

IMPORTANCE OF INTERNAL AID IN ENGLISH LAW

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सत्ये स्थितो धर्मः

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INTRODUCTION

The task of interpretation may vary in difficulty. It is notable that the general methods of statutory interpretation are not themselves regulated by Parliament, but have been developed by the judges.¹ As stated by the Judicial Committee of the Privy Council in *Ditcher v Denison*,²

“It is a good general rule in jurisprudence that one who reads a legal document whether public or private, should not be prompt to ascribe –should not, without necessity or some sound reason, impute – to its language tautology or superfluity, and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.”

A statute is a formal act of the Legislature in written form. It declares the will of the Legislature. It may be declaratory of the law, or a command which must be obeyed, or a prohibition forbidding a course of conduct or a particular act.³ It is a question of fact, not of law: the statute *Quia Emptores* (1289)⁴ provided

“that an Act of Parliament is a general law whereof the judges may take knowledge, and therefore it is to be determined by them whether it is a statute or not.”

When indeed, the language is not only plain, but admits of but one meaning, the task of

Interpretation can be said to arise. The age old process of application of the enacted law has led

to formulation of certain rules of interpretation or construction. “By interpretation or

Construction is meant”, says SALMOND,

*“the process by which the court seeks to ascertain the meaning of Legislatures through the medium of authoritative forms in which it is expressed”.*⁵

¹ *Smith & Bailey on the Modern English Legal System*, Third edition 1996, p351-403;

² (1857) 11 Moore PC 325 at p.337.

³ UNDERSTANDING STATUTE by , V.C.R.A.C.CRABBE

⁴ 18 Edw. 1, Stat. 1, c.1.

⁵ SALMOND: “Jurisprudence” 11th Edition, p. 152.

The body of English law includes legislation, Common Law, and a host of other legal norms established by Parliament, the Crown, and the judiciary. English statutes have never been officially codified. There are, however, unofficial publications that organize by subject the statutes currently in force. The interpretation of statutes is a complex area of English law and also an essential one.⁶

While interpreting the meaning of provisions contained in any statute, judges and lawyers rely upon certain aids to construction which will enable them to know as to what the Legislature meant when it enacted a particular statute. A court will attempt to uncover Parliament's intentions by using a variety of aids – these are either 'internal or external'. One of the aids to construction of statute is internal aid.

Internal aids are those that derive meaning from the internal structure of the text and common dictionary meaning. Internal aids would include interpretation sections of the Act, which state the meaning of words used in the Act.

Using internal aids to interpret a statute involves examining the statute so that the meaning may be extracted from its composition and structure. This includes exploring elements such as punctuation, the title of the statute, the statute's context, and the meaning of associated words in the statute. For example, when two words that ordinarily have similar meanings are grouped together in a statute, they must be construed so that each word is given an independent meaning. Hence, intrinsic aids confine interpretation to the four corners of the statute. For perhaps two centuries, statutes have been by far the most important source of law in common law systems. Intrinsic or internal aids are "any material which is published with an Act, but is not a substantive provision of the Act".⁷

Examples of internal aids to construction will be: preamble to the Act, headings, marginal notes, Definition sections, provisos, explanation, schedules, etc. These are internal aids to construction because they are contained in the statute itself. Internal aids such as preamble of a statute states the main purpose the statute. Statutes are often highly complex, particularly those that enact into

⁶ <http://www.suite101.com/content/the-rules-of-statutory-interpretation-in-english-a219418>

⁷ L.R.C. 61 – 2000, p. 38.

law broad or multifaceted federal policies Therefore internal aids hold great importance in interpretation of Statute.

RESEARCH METHODOLOGY

I have attempted to know what internal aids are. I have also tried to analyze that whether internal aids have any importance in English Law or not. A lot of stress has been given towards the detailed understanding of internal aids and statutory interpretation in English law. I have emphasized towards, The long and short title, Heading, Preamble, Schedules.

For this purpose I have taken help from many sources..The methodology sought to be adopted to make this paper possible is descriptive and analytical. I have relied on data collected from secondary sources like books and articles. I also got relevant material from the internet .Most of all; the researcher has got a detailed understanding of the topic from the course teacher.

Chapter 1

LONG AND SHORT TITLE

An enactment would have what is known as ‘Short Title’ and also a ‘Long Title’. The short title merely identifies the enactment and is chosen merely for convenience. The ‘Long title’ describes the enactment and does not merely identify it.

Acts are often created with a brief title and an alternate, more detailed one. It is well established that the long title may be used to provide clues to the meaning of words within the Act. The long title appears at the of the Act. The Long Title is an important part of the Act; it can be looked at in order to remove an ambiguity in the words of the Act.⁸ In *Fielden v. Morley Corporation*,⁹ Lindley MR referred to the Long Title and said:

“I read the title advisedly because now and for some years past the title of an Act of Parliament has been part of the Act. In old days it used not to be so, and in the old law books we were told not to regard it; but now the title is an important part of the Act, and is so treated in both Houses of Parliament.”

In *Vacher v. London Society of Compositors*, Lord Moulton said:

*“The title is part of the Act itself and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope.”*¹⁰

Long title sets out in general terms the purposes of the Bill, and under the rules of parliamentary procedures should cover everything in the bill. The long title begins with the words like ‘An Act to...’

In English law under parliamentary rules, a Bill of which notice of presentation has been given is deemed to exist as a bill even though it consists of nothing else but the long title. Once the Bill has received the Royal assent, the long title is therefore vestigial. The function of long title is very complex and at times it is misunderstood by judges. Judges are also known to confuse long

⁸ Supra note:3

⁹ [1899] 1 Ch. 1 at p.4, See also

¹⁰ [1913] AC 107, at p.128. [1900] AC 133.

title with other components of the act. Some judges have confused long title with preamble.¹¹ Long title has also been referred to as the short title.¹² The existence of long title as part of the Act has been a question of great importance. Long title is undoubtedly a part of the Act, though its value in interpretation has sometimes been exaggerated by judges.¹³ If the long title makes it clear in what sense a term is used in the Act this will be treated as conclusive where there is no inconsistent indication in the act itself.¹⁴

The Long Title indicates the nature of the legislative measure. It contains the main theme or themes of the Act, and can thus be used in order to determine the scope of the Act and the proper construction to be adopted in order to resolve a doubt or an ambiguity.

The Short Title is the name used for an Act of Parliament for reference purposes. The object of the Short Title 'is identification and not description', but it could be used to assist in the interpretation of the Act. It is used to obviate the necessity of having to refer to the full and descriptive title of the Act. In modern Act the short title is usually given by the Act itself. Short title is very useful as an Act is continued to be cited by the short title authorized to it. If an act is amended in such a way as to make the short title misleading then the latter may be amended. Short title does not mean that the title is very brief. Short title is meant to be merely a convenient label. It is not convenient if too lengthy.

There was informal type of short titles also like 'Fox's libel Act'. But these acts have been given a given short titles by a Statute Law Revision Act. Main function of short title is just to provide brief label by which the act may be referred to. Scrutton J said:

*"...the short title being label, accuracy may be sacrificed to brevity; but I do not understand on what principle of construction I am not to look at the words of the Act itself to help me understand its scope in order to interpret the words Parliament has used in the circumstances in which they were legislating."*¹⁵

¹¹ As in *Ward v Holman* [1964] 2 QB 580 at 586-587

¹² See Bennion, *Statutory Interpretation*, 5th edn, 2008, Section 245.5.

¹³ *Suffolk County Council v Mason* [1979] AC 705 at 720.

¹⁴ Supra note 12

¹⁵ *In re the Vexatious Actions Act 1886-in re Bernard Boaler* [1915] 1 KB 21 at 40

PREAMBLE

The Act starts with a preamble and is generally small. It is general statement of Purpose of statute. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it. It expresses the scope and object of the Act more comprehensively than the long title. The preamble like the Long title can legitimately be used for construing an Act.

According to CHIEF JUSTICE DYER¹⁶ preamble is a “key to open the minds of the makers of the Act, and the mischief’s which they intend to redress”. When there is a preamble it is by and large in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly permissible to have recourse to it as an aid to construing the enacting provisions.¹⁷ It should be noted, however, that the Preamble precedes the enacting part of an Act of Parliament.¹⁸ It is normal to have a preamble to a declaratory statute to explain why the statute is being declared and enacted. Preamble is the Act in a nutshell. It is a preparatory statement. It contains the recitals showing the reason for enactment of the Act. If the language of the Act is clear the preamble must be ignored. The preamble is an intrinsic aid in the interpretation of an ambiguous act.

Since the discussion of the role of preambles in Plato's *The Laws*,¹⁹ it has been recognized that preambles have the potential to do a better job of communicating with citizens than the actual text of statutes. Preambles attempt to explain and persuade before the text of the law commands. Plato suggested that preambles should persuade citizens to obey important laws by speaking to their hearts and minds through both reason and poetry. Though preambles are often included in important legislation, they rarely speak directly to citizens as they do not use popular language or a persuasive voice.²⁰ Preambles may provide a means for legislators to

¹⁶ See *Stowel v Lord Zouch*, (1569) 1 Plowd 353, p.369: 75 ER 536

¹⁷ SUPRA note no:1, pg:4

¹⁸ UNDERSTANDING STATUTES by V.C.R.A.C. CRABBE

¹⁹ Plato, *The Laws of Plato*, trans. T.L. Pangle (New York: Basic Books, 1980).

²⁰ Kent Roach, *The Uses and Audiences of*

offer a somewhat more Romantic understanding of legislation, one that is "less general, less canonical, less instrumentally prescriptive, more intuitive, more aspirational, more narrative."²¹

It is often the case that a statute has been drafted using ellipsis, whereby its content is sometimes difficult to interpret. A court therefore may refer to the preamble for further guidance when interpreting the statute, as it will be written in prose.

Regarding the English Legal System in older pieces of legislation, preambles provided a description of the purpose of the Act, usually in a more comprehensive form than the long title.²² When evaluating a piece of legislation with a Preamble, it may be useful to ascertain if the Courts have in fact given effect to Parliament's intentions by comparing the judgments delivered with the wording in the preamble. Where there is one, a preamble is an introduction to the Act that may *provide* an indication of its purpose.²³

The structure of preamble in English law has gone through a significant change in recent times. Presently a preamble begins with the word 'Whereas'. In early times 'Albeit' was also used. Every Judge has a different view regarding the preamble. Lord Hoffmann said:

*"of course, the preamble to a statute cannot override the clear provisions of the statute. But it is legitimate to have regard to it when seeking to interpret those provisions and any interpretation which conflicts with the preamble must be suspected"*²⁴

The one thing that has come into light in English law is that there is discontinuance in public acts. This is the most recent development that has happened in English legal system regarding Preamble. In *London County Council v. Bidscope Co.* Lord Alverstone expressed much regret that the practice of inserting preambles had disappeared "for the preamble often helped to solution of doubtful points." Lord Alverstone CJ said :

Preambles in Legislation.

²¹ To paraphrase the new kind of statute suggested by R.A. Macdonald in "The Fridge-Door Statute" (2001) 47 McGill L.J. 11.

²² <http://cw.routledge.com/textbooks/9780415480963/legislation.asp>

²³ <http://lawatpendleton.wdfiles.com/local--files/resources/StatutoryInterpretationRevision.pdf>

²⁴ See Bennion, Statutory Interpretation, 4th edn, 2002, Section 246.

*“ I..... regret that the practice of inserting preambles in Acts of Parliament has been discontinued as they were often of great assistance to the court in construing the Acts ”*²⁵

The reason for this discontinuance could be found in Lord Thring's statement that:

“...it is not as a general rule advisable to enunciate the principle of an Act in a preamble, as the opponents of the Act are sure to select it as a battle ground instead of dividing on the actual provision of the Act”.²⁶

It was laid down by the House of Lords that the preamble should not be allowed to contradict plain words in the body of a certain constitutional Act.²⁷ The recital of facts in the preamble to an act does not amount to conclusive proof that the facts are true; but considering prima facie evidence of them.²⁸

There are instances in English law where judges have confused the preamble with long title.²⁹ There is indeed a similarity between them as guides to legislative intent, though judges have never doubted that a preamble is part of the Act.³⁰

The proper function of a Preamble is thus to explain certain facts which need to be grasped before the enactment contained in the Act can be understood.³¹

²⁵ *LCC v Bermondsey Bioscope Co Ltd* [1911] 1 KB 445 at 451.

²⁶ *Practical Legislation*(1902) p 93.

²⁷ *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436.

²⁸ *R v Sutton*(1816) 4 M & S 532.

²⁹ See Bennion, *Statutory Interpretation*, 5th edn, 2008, Section 246.4.

³⁰ *Deputy Federal Comr of Taxation v W R Moran Pty Ltd* (1939) 61 CLR 735

³¹ Lord Thring, *Practical Legislation* p.92.

CONCLUSION

Through this project the conclusion that could be drawn is that the role of internal aid in English law is very significant. Acts are supplemented with tools like short title and long title, so that its interpretation becomes easy. Titles remove the ambiguities of the act. Judges have different view regarding titles and preamble. These aids have also evolved in English Legal system with the judicial pronouncements. The history of evolution of these internal aids is also very interesting. It is also observed that the theory of great philosopher Plato regarding preamble is quite relevant till date. There have been instances where judges in England got confused with long title and preamble; short title and long title. The clear and distinct meaning that is available today is because of these confusions only. The dilemma that, which part of statute is title and which is preamble has helped the judges in interpreting the statutes with new approach.

The development that were seen in the English legal system regarding internal aids has helped the legal system of each and every country. The role of House of Lords in these development is also very significant. From time to time it has changed its decision just to interpret the statute in right manner. At last it could be said that Internal aids have played a key role in the development of the English Legal System.