the most accepted mode of interpretation or construing the statute is to adopt the interpretation or construction according *"to the intent of them that make it"*. It is the duty of Judicature is to act upon the true intention of the legislature. This is guided by the Maxim. ***"Sententia Legis"*** i.e., true intention of legislature. Intention of the legislature always serves as reference to the meaning of words used by legislature which are objectively determined. It is nowhere seen or expressly provided, it has to be assessed by the guiding rules of interpretation. It is the duty of Judicature is to act upon the true intention of the legislature. This is guided by the Maxim. ***"Sententia Legis"*** i.e., true intention of legislature.

- According to ***Salmond*** the duty of the judicature is to discover and to act upon the true intention of the legislature under the Maxim, _sententia legis' or mens. As essence of the law lies in the spirit, not in its letter, but letter are the only way in which intentions are expressed. The words are external manifestation of intention that it involves. When there is possibility of one or more interpretation of statute, courts has to adopt that interpretation which reflects the _true intention of legislature' which can also be considered legal meaning statutory provisions.

The intention of legislature shall have two aspects:-

- **"Meaning''**: That which tell what the words mean.
- **"Purpose and Object"**: That which includes purpose and object of enacting the statute.

- As already understood intention of legislature is not found, it is assessed from the statute with a combination of _meaning of the words' and light of purpose or objects.

Guiding lines to frame intention of legislature are: –

1. The context (*pari materia*e. external aid to interpretation).
2. The subject matter.
3. The effects and consequences.
4. The spirit or reason of the law.

Intention of legislature is assessed either in express words or by necessary implication in keeping mind the purpose or object of the statute.

Supposed intention (limitation):-

It is very well accepted that through the text and then with the context the intention is understood, but in any case courts cannot, think of anything which the legislation has not provided. If the court understands anything beyond what the legislation provided then it is understood as supposed intention which the court has arrived at on his own by overviewing the legislative parameters or subjects involved in legislation by the legislature.

It is a universally accepted truth that _no facts of the case are same‘ but definitely there would be similarity in the facts of the case. While applying the same law in different cases on similarity courts cannot or need not proceed with a supposed intention.

Supreme courts guidelines for interpretation (or) Settled principles of interpretation:-

1. The court must start with the presumption that legislature did not make a mistake.
2. The court must adopt a construction which will carry out the obvious intention of the legislature.
3. If there is a defect or an omission of the words used by the legislature, the court must as much as possible, by literal reading produce on intelligible result. When the provision becomes unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with other parts of statute then only words may be added, altered or modified, thereby to connect or make up the deficiency.

STATUTE MUST BE READ AS A WHOLE

It is well-settled principle that while interpreting a statute, the **interpretative function of the court is to discover the true legislative intent**. A statute is best interpreted when we know why it was enacted. It must be read, first as a whole, and then section by section, clause by clause, phrase by phrase and word by word and therefore, taking into consideration the contextual connotation and the scheme of the Act, its provisions in their entirety.

According to **Maxwell on Interpretation of Statutes** and Driedger on Construction of Statutes the authorities on the interpretation of statutes generally agree that a statute is to be read as a whole and that every clause is to be construed with reference to the other clauses of the act and its context, to the greatest extent possible.

Whenever the question arises as to the meaning of a certain provision in a statute, it is proper and legitimate to read that provision in its context. This means that the statute must be read as a whole. What was the previous state of the law, study of other statutes in pari materia i.e., on the same matter, if there are any, what is the general scope of the statute and what is the mischief which it wanted to remedy, all these questions are to be considered here.

Lord Greene, M.R. said, _To ascertain the meaning of a clause in a statute the courts must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself and the method of construing statutes that I prefer, is to read the statute as a whole and ask oneself the question: In this state, in this context, relating to this subject- matter, what is true meaning of that word?

‘ In the words of Lord Halsbury, —I agree that you must look at the whole instrument in as much as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it.‘ It is now firmly established as a rule that the intention of the Legislature must be found by reading the statute. The conclusion that the language used by the legislature is plain or ambiguous can only be truly arrived at by studying the statute as a whole. Words take colour from the context in which they are used, keeping pace with the time. Words used as an adjective draws colour from the context too. The same word may mean one thing in one context and another in different context, therefore, the same word used in different sections of a statute or even when used at different places in the same clause or section of a statute may bear different meanings. That is why it is necessary to read the statute as a whole in its context.

Although the court would be justified to some extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting the statute should get frustrated. But it is not open for a court to expand even the language used in the preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enactingstatute.

While making contextual interpretation, the roots of the past, the foliage of the present and the seeds of the future cannot be lost sight of. Context quite often provides the key to the meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the legislature in using it. A word is not a crystal, transparent and unchanged. It is the skin of living thought and may vary greatly in colour and content according to the circumstance and the time in which the same is used. When a word or expression is not defined in an enactment, the courts apply

the subject and object‘ rule to ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object, which the legislature has in view.

The Supreme Court in construing the word _sale‘ in the Madras General Sales Tax Act, 1939 before its amendment in 1947, held that the definition of _sale‘ as it then stood laid stress on the element of transfer of property and that the mere fact that the contract for sale was entered into within the province of Madras did not make the transaction, which was completed in another province, a sale taxable within the meaning of the Act. In arriving at that conclusion, the Supreme Court referred to the title, preamble, definition and other enacting provisions of the statute as also to the subsequent amendments made in the statute. In **Jennings v. Kelly** it was held that the principle that the statute must be read as a whole is equally applicable to different parts of the same section. The section must be construed as a whole whether or not one of the parts is a saving clause or a proviso.

STATUTE TO BE CONSTRUED TO MAKE IT EFFECTIVE AND WORKABLE

First, the Determination should be construed in accordance with the maxim *ut res magis valeat quam pereat.* When a by-law is open to two constructions, on one of which it would be within the powers of the local authority, and on the other outside of these powers, the former construction should be adopted, ***ut res magis*** *valeat quam pereat.*

A statute is construed so as to make it effective and operative. There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates, such as those relating to fundamental rights, is always on the person who challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will. The aforesaid principle, however, is subject to one exception that if a citizen is able to establish that the legislation has invaded its fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if one one construction being given the statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the court will prefer the latter, on the ground that the legislature is presumed

not to have intended an excess of jurisdiction. *The apex court agreed with the above mentioned observation in the case of* ***Union of India vs. Elphinstone Spg. and Wvg. Co. Ltd.,***

A statute is an edict of the legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the court is to act upon the true intention of the legislature. *If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which represents the true intention of the legislature*. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. *Nonetheless, the function of the courts is only to expound and not to legislate.* Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for and words chosen to communicate such indefinite referents are bound to be in many cases, lacking in clarity and precision and thus giving rise to controversial questions of construction. *The process of construction combines both literal and purposive approaches*. In other words, the legislative intention, i.e. the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. The apex court made this observation in the case of ***District Mining Officer v. Tata Iron & Steel Co.***

LITERAL RULE

The literal rule is a type of statutory construction, which dictates that statutes are to be interpreted using the ordinary meaning of the language of the statute unless a statute explicitly defines some of its terms otherwise. In other words, the law is to read, word for word and should not divert from its true meaning. According to the plain meaning rule, absent a contrary definition within the statute, words must be given their plain, ordinary and literal meaning. 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.

Lord Esher said (in applying a literal approach) "If the words of an Act are clear then you must follow them even if they lead to a manifest absurdity. The court has nothing to do with the question whether the legislature has committed an absurdity." The literal rule - developed in the early

nineteenth century - has been the main rule applied ever since then. However, there are variations on this (the golden rule and mischief rule).

In Yeswant v Walchand, The Supreme Court held that, "Rules of equity have no application where there are definite statutory provisions specifying the grounds on the basis alone the stoppage or suspension of running of time can arise. While the Courts are necessarily astute in checkmating fraud, it should be equally borne in mind that statutes of limitation are statutes of repose".

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.

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. 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.

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.

GOLDEN RULE

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.

In **R. v. Sweden Lord Parker** construed section 1(1) of the poor Prisoners‘ Defense Act, 1930: ―Any person committed for trial for an indictable offence shall be entitled to free legal aid in the preparation and conduct of his defense at the trial and to have solicitor and counsel assigned to him for that purpose.‖ The Court of Criminal appeal held that this section gave the right to an accused person once the certificate is granted to have a solicitor assigned for the purposes mentioned, but not a right that that solicitor or another should defend him at the trial. The court observed: ―if the section properly construed, gave an accused person a right to have a solicitor at the trial, it would mean that he could repeatedly refuse to have the solicitor assigned when he got advice which he did not like and go to others, and there would be no means whatever to prevent that, with the result that there might be added expense to the country, delays and abuse of the whole procedure.‖ Such an unreasonable intention of Parliament cannot be imputed.

In **Nyadar Singh v. Union of India**, a restricted construction was given to rule 11 (VI) of the Central Services (Classification, Appeal and Control) Rules, 1965. This Rule empowers imposition of ―penalty of reduction to a lower time-scale pay, grade post or service.‖ The Supreme Court held that a person initially appointed to a higher post and grade of pay scale cannot be reduced to a lower grade or post. A wider construction if given to the provision, it may affect the recruitment policy itself for a person directly recruited to a higher post may not have the requisite qualification for the lower post.

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. 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?

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

1. What was the common law before the making of the act?
2. What was the "mischief and defect" for which the common law did not provide?
3. What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?
4. What is the true reason of the remedy?

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

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

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 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, 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.

This principle is illustrated in the case of Raj Krishna vs Binod AIR 1954. In this case, two provisions of Representation of People Act, 1951, which were in apparent conflict, were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to nominate or second a candidate and forbidding him to assist the candidate in any other manner.

EJUSDEM GENERIS

Ejusdem Generis means "of the same kind and nature‖. When a list of two or more specific descriptors are followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them. In this rule a specific word, class or species needs to be mentioned so that the whole statute revolves around it and the statute will be only meant for these specific words. However the specific words should not have a wide approach as they would exhaust the whole statute. This rule provides that where words of specific meaning are followed by general words, the general words will be construed as being limited to persons or things of the same general kind or class as those enumerated by the specific words.

To invoke the application of ejusdem generis rule, there has to be a distinct genus or category. The specific words must apply not to the different objects of a widely differing character, but, to something, which can be called a class or kind of objects. Where this is lacking, the rule will not be applicable. For the invocation of the rule, there must be one distinct genus or category. The specific words must apply not to different objects of a widely

varying character but to words, which convey things or object of one class or kind, where this generic unity is absent, the rule cannot apply.

The rule can be illustrated by a reference to the decision of the Kerala High Court in the case of ***Kerala Cooperative Consumers' Federation Ltd v CIT***. In this decision, the court was required to interpret the meaning of the phrase 'Body of Individuals'. It has said that in construing the words 'Body of Individuals' occurring in section 2(31) of the Income Tax Act along-side the words 'Association of Persons', the words 'Body of Individuals' would have to be understood in the same background, context and meaning given to the words "Association of Persons‖.

The Supreme Court in ***Siddeshwari Cotton Mills (P) Ltd v UOI***, while interpreting the expression 'any other process' appearing along-with the words 'bleaching, mercerizing, dyeing, printing, water-proofing, rubberizing, shrink-proofing, organic processing in section 2(f) of the Central Excise & Salt Act, 1944 (as it stood prior to its substitution by Central Excise Tariff Act, 1985) read with Notification No 230 and 231 dated 15th July, 1977 with the aid of the principle of Ejusdem Generis has said that the foregoing words, which precede the expression 'or any other process' contemplate process, which import a change of a lasting nature must share one or the other of these incidents.

NOSCITUR A SOCISS

Noscitur a Sociis literally means ―It is known from its associates‖. The rule of language is used by the courts to help interpret legislation. Under the doctrine of "noscitur a sociis" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase. This means that words in a list within a statute have meanings that are related to each other.

In Foster v Diphwys Casson((1887) 18 QBD 428), the case involved a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under noscitur a sociis, it was held that the bag could not have been within the statutory definition, because parliament's intention in using case or container' was referring to something of the same strength as a canister.

REDDONDO 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.

For example, when a will says ―I devise and bequeath all my real and personal property to A‖, the principle of reddendo singula singulis would apply as if it read ―I devise all my real property, and bequeath all my personal property, to B‖, since the word devise is appropriate only to real property and the term bequeath is appropriate only to personal 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.

Samantha v. State of Andhra Pradesh, it was a case in which the word _person‘ of sec. 3 of A.P. Scheduled Area Land Transfer Regulation 1959, have to be interpreted. The Supreme Court held that, the maxim ―reddendo singula singulis‖ will apply to the interpretation of the word ―person‖ so that the general meaning of the word ―person‖ in its generic sense with its width would not be cut down by the specific qualification of one species, i.e., natural ―person‖ when it is capable to encompass in its ambit, natural persons, juristic persons and constitutional mechanism of governance in a democratic set up.

In Bishop v. Deakin, section 59(1) of the Local Government Act 1933 construed reddendo singula singulis. The said section provided that ―A person shall be disqualified for being elected or being a member of local authority if he has within five years before the day of election or since his election been convicted of any offence and ordered to be imprisoned for

a period of not less than three months.‖In this case Clanson, J., observed that the section provided two disqualifications: first what is to be disqualification for election to the local body and second; what is to be disqualification for being a member after election.

GENERALIA SPECIFICATION NON DEROGANT

The rule is generalia specialibus non derogant. The general principle to be applied ... to the construction of acts of Parliament is that a general act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together. And the reason is ... that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do....

"As a corollary from the doctrine that implied repeals are not favored, it has come to be an established rule in the construction of statutes that a subsequent act, treating a subject in general terms and not expressly contradicting the provisions of a prior special statute, is not to be considered as intended to affect the more particular and specific provisions of the earlier act, unless it is absolutely necessary so to construe it in order to give its words any meaning at all....

The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms or treating the subject in a general manner and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all.

Supreme Court of Canada decision, Lalonde v Sun Life, Justice Gonthier had used these words in his opinion: "This is an appropriate case in which to apply the maxim generalia specialibus non derogant and give precedence to the special Act.... The principle is, therefore, that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception to the subject-matter of the rule from the general Act."

EXTERNAL AND INTERNAL AIDS TO CONSTRUCTION

―Internal aids‖ mean those aids which are available in the statute itself. Each and every part of an enactment helps in interpretation. However, it is important to decipher as to whether theses parts can be of any help in the interpretation of the statute .

The **internal aids to construction are as follows**:-

- **Tittle**- The Long Title of a Statute is an internal part of the statute and is admissible as an aid to its construction. Statute is headed by a long title and it gives the description about the object of an Act. It begins with the words- ―An Act to …….‖ For e.g. The long title of the Criminal Procedure Code, 1973 is – ―An Act to consolidate and amend the law relating to criminal procedure‖. In recent times, long title has been used by the courts to interpret certain provision of the statutes. However, its useful only to the extent of removing the ambiguity and confusions and is not a conclusive aid to interpret the provision of the statute. The short title of an Act is for the purpose of reference & for its identification. It ends with the year of passing of the Act. E.g. ―The Indian Penal Code, 1860‖; ―The Indian Evidence Act, 1872‖.

The Short Title is generally given at the beginning with the words- ―This Act may be called…….‖ For e.g Section 1 of The Indian Evidence Act, 1872, says –―This Act may be called, The Indian Evidence Act, 1872‖.

- **Preamble**- 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. If any doubts arise from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute and to have recourse to the preamble.

- **Headings and Title of a Chapter**-Headings are of two kinds – one prefixed to a section and other prefixed to a group or set of sections. Heading is to be regarded as giving the key to the interpretation and the heading may be treated as preambles to the provisions following them.

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

- **Definitional Sections/ Clauses**- The object of a definition is to avoid the necessity of frequent repetitions in describing the subject matter to which the word or expression defined is intended to apply. A definition contained in the definition clause of a particular statute should be used for the purpose of that Act. Definition from any other statute cannot be borrowed and used ignoring the definition contained in the statute itself.

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

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

- **Schedules**- they 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.

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

External Aids are as follows:-

- **Parliamentary History, Historical Facts and Surrounding Circumstances**-Historical setting cannot be used as an aid if the words are plain and clear. If the wordings are ambiguous, the historical setting may be considered in order to arrive at the proper construction. Historical setting covers parliamentary history, historical facts, statement of objects and reasons, report of expert committees. Parliamentary history means the process by which an act is enacted. This includes conception of an idea, drafting of the bill, the debates made, the amendments proposed etc. Speech made in mover of the bill, amendments considered during the progress of the bill are considered in parliamentary history whereas the papers placed before the cabinet which took the decision for the introduction of the bill are not relevant since these papers are not placed before the parliament. The

historical facts of the statute that is the external circumstances in which it was enacted in should also be taken into note so that it can be understood that the statute in question was intended to alter the law or leave it where it stood. Statement of objective and reasons as to why the statute is being brought to enactment can also be a very helpful fact in the research for historical facts, but the same if done after extensive amendments in statute it may be unsafe to attach these with the statute in the end. It is better to use the report of a committee before presenting it in front of the legislature as they guide us with a legislative intent and place their recommendations which come in handy while enactment of the bill.

- **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.

- **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.

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

- **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.
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- **Other materials**- Similarly, Supreme Court used information available on internet for the purpose of interpretation of statutory provision in Ramlal v State of Rajasthan. Courts also refer passages and materials from text books and articles and papers published in the journals. These external aids are very useful tools.

PRESUMPTIONS IN STATUTORY INTERPRETATION

Unless the statute contains express words to the contrary it is assumed that the following presumptions of statutory interpretation apply, each of which may be rebutted by contrary evidence. Presumptions represent the accepted judicial view of a range of circumstances that have been predetermined to be the way in which every manifestation of those circumstances will be viewed, until any evidence to the contrary is produced. These tend to arise from theoretical and practical principles of the law.

The following can be said to be the general presumptions in statutory interpretation and they are as follows:-

- A statute does not alter the existing common law. If a statute is capable of two interpretations, one involving alteration of the common law and the other one not, the latter interpretation is to be preferred.
- If a statute deprives a person of his property, say by nationalization, he is to be compensated for its value.
- A statute is not intended to deprive a person of his liberty. If it does so, clear words must be used. This is relevant in legislation covering, for example, mental health and immigration.
- A statute does not have retrospective effect to a date earlier than its becoming law.
- A statute generally has effect only in the country enacted. However a statute does not run counter to international law and should be interpreted so as to give effect to international obligations.
- statute cannot impose criminal liability without proof of guilty intention. Many modern statutes rebut this presumption by imposing strict liability; for e.g. -dangerous driving.
- A statute does not repeal other statutes. Any point on which the statute leaves a gap or omission is outside the scope of the statute.

INTERPRETATION OF PENAL STATUTES

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, ―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 fulfillment 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. 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. 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. 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.

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. 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‖. It is a basic rule of legal jurisprudence that than an enactment is void for vagueness if its prohibitions are not clearly defined. 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.‖

In the case of ***Feroze N. Dotivalaz v. P.M Wadhwani and co.***, 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) 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, 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. 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.‖

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.***, 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. 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. 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.

While interpreting penal statutes, it is clear that any reasoning which is based on the substance of the transaction has to be discarded. 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. 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) 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.‖

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*** 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***, 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, 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.,*** 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.‖ 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.‖ 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. Similarly, such pedantic interpretation has not been given in the cases relating to section 498A of Indian Penal Code, section 12(2) of Foreign Exchange Regulation Act, 1947 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.

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. 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.***, 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 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***, 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***., 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***, 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) 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 it can be broadly categorize the method of interpretation by concluding that firstly in 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.

INTERPRETATION OF THE CONSTITUTION

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*** 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 ***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.

<u>Interpretation of the preamble of the Constitution</u>

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 Bharati'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 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.

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

<u>Principle of Colourable Legislation</u>

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:-

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.

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

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) 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.

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

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.

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

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 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 CODYFYING AND CONSOLIDATING STATUTE

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

- Consolidating statutes without changes
- Consolidating statutes with minor changes.
- Consolidating Act with amendment.

RULES OF INTERPRETAION:-

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.

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.

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:- ― 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 law. 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.

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