CHAPTER 2
Selection of Rule Applicable

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SELECTION OF RULE APPLICABLE

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1 INTRODUCTION

Justice is the ideal to be achieved by law. Justice is the goal of law. Law is a set of general rules applied in the administration of Justice. Justice is in a cause and depends on application of law to a particular case. The development of the law is influenced by morals.[169] Law is not an essential element in the administration justice. We cannot have the former without the latter, but we may have latter with the former."[170]

Our first inquiry should be: -

Where does the judge find the law which he embodies in his judgement?

The rule that fits the case may be supplied by the constitution or by statute. If that is so, the judge looks no further. His duty is to obey. 'Stare decisis' is the everyday working rule of our law. Some judges seldom get

[169] *J. S. Verma "New Dimensions of Justice"*, 2000 Edn., p.1
[170] *Salmond: Jurisprudence, Ibid,* p. 7

beyond that process in any case. Their notion of their duty is to match the colours of the case at hand against the colours of may sample cases spread out upon their desk. The sample nearest in shade supplies the applicable rule. It is when the colours do not match, when the references in the index fail, when there is no decisive precedent, then the serious business of the judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The sentence of today will make the right and wrong of tomorrow. If the judge is to pronounce it wisely, some principles of selection there must be to guide him among all the potential judgments that complete for recognition.[171]

Some cases are governed by rule in strict sense and are to be decided according to rule. The rules themselves determine what cases fall in these categories. Some case are not covered or governed by such rules but are to be decided according to reasoning from an authoritative starting point by an authoritative technique in the light of authoritative ideals. Here there is some element of personal choice of starting points. Other cases are to be decided according to discretion guided by principles of exercising it, i.e. judicial discretion. Still others are to be decided according to personal discretion, i.e. without reference to any authoritative grounds of or guides to the result.[172]

Sometimes difficulties arise from the fact that ‘meaning’ and ‘intention’ are ambiguous words. Does the present case fall within what the legislature ‘meant’ to refer to by the wording it has used (reference), or does it fall within the purpose which it “meant” to accomplish (purpose)? As to the ascertainment of legislative purpose, this would

[171] *Benjamin N. Cardozo, Ibid,* p. 21
[172] *Roscoe Pound – Jurisprudence, Part 3, Ibid,* pp. *353-354*

appear on the face of it to permit a court to venture outside the enactment for available evidence as to the policy behind it so that the wording may be construed in the light of this.[173]

The practical question is how far a court is expected to go in search of such evidence, for without some limit the inquiry might be pursued to unreasonable lengths.[174]

Sometimes the courts show reluctance to venture outside the enactment itself, which means that its wording is to be construed in the light of policy only in so far as this can be gleaned within the four corners of the statute. This limitation narrows till further the distinction between 'construction' and 'interpretation'.[175] Nor do words have proper meanings. A word may bear the meaning put upon it by the user, that understood by the recipient, or the usual meaning.[176] The 'usual meaning' is complicated by the fact that although most words do have an area of agreed application they are also surrounded by a hinterland of uncertainty, which is where disputes arise. Ideally one ought to proceed on the meaning intended by the user, but this is impossible with emanations from a body like the legislature.[177] There is no means of ascertaining parliamentary intention by scrutinizing the minds of those who voted for the enactment in question.[178] It is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law.[179]

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[173] *Dias, Ibid,* p. 167
[174] *Dias, Ibid,* p. 167
[175] *Dias, Ibid,* p. 167
[176] *Dias, Ibid,* p. 167
[177] *Dias, Ibid,* p. 168
[178] *Dias, Ibid,* p. 168
[179] *Davies, Jenkins & Co. Ltd. v. Davies* (1967) 1 All ER, pp. 912, 913 as referred to by *Dias, Ibid,* p. 168

Even in the interpretation of ordinary statutes, it is said, that the meaning of today is not always the meaning of tomorrow.[180] Legislatures have sometimes disregarded their own responsibility, and passed it on to the courts. If the result of a definition is to make them seem to be illusions, so much the worse for the definition; we must enlarge it till it is broad enough to answer to realities.[181] Statutes do not cease to be law because the power to fix their meaning in case of doubt or ambiguity has been confided to the courts.[182]

Judicial discipline does not permit incorporation of general views in the decisions which must be confined only to the reasons necessary for the decisions. Cardozo recognises the influence of the conscious and the subconscious forces in judicial law making, particularly when there are gaps to be filled. The influence of the subconscious is mere subtle. The values cherished by a judge, are, therefore, more significant as they constitute the subconscious element. Emphasising the ethical component of justice, Cardozo reiterated 'ethical considerations can no more be excluded from the administration of justice which is the end and purpose of all civil laws than one can exclude the vital air form his room and live.

In countries where statutes are oftener confined to the announcement of general principles, and there is no attempt to deal with details or particulars, legislation has less tendency to limit the freedom of the judge. Wide enough in all conscience is the field of discretion that remains. Legal reasoning is an exercise in constructive interpretation. Our law consists in the best justification of our legal practices as a whole.

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[180] *Benjamin N. Cardozo, Ibid,* p. 84
[181] *Benjamin N. Cardozo, Ibid,* p. 127
[182] *Benjamin N. Cardozo, Ibid,* p. 127

A court has to interpret law as it stand.[183] The Judges have to administer and to apply as accurately as lies in their power, the precise words of the relevant statutory enactment.[184] It is the duty of the Judge to interpret construe the provisions of an enactment and to interpret them according to the language used.[185] Judges are bound to apply the law as it is made and cannot enter into the question of what it should have been, however, laudable the object behind the latter.[186]

The interpretation of all statutes should be favourable to personal liberty.[187]

A Court consists only of a few learned Judges appointed by the executive, not answerable to anyone, while legislature is elected by the people and Ministers are answerable to the legislature and to the people. This is the reason why a court howsoever high, cannot arrogate to itself the powers of legislature. If it does so it may be tolerated so long as it is non-controversial and harmless, and even be applauded if it is generally perceived to be beneficial in the public interest (for instance: in laying down guidelines for adoption of Indian children by foreigners). The Court has no doubt the power to interpret the Constitution. But if it is perceived by Parliament to be usurping its power then Parliament may under Article 368 even cut down its powers drastically. That is why caution and self-restraint by judges is necessary while being activists and indulging in law-making. They have to realize that they cannot be themselves solve all

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[183] *Abdul Husan v. Mahmuli Begum,* AIR 1953 Lah. 364 : *Chand Shankar v. Sukh Lal,* AIR 1951 All 383 : *Gopi Nath v. Thakurdin,* AIR 1935 All 636 : *Kidar Nath v. Bhag Singh,* AIR 1937 Lah. 504

[184] *Abdur Rahman v. Emperor,* AIR 1935 Cal, pp.316, 327

[185] *Dhirendra Nath v. Nural Huda,* AIR 1951 Cal. 133

[186] *Gulam Nabi Jan v. State,* AIR 1954 J & K 7 : *Gulam Ahmad v. State,* AIR 1954 J&K 59 : *Sanwaldas v. Narain Das,* AIR 1955 Bhopal 3

[187] *Maxwell: Interpretation of Statute, 11th Edi.,* p. 274

problems facing the country. They have neither the power nor the resources nor is it their province to attempt to do so.

The method of interpreting statutory provisions as enumerated in book entitled "*Francis Bennion Statutory Interpretation*"[188], it has been succinctly observed as follows:

> "In interpreting an Act of Parliament, it is not, in general, a true line of construction to decide according to the strict letter of the Act; but the Courts will rather consider what is it's fair meaning, and will expound it differently from the letter, in order to preserve the intent.
>
> There are many so-called rules of construction that Courts of law have resorted to in their interpretation of Statutes but the paramount rule remains that every Statute is to be expounded according to its manifest and expressed intention.
>
> It is the basic principle of legal policy that law should serve the public interest. The Court, when considering in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should, therefore, strive to avoid adopting a construction which is in anyway adverse to the public interest".

Considering the functions of Judge regarding interpretation of statutes and even a Constitution, it is necessary for every Judge to know the various parts of an enactment including its functioning as well as how they can be used for the purpose of interpretation of the concerned

[188] As referred to in *Ashok Ambu Parmar v. The Commissioner of Police, Vadodara City and Ors.,* AIR 1987 Guj. 147

statute. It is also necessary that Judge should know the nature of particular statute and apply the concerned rule of interpretation in a given case.

It is the privilege and bounden duty of the Judges and other exercising judicial function in modern democratic society to decide a situation unhampered either by the political dictation of a proletarian Government or the construction of technical rules. Yet these rules cannot be entirely discarded for without them we return to the chaos of "free" or "kingly" justice. The search for proper rules of statutory interpretation is part of the search of justice which is unending.[189]

Therefore, in this chapter (i) The main three canons of interpretation *viz.* (a) Grammatical-Literal-Plain Meaning Rule; (b) Golden Rule of interpretation and (c) Mischief-Functional-Logical-Social Engineering and Purposive Rule; (ii) interpretation according to Nature of Statute, (iii) Approach to be adopted by a Judge for interpretation have been dealt with.

2 GRAMMATICAL-LITERAL OR PLAIN MEANING RULE OF INTERPRETATION

The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognized canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the court should adopt literal construction if it does not lead to an absurdity.

The Plain meaning rule, also known as the literal rule, is one of three rules of statutory interpretation traditionally applied by English

[189] *W. Friedmann: "Legal Theory"*, 4th Edition, 1960, p. 431

Courts. It is a rule of interpretation of statutes that in the first instance the grammatical sense of the words is to be adhered to.[190]

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.

To avoid ambiguity, legislatures often include "definitions" sections within a statute, which explicitly define the most important terms used in that statute. But some statutes omit a definitions section entirely, or (more commonly_ fail to define a particular term. The plain meaning rule attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself.

A text that means one thing in a legal context, might mean something else if it were in a technical manual or a novel. So the plain meaning of a legal text is something like the meaning that would be understood by competent speakers of the natural language in which the text was written who are within the intended readership of the text and who understand that the text is a legal text of a certain type.

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.

Ordinary, natural and grammatical meaning should be given when neither the context nor any principle of interpretation calls for a

[190] *Bradlaugh v. Clarke,* (1883) 8 AC 354; *Bharat Singh v. Management of New Delhi Tuberculosis Centre, New Delhi,* AIR 1986 SC 842

restrictive meaning.[191] Words must also be considered in the sense which they bore when the statute was enacted. The meaning of the statutes is to be derived from the words read in their natural sense unelucidated or unobscured by the counsel of commentators however eminent.[192]

It may be mentioned that the first and foremost principle of interpretation of a statute is in every system of interpretation is the literal rule of interpretation.[193] Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule.[194] The language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake.

2.1 MEANING OF GRAMMATICAL – LITERAL MEANING OR PLAIN MEANING RULE

The plain meaning rule 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 be read word by word and should not divert from its ordinary meaning.

The plain meaning rule is the mechanism that underlines textualism and, to a certain extent, originalism.

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

[191] *CBI v. V. C. Shukla*, (1998) 3 SCC 410
[192] *The King v. Casement* 1917 (1) K.B., pp.98, 113
[193] *B. Premanand & Others v. Mohan Koikal & Others*, AIR 2011 SC 1925
[194] *Swedish Match AB v. Securities and Exchange Board, India,* AIR 2004 SC 4219

undesirable. The literal rule is what the law says instead of what the law was intended to say.

The words of a statute must prima facie be given their ordinary meaning. Where the grammatical interpretation is clear and manifest and without doubt that interpretation ought to prevail unless there be some strong and obvious reason to the contrary.[195] When there is no ambiguity in the words, there is no room for interpretation. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in provisions.[196]

The first question to be posed is whether there is any ambiguity in the language used in the provision. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxto position in which the rule is placed, the purpose for which it is enacted and the object which it is required to sub serve and the authority by which the rule is framed.[197]

In the case of *Union of India v. Sankarchand Himatlal Sheth & another*, it is held by the Hon'ble Supreme Court that:

> "Where the statute's meaning is clear and explicit, words cannot be interpolated. What is true of the interpretation of all ordinary statute is not any the less true in the case of a constitutional provision and the same rule applies equally to both. But if the

[195] *State of Uttar Pradesh v. Vijay Anand Mohanraj,* AIR 1963 SC 946; *State of Karnataka v. Gopalkrishna Nelli,* AIR 1992 Kar. 198
[196] *R. S. Nayak v. A. R. Antulay,* AIR 1984 SC 684
[197] *Prithi Pal Singh v. Union of India,* AIR 1982 S.C. pp.1413, 1419

> words of an instrument are ambiguous in the sense that they can reasonably bear more than one meaning, that is to say, if the words are semantically ambiguous, or if a provision, if read literally, is patently incompatible with the other provisions of that instrument, the court would be justified in construing the words in a manner which will make the particular provision purposeful. That in essence is the rule of harmonious construction."[198]

Where the language of statute is unambiguous, it is not necessary to examine the intent or object Act while interpreting it provisions.[199]

Plain meaning is the accepted principle of interpretation while past practice is an exception which is to be applied under special circumstances. Any past practice dehors the rule cannot be taken into consideration.[200]

When language used in the statute is unambiguous and on a plain grammatical meaning being given to the words in the statute, the end result is neither arbitrary, nor irrational nor contrary to the object of the statute, then it is the duty of the court to give effect to the rods used in the statute because the words declare the intention of the law-making authority best.[201]

Plain meaning should be ascribed unless context requires otherwise.[202]

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[198] *Union of India v. Sankarchand Himatlal Sheth & another,* AIR 1972 S.C. 2388
[199] *Arual Nadar v. Authorised Officer, Land Reforms*, (1998) 7 SCC 157
[200] *D. Stephen Joseph v. Union of India*, AIR 1997 SC 2602
[201] *Jagdish C. Patnaik v. State of Orissa* (1998) 4 SCC 456
[202] *Municipal Corporation of Greater Bombay v. Mafatlal Industries*, AIR 1996 S.C. 1541

One of the Rules of interpretation is Grammatical interpretation. It is arrived at by reference to the laws of speech to the words used in the statute; in other words, it regards only the verbal expression of the legislature.

According to Gray, grammatical interpretation is the application to a statute of the laws of speech.[203]

It is very useful rule, in the interpretation of the statute, to adhere to the ordinary meaning of the words used. This rule, always potent, is particularly so in two sets of circumstance. First, if Parliament is likely to have envisaged the actual forensic situation, she will use plain words in the expectation that the courts will, in pursuance of the primary canon of construction, apply them to that situation in the way that Parliament intended. Secondly, if Parliament considers that it is difficult to frame a definition which may not either go too far or fall too short in various situations, whether envisaged or merely hypothetical, Parliament will use will use plain words in the expectation that the courts will apply them in their natural sense, without omissions or additions, to various forensic situations as they occur.[204]

Literal interpretation is that which regards exclusively the verbal expression of the law. It does not look beyond the literal legis.

In interpreting statutes, the cardinal rule is to interpret its provisions literally and grammatically giving the words their ordinary and natural meaning. The very words in which a particular enactment is expressed, the litera scripta or litera legis, constitute a part of the law itself. It is an elementary rule of interpretation that the language used in a

[203] *Nature and Sources of the Law, Second Edition* 1911, pp. 176-178
[204] *Chang v. Governor of Pentonville,* (1973) 2 All ER pp.205, 213

statute must be interpreted in its grammatical sense. It is not competent to a judge to modify the language of an Act in order to bring it in accordance with his own views as to what is right and reasonable. When the phraseology of an enactment is clear and unambiguous and capable of one and only one interpretation, it is not open to the courts to give a goby to that interpretation simply with a view to carrying out what is supposed to be the intention of the legislature.

Where the words provide a clear and unambiguous meaning the courts of law are not entitled to read something more in those words than what is contained in them. The legislature speaks through the statute and the courts have to carry out the direction given in the statute so long as the directions are clear and distinct. It is only where the language of the statute is capable of more than one meaning that the courts of law can seek their guidance from the intention of the legislature or the principles of equity[205].

The rule of interpretation, as remarked by Parke, J[206], is to intend the Legislature to have meant what they have actually expressed. It is a safe guide to adhere to the litera legis than to try and discover the sententia legis. A court of law is not justified in supplying casus omissus.

The interpretation of the Act must be taken from the bare words of the Act. The Court cannot fish out what possibly may have been the intention of the Legislature: The Court cannot aid the Legislature's defective phrasing of an Act. It cannot add, and mend, and, by interpretation, make up deficiencies which are left there.

[205] *Jamuna Prasad v. State*, 1959 A.L.J.R. 620
[206] *Crawford v. Spooner*, (1846) 6 Moore P.C. 1

Intention of Legislature is a common but very slippery phrase, which, popularly understood, may signify anything from intentions embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.[207]

According to this, courts should not use the "mischief" rule when the statute is "plain and unambiguous". They can use the mischief rule if the statute is ambiguous, but must not "invent fancied ambiguities" in order to do so.

It is, nevertheless, difficult to reconcile the literal rule with the "context" rule. We understand the meaning of words from their context, and in ordinary life the context includes not only other words used at the same time but the whole human or social situation in which the words are used. Professor Zander gives the example of parents asking a child-minder to keep the children amused by teaching them a card game. In the parents' absence the child-minder teaches the children to play strip poker. There is no doubt that strip poker is a card game, and no doubt that it was not the sort of card game intended by the instructions given. One knows this not from anything the parents have said but from customary ideas as to the proper behaviour and upbringing of children. On its face, the literal rule seems to forbid this common sense approach to statutory interpretation.

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[207] *Salomon v. Salomon & Co*….[1397] A.C. 22; *Lord Howard De Walden v. Inland Revenue Commissioner* (1948) 2 All E.R. 825 (830); *Prem Nath v. Prem Nath*, A.I.R, 1963 Punjab, 62

The rule has often been criticised by writers. What is a real ambiguity, and what is a fancied ambiguity? Consider the following case decided by the House of Lords on the construction of the Factories Act. This Act requires dangerous parts of machines to be constantly fenced while they are in motion. A workman adjusting a machine removed the fence and turned the machine by hand in ordered to do the job. Unfortunately he crushed his finger. Whether the employers were in breach of the statute depended on whether the machine was "in motion". In the primary or literal sense of the words it was, but since the machine was not working under power and was only in temporary motion for necessary adjustment, the House of Lords chose to give the words the secondary meaning of "mechanical propulsion."[208] Since the machine was not being mechanically propelled it was not in motion.

This was a decision of the House of Lords 25 years before the pronouncement of Lord Diplock previously quoted, and no doubt has been cast upon it. Is the provision in the Factories Act ambiguous or not? "Motion" primarily means movement; the machine was in movement, and therefore, in the ordinary meaning of the phrase, was in motion. The reason why the House of Lords cut down the meaning of the phrase must have been because the House did not believe that Parliament intended to cover the particular situation. According to Lord Diplock it is improper to do this if the meaning of the statute is plain. So the decision in the Factories Act case was justifiable only if the Act was regarded as not plain. But in what way was it not plain? "In motion" is on its face a perfectly plain phrase. Was not the reason why the House thought it not plain that their lordships believed that Parliament did not have this situation in mind and would have cut down the wording if it had? Yet it

[208] *Richard Thomas & Baldwins Ltd. v. Cummings*, [1955] A.C. 321; Cross, *op. Cit.*, pp.29-31, 74-84

seems that according to Lord Diplock such reasoning is merely the invention of a fancied ambiguity, which is no reason for denying the "plain" meaning of a statute.

The literal rule is a rule against using intelligence in understanding language. Anyone who in ordinary life interpreted words literally, being indifferent to what the speaker or writer meant, would be regarded as a pedant, a mischief-maker or an idiot.

One practical reason for the literal rule is that judges are now deeply afraid of being accused of making political judgments at variance with the purpose of Parliament when it passed the Act. This fear is sometimes understandable, but not all statutes divide Parliament on party lines.

2.1.1 IF LANGUAGE IS PLAIN CONSEQUENCES TO BE DISREGARDED

Where the language of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak of the intention of the Legislature.[209] If any statutory provision is capable of only one interpretation then it would not be open to the court to put a different interpretation upon the said provision merely because the alternative interpretation would lead to unreasonable or even absurd consequences.[210]

The rule is well explained in the case of *Sussex Peerage,*[211] wherein it was observed that:

> "The only rule for construction of Acts of Parliament is that they should be construed according to the intent of the

[209] *Indubai v. Vyankati Vithoba Sawardha,* AIR 1966 Bom. 64
[210] *K.H. Ghole v. Y. R. Dhadvel,* AIR 1957 Bom. 200
[211] 1844 1Cl&Fin 85

> Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense. The word themselves alone do, in such a case, best declare the intention of the law giver."

It may be that the provisions of the law have been deadly drafted in the statute and that it does not express the real intention of the legislature, but that is a matter with which the court is not concerned.[212] If the result of the interpretation of a statute by this rule is not what the legislature intended, it is for the legislature to amend the statute construed rather than for the courts to attempt the necessary amendment by investing plain language with some other than its natural meaning to produce a result which it is thought the legislature must have intended.[213]

Ironically, however, use of the literal rule may defeat the intention of Parliament. For instance, in the case of *Whiteley v. Chappel,*[214] the court came to the reluctant conclusion that:

> "Whiteley could not be convicted of impersonating "any person entitled to vote" at an election, because the person he impersonated was dead. Using a literal construction of the relevant statutory provision, the deceased was not "a person entitled to vote."

This, surely, cannot have been the intention of Parliament. However, the literal rule does not take into account the consequences of a literal interpretation, only whether words have a clear meaning that

[212] *Ishar Singh v. Alla Rakha,* AIR 1936 Lah. 698
[213] *N.S. Bindra:, Ibid,* p. 438
[214] 1868; LR 4QB 147

makes sense within the context. If Parliament does not like the literal interpretation, then it must amend the legislation.

In *Emperor v. Beneroi Lall,*[215] ROWLAND, J observed : It is not for us to concern ourselves with policy where the law is clear but to give effect to its provisions however injurious we may conceive the consequences to be.

Intent has to be ascertained from the language of the Statute. If the words are unambiguous, clear and explicit, there need be no recourse to any rules of interpretation. The law thus interpreted must be applied even if the inadvertent consequence is that someone benefits from his own wrong.[216]

Legislative intent can be gathered from the words used in the Statute. Words are the skin of the language. The language opens up the bag of the maker's mind. The legislature gives its own meaning and interpretation of the law. It does so employing appropriate phraseology to attain the object of legislative policy which it seeks to achieve.[217]

Meaning should be given to each and every word. It is a cardinal principle of interpretation that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context or in the object of the statute to suggest the contrary It has been often held that the intention of the legislature is primarily to the gathered from the language used, which means that attention should be paid to what has been said as

[215] AIR 1943 FC 36 : [1943] FCR 96 : (1943) 2 Mad LJ 207; *Popatlal Shah v. State of Madras,* 1953 SCR 677 : AIR 1953 SC 274; *Darshan Singh v. State of Punjab,* [1953] SCR 319 : AIR 1953 SC 83

[216] *State of Kerala v. S. G. Sarvothama Prabhu (Dr.),* AIR 1999 SC 1195

[217] *Pannalal bansilal Pitti v. State of Andhra Pradesh,* AIR 1996 SC 1023

also to what has not been said. As a consequence an interpretation which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. Obviously the aforesaid rules of interpretation is subject to exceptions. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by legislature.[218]

The courts are not concerned with the policy of the legislature or with the result whether injurious or otherwise, by giving effect to the language used nor is it the function of the court where the meaning is clear not to give effect to it merely because it would lead to hardship. One of the duties imposed on the courts in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, the court must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not what it was intended to negative that which it sought to achieve.[219]

The cardinal rule of construction of statutes is to read the statute literally, that is by giving to the words used by the legislature, their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words all susceptible of another meaning the court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation.[220]

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[218] *Mohd. Ali Khan v. CWT,* AIR 1997 SC 1165
[219] *Firm Amar Nath v. Tek Chand,* AIR 1972 S.C. pp.1548, 1550
[220] *Jugal Kishore v. Raw Cotton Co.,* AIR 1955 S.C. pp.376, 381

There may be a permanent public policy, one that will prevail over temporary inconvenience or occasional hardship, not lightly to sacrifice certainty and uniformity and order and coherence. All these elements must be considered.

The means of interpretation are direct and indirect. The direct means are: (a) the literal meaning of the language used, and (b) the context. As to this it has been said by Holmes, in his collected papers (1921), 201, that: -

> "We do not inquire what the legislature meant; we ask only what he statute means."[221]

The first of the direct means of interpretation, the literal meaning assumes that the Statute means and hence the legislature meant what the statute says.[222]

What the statute means is arrived at on the basis of – (i) That the statutory formula provides one or more rules, i.e. provides for definite legal consequences which are to attach to definite detailed states of facts, and (ii) that the formula was prescribed by a determinate law maker; that law maker had a will or intention the content of which is discoverable and to be discovered.[223]

The Gujarat High Court has in its judgment has elaborately observed as under:-

> "The words of the Act of Parliament must be so construed as to give them a sensible meaning, following the principle "Ut res magis valeat quam pereat". The primary test is however, the

[221] *As referred by Roscoe Pound: Ibid,* p. 490
[222] *Roscoe Pound, Ibid,* p. 490
[223] *Roscoe Pound, Ibid,* pp. 484, 490

> language employed in the Act. It is the paramount duty of the judicial interpreter to put upon the language of the legislature its plain and rational meaning and to promote its objects. The paramount object in statutory interpretation is to discover what the legislature intended. The intention is primarily to be ascertained from the text of the enactment in question. The text is not to be interpreted without reference to its nature or purpose."[224]

All the provisions of a statute should be read together so as to make it a "consistent enactment". In case of an apparent conflict between different provisions of the same enactment, they should be so interpreted that, if possible, effect maybe given to both. Effect must be given, if possible, to all the words used for the legislature is deemed not to waste its words or to say anything in vain. A interpretation which would attribute redundancy to a legislature shall be accepted except for compelling reasons. The words should be taken to be used in their ordinary sense given in standard dictionaries or law lexicons and their ordinary sense can be departed from only if the departure leads to the proper interpretation of the will of the Legislature. Dictionary meanings, however, helpful in understanding the general sense of the words cannot control where the scheme of the Statute considered as a whole clearly conveys a somewhat different shade of meaning. It is not always a safe way to construe a statute by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the statute upon the basis of these definitions. What particular meaning should be attached to words and phrases in a given statute is

[224] *Prahaladbhai Rajaram Mehta v. Popatbhai Haribhai Patel*, 1996 [1] GCD-564 [Guj].

usually to be gathered from the context, the nature of the subject matter, the purpose or the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker or the writer and the words have naturally, therefore, to be interpreted as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context in which a word conveying different shade of meaning is used, is of importance in determining the precise sense which fits in with the context as intended to be conveyed by the author. Effect must be given to the clear and explicit language, whatever may be the consequences unless in doing so some absurdity or repugnancy or inconsistency to the rest of the provisions would result.

The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.[225] "The true way", according to LORD BROUGHAM is, "to

[225] *Crawford v. Spooner* (1846) 4 MIA (PC) pp.179, 181; *Grey v. Pearson* (1857) 6 HLC pp.61, 106:10 ER 1216 (HL) p.1234 *River Wear Commrs. v. Adanson,* (1877) 2 AC 743: (1874-80) All ER Rep.1 (HL) p. 12; *Attorney General v. Milne,* (1914) AC 765; (1914-15) All ER Rep. (HL) pp.1061,1053; *Corporation of the City of Victoria v. Bishop of Vancouver Island,* AIR 1921 PC pp.240, 242; *Nagendra Nath Dey v. Suresh Chandra Dey,* AIR 1932 PC pp.165, 167; *Pakala Narayana Swami v. Emperor,* AIR 1939 PC pp.47, 51, 52; *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1940) AC 1014; (1940) 3 ALL ER (HL) pp.549, 553; *Jugalkishore Saraf v. Raw Cotton Co. Ltd.,* AIR 1955 SC pp.376, 381; *S.A. Venkataraman v. The State,* AIR 1958 SC pp.107, 109; *Siraj-ul-Haq. v. Sunni Central Board of Waqf,* AIR 1959 SC pp.198, 205; *Shri Ram Daya Ram v. State of Maharashtra,* AIR 1961 SC pp.674, 678; *Madanlal Fakir Chand Dudhediya v. Shri Changdeo Sugar Mills Ltd.,* AIR 1962 SC pp.1543, 1551; *State of Uttar Pradesh v. Vijay Anand Maharaj,* AIR 1963 SC pp.946, 950; *Manmohan Das Shah v. Bishun Das,* AIR 1967 643; *Electrical Manufacturing Co. Ltd. v. D.D. Bhargava,* AIR 1968 SC pp.247, 249, 250; *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. v. Workers Union,* AIR 1969 SC pp.513, 518; *M/s. Glaxo Laboratories (I) Ltd. v. Presiding*

take the words as the legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those words is, wither by the preamble or by the context of the words in question, controlled or altered",[226] and in the words of VISCOUNT HALDANE, L.C., if the language used "has a natural meaning we cannot depart from that meaning unless, reading the statute as a whole, the context directs us to do so".[227]

In an oft-quoted passage, LORD WENSLEYDALE stated the rule thus:

> "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the word is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity, and inconsistency, but no further".[228]

Officer, Labour Court, Meerut (1984 1 SCC pp.1, 9: AIR 1984 SC 505; *Orga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC pp.545, 581; *M/s. Doypack Systems Pvt. Ltd. v. Union of India*, AIR 1988 SC pp.782, 801; *Oswal Agro Mills Ltd. v. Collector of Central Excise*, AIR 1993 SC pp.2288, 2292.

[226] *Crawford v. Spooner*, (1846) 4 MLA 179 (PC), p. 181.

[227] *Attorney General v. Milne*, (1914-15) All ER Rep (HL) pp.1061, 1063

[228] *Grey v. Pearson*, (1857) 6 HLC pp.61, 106: 10 ER 1216 (HL) p.1234; *Walton Ex parte, Re Levy*, (1881) 50 LJ Ch pp.657, 659; *Caledonia Rly. v North British Rly.*, (1881) 6 AC (HL) pp.114, 131; *Vacher & Sons v. London Society of Compositors*, (1913) AC 107: (1911-13) All ER Rep (HL) pp.241, 246; *Corporation of the City of Victoria v. Bishop of Vancouver Island*, AIR 1921 PC pp.240, 242; *Pakala Narayana Swami v. Emperor*, AIR 1939 PC pp.47, 51; *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC pp.1461, 1538: (1973) 4 SCC 225; *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC pp.1025, 1039; *Abbot v. Middleton*, (1858) 28 LJ Ch (HL) pp.110, 114; *Warburton v. Loveland*, (1828) 1 Hud & Brooke (623); *Doe v. Jessep*, (1810) 12 East pp.288, 292; *Grundy v. Pinnigar*, (1852) 1 De GM & G 502: (1852) 21 LJ Ch pp.404, 406; *Mattison v. Hart*, (1854) 14 CB 357: (1854) 23 LJCP pp.108, 114. *Becke v. Smith* (1836) 150 ER pp.274, 276; *Chandvarkar Sita Ratna Rao v. Ashalata S. Guram* (1986) 4 SCC pp.447, 476: AIR 1987 SC 117.

LORD ATKINSON has stated that:

> "In the construction of statutes, their words must be interpreted in their ordinary grammatical sense unless there be something in the context, or in the object of the statute in which they occur or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense".[229]

VISCOUNT SIMON, L.C., has said that:

> "The golden rule is that the words of a statute must prima facie be given their ordinary meaning."[230] Natural and ordinary meaning of words should not be departed from "unless it can be shown that the legal context in which the words are used requires a different meaning".

Such a meaning cannot be departed from by the judges "in the light of their own views as to policy" although they can "adopt a purposive interpretation if they can find in the statute read as a whole or in material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy".[231]

For a modern statement of the rule one may refer to the speech of LORD SIMON of GLAISDALE in a case where he said:

> "Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so

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[229] *Corporation of the City of Victoria v. Bishop of Vancouver Island*, AIR 1921 PC pp.240, 242

[230] *Nokes v. Donacaster Amalgamated Collieries Ltd.*, (1940) AC 1014: (1940) 3 All ER (HL) pp.549, 553; *Chandvarkar Sita Ratna Rao v. Ashalata S. Guram*, (1986) 4 SCC pp.447, 476: AIR 1987 SC 117.

[231] *Shah v. Barnet London Borough Council*, (1963) 1 All ER (HL) pp.226, 235, 238

> important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is to be credited with good sense; so that when such an approach produces injustice, absurdity, contradiction or stultification of statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further."[232]

In the case[233] from which the last mentioned quotation is taken, the question related to section 14(1) of the Immigration Act, 1971, which provides that 'a person who has a limited leave under this Act to enter or remain in the United Kingdom may appeal to an adjudicator against any variation of the leave or against any refusal to vary it.' The words 'a person who has a limited leave' were construed not to include a person "who has had" such limited leave and it was held that the section applied only to a person who at the time he lodge his appeal was lawfully in the United Kingdom that is in whose case leave had not expired at the time of lodgement of appeal.

In construing section 3 which lays down the grounds on which a theka tenant may be ejected and section 5(1) which prescribed that 'a landlord wishing to eject a theka tenant on one or more of the grounds specified in section 3 shall apply to the controller,' the Supreme Court

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[232] *Suthendran v. Immigration Appeal Tribunal,* (1976) 3 All ER (HL) pp.611, 616; *Farrel v. Alexander*, (1976) 2 All ER (HL) pp.721, 736 : (1976) 2 All ER (HL) pp.937, 957; *Stoke v. Frank Jones (Tipton) Ltd.*, (1978) 1 All ER (HL) pp.948, 952; *Applin v. Race Relations Board*, (1974) 2 All ER (HL) pp.73, 91; *Kehar Singh v. The State*, AIR 1988 SC pp.1883, 1945

[233] Suthendran v. Immigration Appeal Tribunal, *Ibid.*

held that these provisions of the Calcutta Theka Tenancy Act, 1949, did not apply to those cases where a decree had already been obtained. Rejecting the argument based on the mischief rule in 'Heydon's case, GAJENDRAGADKAR,J., observed:

> "The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise."[234]

Similarly, section 28 of the same Act which was omitted by Amending Act 6 of 1953 was held to be inapplicable even to pending proceedings on a grammatical construction of the Amending Act. DAS GUPTA,J., referring to the rules of construction said:

> "The intention of the legislature has always to be gathered by words used by it, giving to the words their plain, normal, grammatical meaning"; [235] and proceeding further he said:"If the strict grammatical interpretation gives rise to an absurdity or inconsistency such interpretation should be discarded and an interpretation which will give effect to the purpose the legislature may reasonably be considered to have had, will be put on the words, if necessary even by modification of the language used".[236]

And in speaking of construction of the Indian Limitation Act, 1908, SIR DINSHAH MULLA stated:

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[234] *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907.
[235] *Mahadeolal Kanodia v. Administrator General of West Bengal*, AIR 1960 SC pp.936, 939
[236] *Ibid Referred to in Union of India v. Filip Tiago De Gamma of Vedum Vasco De Gama*, AIR 1990 SC pp.981, 983.

> "The strict grammatical meaning of the words is, their Lordships thing, the only safe guide".[237]

This principle has been reaffirmed by the Supreme Court in various decisions.

In dealing with order 21, rule 16 of the Code of Civil Procedure, 1908, the Supreme Court applied the rule of literal construction and held that the said provision contemplates actual transfer of a decree by an assignment in writing after the decree is passed. S.R.DAS,J., referring to the rule under discussion said:

> "The cardinal rule of construction of statutes is to read statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to an apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."[238]

By section 11 of the Assisted Schools and Training College (Supplementary Provisions) Act, 1960 (Ceylon), the Minister of Education is empowered if he is satisfied that an unaided school "is being administered in contravention of any of the provisions of the Act etc" to declare that such a school shall cease to be an unaided school and that the Director of Education shall be its manager. In holding that the Minister

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[237] *Nagendra Nath Dey v. Suresh Chandra Dey,* AIR 1932 PC 165; *General Accident Fire & Life Assurance Corporation v. Janmahomed Abdul Rahim,* AIR 1941 PC pp.6, 9.

[238] *Jugalkishore Saraf v. Raw Cotton Co. Ltd.,* AIR 1955 SC pp.376, 381

can only take action if the school at the time of the making of the order is being carried on in contravention of the Act and not merely on the ground that a breach of the Act was committed in the past, the Privy Council (LORD PEARCE) pointed out:

> "The present tense is clear. It would have been easy to say 'has been administered' or 'in the administration of the school any breach of any of the provisions of the Act has been committed', if such was the intention, but for reasons which commonsense may easily supply, it was enacted that the Minister should concern himself with the present conduct of the school not the past, when making the order."[239]

In interpreting section 6 of the Prevention of Corruption Act, 1947, the Supreme Court held that sanction is not necessary for taking cognizance of the offences referred to in that section if the accused has ceased to be a public servant on the date when the Court is called upon to take cognizance of the offences. The Court rejected the construction that the words 'who is employed- and is not removable' as they occur in clauses (a) and (b) of Section (1) mean 'who was employed-and was not removable', as also the construction that the words 'competent to remove him from office' in clause (c) mean 'would have been competent to remove him from his office'. IMAM,J., pointed out:

> "In construing the provisions of a statute it is essential for a court to give effect to the natural meaning of the words used therein, if those words are clear enough."[240]

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[239] *Mardana Mosque v. Badi-ud-din Mohmud,* (1966) 1 All ER (PC) pp.545, 551; *F.S.Gandhi v. Commissioner of Wealth Tax,* AIR 1991 SC pp.1866, 1869

[240] *S.A. Venkataraman v. The State,* AIR 1958 SC pp.107, 109.

"To adhere as closely as possible to the literal meaning of the words used", is, as stated by LORD CRANWORTH (when Lord Justice) a "cardinal rule," from which if we depart, "we launch into a sea of difficulties which it is not easy to fathom".[241] This statement over-emphasises the role of literal interpretation, but it is interesting to notice that some of the leading controversies were resolved in favour of literal construction. The law that a minor's agreement is void was settled by the Privy Council on a literal construction of Section 11 and other related provisions of the Indian Contract Act, 1872, [242] and so also the question whether money paid under mistake of law can be recovered back under Section 72 of the same Act was resolved by giving to the word 'mistake', in that section, its ordinary meaning as including even a mistake of law.[243]Again, the difference of opinion between the Bombay High Court and other High Courts on the construction of section 80 of the Code of Civil Procedure, 1908 as to the necessity of notice under that section in a suit for injunction was settled by the Privy Council in approving the view, which was taken by reading the section in its literal sense, that a notice was necessary.[244] Further, the controversy whether a variation made by the appellate decree of the High Court in favour of an intending appellant decree of the High Court in favour of an intending appellant to the Supreme Court is a decree of affirmance within Art. 133(1) of the Constitution was resolved by the Supreme Court by "reading the clause as a whole and giving the material words their plain grammatical meaning". It was held that if the High Court varies the decree under

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[241] *Grundy v. Pinniger*, (1852) 1 De GM & G 502; (1852) 21 LJ Ch pp.405, 406; *Abbot v. Middleton*, (1858) 28 LJ Ch (HL) pp.110, 114

[242] *Mohori Bibee v. Dharmodas Ghose*, ILR 30 Cla (PC) pp.539, 547, 548.

[243] *Sales Tax Officer, Benaras v. Kanhaiyalal Mukundlal Saraf*, AIR 1959 SC pp.135, 139

[244] *Bhagchand Dagdusa Gujrathi v. Secretary of State for India*, AIR 1927 PC pp.176, 185.

appeal, the appellate decree is not a decree of affirmance and it is immaterial whether the variation is in favour of the intending appellant or against him.[245] Similarly, the divergence or opinion as to the starting point of limitation under Art.31 of the Indian Limitation Act, 1908 which arose on the construction of the words 'when the goods ought to have been delivered', was settled by the Supreme Court by adopting "their strict grammatical meaning". The view taken by some of the High Courts that time beings to run from the date of refusal by the railway to deliver the goods was overruled.[246]

In constructing section 6(a) of the Payment of Bonus Act, 1965, the Supreme Court observed that the words "depreciation admissible in accordance with the provisions of sub-section (1) of Section 32 of the Income-tax Act" have to be given their natural meaning and these words could not be read as "depreciation allowed by the Income-tax Office in making assessment on the employer". It was, therefore, held that it was for the Industrial Tribunal to determine what was the depreciation admissible in accordance with Section 32 of the Income-tax Act and the Tribunal could not just accept the amount allowed by the Income-tax Officer as depreciation under that section. It was further held that the finding of the Income-tax Officer was not even admissible before the Tribunal for purpose of the Bonus Act.[247]

The Supreme Court has in several cases adopted the principle of reading down the provisions of the Statute. The reading down of a provision of a statute puts into operation the principle that so far as it is

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[245] *Tirumalachetti Rajaram v. Tirumalachetti Radhakrishnayya Chetty*, AIR 1961 SC pp.1795, 1797, 1798

[246] *Bootamal v. Union of India*, AIR 1962 SC 1716

[247] *Workmen of National and Grindlays Bank Ltd. v. The National and Grindlays Bank Ltd.*, AIR 1976 SC 611: (1976) 1 SCC 925

reasonably possible to do so, the legislation should be interpreted as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the court will interpret it in a more limited sense so as to keep it within power[248].

In *Commissioner of Agricultural Income-tax v. Keshav Chandra Mandal*[249], the question was whether a declaration in the form of return signed by an illiterate assessee by the pen of his son should be treated as properly signed and as valid return under the Bengal Agricultural Income-tax Act, 1944. The High Court held in favour of the assessee, but the Supreme Court, reversing the decision observed:

> "Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute or the rules".

Where the words of a statute are plain and unambiguous effect must be given to them.[250] Where the words are unequivocal, there is no scope for importing any rule of interpretation.[251] Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute.[252] Ordinarily, it is not proper for the Court to depart from the literal rule as that would really be amending the law in the garb of interpretation, which is not permissible.[253] Where the language is clear, the intention of the

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[248] *All Saints High School Hyderabad & Ors v. Government of Andhra Pradesh & Ors* (1980) 2 SCC pp.478, 532, 533
[249] 1950 SCR 435 : AIR 1950 SC 265.
[250] *Bhaiji v. Sub-Divisional Officer, Thandla,* 2003(1) SCC 692
[251] *Pandian Chemicals Ltd. v. C.I.T.,* 2003 (5) SCC 590
[252] *C.I.T. v. Keshab Chandra Mandal,* AIR 1950 SC 265
[253] *J. P. Bansal v. State of Rajasthan & Anr.,* AIR 2003 SC 1405; *State of Jharkhand & Anr. v. Govind Singh, JT,* 2004 (10) SC 349

legislature has to be gathered from the language used.[254] The function of the Court is only to expound the law and not to legislate.[255]

In *Dominion of India v. Shrinbai A. Irani*[256], the question was the interpretation of Clause 3 of the Requisition Land (Continuance of Powers) Ordinance, 1946, which provided that, 'notwithstanding the expiration of the Defence of India Act, 1939, and the rules made thereunder, all requisitioned lands shall continue to be subject to requisition until the expiry of the Ordinance and the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient'. It was contended by the respondent that the clause applied only to requisition order which come to an end with the expiration of the Act, and not to orders which had expired and ceased to be operative by reason of the limitation placed on the duration of requisition in the orders. It was held : Although ordinarily there should be a close approximation between the non- obstante clause and the operative part of the section, the non obstante clause need not necessarily and always be co-extensive with the operative part, so as to have the effect of cutting down the clear terms of an enactment. If the words of an enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment.

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[254] *Grasim Industries Ltd. v. Collector of Customs,* 2002 (4) SCC 297; *Union of India v. Hansoli Devi,* 2002 (7) SCC 273

[255] *District Mining Officer v. Tata Iron and Steel Company,* 2002 (7) SCC 358

[256] [1955] 1 SCR 206 : AIR 1954 SC 596

Whatever may have been the presumed or the expressed intention of the legislating authority when enacting the Ordinance, the words of Clause 3, read along with the definitions are quite clear and it would not be within the province of the courts to speculate as to what was intended to be covered by it when the only interpretation which could be put upon the terms thereof is that all requisitioned lands, that is properties which when the Defence of India Act expired were subject to 'any' requisitioned were to continue to be subject to requisition. No doubt, measures which affect the liberty of the subject and his rights to property have got to be strictly construed. But in spite of such strict interpretation to be put upon the provisions of this Ordinance one cannot get away from the fact that the express provisions of Clause 3 of the Ordinance covered *any* requisition effected under the Defence of India Act and the rules, irrespective of whether the requisition was effected for a limited duration or for an indefinite period….There may be cases in which the Ordinance worked to the prejudice of the owners of the requisitioned property. In such cases the necessary relief could be granted by the appropriate government. But the courts would be helpless in the matter.

As referred to in *S.R.Bommai v. Union of India*[257] the Supreme Court has referred to the decision rendered in *State of Tasmania v. The Commonwealth of Australia and State of Victoria*[258], wherein Connor, J. has observed thus:

> "It appears to me the only safe rule is to look at the statute itself and to gather from it what is its intention. If we depart from that rule we are apt to run the risk of the danger described by Pollack, C.B., in *Mille v. Solomons*. If, he says, the meaning of

[257] AIR 1994 SC 1918.
[258] (1904) 1 CLR 329, 358-59

the language be plain and clear, we have nothing to do but to obey it – to administer it as we find it; and, I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation Some passages were cited by Mr. Glynn from Black on the Interpretation of Laws, which seem to imply that there might be a difference in the rules of interpretation to be applied to the Constitution and those to be applied to any other. Act of Parliament, but there is no foundation for any such distinction. The intention of the enactment is to be gathered from its words. If the words are plain, effect must be given to them; if they are doubtful, the intention of Legislature is to be gathered from the other provisions of the statute aided by a consideration of surrounding circumstances. In all cases in order to discover the intention you may have recourse to contemporaneous circumstances- to the history of the law, and you may gather from the instrument itself the object of the Legislature in passing it. In considering the history of the law, you may look into previous legislation, you must have regard to the historical facts surrounding the brining of law into existence. In the case of a Federal Constitution the field of inquiry is naturally more extended than in the case of a State Statute, but the principles to be applied are the same. You may deduce the intention of the Legislature from a consideration of the instrument itself in the light of these facts and circumstances, but you cannot go beyond it. If that limitation is to be applied in the interpretation of an ordinary Act of Parliament, it should at least be as stringently applied in the interpretation of an instrument of this kind, which not only is a statutory enactment, but also embodies the compact by

which the people of the several colonies of Australia agreed to enter into an indissoluble Union."

2.1.2 WORDS TO BE GIVEN THEIR NATURAL MEANING

In the interpretation of statutes, their words must be interpreted in their ordinarily grammatical sense unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances in which they are used, to show that they were used in a special sense different from their ordinary grammatical sense[259]. Where the words of a section in a statute are plain, the court must give effect to them, and is not justified in depriving the words of only natural and proper meaning in order to give effect to some intention which the court imputes to the legislature from other provisions of the Act.[260]

To adhere as closely as possible to the literal meaning of the words used is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom[261].

It is a well settled rule that in interpreting the provisions of a statute the court will presume that the legislation was intended to be intra vires and also reasonable. The rule followed is that the section ought to be interpreted consistent with the presumption which impetus to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible[262].

Sometimes to keep the Act within the limits of its scope, and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for

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[259] *Victoria City v. Bishop of Vancouver Island,* A.I.R 1921, P.C. 242
[260] *Motilal Dhannalal v. Nathu Ganapati,* AIR 1940 Nag. 414
[261] *Gundry v. Pinniger* (1852) 21 L.J. Ch. pp.405, 406
[262] *Maxwell on Interpretation of Statutes, Twelfth Edn.,* p. 109

certain purposes only, even thought the language expresses no such circumspection of the field of operation[263].

The first thing one has to do, I venture to thing in interpreting words in a section of an Act of Parliament is not to take those words in vacuum, so to speak and attribute to them what is sometimes called their natural or ordinary meaning. Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context. The method of interpreting statutes that I prefer is not to take particular words and attribute to them a sort of prima facie meaning which you may have to displace or modify. It 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 the true meaning of the word?[264]

A word is not crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used[265].

A grant of the power in general terms, standing by itself, would no doubt be interpreted in the wider sense; but it may be qualified by other express provisions in the same enactment, by the implication of the context, and even by the considerations arising out of what appears to be the general scheme of the Act[266].

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[263] *Street: Doctrine of Ultra Vires* ,1930 Edn., p. 441
[264] *Bidie v. General Accident, Fire and Life Assurance Corporation* (1948) 2 All E.R. pp.995, 998; *Kesavananda Bharati v. State of Kerala,* A.I.R. 1973 SC 1461
[265] *Tone v. Eiegner* (245 US. 418)
[266] *Gwyer, J in Central Provinces and Bearer Act,* 1939 (1949 F.C.R 18 & 12)

In *Curtis v. Stovin,*[267] Fry, L.J., said:

> "If the legislature have given a plain indication of this intention, it is our plain duty to endeavour to give effect to it, though, of course, if the word which they have used will not admit of such an interpretation, their intention must fail."

In *Union of India and another v. Hansoli Devi and others,*[268] the Supreme Court has observed:

> "It is a cardinal principle of construction of a statute that when the 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 grounds that such construction is more consistent with the alleged object and policy of the Act."

In *Gurudevdatta VKSSS Maryadit v. State of Maharashtra*[269], the Supreme Court has observed:

> "It is a cardinal principle of interpretation of state that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the

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[267] 22 QBD 513, as referred to by *N.S. Bindra: Ibid,* p. *441*

[268] 2002 (7) SCC 273

[269] AIR 2001 SC 1980; *S. Mehta v. State of Maharashtra,* 2001 (8) SCC 257; *Patangrao Kaddam v. Prithviraj Sajirao Yadav Deshmugh,* AIR 2001 SC 1121

Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts are adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

In the case of *B. Premanand & Others v. Mohan Koikal & Others*,[270] the Supreme Court has observed that :

"The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.

In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representative of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed.

We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil;

[270] AIR 2011 SC 1925

and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation, social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

Justice Frankfurther of the U.S. Supreme Court,[271] has stated :

"Even within their area of choice the courts are not at large. They are confined by the nature and scope of the judicial function in its particular exercise in the field of interpretation. They are under the constraints imposed by the judicial function in our democratic society. As a matter of verbal recognition certainly, no one will gainsay that the function in construing a statute is to ascertain the meaning of words used by the legislature. To go beyond it is to usurp a power which our democracy has lodged in its elected legislature. The great judges have constantly admonished their brethren of the need for discipline in observing the limitations. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely

[271] "Of Law & Men: Papers and Addresses of Felix Frankfurther' as referred to in *B. Premanand & Others v. Mohan Koikal & Others,* AIR 2011 SC 1925

> suggest, construction must eschew interpretation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

A court cannot stretch the language of a statutory provision to bring it in accord with a supposed legislative intention underlying it unless the words are susceptible of carrying out that intention.[272] The intention of the legislature is to gather only from the words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the legislature. Where the words of a section in a statute are plain, the court must give effect to them, and is not justified in depriving words of their only proper meaning in order to give effect to some intention which the court imputes to the legislature from other provisions of the Act.[273] The court cannot indulge in speculation as to the probable or possible qualification which might have been in the mind of the legislature but the statute must be given effect according to its plain and obvious meaning.[274]

2.1.3 NOT TO FILL UP LACUNA IN THE STATUTE

When language of the provision is clear, it has to be given effect to instead of resorting to an interpretation which requires for its support any addition or rejection of words.[275] An interpretation which has the effect of adding certain words and clauses to an enactment should be avoided.[276] The Courts of law are concerned only with the interpretation of statutes, and if a particular class be not covered by the express words used in any

[272] *K. Subba Raju v. State of Andhra Pradesh,* AIR 1957 AP 890
[273] *Revappa v. Babu Sidappa,* AIR 1939 Bom. 61
[274] *N.S. Bindra: Ibid,* p.439
[275] *State of Maharashtra v. Nanded Parbhani Z.L.B.N.V. Operator Sangh,* AIR 2000 SC 725
[276] *Ram Chandra v. Jhumarmal,* AIR 1958 Assam 171

particular enactment or by necessary implication, the particular provisions cannot be extended to that class. In interpreting a statute the court cannot fill in gaps or rectified defects.

Courts must resist the temptation to change the law under cover of interpretation of law. If courts of law use their power to interpret law, to alter laws which they may not like, and to make new laws which, they think, should be made, that would be a corrupt use of power by themselves. If and when the ground on which a law is enacted, ceases to exist, it is the province of the proper legislative authority to consider the matter of repealing the same; but the courts cannot arrogate to themselves the functions of the Legislature. Judges have no right to repeal a law, because what appears to them to be the reasons for which the law was enacted no longer exists.[277]

A court cannot put into the Act words which are not expressed, and which cannot reasonably be implied on any recognised principles of construction. That would be a work of legislation, not of construction and outside the province of the court.[278]

Lord Granworth has observed in *Grundy v. Pinniger*,[279]*:*

> "To adhere as closely as possible to the literal meaning of the words used, is a cardinal rule from which if we depart we launch into a sea of difficulties which it is not easy to fathom."

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[277] *Sadananda Pyme v. Harinam Sha,* AIR 1950 Cal. pp.179, 183, 184 as referred in *N. S. Bindra's Interpretation of Statutes – Eighth Edi.* (1997), p.561

[278] *Kamalaranjann v. Secretary of State,* AIR 1938 P.C. pp.281, 283: *Viswanandha Pillai v. Shaumngharu Pillai* AIR 1969 SC 453

[279] (1852) 1 LJ Ch 405 as referred to in *B. Premanand & Others v. Mohan Koikal & Others,* AIR 2011 SC 1925

In the absence of overriding reasons inherent in the statute the Court is not justified in adding words to a statute, nor to stretch them in order to give effect to the intention of the legislature.[280]

Where the meaning is clear and explicit words cannot be interpolated. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper since the primary source of legislative intent is in the language of the statute.[281]

Granted that words have a certain elasticity of meaning, the general rule remains that the judges regard themselves as bound by the words of a statute when these words clearly govern the situation before the court. The words must be applied with nothing added and nothing taken away. More precisely, the general principle is that the court can neither extend the statute to a case not within its terms though perhaps within its purpose (the *casus ommissus*) nor curtail it by leaving out a case that the statute literally includes, though it should not have. (There is no accepted name for the latter, but it may be called the *casus male inclusus*). Lord Diplock expressed the point as follows:

> "At a time when more and more cases involve the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its

[280] *Tularam v. State of Bombay,* AIR 1954 SC 496
[281] *S. Narayanaswami v. G. Parameshwaran,* AIR 1972 SC 2284

> members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our constitution it is Parliament's opinion on these matters that is paramount."[282]

Lord Diplock went on to say that the principle applies even though there is reason to think that if Parliament had foreseen the situation before the court it would have modified the words it used. "If this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts."

Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it."[283] The intention of the Legislature is

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[282] *Duport Steels Ltd. v. Sirs,* [1980] 1 W.L.R. at 157, 1 All ER 529; *Magor and St. Mellons v. Newport Corpn,* [1952] A.C. 189; *Stock v. Frank Jones (Tipton) Ltd.,* [1978] 1 W.L.R. 231, 1 All ER 948

[283] *Institute of Chartered Accountants of India v. M/s. Price Waterhouse and Anr.,* AIR 1998 SC 74

primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided.

In the case of *Crawford v. Spooner,*[284] it was observed that:

> "Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them".

In *Dr. R. Venkatchalam and Ors etc. v. Transport Commissioner and Ors. etc*[285], it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the

[284] 1846(6) Moore PC 1 : JT 1998 (2) SC 253 : (1978) 1 All ER 948 (HL) : (1910) AC 445 (HL) : AIR 1962 SC 847
[285] AIR 1977 SC 842

provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary as observed in *Commissioner of Sales Tax, M.P. v. Popular Trading Company, Ujjain.*[286] The legislative casus omissus cannot be supplied by judicial interpretative process.

Two principles of construction- one relating to casus omissus and the other in regard to reading the statute as a whole- appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular cause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J in *Artemiou v. Procopiou*[287], "is not to be imputed to a statute if there is some other construction available." Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. As

[286] 2000 (5) SCC 515
[287] 1966 1 QB 878

observed by Lord Reid in *Luke v. IRC*[288] , "this is not a new problem, though our standard of drafting is such that is rarely emerges".

It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is casus omissus, and that the law intended quae frequentius accidunt." "But", on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom", as observed in *Fenton v. Hampton*[289] . A casus omissus ought not to be created by interpretation, save in some case of strong necessity. Where, however, a casus omissus does really occur, either through the inadvertence of the legislature, or on the principle quod semel aut bis existit proetereunt legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute- Casus omissus et oblivioni datus dispositioni communis juris relinquitur: "a casus omissus," observed Buller, J. in *Jones v. Smart*[290], "can in no case be supplied by a court of law, for that would be to make laws."

2.1.4 NOT TO MODIFY LANGUAGE OF THE STATUTE

Words in a statute should be given their natural ordinary meaning. Nothing should be added to them nor should any word be treated as otiose.[291]

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[288] 1996 AC 557

[289] 11 Moo PC pp.347, 346 as referred to by *N.S. Bindra: Interpretation of Statutes, Ibid*, p. 657

[290] [1785] 1 T.R. pp.44, 52 as referred to by *N.S. Bindra: Interpretation of Statutes, Ibid*, p. 312

[291] *Davis v. Sebastian*, (1999) 6 SCC 604

Principle of ironing out the creases does not justify rewriting a clause or doing violence to its language.[292]

In determining the legislative intent, the court is required to consider three facts viz. the context and the object of the statute, the nature and precise scope of the relevant provisions and the damage suffered not the kind to be guarded against. The object of the Act is to promote facilities of general benefit to the public as a whole in getting the trees planted on roadsides, the discharge of which is towards the public at large and not towards an individual, even though the individual may suffer some harm. The Act does not provide for any sanctions for omission to take action; i.e. planting trees or their periodical check-up when planted. By process of interpretation, the Court would not readily infer creation of individual liability to a named person or cause of action to an individual, unless the Act expressly says so. While considering the question whether or not civil liability is imposed by a statute, the court is required to examine all the provisions to find out the precise purpose of the Act, scope and content of the duty and the consequential cause of action for omission thereof. Action for damages will not lie in the suit by an injured person if the damage suffered by him is not of the kind intended to be protected by the Act.[293]

The Supreme Court of India, while dealing with the rules of interpretation, has observed that:

> "It is not permissible for the Judge to omit or delete words from the operative part of an enactment which have meaning and significance in their normal connotation, merely on the ground that according to the view of the Court, it is inconsistent with

[292] *Prem Narayan Barchhila v. Hakimuddin Saifi*, AIR 1999 SC 2450
[293] *Rajkot Municipal Corporation v. Manjulben Jayantilal Nakum*, (1997) 9 SCC 552

> the spirit underlying the enactment. Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of interpretations to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice entertained by the Court. No doubt, if there are other provisions in the statute which conflict with them, the Court may prefer the one and reject the other on the ground of repugnance. Again, when the words in the statute are reasonably capable of more than one interpretation, the object and purpose of the statute, a general conspectus of its provisions and the context in which they occur might induce a Court to adopt a more liberal or a more strict view of the provisions, as the case may be, as being more consonant with the underlying purpose. However, it is not possible to reject words under in an enactment merely for the reasons that they do not accord with the context in which they occur, or with the purpose of the legislation as gathered from the preamble or long title. The preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of the words which may have more than one meaning, but it can; however, not be used to eliminate as redundant or unintended, the operative provisions of a statute." [294]

A departure from the rule of literal construction outside the recognised limits in the guise of liberal or strict construction leads to unwarranted expansion or restriction of the meaning of words and gives rise to serious errors. In construing M.P. Abolition of Proprietary Rights

[294] *State of Rajasthan v. Mrs. Leela Jain,* A.I.R-1965-S.C.129.

Act, 1950, which in clause '(g)' of section 2 defines 'Home-farm' as meaning 'land recovered as Sir and Khudkast in the name of a proprietor in the annual papers for the year 1948-49', the Nagpur High Court held that this definition should be construed liberally and that land, though not recorded as Khudkast of the proprietor in the annual papers of 1948-49 but which ought to have been recorded as such, was within this definition. This decisions was overruled by the Supreme Court by interpreting the said definition section in its natural and ordinary meaning and consequently holding that the basis for treating a particular land as home-farm under the Act "was the record and not the fact of actual cultivation". It was pointed out: "There is no ambiguity about the definition of 'home-farm' and so the question of strict or liberal construction does not arise".[295] Similarly, the words 'khas possession' occurring in section 2 (k) and 6 of the Bihar Land Reforms Act, 1950, were construed by the Patna High Court as embracing even a mere right to possess; and this view was over-ruled by the Supreme Court again showing the importance of literal construction.[296] And, in interpreting section 26(2) of the C.P. and Berar Sales against any person in respect of anything done or intended to be done under this Act unless the suit or prosecution has been instituted within three months from the date of the Act complained of', the opinion in the Madhya Pradesh High Court was that the words 'any person' are restricted to Government servants. This departure from literal

[295] *Haji S.K. Subhan v. Madhorao,* AIR 1962 SC pp.1230, 1238; *Amba Prasad v. Mahboob Ali Shah,* AIR 1965 SC pp.54, 58, 59; *Udai v. Director of Consolidation,* AIR 1990 SC 471; *Sonawati v. Shri Ram,* AIR 1968 SC pp.466, 468; *Vishwa Vijai v. Fakhrul Hussain,* AIR 1976 SC pp.1485, 1488: (1976) 3 SC 642; *Wali Mohammad v. Ram Surat,* AIR 1989 SC 2296.

[296] *Suraj Ahir v. Prithinath Singh,* AIR 1963 SC pp.454, 458; *Ram Ran Bijai Singh v. Behari Singh,* AIR 1965 SC pp.524, 529; *Gurucharan Singh v. Kamala Singh,* AIR 1977 SC 5; *Ramesh Bijoy v. Pashupati Rai,* AIR 1979 SC 1769; *Basudevanand v. Harihar,* AIR 1974 SC 1991: (1974) 2 SCC 514; *P. Venkataswami v. D.S.Ramreddi,* AIR SC 1066

construction was also overruled by the Supreme Court.[297] Again "judicial activism in the reverse gear", by restricting the wide words 'any currency note or bank note' used in section 489A of the Penal Code to Indian Currency notes and bank notes, shown by the Kerala High Court was overruled by the Supreme Court holding that the words were large enough in amplitude to cover currency notes and bank notes of all countries.[298] Further in construing Article 171 of the Constitution and holding that a person elected from graduates constituency need not himself be a graduate as the words of the article do not in terms so provide, the Supreme Court overruled the contrary opinion of the Madras High Court and stressed the importance of the literal construction.[299]

According to this rule a statute must prima facie be given their ordinary meaning[300].

The true way is to take the words as the legislature have given them, and to take the meaning which the words given naturally implies unless where the interpretation of those words is, either by the preamble or by the context of the words in question, controlled or altered.[301]

The Court should as far as possible avoid any decision on the interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice[302].

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[297] *Sitaram v. State of M.P.,* AIR 1962 SC 1146; *Public Prosecutor, Madras v. R. Raju,* AIR 1972 SC 2504

[298] *State of Kerala v. Mathai Verghese* (1986) 4 SCC 746: AIR 1987 SC 33.

[299] *S. Narayanswami v. G. Ponneeerselvam,* AIR 1972 SC pp.2284, 2285.

[300] *Noakes v. Doncaster Collieries Ltd.,* (1940) 3 All E.R. (H.L.) pp.549, 553

[301] *Crawford v. Spooner,* (1846) 4 M.I. 179 P.C p.181, as referred to by *Justice G.P. Singh: Principles of Statutory Interpretation, Ibid,* p.58

[302] *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumarsheth,* 1984 G.O.C. (S.C.) 57

Interpretation of a provision or statute is not a mere exercise in semantics but an attempt to find out the meaning of the legislation from the words used, understand the context and the purpose of the expression used and then to interprete the expression sensibily. If the words are intelligible and can be given full meaning, courts should not cut down their amplitude. Secondly, the purpose or object of the conferment of the power must be borne in mind[303]."

In *Rananjaya Singh v. Baijanath Singh*[304], the appellant's election was set aside by the Election Tribunal on the grounds that he employed more than the prescribed number of persons and that their salaries exceeded the maximum election expenditure permissible. All those persons employed were in the employment of the appellant's father. So far as the appellant was concerned, the Supreme Court held they were only volunteers. The Court observed : "The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of sections of the Act and the rules made thereunder. If all that can be said of the statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage the appeal must be to Parliament and not to the Court."

In *Municipal Board v. State Transport Authority, Rajasthan*[305] the State Transport Authority under Section 64-A of the Motor Vehicles Act, 1939, set aside an order of the Regional Transport Authority, changing the location of a bus stand, on an application filed beyond 30 days from the date of the order of the Regional Transport Authority. The section

[303] *Ajoy Kumar Banerjee & Ors v. Union of India & Ors.*, (1984) 3 S.C.C. 127
[304] (1955) 1 SCR 671 : AIR 1954 SC 749
[305] AIR 1965 SC 458

provides, 'thirty days from the date of the order'. On the question whether the application to the State Transport Authority was in time, the Supreme Court held: "In interpreting the provisions of limitation equitable considerations are out of place and the strict grammatical meaning of the words is the only safe guide. The words should not be read as 'from the date of the knowledge of the order."

It is undesirable to import into a section, when the court's duty is to apply the language of the section to the facts of the case before it, any expression which is not to be found there.[306]

Judges are not permitted by the ordinary law to import words that are not in a statute unless there are compelling reasons for the same.[307]

It is duty of judges neither to add to nor to take from a statute unless Judges see good reason for thinking that the legislature intended something which it has failed to express.[308]

The same rule applies to deletion of words.

In *Commr. Of Agri. I.T. v. Keshab Chandra Mandal*[309], the question was whether a declaration in the form of return signed by an illiterate assessee by the pen of his son should be treated as properly signed and a valid return under the Bengal Agricultural Income Tax Act, 1944. The High Court held in favour of assessee-respondent. Allowing the appeal, the Supreme Court observed: There is an argument based on

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[306] *Nandi Ram v. Jogendra Chandra,* AIR 1924 Cal pp.881, 882; *Multan Municipality v. Kishan Chand* AIR 1927 Lah. pp.276, 277; *Majidan v. Sabir Ali,* AIR 1928 All 62; *Kayastha Co. v. Sita Ram Dube,* AIR 1929 All pp.625, 641 (FB); *Noksingh v. Bholasingh,* AIR 1930 Nag. pp.73, 77; *Brij Bhukan v. S.D.O. Sivam,* AIR 1955 Pat. 1; *Agrasen v. Ramrichmal Jhunjhunwala,* Air 1855 Cal. 379

[307] *Smt. Sushila Bala Dassi v. Corporation of Calcutta,* AIR 1954 Cal. 257

[308] *Everett v. Wells* [1841] 133 ER 747; *Vickers Son & Maxim v. Evans,* 1910 AC 444 as referred to in *N.S. Bindra's Interpretation of Statutes, Eighth Edi.* 1997, p. 562

[309] [1950] SCR 435: AIR 1950 SC 265

hardship or inconvenience. Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute or the rules.

In *Rannanjaya Singh v. Baijnath Singh*[310], the appellant's election was set aside by the Election Tribunal on the grounds that he employed more than the prescribed number of persons and that their salaries exceeded the maximum election expenditure permissible. All those persons were in the employment of the appellant's father and paid by him and not paid by the appellant, and therefore, so far as the appellant was concerned they were mere volunteers. IIN the Supreme Court it was contended by the respondent that to exclude such volunteers from under Section 123(7) if the Representation of the People Act, 1951, would be against the spirit of the election laws. It was held : The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of the statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poor candidates at a disadvantage, the appeal must be to Parliament and not to the court.

In *Shriram v. State of Maharashtra*[311], charges were framed against the appellant by the Magistrate on a consideration of the report under Section 173, Cr. P.C., and the documents produced, but without examining any of the persons cited by the prosecution as eyewitnesses. The appellant was convicted by the Sessions Court and the conviction was confirmed by the High Court. It was contended by the appellant that

[310] [1955] 1 SCR 671: AIR 1954 SC 749; *Kannialal v. Paramanidhi,* [1958] SCR 360: AIR 1957 SC 907

[311] [1961] 2 SCR 890: AIR 1961 SC 674

the committal was illegal as the eyewitnesses should have been examined by the Magistrate under Section 207-A(4) of the Code, before he was committed to take trial. The section provides that the Magistrate shall take the evidence of such persons, if any, as may be produced by the prosecution as eyewitnesses to the commission of the offence; and if he is of opinion that it is necessary to take the evidence of any other witness he may do so. It was held : One of the fundamental rules of interpretation is that if the words of a statute are in themselves precise and unambiguous no more is necessary then to expound those in their natural and ordinary sense, the words themselves in such a case best declaring the intention of the legislature. The word "shall" imposes a peremptory duty on the Magistrate to take the evidence, but the duty of the Magistrate is only confined to the witnesses produced by the prosecution. The word 'produced' cannot be read as 'cited' when the meaning is clear and unambiguous and the acceptance of the meaning does not make the section otiose. The phrase 'if any' emphasises that the prosecution may not produce any such witness in which case the obligation to examine them cannot arise.

In *Collector of customs v. D. S. & W. Mills Ltd.*[312], the Central Board of Revenue, in an appeal under Section 188 of the Sea Customs Act, 1878, against an order of the collector of Customs, imposed a penalty for the first time under Section 167(8) of the Act. On the application by the appellant, the Magistrate under Section 193 of the Act issued warrants of the attachment against the respondent. The respondent contended that the Central Board of Revenue was not 'an officer of customs' within the meaning of Section 193 and therefore its order could not be enforced under the section by an officer of the customs. The High

[312] [1962] 1 SCR 896: AIR 1961 SC 1549

Court upheld the respondent's contention. Dismissing the appeal to the Supreme Court, it was held : It is one of the well established rules of construction that 'if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such cases best declaring the intention of the legislature'. It is an equally well settled principle of construction that where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

In *Jambekar v. State of Gujarat*[313], the inspector of factories received a report of an accident in February 28, 1968. He visited the factory and inquired into it on July 30, 1968. He filed a complaint on September 20, 1968 for an offence punishable under Section 92, Factories Act, 1948. On the question whether the complaint was out of time under Section 106, which provides for 3 months from the date of knowledge of the commission of the offence it was held : one cannot equate the 'date on which the alleged offence came to the knowledge of the Inspector' with the date on which the alleged offence ought to have come to his knowledge. There can be no doubt that if the Inspector had conducted the enquiry earlier, he would have come to know of the commission of the offence earlier, but in interpreting a provision in a statute prescribing a period of limitation of a proceeding, questions of equity and hardship are out of place.

[313] (1973) 3 SCC 524

In *Senior Superintendent, R.M.S., Cochin v. K. V. Gopinath*[314], the question was whether the order terminating the services of the respondent, a temporary Government servant, was in accordance with Rule 5 of the Central Services (Temporary Service) Rules, 1965. The rule provides for 'termination forthwith by payment, etc.' The payment of salary and allowances was not made on the date of termination. Holding that the termination was illegal, it was observed : The rule does not lend itself to the interpretation that the termination of service becomes effective as soon as the order is served on the Government servant irrespective of the question as to when the payment due to him is to be made. If that was the intention of the framers of the rule, it would have been differently worded. As has often been said that if 'the precise words based are plain and unambiguous, we are bound to construe them in their ordinary sense', 'and not to limit plain words in an Act of Parliament by considerations of policy, if it be policy, as to which minds may differ and as to which decisions may vary', see Craies, 6th Ed., pp.86 and 92.

In *C.S.T. v. Parson Tolls & Plants*[315], while holding that the limitation for filing a revision against the assessment orders of the sales tax authorities under U. P. Sales Tax Act, 1948, is governed by Section 10(3-B) and not by Sections 5 and 14 of the Limitation Act, 1963, the court observed : If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute or even if there is *casus omissus* in a statute the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it under the guise of interpretation by analogy or implication, something which it thinks to be a general principle of justice and equity. To do so, would be entrenching upon the

[314] (1973) 3 SCC 876
[315] (1975) 4 SCC 22

preserves of the legislature. The primary function of a court of law being *jus dicere* and not *jus dare*. The will of the legislature as a supreme law of the land and demands perfect obedience. Judicial power is never exercised for the purpose of giving effect to the will of the judges always for the purpose of giving effect to the will of the legislature, or, in other words, to the will of the law. Therefore, where the legislature clearly declares its intent in the scheme of a language of the statute it is the duty of the court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of the law-giver. More so if the statutes is a taxing statute.

In *M/s. Hiralal Ratanlal v. STO,*[316] the Supreme Court has observed that :

> "In construing a statutory provision the first and foremost rule of construction is the literally construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

The presumption is that it intended to say what it has said.[317] Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency.[318] Where the legislative intent is clear from the language, the Court should give

[316] AIR 1973 SC 1034
[317] *Prakash Nath Khanna v. C.I.T.*, 2004 (9) SCC 686
[318] *Delhi Financial Corporation v. Rajiv Anand,* 2004 (11) SCC 625

effect to it.[319] The Court should not seek to amend the law in the grave of interpretation.[320]

The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to

[319] *Government of Andhra Pradesh v. Road Rollers Owners Welfare Association*, 2004 (6) SCC 210

[320] *B. Premanand & Others v. Mohan Koikal & Others*, AIR 2011 SC 1925

enact such a provision was "most unwarranted besides being uncharitable".[321]

In *Rohitash Kumar v. Om Prakash Sharma,*[322] after placing reliance on various earlier judgments, the Supreme Court held:

> "27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word… A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act…..
>
> 28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or

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[321] *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar,* AIR 1965 SC 1457; *Martin Burn Ltd. v. Corpn. Of Calcutta,* AIR 1966 SC 529; *M. V. Elisabeth v. Harwan Investment and Trading (P) Ltd.,* 1993 Supp (2) SCC 433 : AIR 1993 SC 1014; *Sultana Begum v. Prem Chand Jain,* (1997) 1 SCC 373; *State of Bihar v. Bihar Distillery Ltd.,* (1997) 2 SCC 453 : AIR 1997 SC 1511; *Institute of Chartered Accountants of India v. Price Waterhouse,* (1997) 6 SCC 312; *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies,* (1998) 2 SCC 580 : 1998 SCC (L&S) 703 : AIR 1998 SC 703

[322] (2013) 11 SCC 451 : AIR 2013 SC 30, pp. 460-61

imaginary hardship which such literal interpretation may cause….

29…. under the grab of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

The words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where the Courts are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation.[323]

The true meaning of the section must be gathered from the expressed intention of the Legislature. If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.[324]

It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute[325].

2.2 SUMMARY IN REGARD TO GRAMMATICAL-LITERAL OR PLAIN MEANING RULE

The function of the court is to apply the law as it stands. It is not for the court to rewrite the law even though the court notices anomalies and omissions and considers the provision as they stand unreasonable.[326]

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[323] *State of Bombay v. Hospital Mazdoor Sabha,* AIR 1960 SC 610
[324] *Nagpur Corporation v. Its Employees,* AIR 1960 SC 675
[325] *Aswini Kumar Ghose and another v. Arabinda Bose and another,* AIR 1952 SC 369
[326] *Dakshaythi v. Madhvain,* AIR 1982 Ker. 126

The general rule is not to import into statutes words which are not found therein. Words are not to be added by implication into the language of a statute. Where the words used in the statute are clear and unambiguous, the courts while applying rules contained in that statute cannot either add to or detract from the particular text appearing in the statute for the purpose of avoiding supposed injustice. Even if the application of a rule of law which is couched in clear and unambiguous language causes injustice, a Court of law whose function is only to interpret and not to make law cannot refrained from applying that rule and replace it by rule of its own liking which according to them would avoid any injustice being done.

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.

Ordinarily, the words used in a statute have to be construed in their ordinary meaning; but there are cases where judicial approach finds that the simple device of adopting the ordinary meaning of the words does not meet the ends of a fair and a reasonable construction. Exclusive reliance may not necessarily assist a proper construction of the statutory provision in which those words occur. Very often in interpreting a statutory provision, it becomes essential to have regard to the subject matter of the statute and the object which it is intended to achieve. That is the reason why in deciding the true scope and effect of the relevant words, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute become

relevant and material [327]. By such aids the court can modify or alter the language of the statute if plain meaning of the words leads to an absurdity. In other words, if the literal construction leads to an absurdity, the Courts can resort to external aids and depart from ordinary meaning and give or add something to or subtract something from the provisions of the statute to avoid absurdity.[328]

It is said that the 'plain meaning' canon of interpretation is ill-suited to modern social legislation, which inaugurates whole schemes and policies, nor does it give guidance in marginal cases. A further drawback is that it requires that words are given their ordinary meaning at the time of enactment. If this were rigidly adhered to it would stand in the way of interpreting statutes so as to adopt them to the changing needs of a developing society.[329]

However, the courts are quite ready to extend the words of statutes to cover new inventions, provided that the new invention falls within the generic conception of what was known at the date of the statute, and falls within the fail meaning of what was expressed.

3 GOLDEN RULE OF INTERPRETATION

Rules of construction have been laid down because of the obligations imposed on the Courts of attaching one intelligible meaning to confused and unintelligible sentences.

Many a times, courts have to resolve the difficulty in a given case as to the application of provisions contained in a given legislation. Sometimes, it appears to the court that to apply the words literally is to

[327] *Sheikh Gulfam v. Sanat Kumar*, A.I.R- 1966 SC 1839.
[328] *Prithi Pal Singh v. Union of India,* A.I.R.-1982-S.C.-1413
[329] *Dias: Jurisprudence, Ibid,* p. 173

defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, the Judge must do some violence to the words. This is not a new problem. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result, that the words of the enactment must prevail.[330]

As far as judicial thinking is concerned there is a tense dialectical drama suffused with conflict between two diametrically opposite perspectives and the task of an interpreter is really difficult so as to arrive at and to construct a viable synthesis out of all the animation[331]. What is commonly known as the doctrine of casus omissus is really a doctrine of error and its correction. Maxwell has noted that the same as an "exceptional construction" available to the interpreter. The Learned author observes :-

> "Whether the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify and that the modifications made are mere corrections of careless language

[330] *Luke v. Inland Revenue Commissioners* (1963) 1 All ER pp.655, 664
[331] *Jamanbha v. Suryabha*, A.I.R.-1974- Bombay- pp.142, 150.

> and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity or the absolute intractability of the language used [332].

When reading the statute for the first time, the court will of necessity have to place some meaning on individual words, and in doing so, the judges will usually give the words their ordinary and usual, or primary meaning. The first decision a court will have to make is whether having given the words their usual and ordinary meaning in the narrow context of the section or subsection, they should also declare the words to be clear or plain and capable of only one meaning. If the court decides to adopt this literal approach, it may be doing so when it does not have a clear understanding of the purpose of the Act as a whole, or even of the purpose of the particular section or subsection in dispute. Courts adopting this approach are generally considered to be taking an unusually narrow view of the context, and one which is not warranted. It is more usual for the court to read the provisions in dispute in the context of the statute as a whole, thus giving meaning to the language in a broader context. By so doing, the court may be able to obtain some insight into the general purpose of the legislative enactment and the scheme of the Act as well.

In order to avoid imputing to Parliament an intention to produce an unreasonable result, the Judges are entitled and indeed bound to discard the ordinary meaning of any provision and adopt some other possible meaning which will avoid that result.[333]

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[332] *Maxwell on the Interpretation of Statutes*, 12th Edition p. 228, referred to in A.I.R. 1974-Bom-142.

[333] *Luke v. Inland Revenue Commissioners, Ibid,* p. 666

An appreciation of some of the difficulties inherent in the "Literal Rule" led to a cautious departure, styled the "Golden Rule": the literal sense of the words should be adhered to unless this would lead to absurdity, in which case the literal meaning may be modified.[334] It contradicts the "Literal Rule".

3.1 GOLDEN RULE

The golden rule of interpretation is that unless literal meaning given to a document leads to anomaly or absurdity, the principles of literal interpretation should be adhered to.[335]

The golden rule of interpretation allows the court to construe a statute in such a way that a reasonable result is produced, even though this involves departing from the prima facie meaning of the words.[336]

In the 'golden rule', the Court is permitted to depart from the literal meaning, in order to avoid an absurdity.[337]

According to Maxwell, the golden rule of interpretation is to adhere to the ordinary meaning of the words used unless it is in direct conflict with the intention of the Act. In this connection, the author observes thus[338]:

> "It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are

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[334] *Becke v. Smith*, (1836) 2 M&W pp.191, 195 as referred to by *Dias: Jurisprudence Ibid*, p. 173

[335] *Compack (P) Ltd. v. CCE.*, MANU/SC/1155/2005; *Dayal Singh v. Union of India*, MANU/SC/0058/2003; *Swedish Match AB v. Securities and Exchange Board*, India, MANU/SC/ 0693/2004

[336] *Glanville Williams, "Learning the Law"* (1982) p. 106 as referred to by *P.M.Bakshi, 'Legal Interpretations' (Ancient and Modern)* (1993) p. 26

[337] *Mattison v. Hart*, (1854) 14- C.B. p. 385: 139 E.R. p. 159

[338] *'Interpretation of Statutes'*, 12th Edition, p.228

adequate grounds to justify the interference that the legislature intended something which it omitted to express."

When a statutory provision, on one interpretation, brings about a startling and inequitable result, this result may lead the Court to seek another possible interpretation which will do better justice, because "there is some presumption that Parliament does not intend its legislation to produce highly inequitable results".[339]

Lord Reid put the matter as follows: -

> "To apply the words literally is to defeat the obvious intention of the legislature and to produce a wholly unreasonable result. To achieve the obvious intention and to produce a reasonable result we must do some violence to the words. The general principle is well settled. It is only when the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of the enactment must prevail."[340]

The rule is thus stated by the Irish Judge, Burton, J., in *Warburton v. Loveland*,[341] in terms quoted and approved by Lord Fitzgerald in *Bradlaugh v. Clarke,*[342] :

> "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statute, or if it

[339] *Coutts & Co.* 48 I.R.C. (1953) A.C. pp.267, 281: (1953) 1 All ER 418
[340] *Luke v. Inland Revenue Commissioners*, (1963) 1 All E R pp.655, 664, as referred to by *Dias: Jurisprudence, Ibid*, p. 174
[341] (1828) 1 Hud and Bro pp.632, 648.
[342] (1883) 8 AC at p. 384; *Union of India v. S.H.Seth* (1977) 18 Guj LR (SC) 919

would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further."

Cromption, J., also expressed his doubts about the rule in *Woodward v. Watts*[343], in these words:

"I do not understand it to go so far as to authorize us, when the Legislature have enacted something which leads to an absurdity, to repeal that enactment and make another for them if there are no words to express that intention."

Lord Bramwell made further reference in *Hill v. East and West India Dock Co.,* [344] to the opinion of Cromption, J., in respect of the above rule in the following terms:

"I have often heard Lord Wensleydale lay that rule, which he quoted from a judgment of Burton, J., in Ireland, and I am now content to take it as a golden rule, though I heard Cromption, J., say in reference to it, that he did not set any value upon any golden rule, that they were all calculated to mislead people, and I am not sure that this will not result from what is put at the end of what I have just read, namely, that you are to abide by the grammatical and ordinary sense of the words unless that would lead to some absurdity. That last sentence opens a very wide door. I should like to have a definition of what is such an absurdity that you are to disregard the plain words of an Act of

[343] (1853) 2 E & B 452.
[344] (1884) 9 AC pp.448, 464, 465.

> Parliament. It is to be remembered that what seems absurd to one man does not seem absurd to another."

The canon as to departure from the grammatical meaning was thus stated by Lord Blackburn in *Caledonian Railway Company v. North British Railway Company*,[345]:

> "There is not much doubt about the general principle of interpretation. Lord Wensleydale used to enunciate that which he called the golden rule for interpreting all written engagements. I find that he stated it is very clearly and accurately in *Grey v. Pearson*,[346] in the following terms: 'I have been long and deeply impressed with that wisdom of the rule, now, I believe, universally adopted- at least in the Courts of law in Westminster Hall – that in construing wills, and indeed statutes and all written instruments the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no further. 'I agree in that completely, but in the cases in which there is real difficulty this (rule of interpretation) does not help us much, because the cases in which there is a real difficulty are those in which there is controversy as to what the grammatical and ordinary sense of the words used with reference to the subject matter is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the other side

[345] (1881) 6 AC pp.114, 131
[346] (1857) 6 HLC pp.61, 106

> and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the words are perfectly clear, that they can bear no other meaning at all, and that to substitute any other meaning would not to interpret words used, but to make an instrument for the parties and that the supposed inconsistency, or repugnancy is perhaps a hardship- a thing which perhaps it would have been better effectuated." 'You are to attribute to the general language used by the Legislature a meaning which will not carry out is objects."

In *Simms v. Registrar of Probates,* [347] Lord Hobhouse, speaking for the Judicial Committee, said :

> "Where there are two meanings, each adequately satisfying the meaning (of a statute), and great harshness is produced by one of them that has a legitimate influence in inclining the mind to the other- it is more probable that the Legislature should have used the word (evade) in that interpretation, which least offends our sense of justice. If the inconvenience is not only great, but… an absurd inconvenience, but reading an enactment in its ordinary sense, there would not be any inconvenience at all, there would be reason why you should not read it according to its ordinary grammatical meaning."[348]

"The General rule" said, Willes, J., in *Christopherson v. Lotinga*,[349] is stated by Lord Wensleydale in these terms – viz., to adhere

[347] (1900) AC pp.323, 335
[348] *R. v.* Tonbridge Overseers, (1884) 13 QBD 342.
[349] (1864) 33 LJCP 123.

to the ordinary meaning of the words used, and to the grammatical interpretation, unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further." Continuing his Lordship Willes J., said :

> "I certainly subscribe to every word of the rule, except the word 'absurdity', unless that be considered as used there in the same sense as 'repugnance', that is to say, something which would be absurd with reference to the other words of the statute as to amount to a repugnance."

This rule was thus expressed by Jessel, M.R.:

> "Anyone who contends that a section of an Act of Parliament is not to be read literally must be able to show one of two things- either that there is some other section which cuts down its meaning, or else that the section itself (if read literally) is repugnant to the general purview of the Act."[350]

In *Kehar Singh v. State (Delhi Admn.),*[351] the Supreme Court has observed that there is a change in the approach of the Courts in the interpretation of the Statute and what was considered as the golden rule previously laying emphasis on "grammatical meaning" is now changed over to "intention of legislature" or "purpose of Statute".

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[350] *North v. Tamplin, (1881) 8 QBD 253.*
[351] MANU/ SC/0241/1988

In the case of *Gurudevdatta VKSS Maryadit v. State of Maharashtra*,[352] it was observed that:

> "The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the Legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

3.1.1 ABSURDITY

Ordinarily, it is one of the well settled principle of law that the Court should not omit or subtract anything from the language used by the legislature and ordinarily substitution of one expression for the other should not be done, but it is also well settled that if the draft of the section, language of the section indicates a defective draftsmanship leading to absurdity or render the very object of the section nugatory, the Court has powers to greet and to read the expression properly.

It is open to the Court, in cases where there is a manifest contradiction of the apparent purpose of the enactment or where the literal interpretation is likely to lead to a result not intended by the Legislature, to modify the meaning of the words, if necessary even by

[352] MANU/SC/0191/2001

departing from the rules of grammar or by giving an unusual meaning to particular words.[353]

Two principles of construction- one relating to casus omissus and the other in regard to reading the statute as a whole- appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed with reference to the context and other clause of a section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danackwerts, L.J. in *Artemiou v. Procopiou*,[354] " is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. IRC,*[355] observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".

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[353] *Maxwell : Interpretation of Statutes,* 12th Ed. p. 228; *Premier Automobiles Ltd. v. Ram Chandra,* AIR 1960 Bom 390; *Hazara Singh v. State of Punjab,* AIR 1961 Punj (FB) pp.34, 40; *Ishwar Singh Bindra v. State of U.P.,* AIR 1966 All 168; *C.W.S. (India) Ltd. v. Commissioner of Income-tax,* (1994) 73 Taxman 174 (SC)

[354] 1966 1 QB 878

[355] 1966 AC pp.557, 577

In *S.J.Grange Ltd. v. Customs and Excise Commissioners*,[356] while interpreting a provision in the Finance Act, 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable.

Sometimes where the sense of the statute demands it or where there has been an obvious mistake in drafting, a Court will be prepared to substitute another word or phrase for what which actually appear in the text of the Act.[357]

If a too literal adherence to the words of the enactment appears to produce an absurdity, it will be the duty of the Court of interpretation to consider the state of the law at the time the Act was passed, [358] with a view to ascertaining whether the language of the enactment is capable of any other fair interpretation, [359] or whether it may not be desirable to put upon the language used a secondary[360] or restricted[361] meaning, or perhaps to adopt a construction not quite strictly grammatical.[362] It appears well settled therefore, that a grammatical construction has to be avoided if it would lead to absurdity or inconvenience or anomalous position.[363] Another rule of interpretation which is equally well-settled is that where words according to their literal meaning produce an inconsistency, or absurdity or inconvenience not intended, the Court will

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[356] (1972) 2 All ER 91
[357] *Maxwell: The Interpretation of Statutes*, 12 Edition, p. 231
[358] *Gover's case*, (1875) 1 Ch D pp.182, 198; *Parvati Dei v. Sacchidanand Sah*, 1983 Pat LJR 251 (DB)
[359] *River War Commissioners v. Adamson*, (1876) 1 QBD pp.546, 549.
[360] *Ex parte St. Sepulchre's*, (1864) 33 LJ Ch 373,
[361] *Ex parte* Altone, (1881) 16 Ch D pp.746, 757,
[362] *Williams v. Evans*, (1876) 1 Ex D 284; *Sajja v. Habib Rathqr*, 1979 CLR (J&K) 32; *Craies on Statute Law*, 7th Ed. p. 87.
[363] *Ramanand Ramanarayan Raidas v. State of M.P.*, 1979 MPLJ 498 : 1979 Jab LJ 574 (DB).

be justified in putting some other signification which in the Court's opinion would bear.[364]

In *Rex v. Vasey,*[365] Lord Alverstone, C.J., said :

> "Where the language of a statute, in its ordinary meaning and grammatical interpretation, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice presumable, not intended, a construction may be put upon it which modifies the meaning of the words, and the structure of the sentence."

Sutherland J., observed in *Vancamp & Sons Co. v. American Can Co.*[366], that:

> "The words being clear they are decisive. There is nothing to construe. To reach elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the Legislature definitely meant to include."

If a plain and literal interpretation leads to manifestly absurd or unjust result, it is within the scope of the powers and jurisdiction of the Court to modify the language used by the Legislature.

But, the courts will go much further than this, and, in order to avoid what they regard as absurdity, imply into statutes saving clauses

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[364] *Union of India v. S.H.Sheth,* (1977) 18 Guj LR 919, *Thrikkarruva Kuttyazhikom Devaswom v. Aliyummer Asan,* 1976 Ker LT 111 (DB)
[365] (1905) 2 KB pp.748, 750; *King v. Lyon,* (1906) 3 CLR pp.770, 787.
[366] 73 Ed pp.311, 313 ; *Rama Iyer v. Taluk Land Board,* 1977 Ker LT 903.

that have not been expressed. This is the so-called "golden rule" of interpretation. [367]

The defects which may occurred in statutory drafting which come to the surface when a question of interpretation arises which affects valuable rights of those who are governed by such laws or statutes; it appears mandatory that an effort has to be made to reconcile all absurdities and to give meaning to the statutory device. The matters cannot be merely left to find out the mistake and as observed by Denning Ld. J [as he then was] in *Seaford Court Estate Ltd. v. Asher*[368]:-

> "…..It must be remembered that it is not within human power to foresee the manifold sets of facts which may arise and even if it were, it is not possible to provide from them in terms free from all ambiguity. The English is not an instrument of mathematical precision…. This is where the draftsman of Acts of Parliament Leave often been unfairly criticised… It would certainly save the Judges' trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hand and blame the draftsman, rather he should iron out the creases."

Meckinnon L.J, has observed that:

> "When the purpose of an enactment is clear, it is often legitimate to refer the circumstances under which law was enacted because it is necessary to put strained interpretations upon some words which have been inadvertently used, and of which the plain meaning would defeat the obvious intention of

[367] *Mattison v. Hart* (1854) 14 C.B. 385 as referred to by *Salmond, Ibid*, p. 137
[368] [1942] 2 K.B. 481

> the legislature. It may even be necessary and therefore, legitimate, to substitute for an inapt word as words that which such intentions requires." [369]

In *Adler v. George*,[370] for the purpose of avoiding absurdity and inconvenience or extraordinary results, where the Official Secret Act, 1920 used the phrase " in the vicinity of", the Court read the same as "in or in the vicinity of" so as to effectuate the remedy.

In the case of *Polester & Co., Ltd. v. Addl. Commissioner of Sales Tax, New Delhi*,[371] the Supreme Court has observed that:

> "Decisions of this Court, where the letter of the Statute was not deemed controlling and the legislative intent was determined by a consideration of circumstances apart from the plain language used, are of rare occurrence and exceptional character, and deal with provisions which, literally applied, offend the moral sense, involve injustice, oppression or absurdity, or lead to an unreasonable result, plainly at variance with the policy of the statute as a whole."

In *Shamrao v. District Magistrate, Thana*[372] , the Petitioner was arrested under the Preventive Detention Act, 1950, after its amendment in 1951. The 1950-Act was due to expire on April 1, 1951, but the Amending Act of 1951 prolonged its life to April 1, 1952. The detention would have expired on April 1, 1952, but the Preventive Detention (Amendment) Act, 1952, prolonged its life till October 1, 1952. The

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[369] *Sutherland Publishing Co. v. Caxton Publishing Co.*, (1917) Ch. p.201 referred to in A.I.R. 1974 Bom. 142.
[370] 1964 (2) QBD 7
[371] AIR 1978 SC pp.897, 904; *Commissioner of Income Tax Bihar, Ranchi v. Shri Dungarmal Tainwala, Upper Bazar, Ranchi*, (1991) 1 BLJR 478.
[372] [1952] SCR 683 : AIR 1951 SC 458

petitioner contended that Section 3 of the Principal Act (1950-Act) provided that the detention shall remain in force 'for so long as the principal Act is inforce', that the principal Act was due to expire on April 1, 1952, that therefore his detention came to an end on April 1, 1952, and could not be extended to October 1, 1952. It was held :

> "It is the duty of courts to give effect to the meaning of an Act when the meaning can be fairly gathered from the words used, that is to say, if one interpretation will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even in the same sentence, have to be construed differently. Indeed, the law goes so far as to require the courts sometimes even to modify the grammatical and ordinary sense of that words if by doing so absurdity and inconsistency can be avoided. The meaning of Section 3 of the Preventive Detention Act, 1950, is quite plain and only desperate hair-splitting can reduce it to an absurdity. Courts should not be astute to defeat the provisions of an Act whose meaning is, on the face of it, reasonably plain. Of course, this does not mean that an Act, or any part of it, can be recast. It must be possible to spell the meaning contended for out of the words actually used."

In *State of Punjab v. Ajaib Singh*[373], the High Court held that the Abducted Persons (Recovery and Restoration) Act, 1949, was *ultra vires*

[373] [1953] SCR 254 : AIR 1953 SC 10

Article 22(1) and (2) of the Constitution. Expressing the disagreement with the view, the Supreme Court observed:

> "If the language of the Article is plain and unambiguous and admits of only one meaning then the duty of the court is to adopt that meaning irrespective of the inconvenience that such a interpretation may produce. If however, two interpretations are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

In *Tirath Singh v. Bachitter Singh*[374] , the appellant contended that under Section 99(1) (a) of the Representation of the People Act, 1951, the tribunal has to record the names of ' all persons' who are proved to have been guilty of corrupt or illegal practice, that that would include both parties to the petition as well as non-parties, that the proviso requires that notice should be given to all persons who are to be named under Section 99(1)(a)(ii) and that the appellant who was the successful candidate and a party to the petition was accordingly entitled to fresh notice. It was held :

> "'Where the language of a statute, in its ordinary interpretation leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a interpretation may be put upon it which modifies the meaning of the words, and even the structure of the sentence'. Reading the proviso along with the clause (b) thereto, and construing it in its setting in the section,

[374] [1955 2 SCR 457 : AIR 1955 SC 830

we are of opinion that notwithstanding the wideness of the language used, the proviso contemplates notice only to persons who are not parties to the petition."

In *J. K. Cotton Mills v. State of U.P.*,[375] the appellant applied under Clause 5(a) of a Government Order made under the U.P. Industrial Disputes Act, 1947, that there was an industrial dispute and that the authority may grant permission to terminate the services of certain employees. Clause 23 of the Government Order provided that before the management could make an order discharging or dismissing any of its workmen, the management should obtain permission for the same from the Regional Conciliation Officer, if proceedings were pending before the Conciliation Officer and one of the questions that had to be decided was whether, without the permission from the Conciliation Officer, the application under Clause 5(a) was maintainable. It was held: On the assumption that under Clause 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly disharmony between Clause 5(a) and Clause 23 and undoubtedly we have to apply the rule of harmonious construction. In applying the rule, however, we have to remember that to harmonise is not to destroy. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule-making authority. It is obvious that if by merely making an application under Clause 5(a) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the requirements

[375] [1961] 3 SR 185 : AIR 1961 SC 1170; *Collector of Customs v. Digvijaya Singhji,* [1962] 1 SCR 896 : AIR 1961 SC 1549

of Clause 23 the clause will be a dead letter. Such a construction, if possible, should be avoided.

In *M. Pentiah v. Veeramallappa,*[376] it was also observed, accepting the contention and holding that Section 320 was only of a transitory character, that one of the established rules of construction is that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result,[377]; and that Manifest absurdity of futility, palpable injustice or absurd inconvenience or anomaly is to be avoided.[378]

In the case of *Khan Chand Tiloke Ram v. State of Punjab,*[379] a Full Bench of the Punjab High Court had held that it was a recognized principle of interpretation that for the purpose of giving a meaning to the clear and definite intention to the Legislature some words may in suitable cases be read in the provisions to avoid reducing the provisions to an absurdity. Even supplying of words not there to understand the provisions in any restricted or larger sense, as the case may be, to avoid mischief or injustice, would be called for. [380] It seems, however, that the power to add words should not be exercised unless there is almost a necessity in order to give the section a workable meaning[381] much less, when the language

[376] [1961] 2 SCR 295 : AIR 1961 SC 1107
[377] *Maxwell,* 10th Ed., p. 7
[378] *Craies,* 5th Ed., p. 82
[379] AIR 1966 Punj 423 : ILR (1966)2 Punj 447 (FB).
[380] *Rama Iyer v. Taluka Land Board,* 1977 Ker LT 903.
[381] *Shyam Kishori Devi v. Municipal Corporation,* AIR 1966 SC 1678 : 1966 BLJR 449; *Abdul Wahid Khan v. Dy. Director, Consolidation,* AIR 1968 All (FB) pp.402, 404-405; *Rashmi Parihar v. Gangaram Badil,* 1988 JLJ 427 (MP).

of the section does not justify the addition.[382] In the Full Bench case of *Fakruddin v. State of U.P.,*[383] rejecting the contention that the words 'for sale' should be read after the words 'store' and 'stores' in Sections 7 and 16 of the Prevention of Food Adulteration Act, the Court held that it can add words in a provision of law if they are necessary for giving the existing words a meaning, i.e., if the meaning is not clear; it is permissible to add words only to make obvious what is latent, but, otherwise it is not permissible for the Courts to add words to a provision enacted by Legislature.

In *Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu,*[384] the respondents are employees of the High Court and members of the State Judicial Service, and at the time of their compulsory retirement were Deputy Registrar of the High Court and a Subordinate Judge respectively. They were compulsorily retired on reaching the age of 50 years – the former by the Chief Justice of the High Court and the latter by the State Government on the recommendations of the High Court. The Deputy Registrar thereupon filed a writ petition in the High Court challenging the order of compulsory retirement but it was dismissed at a preliminary hearing on the ground that the High Court had no jurisdiction in the matter since such jurisdiction was vested in the Administrative Tribunal constituted under Article 371-D of the Constitution by the President of India by the Administrative Tribunal Order, 1975 dated May 19, 1975. The Deputy Registrar thereupon moved the Administrative Tribunal and that Tribunal set aside the order of premature retirement on the ground that it was arbitrary and amounted to penalty and was, therefore hit the

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[382] *Jaccob, R.G. v. Republic of India,* AIR 1963 SC 550; *Faruq Ali Shaw v. Ghansham Das,* AIR 1963 All 280.
[383] 1976 All LR 274 (FB)
[384] (1979) 2 SCC 34

Article 311(2) of the Constitution. The Subordinate Judge also filed a petition before the Tribunal and the Tribunal held that since in the case of Subordinate Judges, the appointing authority was the High Court, the Government had no power or jurisdiction to pass an order of premature retirement.

On appeal to the Supreme Court it was contended by the appellant that in the context of the basic and fundamental principles underlying the Constitution, officers and the servants of the High Court and members of the judicial services were outside the scope of Article 371-D and, hence, the Tribunal had no jurisdiction to interfere with the order with respect to such officers of the High Court and members of the Judicial Service. Allowing the appeals, held: Where to alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living integrated organism, having a soul and consciousness of its own. The pulse beats emanating from the spinal cord of its basic framework can be felt all over its body, even in the extremities of its limbs.

In *Commissioner of Income Tax v. J.H. Gotal, Yadagiri,*[385] while interpreting section 24(2) of the Income Tax Act, 1922; it was observed that:

> "… if strict literal construction leads to an absurd result i.e. result not intended to be sub-served by the object of the

[385] MANU/SC/0133/1985

> legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction. Though equity and taxation are often strangers, attempts should be made that these do not mean always so and if a construction results in equity rather than in injustice; then such construction should be preferred to the literal construction."

In the case of *S. Sundaram Pillai v. V.R. Pattabhiraman,*[386] the Supreme Court (at para 87) observed that :

> "It has been observed that statutory provisions must be so construed, if it is possible, that absurdity and mischief may be avoided. Where the plain and literal interpretation of statutory provisions produces a manifestly absurd and unjust result, the Court might modify the language used by the legislature or even do some violence to it so as to achieve the obvious intention of the legislature and produce rational construction and just results."

Grammatical interpretation leading to absurdity or injustice to be avoided only if language admits of such interpretation.[387]

In *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat,*[388] the Supreme Court has observed as under:

> "The golden rule for construing wills, statutes, and in fact, all written instruments has been thus stated:" The grammatical and ordinary sense of the words is to be adhered to unless that

[386] AIR 1985 SC 582
[387] *R. Rudraiah v. State of Karnataka,* AIR 1998 SC 1070
[388] 2004 (6) SCC 672

would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" The later part of this "golden rule" must, however, be applied with much caution. "If," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning."

3.1.2 INCONSISTENCY WITH THE INTENTION

"Inconsistent", according to Black's Legal Dictionary, means 'mutually repugnant or contradictory: contrary, the one to the other so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other'. So it was to be seen whether mutual co-existence between Section 34 of the Bonus Act, 1965 and Section 3(b) of the Industrial Disputes Act, 1947 is impossible. If they relate to the same subject matter, to the same situation, and both substantially overlap and are coextensive and at the same time so contrary and repugnant in their terms and impact that one must perish wholly if the

other were to prevail at all- then, only were to prevail at all- then, only then, are they inconsistent[389].

Things are said to be inconsistent when they are contrary, the one to the other, so that one infers the negation, destruction, or falsity of the other". "Inconsistency implies opposition, antagonism; repugnance. In *corpus Juris Secundum*, Vol.42. p. 341, the meaning of the word inconsistency was given as follows:

> "Inconsistent. A word of broad signification, implying contradiction, qualities which cannot co-exist, nor merely a lack of uniformity in details, and judicially defined as meaning contradictory, inharmonious, logically incompatible, contrary, the one to the other, so that both cannot stand mutually repugnant or contradictory."

Things are said to be inconsistent when they are contrary the one to the other, or, so that one infers the negation, destruction, or falsity of the other[390]. The expression "inconsistency" means incompatible, dissonant, inharmonious, inaccordant, inconsonant, discrepant, contrary, contradictory, not in agreement, incongruous or irreconcilable[391].

In a case where the plain language of a provision of it is so interpreted plainly, has the effect of frustrating the object of the Act and there is no way out except by restructuring the provision, then it is open to the Court to do so.

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[389] *Basti Sugar Mills v. State of U.P.*, (1978) SCC pp.88, 99
[390] *Rana Harish Chandra v. Agril Bank of Garhwal*, 1982 All. L.J. pp.749, 751
[391] *Gandhi Travels v. Secretary, Regional Transport Authority*, 1990 M.P. L.J 210

Where the language of a statute, in its ordinary meaning and grammatical constructions leads to a manifest contradictions of the apparent purpose of the enactment, or to some inconvenience, or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.[392]

It is well settled principle of law of interpretation of statute that when the expression is to be interpreted and if there is ambiguity or vagueness then, it has got to be read in context with the other provisions of the Act.[393] It is settled law that the proviso and the main part of the Act or Rule are to be harmoniously read together and interpreted to give effect to the object of the provision.[394]

Lord Reid put the matter as follows…..

> "To apply the words literally is to defeat the obvious intentions of the legislature and to produce a wholly unreasonable result to achieve the obvious intention and to produce a reasonable result we must do some violence, to the words." [395]

The Supreme Court has also enunciated that where the language of a statute in its ordinarily meaning and grammatical construction leads to a manifest contradiction of the apparent purpose, the enactment or to some inconvenience, or absurdity or hardship or injustice presumably not intended, a construction may be put upon it which modifies the meaning of the word and even the structure of the sentences[396]. If the language is ambiguous or its literal sense gives to an anomaly or results in something

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[392] *M. Pentiah v. Veeramallapa,* 1961-S.C.- pp.1107,1115.
[393] *K. Darsharatha v. Mysore City Municipal Corporation,* AIR 1995 Kant pp.157,164-165
[394] *Sales Tax Commissioner etc. v. B.G. Patel etc.,* AIR 1995 S.C. 865
[395] *Luke v. Revenue Commissioner,* [1963] A.C.-pp.557, 577.
[396] *Tirath Singh v. Bachittar Singh,* A.I.R. – 1956- SC-830.

which would defeat the purpose of the Act, the statute is not required to be construed according to the literal meaning of the words. It is permissible to imply words in a statute where applying the words of the statute literally would defeat the obvious intention of the legislature and produces an unreasonable result.[397]

In *Vacher & Sons, Ltd. v. London Society of Compositors*[398], Lord Macnaghten observed:

> "Nowadays, when it is a rare thing to find a preamble in any public general statute, the field of enquiry is even narrower than it was in former times. In the absence of a preamble there can, I think, be only two cases in which it is permissible to depart from the ordinary and natural sense of the words of an enactment. It must be shown either that the words taken in their natural sense lead to some absurdity or that there is some other clause in the body of the Act, inconsistent with, or repugnant to, the enactment in question construed in the ordinary sense of the language in which it is expressed."

The aforesaid view of Lord Macnaghten was reaffirmed by Lord Atkinson in *City of London Corporation v. Associated Newspapers Ltd.*, [399] by observing that:

> "The duty of a Court of law is simply to take the statute it has to construe as it stands, and to construe its words according to their natural significance. While reference may be made to the state of the law, and the material facts and events with which it

[397] *Yadecre v. Agricultural Produce Market Committee*, A.I.R.-1974- Bombay-181.
[398] (1913) AC pp.107, 117-118.
[399] (1915) AC pp.674, 692; *Inland Revenue Commissioners v. Hebert*, (1913) AC pp.326, 332.

is apparent that Parliament was dealing, it is not admissible to speculate on the probable opinions and motives of those who frame the legislation, excepting in so far as these appear from the language of the statute. That language must indeed be read as a whole. If the clearly expressed scheme of the Act requires it, particular expressions may have to be read in sense which would not be the natural one if they could be taken by themselves. But subject to this the words used must be given their natural meaning, unless to do so would lead to a result which is so absurd that it cannot be supposed, in the absence of expression which are wholly unambiguous, to have been contemplated."

In *Mohammad Shekhan v. Raja Seth Swami Dayal*[400] , the mortgagor mortgaged his property for 5 years and agreed that if he did not redeem it at the end of that period, the mortgagee had a right to take and keep possession for 12 years, during which term, the mortgagor had not right to redeem. The mortgagor committed default at the end of 5 years, but later sued to redeem, but the mortgagee opposed. It was held: Even if the mortgage were an anomalous mortgage, its provisions offend against the statutory right of redemption conferred by Section 60, and the provisions of one section cannot be used to defeat those of another, unless it is impossible to effect reconciliation between them. (Section 98 of the Transfer of Property Act as it stood in 1922, dealt with anomalous mortgages and the rights and liabilities of the parties were to be determined by their contract as evidenced in the mortgage- deed)

[400] (1922) LR 49 IA 60 : AIR 1922 PC 17

In *Raj Krishna v. Binod Kanungo*[401], the question was whether an election to a State Legislative Assembly is invalidated when the member's nomination was either proposed or seconded by a Government Servant. Under Section 33(2) of the Representation of the People Act, 1951, a Government servant is entitled to nominate or second a candidate. Section 123 (8) of the Act forbids the obtaining or procuring any assistance other than giving of vote by a Government servant. Answering the question in the negative, the court observed :

> "It is usual when one section of an Act takes away what another confers to use a non-obstante clause and say that ' notwithstanding anything contained in section so and so, this or that will happen'; otherwise, if both sections are clear, there is a head on clash. It is the duty of court to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise."

In *Cal. Gas Co. (P) Ltd. v. State of W.B.,*[402] the appellant was the manager of the Oriental Gas Company. The Legislature of W. Bengal passed the Oriental Gas Company Act, 1960, and under that Act the respondent was to take over the management of the Oriental Gas Co. The appellant challenged the validity of the Act on the ground that Parliament, by virtue of Entry 52 of List I dealing with 'Industries' had passed the Industries (Development and Regulation) Act, 1951, and the State Legislature could not therefore pass the law either under Entry 24 or 25 of List II. It was held :

> "It is well settled that widest amplitude should be given to the language of the entries. But some of the entries in the different lists or in the same list may overlap and sometimes may also

[401] [1953] SCR 913 : AIR 1954 SC 202
[402] 1962 Supp 3 SCR 1 : AIR 1962 SC 1044

> appear to be in direct conflict with each other. It is then the duty of the court to reconcile the entries and bring about harmony between them. In the matter of the *Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act,*[403] it was observed: 'an endeavour must be made to solve it, as the Judicial Committee have said, by having recourse to the context and scheme of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting where necessary, by modifying the language of one by that of the other'. Entry 24 covers a very wide field, that is the field of the entire 'industry' in the State. Entry 25, dealing with gas and gas words is confined to a specific industry, the gas industry, and Entry 24 does not comprehended gas industry. Industry in Entry 52 in List I has the same meaning as that expression in Entry 24 in List II and so does not take in gas industry which is within the exclusive filed allotted to States and so the Act is valid. The scheme of harmonious construction gives fill and effective scope of operation for all the entries in their respective fields."

In *Shankari Prasad v. Union of India*[404], the question was whether the power of amendment in Article 368 of the Constitution includes the power to amend the fundamental rights. It was contended that such an amendment would be violative of Article 13(2). It was held :

> "We have here two articles each of which is widely phrased, but conflicts in its operation with the other. Harmonious construction requires that one should be read as controlled and

[403] [1939] FCR 18 : AIR 1939 FC 1; *Madanlal v. Changdeo Sugar Mills,* 1962 Supp 3 SCR 973 : AIR 1962 SC 1543
[404] [1952] SCR 89 : AIR 1951 SC 458

qualified by the other. Having regard to the consideration adverted to above, we are of opinion that in the context of Article 13, 'law' must be taken to mean rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power, with the result that Article 13(2) does not affect amendments made under Article 368."

In *Clapharm v. National Assistant Board*,[405] the matter arose under the provisions of the National Assistance Act, 1948, Sec.44. It was held while construing the words "shall in all other respects…..proceed as on an application made by the mother" that the right with the Board u/s. 44 was an independent substantive right, independent and separable from any right which the mother would have had, to obtain an affiliation order. Lord Parker, C.J, observed that the words "In any proceedings arising out of an application" under sub-section (3) of Section 44 must be read as " in any proceedings resulting from or arising out of an application" for it was purely a procedural sub-section and these words were clearly necessary to ensure the ends of justice and the learned Chief Justice found that sub-section (3) of Section 44 was not happily worded and therefore it should be interpreted in a meaningful manner. In fact, the reading of the judgment clearly shows that the entire sub-section (3) was rewritten for that purpose. Where the sub-section (3) began by saying "In any proceedings on an application under the last foregoing subsection" it was interpreted to mean "In any proceedings arising out of an application for summons" and in the last two lines of the subsection the words "proceed as on an application made by the mother under the said section", the Court read "proceed as on an complaint arising out of an application

[405] 1961 (2) QBD 77

made by the mother". This was found necessary to give effective power to the Board under Section 44 of that Act.

In *S. C. Prashar v. Vasatsen Dwarakadas,*[406] the appellant gave a notice to the respondent to give effect to the finding of the Appellate Tribunal and re-open and assessment for the assessment year 194-43 in 1954. The respondent contended that the notice was barred by limitation under Section 34 of the Income Tax Act, 1922. The respondent's contention was accepted by the High Court. In appeal to the Supreme Court, the appellant contended that Section 4 of the Amending Act of 1959; saved the notice. MR. Justice S.K. DAS, repelling the contention, observed: If the view taken of Section 4 of the Amending Act of 1959 is that if abrogates and supersedes all past provisions regarding limitation, then the section would be in conflict with the provisions of Section 34. On the principle of harmonious construction the attempt should be to avoid such conflict rather than create it. The last part of Section 4 shows, in my opinion its true intent, namely that what is intended is to validate post 1956-action, that is, action taken under Section 34 as amended by Section 18 of the Finance Act, 1956.

Etton College v. Minister of Agriculture,[407] is yet another example where the text of a Section was found to be defective and changed. The Words of Section 3 of Ecclesiastical Leases Act, 1571 were being considered. Wilberforce, J considered the Scheme of the Act and after reading the provisions of Section 3 found that the word "or" which followed the words "having any spiritual or ecclesiastical living" was a mistake for the word "of" and on that assumption applied the Act.

[406] [1964] 1 SCR 29 : AIR 1963 SC 1356
[407] 1964 Ch. D 274

In *State of Madhya Pradesh v. M/s. Azad Bharat Finance Co.,*[408] a truck belonging to the respondent was used to carry contraband opium, but without his knowledge. Under Section 11 of the Opium Act, 1878, as modified by the Opium (Madhya Bharat Amendment) Act, 1955, the truck was ordered to be confiscated as the words used in the selection are 'shall be confiscated', whereas the words used in the main Act are 'shall be liable to be confiscated'. In appeal, the High Court held the section conferred a discretion on the Magistrate and that in the particular circumstances of the case the truck should not have been confiscated. In appeal to the Supreme Court, it was held:

> "The High Court was right in reading the section as permissive and not obligatory. 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 words 'shall' occurs and other circumstances. In the present case it would be unjust to confiscate the truck as the respondent had no knowledge of the commission of the offence. It is well recognized that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence."

In *Chandra Mohan v. State of U.P.,*[409] the U.P. Higher Judicial Service Rules providing for the recruitment of District Judges were held to contravene the constitutional mandate of Article 233(1) and (2) and

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[408] 1966 Suppp SCE 473 : AIR 1967 SC 276; *Itrath Singh v. Bachittar Singh,* [1955] 2 SCR 457 : AIR 1955 SC 830; *D. Sanjeevaiyya v. Election Tribunal*, [1967] 2 SCR 489 : AIR 1967 SC 1211; *Madhavrao Scindia v. Union of India,* (1971) 1SCC 85: AIR 1971 SC 530

[409] [1967] 1 SCR 77 : AIR 1966 SC 1987

hence constitutionally void. Under the rules, the Governor provides the qualifications, the selection committee appointed by him selects the candidates and the High Court has to recommend only from out of the lists prepared by the selection committee. Therefore, the consultation with the High Court was an empty formality. In coming to the conclusion, the court observed:

> "It should be remembered that the fundamental rule of interpretation is the same whether one construes the provision of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, if however, two constructions are possible then the court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

In *State of Orissa v. Arakhita Bisoi,*[410] the Revenue Officer determined the land ceiling surplus of the respondent under the Orissa Land Reforms Act, 1960, and the order was confirmed by the appellate authority under Section 44 of the Act. When the respondent filed a revision before the Additional District Magistrate he dismissed it holding that no revision lay. The High Court, in a writ petition filed by the respondent, held that a revision was entertainable by the Additional District Magistrate under Section 59. Dismissing the appeal the Supreme Court held: The Act is of an expropriatory nature and the determination of the excess lands is done by the Revenue Officer and on appeal by the Revenue Divisional Officer. In such circumstances, it is only proper to

[410] (1977) 3 SCC 242

presume that the legislature intended that any error or irregularity should be rectified by higher authorities like Collector and Revenue Board. It will be in conformity with the principle of harmonious construction and with the intention of the legislature to hold that Section 59 confers a power of revision of an order passed under Section 44(2).

In *Assessing Authority v. Patiala Biscuits Manufacturers,*[411] while interpreting the word "possession of the registration certificate" in the Punjab General Sales Tax Act, 1948, and the rules made thereunder, to mean that it does not mean actual possession but that it is sufficient if a dealer's application for registration after complying with all prescribed requirements is pending before the prescribed authority, the court observed, as regards the requirement of entering the number of registration certification, it is to be viewed with reasonable flexibility and reconciled with other rules. Thus construed harmoniously with related statutory provisions this requirement will be substantially satisfied if the number of the certificate granted subsequently but covering the earlier period is supplied to the Assessing Authority along with declaration of the dealer at the time of assessment.

In *Madhu Kimaye v. State of Maharashtra,*[412] the Supreme Court held that:

> "The 1973-Code put a bar on the power of revision against interlocutory orders in order to facilitate expeditious disposal of cases. But in Section 482 it was provided that nothing in the Code, which would include Section 397(2) also, shall be deemed to limit or affect the inherent powers of the High Court. On a harmonious construction it should be held that the bar

[411] (1977) 2 SCC 389
[412] (1977) 4 SCC 551

provided in Section 397(2) operates only in exercise of the revisional power of the High Court, meaning thereby, that the High Court will have no power of revision in relation to any interlocutory order. But in such a case, the inherent power will come into play there being no other provision in the Code for the redress of the grievance of the aggrieved party. In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference of the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power of the High Court. Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The legislature on the one hand has kept intact the revisional power of the High Court and on the other hand put a bar on the exercise of that power in relation to an interlocutory order. The real intention of the legislature was not to equate the expression “interlocutory order” as invariably being converse of the words “final order”. There may be an order passed during the course of the proceeding which may not be final but yet it may not be an interlocutory order pure and simple. By a rule of harmonious construction of sub-sections (1) and (2) of Section 397 it must be held that the bar in sub-section (2) is not meant to be attracted to such kinds of intermediate orders. It is neither advisable nor possible to make a catalogue of orders to demonstrate which kinds of orders would be interlocutory and which would be final and then prepare an exhaustive list of those types of orders which would fall between the two.”

In *Organo Chemical Industries v. Union of India*,[413] the Supreme Court held that:

> "A bare mechanical interpretation of the words devoid of concept or purpose will reduce most legislation to futility. It is a salutary rule well established that the intentions of the legislations must be found reading the Statute as a whole."

While dealing with the Section 2(c) of the Gujarat Prevention of Anti-Social Activities Act (16 of 1985) (as it stood then) and the phrase "during a period of three successive years" in that Section2(c), the full bench of the Gujarat High Court in the case of *Ashok Ambu Parmar v. The Commissioner of Police, Vadodara City and Others*,[414] has clearly held that:

> "The Court should not apply literal meaning to the word regardless of the consequences. It is a cardinal principle that if the words are capable of more than one meaning, the Court must accept that meaning which will be in consonance with the spirit and purpose for which such an enactment has been made.
>
> In giving the words their ordinary meaning, if we are faced with extraordinary results which cannot have been intended by the legislature, we then have to move on to the second stage in which we re-examine the words. In case we are faced with two possible constructions of legislative language, we have to look to the results of adopting each of the alternatives respectively for the purpose of upholding the true intention of the legislature. The construction which promotes the objectives for which the

[413] AIR 1979 SC 1803
[414] AIR 1987 Guj 147

enactment is intended must be adopted. Our interpretation must be in keeping with the purpose for which the legislation was promulgated."

In *M/s. Miracle Sugar Factory, Bhandsar v. State of U.P.,*[415] the Allahabad High court (Hon'ble Mr. Justice M. Katju) observed that:

"It is now a settled rule of interpretation that the Court is not always to go by the plain wording of the Statute but should see the legislative intent."

In the case of *Hameedia Hardware Stores v. B. Mohan Lal Sowcar,*[416] Their Lordships of the Supreme Court have been pleased to observe as under:

"It is no doubt true that the Court while construing a provision should not easily read into it words which have not been expressly enacted but having regard to the content in which a provision appears and the object of the Statute in which the said provision is enacted the Court should construe it in a harmonious way to make it meaningful."

Their Lordships of the Supreme Court, in this connection, made a reference to the following observations of Lord Denning C.J. and has quoted as under.

In *Seaford Court Estates Ltd. v. Asher*,[417] Lord Denning L.I. said:

"When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the

[415] AIR 1995 ALL 231
[416] AIR 1988 S.C. pp.1060, 1067; *M. Pentiah v. Muddala Veeramallappa,* AIR 1961 SC 1107; *Bangalore Water Supply & Sewerage Board v. A. Ranjappa,* AIR 1978 S.C. 548
[417] (1949) 2 ALL ER pp.155, 164

> constructive task of finding the intention of Parliament…. And then he must set supplement the written words so as to give 'force and life' to the intention of the legislature…… A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven but he can and should iron out the crease".

In *Allied Motors (P) Ltd. v. Commissioner of Income-tax, Delhi*,[418] certain unintended consequences flew from a provision enacted by the Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that:

> "Literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply. "A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole."

The statute should be construed not the theorems of Eudid, but with some imagination of the purpose which lie behind them. If the words are susceptible of wider import, the Court has to pay regard to the objects and purposes for which the particular piece of legislature has been

[418] AIR 1997 SC 1361

enacted. No doubt if there is an obvious anomaly in the application of law, the courts could shape the law to remove anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency the Court should discard such interpretation and adopt an interpretation which will give effect to the purpose of the legislature [419].

In interpreting wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency but no further[420].

3.1.3 REPUGNANCE

REPUGNANT, that which is contrary to what is stated before. The rule of construction is that in a will the later of two contradictory clauses prevails, but in other writings the earlier. Conditions which are repugnant to a previous gift or limitations are void.[421]

'Repugnant to' really means 'inconsistent with' and, as observed by Higgings, J in *Clyde Engineering Co. v. Cowburn*[422] :

> "…..things are inconsistent when they cannot stand together at the same time, and one law is inconsistent with another law when the command or power or provision in the one law

[419] *Prahaladbhai Rajaram Mehta v. Popatbhai Haribhai Patel*, 1996 [1] GCD-564 [Guj].
[420] *Grey v. Pearson* (1857) 6 H.L.C. pp.61, 106
[421] *Bradley v. Peixoto*, (1797) 3 Ves. 325; *Briton v. Twining*, (1917) 3 Mer. 184; *Stogdon v. Lee*, 1891 I Q.B. 661
[422] (1926) 37 Com. W.L.R. pp.466, 503; *Vishnu v. Poulo*, AIR 1953 T.C. pp.327, 335 : I.L.R. 1952 T.C. 670 : 8 D.L.R.T.C. 315 : 1953 K.L.T. 238

conflicts directly with the command or power or provision in the other."

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head on clash"[423] between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise".[424] It should not be lightly assumed that "Parliament had given with one hand what it took away with the other".[425] The provisions of one section of a statute cannot be used to defeat those of another "unless it is impossible to effect reconciliation between them".[426] The same rule applies in regard to sub-sections of a section.

In the words of GAJENDRAGADKAR, J.:

"The sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in

[423] *Raj Krushna v. Binod Kanungo,* AIR 1954 SC pp.202, 203

[424] *University of Allahabbad v. Amritchand Tripathi*, AIR 1987 SC pp.57, 60, *Krishna Kumar v. State of Rajasthan*, AIR 1992 SC pp.1789, 1793, 1794

[425] *Dormer v. Newcastle-on-Tyne Corpn*, (1940) 2 All ER (CA) pp.521, 527; *Tahsildar Singh v. State of UP* AIR 1959 SC pp.1012, 1022; *K.M. Nanawati v. State of Bombay*, AIR 1961 SC pp.112, 137; *Krishna Kumar v. State of Rajasthan, Ibid*

[426] *Mohammad Sher Khan v. Raja Seth Swami Dayal*, AIR 1922 PC pp.17, 19; *Sanjeevayya D. v. Election Tribunal, Andhra Pradesh* AIR 1967 SC pp.1211, 1213; *Krishna Kumar v. State of Rajasthan, Ibid*

construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy".[427]

As stated by VENKATRAMA AIYAR, J:

"The rule of construction is well settled that 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. This is what is known as the rule of harmonious construction".[428]

The effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber"[429] or "dead letter"[430] is not harmonious construction. To harmonise is not to destroy.[431] A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific.[432] The principle is expressed in the

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[427] *Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd.*, AIR 1962 SC pp.1543, 1551; *Tahsildar Singh v. State of U.P., Ibid*, p.1022.

[428] *Venkatramana Devaru v. State of Mysore*, AIR 1958 SC pp.255, 268; *Krishna Kumar v. State of Rajasthan* AIR 1992 SC pp.1789, 1794; *State of Rajasthan v. Gopi Kishan Sen*, AIR 1992 SC pp.1754, 1756

[429] *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.* AIR 1962 SC pp.1044, 1051

[430] *J. K. Cotton Spinning & Weaving Mills v. State of U.P.* AIR 1961SC pp.1170, 1174

[431] *J. K. Cotton Spinning & Weaving Mills v. State of U.P.* AIR 1961 SC pp.1170, 1174; *Chief Inspector of Mines v. Karam Chand Thaper,* AIR 1961 SC pp.838, 843

[432] *South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum,* AIR 1964 SC pp.207, 215; *Weverly Jute Mills Co. Ltd. v. Raymon & Co. (India) (Pvt.) Ltd.*, AIR 1963 SC pp.90, 95; *J. K. Cotton Spinning & Weaving Mills v. State of U.P.*, AIR 1961 SC pp.1170, 1194; *Pradip Port Trust v. Their Workmen*, AIR 1977 SC pp.36, 44 : 1977 SCC (Lab) 253; *U. P. State Electricity Board v. Harishanker* AIR 1979 SC 65: (1978) 4 SCC 16: 1978 SCC (Lab) 481; *Life Insurance Corporation of India v. D.J. Bahadur* AIR 1980 SC pp.2181, 2202, 2208, *State of U.P. v. Renusagar Power Co.,* AIR 1988 SC pp.1737, 1751; *State of Rajasthan v. Gopikishan Ibid* p.1756. *Life Insurance Corporation of India v. S. V. Oak* AIR 1965 SC pp.975, 980.

maxims Generalia specialibus non derogant,[433] and Generalibus specialia derogant.[434] If a special provision is made on a certain matter, that matter is excluded from the general provision.[435] These principles have also been applied in resolving a conflict between two different Acts.[436] But the principle, that a special provision on a matter excludes the application of a general provision on that matter, has not been applied when the two provisions deal with remedies, for validity of plural remedies cannot be doubted.[437] Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them.

Lord Wensleydale stated the rule in *Grey v. Pearson*[438]:

> "The grammatical ordinary sense of the words is to be adhered to unless that would lead to an absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid such absurdity, repugnancy or inconsistency but no further."

In *In re : Hindu Women's Rights to Property Act*[439] , the question was whether the Hindu Women's Rights to Property Act, 1937, and the

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[433] General things do not derogate from special things. *OSBORN'S Law Dictionary*, Eighth Edition, First Indian Reprint 1999, p.157

[434] Special things derogate from general things. *Ibid*

[435] *Venkateshwar Rao v. Govt. of Andhra Pradesh* AIR 1966 SC 828; *CIT, Patiala v. Shahzada Nand & Sons* AIR 1966 SC pp.1342, 1347; *State of Gujarat v. Patel Ramjibhai Danabhai*, AIR 1979 SC pp.1098, 1103; *State of Bihar v. Yogendra Singh*, AIR 1982 SC pp.882, 886 : (1982) 1 SCC 664; *Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupesh Kumar Sheth* (1984) 4 SCC pp.27, 47:AIR 1984 SC 1543; *State of Rajasthan v. Gopikishan, Ibid*, p. 1756

[436] *Jogendra Lal Saha v. State of Bihar* AIR 1991 SC pp.1148, 1149.

[437] *Bihar State Co-operative Marketing Union Ltd. v. Uma Shankar Saran*, AIR 1993 SC pp.1222, 1224

[438] (1857) 6 HLS 61.

Amendment Act, 1938, operated with respect to agricultural property and whether they were valid. It was held :

> "In *D'Emden v. Pedder*[440] , it was held, ' It is in our opinion a sound principle of construction that Acts of a Sovereign legislature, and indeed of subordinate legislatures such as a municipal authority, should, if possible, receive such an interpretation as will make them operative and not inoperative…. It is a settled rule in the interpretation of statutes that general words will be taken to have been used in the wider or more restricted sense according to the general scope and object of the enactment'. There is this also to be said. The underlying purpose of the Act is remedial and since it is a remedial Act it ought to receive a beneficial interpretation. 'If the enactment is manifestly intended to be remedial, it must be so construed as to give the most complete remedy which the phraseology will permit (*Grover's* case[441]) …. Even if it were true that an Act intended to be remedial, though possibly limited in scope, was found in a small minority of cases to prejudice rather than to benefit those whom it was intended to help, this would be no reason why the court should not adopt the interpretation which is on the whole best calculated to give effect to the manifest intention of the legislature…. The Act was beyond the competence of the Indian Legislature, so far as its operation might affect agricultural land in the Provinces, and the question is whether the court is bound to construe the word 'property' as referring only to those forms of property with

[439] (1941) FCR 12 : AIR 1941 FC 72 : 194 IC 357
[440] (1904) 1 CLR 91
[441] (1875) 1 Ch D 182

> respect to which the legislature which enacted the Act was competent to legislate…If the restriction of the general words to purposes within the power of the legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because, in such circumstances it is impossible to assert with any confidence that the legislature intended the general words, which it has used to be construed only in the narrower sense: *Owners of S.S. Kaliba v. Wilson*[442], *Vacuum Oil Company v. State of Queensland*[443], *R. v. Commonwealth Court of Conciliation and Arbitration*[444], *and British Imperial Oil Co. Ltd. v. Federal Commissioner of Taxation*[445]. If the Act is to be upheld, it must remain, even when a narrower meaning is given to the general words, 'an Act which is complete, intelligible and valid and which can be executed by itself.'"

Section 86(1) of the Special War Revenue Act, Revised Statutes of Canada, 1927, has selected the time of delivery of the goods to the purchaser as the point of time for imposing ,levying and collecting sales-tax. But in *The King v. Dominion Engineering Co.*[446] , the goods were never delivered and the general rule was inapplicable. But the words of the enactment are followed by two provisos, and it was held :

[442] (1910) 11 CLR 689
[443] (1934) 51 CLR 677
[444] (1910) 11 CLR 1
[445] (1925) 35 CLR 422
[446] AIR 1947 PC 94 12

> "However aptly proviso (1) may seem to fit the Crown's case, proviso (20 presents an insuperable obstacle to the Crown's claim. Proviso (2) qualifies the main enactment in the matte of delivery no less than does proviso (1), and it also qualifies proviso (1) itself. For it provides 'further' that 'in any case where there is no physical delivery of the goods', the tax is to be payable when the property in the goods passes to the purchaser. Thus where there is no physical delivery, the notional delivery which proviso (1) introduces is rendered inapplicable. There has been no physical delivery of goods by the respondent to its purchaser. The proviso enacts that ' in any case' where there has been no physical delivery, the tax is to be payable when the property passes. The property in the goods never passed to the purchaser. Consequently, tax has never become payable. *If proviso* (2) *is repugnant in any way to proviso* (1)*, it must prevail for it stands last in the enactment* and so, to quote Lord TENTERDEN, C.J., 'speaks the last intention of the makers'."

In *Venkataraman Devaru v. State of Mysore*[447], the trustees of the appellant filed a suit for a declaration that the appellant was a denominational temple and that Section 3 of the Temple Entry Act was void as repugnant to Article 26(b) of the Constitution. Under the article, a religious denomination had the right to manage its own affairs in the matter of religion. It was contended by the appellant, that this article is not subject to and controlled by a law protected by Article 25(2)(b) which protects the right to enter a temple for purposes of worship. It was held: This contention ignores the true nature of the right conferred by Article

[447] [1958] SCR 895 : AIR 1958 SC 255

25(2)(B). That is right conferred on all classes and sections of Hindus to enter into a public temple and on the unqualified terms of that article, the right must be available whether it is sought to be exercised against an individual or against a denomination….. If the contention of the appellant is to be accepted then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though the language of the article includes them. On the other hand, if the contention of the respondent is accepted, full effect can be given to Article 26(b) in all matters except entry into a temple for worship, this rights declared under Article 25(2)(b). On the principles of harmonious construction it must be held that Article 26(b) must be read subject to Article 25(2)(b).

Same rule was applied to resolve the conflict between Articles 19(1)(a) and 194(3) of the Constitution and it was held that the right of freedom of speech guaranteed under Art.19(1) (a) is to be read as subject to powers, privileges and immunities of House of the Legislature which are those of the House of Commons of the United Kingdom as declared by latter part of Art.194(3).[448] It is, however, interesting to notice that in Special Reference No.1 of 1964, it was decided that Article 194(3) is sub-ordinate to Articles 21, 32, 211 and 226. This conclusion was also reached by recourse to the rule of harmonious construction.

Applying the same rule it has been held that the general provision under Art.372 of the Constitution regarding continuance of existing laws is subject to Art. 277 of the Constitution which is a special provision relating to taxes, duties, cesses or fees lawfully levied at the commencement of the Constitution.[449]

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[448] *M.S.M. Sharma v. Shri Krishna Sinha,* AIR 1959 SC pp.395, 410

[449] *South India Corporation (P) Ltd v. Secy., Board of Revenue, Trivandrum* AIR 1964 SC pp.207, 215

The Supreme Court applied the rule in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matter of religion [Art.26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Art.25(2)(b)].[450]

The principle of harmonious construction has very often been applied in construction of apparently conflicting legislative entries in Schedule VII of the Government of India Act, 1935 and the Constitution.[451]

An interesting question relating to a conflict between two equally mandatory provisions, viz. sections 17(1) and 18(1) of the Industrial Disputes Act, 1947, is a good illustration of the importance of the principle that every effort should be made to give effect to all the provisions of an Act by harmonizing any apparent conflict between two or more of its provisions. Section 17(1) of the Act requires the Government to publish every award of a Labour Tribunal within thirty days of its receipt and by sub-section (2) of section 17 the award on its publication becomes final. Section 18(1) of the Act provides that a settlement between employer and workmen shall be binding on the parties to the agreement. In a case where a settlement was arrived at after receipt of the award of a Labour Tribunal by the Government but before its publication, the question was whether the Government was still

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[450] *Venkataramana Devaru v. State of Mysore* AIR 1958 SC 255

[451] In *Re C.P. & Berar Motor Spirit & Lubricants Taxation Act* AIR 1939 FC pp.1, 5; *G.G. in Council v. Province of Madras*, AIR 1945 PC pp.98, 100, 101; *Calcutta Gas (Proprietary) Ltd. v. State of W.B.*, AIR 1962 SC pp.1044, 1050; *Waverly Jute Mills Co. Ltd v. Raymon & Co. (India) (Pvt.) Ltd* AIR 1963 SC pp.90, 95

required by section 17 (1) to publish the award. In construing these tow equally mandatory provisions, the Supreme Court held that the only way to resolve the conflict was to hold that by the settlement, which becomes effective from the date of signing, the industrial dispute comes to an end and the award becomes infructuous and the Government cannot publish it.[452]

By invoking the same rule the Supreme Court held that the apparently absolute power of the Governor under Art.161 of the Constitution to grant pardon or to suspend a sentence passed on an accused person is not available during the period the matter becomes sub-judice before the Supreme Court as otherwise it will conflict with the judicial power of that court provided under Art.142 of the Constitution.[453] A similar result was reached in interpreting sections 401 and 426 of the Code of Criminal Procedure, 1898.[454]

Another example of application of the rule is found in the construction of section 100 (4) and section 217(2)(e) of the Motor Vehicles Act, 1988. Section 217(2)(e) requires that all pending Nationalisation Schemes under the repealed Act should be finalized in accordance with section 100 of the new Act. Section 100(4) provides that schemes not finalized within one year from the date of publication of the proposal shall lapse. There was no such limitation under the repealed Act and schemes remained pending for years after the proposal was published. To give effect to both sections 100(4) and 217(2)(e) it was held that in cases of schemes pending under the repealed Act the period

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[452] *Sirsilk Ltd. v. Govt. of Andhra Pradesh* AIR 1964 SC pp.160, 162, 163; *Life Insurance Corporation of India v. S.V. Oak* AIR 1965 SC pp.975, 980

[453] *K.M.Nanavati v. State of Bombay,* AIR 1961 SC pp.112, 122,123, 124

[454] *Ibid* p.121

of one year will be counted from the commencement of the new Act and not from the publication of the proposal.[455]

An important question as to the power of courts to decide a question of privilege concerning documents relating to affairs of State was answered by the Supreme Court by harmonizing sections 123 and 162 of the Indian Evidence Act, 1872.[456] The affidavit of the head of the department or the minister is not conclusive that a particular document relates to affairs of State. The opinion of the Head of the Department or the Minister is open to judicial review and if necessary the court can inspect the document. In deciding upon the question of privilege the court has to balance the public interest which demands the withholding of the document against the public interest in the administration of justice that the court should have fullest possible access to all relevant materials.[457]

The principle of harmonious construction is also applicable in construction of provisions of subordinate legislation.[458] The principle was applied in resolving a conflict between cl.5(a) and cl.23 of the Government Order, 1948, passed under the Uttar Pradesh Industrial Disputes Act, 1947 it was held that the special provision made in cl. 23 relating to discharge or dismissal of workmen pending an inquiry or

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[455] *Krishna Kumar v. State of Rajasthan* AIR 1992 SC 1789

[456] *State of Uttar Pradesh v. Raj Narain* AIR 1975 SC 865: (1975) 4 SCC 478; *S.P. Gupta and others v. President of India* AIR 1982 SC 149; *M/s. Doypack Systems Pvt. Ltd. v. Union of India* AIR 1988 SC pp.782, 797, 798; *R. K. Jain v. Union of India* AIR 1993 SC pp.1769, 1774, 1788, 1795-97.

[457] *Ibid*. *Nixon v. U.S.A.* (1975) 418 U.S. 683; *Conway v. Rimmer* (1968) 1 All ER 874 (HL); *Burmah Oil Co. Ltd. v. Bank of England* (1979) 3 All ER 700 (HL); *Air Canada and others v. Secretary of State for Trade and another* (1983) 1 All ER 910 (HL)

[458] *J.K. Cotton Spinning & Weaving Mills Ltd. v. State of U.P.* AIR 1961 SC 1170

appeal was outside the more general provisions of cl.5 (a) which related to all industrial disputes in general.[459]

In *State of M.P. v. M/s. Azad Bharat Finance Co.*,[460] a truck belonging to the respondent was used to carry contraband opium, but without the respondent's knowledge. Under Section 11 of the Opium Act, 1878, as modified by the Opium (Madhya Bharat Amendment) Act, 1955, the truck was ordered to be confiscated as the words used in the amended section are, 'shall be confiscated', whereas, the words used in the main Act are 'shall be liable to be confiscated'. The Supreme Court, in spite of the amendment, held:

> "The section is permissive and not obligatory. It is well-recognised that if a statute leads to absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence."

It was further observed by the Supreme Court that :

> "The High Court was right in reading the section as permissive and not obligatory. 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 other circumstances. In the present case it would be unjust to confiscate the truck as the respondent had no knowledge of the commission of the offence. It is well recognized that if a statute leads to absurdity, hardship or

[459] *Ibid,* p.1170

[460] 1966 Supp SCR 473 : AIR 1967 SC 276; *Tirath Singh v. Bachittar Singh*, [1955] 2 SCR 457: AIR 1955 SC 830; *D. Sanjeevaiyya v. Election Tribunal*, [1967] 2 SCR 489: AIR 1967 SC 1211; *Madhavrao Scindia v. Union of India*, (1971) 1 SCC 85: AIR 1971 SC 530

> injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, or even the structure of the sentence."

In *Ramaswamy Nada v. State of Madras*,[461] the Supreme Court was considering the provisions of Section 423 (1) (a) of the Code of Criminal Procedure and referring to the specific power to reverse the order appealed from as contained in clauses (a) and (b) of sub-section (1) of that Section, the words that fell for consideration were, "find the accused persons guilty" and the question was posed "of what?". Upon the construction, it was found that some words need to be added and supplied and the Supreme Court observed:

> "If, in construing the section, the Court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the construction which is more in consonance with reason and justice."

In *Nagpur Electric Light & Power Co. v. K. Shreepathirao*,[462] the question arose of the construction and interpretation of the Standing Orders framed by the Nagpur Electric Light and Power Company for the purposes of its employees. While considering the Scheme of the provisions of Section 30 of the C.P & Berar Industrial Disputes Act, 1947, which imposed a statutory obligation on the employer to make standing orders, the Court observed that it would be justified to apply the reasonable test of interpretation to the construction of the Standing Order so as to make it consistent with the compliance of the statutory obligation. In express terms, the principle that every word occurring in a statute must be given its proper meaning and weight was alluded to and

[461] AIR 1958 SC 56
[462] AIR 1958 SC 658

the English cases referred. The decision of Beyley, J. in *Corlis v. The Kent Water Works Co.*[463]; was referred to and extracted as laying down the true test of interpretation. These the learned Judge was considering in an act for paying, cleansing, lighting etc, of the Town and Parish of Woolwich for a right of appeal to an aggrieved person. The learned Judge construed it as available to all persons capable of appealing to all persons capable of appealing. The decision of the Madras High Court in *Parumal v. Tirumalasaynuram,*[464] which construed O.33 R 1 of C.P.C with reference to the companies was approved. The Supreme Court, therefore, proceeded to read Standing Order No. 2 as by adding words to the actual wording of the Standing Order and applied the same to those employees only who possessed the tickets and whose ticket numbers were capable of being entered in the departmental musters.

In *Avtar Singh v. State of Punjab,*[465] by alluding to *Courtis v. Stovin,*[466] the provisions of Section 39 of the Indian Electricity Act, 1910 were interpreted. There the question was, Section 39 itself did not provide for punishment, but the Court held that it must be read as providing for a punishment because the Act contemplated it and for this reference was made to Sections 48 and 49. The Principle that the words of an Act of Parliament must be construed so as to give sensible meaning to them and the words ought to be construed Ut res magis valeat quam pereat was reaffirmed.

Similarly, if it appears from the context or a consideration of the other provisions of the Statute that it was the intention of the legislature

[463] (1827) 7 B & C, 314
[464] AIR 1918 Mad 362
[465] AIR 1965 SC 666
[466] (1889) 22, QBD 513

to give another meaning the Court will not be prevented from departing from the ordinary grammatical meaning of the words.

In *M.S.M. Sharma v. Sri Krishna Sinha,*[467] it was also observed:

> "We must by applying the cardinal rules of construction ascertain the intention of the Constitution-makers from the language used by them. Article 19(1)(a) and Article 194(3) have to be reconciled. The principle of harmonious construction must be adopted and so construed, the provisions of Article 19(1)(a), which are general, must yield to Article 194(1) and (3)."

The dissenting judge MR. JUSTICE SUBBA RAO however said:

> "I cannot appreciate the argument that Article 194 should be preferred to Article 19(1) and not vice versa. Under the Constitution it is the duty of the court to give a harmonious construction to both the provisions so that full effect may be given to both without the once excluding the other. Where there is conflict, the privilege should yield to the extend it affects the fundamental rights."

In *K. M. Nanavati v. State of Bombay,*[468] the appellant was sentenced to imprisonment for life for the offence of murder, by the High Court in appeal. On the same day, the Governor of the State passed an order suspending the sentence under Article 161. The appellant's application for special leave was dismissed by the Supreme Court, by a majority, holding that the appellant's special leave petition could not be listed for hearing unless he surrendered to his sentence as required by

[467] 1959 Supp 1 SCR 806: AIR 1959 SC 395; *Tahsildar Singh v. State of U.P.*, 1959 Supp 2 SCR 875: AIR 1959 ASC 1012
[468] [1961] 1 SCR 497: AIR 1961 SC 112

Article 142(1) and the rules of the Supreme Court under Article 145. In his dissenting judgment, MR. JUSTICE KAPUR, however, observed:

> "The two articles, Articles 142 and 161 operate in two distinct fields where different considerations apply. The two articles are reconcilable and should be reconciled. The rule of statutory co-existence stated in textbooks on Interpretation of Statutes, is as follows: "It is sometimes found that the conflict of two statutes is apparent only, as their objects are different and the language of each is restricted to its own subject. When their language is confined, they run in parallel lines without meeting."[469] The proper rule of construction was laid down in *Warburton v. Loveland*,[470]*:* "No rule of construction of statutes can require that when the words of a statute convey a clear meaning, it shall be necessary to introduce another part of the statute, which speaks with less perspicuity, and of which the words may be capable of such construction as by possibility to diminish the efficacy of the other provisions of the Act. In the instant case the words of Article 161 are clear and unambiguous. It is an unsound construction to put a fetter on the plentitude of the powers given in that article by reading an earlier article which deals with the powers of a different department of Government and uses language 'which speaks with less perspicuity'. Moreover it is a relevant consideration in the matter of interpretation that the two articles are in two different parts. There is ample authority for the view that one is entitled to have regard to the indicia afforded by the arrangement of sections

[469] *Maxwell,* 1953 Ed., p.170
[470] 5 ER 499: 2 D & CI 480; *Tasmania v. commonwealth of Australia,* (1904) 1 CLR 329

and from other indications. *Dormer v. Newcastle-upon-Tyre Corporation,*[471] per SLESSER, L.J.: The arrangement of sections into parts and their headings are substantive parts of the Act; and as is pointed out[472], 'they are gradually winning recognition as a kind of preamble to the enactments which they precede limiting or explaining their operation.' In *Inglis v. Robertson,*[473] LORD HERSCHELL said: These headings are not in my opinion mere marginal notes, but the sections in the group to which they belong must be read in connection with them, and interpreted in the light of the,. VISCOUNT SIMON L.C. said in *Nokes v. Doncaster Amalgamated Collieries Ltd.,*[474] 'Section 294 occurs in Part V of the Companies Act, 1929, dealing with winding up, whereas Section 154 is found in Part IV'. These cases place accent on the principle that Articles 142(1) and 161 deal with different subjects showing operation in separate fields and were not intended to overlap so as to be restrictive of each other. The language of Article 161 is general that is, the power extends equally to all cases of pardons known to the law whatever the nomenclature used; and therefore if the power to pardon is absolute and exercisable at any time on principles which are quite different from the principles on which judicial power is exercised then restrictions on the

[471] (1940) 2 KB 204: 109 LJ KB 708: 163 LT 266
[472] *Craises,* 5th Ed., p. 165
[473] (1898) AC 616
[474] (1940) AC 1014 : 108 J KB 845 : 160 LT 592; *Province of Bombay v. Municipal Corporation of City of Bombay,* (1947) LR 73 IA 271 : AIR 1947 PC 34; *Director of Rationing & Distribution v. Corporation of Calcutta,* (1961) 1 SCR 158 : AIR 1960 SC 1355; *Kutner v. Philips,* (1891) 2 QB 267 : 60 LJ QB 505 : 64 LT 628; *Dormer v. Newcastle-upon-Tyre Corporation,* (1940) 2 KB 204 : 109 LJ KB 708 : 163 LT 266; *Wood v. Riley,* (1868) LR 3 CP 26 : 37 LJ CP 24 : 17 LT 216

> exercise of the lesser power of suspension for a period during which the appeal is pending in this court would be an unjustifiable limitation on the power of the executive. It could not have been the intention of the framers that the amplitude of the executive power should be restricted as to become suspended for the period of pendency of an appeal in the Supreme Court. Article 161 is later provision and when it was adopted the Constitution-makers had already adopted Articles 72, 142 and 145. It does not seem reasonable that by so juxtaposing the articles it was in the intention of the framers to constrict the powers of the executive. The rules of interpretation on this point have thus been stated : (a) It is presumed that the legislature does not deprive the State of its prerogative powers unless it expresses its intention to do so in express terms or by necessary implication (b) It seems impossible to suppose that so material a change in the constitutional powers of the Governor was intended to be effected by a side wind. (c) The law will not allow alteration of a statute by construction when the words may be capable of proper operation without it: (d) it cannot be assumed that the Constitution has given with one hand what it has taken away with another. (e) If two sections are repugnant, the known rule is that the last must prevail."

In *Chief Inspector of Mines v. K. C. Thapar*,[475] the respondents were prosecuted for non-observance of some of the regulations of the Indian Coal Mines Regulations, 1925. It was contended that under Section 31 (4) of the Mines Act, 1923, regulations and rules shall be published in the official Gazette and on such publication shall have effect

[475] [1962] 1 SCR 9 : AIR 1961 SC 838

‘as if enacted in this Act’, that the consequence of this provision was that the regulations became part of the Act, and since the Act was repealed by Section 88 of the Mines Act, 1952, the 1926- Regulations stood repealed on the very day the 1952-Act came into force and hence ceased to have legal existence long before the date of the alleged violation. Reliance was placed on *Institute of Patent Agents v. Lockwood*[476]. Where the LORD CHANCELLOR observed: “I own I feel very great difficulty in giving to this provision that they ‘shall have the same effect as if they were contained in the Act’ any other meaning than this, that you shall for all purposes of construction or obligation or otherwise, treat them as if they were in the Act. The true position appears to be that the rules and regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act.” It was held: The LORD CHANCELLOR, in the above case, had himself observed, ‘No doubt there might be some conflict sometimes between two sections to be found in the same Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision and which is the subordinate provision, and which must give way to the other. That would be so with regard to enactments and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated as governing consideration and the rule as subordinate to it.’ The rules and regulations continue to be rules subordinate to the Act, and though for certain purposes, including the power of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore, with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General

[476] (1894) AC 247

Clauses Act, 1897, and hence the Mines Regulations, 1926, would be in force at the relevant date in 1955 and shall be deemed to have been made under Section 57 of the 1952-Act, as there is no provision express or otherwise in the later Act to the contrary and the regulations are not inconsistent with the re-enacted provisions.

In *Sajjan Singh v. State of Rajasthan*,[477] the validity of the Constitution (17th Amendment) Act, 1964, was challenged. One of the questions was, what would be the requirement for making an amendment in a constitutional provision contained in Part III, if as a result of the said amendment, the powers conferred on the High Courts under Article 226 are likely to be affected. The petitioners contended that the bill introduced for making such an amendment must attract the proviso to Article 368. It was held: The two parts of Article 368 must on a reasonable construction be harmonized with each other in the sense that the scope and effect of either of them should not be allowed to be unduly reduced or enlarged. In other words, in construing both parts of Article 368, the rule of harmonious construction requires that if the direct effect of the amendment of fundamental right is to make a substantial inroad on the High Court's power under Article 226, it would become necessary to consider whether the proviso would cover such a case or not. If the effect of the amendment made in the fundamental rights on the powers of the High Courts, prescribed by Article 226, is indirect, incidental, or is otherwise of an insignificant order, it may be that the proviso will not apply.

[477] [1965] 1 SCR 933 : AIR 1965 SC 845

In *L.I.C. India v. S. V. Oak,*[478] the appellant took over the controlled business of a Mutual Assurance Company, and filed a petition before the Life Insurance Tribunal, praying for a declaration that the respondents were not entitled to the repayment of their deposits. The Tribunal granted the prayer, but the High Court reversed the order. Dismissing the appeal to the Supreme Court, it was held: Under Section 28 of the Life Insurance Corporation Act, 1956, the surplus which results from an actuarial investigation is to be disposed of by allocating not less than 95% of the surplus for the policy holders of the Corporation. The balance of the surplus, the sections says, may be utilized for such purposes and in such manner as the Central Government may determine. The Government while making directions is expected to have regard to the liabilities of the Corporation under Section 9 of the Act. Indeed Section 9 is so comprehensive in its working that Section 28 which is discretionary at least so far as the Central Government is concerned, may be taken to be controlled by the former. The two sections must be read harmoniously and it could not have been intended that Section 28 was to be used to negative what Section 9 provided so explicitly. We think that on this harmonious construction we must hold that Section 28 does not put any bar in the way of Corporation in the fulfillment of its obligations arising under Section 9.

In *Firm Amar Nath v. Tek Chand,*[479] the respondent obtained a decree for ejectment of the appellant, his tenant. The respondent's execution petition was opposed on the ground that the conditions specified in the notification issued under Section 3 of the Punjab Urban Rent Restriction Act, 1949, were not complied with. The conditions were:

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[478] [1965] 1 SCR 403 : AIR 1965 SC 975; *State of Rajasthan v. Leela,* (1965) 1 SCR 276 : AIR 1965 SC 1296

[479] (1972) 1 SCC 893

(1) Buildings constructed during the years 1959-1963 are exempted from all the provisions of the Act for a period of 5 years to be calculated from the date of their completion, and (2) suits for ejectment of tenants in possession of those buildings were instituted during the period of exemption and decrees of eviction were or are passed. The contention was that the decree of ejectment should also have been passed during the period of exemption. It was held: The buildings had already been exempted under earlier notification and the very purpose of exemption was to give landlords the right to evict tenants. If no provision was made for exempting decrees, the exemption would be illusory. Therefore, provision was made for the time during which the suit in which the decree had been passed should be filed, thought the decree itself may be passed subsequent to the expiry of the five years' period. To hold that the decree should also have been passed within five years would lead to an incongruity and have the effect of nullifying the very purpose for which the exemption was given. Courts are not concerned with the policy of the legislature or with the result, whether injuries or otherwise, by giving effect to the language used nor is it the function of the court when the meaning is clear not to give effect to it merely because it would lead to hardship. It cannot however be gainsaid that one of the duties imposed on the court in interpreting a particular provision of law, rule or notification is to ascertain the meaning and intendment of the legislature or of the delegate, which in exercise of the powers conferred on it, has made the rule or notification in question. In doing so, we must always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve.

In *Sambhu Nath Sarkar v. State of W. Bengal,*[480] on the question whether Parliament has alternative power either to pass a law providing for a longer period of detention than three months with the intercession of an Advisory Board under Article 22(4)(a) or to enact a law under Article 22(4)(b), read with Article 22(7)(a) providing for the longer detention without the intercession of such a Board, the Supreme Court held: If such a theory were accepted it would mean that Article 22(4)(a) would be totally nullified by Article 22(4)(b), read with Article 22(7)(a). Therefore, the construction that Article 22(4)(b) read with Article 22(7)(a) lays down an exception to Article 22(4)(a), harmonises the clauses.

While dealing with the questions of interpretation of S. 2(4) (1), the expression "debt due before the date of commencement" of the Act of the Karnataka Agriculturists Debt Relief Act, (Act No. 11 of 1970), Their Lordships of the Supreme Court in the case of *State Bank of Travancore v/s. Mohammed Mohammad Khan,*[481] had been pleased to observe at para 18 as under:

> "The plain language of the Clause if interpreted so plainly, will frustrate rather than further the object of the Act. Relief to agricultural debtors, who have suffered the oppression of private money-lenders, has to be the guiding star which must illumine and inform the interpretation of the beneficent provisions of the Act. When Clause (1) speaks of a debt due "before the commencement" of the Act to a banking company, it does undoubtedly mean what it says, namely, that the debt must have been due to a banking company before the commencement of the Act. But it means something more that

[480] (1973) 1 SCC 856 : 1973 SCC (Cri) 618
[481] AIR 1981 S.C. 1744

the debt must also be due to a banking company at the commencement of the Act. We quite see that we are reading into the clause the word "at" which is not there because, whereas it speaks of a debt due "before" the commencement of the Act, we are reading the clause as relating to debt which was due "at" and "before" the commencement of the Act to any banking company. We would have normally hesitated to fashion the clause by so restructuring it but we see no escape from that course, since that is the only rational manner by which we can give meaning and content to it, so as to further the object of the Act."

3.2 SUMMARY IN REGARD TO GOLDEN RULE OF INTERPRETATION

The greatest difficulty in interpreting statute is to get at the intention of the legislature without reading our own ideas of ideologies into it.

Where the words of an Act of Parliament are clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the Statute.[482] If the plain language involves absurdity in interpretation, the court is entitled to determine the meaning of the word in the context in which it is used keeping in view the objects sought to be achieved by the legislation. If the literal interpretation leads to anomaly and absurdity, the court having regard to the hardship and consequences that flow from such unambiguous language can explain the true intention of the legislation and then apply such interpretation to the facts on hand.

[482] *Croxford v. Universal Insurance Co.*, (1936) 2 K.B. pp.253, 281

The adherence to the ordinary meaning of the words used in the statute may be departed in a situation where it is found that it is a variance with the intention of the legislature, to be collected from the statute itself, or tends to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience, but no further.[483]

In number of cases the Courts have held that alternative shades of meanings may be chosen when there is absurdity or inconvenience. This has led to the rule that it is not the literal meaning that should be taken, but that the meaning to be chosen depends upon the context. Therefore, context prevails and one must choose a meaning for words according to the context. A word changes its meaning like a chameleon changes its colour in a particular environment. In fact, every word has two meanings- its denotation and its connotation. Denotation means one of its dictionary meanings, whereas connotation means the meaning obtained by its association with other words.[484] So, the rule would be: Read the whole Act and choose those meanings for words which fit the context. And, fitting the context would mean, (1) avoiding absurdity or inconvenience, and (2) avoiding conflict with other sections of the Act.

A interpretation to avoid absurdity is permissible- (a) Where the language of a statute is clear and unambiguous, it must be interpreted in its ordinary sense, even though it may lead to what the court considers a manifest absurdity, or repugnance, or mischief, or injustice.

(b) When the language of a statute is susceptible of two interpretations, one of which is reasonable and the other unreasonable, according to the court, the court should hold that the former must prevail.

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[483] *Becke v. Smith,* (1836) 2 M&W pp.191, 195; as referred to in the *Chang v. Governor of Pentonville* (1973) 2 All ER pp.205, 213

[484] *Vepa P. Sarathi, "The Interpretation of Statutes",* Second Edition 1981, p. 9

(c) Where the language of a statute is general, doubtful or obscure, the language may be modified or varied by interpretation in order to avoid any manifest absurdity, repugnance, mischief or injustice.

(d) If there are two interpretations, the more reasonable of the two should be adopted.

(e) An argument of inconvenience should not be lightly entertained.

(f) The legislature must not be supposed to intend to do a palpable injustice.

(g) When the language of a statute is capable of two interpretations, one of which works injustice and the other does not work any injustice, the latter must prevail.

To promote and advance the object and purpose of the enactment, to avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court is well justified in departing from the so-called golden rule of construction and in supplementing, the written word if necessary.[485]

Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the Judges should not proclaim that they are playing the role of a law-maker merely for an exhibition of judicial valour. They have to remember that there is a

[485] *M/s. Girdharilal & Sons v. Balbir Nath Mathur,* AIR 1986 SC 1499 : (1986) 2 SCC 237 : (1986) 1 Rent LR 314; (1986) 2 SCJ 422 : (1986) 2 Supreme 69 : (1986) 1 Curr CC 1070 :(1986 SCF B R C 249 : (1986) 30 DLT 68 : (1986) 2 Rent CR 361; *Gaya Prasad v. Suresh Kumar,* 1992 JLJ 143 (FB); Curr 2 Supreme 69

line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so."[486]

4 MISCHIEF – FUNCTIONAL – LOGICAL – SOCIAL ENGINEERING AND PURPOSIVE RULE OF INTERPRETATION

The duty of the judicature is to discover and to act upon the true intention of the legislature – the mens or sentential legis. The essence of the law lies in its spirit, not in its letter, for the letter is significant only as being the external manifestation of the intention that underlies it. Nevertheless in all ordinary cases the courts must be content to accept the literal legis as the exclusive and conclusive evidence of the sentential legis. They must in general take it absolutely for granted that the legislature has said what it meant, and meant what it has said.

The forms and uses of language are infinitely flexible and various. To imagine a language means to imagine a form of life. The exploration of the meaning of language thus becomes a kind of adventure. Language cannot be understood without the things we do.[487]

The law when enacted, in spite of the best effort and capacity of the legislators, cannot visualize all situations in future to which that law requires application. New situations develop and the law must be interpreted for the purpose of application to them, for finding solutions to

[486] *Frankfurter, Some Reflections on the Reading of Statutes in "Essays on Jurisprudence"*, Columbia Law Review, p.51
[487] *W. Friedmann, Ibid*, p. 272

the new problems. That is the area or field of judicial creativity which fills in gap between the existing law and the law as it ought to be.

Ita scriptum est is the first principle of interpretation. A judge may not add words that are not in the statute, save only by way of necessary implications; nor may he interpret a statute according to his own views as to policy, but if he can discover this from the statute or other materials, which it is permissible for a court to consult, he may interpret it accordingly.

A completely different approach to statutory interpretation is enshrined in the "mischief" rule. It requires the judges to look at the common law before the Act, and the mischief in the common law which the statute was intended to remedy; the Act is then to be construed in such a way as to suppress the mischief and advance the remedy. The mischief rule is also known as functional, purposive, logical and social engineering rule of interpretation.

In our country, like American law, two factors above all make the problem more complex. One is the presence of the Constitution as the supreme statute of the land. Its interpretation is closely and immediately concerned with basic political values, such as the extent of civic rights, the limits of both Union and State regulative power in the light of the 'due procedure of law" clauses, and other matters in which the technical legal factors are overshadowed by the political issues. The other fact is the sheer quantity of statutes which pour forth from the legislatures of the Union and of State jurisdictions.

The clash of philosophies, concealed behind different interpretations of a technical statutory term is again illustrated in many decisions of the Supreme Court.

4.1 MISCHIEF RULE

If, after looking at the words in question in the context of the Act as a whole, the court is undecided as to which meaning was intended by the legislature, or if, in the case of correcting errors or filling gaps, the interpreter is unable to sufficiently grasp the purpose of the Act, the court is faced with a further decision involving context: should the context be broadened even further so that material external to the statute itself is considered? This wider context may provide the court with a clear appreciation of the purpose of the statute, or the so-called mischief.

The mischief rule and evasion theory are not new in the realm of interpretation as external aids to the interpretation of statutes.

As early as the year 1584, it was observed in Heydon's case, 3 Co. Rep. 7a, that the office of all the Judges is always to make such construction as shall suppress the mischief, and advocate the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commando, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, probono publico.

In Heydon's case,[488] certain lands were the copyholds of a college. The warden and canons of the college granted a part of the land to W and his son for their lives and the rest to S and G at the will of the Warden and canons in the time of King Henry VIII. While so, the warden and canons granted all the lands to Heydon on lease for 80 years. Thereafter, the warden and canons surrendered their college to the King. The Attorney-General filed an information, on behalf of the Crown, for obtaining satisfaction in damages for the wrong committed in the lands,

[488] (1584) 3 Co Rep 7a : 76 ER 637

against Heydon, as an intruder on the lands. The Statute, 31 Henry VIII, provided that if a religious or ecclesiastical house had made a lease for a term of years, of lands in which there was an estate and not determined at the time of the lease, such lease shall be void. It was decided by the Barons of the Exchequer. For the sure and true interpretation of all Statutes in general, be they penal, or beneficial, restrictive or enlarging of the common law, four things are to be discerned and considered, (a) what was the common law before the making of the Act, (b) what was the mischief and defect for which the common law did not provide, (c) what remedy the Parliament hath resolved and appointed to cure the disease of the Common wealth, and (d) the true reason of the remedy. Then the office of all the Judges is always to make such construction as shall suppress the mischief and advance to remedy, and to suppress subtle inventions and evasions for continuance of the mischief and pro-privato commodo, and to add force and life to the cure and the remedy, according to the true intent of the makers of the act, pro bono publico. In this case, the common law was that religious and ecclesiastical persons might have leases for as many years as they pleased, the mischief was that when they perceived their houses would be dissolved, they made long and unreasonable leases : now the Statute 31 H. 8, both provide the remedy and principally for such religious and ecclesiastical houses which should be dissolved after the Act, such as the college in the instant case, that all leases of any land, whereof any estate of interest for life or years was then in being, should be void ; and their reason was, that it was not necessary for them to make a new lease, so long as a former had continuance ; and therefore the intent of the Act was to avoid doubling of estates implies itself deceit, and private respect, to prevent the intention of the Parliament. If the copyhold estate for two lives and the lease for 80 years

shall stand together, here will be doubling of estates, Simul and Semal (at one and the same time) which will be against the true meaning of the Act.

Later in 1898, Lindly M.R. observed in *Re May- fair Property Co.,*[489] that in order properly to interpret any statute it is necessary to consider how the law stood when the statute to be construed was passed and "what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief."

Following the aforesaid weighty observations, Courts have often considered the mischief or the object of the enactment as an aid to the interpretation of it and both restricted and extended meanings were given to expressions, depending on the context, on an application of the aforesaid Rule.

Thus, in the well-known case of *Smith v. Hughes,*[490] it was held construing the term "in a street" that the prostitutes who attracted the attention of passers-by from balconies or windows were soliciting in street and would still be within the mischief of the provision which prohibited soliciting " in a street" and Lord Parker C.J. observed that the Act was intended to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes and that viewed that way the precise place form which a prostitute addressed her solicitations to somebody on the road was wholly irrelevant.

A decision by Denning J. (as he then was) supplies an excellent – though unfortunately rare – example of sociological interpretation of a legal concept. A firm of builders had challenged a compulsory purchase order made by the City of Bristol under the Housing Act of 1936 for a

[489] (1898) 2 Ch. 28
[490] (1960) I W.L.R 830

municipal Housing scheme. The challenge was on the ground that the Act used the formula "Houses for the Working Classes", whereas the proposed houses were open to members of all classes, including doctors, engineers and salesmen.

Denning J, refused to quash the order and his reasoning included the following characteristic passage:

> "Working classes" fifty years ago denoted a class which included men working in the fields or the factories, in the docks or the mines, on the railways or the roads, at a weekly wage. The wages of people of that class were lower than those of two other members of the community, and they were looked upon as a lower class. That has now all disappeared. The social revolution in the last fifty years has made the words "working class" quite inappropriate today. There is no such separate class as the working class. Nor is there any social distinction between one or the other. No one of them is of a higher or lower class."[491]

In their classic work on the Meaning of Meaning, first published in 1923, Ogden and Richards challenged the widely held assumption that words have a real existence in themselves. They are, in fact, a special class of signs used in thinking and communication. Words and verbal analysis therefore receive meaning only by reference to an object or a situation in the real world.[492]

The meaning of any statement is the method of its "verification". Verification can be obtained either through experiment or through

[491] *Green & Sons v. Ministers of Health*, [1948] 1 K. B. 3438 as referred to by *W. Friedmann "Legal Theory"*, Fifth Edi. 2011, pp. 75-76
[492] *W. Friedmann, Ibid*, p. 270

mathematical – logical deduction. According to English Philosopher, the only genuine concepts are either empirical or logical.[493] If a statute establishes rent tribunals with power to adjust inequitable rents on application, one judicial interprets may stress the objective of social justice against the sanctity of contract, another may do the opposite.[494]

Ld. Judge Hand declared:

> "Courts have not stood helpless in such situations; the decisions are legion in which they have refused to be bound by the letter, when it frustrates the patent purposes of the whole statute."[495]

Of course, it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

Functional-logical interpretation is that which departs from the letter of the law, and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. It deals with the spirit of enacted law.[496]

The method of sociology in filling the gaps puts its emphasis on the social welfare. Social welfare is a broad term. We are applying the method of sociology when we pursue logic and coherence and

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[493] *W. Friedmann, Ibid,* p. 271
[494] *W. Friedmann, Ibid,* p. 456
[495] *Cabell v. Markham,* 148 F. 2nd 737[2nd Cir. 1945] as referred to by *W. Friedmann Ibid*, p. 458
[496] *Salmond, Ibid,* p. 132

consistency as the greater social values.[497] Statutes are generally of indefinite duration, and consideration of them in this way takes account of their changing functions and functioning.

Purposive interpretation has been elaborately dealt in by Francis Bennion in his Statutory interpretation. At Section 304, of the treatise purposive construction has been described in the following manner:-

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive-and-literal construction), or

(b) Applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive-and-strained construction).

The mischief rule is an invaluable aid to statutory interpretation, but the mischief or purpose of a statute is not always clearly apparent, or it looks different to different observers.

The total effect, however, is unquestionably one of the great elasticity in the interpretation of statutes. This may be illustrated by a few out of the innumerable relevant decisions.[498]

It is this principle of interpretation which enabled the reading of the word 'telegraph' to include 'telephone' within the meaning of that word in the Telegraph Acts of 1863 and 1869 when telephone was not invented, and therefore, could not be expressly mentioned in statute. For

[497] *Benjamin N. Cardozo, Ibid,* p. 75
[498] *W. Friedmann, Ibid,* p. 457

the same reason, the meaning of the word 'handwriting' in section 45 of the Indian Evidence Act, 1872 was construed to include 'typewriting' because the typewriting became available for common use much after 1872.

4.1.2 SUPPRESION OF MISCHIEF AND ADVANCE OF REMEDY

The rule in 'Heydon's case'[499] itself is sometimes stated as a primary canon of construction, sometimes as secondary[500]. We think that the explanation of this is that the rule is available at two stages. The first task of a court of construction is to put itself in the shoes of the draftsman – to consider what knowledge he had and, importantly, what statutory objectives he had – if only as a guide to the linguistic register. Here is the first consideration of the 'mischief'. Being thus placed in the shoes of the draftsman, the court proceeds to ascertain the meaning of the statutory language. In this task 'the first and most elementary rule of construction' is to consider the plain and primary meaning, in their appropriate register, of the words used. If there is no such plain meaning (i.e. if there is an ambiguity), a number of secondary canons are available to resolve it. Of these one of the most important is the rule in Heydon's case. Here, then, may be second consideration of the 'mischief'. [501]

(1) What were the issues the legislature was trying to address?

(2) What was the mischief Parliament wanted to check?

(3) What were the objects it intended to achieve through these amendment?

The best way to understood a law is to know the reason for it.

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[499] [1584] 3 Co Rep.7a]
[500] *Maxwell on Interpretation of Statutes*, 12th Edition (1969), pp 40, 96
[501] *Maunsell v. Olins & another*, (1975) 1 All ER pp. 16, 29

When the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words "of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law)"is the rule laid down in Heydon's case[502] which has "now attained the status of a classic". [503] The rule which is also known as 'purposive construction' or 'mischief rule', [504] enables consideration of four matters in construing an Act: (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy. The rule then directs that the courts must adopt that construction which "shall suppress the mischief and advance the remedy".

The rule was explained in the *Bengal Immunity Co. v. State of Bihar*[505], by S.R.DAS, C.J. as follows:

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case[506] was decided that for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:
>
> 1st-What was the common law before the making of the Act,

[502] (1584) 3 Co. Rep.pp.7a, 7b: 76 ER 637.
[503] *Kanailal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC pp.907, 910
[504] *Anderton v. Ryan*, (1985) 2 All ER (HL) pp.355, 359. *CROSS: "Statutory Interpretation*", 2nd Edition, p.17.
[505] AIR 1955 SC pp.661, 674; *CIT, Patiala v. Shahzada Nand & Sons*, AIR 1966 SC pp.1342, 1347; *Sanghvi Jeevraj Ghewar Chand v. Madras Chillies, Grains & Kirana Merchants Workers Union*, AIR 1969 SC pp.530, 533, *Union of India v. Sankalchand*, AIR 1977 SC pp.2328, 2358; *K.P.Verghese v. I.T.Officer*, AIR 1981 SC pp.1922, 1929: (1981) 4 SCC 173.
[506] *Heydon's case*, (1584) 3 Co. Rep pp.7a, 7b: 76 ER 637

2nd- What was the mischief and defect for which the common law did not provide,

3rd- What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro private commondo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act, pro bono publico."[507]

In *Eastman Photographic Materials Co. v. Comptroller General of Patents, Designs and Trademarks,*[508] the EARL OF HALSBURY reaffirmed the rule as follows:

"My lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three things being compared I cannot doubt the conclusion…. In the present case, there is no knowing with

[507] *Bengal Immunity Co. v. State of Bihar*, AIR 1955 SC pp.661, 674; *CIT, Patiala v. Shahzada Nand & Sons*, AIR 1966 SC 1342; *Sanghvi Jeevraj Ghewar Chand v. Madras Chillies, Grains & Kirana Merchants Workers Union*, AIR 1969 SC pp.530, 533; *Swantraj v. State of Maharashtra*, AIR 1974 SC pp.517, 520: 1974 SCC (Cri) 930; *Applin v. Race Relations Board* (1974) 2 ALL ER (HL) pp.73, 89; *Rani Choudhury v. Surajit Singh Choudhury*, AIR 1982 SC pp.1397, 1399: (1982) 2 SCC 596, *Babaji Kondaji Garod v. Nasik Merchants Co-operative Bank Ltd.* (1984) 2 SCC pp.50, 59: AIR 1984 SC 192; *Dr. Waliram Waman Hiray v. Mr. Justice B. Lentin*, AIR 1988 SC pp.2267, 2281

[508] (1898) AC 571 : 67 LJ Ch 628 : 79 LT 195

> certainty as to whether the legislature meant to enact Section 16 (3) with reference to a make using 'individual' in a narrow sense or intended to include a female also wherever appropriate…. The legislature certainly is guilty of using an ambiguous term. In order to resolve the ambiguity, therefore, we must by necessity have resort to the state of law before the enactment of the provision the remedy which the legislature resolved and appointed to cure the defect and, the true reasons of the remedy."

In the above mentioned formulations of the rule, as pointed out by LORD REID, "the word mischief is traditional". He explained it to include "the facts presumed to be known to Parliament when the Bill which became the Act in question was before it" and "the unsatisfactory state of affairs" disclosed by these facts "which Parliament can properly be supposed to have intended to remedy by the Act."[509]

The rule is more briefly stated by LORD ROSKILL:

> "Statutes should be given what has become known as a purposive construction, that is to say that the courts should identify the 'mischief' which existed before passing of the statute and then if more than one construction is possible, favour that which will eliminate the mischief so identified."[510]

In *Bhagwan Prasad v. Secretary of State*,[511] the appellant was declared to be disqualified to manage his property under Section 8(1)(d)(iii) and (iv), provisos (a) and (b) of the U.P. Court of Wards Act,

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[509] *Black-Clawson International Ltd. v. Papierwerke Waldhof Ascheffenburg*, (1975) 1 All ER (HL), pp.810, 814; *M/s. Goodyear India Ltd. v. State of Haryana*, AIR 1990 SC pp.781, 789

[510] *Anderton v. Ryan*, (1985) 2 All ER (HL) pp.355, 359

[511] (1940) LR 67 IA 197 : AIR 1940 PC 82

1912, on the ground that the local Government was satisfied that the aggregate annual interest payable on debts and liabilities exceeds 1/3 of the gross annual profits; and his extravagance and failure to discharge his liabilities was likely to lead to the dissipation of property. The appellant filed a suit that the declaration was ultra vires and illegal. It was observed:

> "The proviso expressly requires the satisfaction of the local Government and not that of a court. It is unlikely that a decision solemnly come to by the Governor-in-Council after full inquiry and when declared by the Act to be final, should thereafter be subject to review by the local courts of the Province. In coming to the conclusion their Lordships are in no way overlooking the importance of jealously scrutinising the jurisdiction conferred on executive bodies or giving no wider interpretation than is necessary to any limitation of the powers of the court. But however carefully the liberty of the subject has to be guarded, not only is there sound sense in making the decision of the Local Government final, but it has to be remembered that a right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and circumstances in which it is enacted are taken into consideration."

The Supreme Court in Bengal Immunity Co.'s case[512] applied the rule in construction of Art.286 of the Constitution. After referring to the state of law prevailing in the provinces prior to the Constitution as also to the chaos and confusion that was brought about in inter-State trade and commerce by indiscriminate exercise of taxing powers by the different

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

provincial legislatures founded on the theory of territorial nexus S.R..DAS, C.J., proceeded to say:

> "It was to cure this mischief to multiple taxation and to preserve the free flow of inter-State trade or commerce in the Union of India regulated as one economic unit without any provincial barrier that the constitution-makers adopted Art.286 in the Constitution".

The rule was again applied by the Supreme Court in similar context while construing the changes brought about by the Constitution 46th Amendment Act.[513]

An example is furnished in the construction of section 16 (3) of the Indian Income-tax Act, 1922. The sub-section reads: "In computing the total income of any individual for the purpose of assessment, there shall be included (a) so much of the income of a wife or minor child of such individual as arises indirectly or directly—". The question before the Supreme Court was whether word 'individual' occurring in the aforesaid sub-section meant only a male or also included a female. After finding that the said word in the setting was ambiguous, BHAGWATI, J., observed:

> "In order to resolve this ambiguity, therefore, we must of necessity have resort to the state of the law before the enactment of the provisions, the mischief and the defect for which the law did not provide; the remedy which the legislature resolved and

[513] *M/s. Goodyear India Ltd. v. State of Haryana*, AIR 1990 SC 781

appointed to cure the defect; and the true reason of the remedy".[514]

BHAGWATI J., criticising the mode of approach of the High Court stated:

> "The High Court plunged headlong into a discussion of the reason which motivated the Legislature into enacting section 16(3), and took into consideration the recommendations made in the Income-tax Enquiry Report, 1936 and also Statement of Objects and Reasons for the enactment of the same, without considering in the first instance whether there was any ambiguity in the word, 'individual' as used therein". It was pointed out that the rule in *Heydon's case*[515] is applicable only when language is ambiguous and the said rule in that case was only applied after first finding that the words 'any individual' in the setting are ambiguous."

After referring to these factors, BHAGWATI, J., proceeded on to point out:

> "It is clear that the evil which was sought to be remedied was the one resulting from the wide-spread practice of husbands entering into nominal partnerships with their wives and fathers admitting their minor children to the benefits of the partnerships of which they were members. This evil was ought to be remedied by the enactment of section 16 (3) in the Act. If the background of the enactment of section 16 (3) is borne in mind there is no room for any doubt that howsoever that mischief was

[514] *CIT, M.P.& Bhopal v. Sodra Devi*, AIR 1957 SC pp.832, 837, 838; *Mahijibhai v. Manibhai*, AIR 1965 SC pp.1477, 1482
[515] (1584) 3 Co Rep 7a: 76 ER 637

sought to be remedied by amending the Act, the only intention of the legislature in doing so was to include the income derived by the wife or minor child, in computation of the total income of male assessee, the husband or the father, as the case may be, for the purpose of assessment".

The words 'any individual' were therefore construed as restricted to males.

Similarly, in another case[516] GAJENDRAGADKAR, J., stated that the recourse to object and policy of the Act or consideration of the mischief and defect which the Act purports to remedy is only permissible when the language is capable of two constructions. But it has already been seen that for deciding whether the language used by the legislature is plain or ambiguous it has to be studied in its context. And 'context' embraces previous state of the law and the mischief which the statute was intended to remedy. Therefore, it is not really correct to say that the rule in Heydon's case is not applicable when the language is not ambiguous. The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule.

LORD SIMON explains this aspect by saying that the rule in Heydon's case is available at two stages; first before ascertaining the plain and primary meaning of the statute and secondly at the stage when the court reaches the conclusion that there is no such plain meaning.[517]

[516] *Kanailal Sur v. Paramnidhi Sadhukhan,* AIR 1957 SC pp.907, 910, 911
[517] *Maunsell v. Olins,* (1975) 1 All ER (HL) pp.16, 29

In *Stock v. Frank Jones (Tipton) Ltd.*,[518] Lord Simon has observed that:

> "Words and phrases of the English language have an extraordinary range of meaning. This has been a rich resource in English Poetry (which makes fruitful use of the resonances, overtones and ambiguities), but it has a concomitant disadvantage in English law (which seeks unambiguous precision, with the aim that every citizen shall know, as exactly as possible, where he stands under the law).
>
> But it is essential to bear in mind what the court is doing. It is not declaring 'Parliament has said X: but it obviously meant Y; so we will take Y as the effect of the statute'. Nor is it declaring 'Parliament has said X, having situation A in mind', but if Parliament had had our own forensic situation, B, in mind, the legislative objective indicates that it would have said Y; so we will take Y as the effect of the statute as regards B'. What the court is declaring is 'Parliament has used words which are capable of meaning either X or Y; although X may be the primary, natural and ordinary meaning of the words, the purpose of the provision shows that the secondary sense, Y, should be given to the words'. So too when X produces injustice, absurdity, anomaly or contradiction. The final task of construction is still, as always, to ascertain the meaning of what the draftsman has said, rather than to ascertain what the draftsman meant to say. But if the draftsmanship is correct these should coincide. So that if the words are capable of more than one meaning it is a perfectly legitimate intermediate step in

[518] [1978] 1 All ER 948, pp.953, 954

construction to choose between potential meanings by various tests (statutory, objective, justice, anomaly etc.) which throw light on what the draftsman meant to say.

It is idle to debate whether, in so acting, the court is making law. As has been cogently observed, it depends on what you mean by ‘make’ and ‘law’ in this context. What is incontestable is that the court is mediating influence between the executive and the legislature on the one hand and the citizen on the other. Nevertheless it is essential to the proper judicial function in the constitution to bear in mind: (1) that modern legislation is a difficult and complicated process, in which, even before a bill is introduced in a House of Parliament, successive drafts are considered and their possible repercussions on all envisageable situations are weighted by people bringing to bear a very wide range of experience; the judge cannot match such experience or envisage all such repercussions, either by training or by specific forensic aid; (2) that the bill is liable to be modified in a Parliament dominated by a House of Commons whose members are answerable to the citizens who will be affected by the legislations; an English judge is not so answerable; (3) that in a society living under the rule of law citizens are entitled to regulate their conduct according to what a statute has said, rather than by what it was meant to say or by what it would have otherwise said if a newly considered situation had been envisaged; (4) that a stark contradistinction between the letter and the spirit of the law may be very will in the sphere of ethics, but in the forensic process St John is a safer guide than St Paul, the logos being the informing spirit; and it should be left to

> peoples' courts in totalitarian regimes to stretch the law to meet the forensic situation in response to a gut reaction; (5) that Parliament may well be prepared to tolerate some anomaly in the interest of an overriding objective; (6) that what strikes the lawyer as an injustice may well have seemed to the legislature as no more than the correction of a now unjustifiable privilege or as a particular misfortune necessarily or acceptably involved in the vindication of some supervening general social benefit; (7)that the Parliamentary draftsman knows what objective the legislative promoter wishes to attain, and he will normally and desirably try to achieve that objective by using language of the appropriate register in its natural, ordinary and primary sense; to reject such an approach on the ground that it gives rise to an anomaly is liable to encourage complication and anfractuosity in drafting; (8) that Parliament is nowadays in continuous session, so that an unlooked-for and unsupportable injustice or anomaly can be readily rectified by legislation; this is far preferable to judicial contortion of the law to meet apparently hard cases with the result that ordinary citizens and their advisers hardly know where they stand."

Lord Simon has suggested that five considerations might be taken into account:

(1) The social background to identify the social or juristic defect;

(2) A conspectus of the entire relevant body of law;

(3) Long title and preamble stating legislative objectives;

(4) The actual words used; and

(5) Other statutes in pari material.[519]

An illustration of the application of the rule is also furnished in the construction of section 2(d) of the Prize Competitions Act, 1955. This section defines 'Prize Competition' as meaning "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The question was whether in view of this definition, the Act applies to competitions which involve substantial skill and are not in the nature of gambling. The Supreme Court, after referring to the previous state of law, to the mischief that continued under the law and to the resolutions of various States under Art.252(1) authorising Parliament to pass the Act stated:

> "Having regard to the history of legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill".[520]

Again in *Re Newspaper Proprietors' Agreement*,[521] the Court of Appeal held that the duty of the Registrar under the Restrictive Trade Practices Act, 1956 to maintain a register of agreements extended to agreements which had expired. This is how the extension was justified by Lord Denning M R:

> "It is natural enough for the Act to speak in terms of existing agreements which are brought before the Court, because those were the ones principally in mind, but there is no insuperable

[519] *Dias*, *Ibid*, pp. 175-176
[520] *RMD Chamarbaugwalla v. Union of India*, AIR 1957 SC pp.628, 631, 632
[521] (1962) L.R. 3 R.P. 360

> difficulty in applying its provisions to agreements which have expired or been determined before being brought to court. And when I bear in mind the mischief which it was intended to remedy, and the remedy which it has provided (by restraining agreements (in the future) to the like effect, I think that it should be construed so as to apply to agreements that have expired or been determined."

Similarly in *Lower v. Sorrel*,[522] where Agricultural Holdings Act 1948 provided that a notice to quit an agricultural holding would be invalid if it purported to terminate the tenancy before the expiration of 12 months from the end of the current year of tenancy, it was held to invalidate a notice to quit given before the commencement of the tenancy even though it did not fall within the strict words of the Section because it was felt that any other decision "would have the effect of defeating the purpose of the statute."

The application of the mischief rule and the theory of advancing the remedy, is not unknown even in the interpretation of penal statutes. For example, in the case of *Scatchard v. Joonson*,[523] the supply of beer to a drunken man and his sober companion was held to be within the mischief of the law even though it made "selling" liquor to the drunken man penal audit had been ordered and paid for in that case by the sober companion.

Similarly, in the case of *Gorman v. Standen*,[524] where a stepdaughter lived in brothel managed by her stepmother and had "a part at any rate of the say of what goes on at that house", it was held that the

[522] (1963) I Q.B. 959
[523] (1888) 57 L.J.M.C 41
[524] (1964) 1 Q.B. 294

stepdaughter was “assisting in the management of the brothel so as to attract the penal provisions (r) of the Sexual Offence Act, 1956. The phrases “prostitution”, “common prostitute” and “purpose of prostitution” used in that statute were held to be not limited to the cases of prostitution as commonly understood and to cover all cases in which “a women offers her body for purposes amounting to common lewdness for payment in return.”

Again the phrase “a person committing” the offence of driving a motor vehicle while unfit through drink appearing in Road Traffic Act 1960 was held in the case of *Wiltshire v. Berrett*,[525] to justify the arrest of a man who was “ apparently” committing the offence.

In *Hutchi Gowder v. Ricobdos Fathaimul*,[526] the question was whether a decree obtained in a suit to enforce a debt incurred after the Madras Agriculturists Relief Act, 1938, came into force, could be scaled down under Section 13 of the Act. Section 13 provided: ‘In any proceeding for recovery of a debt, the court shall scale down all interest due on any debt incurred by an agriculturist after the commencement of the Act so as not to exceed a sum calculated at 5- ½ % per annum S. I.’. It was contended that the words ‘decree debt’ should be read for ‘debt’ in the section, because, ‘debt’ is defined to include ‘decree debt’ also. The court rejected the contention on the ground that such an interpretation would disturb the entire scheme of the Act which deals with ‘debts’ and ‘decrees’ separately.

[525] (1966) 1 Q.B. 312

[526] [1964] 8 SCR 306: AIR 1965 SC 577; *Kanwar Singh v. Delhi Administration,* [1965] 1 SCR 7: AIR 1965 SC 871

In *CIT v. Shahzada Nand & Sons*,[527] it was observed that:

> " When the words of a section are clear, but its scope is sought to be curtailed by construction, the approach suggested by Lord Coke in Heydon's case (1584) 3 Rep 7b yields better results. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object to the whole Act; to consider, according to Lord Coke; 1. What was the law before the Act was passed; 2. what was the mischief or defect for which the law had not provided; 3. what remedy Parliament has appointed; 4. the reason of the remedy."

In *Sevantilal Maneklal Sheth v. CIT*,[528] the Supreme Court again observed that it is a sound rule of interpretation that a statute should be so construed as to prevent the mischief and to advance the remedy according to the true intention of the makers of the statute.

In *Virajlal M. & Co. v. State of M.P.*,[529] the Supreme Court observed :

> "A mere literary or mechanical construction would not be appropriate when important questions such as the impact of an exercise of a legislative power or constitutional provisions and safeguards thereunder are concerned. In cases of such a kind, two rules of construction have to be kept in mind – (1) that courts generally lean towards the constitutionality of the legislative measure impugned before them upon the presumption that a legislature would not deliberately flout a

[527] MANU/SC/0113/1966
[528] MANU/SC/0181/1967
[529] (1969) 2 SCC 248; *Madhav Rao Scindia v. Union of India,* (1971) 1 SCC 85: AIR 1971 SC 530

> constitutional safeguard or right, and (2) that while construing such an enactment the court must examine the object and purpose of the impugned Act, the mischief it seeks to prevent and ascertain from such factors its true scope and meaning."

Another example is furnished in the construction of section 195(3 of the Code of Criminal Procedure, 1973 which reads: "In clause (b), of sub-section (1) the term court means a Civil, Revenue or Criminal Court and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a court for the purposes of this section." The Supreme Court pointed out that this section was enacted to implement the recommendations of the 41st report of the Law commission which had referred to the unsatisfactory state of the law due to conflict of opinion between different High Courts as to the meaning of the word court in section 195 of the earlier Code and had recommended that a tribunal might be regarded as a court only if declared by the Act constituting it to be a court for purpose of section 195.[530] On this view it was held that a Commission of Inquiry constituted under the Commissions of Inquiry Act, 1952 was not a court for purposes of section 195 as it was not declared to be so under the Act.[531]

In the case of *Capt. Ramesh Chander Kaushal v. Veena Kaushal,*[532] the Supreme Court has held that:

> "9. ..... The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of

[530] *Dr. Waliram Waman Hiray v. Mr. Justice B. Lentin,* AIR 1988 SC pp.2267, 2280
[531] *Ibid,* p. 2283
[532] (1978) 4 SCC 70

two alternatives which advances the cause – the cause of the derelicts."

In *Utkal Contractors and Joinery Pvt. Ltd. And others v. State of Orissa and others*;[533] the Supreme Court said: -

> "9..... A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statement of Objects and Reasons when the bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed wheel..."

Again in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. And others*,[534] the Supreme Court said: -

> "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then

[533] AIR 1987 S.C. 1454
[534] AIR 1987 SC 1023

> section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

The modern method of interpretation is purposive or functional, and the literal rule of interpretation is out of vogue.[535]

In *S.P. Jain v. Krishna Mohan*,[536] the Supreme Court held that:

> "The meaning must suit the purpose and the idea behind the statute in question in a particular case. Further, Law should take a pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life style of the community. The purpose of the law provides a good guide to the interpretation of the meaning of the Act."

In *Kehar Singh v. State*,[537] the Supreme Court observed that during the last several years the grammatical or literal rule has been given a go-

[535] *Lord Dennings: The Discipline of Law"* as referred to in *M/s. Miracle Sugar Factory, Bhandsar v. State of U.P.,* AIR 1995 ALL 231
[536] AIR 1987 SC 222
[537] AIR 1988 SC 1883

by and now the Courts look for the intention of the legislative or the purpose of the Statute.

In *U.P. Bhodan Yojna Samiti v. Braj Kishore,*[538] the Supreme Court held that the expression "landless person" in the U.P. Bhoodan Yogna Act would mean landless peasant, and not any landless person as that was the legislative intent.

Similarly, in *Administrator, Municipal Corporation v. Dattatraya,*[539] the Supreme Court observed that, "the mechanical approach to construction is altogether out of step with the modern positive approach. The modern positive approach is to have a purposeful construction that is to effectuate the object and purpose of the Act."

The Supreme Court in *Director of Enforcement v. Deepak Mahajan,*[540] has observed that mere mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislation inane.

In the case of *Badshah v. Urmila Badshah Godse & Anr.,*[541] the facts were that the petitioner therein i.e. second wife claimed maintenance under Section 125 of the Code of Criminal Procedure. The husband contended that his second marriage with the petitioner was performed as per the Hindu rites during subsistence of his first marriage and therefore it was void under Hindu Marriage Act, 1955 and therefore second wife is not entitled to maintenance as she was not his legally wedded wife. According to factual aspects the husband had duped the second wife by not revealing her facts of his earlier marriage. The Trial Courts as well as

[538] AIR 1988 SC 2239
[539] AIR 1992 SC 1846
[540] AIR 1994 S.C. 1975
[541] (2014) 1 SCC 188

High Court allowed the maintenance petition and granted maintenance to wife and the daughter born out of the said wedlock. In the Supreme Court the same defence was raised on behalf of the respondent. While dealing with the interpretation the Supreme Court has observed as follows: -

> "..... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.
>
> The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision – *Libre recherché scientifique* i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances.

This approach is particularly needed deciding the issues relating to gender justice.

Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case[542] which became the historical source of purposive interpretation. The court would also invoke the legal maxim of construction *ut res magis valeat quam pereat* in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife."

In the case of *State of Andhra Pradesh v. Mohd. Hussain Alias Saleem,*[543] the question was relating to the interpretation of Section 21 of the National Investigation Agency Act, 2008, which provides for appeals

[542] (1584) 3 Co Rep 7a: 76 ER 637
[543] (2014) 1 SCC 258

against the Order passed by the Special Courts to the High Court. The relevant provision of Section 21 reads as follows: -

> "**21. Appeals.-** (1) notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.
>
> (2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.
>
> (3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.
>
> (4) Notwithstanding anything contained in sub-section (3) of Section 378 of the code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.
>
> (5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:
>
> Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.
>
> Provided further that no appeal shall be entertained after the expiry of period of ninety days."

The accused therein was facing prosecution for offences under Maharashtra Control of Organised Crime Act, 1999 as well as Unlawful Activities (Prevention) Act, 1967, Explosive Substance Act, 1908, Arms Act, 1959 as well as offences under Indian Penal Code.

The submission way of the accused were: (a) that order on a bail application is excluded from coverage of Section 21 (1), NIA Act, and it is only those appeals which are covered under Section 21 (1) that are to be heard by a Bench of two Judges of the High Court as laid down under Section 21 (2), and as appeal against refusal of bail lies to the high Court under Section 21 (4) and not under Section 21 (1), therefore, it need not be heard by a Bench of two Judges, and (b) that bail application which the applicant had filed before the High Court was one under Section 21 (4), MCOC Act read with Section 439 CrPC, therefore, it was fully maintainable before a Single Judge of the High Court.

While rejecting the contentions of the accused, the Supreme Court has held:

> "An order granting or refusing bail is an interlocutory order and appeal against such Order lies to the High Court only. No other interlocutory orders in matters, to which, National Investigation Agency Act applies are not appealable at all. It was further held that every appeal under NIA Act is required to be heard by Bench of two High Court Judges as provided under Section 21 (2). This is because of the importance that is given by the Parliament to the prosecution concerning the Scheduled Offences/Composite Trials. If Parliament in its wisdom has

desired that such appeal shall be heard only by Bench of two Judges of the High Court, the Supreme Court cannot detract from the intention of the Parliament. It has further held: -

> "We cannot ignore that it is a well-settled canon of interpretation that when it comes to construction of a section, it is to be read in its entirety, and its sub-sections are to be read in relation to each other, and not disjunctively. Besides, the text of a section has to be read in the context of the statute. A few sub-sections of a section cannot be separated from other sub-sections, and read to convey something altogether different from the theme underlying the entire section. That is how a section is required to be read purposively and meaningfully."

In *Jt. Registrar of Co-op. Societies v. T.A. Kuttappan,*[544] while interpreting the provisions of Kerala Cooperative Societies Act, 1969, duties and functions of the Committee of Management of the society, the Supreme Court observed as under:

> "The duty of such a committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

[544] (2000) 6 SCC 127

In *Associated Timber Industries v. Central Bank of India,*[545] upon purposive and meaningful interpretation, the Supreme Court held that banks do not come under the purview of the Assam Money Lenders Act.

In *Allahabad Bank v. Canara Bank,*[546] interpreting the provisions of Recoveries of Debts Due to Banks and Financial Institutions Act, 1993, our Supreme Court held that the banks or financial institutions need not obtain leave of the Company Court to invoke the jurisdiction of Debts Recovery Tribunal for recovering the debts.

In *K. Duraiswamy v. State of Tamil Nadu,*[547] it was held that:

> "the mere use of the word 'reservation' per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of the expression will necessarily depend upon the purpose and object with which it is used."

In the case of *Ananta Kumar Bajaj v. State of W.B.,*[548] it was observed that:

> "It is a well settled principle of law that despite absence of a rule, the Selection Committee is entitled to short list the candidates. Rule 9(c)(ii) of the rules only gives a statutory

[545] (2000) 7 SCC 93
[546] (2000) 4 SCC 406 : AIR 2000 SC 1535
[547] (2001) 2 SCC 538
[548] 1999 (4) SLR 661 (Cal)

recognition to the aforementioned service jurisprudence. In a case of this nature, therefore, the doctrine of purposive interpretation should be invoked, and in such a situation the word 'written test' must be held to be incorporated within the word 'interview'. The answer to the question posed in this appeal, thus in the opinion of the Court, should be rendered in affirmative as otherwise the word 'written examination' would become totally otiose."

Uday Mohanlal Acharya v. State of Maharashtra,[549] held that the provision of a statute have to be interpreted preferably in consonance with the purpose and object of the Legislation.

In *Moreshwar Balakrishna Pandare v. Vithal Vyanku Chavan*,[550] the Apex Court applying the rule of purposive construction observed that the reasoning adopted by the High Court in support of its finding that the suit was barred by limitation is fallacious in as much as it defeats the object and the purpose of the statute enacted by the Legislature specially to give relief to debtors in the State.

In *Maruti Udyog Ltd. v. Ram Lal and Ors.*,[551] while interpreting the provisions of Industrial Disputes Act, 1947, the rule of purposive construction was followed.

Balram Kumavat v. Union of India and Ors.,[552] held that if special purpose is to be served even by a special statute, the same may not always be given any narrow and pedantic, literal and lexical construction nor doctrine of strict construction should always be adhered to.

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[549] MANU/SC/0222/2001
[550] (2001) 5 SCC 546
[551] MANU/SC/0056/2005
[552] MANU/SC/0628/2003

In *Pratap Singh v. State of Jharkhand and Anr.*,[553] the Supreme Court emphasized assignment of contextual meaning of a statute having regard to the constitutional as well as international law operating in the field.

Validity of Public Interest litigation filed by the defendants questioning the validity of Development Control Regulation No. 58 (DCR 58) framed by the State and sale of surplus land occupied by cotton mills allowed by the High Court was challenged. The court clarified that the Legislative Act confers guidelines which advocates the necessity of environmental consequences together with other relevant factors. Literal interpretation of the Act and the Rules would give rise to many anomalies. It would not advance the object and purport of the Act. It would also create difficulties in implementing the statutory scheme.[554]

In the case of *State of Gujarat v. Salimbhai Abdulgaffar Shaikh and Ors.*,[555] it was held that the Section 49 of POTA cannot be read in isolation, but must be read keeping in mind the scope of Section 34 whereunder an accused can obtain bail from the High Court by preferring an appeal against the order of the Special Court refusing bail. In view of this specific provision, it will not be proper to interpret Section 49 in the manner suggested by learned counsel for the respondents.

P.S. Sathappan (Dead) By LRS v. Andhra Bank Ltd. and Ors.,[556] observed that in the guise of purposive construction one cannot interpret a section in a manner which would lead to a conflict between two sub-sections of the same section.

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[553] MANU/ SC/ 0075/2005
[554] *Bombay Dyeing and Mfg. Co. Ltd v. Bombay Environmental Action Group and Ors.*, AIR 2006 SC 1489
[555] AIR 2003 SC 3224
[556] MANU/SC/0873/2004

It is clear that unless there is any such ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principles and practice.[557]

In the latter event the following observations as of LORD LINDLEY, M.R., in *Thompson v. Lord Clanmorris,*[558] would be apposite:

> "In construing any statutory enactment regard must be had not only to the words used, but to the history of the Act and the reasons which led to its being passed. You must look at the mischief which had to be cured as well as at the cure provided."

In *In re Mayfair Property Co.,*[559] LINDLEY, M.R., in 1898, found the rule 'as necessary now as it was when LORD COKE reported *Heydon's case.*[560]

Though, generally, it is not legitimate to refer to the statement of objects and reasons as an aid to the construction or for ascertaining the meaning of any particular word used in the Act or statute[561] nevertheless, the court in *State of West Bengal v. Subodh Gopal Bose,*[562] referred to the same for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of evil which he sought the remedy.

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[557] *Narin v. University of St. Adrews, (1909) AC 147 : 78 LJ PC 54 : 100 LT 96*
[558] (1900) 1 Ch 718 : 69 LJ Ch 337; *R. v. Paddington & St. Marylebone Rent Tribunal,* (1949) 65 TLR 200 : [1949] 1 KB 666 : [1949] 1 ALL ER 720
[559] (1898) 2 Ch 28 : 67 LJ Ch 337
[560] (1584) 3 Co Rep 7a : (1584) 76 ER 637
[561] *Aswani Kumar Ghosh v. Arbinda Bose,* [1953] SCR 1 : AIR 1952 SC 369
[562] [1954] SCR 587 : AIR 1954 SC 92

The dissenting judge, however, held that the word 'individual' has been used in its accepted connotation of either male or female, and when the legislature wanted to confined the operation of a sub-clause to the male individual only, it used appropriate words.[563]

In *Workmen v. DTE Management,*[564] the services of an assistant medical officer of the respondent were terminated and the workmen raised a dispute which was referred to the Industrial Tribunal. Industrial dispute is defined in Section 2(k) of the Industrial Disputes Act, 1947, as a dispute, among other things, between employers and employees in connection with the non-employment of any person. On the question whether the dispute in relation to a person who is not a workman within the meaning of the Act still falls within the scope of Section 2(k), it was held:

> "The definition clause must be read in the context of the subject-matter and scheme of the Act, and consistently with the objects and the provisions of the Act. It is a well settled rule that, 'the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strict grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained."[565]

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[563] *Kanailal v. Paramnidhi,* [1958] SCR 360 : AIR 1957 SC 907
[564] [1958] SCR 1156 : AIR 1958 SC 353
[565] *Maxwell,* 9th Ed., p. 55

In *State of U.P. v. C. Tobit,*[566] the appellant filed an appeal against acquittal on the last day of the period of limitation, but the memorandum of appeal was not accompanied with a certified copy of the judgment of the trial court. The appeal was dismissed as the certified copy was filed beyond time. Holding that the 'copy' referred to in Section 419, Cr. P.C., meant 'a certified copy', the Supreme Court observed: It is well settled that 'the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is to be found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or with occasion on which they are used, and the object to be attained.'[567]

In *Kangsari Haldar v. State of West Bengal,*[568] the appellants were prosecuted for certain offences and were tried before the Tribunal constituted under the West Bengal Tribunals of Criminal Jurisdiction Act, 1952. By a notification issued under the Act, certain area in which the offences were committed was declared to be disturbed area. The appellants moved the High Court for quashing the proceedings against them on the ground that the Act allowed the Government to declared an area in which there was disturbance in the past, to be disturbed area and hence was discriminatory between persons who had committed the offences and whose trials had already been concluded under the normal

[566] [1958] SCR 1275 : AIR 1958 SC 414; *Sirajul Haq v. Sunni Central Board,* [1959] SCR 1287 : AIR 1959 SC 198
[567] *Maxwell,* 10th Ed., p. 52
[568] [1960] 2 SCR 646 : AIR 1960 SC 457; *Mahadeolal Kanodia v. Administrator General of West Bengal,* [1960] 3 SCR 578 : AIR 1960 SC 936

procedure and others whose trials has not concluded and who had to be tried under the special procedure prescribed by the Act. It was held:

> "In considering the validity of the impugned statute on the ground that it violates Article 14, it would first be necessary to ascertain the policy underlying the statute and the objet intended to be achieved. In this process the preamble to the Act and its material provisions can and must be considered. The preamble shows that the legislature was dealing with the problem raised by the disturbances which had thrown a challenge to the security of the State and grave issues about the maintenance of public peace and tranquillity and safeguarding of industry and business. It therefore decided to meet the situation by providing for speedy trial of the scheduled offences and thus the object of the Act and the principles underlying it are not in doubt."

In *Manoharlal v. State of Punjab,*[569] the appellant, who was a shopkeeper, was convicted for contravening the provisions of Section 7(1) of the Punjab Trade Employees Act, 140. Under the Act, he was required to keep his shop closed on the day which he had chosen as a 'closed day'. He contended that the Act did not apply to his shop as he did not employ any stranger but he himself, alone, worked in the shop. In support of the contention he relied on the long title which reads : 'An Act to limit the hours of work of shop assistants and commercial employees and to make certain regulations concerning their holidays, wages and terms of service.' It was held that:

> "The long title no doubt indicates the purpose of the enactment, but it cannot obviously control the express operative provisions

[569] [1961] 2 SCR 43 : AIR 1961 SC 418, *Pentiah v. Veeramallappa,* [1961] 2 SCR 295 : AIR 1961 SC 1107

> of the Act, such as Section 7(1). The purpose of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested. It is in the light of this purpose that the provisions of the Act have to be construed. The Act is concerned with the welfare of the worker and seeks to prevent injury to it, not merely from the action of the employer but also from his own."

In *P. J. Irani v. State of Madras*,[570] there was a dispute between the owners of a cinema house, and receivers were appointed to administer it. The receiver offered a lease of the cinema house to the existing lessee for 21 years but he was willing to take it only for 7 years. Under directions of the court, the receivers executed a lease for 5 years in favour of the lessee (appellant) and a reversionary lease thereafter in favour of another. But before the lease in favour of the lessee expired, the Madras Buildings (Lease and Rent Control) Act came into force protecting the tenant from eviction. Therefore, the reversioner approached the Government to exempt the cinema house from the operation of the Act under Section 13. Thereupon, the lessee challenged the vires of the section on the ground that it violated the Article 14 of the Constitution. The Supreme Court was in complete agreement with the approach and conclusion of the High Court. The High Court had pointed out that:

> "It was not correct to say that the enactment did not sufficiently disclose the policy and purpose of the Act which furnish adequate guidance for the basis of the exercise of the power of exemption. The preamble of the Act said, 'whereas it is

[570] [1962] 2 SCR 169 : AIR 1961 SC 1731; *U. P. v. Vijay Anand,* [1963] 1 SCR 1 : AIR 1963 SC 946

> expedient to regulate the letting of residential and non-residential buildings and to control the rents of such buildings and to prevent unreasonable eviction of tenants therefrom in the State.' This meant that the legislation was enacted for achieving three purposes: (1) the regulation of letting, (2) the control of rents, and (3) the prevention of unreasonable eviction of tenants from residential and non-residential buildings. Though the enactment thus conferred rights on tenants, it was possible that such statutory protection could have caused great hardship to a particular landlord or was the subject of abuse by the tenant. It was for this reason that a power of exemption in general terms was conferred on the State Government which, however, could not be used for the purpose of discrimination between tenant and tenant. Therefore Section 13 is constitutionally valid."

Under Section 6 of the Probation of Offenders Act, 1958, when any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment, the court by which the person is found guilty shall not sentence him to imprisonment unless..... Under Section 11, notwithstanding anything contained in the Criminal Procedure Code or nay other law, an order under this Act may be made by any court.... On the question whether the jurisdiction or powers envisaged by Section 6 are within the scope of the jurisdiction conferred by Section 11, it was held in *Ramji Missir v. State of Bihar*[571] that:

> "An injunction enacted by this Act against passing a sentence of imprisonment can hardly be termed passing an order. However the words in Section 11 are not to be construed so strictly and literally, but to be understood to mean 'to exercise the powers

[571] 1963 Supp 2 SCR 745 : AIR 1963 SC 1088

> or jurisdiction under the act.' This wider interpretation might perhaps be justified by the scope and object of the section. Section 11 is to apply notwithstanding anything contained in the Code or any other law to all courts empowered to sentence offenders. To read a beneficial provision of this universal type in a restricted sense, so as to confine the powers of these courts to the exercise of the powers under Section 3 and 4 alone would not be in accord with sound principles of statutory interpretation."

In *New India Sugar Mills v. Commissioner of Sales Tax,*[572] the question was whether statutory sales in compliance with the directions issued by the Controller under Sugar and Sugar Products Control Order, are not liable to sales tax under the Bihar Sales Tax Act, 1947, on the ground that there is no contract of sale. It was observed that:

> "It is a recognised rule of interpretation of statutes that the expression used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the court would be justified in assuming that the legislature used the expression in the sense which would carry out it object and reject that which rendered the exercise of its powers invalid. In interpreting a statute the court cannot ignore its aim and object. It is manifest that the Bihar Legislature intended to enact machinery within the frame work of the Act for levying sales tax on transactions of sale and the power of legislature being restricted to imposing tax on

[572] 1963 Supp 2 SCR 459 : AIR 1963 SC 1207

sales in the limited sense, it could not be presumed to have deliberately legislated outside its competence. The definition of 'sale' does not justify the inference that transfers of property in goods were not to be the result of a contract of sale. If any such intention was attributed to the legislature, the legislation may be beyond the competence of the legislature."

In *Mahibjibhai v. Manibhai*,[573] the question was whether an application under Section 144, C.P.C. is an application for execution. It was held by the majority that:

> "Different views can be taken on a fair construction of the section. In such a case the rule of construction of a statute applicable is stated by LORD COKE, which is adopted by Maxwell, and it is found[574] : 'To arrive at the real meaning, it is always necessary to get an extract conception of the aim, scope and object of the whole Act : to consider, according to LORD COKE : (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; (4) the reason of the remedy.....' We realise that the opposite construction for which the appellant contended is also a possible one; but it ignores the history of the legislation and the anomalies that it introduces. On a procedural matter pertaining to execution when a section yields to two conflicting constructions, the court shall adopt a construction which

[573] [1965] 2 SCR 436 : AIR 1965 SC 1477; *Sheikh Gulfam v. Sanat Kumar,* [1965] 3 SCR 364 : AIR 1965 SC 1839; *Deputy Custodian v. Official Receiver,* (1965) 1 SCR 220 : AIR 1965 SC 951; *Sevantilal v. Income Tax Commissioner, Bombay,* (1868) 2 SCR 360 : AIR 1968 SC 697

[574] *Maxwell,* 11th Ed., p. 18

maintains rather than disturb the equilibrium in the field of execution. We therefore held on a fair construction of the section that an application under it is an application for execution of a decree."

In *State of Punjab v. Amar Singh*,[575] the question was whether Section10-A of the Punjab Security of Land Tenures Act, 1953, overrides Section 18 of the Act. The majority held that it does and observed:

"(1) We have to bear in mind the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislature in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware court, informed on this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up. Any interpretation unaware of the living aims, ideology and legal anatomy of an Act will miss its soul substance – a flaw which, we feel, must be avoided particularly in socio-economic legislation with a dynamic will and mission.

(2) It is useful to read the objects and reason relating to the clause of a bill to illumine the idea of the law, not to control its

[575] (1974) 2 SCC 70; *King Emperor v. Benoari Lal Sharma,* 1945 LR 72 IA 57 : AIR 1945 PC 48

amplitude. Moreover, the purpose, as revealed in the statement of objects is plain."

However, the dissenting judge held that Section 10-A does not override Section 18 and he observed :

> "Before embarking upon a consideration of this question, it is necessary to remember two fundamental canons of interpretation applicable to such statutes. The first is that if claim lies between two alternative constructions, 'that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.[576] The second is that if there is an apparent conflict between different provisions of the same enactment, they should be so interpreted that, if possible, effect may be given to both."

In *State of Haryana v. Sampuran Singh,*[577] the question was the scope of Sections 19-B and 10-A of the Punjab Security of Land Tenures Act, 1953. The Supreme Court in appeal held that:

> "… under section 19-B, if any person acquires any land by inheritance or bequest or gift which, with the land already held by him exceeds in the aggregate the permissible area then he shall furnish to the Collector a return indicating the permissible area he desires to retain. Section 10-A(b) provides that lands acquired by inheritance are saved insofar as disposition of such lands are concerned. The drafting of this saving clause is

[576] *Maxwell,* 12th Ed., p. 45
[577] (1975) 2 SCC 810

> cumbersome but the sense is and, having regard to the conspectus, can only be, that although in the hands of the propositus, it is surplus land, if among the heirs it is not, then their transfers will not be affected by interdict of Section 10-A(a). Assuming some inconsistency primacy goes to Section 19-B, which effectuates the primary object. It is a settled law that court should favour an interpretation that promotes a general purpose of an Act rather than one that does not."

In *Chintan J. Vaswani v. State of W.B.,*[578] the appellant was a proprietor and manager of a bar which was in fact a brothel. He was convicted under Sections 7(2)(a) and 3(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956, and orders for eviction were given under Section 10(2) even though the brothel was beyond 200 yards of any public place referred to under Section 7(1). It was held that:

> "Section 18(1) *proprio vigour* applies only to brothels within the distance of 200 yards of specified types of public institutions, and hence in the present case that section will not apply; but Section 18(2) operates not merely on places within the offending distance of 200 yards but in all places where the activity of prostitution has been conducted."

The Court further observed that:

> "The home truth that legislation is for the people and must, therefore, be plain enough has hardly been realised by our lawmakers. Judges, looking at statutes, are forced to play a linguistic game guessing at a general legislative purpose and straining at semantics. In the present case, we have had to reach

[578] (1975) 2 SCC 829

> a conclusion against the appellant by broadening the dimensions of Heydon[579] importing a context purpose teleological approach. There are many canons of statutory construction but the golden rule is that there is no golden rules, if we may borrow a Shavian epigram, we must emphasise once more that legislative draftsmen and legislators must not confuse each other and start talking to their real audience – the people – by writing law in unmistakable and simple language."

In *Union of India v. B. N. Prasad,*[580] it was held that any superior officer may file a complaint under Section 138, Railways Act, 1870 for eviction of refreshment contractor at the railway station. The respondent was a contractor for supplying food in the refreshment room at the railway station. After the agreement with him had expired he was given notice by the railway administration for evicting from the premises and as he failed to do so, the Deputy Chief Commercial Superintendent filed a complaint under Section 138 and a magistrate directed the eviction of the respondent. The Supreme Court in appeal held:

> "A close perusal of the section reveals that the provision has widest amplitude and takes within its fold not only a railway servant but even a contractor who is engaged for performing services to the railway and the termination of his contract by the railway amounts to his discharge as mentioned in the section. As the provision is in public interest meant to avoid inconvenience and expense for the travelling public and gear up efficiency of the railway administration, it must be construed liberally, broadly and meaningfully so as to advance the object

[579] (1584) 76 ER 637
[580] (1978) 2 SCC 462

> sought to be achieved by the Railways Act. The section requires that an application should be made by or on behalf of the Railway Administration. It does not require that any person holding a particular post should be authorised to file the complaint. A contractor is not covered by Article 311 of the Constitution."

In *State of M.P. v. Shri Ram Raghubir Prasad Agrawal,*[581] one of the subjects of secondary education in Madhya Pradesh was 'Rapid Reading', for which the State Government after laying down syllabus, produced necessary textbooks and distributed the same among the students in many schools purportedly in exercise of its power under Section 5 of the M.P. Act 13 of 1973. Until then the books of the respondent, who is a private publisher, were in use for 'Rapid Reading'. He, therefore, challenged the Government action by a writ petition under Article 226 claiming for withdrawal of the government's textbooks. The High Court allowed the petition. The Supreme Court, on appeal, held:

> "Language permitting, the appropriate interpretational canon must be purpose-oriented. Therefore, the expression 'syllabi' must be so interpreted as to fulfil the purpose of Section 3 and 4 which means there must be sufficient information for those concerned to know generally what courses of instruction are broadly covered under the heading mentioned, so that they may offer textbooks for such courses. If there is total failure here the elements of syllabi may well be non-existent, even though experts might claim otherwise. The law is what the judges interpret the statue to be, not what the experts in their monopoly of wisdom asserts it to be."

[581] (1979) 4 SCC 686

In *Bombay Dyeing and Mfg. Co. Ltd. v. Bombay Environmental Action Group and Ors.*,[582] the Supreme Court has observed that:

> "It is also a well-settled principle of law that commonsense construction rule should be taken recourse to in certain cases as has been adumbrated in Halsbury's Laws of England (Fourth Edition) Volume 44(1) (Reissue).
>
> In Halsbury's Laws of England (Fourth Edition) Volume 44(1) (Reissue), the law is stated in the following terms:
>
> 1392. Commonsense Construction Rule. It is a rule of common law, which may be referred to as the commonsense construction rule, that when considering, in relation to the facts of the instant case, which the opposing constructions of the enactment would give effect to the legislative intention, the court should presume that the legislator intended commonsense to be used in construing the enactment.
>
> 1477. Nature of presumption against absurdity. It is presumed that Parliament intend that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction which produces an absurd result, since this is unlikely to have been intended by Parliament. Here 'absurd' means contrary to sense and reason, so in this context the term 'absurd' is used to include a result which is unworkable or impracticable, inconvenient, anomalous

[582] AIR 2006 SC 1489

or illogical, futile or pointless, artificial or productive of a disproportionate counter-mischief.

1480. Presumption against anomalous or illogical result. It is presumed that parliament intends that the Court, when considering, in relation to the facts of the instant case, which of the opposing constructions of an enactment corresponds to its legal meaning, should find against a construction that creates an anomaly or otherwise produces an irrational or illogical result. The presumption may be applicable where on one construction a benefit is not available in like cases, or a detriment is not imposed in like cases, or the decision would turn on an immaterial distinction or an anomaly would be created in legal doctrine. Where each of the constructions contended for involves some anomaly then, in so far as the court uses anomaly as a test, it has to balance the effect of each construction and determine which anomaly is greater. It may be possible to avoid the anomaly by the exercise of a discretion. It may be, however, that the anomaly is clearly intended, when effect must be given to the intention. The court will pay little attention to a proclaimed anomaly if it is purely hypothetical, and unlikely to arise in practice."

The Constitution Bench of the Supreme Court in *Iqbal Singh Marwah v. Meenakshi Marwah,*[583] while interpreting Section 195 CrPC, held that any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded.

[583] (2005) 4 SCC 370 : 2005 SCC (Cri) 1101; *Perumal v. Janaki,* (2014) 5 SCC 377

In *K. V. Mutthu v. Angamuthu Ammal*,[584] the Supreme Court has made following observations:

> "While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.
>
> Where the definition or expression, as in the instant case, is preceded by the words 'unless the context otherwise requires,' the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed could not be applied."

In *R.L. Arora v. State of U.P.*,[585] it was observed that:

> "9… a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used in a provision of the statute."

Similarly, in *TELCO Ltd. v. State of Bihar*,[586] it was held:

> "15… The method suggested for adoption, in cases of doubt as to the meaning of the words used is to explore the intention of

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[584] (1997) 2 SCC pp.53, 57, 58; *Paul Enterprises Case*, (2009) 3 SCC pp.709, 718; *National Insurance Co. Ltd., v. Kirpal Singh*, (2014) 5 SCC 189
[585] AIR 1964 SC 1230 : (1964) 6 SCR 784; AIR pp.1236-37
[586] (2000) 5 SCC 346; SCC p. 353

> the legislature through the words, the context which gives the colour, the context, the subject-matter, the effects and consequences or the spirit and reason of the law. The general words and collocation or phrases, howsoever wide or comprehensive in their literal sense are interpreted from the context and scheme underlying in the text of the Act."

In *Joginder Pal v. Naval Kishore Behal*,[587] it was held:

> "27… It is true that ordinary rule of construction is to assign the word a meaning which hit ordinarily carries. But the subject of legislation and the context in which a word or expression is employed may require a departure from the literal construction."

In the case of *Sarah Mathew v. Institute of Cardio Vascular Diseases & Ors.*,[588] the question before the Constitution Bench was (i) whether for the purposes of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognisance of the offence? and (ii) which of the two cases i.e. *Krishna Pillai v. T.A. Rajendran*[589] or *Bharat Damodar Kale v. State of A.P.*,[590] lays down the correct law? While holding that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution and not the date on which the

[587] (2002) 5 SCC 397; SCC, p.411
[588] (2014) 2 SCC 62
[589] 1990 Supp. SCC 121
[590] (2003) 8 SCC 559

Magistrate takes cognisance, it was held that decision of *Bharat Kale* lays down the correct law, the Supreme Court has observed as follows:

> "It is true that there is no ambiguity in the relevant provisions. But, it must be borne in mind that the word "cognizance" has not been defined in CrPC. This Court had to therefore interpret this word. We have adverted to that interpretation. In fact, we have proceeded to answer this reference on the basis of that interpretation and keeping in mind that special connotation acquired by the word "cognizance". Once that interpretation is accepted, Chapter XXXVI along with the heading has to be understood in that light. The rule purposive construction can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose."

The Supreme Court has also referred to the following paragraph from Justice G.P. Singh's *"Principles of Statutory Interpretation"*[591]:

> "With the widening of the idea of context and importance being given to the rule that the statute has to be read as a whole in its context it is nowadays misleading to draw a rigid distinction between literal and purposive approaches. The difference between purposive and literal constructions is in truth one of degree only. The real distinction lie n the balance to be struck in the particular case between literal meaning of the words on the

[591] 13th Ed., 2012

one hand and the context and purpose of the measure in which they appear on the other. When there is a potential clash, the conventional English approach has been to give decisive weight to the literal meaning but this tradition is now weakening in favour of the purposive approach for the pendulum has swung towards purposive methods of constructions."

4.2 SUMMARY IN REGARD TO MISCHIEF-FUNCTIONAL-LOGICAL-SOCIAL ENGINEERING AND PURPOSIVE RULE OF INTERPRETATION

More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the Courts should keep in mind the objectives or purpose for which statute has been enacted. Legislation has an aim, it seeks to obviate some mischief, to supply an adequacy, to effect a change of policy, to formulate a plan of Government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statues, as read in the light of other external manifestations of purpose.[592] This principle of purposive and meaningful interpretation has been followed by the Supreme Court in a number of cases.

The task of interpreting statute gives judges the chance of expressing their own opinions as to social policy; and, inevitably, their opinions do not always command universal assent. However, the judges are on fairly safe ground if they apply the "mischief" rule, otherwise known as the rule in *Heydon's case.*[593] This bids them to look at the common law (i.e. the legal position) before the Act, and the mischief that

[592] Justice Frankfurter of U.S. Supreme Court, "Some Reflections on the Reading of Statutes", 47 Columbia Law Reports 527

[593] (1584) 3 Co. Rep. at 7B, 76 E.R. 638

the statute was intended to remedy; the Act is then to be construed in such a way as to suppress the mischief and advance the remedy.

Judges vary, however, in the extent to which they make use of this rule (mischief rule), which allows a mere functional approach, to legislation. On the whole comparatively little use has been made of it.[594]

The practical utility of the rule depends to some extent upon the means that the courts are entitled to employ in order to ascertain what mischief the Act was intended to remedy. In practice, the judge generally divines the object of a statute merely from perusal of its language in the light of his knowledge of the previous law and general knowledge of social conditions.

Where a statute has been clearly enacted to suppress mischief of one sort this rule will not allow it to be so interpreted as to suppress mischief of a different sort which was quite outside the intention of the legislature.[595]

The Court must adopt that construction which, "suppresses the mischief and advances the remedy." The best way to understand a law is to know the reason for it. In order to understand what the law really is, it is essential to know the "why" and "how" of the law. Why the law is what it is and how it came to its present form?[596]

The propositions in Heyden's Case were probably adequate to deal with the limited kind of legislation that then existed. Today, however, statutes put into effect new social experiments and operate on a scale much larger than before. Heyden's case itself is thus somewhat

[594] *Salmond, Ibid*, p. 140
[595] *Salmond, Ibid*, p. 139
[596] *Novartis AG v. Union of India and Ors.*, AIR 2013 SC 1311

inadequate; it needs to be broadened and adopted to meet the conditions of today.

Law has to be interpreted according to the current societal standards – needs. The functional method must, in fact, supplement the idealistic approach, by laying bare possible discrepancies between legal ideology and social reality.

The interpretation of laws has to be purposive. This means the interpretation must sub serve the object of the enactment of the law keeping in view the supreme law, the constitution. Every law has to accord with the constitution, otherwise it suffers the defect of invalidity or unconstitutionality and, therefore, even while interpreting statute law, one must always bear in mind the provisions of the constitution, the constitutional goals and the constitutional purpose which is sought to be achieved.

The text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.[597] Court has to give effect to true object of the Act by adopting a purposive approach.[598] The approach here laid down clearly contemplates inquiry into the policy and purpose behind the statute.

Purposive interpretation must be such as to preserve constitutionality of the statute where two interpretations are possible.[599] It is obvious that 'meaning' with reference to this 'rule' connotes purpose,

[597] *S. Gopal Reddy v. State of Andhra Pradesh*, AIR 1996 SC 2184
[598] *Chinnama George v. N. K. Raju*, AIR 2000 SC 1565
[599] *Tejkumar Balakrishna Ruia v. A. K. Menon*, AIR 1997 SC 442

i.e. what the statue 'means' to accomplish. This canon also harmonises with the modern tendency to see how words are used.

5 INTERPRETATION ACCORDING TO NATURE OF STATUTE

A statute is the will of the legislature. In India, the statute is an act of Central Legislature or of a State Legislature. It includes Acts passed by the Imperial or Provincial Legislatures in pre-independence days, Acts passed after the independence, subordinate legislatures. The Constitution of India is also sometime a subject to interpretation.

The Legislatures enacts various types of Statutes in consonance with the necessity of the time. It is presumed that such laws are enacted which the society considers as honest, fair and equitable and the object of the every Legislature is to advance public welfare.

A Statute only enacts its substantive provisions, but, as a necessary result of legal logic it also enacts, as a legal proposition, everything essential to the existence of the specific enactments.[600] To interpret the statutes, there are rules of interpretation *viz.* Grammatical rule of interpretation, Golden rule of interpretation and Mischief rule of interpretation, which is also known as Purposive-Social Engineering-Logical rule of interpretation. These rules are being applied by the Courts for interpretation of various types of statutes as per the nature of the legislation. The various types of statutes are dealt with as under.

5.1 PENAL STATUTE

Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. Ordinarily every crime which is created by a statute, however,

[600] *Anand Prakash v. Narain Das,* AIR 1931 All 162

comprehensive and unqualified the language used is always understood as requiring the element of mens rea or a blameworthy state of mind on the part of the actor. But there may be cases in which Legislature completely rules out the principle of mens rea while providing for penalty.[601] One class of cases in which the legislature may insist on strict liability rule, excluding the applicability of mens rea, are statutes which deal with public welfare, e.g. statutes regulating the sale of food and drink.[602] From early times it has been held that penal statutes must be strictly construed.[603]

The rule of strict construction requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment.[604] Thus, before a person can be convicted under section 176, IPC, the prosecution are bound to prove (a) that the accused person was legally bound to furnish a certain information to a public servant, and (b) that he intentionally omitted to give such information.[605] Likewise, every 'distinct' offence in section 233 (now sec.218), Cr.P.C., cannot be treated as having the same meaning as every offence. The only meaning that the word 'distinct' can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. The fact that three houses were looted one after the other cannot have the effect of proving

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[601] *N.S. Bindra: Ibid,* pp.709, 710
[602] *N.S. Bindra: Ibid,* p.710
[603] *Steel Authority of India Ltd. v. Bihar Agricultural Produce Market Board,* AIR 1990 Pat 146 (FB)
[604] *Ram Sran v. King-Emperor,* 4 Cri LJ 293*: Hyder Ali v. State of Hyderabad, AIR* 1950 Hyd. 128 (FB)*: Dattatraya v. Emperor,* AIR 1937 Bom pp.28, 30*; Rahmat Aslam v. Crown,* AIR Lah. 232
[605] *Shridhar v. State,* AIR 1954 H.P. 67

three ‘distinct’ offences. There may even in such a case be sufficient continuity of purpose to make it one offence.[606]

Where an enactment entails penal consequences, no violence should be done to its language to bring people within it but rather care must be taken to see that no one is brought within it, who is not within the express language.[607] Clear words of an Act of Legislature, conveying a definite meaning in the ordinary sense of the words used, cannot be cut down or added to so as to alter that meaning.[608] It is not merely unsound but unjust to read words and infer meanings that are not found in the text.[609] It would not be proper for the courts to extend the scope of a penal provision by reading into it words which are not there, and thereby widen the scope of the provision.[610]

It is to interpreted on the basis of literal or grammatical meaning. All the provisions of penal law must be interpreted in favour of the subject, and most of all, the provisions relating to the offence of murder. In case of ambiguity the benefit of interpretation must go to the accused.[611] But it may be noted that the existence of an ambiguity in the words to be construed does not necessarily create a doubt. It is then necessary to opt for an examination of the context, the scope and object of the enactment. But that meaning may satisfy the court beyond all doubt as to the meaning to be placed on an expression which is on its face ambiguous. In the interpretation of a penal statute mere ambiguity of expression or loose or inaccurate language will not prevent a court from

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[606] *Ali Chunno v. State,* AIR 1954 All 795
[607] *N.S. Bindra: Ibid,* p. 721
[608] *Hari Singh v. Crown,* ALR 7 Lah. pp.348, 354
[609] *Pyndah Venkatanarayana v. Sudhakar Rao,* AIR 1967 A.P. 111
[610] *Motibhai Fulabhai Patel & Co. v. Collector of Central Excise,* AIR 1970 S.C. 829
[611] *King v. Aung The Nyun,* AIR 1940 Rang 259 *(FB); Shaikh Abdul Azees v. State of Karnataka,* AIR 1977 SC 1485

giving effect to the meaning of the Legislature if, by the application of the ordinary rules of construction applicable to all other statutes, that meaning can be ascertained. If, notwithstanding a careful examination by the aid of these rules of the words to be interpreted, a doubt still remains as to their meaning, the court is not at liberty to resolve the doubt against the accused by the application of any principle of public policy or general intent of the enactment, but in such a case must give him the benefit of the doubt.[612]

While interpreting a prohibitive clause leading to penalties, no addition is permissible[613] the court observed that a provision drastically restricting citizens' fundamental rights, especially when it leads to quasi-penal consequences, must be construed strictly.[614] The well-settled rule is that the subject should be held to be free unless he can be found guilty according to the clear and unambiguous language of the statute.[615]

True, penal statutes should always be very strictly construed. However, it must be remembered that no rule of construction requires that a penal statute should be unreasonably construed or construed so as to defeat the obvious intention of the legislature or construed in a manner as would lead to absurd results; on the other hand, it is of the utmost important that the court should endeavour to ascertain the intention of the legislature and to give effect thereto.[616] While dealing with a penal provision, it would not be proper for the courts to extend the scope of that

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[612] *Chandler & Co. v. Collector of Customs,* 4 CLR pp.1719, 1935 *as referred in N. S. Bindra: Ibid,* p. 714

[613] *Wasudeo v. State,* AIR 1977 Bom 94

[614] *State of U.P. v. Lalai Singh,* AIR 1977 SC 202*: Maharaja Book Depot v. Gujarat State,* (1979) 1 SCC 295

[615] *Bansraj v. State,* AIR 1956 All pp.27, 29

[616] *Teja Singh v. State,* AIR 1952 Punj. 145*; Fakir Mohan v. State,* AIR 1958 Ori. pp.118, 122

provision by reading into it words which are not there and thereby widen the scope of that provision.[617]

When it is said that all penal statutes are to be construed strictly it only means that the court must see that the thing charged is an offence within the plain meaning of the words used and must not strain the words. But these rules do not in any way affect the fundamental principles of interpretation, namely, that the primary test is the language employed in the Act and when the words are clear and plain the court is bound to accept the expressed intention of the legislature.[618] A penal Act must be read plainly,[619] in an atmosphere free from all bias,[620] and in a manner consistent with commonsense.[621]

No law can be interpreted so as to frustrate the very basic rule of law. It is settled principle of interpretation of criminal jurisprudence that the provisions have to be strictly construed and cannot be given retrospective effect unless legislative intent and expression is clear beyond ambiguity. The amendments to criminal law would not intend that there should be undue delay in disposal of criminal trials or there should be retrial just because the law has changed. Such an approach would be contrary to the doctrine of finality as well as avoidance of delay in conclusion of criminal trial.[622]

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[617] *Motibhai Fulabhai v. Collector, Central Excise,* AIR 1970 SC 829*; State of A.P. v. Andhra Pradesh Potteries,* AIR 1973 SC 2429*; Dilip Kumar Sharma v. State of M.P.*, 1975 Cri LR (SC) 624

[618] *M.V. Joshi v. M.U. Shimpi,* AIR 1961 SC pp.1494, 1498*; Narendra Bhogi Lal v. State of Maharashtra*, 73 Bom LR pp.828, 834

[619] *Chedi Mala v. King Emperor,* 1 CrLJ pp.205, 207 (Cal)

[620] *Madho Saran Singh v. Emperor,* AIR 1943 All 379

[621] *Jogendra Chandra Roy v. Superintendent; Dum Dum Special Jail,* AIR 1933 Cal. pp.280, 282*; Gamadia v. Emperor, AIR 1926 Bom.,* pp.*57, 59; State v. Hyder Ali,* AIR 1950 Hyd. 128 *(FB)*

[622] *Sukhdev Singh v. State of Haryana,* AIR 2013 SC pp.953, 958

In the case of *G.N.Verma v. State of Jharkhand and another*[623], the Supreme Court of India has observed as under:

> "The law is well settled by a series of decisions beginning with the Constitution Bench decision in *W.H.King v. Republic of India*[624] that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. This view has been consistently adopted by this Court over the last, more than sixty years."

In the case of *Rupak Kumar v. State of Bihar & Anr.,*[625] the Supreme Court was dealing with the interpretation of word "store" used in Section 7 & 16 of the Prevention of Food Adulteration Act, 1954. The fact was that the petitioner was Superintendent of District Jail, Bihar Sharif where from the Food Inspector collected samples of various materials including haldi and rice. These articles were stored for consumption of the prisoners. The samples collected were found to be adulterated and therefore, two separate prosecution reports were submitted before the Trial Court which took cognizance of the offence and directed for issuance of process in both the cases. The petitioner assailed both the orders in separate revision applications before the Sessions Judge which were also dismissed and thereafter, he approached the Hon'ble High Court, which has also dismissed his applications. Therefore, he approached the Hon'ble Supreme Court. The Supreme Court took the notice of Section 7, 10 and 16 of the Act. Section 7 of the Act inter alia prohibits manufacture for sale, or store, sell or distribute of certain articles of food. Whereas Section 10 of the Act provides of the

[623] (2014) 4 SCC 282
[624] AIR 1952 SC 156 : 1952 Cri. L.J. 836 : 1952 SCR 418
[625] (2014) 4 SCC 277

power of Food Inspector under which he is empowered to take sample of any article of food from any person selling such article. Whereas Section 16 of the Act provides for the penalties for manufacture for sale or store or sells any adulterated articles. On the basis of the use of the word "store" in Section 7 and 16, the Hon'ble Supreme Court has observed as follows:

> "In the present case, according to the prosecution, the appellant, a Superintendent of Jail, had stored rice and haldi and, therefore, his act comes within the mischief of Section 7 and 16 of the Act. In view of the aforesaid, what needs to be decided is as to whether the expression "store" as used in Section 7 and Section 16 of the Act would mean storage simpliciter or storage for sale. We have referred to the provisions of Section 7, Section 10 and Section 16 of the Act and from their conjoint reading, it will appear that the Act is intended to prohibit and penalise the sale of any adulterated article of food. In our opinion, the term "store" shall take colour from the context and the collocation in which it occurs in Section 7 and 16 of the Act. Applying the aforesaid principle, we are of the opinion, that "storage" of an adulterated article of food other than for sale does not come within the mischief of Section 16 of the Act."

In the case of *MCD v. Laxmi Narain Tandon,*[626] the Supreme Court has held that:

> "14. From a conjoint reading of the abovereferred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage or distribution

[626] (1976) 1 SCC 546 : 1976 SCC (Cri) 76

for sale of any adulterated article of food. The terms ‘store’ and ‘distribute’ take their colour from the context and the collocation of words in which they occur in Sections 7 and 16. ‘Storage’ or ‘distribution’ of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section.”

5.2 FISCAL STATUTE

In interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if there be any in the statutes, it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer. In a considering a taxing Act the word is justified in straining the language in order to hold a subject liable to tax.[627] In a Taxing Act one has to look nearly at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. In a case of reasonable doubt, the interpretation most beneficial to the subject is to be adopted. But even so, the fundamental rule of interpretation is the same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used there in rather than from any motions which may be entertained by the court as to what is just or expedient. The expressed intentions must guide the court. The maxim "generalia speci alibus non derogent" means that where there is a conflict between a general and a special provision, the later shall prevail. But this rule of interpretation is not of universal application. It is subject to the condition that there is nothing in the general provision, expressed or

[627] *State of Punjab v. M/s. Jallander Begetables Syndicates* - AIR 1966 SC 1295

implied, indicating and intention to the contrary. To arrive at the real meaning it is always necessary to get an exact conception of the aim, scope and object of the whole Act to consider - (1) What was the law before the Act was passed? (2) What is mischief or defect for which law had not provided ? (3) What remedy Parliament has appointed? and (4) The reason of the remedy.[628]

It has been said and said on numerous occasions that fiscal laws must be strictly construed, words must say what they mean, nothing should be presumed or implied, these must say so. The free test must always be the language used.[629] However, strict interpretation does not mean full effect should not be given to exemption notification.[630] The expressions in the schedule to the fiscal statute and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provisions, imposing taxes or granting exemption should be understood in the same way in which they are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. A notification issued under the provisions of Rules has to be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself. It is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. However, that is so in the event of there being a real difficulty in

[628] *I.T. Commissioner, Patiala v. Shahzada Nand & Sons* - AIR 1966 SC 1342
[629] *M/s. Goddyear India Ltd. v. State of Haryana* - AIR 1990 SC 781
[630] *M/s. Swadeshi Polytex Ltd. v. Collectors of Central Excise* AIR 1990 SC 301

ascertaining the meaning of a particular enactment that the question of strictness or of liberality of interpretation arises. While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of interpretation should be avoided.[631]

In *Commissioner of Income-tax v. Orissa State Warehousing Corporation*,[632] the court has held that:

> "While interpreting a taxing statute, equitable considerations are entirely out of place. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute, in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency. One has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing has to be read in, nothing is to be implied. One can only look fairly at the language used. In case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient. The expressed intention must guide the court. If

[631] *Collector of Central Excise, Bombay v. M/s Parle Exports (P) Ltd.* AIR 1989 SC 644

[632] [1993] 201 ITR 729 (Orissa)

the intention of the Legislature is clear and beyond doubt, then the fact that the provisions could have been more artistically drafted cannot be a ground to treat any part of a provision as otiose. Though in recent times there has been change from emphasis on grammatical meaning to intention of the Legislature or purpose of statute, yet if the words are ambiguous, uncertain or any doubt arises as to the terms employed, the court has a paramount duty to put upon the language of the Legislature a rational meaning. In the past, the judges and lawyers spoke of a golden rule by which statutes were to be interpreted according to the grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which the Legislature never intended, the grammatical meaning alone was held to prevail. They said that it would be for the Legislature to amend the Act and not for the court to intervene by its innovation. During the last several years, the golden rule has been given a farewell. Now the words of the statute are examined rationally. If the words are precise and cover the situation at hand, there is no necessity to go any further. The court expounds those words in the natural and ordinary sense of the words.

Literally, exemption is freedom from liability, tax or duty. Fiscally, it may assume varying shapes, especially in a growing economy. For instance, tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective, etc. That is why its construction, unlike charging provision, has to be tested on a different touchstone. In

fact, an exemption provision is like any exception and on normal principles of construction or interpretation of statutes, it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State Revenue. But once exception or exemption becomes applicable, no rule or principle requires it to be construed strictly. Truly speaking, a liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause, then it being in the nature of exception, it is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.

The language used in Section 10(29) is so clear and unambiguous that there is no scope for accepting the submission of the assessee that the plain meaning is to be given a go-by."

In *Commissioner of Income-tax, Karnataka-I v. Shambulal Nathalal and Company.*,[633] the court has held that:

"If a statutory provision relating to tax law is reasonably capable of two constructions, the one which leads to evasion of tax, should be avoided. The rule laid down in *Cape Brandy Syndicate v. IRC,*[634] that in a taxing statute one has to merely look at what is clearly said, was accepted by the Supreme Court

[633] (1984) 39 CTR 195 (Kar)
[634] [1921] 1 KB 64

in *A.V. Fernandas v. State of Kerala,*[635] where it was laid down that 'if.... the case is not covered within the four corners of the provision of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering 'what was the substance of the matter'. The object of this rule is to prevent a taxing statute being construed 'according to its intent, though not according to its words.'

In *CWT v. Smt. Hashmatunnisa Begum,*[636] the Supreme Court while dealing with the exemption of property comprised of gift under Section 4(1)(a) of the Wealth-tax Act and proviso to Section 5 of the Gift-tax Act, held that on a reading of the plain words of the proviso to Section 4(1)(a) of the Wealth-tax Act, 1957, the clause "for any assessment year commencing after the 31st day of March, 1964" can only be read as relating to gift-tax assessments and not to wealth-tax assessments. The exemption under the proviso, from inclusion in the net wealth, is attracted to assets which were the subject-matter of such gifts as were chargeable to gift-tax or not chargeable to tax under Section 5 of the Gift-tax Act, 1958, for any assessment year commencing after March 31, 1964, but before April 1, 1972. Gifts made earlier would not attract the benefit of the exemption.

The Supreme Court in *Mohammad Ali Khan v. CWT,*[637] while dealing with a case of Section 5(1)(iii) of the Wealth-tax Act, 1957 exempting any one building in the occupation of the ruler declared as his official residence, held that a fair reading of this section would reveal that only the building or the part of the building in the occupation of the Ruler

635 [1957] 8 STC 561
636 MANU/SC/0140/1989
637 [1997] 224 ITR 672

which had been declared by the Central Government to be the official residence under the Merged States (Taxation Concession) Order, 1949 will not be included in the net wealth of the assessee and therefore, the buildings of Khas Bagh Palace which were let to different persons and for which rent was received, were not in the occupation of the assessee within the meaning of Section 5(1)(iii) of the Act and in that context the Supreme Court observed that the intention of the Legislature is primarily to be gathered from the language used. Just as it is not permissible to add words or to fill in a gap or lacuna, similarly it is of universal application that effort should be made to give meaning to each and every word used by the Legislature.

The Supreme Court in *Orissa State Warehousing Corpn. v. CIT*,[638] while dealing with a case under Section 10(29) of the Act granting exemption to the income which is derived from letting out of godown or warehouse for storage, processing or facilitating marketing of commodities, held that the Legislature has been careful enough to introduce in the section itself a clarification by using the words "any income derived therefrom", meaning thereby obviously for marketing of commodities by letting out of godowns or a warehouse for storage, processing or facilitating the same. If the letting out of godowns or warehouses is for any other purpose, the question of exemption would not arise. In that context, the court dealt with the interpretation of fiscal statute and observed that "Artificial and unduly latitudinarian rules of construction, which with their general tendency to 'give the taxpayer the breaks', are out of place where the legislation has a fiscal mission."

[638] MANU/SC/0234/1999

In *Vikrant Tyres Ltd. v. First ITO,*[639] the Supreme Court while dealing with the levy of interest under Section 220(2) in respect of the demand which was paid on the issue of the notice under Section 156 but refunded to the assessee due to appellate order, but restored by the High Court order held that interest can be levied under this section only when there was a default of the assessee and there can be no revival of the demand if the original notice of demand was satisfied by the assessee within the prescribed time even though the demand was restored by the subsequent order of the High Court. In that connection, the Supreme Court observed that: "Admittedly, on a literal meaning of the provisions of Section 220(2) of the Act, such a demand for interest cannot be made."

In this connection, the Supreme Court observed as under: -

> "It is settled principle in law that the courts while construing 'revenue Acts have to give a fair and reasonable construction to the language of a statute without leaning to one side or the other, meaning' thereby that, no tax or levy can be imposed on a subject by an Act of Parliament without the words of the statute clearly showing an intention to lay the burden on the subject. In this process, the courts must adhere to the words of the statute and the so-called equitable construction of those words of the statute is not permissible. The task of the court is to construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case and in that process if the taxpayer is brought within the net he is caught, otherwise he has to go free!"

[639] [2001] 247 ITR

In *V.V.S. Sugars v. Government of A.P.,*[640] it was reiterated that:

> "The Act in question is a taxing statute must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or otherwise."

In *Mathuram Agrawal v. State of Madhya Pradesh,*[641] the court has held that:

> "Intention of Legislature in municipal taxation statute has to be gathered from language of provisions particularly where language is plain and unambiguous. In taxing Act it is not possible to assume any intention or governing purpose of statute more than what stated in plain language. The statute should clearly convey three components of tax law – subject of tax, person who is liable to tax and rate at which tax to be paid."

In *V.M. Syed Mohamed and Co. and Anr. v. The State of Madras represented by the Secretary to Government, Revenue Department, Fort Saint George, Madras and Anr.,*[642] the court has held that:

> "The Madras General Sales Tax is a measure of taxation and in respect of taxing statutes, the Legislature enjoys wide powers of classification. It has the power to determine which class of persons or properties shall be taxed and such determination is not open to question on the ground that the tax is not levied on all persons or on all properties."

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640 MANU/SC/0321/1999
641 AIR 2000 SC 109
642 AIR 1953 Mad 105

In *CIT v. Cellulose Products of India Ltd.*,[643] the Supreme Court has held that:

> "Liberal construction of statute so as to effectuate the object thereof can be taken recourse to while interpreting a particular provision when two opinions are capable of being held."

In *Goodyear India Ltd. v. State of Haryana*,[644] the court has held that:

> "Fiscal laws must be strictly construed, words must say what they mean, nothing should be presumed or implied, these must say so. The true test must always be the language used."

In *United Receland Limited and Anr. v. The State of Haryana and Ors.*,[645] the court has held that:

> "The Courts cannot substitute their opinion for the declared economic and social policy of the State expressed through the duly elected Legislature. It has been rightly held by various Courts that in a democratic system the power of taxation vests in the Legislature and not in the executive or the judiciary. Tax cannot be equated with fee or other contributions. Sales tax is a tax which includes within its scope and business as well as all tangible personal property at either the retailing, wholesaling or manufacturing stage with the exceptions noted in the taxing law."

[643] AIR 1991 SC 2285
[644] [1991] 188 ITR 402
[645] (1996) 14 PLR 227

In *K.P. Sons v. Sales Tax Officer and Anr.*,[646] the court has held that:

> "Though the taxing statute has to be construed strictly, yet, none the less, it must be borne in mind that the construction does not suffer from any vices of rigid rule of interpretation."

In *Shree Sajjan Mills Ltd. v. Commissioner of Income Tax, M.P., Bhopal and Anr.*,[647] the Supreme Court has held that:

> "In interpreting a taxing statute, it was submitted on behalf of the assessee, equitable considerations were entirely out of place, not could taxing statute be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret these. It should interpret a taxing statute in the light of what was clearly expressed and it could not imply anything which was not expressed; it could not Import provisions into the statute so as to supply any assumed deficiency, not could it refuse to give effect to the plain and clear meaning of the words on the ground that strange and anomalous consequences might arise."

In *CCE v. Usha Martin Industries*,[648] while dealing with exemption notification issued under the Central Excise and Salt Act, 1994, the Supreme Court in paras 19 and 20 observed as follows:

> "19. No doubt the court has to interpret statutory provisions and notifications thereunder as they are with emphasis to the intention of the legislature. But when the Board made all others

[646] [1987] 67 STC 38 (MP)
[647] AIR 1986 SC 484
[648] (1997) 7 SCC 47

to understand a notification in a particular manner and when the latter have acted accordingly, is it open to the Renenue to turn against such persons on a premise contrary to such instructions?

20. Section 37-B of the Act enjoins on the Board a duty to issue such instructions and directions to the excise officers as the Board considers necessary or expedient 'for the purpose of uniformity in the classification of excisable goods or with respect to levy of duty excised on such goods.' It is true that Section 37-B was inserted in the Act only in December 1985 but that fact cannot whittle down the binding effect of the circulars or instructions issued by the Board earlier. Such instructions were not issued earlier for fancy or as rituals. Even the pre-amendment circulars were issued for the same purpose of achieving uniformity in imposing excise duty on excisable goods. So the circular whether issued before December 1985 or thereafter should have the same binding effect on the Department."

In *Commr. of Customs v. Indian Oil Corpn. Ltd.*,[649] the Supreme Court culled out the following principles in relation to the circulars issued by the Government under the fiscal laws (Income Tax Act and Central Excise Act) as follows:

"(1) Although a circular is not binding on a court or an assessee, it is not open to the Revenue to raise a contention that is contrary to a binding circular by Board. When a circular remains in operation, the Revenue is bound by it and cannot be

[649] (2004) 3 SCC 488

allowed to plead that it is not valid nor that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

(3) A show-cause notice and demand contrary to the existing circulars of the Board are ab initio bad.

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars."

In *Union of India and Anr. v. Azadi Bachao Andolan and Anr.,*[650] the Supreme Court was concerned with a statutory power exercised by the Board of Direct Taxes in issuing directions to the income Tax Officers as to how they should deal with the cases falling with the purview of the Indo-Mauritius Double Taxation Avoidance Convention, 1983. The Court itself held that the principles adopted in interpretation of treaties are not the same as those in interpretation of a statutory legislation on the ground that the principle which needs to be kept in mind in the interpretation of the provisions of an international treaty, including one for double taxation relief, is that treaties are negotiated and entered into at a political level and have several considerations as their basis; whereas a statute has to be interpreted keeping in mind the well known principles or canons of interpretation of statute.

In the case of *State of Haryana and others v. Bharti Teletech Limited* [651], the Supreme Court of India has, while dealing with Haryana

[650] [2004] 10 SCC 1
[651] (2014) SCC 556

General Sales Tax Rules, 1975, on the applicability of exemption with regard to Interpretation of taxing/ fiscal statute, observed that:

> "It is clear as crystal that a statutory rule or an exemption notification which confers benefit on the assessee on certain conditions should be liberally construed but the beneficiary should fall within the ambit of the rule or notification and further if there are conditions and violation thereof are provided, then the concept of liberal construction would not arise. Exemption being an exception has to be respected regard being had to its nature and purpose. There can be cases where liberal interpretation or understanding would be permissible, but in the present case, the rule position being clear, the same does not arise."

In *Hansraj Gordhandas v. CCE and Customs*[652], it has been held as follows:

> "It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the pay-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the interpretation of the words of the notification or by necessary implication therefrom, the matter is different."

[652] AIR 1970 SC 755

In *CST v. Industrial Coal Enterprises*[653], after referring to *CIT v. Straw Board Mfg. Co. Ltd.*[654] and *Bajaj Tempo Ltd. v. CIT*[655], the Court ruled that an exemption notification, as is well known, should be construed liberally once it is found that the entrepreneur fulfils all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled to the benefit thereof, the same should not be denied.

In *T.N.Electricity Board v. Status Spg. Mills Ltd*[656], it has been held therein:

> "It may be true that the exemption notification should receive a strict construction as has been held by this Court in *Novopan India Ltd. v. CCE and Customs*[657], but is also true that once it is found that the industry is entitled to the benefit of exemption notification, it would receive a broad construction. A notification granting exemption can be withdrawn in public interest. What would be the public interest would, however, depend upon the facts of each case."

If in construing a taxing statutes, there are two interpretations possible, then effect is to be given to the one that impress a burden on him.[658]

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[653] (1999) 2 SCC 607
[654] 1989 Supp (2) SCC 523 : 1990 SCC (Tax) 158
[655] (1992) 3 SCC 78
[656] (2008) 7 SCC 353 : (2005) 4 SCC 272 : (2007) 2 SCC 725
[657] 1994 Supp (3) SCC 606
[658] *Express Mills v. Municipal Committee Wardha* - AIR 1958 SC pp.341, 344

In interpreting a fiscal statuti, the court cannot proceed to make good deficiencies if there be any; the court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax-payer. But where by the use of words capable of comprehensive import, provisions is made for imposing liability for penalty upon tax-payer guilty of fraud , gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense. So as to defeat the avowed object of the Legislative qua a certain class will not be lightly made.[659]

In interpreting a taxing statutes, equitable consideration are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot import provisions in the statutes so as to supply and assumed deficiency.[660]

Literally exemption is freedom from liability, tax as duty. Fiscally it may assume varying shapes, specially in a growing economy. That is why its interpretation unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like any exception and on normal principle or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment state revenue. But once exception or exemption becomes applicable no rule or principle requires it to be interpreted strictly. Truly specking, liberal and strict interpretations of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then

[659] *C.A. Abraban v. I.T. Officer* - AIR 1961 SC 609
[660] *Sales Tax Commissioner of U.P. v. Modi Sugar Mills Ltd* - AIR 1961 SC 1047

it being in nature of exception is to be interpreted strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal interpretation.[661] A distinction has to be made by court while interpreting the provisions of a taxing statute between the charging provisions which impose the charge to tax and machinery provisions which provide the machinery for the qualification of the tax and the levying and collection of the tax so imposed. While charging provisions are interpreted strictly, machinery sections are not generally subject to a rigorous interpretation. The courts are expected to interpret the machinery sections in such a manner that a charge to tax is not defeated.[662] Absolute equality and justice is not attainable in taxing laws. A statute has to be interpreted in light of the mischief it was designed to remedy.[663]

5.3 PROCEDURAL STATUTE

According to Salmond,[664] the law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions – using the term action in a wide sense to include all proceeding, civil or criminal.

In *Krishnaji Dattatraya Bapat v. Krishnaji Dattatraya Bapat*,[665] it was held that: -

> "Statutes pertaining to a right of appeal should be liberally construed."

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[661] *Union of India v. Wood Paper Ltd*, AIR 1991 SC 2049
[662] *Associated Cement Co. Ltd v. Commercial Tax Officer, Kota*, AIR 1981 SC 1887
[663] 1990 (4) J.T 131 SC: 1963 SC 1062 : AIR 1940 PC 124 : *India United Mills Ltd v. Commissioner of Excess Profits Tax, Bombay* - AIR 1955 SC 79
[664] *Salmond: Jurisprudence*, 10th Ed. pp. 475-476
[665] MANU/SC/0456/1969

In *Gurdev Kaur and Ors. v. Kaki and Ors.,*[666] the court has held that:

> "Judges must administer law according to the provisions of law. It is the bounden duty of judges to discern legislative intention in the process of adjudication. Justice administered according to individual's whim, desire, inclination and notion of justice would lead to confusion, disorder and chaos. Indiscriminate and frequent interference under Section 100 C.P.C. in cases which are totally devoid of any substantial question of law is not only against the legislative intention but is also the main cause of huge pendency of second appeals in the High Courts leading to colossal delay in the administration of justice in civil cases in our country."

In *Khan Gul v. Lakha Singh,*[667] Tek Chand, J., has observed that:

> "This brings us to the remaining but really substantial point, *viz.*, whether the specific provision of the substantive law (section 11 of the Contract Act), which declares a minor's contract to be void, can be rendered nugatory by a general provision embodying the rule of estoppel found in a procedural Code like the Evidence Act. In order to find a satisfactory answer to this question two fundamental principles must be borne in mind. The first is embodied in the great maxim *generalia specialibus non derogant* which has frequently been applied to resolve the apparent conflict between provisions of the same statute or of different statutes. In such cases, the rule is that wherever there is a particular enactment and a general

[666] AIR 2006 SC 1975
[667] ILR 9 Lah (FB) pp.701, 742 : 1928 Lah (FB) pp.609, 625

enactment and the latter, taken at its most comprehensive sense, would overrule the former, the particular statute must be operative, and its provisions must be read as excepted out of the general."

In *Habu v. State of Rajasthan,*[668] the court held that:

"Inherent powers under Section 482 Cr.P.C. are always inherent in a court and if (not) specifically provided by the legislature, all pervasive and comprehensive enough to arm the Court for advancing the cause of justice and to prevent the abuse of the process of the Court."

In *Sachida Nand Singh and Anr. v. State of Bihar and Anr.,*[669] the court considering the interpretation and scope of Sections 195(1)(b)(ii) and 340(1) of the Criminal Procedure Code held:

"to interpret Section 195(1)(b)(ii) as containing a bar against initiation of prosecution proceedings merely because the document concerned was produced in a Court albeit the act of forgery was perpetrated prior to its production in the Court. Any such construction is likely to ensure unsavoury consequences. For instance, if rank forgery of a valuable document is detected and the forgerer is sure that he would imminently be embroiled in prosecution proceedings he can simply get that document produced in any long-drawn litigation which was either instituted by himself or somebody else who can be influenced by him and thereby pre-empt the prosecution for the entire long period of pendency of that litigation. It is a settled proposition

[668] AIR 1987 Raj 83
[669] (1998) 2 SCC 493

that if the language of legislation is capable of more than one interpretation, the one which is capable of causing mischievous consequences should be averted."

The Supreme Court in *Bhagwant Singh v. Commr. of Police,*[670] while giving interpretation to Section 173(2)(ii) Cr.P.C. held:

"(i) the power of re-call is different than the power of altering or reviewing the judgment and (ii) powers under Section 482 Cr. P.C. can be and should be exercised by this Court for re-calling the judgment in case the hearing is not given to the accused and the case falls within one of the three conditions laid down under Section 482 Cr. P.C."

In *Abdul Aziz v. State.,*[671] the court held that:

""Shall be written by Presiding Officer" – is to be interpreted to mean that the judgment must be in the handwriting of the presiding officer it would mean that even if the presiding officer types a judgment himself it would offend against the provisions of this law. The Code of Criminal Procedure was enacted in 1898 and those who framed the Code perhaps did not know that typewriters would be available to courts and judgments could be typed. At that time they were only safeguarding against someone else other then the presiding officer writing out the judgment and the presiding officer merely signing that judgment. They only reason for making the provisions seems to be that as it was a non-appealable order it was considered

[670] AIR 1985 SC 1285
[671] AIR 1956 All 637

necessary that the record should contain a clear indication that the Magistrate fully considered the evidence led in the case before pronouncing his final order. There is no reason to believe that the accused stands in any danger of being prejudiced if the Magistrate instead of writing the evidence in his own hand kept a type-written record. The risk of someone else typing out the record and the Magistrate merely signing it is in my opinion negligible and not worthy of consideration. Another ridiculous situation, if this interpretation is accepted, would be taht if a Magistrate suffers from some disability either temporary or permanent which prevents him from writing himself he would become unfit for conducting summary trials. The law surely could not mean that such an officer is disqualified from tying cases summarily under Section 263 or Section 264, Cr. P.C."

In *Dhondhey Prasad v. Sewak and Ors.*,[672] it was argued that the word 'decree holder' must include the plural, 'decree holders', hence payment must be made to all the decree-holders jointly at one time. The court held that:

"The interpretation sought to be given to this provision of law by if accepted might result in hardship in certain cases where a joint decree is passed in favour of a number of decree-holders having separate and divisible shares in the decretal amount. If, for example, one of the decree-holders has gone abroad or is untraceable for the time being, then according to the interpretation placed by the learned Counsel for the appellant, it would not be possible for the judgment-debtor to pay off the

[672] AIR 1954 All 739

share or shares of the remaining decree-holders out of Court. Nor would it be possible for the remaining decree-holders to accept out of court payment of their shares in the decretal amount in partial satisfaction of the decree. It would also not be possible for the Court to record satisfaction of such payment in Court. Further where partial payment of the respective shares of other decree-holders has been made by the judgment-debtor, it would enable the remaining decree-holders to still insist on the payment of the entire amount and to ask the Court to disregard such payment in execution proceedings. This is exactly what has happened in this case. The situation created would certainly be inequitable.

It would, therefore, be open to the Court in such a case to impose a condition that the entire money be deposited in Court and that out of it the applicant decree-holder should be allowed to be paid only one-third of the amount of the decree and not the remaining two-thirds which has already been paid off. In this particular easel there seems to be a conflict between the three decree-holders and a direction like that would be justifiable under provisions of Order 21, Rule 15(2), C.P.C. If the Court could impose a condition like that and stop in the end the eventual payment of two thirds of money realized as a result of execution there seems to be no reason why the Court should not allow the satisfaction of two-thirds of the decree to be recorded in Court and allow the execution proceedings to go on only with respect to the remaining one-third from the very beginning. This is certainly a more convenient and expeditious mode of achieving the same purpose which is both just and equitable."

5.4 BENEFICIAL-SOCIAL-WELFARE STATUTE

A statute which purports to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individual with whom they stand in certain relations, is called a beneficial legislation.

In interpreting such a statute, the principle established is that there is no room for taking a narrow view,[673] but that the Court is entitled to be generous towards person on whom the benefit has been conferred.[674]

It is a well settled canon of construction that in construing the provision of beneficial enactments, the court should adopt that construction which advances, fulfills and furthers the object of the Act rather than the one which would defect the same and render the protection illusory.[675]

Welfare statute is an enactment which is intended to promote the welfare of society or class of society e.g. The Industrial Disputes Act is an Act enacted as a welfare legislation intended to promote the welfare of the working class by ensuring to them reasonable conditions of service which obligation under the constitution is cast upon the state by Articles 38 and 43 thereof.

All legislation in a welfare state is enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have more immediate

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[673] *Modern Movies v. S.B. Tiwari,* [1966] Lab LJ 763
[674] *Union of India v. Pradeep Kumari,* [1995] 2 SCC 736
[675] *Chinnamar Kathian alias Muthu Gounder v. Ayyavoob alias Periana Gounder,* AIR 1982 SC 137

and visible impact on social vices by operating more directly to achieve social reforms. Factories Act is a example thereof.

It demand an interpretation liberal enough to achieve the legislative purpose, without doing violence to the language.[676]

In the case of *Suhas H. Pophale v. Oriental Insurance Company Limited.,*[677] the Supreme Court has laid down that:

> "If there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective."

In *Banerjee v. Anita Pan*[678], the facts were that poor landlords were selling their properties and the transferees were resorting to large scale eviction on the ground of rebuilding for personal use and resorting to re-letting on rack-rents or rebuilding for rich returns. To get over such a situation West Bengal Premises Tenancy Act, 1956 was amended in 1969, and Section 13(3-A) as introduced prohibiting the transferee landlords from instituting suits of eviction within three years of the transfer and the section was made retrospective. The respondent however, who had purchased the premises, before the amendment, filed a suit for eviction within three years of the transfer. The High Court upheld the amended provision but not its retrospective effect and gave relief to the

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[676] *Central Railway Workshop v. Vishwanath,* (1970) 2 SCR 720
[677] (2014) 4 SCC 657; *Janardhan Reddy v. State,* AIR 1951 SC 124 : (1951) 52 Cri LJ 391
[678] (1975) 1 SCC 166

respondent. Allowing the appeal of the aggrieved tenant, it was held (per majority) : there is a presumption of constitutionality in favour of a legislation and hardship in a few instances would not affect the constitutionality of social legislation. Where to interpretations are possible that which validates the statute and shortens litigation should be preferred to any literal, pedantic, legalistic or technically correct interpretation which invalidates the enactment or proliferates litigation. Promotion of public justice and social gain at the cost of straining language of a statute is permissible. Statutory construction relating to complex problems of the community cannot be hide bond by orthodox textbooks canons. In interpreting social legislation court can refer to legislation proceedings and common knowledge and other relevant factors including the statement of object and reasons. A reasonable interpretation which can avoid invalidation is preferable. Humanist considerations, public policy and statutory purpose provide guide-lines of construction within reasonable limits. Hardship has no relevance to constitutionality though it may influence the ultimate solution that the court may arrive at by interpretation.

In *Gurcharan Singh v. Kamla Singh,*[679] the Court while dealing with Tenancy law observed: interpretation of socio-economic legislation should further the object and purpose of the legislation and legislative history becomes irrelevant when the Act seeks to usher in a new order.

In *State of M.P. v. Galla Tilhan Vyapari Sangh,*[680] the court while holding that Section 37)5)(a) of the M.P. Krishi Upaj Mandi Adhiniyam, 1972, in imposing on every commission agent the liability to keep in safe custody the agricultural produce of the principal does not imposed

[679] (1976) 2 SCC 152
[680] (1977) 1 SCC 657

unreasonable retractions, observed: the main purpose of the Act is to secure a scientific method of storage, sale distribution and marketing of agricultural produce and to cut out, as far as possible, the middleman's profit. The Act therefore, contains provisions of a beneficial nature. It does not impose any hardship that can be termed as unreasonable as the agent is fully compensated. The Act being a social piece of legislation should be liberally construed so as to advance the object of the Act and fulfil the aims to be achieved thereby.

In *Hutchiah v. Karnataka State Road Transport Corporation.,*[681] the plea of the Corporation was: "A probationer is no workman within the meaning of that expression defined in S.2(s) of the Act. Therefore, the discharge from service of a probationer is no retrenchment within the meaning of that expression defined in S.2(oo) of the Act. Consequently, the pre-conditions required to be complied with before effecting the retrenchment of a workman prescribed under S.25-F of the Act, are inapplicable. On the other hand the plea of the employees were: "Every person, who is employed in an industry, is a workman as defined in S.2(s) of the Act, irrespective of the fact, whether he is called a temporary workman, permanent workman or a probationer. Whatever be the nature of tenure, every person employed in an industry is a workman and the moment he puts in a continuous service of one year within the meaning of S.25-B of the Act, he would become entitled to the protection afforded under S.25-F of the Act in respect of retrenchment. Termination of service of such a workman, in whatsoever manner, would amount to retrenchment unless it falls within the excepted categories specified in clauses (a), (b) and (c) of S.2(oo) of the Act."

[681] (1983) ILLJ 30 Kant

The Court has held that:

> "It is the duty of the Court to interpret the provisions of a welfare legislation so as to promote and not to demote its intention."

In *Sant Ram v. Rajinder Lal,*[682] the lessee was a cobbler for over a decade running a small shop and was cooking food and was sometime staying on the premises at night. There was no mention of the purpose in the lease deed. The lessor sought eviction on the ground of the use of a shop for a purpose other than for which it was leased. The Supreme Court held: The degree of precision in drafting of deeds or statutes should be such that a person reading even in bad faith cannot misunderstand. The intention of parties from which the purpose of the lease is spelt out is to be gathered from the social milieu. The actual life situations and urban conditions of India, especially where poor tradesmen like cobblers, candlestick makers, cycle repairs and tanduri bakers, take out small spaces on rent, do not warrant in irresistible inference that if the lease is of a shop the purpose of the lease must be commercial. They take on lease little work places to trade and to live, the two being interlaced for the lower, larger work places to trade and to live, the two being interlaced for the lower, larger bracket of Indian humanity. Thus viewed, it is difficult to hold, especially when the lease has not been spelt it out precisely, that the purpose was exclusively commercial and incompatible with any residential use, even of a portion. Statutory construction, so long as law is at the service of life, cannot be divorced from the social setting. That is why, welfare legislation like the present one must be interpreted in a Third World perspective. It should be borne in mind that the present case is concerned with a hilly region of an Indian town with indigents

[682] (1979) 2 SCC 274

struggling to live and huddling for want of accommodation. The law itself is intended to protect tenants from unreasonable eviction and is, therefore, loaded a little in favour of that class of beneficiaries. When interpreting the text of such provisions – and this holds good in reading the meaning of documents regulating the relations between the weaker and the stronger contracting parties – the court should favour the weaker and poorer class.

It is the duty of the court to interpret a provision, especially a beneficial provision, liberally so as to give it a wider meaning, instead of giving a restrictive meaning which would negate the very object of the provision.[683] Relevant rule in this case entitling an army officer to disability pension if he suffered disability "which is attributable to or aggravated by " military service – The rules further providing that "A person is also considered to be on duty when proceeding to his leave station or returning to duty from his leave station at public expense" – Appellant, while on casual leave, travelling at his own expenses to his home station and during journey, meeting with an accident which resulted in amputation of his hand – Disability pension denied to him on the ground that he was not on duty because the journey being performed by him on leave was not "at public expense" – Held, appellant could not be denied disability pension by giving a literal interpretation to the expression "at public expense" – The expression read down to mean that the army officer has been authorized to undertake journey for leave station – Appellant, therefore, held entitled to disability pension.

[683] *Madan Singh Shekhawat v. Union of India*, (1999) 6 SCC 459

Interpretation which provides beneficial purpose of the provision should be adopted.[684] Remedial Act should be given beneficial interpretation.[685]

In interpreting a welfare legislation, the court should adopt a beneficent rule of construction; if a section is capable of the constructions, that construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act has been passed.[686]

In *Hindustan Lever Ltd. v. Ashok Vishnu Kate*,[687] the Supreme Court has succinctly summed up as follows:

> "In interpreting a social welfare legislation such a construction should be placed on the relevant provisions which effectuates the purpose for which such legislation is enacted and does not efface its very purpose."

Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions.[688]

5.5 GENERAL AND SPECIAL STATUTE

What is a general statue and what is a special statue is often a question of difficulty to solve in most cases; but the classification has to be made with reference to the context in each case and the subject-matter

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[684] *Ghantesher Ghose v. Madan Mohan Ghosh,* (1996) 11 SCC 446
[685] *Vijaynath v. Guramma,* AIR 1999 SC 555
[686] *Rajaram Bhivandiwala v. Nand Kishore,* 1975 MPCJ 225
[687] (1955) 6 SCC 326
[688] *Surendra Kumar Verma v. Central Government Industrial Tribunal,* AIR 1981 SC 422

dealt with by each statute. As Justice Ramesan has pointed out in *Thammayya v. Rajah Tyadapusapati,*[689] most Acts can be classed as General Acts from one point of view and Special Act from another. For example, it may be argued as he says that the Contract Act which is applicable to all is general in relation to the Labour Act which is limited to the relationship of the employer and the employee; and in another sense the Labour Act which applies to all concerns will be general in relation to the labour employed in concerns engaged in supplies as essentials. "A General Act *prima facie,* is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects." A special law must be taken as exhaustive in the subject it enacts. Rights not expressly conferred by it cannot be allowed to be spelled out by means of analogy nor can considerations of expediency and convenience unwarranted by the term of the statute be called in aid to enlarge the scope of its provisions. If there is a Special Act and a General Act, dealing with the same matter, the Special Act overrides the General Act.[690]

A general statute is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by special Act. The rule that general provisions will not abrogate special provisions cannot be pressed too far. A general statute may repeal a particular statute, and there is not rule of law which prevents this. If the provisions of the special Act are wholly repugnant to the general statute, it would be possible to infer that the special Act was repealed by the general statute.[691] There may be facts and circumstances showing that the

[689] AIR 1930 Mad 963
[690] *N.S. Bindra: Ibid*, p. 567
[691] *Municipal Counsel v. T.J. Joseph,* AIR 1963 SC 1561

legislature intended to repeal the special Act. Each case is to be decided on its own facts and circumstances.[692] A general statute may repeal a prior special Act, without expressly naming it, when the provisions of both cannot stand together, and it is clear the legislature intended to effectuate such repeal. A general law does not abrogate an earlier special one by mere implication.[693] Where there are general words in a later act which are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, the earlier and special legislation cannot be held to have been indirectly repealed, altered or derogated from merely by force of such general words, without indication of a particular intention to do so.[694]

In *Pune Municipal Corporation & Anr. v. Harakchand Misirimal Solanki & Ors.,*[695] the Supreme Court has held that:

> "The Land Acquisition Act, 1894 being an expropriatory legislation has to be strictly followed. The procedure, mode and manner for payment of compensation are prescribed in Part V (Sections 31-34) of the 1894 Act. The Collector, with regard to the payment of compensation, can only act in the manner so provided. It is settled proposition of law (classic statement of Lord Roche)[696] that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."

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[692] *Maharaj Shree Umaid Mills v. Union of India,* AIR 1960 Raj. 92
[693] *N. S. Bindra:, Ibid,* p. 569
[694] *Barsay v. State,* AIR 1958 Bom 354; *Pratap Singh v. Manmohan Dey,* AIR 1966 SC 1931
[695] (2014) 3 SCC 183
[696] *Nazir Ahmad v. King Emperor,* (1935-36) 63 IA 372 : (1936) 44 LW 583 : AIR 1936 PC 253 (2)

When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly.[697]

It is but a particular application of the general presumption against an intention to alter the law beyond the immediate scope of the statute to say that a general Act is to be construed as not repealing a particular one by mere implication. A general later law does not abrogate an earlier special one. It is presumed to have only general cases in view, and not particular cases, which have been already provided for by a special or local Act, or, what is the same thing, by custom. Having already given its attention to the particular subject, and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless it manifests that intention in explicit language.[698]

Where there is a conflict between a special Act and a general Act, the provisions of the special Act prevail.[699]

If the Legislature make a special Act dealing with a particular case and later makes a general Act, which by its terms would include the subject of the special Act and is in conflict with the special Act, nevertheless unless it is clear that in making the general Act, the Legislature has had the special Act in its mind and has intended to

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[697] *N.S. Bindra: Ibid,* p. 149

[698] *Maxwell: Ibid,* 9th Ed., p.183

[699] *Collector of Bombay v. Kamalawahooji,* AIR 1934 Bom 162; *Bhana Makan v. Emperor,* AIR 1936 Bom 256; *Gwalior R.S. M. Co. v. Union of India,* AIR 1960 M 330; *Abdul Halim v. State of M.P.,* 1962 MP LJ 183; *Patna Improvement Trust v. Laxmi Devi,* AIR 1963 SC 1077; *Jogender Lal Saha v. The State of Bihar,* AIR 1991 SC 1148

abrogate it, the provisions of the general Act do not override the special Act. If the special Act is made after the general Act, the position is even simpler. Having made the general Act if the legislature afterwards makes a special Act in conflict with it, we must assume that the Legislature had in mind its own general Act when it made the special Act and made the special Act which is in conflict with the general Act, as an exception to the general Act.[700]

5.6 EMERGENCY STATUTE

Where the provisions of a statute are of exceptional character meant to be in force for a specified period during which the Legislature thought it advisable and expedient to provide for extraordinary remedies which are inroads upon the freedom of action of a particular class of persons, such provisions have to be construed strictly in accordance with the words actually used by the legislation and they cannot be given an extended meaning[701]. Legislature enacted for the purpose of alleviating grave conditions which result from economic disaster and public calamity is deserving of a generous interpretation so that its purposes may be accomplished.[702] War-time measures which often have to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake, should be construed more liberally in favour of the Crown or the State than peace-time legislation.[703] Lord

[700] *Corporation of Madras v. Madras Electric Tramways, Ltd.,* AIR 1931 Mad pp. 152, 156 : ILR 54 Mad 364
[701] *K.C. Momin v. Indumati Potdar,* AIR 1958 SC pp.444, 447
[702] *Sutherland: Statutory Construction,* 3rd Ed., Vol.3 p.442
[703] *State of Bombay v. Vir Kumar,* AIR 1952 SC 335

Macmillan in *Liversidge v. Anderson*,[704] in interpreting the words of Regulation 18-B of the Defence (General) Regulations, 1939, observed :

> "In the first place, it is important to have in mind that the regulation in question is a war measure. This is not to say that the Courts ought to adopt in wartime canons of construction different from those which they follow in peacetime. The fact that the nation is at war is duly observed, specially in a matter so fundamental as the liberty of the subject- rather the contrary. But in a time of emergency when the life of the whole nation is at stake it may well be that a regulation for the defence of the realm may quite properly have a meaning which because of its drastic invasion of the liberty of the subject the Courts would be slow to attribute to a peacetime measure. The purpose of the regulation is to ensure public safety, and it is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is in accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peacetime as well as in war-time."

Lord Romer in the said case observed:

> "It was, indeed, said on behalf of the appellant in *Greens's* case[705] that wherein an Act of Parliament is capable of more than one construction, the Courts will adopt that construction which is the least likely to lead to an invasion of the liberty of the subject. That in general is a very salutary rule, but we are

[704] 1942 AC 266 : (1941) 3 All ER 338: 1943 FCR 49, ILR 1943 Nag 154: AIR 1943 Nag 26, ILR 1943 Nag 73 : AIR 1943 Nag 36.
[705] *R. v. Home Secretary Ex Parte Green*, (1943) 3 All ER 104

dealing here with an Act passed and regulations made under it in times of a great national emergency, and in view of this circumstance and of the objects which that Act and those regulations so plainly had in view, the Courts should, in my opinion , prefer that construction which is the least likely to imperil the safety of this country."[706]

An ordinance or an emergency measure is usually drafted in hurry to meet unexpected contingencies or to meet some immediate need. In view of such circumstances and the speed with which such legislation is brought out, it would be unfair to criticize it in the way that a statute might be criticized. The proper course is to take such an Ordinance as a whole and in the light of the surrounding circumstances construe it so as to give effect to what appears to be its proper meaning.[707]

The Legislature may make temporary laws for the purpose of meeting an emergency in which case it may fix the period of expiration either expressly or it may fix no period and in such a case the temporary laws may expire otherwise. They cannot be allowed to outlast the emergency which brought it forth.[708]

The general rule is that on the expiration of a temporary provision which repeals an earlier Act, the earlier Act is revived after the temporary provision is spent. This rule will prevail except in cases where the intention of the temporary Act is clearly expressed for the purpose of repealing the earlier Act permanently.[709]

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[706] *Basanta Chandra v. Emperor*, ILR 23 Pat 968 : AIR 1945 Pat pp.44, 50
[707] *Sushil Kumar v. Emperor*, AIR 1943 Cal pp.489, 493
[708] *Panna Lal Lahoti v. State of Hyderabad*, AIR 1954 Hyd 129
[709] *Govindswami Naidu v. Additional Commercial Tax Officer*, ILR (1962) 2 Mad 294.

5.7 SUBSTANTIVE AND ADJECTIVE STATUTE

Law defines the rights which it will aid and specifies the way in which it will aid them. So far as it defines, thereby creating it is 'Substantive law'. So far as it provides a method of aiding and protecting, it is 'Adjective law'.[710] Adjective law are also called Procedural law.

There is difference in the matter of interpretation between a law dealing with substantive rights and dealing with procedure. There is no vested right in procedure but the case of vested right is different. The statute dealing with the substantive rights is to be interpreted in a way that the substantive right available to the subject is not lost. Generally, substantive statutes is treated as prospective in a nature. Whereas, rules of procedure may be respective in nature.

Rule of procedure are not by themselves an end but the means to achieve the ends of justice. They are tools forged to achieve justice and not hurdles to obstruct pathway to justice. Interpretation to rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of permissible construction must be preferred to that which is rigid and negatives the ends of justice. The reason is obvious. Procedure is a means to subserve and not rule the cause of justice.[711] A rule of procedure enacted in a statute must, moreover be liberally construed; so as to lead to the smooth working of the scheme of the statute.[712]

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[710] *Holland: Jurisprudence,* Chapter 8 end as referred to in *N. S. Bindra: Ibid,* p. 581
[711] *M.V. Vali Press v. Fernandee Lopez,* AIR 1989 SC 2206
[712] *Quazi Vemat Ullah v. 6th Additional District Judge, Gorakhpur,* AIR 1993 All 126

It is a general rule relating to interpretation of statute that in the absence of an expressed provision, an adjective law cannot control the provisions of substantive law.[713] While interpreting a procedural law, the court takes into a consideration also the impact it is calculated to have on the course of litigation and decision making.[714]

Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of courts and litigants in respect of the litigation itself, the former determines their conduct and relations in respect of the matters litigated.[715]

5.8 AMENDING, CODIFYING AND CONSOLIDATING STATUTE

AMENDING STATUTE

A law is amended when it is, in whole or in part, permitted to remain, and something is added to or taken from it, or it is in someway changed or altered to make it more complete or perfect, or to treat it the better to accomplish the object or purpose for which it was made, or some other object or purpose. It is an alteration or change of something established as law.[716]

It frequently happens that legislative changes are made in order to reverse decisions of the courts; sometime, indeed the courts themselves invite the change. The decision is then the occasion of the enactment.

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[713] *Collector of Broach v. Ochhavlal,* AIR 1941 Bom 158
[714] *Ram Jas v. Surinder Nath,* AIR 1980 All 385
[715] *N. S. Bindra: Ibid,* p. 581
[716] *N.S. Bindra, Ibid,* p. 621

The question may, consequently arise whether the new enactment is confined to dealing with the particular situation with which the court was concerned or whether it goes further and covers a wider field; and if so, how much wider. This is no general rule or presumption as to this. Often Parliament, or its expert advisers, may take the opportunity to review the whole matter in principle and make broad changes.

Legislative time is a precious commodity and it is natural that opportunities, when they arise, will be used. Or, and this happens in the fiscal field, the draftsman, faced with some loophole in a taxing Act which the courts have recognised, will not merely close that particular loophole but will use general language extending much more widely, sometimes so as to sweep the honest and conscientious taxpayer up in the same net as the evader.

On the other hand, there may be cases where Parliament takes a narrow and piecemeal view of the matter; time may not admit of an extensive review which may involve wide policy questions, or necessitate consultation with other interests.

All these possibilities must be taken into account by courts in assessing legislative intention.

In performing that task, the help can be gained from setting down the two main elements which the draftsman has in the mind: the pre-existing law and the decision of the court rendered earlier.

CODIFYING STATUTE

Codifying Acts are Acts passed to codify the existing law. This is not merely to declare the law upon some particular point, but to declare in the form of Code, the whole of the law upon some particular subject.

Codification contemplates, implies and produces continuity of existing law in clarified form rather than its interpretation.[717]

The purpose of a codifying statute is to present an 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.[718] The principles applicable to the construction of such a statute are well stated in an off quoted passage of LORD HERSCHELL: "I think the proper course, in the first instance, to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation inconformity with this view."[719]

It is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction.[720]

The first step taken should be to interpret the language of the statute, and that an appeal to earlier decisions can only be justified on some special ground.[721]

CONSOLIDATING STATUTE

Consolidation is the combination in a single measure of all the statutes relating to a given subject matter and is distinct from codification

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[717] *N.S. Bindra, Ibid,* p. 638
[718] *HALSBURY: Laws of England,* (3rd Ed.) Vol. 36, p. 366
[719] *Bank of England v. Vagliano Brothers,* (1891) AC 107 (HL) p. 144, as referred to by *Justice G.P. Singh*: *Ibid,* p. 214
[720] *Joseph Peter v. State of Goa, Daman and Diu,* AIR 1977 SC 1812
[721] *Bank of England v. Vagliano Brothers,* (1891) AC 107 : *Ravulu Subbarao v. CIT, Madras,* AIR 1956 SC 604

in that the later systematizes case law as well as statutes.[722] A Consolidating Act may further be an amending Act. This additional purpose is usually indicated in the Preamble or in the long title by use of the words 'an Act to consolidate and amend'.[723]

For the purpose of interpreting a statute which is a consolidating as well as amending Act, the proper course is to have a "reasonable interpretation of its provisions"[724] and to apply the normal rule of interpretation "so as to give each word the meaning proper to it in its context".[725]

It is not a sound cannon of interpretation to refer to the provisions in repealed statutes when the consolidating statute contends enactment dealing with the same subject in different terms.[726] Even when a section from an earlier Act is repeated in a consolidation Act in identical terms the framework in which it is placed may be different.[727]

5.9 DELEGATED OR SUBORDINATE STATUTE

The nomenclature of delegated legislation is confused. The Act of Parliament which delegates the power may in so many words lay down that 'regulations', 'rules', 'orders', 'warrants', 'minutes', 'schemes', 'byelaws', or other instruments for delegated legislation appears under all these different names – may be 'made' or 'approved' under defined conditions.[728]

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[722] *Paton: Jurisprudence,* 4th Edition, First Indian Reprint, 2004, p. 186
[723] *Justice G.P. Singh: Ibid,* p.217
[724] *Ramdas Vitthaldas Durbar v. Amarchand & Co.,* (1916) ILR 40 Bom. 630 (PC)
[725] *Thakur Amar Singhji v. State of Rajasthan,* AIR 1955 SC 504
[726] *Administrator General of Bengal v. Premlal Mullick,* ILR 22 Cal. 788 (PC)
[727] *Justice G.P. Singh: Ibid,* p.217
[728] *N.S. Bindra: Interpretation of Statutes, Ibid,* p. 737

The power to legislate, when delegated by Parliament, differs from Parliament's own power to legislate. In subordinate legislation the legislature delegates to some person or body of persons the duty of framing regulations for carrying out the policy and objects of the statute.

A piece of subordinate legislation is not as immune as a statute passed by a competent legislative and is liable to be challenged on any of the grounds on which plenary legislation is questioned.[729] The courts should make a cautious approach in interpreting the subordinate legislation and adopt almost the same standard as adhered to in interpreting legislative enactments.[730]

By reason of any legislation whether enacted by the legislature or by way of subordinate legislation, the State gives effect to its legislative policy. Such legislation, however, must not be ultra vires the Constitution. A subordinate legislation apart from being intra vires the Constitution, should not also be ultra vires the parent Act under which it has been made. A subordinate legislation must be reasonable and in consonance with the legislative policy as also give effect to the purport and object of the Act and in good faith. Where two interpretations of a delegated legislation are possible, the one that makes it unworkable should be avoided.[731] If the language used in the delegated legislation leads to one irresistible result it would not be proper to read it differently only for purpose of finding out the same to be valid.[732]

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[729] *Indian Express Newspapers Private Ltd. v. Union of India,* AIR 1986 SC 515
[730] *P. V. Mani v. Union of India,* AIR 1986 Ker. 86
[731] *N.C. Singhal v. Union of India,* AIR 1980 SC 1257
[732] *Tara Chand v. State of U.P.,* 1975 ALR 39; *Mark Netto v. Govt. of Kerala,* AIR 1979 SC 83

In *P.J. Irani v. The State of Madras,*[733] the Court has held that:

> "A subordinate legislation can be challenged not only on the ground that it is contrary to the provisions of the Act or other statutes; but also if it is violative of the legislative object. The provisions of the subordinate legislation can also be challenged if the reasons assigned therefore are not germane or otherwise mala fide. The said decision has been followed in a large number of cases by this Court."

In *Secretary, Ministry of Chemicals& Fertilizers, Government of India v. Cipla Ltd. and Ors.,*[734] the court has opined that:

> "The Central Government which combines the dual role of policy-maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the policy guidelines evolved by itself in the matter of selection of drugs for price control."

In *Maharashtra State Board of Secondary and Higher Secondary Education and Anr. v. Paritosh Bhupesh Kumar Sheth and Ors.,*[735] the court has held that:

> "The court was concerned with a regulation laying down the terms and conditions for revaluating the answer papers. Indisputably, there exists a distinction between regulations, rules and bye-laws. The sources of framing regulations and bye-laws are different and distinct but the same, in our opinion,

[733] MANU/SC/0080/1961
[734] MANU/SC/0514/2003
[735] MANU/SC/0055/1984

would not mean that the court will have no jurisdiction to interfere with any policy decision, legislative or otherwise."

In *State of Rajasthan and Ors. v. Basant Nahata,*[736] the court has held that:

> "Interpretation of a town planning statute which has an environmental aspect leading to applications of Articles 14 and 21 of the Constitution of India cannot be held to be within the exclusive domain of the executive."

Where a Court is required to determine whether a piece of delegated legislation is bad on the ground of arbitrary and excessive delegation, the Court must bear in mind the following well-settled principles:

(1) The essential legislative function consists of the determination of the legislative policy and its formulation as a binding rule of conduct and this cannot be delegated by the Legislature.

(2) The Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act.

(3) Where the legislative policy is enunciated with sufficient clearness or a standard is laid down, the Courts should not interfere.

(4) What guidance should be given and to what extent and whether guidance has been given in a particular case at all

[736] MANU/SC/0547/2005

depends on a consideration of the provisions of a particular Act with which the Court has to deal, including its Preamble.

(5) The nature of the body to which delegation is made is also a guidance in the matter of delegation.

(6) What form the guidance should take will depend upon the circumstances of each statute under consideration, and cannot be stated in general terms. In some cases guidance in broad general terms may be enough, in other cases more detailed guidance may be necessary.

5.10 INTERPRETATION OF CONSTITUTION

The Constitution of India is *supremalex*. It is supreme law of the land.

Any Judge faced with the task of interpreting a document must decide what role various sources of meaning will play in the act of judicial interpretation. With regard to constitutional interpretation, the judge must decide, among other things, how much weight to give arguments about the plain meaning of the constitution's text, the text's purpose or spirit, and historical evidence concerning the intent of the framers. In addition, the judge must decide how much weight to give judicial precedents interpreting the Constitution, legislative and executive practice under the Constitution and arguments concerning the consequences of a particular judicial decision which are arguments of policy.[737]

[737] *R. Randall Kelso, "Styles of Constitutional interpretation and the four main approaches to constitutional interpretation in American legal history"*, 29 Valpariso University Law Review, 122 (1994-5)]

The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or Charter of rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the constitution and must, in interpreting its provisions, bear these considerations in mind.[738]

In *Jamshed N. Guzdar v. State of Maharashtra,*[739] the Supreme Court has stated:

> "…. We are afraid, when it comes to interpretation of the Constitution, it is not permissible to place reliance on contemporanea expositio to the extent urged. Interpretation of the Constitution is the sole prerogative of the constitutional courts and the stand taken by the executive in a particular case cannot determine the true interpretation of the Constitution…."

Broadly stated, there are four main sources of meaning: contemporaneous sources of meaning, subsequent events, non-interpretative considerations, and individual bias.

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[738] *Justice Aharon Barak, President of Supreme Court of Israel says in Harward Law Review,* Vol. 116 (2002-2003)

[739] [2005] 2 SCC 591

Each of these four sources contains a number of sub-categories:

(1) For example, contemporaneous sources of meaning (i.e., those sources of meaning which existed at the time of a constitutional provision was ratified) include the text of the Constitution, the structure of government contemplated by the Constitution, and the history surrounding the constitutional provision's drafting and ratification.

(2) For subsequent events, there are the sub-categories of judicial construction of the Constitution (doctrinal precedents) and legislative and executive practice under the Constitution.

(3) Non-interpretive considerations involve arguments concerning the consequences of a judicial construction from the perspective of justice or sound social policy, and considerations of policies.

(4) Individual bias involves consideration of general interpretive bias and consideration of specific case bias, both doctrinal bias and party bias.

Art. 13 of the Constitution gives the Courts wide powers to declare any statute or other legal rule to be void on ground of inconsistency with Part 3 of the Constitution. Our Part 3 of the Constitution is much more elaborate. But, in spite of the elaboration, it had inevitably to be left to courts to declare:-

(i) What classification is reasonable and legitimate within the meaning of Articles 14, 15(1) and 16(1), and what special provisions are legitimate within the meaning of Articles 15(3) and (4) and 16(4);

(ii) What restrictions are reasonable and in the public interest within the meaning of clauses (2) to (6) of Article 19;

(iii) What is comprised in the right to life and in right to personal liberty within the meaning of Article 21, and what amounts to procedure established by law within the meaning of that Article;

(iv) What regulations governing minority educational institutions are reasonably related to the need of maintaining educational standards and do not amount to our unreasonable interference with the right of the minorities to establish and administer the institutions of their choice;

(v) What regulations are reasonably related to "public order, morality and health" and to other provisions of Part 3 within the meaning of Articles 25(1) and 26(1), and what regulations are legitimate under Art. 25(2)(a);

(vi) Whether the principles laid down by legislation regarding compensation, within the meaning of original Article 31, was just equivalent of the property acquired. Now, Article 300A, in the light of the interpretation given in Maneka Gandhi (AIR 1978 S.C. 597) to the expression "law" in Article 21, brings about the same result;

(vii) What provisions of a law contemplated by Article 31A are reasonably related to the purpose mentioned in sub-clauses (a) to (e) of Clause (1) of that Article;

(viii) What law abridging a fundamental right is within the meaning of Article 31C, genuinely gives effect to or secure any of the directive principles mentioned in Part 4.

Apart from Part-3, several other provisions also attract judicial law making power. For instance, Article 265 says that, no tax shall be levied or collected except by authority of law. This expression "authority of law" has again to be interpreted in accordance with the interpretation given in *Maneka Gandhi v. Union of India*[740] to "law" occurring in Article 21.

A democratic constitution cannot be interpreted in a narrow and pedantic sense i.e. in the sense of strictly literal. Constitutional provision is to be interpreted in the light of basic structure of the Constitution.[741] The function of a Constitution is to establish the framework and general principles of Government, and hence, merely technical rules of construction of statutes are not to be applied to as to defeat the principles of the Government or the objects of its establishment.[742] Being a paramount law there are certain rules which are specially applicable to the construction of a Constitution, rules which are not applicable to the construction of statutes. Even though the language may seem to be clear in its meaning, many questions arise where a word which would otherwise be unambiguous has two or more separate and distinct meanings or connotations. In such a situation a question of construction exits, for it must be determined which of the possible meaning of the term

[740] AIR 1978 SC 597

[741] *M/s. Shriram Industrial Enterprises Ltd., Meerut v. Union of India: S.R.Bommai v. Union of India,* AIR 1994 SC 1918

[742] *Brien v. Williamson*, 7 How 14 : *Rambhadra v. Union of India*, AIR 1961 AP pp.355, 358.

is intended. Words or terms used in a Constitution, being dependent upon ratification by the people voting upon it, must be understood in the sense most obvious to the common understanding at the time of its adoption although a different rule might be applied in interpreting Statutes and Acts of the Legislature.[743]

The rule is well established that no court is authorized so to construe any clause of the Constitution as to defeat it's obvious ends where another constitution equally accordant with the words and sense thereof will and enforce and protect it. [744] The naked words of the statute governing constitutional privileges are not always a safe guide for determining their applicability. Where fundamental rights are involved it is the *sententia legis* more than the *nuda verba* which throws light and gives guidance. [745] In the construction of constitutional provisions dealing with the powers of Legislature a distinction cannot be made between an affirmative provision and a negative provision, for both are limitations on the power. [746] The directive principles cannot override the categorical restriction imposed on the legislative power of the state. In determining the scope of legislative power conferred by the Constitution, besides placing itself in the position of the farmers of it, the Court must have regard to what is ordinarily within that topic in legislative practice of that State in particular with a view to ascertain the general conception of the words used in the Act. Parliament must be presumed to have had Indian Legislative practice in mind, and unless the context requires to the contrary, not to have conferred a legislative power intended to be interpreted in a sense not understood by those to whom the Act was to

[743] *Lake County v. Rollins,* 130 US 662 : 132 L Ed 1060; *United States v. Sprague,* 282 US 716 : 75 L Ed 640; *Chioestrel Iopovice v. Agler,* 280 US 379 : 74 L Ed 489
[744] *Prigg v. Pennsylvania,* 16 Pet (US) 539 : 10 L Ed 1060.
[745] *Peoples Insurance Co. Ltd. v. Sardul Singh,* AIR 1962 Punj pp.101, 103.
[746] *Deepchand v. State of U.P.,* AIR 1959 SC pp.648, 656

apply. [747] A harmonious interpretation has to be placed upon the Constitution[748] and so interpreted it means that the State should certainly implement the directive principles but it must do so in such a way that its law do not take away or abridge the fundamental rights, for otherwise the protecting provisions of Chapter III will 'be a mere rope of sand.' Contemporaneous and subsequent practical constructions are entitled to greatest weight.[749]

We must never forget that a Constitution is always being expounded. [750] Provisions of a Constitution should not be interpreted in a narrow and pedantic sense.[751] It is true that the Supreme Court will give such meaning to the words used in the Constitution as would help towards its working smoothly. [752]

The words of the Constitution must be naturally and liberally construed and no narrow or restricted interpretation should be put upon the words unless such interpretation is forced by the context in which they occur.

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[747] *Vishnu Agencies (P) Ltd. v. Commercial Tax Officer,* AIR 1978 SC pp.449, 459

[748] *Kavalappara Kuttarithil Kochuni v. State of Madras and Kerala,* AIR 1960 SC 1080

[749] *Williams McPherson v. Robert R. Blacker,* 146 US 1 : *Kesavananda Bharati v. State of Kerala,* (1973) 4 SCC pp.225, 474

[750] *McCulloch v. Maryland,* 4 L Ed 579

[751] *Bimalchandra v. Mukherjee,* HC 56 CWN 651; Karkare, G.D. V.Shevde, T.L. AIR 1952 Nag 330; *Narain Prasad v. Indian Iron & Steel Co. Ltd.,* AIR 1953 Cal 695; *Ram Chandraa Rao v. Andhra Pradesh Regional Committee,* AIR 1965 A.P. pp. 306, 310

[752] *Lt. Col Khajur Singh v. Union of India,* (1961) 2 SCR pp.828, 841; *Bain Peanut Co. v. Pinson,* 75 L Ed pp.482, 491 : 282 US 499; *All India Bank Employees Association v. National Industrial Tribunal,* (1962) 3 SCR pp.269, 290.

The Supreme Court itself has observed in *Asif Hameed v. State of J.K.*,[753] that:

> "Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive, the two facets of people's will, they have all the powers including that of finance. Judiciary has no power over sword or the purse nonetheless it has power to ensure that the aforesaid two main organs of State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of power is the self imposed discipline of judicial restraint."

All the statutes made by the Parliament and State legislatures are subject to the Constitution. Indeed, if any statute violates the fundamental rights chapter in the Constitution, by reason of Article 13, it has to be

[753] AIR 1989 S.C. pp.1899, 1905

declared as void. If an action is otherwise unconstitutional, the same has to suffer invalidation by the court of judicial review. Therefore, while interpreting the laws we cannot ignore the Constitution of India.

The Parliament and the State Legislature are competent to make laws in their respective jurisdictions. It shall be the duty of the Parliament and State Legislature to apply the Directive Principles of State Policy in making laws. It is well known presumption of law that all laws are made in accordance with the Constitution. Therefore, if any provision of any law presents any difficulty, the first step is to conclusively presume that the law requiring interpretation was made in furtherance of the preambular goals and the Directive Principles of State Policy. This would enable to interpret the law in the light of the preamble and the directive Principles of State Policy. Indeed such a method of interpretation of laws which all the judges are bound to follow is accepted by the Supreme Court in *Bihar Legal Support Society v. Chief Justice of India.*[754] When Kirloskar was granted bail in midnight, they said that you are granting bail for rich people and giving different treatment to poor people? A Constitution Bench of the apex Court spoke in resounding voice thus:

> "..... In fact, this court has always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent, the businessman and the industrialists. The reason is that the weaker sections of Indian humanity have been deprived of justice for long, long years: they have had no access to justice on account of their poverty, ignorance and illiteracy. They are not aware of the rights and benefits conferred upon them by the Constitution and the law..... The majority of the people of our country are subjected to this denial of access to

[754] AIR 1987 SC 38

> justice and, overtaken by despair and helplessness, they continue to remain victims of an exploitative society where economic power is concentrated in the hands of a few and it is used for perpetuation of domination over large masses of human beings. This court has always, therefore, regarded it as its duty to come to the rescue of these deprived and vulnerable sections of Indian humanity in order to help them realise their economic and social entitlements and to bring to an end their oppression and exploitation..... This court has always shown the greatest concern and anxiety for the welfare of the large masses of people in the country who are living a life of want and destitution, misery and suffering and has become a symbol of the hopes and aspirations of millions of people in the country."

In the case of *Atam Prakash v. State of Haryana,*[755] Justice O. Chinnappa Reddy observed that:

> "The implication of the introduction of the preambular word 'Socialist' which has become the centre of hopes and aspirations of the people a beacon to guide and inspire all that is enshrined in the Articles of Constitution, is clearly to set up vibrant throbbing socialist welfare society" in place of 'Feudal exploited Society'. Whether it is the Constitution or the constitutional validity of statute, when it is considered, the cardinal rule is to look to the preamble to the Constitution as the guiding light and Directive Principles of State Policy as the book of interpretation. Therefore, in interpreting the various laws brought before the Judiciary at the District level also, the effect of Constitutional provisions cannot be forgotten. In a

[755] AIR 1986 SC 859

recent judgment under the Juvenile Justice Act, Justice Thomas interpreted against the petitioner, and he said the relevant date for the purpose of giving benefit is that date when he is brought before the appropriate authority.

The speeches made by the members of the Constituent Assembly in the course of the debates on the draft Constitution cannot be used in interpreting an Article of the Constitution."[756]

In case of *S.R.Bommai v. Union of India*[757] while dealing with amendment of Constitution the Supreme Court has observed that;

"The question further arises whether by interpretative process, would it be permissible to fill in the gaps. Though it is settled law that in working the law and finding yawning gaps therein, to give life and force to the legislative intent, instead of blaming the draftsman, the Courts ironed out the creases by appropriate technique of interpretation and infused life into dry bones of law. But such an interpretation in our respectful view is not permissible, when we are called upon to interpret the organic Constitution and working the political system designed by the Constitution but took no steps to amend the Constitution in this behalf, it is a principle of legal policy, that the law should be altered deliberately, rather than casually by a sidewind only, by major and considered process. Amendment of the Constitution is a serious legislative business and change in the basic law, carefully workout, more fundamental changes are brought out

[756] *State of Travancore-Cochin and Others v. Bombay Company Ltd, Alleppey, Union of India and others,* A.I.R 1952 SC 366
[757] AIR 1994 SC 1918.

by more thorough going and indepth consideration and specific provisions should be made by which it is implemented. Such is the way to contradict the problem by the legislative process of a civilized State. It is a well established principle of construction that a statute is not to be taken as affecting Parliamentary alteration in the general law unless it shows words that are found unmistakably to that conclusion. No motive or bad faith is attributable to the Legislature."

It was further observed that; "Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of casus omissus or of pressing into service external aid, for in such a case the words used by the Constitution or the stature speak for themselves and it is not the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the Legislature."

While referring the American Jurisprudence it was observed that;

"In American Jurisprudence, 2 Series, Vol.73 at page 397 in para 203 it is stated that "It is a general rule that the courts may not, by construction insert words or phrases in a statute or supply a casus omissus by giving force and effect to the language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the Legislature at the time of the enactment of the law. Under such circumstances, new provisions or ideas may not be interpolated in a statute or ingrafted thereon. At page 434 in para 366 it is further stated that "While it has been

held that it is duty of the courts to interpret a statute as they find it without reference to whether its provisions are expedient or unexpedient. It has also been recognised that where a statute is ambiguous and subject to more than one interpretation, the expediency of one construction or the other is properly considered. Indeed, where the arguments are nicely balanced, expediency may tip the scales in favour of a particular construction. It is not the function of court in the interpretation of statues, to vindicate the wisdom of the law. The mere fact that the statute leads to unwise results is not sufficient to justify the court in rejecting the plain meaning of unambiguous words or in giving to a statue a meaning of which its language is not susceptible, or in restricting the scope of a statute. By the same token an omission or failure to provide for contingencies, which it may seem wise to have provided for specifically, does not justify any judicial addition to the language of the statute. To the contrary, it is the duty of the courts to interpret a statute as they find it without reference to whether its provisions are wise or unwise, necessary or unnecessary, appropriate or inappropriate, or well or ill-conceived".

The Supreme Court has further observed that;

"In Encyclopedia of the American Judicial system the constitutional interpretation by Craig R. Ducat it is stated that the standard for assessing constitutionality must be the words of the Constitution, not what the Judges would prefer the Constitution to mean. The constitutional supremacy necessarily assumes that a superior rule is what the Constitution says, it is not what the Judges prefer it to be. In Judicial tributes balancing

the competing interest Prof. Ducat quoted with approval the statement of Bickel at page 798 thus :

"The judicial process is too principle-prone and principle-bound – it has to be, there is no other justification or explanation for the role it plays. It is also too remote from conditions, and deals, case by case, with too narrow a slice or reality. IT is not accessible to all the varied interests that are in play in any decisions of great consequence. It is, very properly, independent. It is passive. It has difficulty controlling the stages by which it approaches a problem. It rushes forward too fast, or it lags; its pace hardly ever seems just right. For all these reasons, it is, in a vast, complex, changeable society, a most unsuitable instrument for the formation of policy."

In the modes of Constitutional Interpretation by Craig R.Ducat, 1978 Edition at p. 125, he stated that the Judges' decision ought to mean society's values not their own. He quoted Cardozo's passage from the Nature of Judicial Process at page 108 that, "a Judge, I think would err if he were to impose upon the community as a rule of life his own idiosyncracies of conduct or belief. The court when caught in a paralysis of dilemma should adopt self-restraint, it must use the judicial review with greatest caution. In clash of political forces in political statement the interpretation should only be in rare and suspicious occasions to nullify ultra vires orders in highly arbitrary or wholly irrelevant proclamation which does not bear any nexus to the predominant purpose for which the Proclamation was issued, to declare it to be unconstitutional and no more."

According to the Supreme Court, the cardinal rule of interpretation is that the entries in the legislature lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all authority or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival Legislature lists. In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude.[758] The rule of construction adopted for the purpose of harmonising the two apparently conflicting entires in the Union and State Lists would equally apply to an apparent conflict between two entries in the same list.[759] The words 'that is to say' in the several entries are mere illustrative and not words of limitation.[760]

It is a fundamental canon of interpretation that a constitution should receive a liberal interpretation in favour of a citizen, especially with respect to those provisions which were designed to safeguard the liberty and security of the citizen.

5.11 INTERPRETATION OF CONTRACTS / DEEDS

Contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meaning unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however is reasonable, if the parties

[758] *The Elel Hotels Investments Ltd. v. Union of India,* AIR 1990 SC 1664
[759] *Calcutta Gas Co. v. State of W.B.,* 1962 (Supp.) 3 SCR 1
[760] *Bhola Prasad v. King- Emperor,* AIR 1942 FC 17

have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely.[761]

In *DLF Universal Ltd. & Anr. v. Director, T. & C. Planning Department Haryana & Ors.,*[762] the Supreme Court has held: -

> "It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint interest of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both parties and the joint intent of the parties to be discovered from the entirety of the contract and the circumstances surrounding its formation.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly."

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[761] *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal,* AIR 2004 SC 4794*; The Rajasthan State Industrial Development and Investment Corporation & Anr. v. Diamond and Gem Development Corporation Ltd. & Anr,* AIR 2013 SC pp.1241, 1250

[762] AIR 2011 SC 1463

Circulars issued by the State Government may provide useful guidance to the parties concerned, but the same are not conclusive of the correct interpretation of the relevant clauses of the agreement and, in any case, the Government's interpretation is not binding on the Courts.[763]

Bharat Builders Pvt. Ltd. v. Parijat Flat Owners Co-op. Hsg. Society Ltd.,[764] the case questioned on the interpretation of documents, in a case involving dispute between the promoter and flat purchaser – It was debated whether the document in question were of sale or of lease – The Court held that the documents were to be construed as per wordings of the documents, if language was unambiguous – If the document contained ambiguous language, then they were to be construed in the light of intention of the parties, ignoring grammatical meanings of words appearing in the document.

In *R. M. Sundaram @ Meenakshi Sundaram and another v. The Correspondent, National Elementary School, Pundarigakulam, Vadakarai, Nagapattinam*[765], it was held that:

> "When both parties are free to enter into a contract either in the nature of a lease or a licence, and with open mind, they enter into a transaction giving the document the name as a lease, that also shows that the parties intended to create only that relationship. Even though there is no wording of handing over the property to the grantee, if the grantee can make use of the same if it is in his effective control, it can be inferred that he obtained exclusive possession."

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[763] *Vishnu v. State of Maharashtra,* (2014) 1 SCC pp.516, 535
[764] 1998 (3) Bom CR 188
[765] 1998 (1) CTC 195

In *Qudrat Ullah v. Municipal Board, Bareily,*[766] it was held that:–

> "There is no simple litmus test to distinguish a lease as defined in Section 105 Transfer of Property Act from a licence as defined in Section 52, Easements Act, but the character of the transaction turns on the operative intent of the parties. To put it pithily, if an interest in immovable property, entitling the transferors to enjoyment, is created, it is a lease; if permission to use land without right to exclusive possession is also granted, a licence is the legal result."

In *Khalil Ahmed Bashir Ahmed v. Tufelhussein Samashbhai Sarangpurwala,*[767] it was held that:

> "In order to determine whether the document created a licence or a lease the real test is to ascertain the intention of the parties i.e., whether they intended to create a licence or a lease. If the document creates an interest in the property entitling the transferee to enjoyment, then it is a lease; but if it only permits another to make use of the property without exclusive possession, that it is a licence. Substance of the document must be preferred to form."

In *Puran Singh Sahni v. Sundari Bhagwandas Kripalani,*[768] it was held: -

> "The intention of the parties in making the agreement is determinative of the question whether it was a lease or licence. The test of exclusive possession, though of significance, is not

[766] MANU/SC/0418/1973
[767] MANU/SC/0526/1987
[768] MANU/SC/0541/1991

> decisive. By mere use of the word lease or licence the correct categorisation of the instrument under law cannot be affected. While interpreting the agreement court has also to see what transpired before and after the agreement. Ex praecedentibus et consequentibus optima bit interpretation. The best interpretation is made from the context. The best intention of the parties to an agreement has to be gathered from the terms of the agreement construed in the context of the surrounding antecedent and consequent circumstances. The crucial text would be what the parties intended. If in fact it was intended to create an interest in the property, it would be a lease, if it did not, it would be a licence. Interest for this purpose means a right to have the advantage accruing from the premises or a right in the nature of property in the premises but less than title. In the case the intention to create is only a licence and not a lease is clear from the tenor of the arrangement. Positively it speaks of a licence for the use of the flat and negatively that the licensee would not claim any tenancy or sub-tenancy. What was given to the licensee was the use of the flat with furniture, fittings, etc., which would not be said to have created any interest in the flat thought in effect the use continued for stipulated period of time."

In *Enercon (India) Limited & Ors. v. Enercon GMBH & Anr.,*[769] the Supreme Court has held that:

> "Whilst interpreting the arbitration agreement and/or the arbitration clause, the court must be conscious of the overarching policy of least intervention by courts or judicial

[769] (2014) 5 SCC 1

authorities in matters covered by the Indian arbitration Act, 1996.

In our opinion, the courts have to adopt a pragmatic approach and not a pedantic or technical approach while interpreting or construing an arbitration agreement or arbitration clause. Therefore, when faced with a seemingly unworkable arbitration clause, it would be the duty of the court to make the same workable within the permissible limits of the law, without stretching it beyond the boundaries of recognition. In other words, a common sense approach has to be adopted to give effect to the intention of the parties to arbitrate. In such a case, the court ought to adopt the attitude of a reasonable business person, having business common sense as well as being equipped with the knowledge that may be peculiar to the business venture. The arbitration clause cannot be construed with a purely legalistic mindset, as if one is construing a provision in a statute."

In *Rajkumar v. State of Himachal Pradesh,*[770] the court has opined that in cases where the language of the document was not clear, the subsequent conduct of parties furnished evidence to clear the blurred area and to ascertain the true intention of the author of the document.

In *Bank of India v. Rustom Fakirji,*[771] the court has held that construction of a document cannot be controlled by any subsequent declaration or conduct of the parties; a fortiori it cannot be controlled by any such declaration or conduct of one of the parties. It is firmly established rule that the construction of a contract cannot be affected by

[770] MANU/SC/0322/1990
[771] 57 BLR 850

the declaration of parties made subsequent to its date though when the words are ambiguous they may be explained by the previous or contemporaneous conduct of the parties.

The Supreme Court in *S. M. Mohidden v. R.V.S. Pillai,*[772] spoke of the possibility of subsequent conduct of parties or their representatives varying for imponderable reasons – bona fide or otherwise and thus warping the issue.

(i) Whether a document or its terms are clear, evidence of surrounding circumstances including subsequent conduct or even subsequent interpreting statements is inadmissible apart from being redundant.

(ii) Where the document or its words are ambiguous, surrounding circumstances will be admissible to ascertain as to how the parties understood the same.

(iii) Surrounding circumstances would certainly include conduct or statements contemporaneous or near proximate to document's execution.

(iv) Subsequent conduct or statements remoter and getting more distant from the date of document is admissible but is an unsafe guide, more-so if it represents a one-sided happening or assertion.

(v) A long course of conduct may be indicative of how parties understood a document suffering from ambiguity in the whole or part thereof and thus illuminate the misty area.

[772] MANU/SC/0426/1973

The above propositions do not govern the operation of an estoppel based upon a change of position by one of the parties to a document pursuant to a representation as to its effect by the other party thereto.

6 APPROACH TO BE ADOPTED BY JUDGE IN INTERPRETATION

The law is not static, but is a dynamic process. The task of judicial interpretation is not merely to reiterate Judicial Interpretation can be creative, but of course within the limits of the most rigorous discipline and in entire harmony with the boundaries of statute law and precious growth.[773]

The proper function of a court is merely to interpret what a statute lays down, and not to legislate according to what it thinks should be the law.[774]

Further, it is well-settled that it cannot be presumed that the legislature makes any provision which is unnecessary, needles or futile. The general framework furnished by the statute is to be filled in for each case by means of interpretation, that is, by following out the principles of the statute. In every case, without exception, it is the business of the court to supply what the statute omits, but always by means of an interpretative function.[775] When confronted with the task of interpreting a statute judges say that their task is to ascertain the 'intention of parliament' as can be gathered from the meaning of the words used. This quest is no less elusive than the search for the ratio decidendi of a case. For instance, where parliament enacts a provision on a mistaken view of the law, the courts will give effect to it according to what the law really was in their

[773] *Mrs. Nellie Wapshare v. Pierce Leslie & Co. Ltd*., AIR 1960 Mad. pp.410, 422
[774] *Raja Shatraijal v. Azmat Azim Khan*, AIR 1966 ALL 109
[775] *Kiss, "Equity Civil Law", 9 Modern Legal Philosophy Series*, p.161 as quoted by *Cardozo, Ibid*, p. 70

view.[776] This may be a byproduct of the rule that express words, or necessary implication, are required to change the law.

A Statute is the will of the Legislature and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it.[777]

A statute is to be construed, if possible, as to give sense and meaning to every part. It sometimes happens that in a statute, the language of which may fairly comprehend many different cases, some only of those cases are expressly mentioned by way of example merely, and not as excluding others of a similar nature. So, where the words used by the legislature are general, and the statute is only declaratory of the common law, it shall extend to other persons and things besides those actually named, and consequently, in such cases, the ordinary rule of construction cannot properly apply. Sometimes, on the contrary, the expressions used are restrictive, and intended to exclude all things which are not enumerated. Where, for example, certain specific things are taxed, or subjected to a charge, it seems probable that it was intended to exclude everything else even of a similar nature, and a fortiori, all things different in genus and description from those which are enumerated.[778]

It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.[779] This proposition was further explained in para 8 of

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[776] B*irmingham City Corporation v. West Midland Buptist (Trust) Association (Incorporated)* (1969) 3 All ER 172 as referred to by *Dias, Ibid,* 166

[777] *Maxwell on Interpretation of Statutes,* pp. 1, 2 as referred in N. S. *Bindra: Ibid,* p.10

[778] *Ibid*, p. 452

[779] *Taylor v. Taylor,* (1875) LR 1 Ch D pp.426, 431; *Nazir Ahmad v. King Emperor,* AIR 1936 PC 253; *Rao Shiv Bahadur Singh v. State of Vindhya,* AIR 1954 SC 322 : 1954 Cri LJ 910

State of U.P. v. Singhara Singh[780] by a Bench of three Judges in the following words: (AIR p. 361)

> "*8.* The rule adopted in *Taylor v. Taylor* is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."

Such being the case, the point is: if Parliament did take a mistaken view of the law, in what sense are courts giving effect to the intention behind enactment? Reference to intention seems to be superfluous.[781] Whose intention is it that is relevant?

It cannot be the intention of the body which may have recommended the measure, such as the law Reform Committee, nor of the draftsman, nor even of the member of Parliament who voted it though, for a good many of them may not have attended on that day, or may have voted in obedience to party dictates.[782] Ascertaining the intention of the legislature, therefore, boils down to finding the meaning of the words used – the 'intent of the statute' rather than of Parliament.[783]

One important step in interpreting statutes is to forget the **'legislators'** and think only of the **'Legislature'**. The next step to be

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[780] AIR 1964 SC 358 : (1964) 1 Cri LJ 263(2); *Chandra Kishore Jha v. Mahavir Prasad*, (1999) 8 SCC 266; *Dhanajaya Reddy v. State of Karnataka*, (2001) 4 SCC 9 : 2001 SCC (CRI) 652; *Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.*, (2008) 4 SCC 755

[781] *Dias, Ibid*, p. 166

[782] *Dias, Ibid*, pp. 166-167

[783] *Dias, Ibid*, p. 167

fully acquainted with all the literature- debates on the floor of the Legislature, reports of select Committees and newspaper discussions- bearing upon the statute, for then only can one have a proper perspective and idea of the object of the Legislature. Once the object is defined and clearly kept in view, one can easily find out how the Legislature intended to achieve that object. That interpretation can then be chosen, language permitting, which achieves what the interpreter conceives to be the object.[784]

The fundamental rule of interpretation is the same whether the court is asked to interpret a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the legislature. It is perhaps difficult to attribute to a legislative body functioning in astatic society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made for a modern legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situation, if the words are capable of comprehending them.[785] In a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning

[784] *Shri Vepa- P. Sarathi:* Preface to first edition of *'Interpretation of Statutes'*
[785] *Senior Electric Inspector v. Laxminarayan Chopra,* AIR 1962 SC 159

attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.[786] Object of law is good guide in interpreting it.

Law should take pragmatic view of the matter and respond to the purpose for which it was made and also take cognizance of the current capabilities of technology and life style of the community. The purpose of law provides a good guide to the interpretation of the meaning of the Act.[787]

Courts must find out the literal meaning of the expression in the task of interpretation. In doing so if the expressions are ambiguous then the interpretation that fulfils the object of the legislation must provide the key to the meaning. Courts must not make a mockery of legislation and should take a constructive approach to fulfil the purpose and for that purpose, if necessary, iron out the creases.[788]

A provision must be interpreted by the written text if the precise words used are plain and unambiguous, the court is bound to construe them in their ordinary sense and give them full effect. The peal of inconvenience and hardship is a dangerous one is only admissible in interpretation where the meaning of the statute is obscure and there are alternative methods of interpretation. Where the language is explicit its consequences are for Parliament, and not for the Courts to consider.[789]

A test of construction of a single word; where there is a string of words in an Act of Parliament and the meaning of one of them is

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[786] *M/s. J. K. Cotton Spg. And Wvg. Mills LTd. v. Union of India,* AIR 1988 SC 191
[787] *S.P. Jain v. Krishna Mohan Gupta,* AIR 1987 SC 222
[788] *H. Shiva Rao v. Cecilia Pereira,* AIR 1987 SC 248
[789] *Dr. Ajay Pradhan v. State of Madhya Pradesh,* AIR 1988 SC 1875

doubtful, that meaning is given to it which it shares with the other words. So, if the words ‘horse, cow, or other animal’ occur, ‘animal’ is held to apply to brutes only.

When two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general.

While interpreting Statutes also, the judges to make law while, for instances:-

(a) discovering the true intention of the legislature;
(b) resolving ambiguities;
(c) filling in the gaps;
(d) avoiding absurdity or hardship;
(e) making the Statute harmonious with the Constitution and other laws.

For example, in S. 23 of the Contract Act, any contract found to be against public policy may be declared by Courts to be invalid. A Judge indirectly legislates when he decides what is contrary to public policy.

The rules of interpretation are not rules of law. They serve as guide. In applying the rules it must be kept in view that as the rules are not binding in the ordinary sense like a legislation, “they are our servants and not masters.”

It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.[790]

Statute containing stringent provisions and providing heavier punishment must be interpreted strictly.[791]

Provision fixing limitation period should be strictly construed. Equitable consideration of hardship out of place.[792]

Liberal interpretation cannot be applied to an expression expressly defined in the statute.[793] Liberal interpretation may be made but such interpretation could not be one which gave a right which the legislature clearly did not intend to confer.[794]

In exercise of the process of interpretation of a given statute the Judge should keep the following primary points in mind.

Preliminary Points

(i) What is the relevant enactment?
(ii) The source of enactment.
(iii) Is the enactment ambiguous in relation to the facts?
(iv) The purpose or object of legislature in enacting the Act.
(v) The mischief which the legislature wanted to curb.
(vi) Whether there is absurdity, inconvenience or repugnancy in the enactment?
(vii) Which rule of interpretation is to be applied?

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[790] *Sachida Nand Singh v. State of Bihar,* (1998) 2 SCC 493
[791] *State of Tamil Nadu v. Sivarasan,* (1997) 1 SCC 682
[792] *R. Rudraiah v. State of Karnataka,* AIR 1998 SC 1070
[793] *CIT v. Kotagiri Industrial Co-Op. Teat Factory Ltd.,* AIR 1997 SC 1865
[794] *Gautam Paul v. Debi Rani Paul,* (2008) 8 SCC 330

For ascertaining the meaning of the enactment and for interpreting it, the Judge should follow the possible guidelines which may be narrated as under:-

(i) First of all the entire enactment should be read thoroughly.

(ii) Various presumptions as to the statute, as stated below, should be kept in mind.

a. The statute is constitutionally valid.
b. It is just, coherent, self contained, certain, predictable and enacted for public interest.
c. It operates retrospectively.
d. It is enacted with some purpose.
e. Presumption that statutes are territorial in operation.
f. Legislature does not commit a mistake.
g. Legislature does not waste its words.
h. Legislature presumed to know the rules of grammar.
i. Legislature is fair.
j. Words used in the statutes is in ordinary sense unless technical one.
k. That a statute does not create new jurisdiction or enlarge existing ones.

(iii) The Judge should keep the following canons of law in mind: -

a. That each word is to be given a meaning subject to the possibility that it is inserted as a caution.
b. That the same words are to be given the same meaning.
c. That different words are to be given different meanings.
d. That where there is no ‘plain’ meaning, the ‘legal’ meaning is to be ascertain by weighing and balancing the relevant interpretative factors as they apply to the opposing interpretations of the enactment.

e. That literal meaning is to be given to the words used in the enactment.
f. That court may rectify drafting errors where there is required to carry out for the purpose of overall legislative intention.
g. That the court may add or subtract the words of the enactment if it is found that there is some absurdity, inconvenience or repugnancy in the enactment.
h. It is the duty of the Court to harmoniously construe different provisions of any Act or Rule or Regulation, if possible, and to sustain the same rather than strike down the provisions outright.[795]
i. That a provision of a statute is required to be interpreted in such a manner that possible conflicts between various provisions of a statute may be avoided.[796]
j. Provisions of the Act should be harmoniously construed so as to promote the object and spirit of the Act so long that does not violate the plain language of the provisions.[797]
k. Inconsistent or repugnant provisions have to be so construed as to harmonise them so that purpose of the Act may be given effect to. Statute has to be read as a whole to find out the real intention of the legislature. The rule of interpretation requires that while interpreting two inconsistent, or, obviously repugnant provisions of an Act, the courts should make an effort to so interpret the provisions as to harmonise them so that the purpose of the Act may be given effect to

[795] *K. Anjaiah v. K. Chandraiah*, (1998) 3 SCC 218
[796] *Sudha Agrawal v. Xth ADJ*, AIR 1999 SC 2975
[797] *Gulzari Lal Agarwal v. Account Officer*, (1996) 10 SCC 590

and both the provisions may be allowed to operate without rendering either of them otiose.

l. It is the duty of the Courts to avoid a head-on-clash between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them.

m. The provisions of one section of a statute cannot be used to defeat the other provisions unless the court, in spite of its efforts, finds it impossible to effect reconciliation betweens them.

n. It has to be borne in mind by all the courts all the time that when there are two conflicting provisions in an Act, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is the essence of the rule of "harmonious construction".

o. The courts have also to keep in mind that an interpretation which reduces one of the provisions as a "dead letter" or "useless lumber" is not harmonious construction.

p. To harmonise is not to destroy any statutory provision or to render it otiose.[798]

q. The precedents relating to the concerned enactment should also be considered.

However, precedents are not to be mechanically applied; they are of assistance only in so far as they furnish guidance by compendiously summing up principles based on rules of common sense and logic.[799]

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[798] *Sultana Begum v. Prem Chand Jain,* AIR 1997 SC 1006

[799] *M/s. Rohit Pulp and Paper Mills Ltd. v. Collector of Central Excise Baroda,* (1990) 3 SCC 447

So far as the point as to which rule has to apply and when for the interpretation of a particular situation is concerned, on analysis of the discussions made so far in regard to the interpretation according to the nature of the statutes, it is quite clear that applicability of rules of interpretation *viz.* Grammatical-Literal Meaning rule, Golden Rule and Mischief-Purposive rule may be enumerated as follows:

1. When the language of the statute is clear and unambiguous, it should be interpreted using the ordinary meaning of the language of the statute. Further considering the nature of the statutes, *viz.* Penal statutes, General statutes, Emergency statute, Subordinate or Delegated legislation are concerned, generally, the Grammatical-Literal meaning rule is to be applied by the Court. Not only that but if there is a provisions relating to imposing of tax or penalty in a fiscal statutes, then also the Grammatical-Literal meaning rule has to be applied.

2. When, the language of the statute is such that there is possibility of two interpretations then to avoid absurdity, inconvenience and hardship and repugnance, the court can depart from the literal meaning rule. This is a golden meaning rule. This rule can be applied in a situation where there is likelihood of anomaly or absurdity in the provisions of the statutes. Further the statutes like Special statutes governing of particular subject, the statute relating to defining the rights or creating the rights i.e. Substantive statute and Adjective statutes and Codifying statutes may be interpreted by using the Golden rule of interpretation. Of course, now a days the applicability of Golden rule is somewhat limited and Mischief rule of interpretation is applied in interpretation of such statutes.

3. The Mischief rule-Purposive rule is intended to find out the true intention and object of the legislature in enacting a particular legislation. Under this rule, the court can depart from the ordinary meaning of the words and may add or modify the language of the statute for the fulfilment of the intention of the legislature. Now, this rule is very much utilized by the courts at present. This rule can be applied for the suppression of the mischief and advancement of remedy for which the concerned statute has been enacted. Considering the various decisions relating to various types of statutes as discussed earlier, it is crystal clear that this rule has been applied in interpretation of provisions of various types of statutes *viz.* the provisions relating to Machinery provision of collecting tax under the Fiscal statute, Procedural statute, Beneficial-Social-Welfare statute, Amending, Codifying and Consolidating statutes, Substantive and Adjective statute.

4. So far as the interpretation of contracts and deeds are concerned, generally, the Grammatical-Literal meaning rule is applicable. However, if in a given case it is found that while applying this rule, there is some absurdity or repugnancy is found then the Golden rule is applicable.

5. Now, so far as the, Constitution is concerned, the basic rule of interpretation would be of harmonious interpretation. The provisions relating to procedural aspects as envisaged in the constitution may be interpreted according to the Grammatical-Literal meaning rule. But, when the question is relating to the rights of the citizens, then in that case either the Golden rule or Mischief-Purposive rule has to be applied.

7 SUMMARY

The number of decisions which the courts have delivered and continued to deliver dealing with questions of exposition of enacted laws are the principal source for ascertaining the rules of interpretation. The formulations of the rules even in leading decisions are not quite uniform as most often even a generalised statement in a case gets coloured by an emphasised on the problem in that case. Indeed the courts are, at times, seen lamenting over the growth of the rules and apparent conflict in them because of confusion and error of judgment that is likely to result in blind adherence to them.

Vincount Simonds said:

> "since a large and even increasing amount of time of the courts has, during the last three hundred years, been spent in the interpretation and expositions of statutes, it is natural enough that in a matter so complex, the guiding principles should be stated in different language and with such varying emphasis on different aspects of the problem that support of high authority may be found for general and apparently irreconcilable propositions. I shall endeavour not to add to their number."[800]

Lord Evershed in his forward to the Eleventh Edition of Maxwell said:

> "It is my hope that out of vast body of judicial decisions on the interpretation of statutes, there will, in the end, emerge rules few in number but well understood generally applicable or applicable to particular or defined classes of legislation, which

[800] *Attorney General v. H&H Prince Ernest Augustus,* (1957) 1 All ER (HL) pp.49, 53, 54

may supersede and render absolute other dicta derived from a different age and a different philosophy."[801]

When Judges are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance.[802] 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.

It is also well settled that in interpreting an enactment the court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress.[803]

I may say that various methods of interpretation are applied by the Courts – literal interpretation, golden rule of interpretation, and mischief rules. Though different terms are used in different situations, the main endeavour of the court is to know the intention of the legislature and, therefore, depending on the problem posed before the court one of these should be followed while applying the principles of interpretation briefly discussed so far.

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[801] *Maxwell: Ibid,* 11th Ed., Forward, p. 6
[802] *Benjamin N. Cardozo, Ibid*, p. 67
[803] *Kedar Nath Singh v. State of Bihar* (1962) Supp. 2 SCR pp.769, 809; *Bengal Immunity Co. Ltd. v. State of Bihar,* AIR 1955 SC 661; *R.M.D Chamarbaugwalla v. Union of India,* AIR 1957 SC 628