

CHAPTER 3
Aids to Interpretation

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AIDS TO INTERPRETATION

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1 INTRODUCTION

This section tries to explore- how far beyond the actual words of the statute itself is it permissible for courts to roam in their efforts to interpret legislation? Put another way, what is the proper context in which to interpret legislative directives? It is a question that is unavoidable intertwined with the more general problem of the proper approach to statutory interpretation, which in turn raises question about the proper constitutional functions of a court and the exercise of judicial discretion.

Does a willingness to broaden the statutory context by consulting extrinsic material mean that the court is advocating a change in the court's function vis-a-vis the legislature and the executive. In the following analysis of some precedents from the highest court of the land, we make an attempt to clarify and delineate some of the underlying concerns that have supported the historically limited use of extrinsic evidence and also the recent trend in this regard.

Unfortunately, the courts in India have not adopted a consistent and uniform approach to the use of extrinsic materials in the sense of determining what aids to interpretation, external to the statute under consideration, are legitimate and permissible, and the purpose for which this material might be used.

1.1 INTERNAL AID

Traditionally, all the writers on interpretation of statutes consider the preamble, title, heading, marginal notes, punctuation, illustrations, definitions, proviso, explanation etc. as internal aids.

By a long catena of decisions, it is now well settled that preamble is not a part of enactment. It is a recital to the intent of the legislature as it enumerates the mischiefs to be remedied. Though it is considered as a key to the construction of the statute, whenever the enacting part is open to doubt, it cannot restrict or extend the enacting part when the latter is free from doubt. However, in India, it is well settled in the field of constitutional law that the preamble to the Constitution of India and Directive Principles of State Policy are the guidelines for interpreting the constitutional provisions. We will deal with this a little while later. But there is nothing wrong for Courts to refer to the preamble as well as the title of the Act in construing the statute to know the intention of the legislature.

Whenever there is a reasonable doubt about the provisions in the statute, it is permissible to refer to the heading of the provision for interpreting the section. Insofar as marginal notes inserted in the legislation itself are concerned, they are also treated as guidelines for interpreting the statutes. In many statutes, especially, penal statutes, enacted in the olden times, it is the practice of the legislature to give illustrations. The illustrations cannot be used either to cut down or extend the scope of the section.

1.1.1 LONG TITLE

It is now settled that Long Title of an Act is a part of the Act and is admissible as an aid to its construction. The long title which often precedes the preamble must be distinguished with the short title; the former taken along with the preamble or even in its absence is a good guide regarding the object, scope or purpose of the Act, whereas the latter

being only an abbreviation for purposes of reference is not a useful aid to construction.⁸⁰⁴

While dealing with the Supreme Court Advocates (Practice in High Courts) Act, 1951, which bears a full title thus ‘An Act to authorise Advocates of the Supreme Court to practise as of right in any High Court, S. R. DAS, J., observed: “One cannot but be impressed at once with the wording of the full title of the Act. Although there are observations in earlier English cases that the title is not a part of the statute and is, therefore, to be excluded from consideration in construing the statutes, it is now settled law that the title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope and of throwing light on its construction, although it cannot override the clear meaning of the enactment.”⁸⁰⁵

The title of the Madras General Sales Tax, 1939, was utilised to indicate that the object of the Act is to impose taxes on sales that take place within the province.⁸⁰⁶

The title although part of the Act is in itself not an enacting provision and though useful in case of ambiguity of the enacting provisions, is ineffective to control their clear meaning.

The long title of the Act – on which learned counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main

⁸⁰⁴ *Justice G. P. Singh: Ibid*, pp.105, 106

⁸⁰⁵ *Aswinikumar Ghose v. Arabinda Bose*, AIR 1952 SC pp.369, 388

⁸⁰⁶ *Poppatlal Shah v. State of Madras*, AIR 1953 SC 274

purposes of the enactment but cannot, obviously, control the express operative provisions of the Act.⁸⁰⁷

In the case of *Amarendra Kumar Mohapatra & Ors. v. State of Orissa & Ors.*,⁸⁰⁸ the Supreme Court has held that:

“The title of a statute is no doubt an important part of an enactment and can be referred to for determining the general scope of the legislation. But the true nature of any such enactment has always to be determined not on the basis of the given to it but on the basis of its substance.”

In *M.P.V. Sundararamier & Co. v. State of A.P.*,⁸⁰⁹ the Supreme Court was considering whether the impugned enactment was a Validation Act in the true sense. This Court held that although the short title as also the marginal note described the Act to be a Validation Act, the substance of the legislation did not answer that description. The Supreme Court observed:

“31. ... It is argued that to validate is to confirm or ratify, and that can be only in respect of acts which one could have himself performed, and that if Parliament cannot enact a law relating to sales tax, it cannot validate such a law either, and that such a law is accordingly unauthorised and void. The only basis for this contention in the Act is its description in the short title as the ‘Sales Tax Laws Validation Act’ and the marginal note to Section 2, which is similarly worded. But the true nature of a law has to be determined not on the label given to it in the

⁸⁰⁷ *Manoharlal v. State of Punjab*, AIR 1961 SC pp.418, 419, as referred to by Justice G. P. Singh: *Ibid*, p.107

⁸⁰⁸ (2014) 4 SCC 583

⁸⁰⁹ AIR 1958 SC 468

statute but on its substance. Section 2 of the impugned Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on them by Article 286(2) and to enable such laws to operate on their own terms.”

We may also refer to Maxwell,⁸¹⁰ where on the basis of authorities on the subject, short title of the Act has been held to be irrelevant for the purpose of interpretations of statutes. Lord Moulton in *Vacher and Sons Ltd. v. London Society of Compositors*,⁸¹¹ described the short title of an Act as follows:

“A title given to the Act is solely for the purpose of facility of reference. If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title Its object is identification and not description.”

1.1.2 PREAMBLE

The preamble of a statute like the long title is a part of the Act and is an admissible aid to construction. Although not an enacting part, the preamble is expected to express the scope, object and purpose of the Act more comprehensively than the long title. It may recite the ground and cause of making the statute, the evils sought to be remedied⁸¹² or the

⁸¹⁰ *Maxwell: Ibid*, 12th Ed., p. 6

⁸¹¹ 1913 AC 107 : (1911-13) All ER Rep 241 (HL)

⁸¹² *The Secretary, Regional Transport Authority v. D.P. Sharma*, AIR 1989 SC pp.509, 511

doubts which may be intended to be settled. In the words of SIR JOHN NICHOLL : “It is to the preamble more specifically that we are to look for the reason or spirit of every statute, rehearsing this, as it ordinarily does, the evils sought to be remedied, or the doubts purported to be removed by the statute, and so evidencing, in the best and most satisfactory manner, the object or intention of the Legislature in making or passing the statute itself.”⁸¹³

The principle has also been enunciated by the Supreme Court, where MUDHOLKAR, J., speaking for the court observed: “It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble may be resorted to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the preamble may be used to indicate to what particular instances, the enactment is intended to apply. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we could be justified in resorting to it, nay, we will be required to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact parliament intended that it should have a limited application.”⁸¹⁴

The preamble may, no doubt, be used to solve any ambiguity or to fix the meaning of words which may have more than one meaning, but it

⁸¹³ *Brett v. Brett*, (1826) 162 ER 456, pp. 458, 459

⁸¹⁴ *Burakar Coal Co. Ltd. v. Union of India*, AIR 1961 SC pp.954, 956, 957; *Venkataswami R. Naidu v. Narasram Naraindas*, AIR 1966 SC pp.361, 363; *Tribhuvan Parkash Nayyar v. Union of India*, AIR 1970 SC pp.540, 543; *Y. A. Mamarde v. Authority under the Minimum Wages Act*, AIR 1972 SC pp.1721, 1726; *A. C. Sharma v. Delhi Administration*, AIR 1973 SC pp.913, 917 : 1973 SCC (Cri) 608; *Rashtriya Mill Mazdoor Sangh v. National Textile Corporation*, 1995 (6) Scale pp.609, 617

can, however, not be used to eliminate as redundant or unintended, the operative provision of a statute.⁸¹⁵

A preamble retrospectively inserted into an earlier Act is not of much assistance for gathering the intention of the original Act. Similarly, it seems the repeal of a preamble simpliciter will not affect the construction of the Statute.⁸¹⁶

1.1.3 PREAMBLE TO CONSTITUTION

The Preamble of the Constitution like the Preamble of any statute furnishes the key to open the mind of the makers of the Constitution more so because the Constituent Assembly took great pains in formulating it so that it may reflect the essential features and basic objectives of the Constitution. The Preamble is a part of the Constitution.⁸¹⁷ The Preamble embodies the fundamentals underlining the structure of the Constitution. It was adopted by the Constituent Assembly after the entire Constitution has been adopted. The true functions of the Preamble is to expound the nature and extend and application of the powers actually confirmed by the Constitution and not substantially to create them.

The Constitution, including the Preamble, must be read as a whole and in case of doubt interpreted consistent with its basic structure to promote the great objectives stated in the preamble. But the Preamble can neither be regarded as the source of any substantive power nor as a source of any prohibition or limitation.⁸¹⁸ The Preamble of a Constitution Amendment Act can be used to understand the object of the amendment.

⁸¹⁵ *State of Rajasthan v. Leela Jain*, AIR 1965 SC pp.1296, 1299

⁸¹⁶ *CRAIES: Statute Law, 7th Ed.*, p. 206; as referred to by Justice G. P. Singh: *Ibid*, pp.113, 114

⁸¹⁷ *Justice G.P. Singh: Ibid*, p. 114

⁸¹⁸ *Indira Nehru Gandhi (Smt.) v. Raj Narain*, AIR 1975 SC 2299; *Raghunath Rao Ganpat Rao v. Union of India*, AIR 1993 SC 1267

The majority judgments in *Keshavanand and Minerva Mills* strongly relied upon the Preamble in reaching the conclusion that the power of amendment conferred by Article 368 was limited and did not enable Parliament to alter the basic structure or framework of the Constitution.⁸¹⁹

1.1.4 HEADINGS

The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to in construing an Act of the Legislature.⁸²⁰ But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. “A Heading”, according to one view, “is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation;⁸²¹ and so the headings might be treated “as preambles to the provisions following them.”⁸²²

Recently the Supreme Court expressed itself as follows: “It is well settled that the headings prefixed to sections or entries (of a Tariff Schedule) cannot control the plain words of the provisions; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision.

⁸¹⁹ *Kesavananda v. State of Kerala*, AIR 1973 SC 1461 : (1973) 4 SCC 225; *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC pp.1789, 1798, 1806

⁸²⁰ *Hammer Smith & City Ry v. Brand*, (1869) LR 4 HLC 171; *Ingils v. Robertson* (1898) AC pp.616, 624, 629 (HL); *Toronto Corporation v. Toronto Ry*, (1907) AC (PC) pp.315, 324; *Martins v. Fowler*, (1926) AC (PC) pp.746, 750; *Qualter Hall & Co. Ltd. v. Board of Trade*, (1961) 3 All ER (CA) pp. 389, 392, 394; *Bhinka v. Charan Singh*, AIR 1959 SC pp.960, 966; *Director of Public Prosecutions v. Schildkamp*, (1969) 3 All ER 1640 (HL)

⁸²¹ *Toronto Corporation v. Toronto Ry Co.*, *Ibid*, p. 324; *Re Ralpph George Cariton*, (1945) 1 All ER pp.559, 562; *Qualter Hall & Co. v. Board of Trade*, *Ibid*, p. 392

⁸²² *Martins v. Fowler*, *Ibid*, p. 750 : *Qualter Hall & Co. v. Board of Trade*, *Ibid*, p. 392

Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.”⁸²³

“The heading prefixed to sections or sets or sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words.”⁸²⁴

1.1.5 MARGINAL NOTES

In the older statutes marginal notes were not inserted by the legislature and hence were not part of the statute and could not be referred to for the purpose of construing the statute. If they are also enacted by the legislature they can be referred to for the purpose of interpretation. In the case of the Indian Constitution, the marginal notes have been enacted by the Constituent Assembly and hence they may be referred to for interpreting the Articles of the Constitution. If the words used in the enactment are clear and unambiguous, the marginal note cannot control the meaning, but in case of ambiguity or doubt, the marginal note may be referred to.⁸²⁵

In the case of *Thakurain Balraj Kunwar v. Rao Jagatpal Singh*,⁸²⁶ it was observed that it is well settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act.

⁸²³ *M/s. Frick India Ltd. v. Union of India*, AIR 1990 SC pp.689, 693

⁸²⁴ *Bhinka v. Charan Singh*, AIR 1959 SC pp.960, 966; as referred to in *Maxwell: Ibid*, 11th Ed., pp. 48, 49

⁸²⁵ *Vipa P. Sarathi: Ibid*, p. 258

⁸²⁶ (1904) ILR 26 All 393 (PC) as referred to by *Vipa P. Sarathi, Ibid*, p. 258

There can be no justification for restricting the contents of the section by the marginal note.⁸²⁷ The marginal note cannot affect the construction of the language used in the body of the section if it is otherwise clear and unambiguous.⁸²⁸ The marginal heading cannot control the interpretation of the words of the section particularly when the language of the section is clear and unambiguous.⁸²⁹ Where the language is clear and can admit of no other meaning, the marginal note cannot be read to control the provisions of the statute.⁸³⁰ “Marginal notes in an Indian statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute.”⁸³¹

Although a marginal note may not be determinative of the content of the provision, it may act as an intrinsic aid to construction.”⁸³²

1.1.6 PUNCTUATIONS

‘Punctuation’ means to mark with points and to make points with usual stops. It is the art of dividing sentences by point or mark. Is the Court entitled to use punctuation also while interpreting the statutes? Punctuation is considered as a minor element in the construction of statutes. Text book writers comment that English Court pay little or no attention to punctuation while interpreting while interpreting the statutes. The same is not the cases in Indian Courts. If a statute in question is found to be carefully punctuated, punctuation may be resorted for the

⁸²⁷ *Emperor v. Sadashiv*, AIR 1947 PC 82

⁸²⁸ *Western India Theaters Ltd. v. Municipal Corporation Puna*, AIR 1959 SC 586

⁸²⁹ *Chandroji Rao v. Income Tax Commissioner*, AIR 1970 SC 1582

⁸³⁰ *Charan Lal Sahu v. Nand Kishor Bhatt*, (1973) 2 SCC 530

⁸³¹ *C.I.T. v. Ahmedbhai Umarbhai & Co.*, AIR 1950 SC pp.134, 141; *Board of Muslim Waqfs, Rajasthan v. Radhakishan*, AIR 1979 SC pp.289, 295, 296 : (1979) 2 SCC 468; *Kalawati Bai v. Soiryabai*, AIR 1991 SC pp.1581, 1586; as referred to by *Justice G. P. Singh: Ibid*, p. 118

⁸³² *Smt. Nandini Satpathy v. P.L. Dani and Anr.*, AIR 1978 SC 1025; *Bombay Dying and Manufacturing Co. Ltd. v. Bombay Environmental Action Group*, AIR 2006 SC 1489

purpose of construction. In *Mohd. Shabbir v. State of Maharashtra*,⁸³³ while interpreting Section 27 of the Drugs and Cosmetics Act, 1940, the Supreme Court pointed out that the presence of ‘comma’ after ‘manufactures for sale’ and ‘sells’, and absence of any ‘comma’ after ‘stocks’ would indicate that only stocking for sale could amount to offence and that mere stocking cannot be treated as an offence for the purpose of the Drugs and Cosmetics Act. Another important internal aid is the schedule or schedules appended to a statute. It forms part of the statute and it can be interpreted independently as well as with the aids of interpretation of statutory provision.

B. K. MUKHERJEE, J., in *Aswini Kumar Ghose v. Arabinda Bose*,⁸³⁴ expressed himself as follows: “Punctuation is after all a minor element in the construction of a statute, and very little attention is paid to it by English Courts-. It seems, however, that in the vellum copies printed since 1850, there are some cases of punctuation, and when they occur they can be looked upon as a sort of contemporanea expositio-. When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given some cases, but it cannot certainly be regarded as a controlling element and cannot be allowed to control the plain meaning of a text.”

In *Gopalan’s case*,⁸³⁵ KANIA, C.J., in construing Art. 22(7)(a) of the Constitution, referred to the punctuation and derived assistance from it in reaching his conclusion that Parliament was not obliged to prescribe both the circumstances under which, the class or classes of cases, in which a person may be detained for a period longer than three months, without obtaining the opinion of the Advisory Board and that Parliament

⁸³³ AIR 1979 SC 564

⁸³⁴ AIR 1952 SC pp.369, 383

⁸³⁵ *A. K. Gopalan v. State of Madras*, AIR 1950 SC pp.27, 45

on a true construction of the clauses could prescribe either or both. It would appear, with respect to modern statutes, that if the statute in question is found to be carefully punctuated, punctuation, though a minor element, may be resorted to for purposes of construction.

An illustration of the aid derived from punctuation may be furnished from the case of *Mohd. Shabbir v. State of Maharashtra*,⁸³⁶ where section 27 of the Drugs and cosmetics Act, 1940 came up for construction. By this section whoever 'manufactures for sale, sells, stocks or exhibits for sale or distributes' a drug without a licence, is liable for punishment. In holding that mere stocking is not an offence within the section, the Supreme Court pointed out the presence of comma after 'manufactures for sale' and 'sells' and absence of any comma after 'stocks'. It was, therefore, held that only stocking for sale could amount to offence and not mere stocking. For another example of the use of punctuation, reference may be made to *Dr. M. K. Salpekar v. Sunil Kumar Shamsunder Chaudhari*,⁸³⁷ where the court construed clause 13 (3) v of the C.P. and Berar Letting of Houses and Rent Control Order. This provision permits ejection of a tenant on the ground that "the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house." In holding that the requirement that the tenant 'does not reasonably need the house' has no application when he 'has secured alternative accommodation' the court referred and relied upon the punctuation comma after the words alternative accommodation. However, if a statute is revised and re-enacted but the section under construction in the revised statute is brought in identical terms as in the old statute except as to

⁸³⁶ AIR 1979 SC pp.564, 565 : (1979) 1 SCC 568 : 1979 SCC (Cri) 356

⁸³⁷ AIR 1988 SC 1841; *Sama Alana Abdulla v. The State of Gujrat*, 1995 (6) Scale pp.407, 409, 410

variation of some punctuation, that in itself will not be indicative of any intention on the part of the Legislature to change the law as understood under the old section.⁸³⁸

1.1.7 ILLUSTRATIONS

Illustrations appended to a section from part of the statute and although forming no part of the section, are of relevance and value in the construction of the text of the section and they should not be readily rejected as repugnant to the section.⁸³⁹

It would be the very last resort of construction to make this assumption. The great usefulness of the Illustrations which have, although not part of the sections, been expressly furnished by the Legislature as helpful in the working and application of the statute, should not be thus impaired.⁸⁴⁰

Similarly in interpreting section 113 of the Indian Succession Act, 1925 and in deciding that 'later' bequest to be valid must comprise of all the testator's remaining interest, if the legatee to the later bequest is not in existence at the time of testator's death, and that a conferment of a life estate under such a bequest is not valid, the Privy Council took the aid of Illustrations appended to that section. VISCOUNT MAUGHAM pointed out: "Illustrations 2 and 3 would seem to show - What is not clear from the language of the section - that however complete may the disposition of the will, gift after the prior bequest may not be a life interest to an

⁸³⁸ *Pope Appliance Corporation v. Spanish River Pulp & Paper Mills Ltd.*, AIR 1929 PC pp.38, 45

⁸³⁹ *Mahomed Sydeol Ariffin v. Yeah Oai Gark*, 43 IA pp.256, 263; (1916) 2 AC (PC) pp.575, 581; *Muralidhar Chatterjee v. International Film Co.*, AIR 1943 PC pp.34, 38; *Sopher v. Administrator General of Bengal*, AIR 1944 PC pp.67, 69; *Jumma Masjid v. Kodimaniandra Deviah*, AIR 1962 SC pp.847, 851

⁸⁴⁰ *Mohomed Shydol Arrifin v. Yeah Oai Gark*, 43 IA pp.256, 263 : *Jumma Masjid v. Kodimaniandra Deviah*, AIR 1962 SC pp.847, 851

unborn person for that would be a bequest to a person not in existence at the time of testator's death of something less than the remaining interest of the testator."⁸⁴¹

The Supreme Court took the aid of Illustration appended to section 43, Transfer of Property Act, 1882 for the conclusion that the said provision applies to transfers of *spes successionis* and enables the transferee to claim the property, provided other conditions of the section are satisfied. VENKATARAMA AIYAR, J., quoted the judgment in *Ariffins'* case,⁸⁴² and observed: "It is not to be readily assumed that an Illustration to a section is repugnant to it and rejected."⁸⁴³

Mention must also be made of Illustration (b) to section 114, Indian Evidence Act, which reads: 'The court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars.' The impact of this Illustration on the construction of section 133 of the Evidence Act - 'An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice' - is too well known. The rule evolved on the basis of the Illustration is that "it is almost always unsafe", to convict an accused on the uncorroborated testimony of an accomplice,⁸⁴⁴ and that the corroboration required to sustain a conviction must be independent and must relate to the participation of the accused in the offence.⁸⁴⁵ The Supreme Court has

⁸⁴¹ *Sopher v. Administrator General of Bengal*, AIR 1944 PC pp.67, 69

⁸⁴² 43 IA pp.256, 263

⁸⁴³ *Jumma Masjid v. Kodimaniandra Deviah*, AIR 1962 SC pp.847, 851

⁸⁴⁴ *Bhiva v. State of Maharashtra*, AIR 1963 SC pp.599, 601

⁸⁴⁵ *Ibid*, p. 600; *Jnanendra Nath Ghose v. State of W.B.*, AIR 1959 SC pp.1199, 1202; *Gajendranath Dwari v. State of Orissa*, 1965 SCN 246; *Mohd. Hussain Umer Kochra v. K.S. Dalip Singhji*, AIR 1970 SC 45; *Balwant Kaur v. Union Territory of Chandigarh*, AIR 1988 SC pp.139, 142; *Shanker alias Gauri Shanker*, JT 1994 (3) SC 54

never felt any difficulty in setting aside a conviction based on uncorroborated or insufficiently corroborated testimony of an accomplice.⁸⁴⁶ Thus the rule of law enacted in the later part of section 133 has, from practical point of view, been reduced to a dead letter on the basis of a rule of practice developed under a mere illustration and that too appended to a different section. Such a result, which is exceptional from the point of view of principles of construction, is the outcome of the anxiety of Courts to safeguard the liberty of the subject and to make sure that a conviction is not obtained merely on tainted evidence.

In a case before the Supreme Court which involved the interpretation of section 106 of the Indian Evidence Act, 1872, the Court held that the said provision was not intended to relieve the prosecution of the burden of proff and was designed to meet certain exceptional cases and had no application to those cases where the information was as much within the knowledge of the prosecution as of accused. Referring to the Illustration to section 106, BOSE J., observed:

"We recognize that an Illustration does not exhaust the full content of the section which it illustrates but it can neither curtail nor expand its ambit."⁸⁴⁷

1.1.8 DEFINITION SECTION

These do not take away the ordinary and natural meaning of the words, but as used: (i) to extend the meaning of a word to include or cover something, which would not normally be covered or included; and (ii) to interpret ambiguous words and words which are not plain or clear.

⁸⁴⁶ *Sarwan Singh Rattan Singh v. State of Punjab*, AIR 1957 SC 637; *R.R. Chari v. State of U.P.*, AIR 1962 SC 1573; *Bhiva v. State of Maharashtra*, *Ibid*, *Saravanabhavan and Govndaswami v. State of Madras*, AIR 1966 SC 1273; *Balwant Kaur v. Union Territory of Chandigarh*, *Ibid*

⁸⁴⁷ *Shambhu Nath Mehra v. State of Ajmer*, AIR 1956 SC pp.,404, 406

The definition must ordinarily determine the application of the word or phrase defined; but the definition itself must first be interpreted before it is applied.

When the definition of a word gives it an extended meaning, the word is not to be interpreted by its extended meaning every time it is used, for the meaning ultimately depends on the context; and a definition clause does not, ordinarily enlarge the scope of the Act.

A court should not lay down a rigid definition and crystallize the law, when the legislature, in its wisdom has not done so.

It is ordinarily unsafe to seek the meaning of words used in an Act, in the definition clause of other statutes even when enacted by the same legislature; but where a word or phrase used in an Act, is used in another Act which is in pari material and the word is not defined in that other Act, then the word may be given the meaning given in the first Act.

Definitions in an Act are to be applied only when there is nothing repugnant in the subject or context, and this is so even if such a qualifying provision is not expressly stated by the legislature.

The words 'that is to say' are not words of restriction. They are words of illustration, and the instances that follow operate as a guide for interpretation.

An interpretation clause may use the very 'includes' or 'means' or 'means and includes', or 'denotes' or 'deemed to be'.

The words 'includes' is generally used in the interpretation clause to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, those words and phrases must be considered as comprehending, not only such things as they signify

according to their natural import, but also those things which the interpretation clause declares that they shall include.

If the words 'means' or 'means and includes' are used it affords an exhaustive explanation of the meaning which, for the purposes of the Act, must inevitably be attached to those words or expressions.

If the word 'denotes' is used it has the same significance as 'includes'.

If the word 'deemed to be' is used it creates a fiction and a thing is treated to be that which in fact it is not.

If a special definition of a word or phrase is set out in an Act, the meaning of this word or phrase as given in such definition should normally be adopted in the interpretation of the statute. In the absence of such a definition, the General Clauses Act of the particular legislature which enacted the statute should be referred to. If the word is not defined there also, the rules of interpretation would come into play.

In *Vanguard Fire & General Insurance Co. Ltd. v. Fraser & Ross*,⁸⁴⁸ one of the questions that fell for determination before the Supreme Court was whether the definition of the word "insurer" included a person intending to carry on a business or a person who has ceased to carry on a business. It was contended that the definition started with the words "insurer means" and, therefore, is exhaustive. The Supreme Court, repelling that contention held, that statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have somewhat different

⁸⁴⁸ AIR 1960 SC 971

meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words “unless there is anything repugnant in the subject or context.”

The expression “include” is used as a word of extension and expansion to the meaning and import of the preceding words or expressions. The following observations of Lord Watson in *Dilworth v. Stamps Commissioners*,⁸⁴⁹ in the context of use of “include” as a word of extension has guided this Court in numerous cases:

“... But the word ‘include’ is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to ‘mean and include’, and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.”

The meaning of the said expression has been considered by a three Judge Bench of this Court in *South Gujarat Tiles Manufacturers Assn. V. State of Gujarat*,⁸⁵⁰ wherein this Court has observed:

“Now it is true that ‘includes’ is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation.”

⁸⁴⁹ 1899 AC 99 : (1895-99) All ER Rep Ext 1576 (PC)

⁸⁵⁰ (1976) 4 SCC 601 : 1977 SCC (L&S) 15

The word ‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.⁸⁵¹

It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word ‘includes’ by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word ‘includes’ may have been designed to mean ‘means’. The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word ‘includes’ for the purposes of such enactment.⁸⁵²

The word “include” is generally used to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. That is to say that when the word “includes” is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be

⁸⁵¹ *Justice G.P. Singh: Ibid*, p. 181

⁸⁵² *Karnataka Power Transmission Corpn. v. Ashok Iron Works (P.) Ltd.*, (2009) 3 SCC 240 : (2009) 1 SCC (Civ) 802

extended to bring within it matters, which in its ordinary meaning may or may not comprise.⁸⁵³

In construing a provision of law as to its mandatory nature, the intention of the legislature and the consequences that would flow from the construction thereof one way or the other have to be kept in view. In *Mohan Singh v. International Airport Authority of India*,⁸⁵⁴ the Supreme Court was considering the question whether the use of the word 'shall' is not decisive in construing whether a provision is mandatory or directory. It was observed as under:

“..... The word 'shall', though prima facie gives impression of being of mandatory character, it requires to be considered in the light of the intention of the legislature by carefully attending to the scope of the statute, its nature and design and the consequences that would flow from the construction thereof one way or the other. In that behalf, the court is required to keep in view the impact on the profession, necessity of its compliance; whether the statute, if it is avoided, provides for any contingency for non-compliance; if the word 'shall' is construed as having mandatory character, the mischief that would ensue by such construction; whether the public convenience would be subserved or public inconvenience or the general inconvenience that may ensue if it is held mandatory and all other relevant circumstances are required to be taken into consideration in

⁸⁵³ *Commr. Of Customs v. Caryaire Equipment India (P) Ltd.*, (2012) 4 SCC 645; *U.P. Power Corpn. Ltd. v. NTPC Ltd.*, (2014) 1 SCC 371; *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Copn. Ltd.*, (2007) 3 SCC 607; *Dadaji v. Sukhdeobabu*, (1980) 1 SCC 621; *Mahalkshmi Oil Mills v. State of A.P.*, (1989) 1 SCC 164 : 1989 SCC (Tax) 56; *Bharat Coop. Bank (Mumbai) Ltd. v. Employees Union*, (2007) 4 SCC 685 : (2997) 2 SCC (L&S) 82

⁸⁵⁴ (1997) 9 SCC 132

construing whether the provision would be mandatory or directory. If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding it mandatory serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all the provisions harmoniously to suppress public mischief and to promote public justice.”

In the same decision, it was observed as under:

“Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generally) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to achieve. Therefore, it is necessary to ascertain the intention. The word ‘shall’ is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or

directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration.”

1.1.9 PROVISO

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

When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the later intention of the makers. When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one. However, where the

section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

The proviso is subordinate to the main section. A proviso does not enlarge an enactment except for compelling reasons. Sometimes an unnecessary proviso is inserted by way of abundant caution. A proviso may sometimes contain a substantive provision.

A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasury of Survey*⁸⁵⁵, when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso."⁸⁵⁶

⁸⁵⁵ 1885 (5) QBD 170 : AIR 1961 SC 1596 : AIR 1965 SC 1728

⁸⁵⁶ *State of Punjab & Anr. v. Ashwani Kumar & Ors*, AIR 2009 SC 186

Coming to the interpretation of proviso and explanation, we may refer to a well known judgment of the Supreme Court in *S. Sundaram Pillai v. V.R. Pattabiraman*.⁸⁵⁷ After exhaustively referring to the earlier case law on scope and interpretation of a proviso as well as explanation to a section, the Supreme Court laid down as under:

“A proviso may serve four different purposes:

- (1) qualifying or excepting certain provisions from the main enactment;
- (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
- (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and
- (4) it may be used merely to act as an options addenda to the enactment with the sole object of explaining the real intendment of the statutory provision.

1.1.10 EXPLANATION

The object of an Explanation is to understand the Act in the light of the Explanation.

The object of an Explanation to a statutory provision is-

- (a) to explanation the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

⁸⁵⁷ AIR 1985 SC 582 : (1985) 1 SCC 591

- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute.

1.1.11 NON OBSTANTE CLAUSE

A section sometimes begins with the phrase ‘notwithstanding anything contained etc.’ Such a clause is called a non obstante clause and its general purpose is to give the provision contained in the non obstante clause an overriding effect in the event of a conflict between it and the rest of the section. Thus, there is generally a close relation between the non obstante clause and the main section and in case of ambiguity the non obstante clause may throw light on the scope and ambit of the rest of the section. If, however, the enacting part is clear and unambiguous, its scope cannot be whittled down by the use of the non obstante clause.

This phrase i.e. ‘notwithstanding anything in’ is in contradiction to the phrase ‘subject to’.

In *Aswini Kumar v. Arabinda Bose*,⁸⁵⁸ the petitioner was an Advocate of the Calcutta High Court and also of the Supreme Court of India. The Supreme Court Advocates (Practice in High Courts) Act, 1951 is an Act to authorise Advocates of Supreme Court to practice as of right in any High Court. When he filed in the Registry on the original side of the Calcutta High Court a warrant of authority executed in his favour to appear for a client, it was returned, because under the High Court Rules and Orders, Original side, an Advocate could only plead and not act. The Advocate contended that as an Advocate of the Supreme Court he had a right to practice which right included the right to act as well as to appear and plead without being instructed by an attorney. The contention was accepted by the majority. The Supreme Court observed that:

“the non obstante clause can reasonably be read as overriding ‘anything contained’ in any relevant existing law which is inconsistent with the new enactment, although the draftsman had primarily in his mind a particular type of law as conflicting with the new Act. The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously; for, even apart from such a clause, a later law abrogates earlier laws clearly inconsistent with it. While it may be true that the non obstante clause need not necessarily be co-extensive with the operative part, there can be no doubt that ordinarily there should be a close approximation between the two.”

It was further observed that:

“It should first be ascertained what the enacting part of the section provides on a fair construction of the words used

⁸⁵⁸ 1953 SCR 1 : AIR 1952 SC 369 : 1952 SCJ 568

according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment.”

In *Kanwar Raj v. Pramod*,⁸⁵⁹ the Custodian of Evacuee Property cancelled a lease granted by him, under Section 12 of the Administration of Evacuee Property Act, 1950. Section 12 enacts : Notwithstanding anything contained in any other law for the time being in force the Custodian may terminate any lease, etc. It was contended that the power of the Custodian to cancel leases could be exercised only so as to override a bar imposed by any law but not the contract under which the lease is held, because, the non obstante clause is limited to ‘anything contained in any other law for the time being in force’. It was held: The operative portion of the section which confers power on the Custodian to cancel a lease or vary the terms thereof is unqualified and absolute, and that power cannot be abridged by reference to the provision that it could be exercised ‘notwithstanding anything contained in any other law for the time being in force.’ This provision is obviously intended to repel statutes conferring rights or leases, and cannot prevail as against them and has been inserted ‘ex abundant cautela’. It cannot be construed as cutting down the plain meaning of the operative portion of the section.

In *Sarwan Singh v. Kasturi Lal*,⁸⁶⁰ the question arises that when two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law,

⁸⁵⁹ [1955] 2 SCR 977 : AIR 1956 SC 105 : 1956 SCJ 134

⁸⁶⁰ (1977) 1 SCC 750

stimulating and incisive problems of interpretation arise. The court observed that:

“Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. A piquant situation, like the one rose in *Shri Ram Narain v. Simla Banking & Industrial Co. Ltd.*,⁸⁶¹ the competing statutes being the Banking Companies Act, 1949, as amended by Act 52 of 1953 and the Displaced Persons (Debts Adjustment) Act, 1951. Section 45-A of the Banking Companies Act, which was introduced by the amending Act of 1953, and Section 3 of the Displaced Persons Act, 1951 contained each a non obstante clause, providing that certain provisions would have effect ‘notwithstanding anything inconsistent therewith contained in any other law for the time being in force....’ This court resolved the conflict by considering the object and purpose of the two laws and giving precedence to the Banking Companies Act by observing: “It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein.” For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one.”

⁸⁶¹ 1956 SCR 603 : AIR 1956 SC 614 : (1956) 26 Com Cas 280

The enacting part of a statute must, where it is clear, be taken to control the *non obstante* clause where both cannot be read harmoniously; for even apart from such clause, a later law abrogates earlier laws clearly inconsistent with it⁸⁶².

2.2 EXTERNAL AID

They are the Statement of Objects and Reasons when the Bill was presented to Parliament, the reports of the Committee, if any, preceded the Bill, legislative history, other statutes in pari material and legislation in other States which pertain to the same subject matter, persons, things or relations.

The history of legislation, the enactments which are repealed, the parliamentary debates, dictionary commentaries etc. are external aids to construction. It is important to point out here that the legislature adopts the device of making a statute by “reference” and by “incorporation”. When the statute is incorporated in another statute by the legislature, the incorporated statute or statute referred to therein is external aid for interpreting the statute in question. There has been a controversy in India regarding the use of parliamentary debates for interpreting the Constitution. It is now settled that the court can always refer to the debates in the legislature while interpreting the statute to know the intention if there is a doubt about the provision. More often than not, a provision is introduced in the Bill and after some debate either it is altered or modified or amended before finally it receives the assent of the President. Such external aids are helpful in interpreting the law.

⁸⁶² *Ibid*, p. 614

Where the Legislature has not chosen to define the expression the court of law have, therefore, to fall back upon other aids for finding the intention of the Legislature; for example by reference to the context and object and purpose of the legislative measure in question. The court may further have resort to dictionaries and judicial interpretation of this award as used in other statutes; but it cannot be denied that these methods are not as satisfactory as a precise and clear legislative definition in the statute itself.

In *B. Prabhakar Rao v. State of Andhra Pradesh*⁸⁶³, the observations at p.591 , quoted below, are illuminating:-

"Where internal aids are not forthcoming, we can always have recourse to external aids to discover the object of the legislation. External aids are not ruled out. This is now a well settled principle of modern statutory construction. Thus 'Enacting History' is relevant: "The enacting history of an Act is the surrounding corpus of public knowledge relative to its introduction into Parliament as a Bill, and subsequent progress through, and ultimate passing by, Parliament. In particular it is the extrinsic material assumed to be within the contemplation of Parliament when it passed the Act." Again "In the period immediately following its enactment, the history of how enactment is regarded in the light of development from time to time." "Official statements by the government department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions." Justice may be blind but it is not to be deaf. Judges are not to sit in sound proof rooms.

⁸⁶³ 1985 Suppl (2) SCR 573

Committee reports, Parliamentary debates, Policy statements and public utterances of official spokesmen are of relevance in statutory interpretation. But 'the comity, the courtesy and respect that ought to prevail between the two prime organs of the State, the legislature and the judiciary', require the courts to make skilled evaluation of the extra textual material placed before it and exclude the essentially unreliable. "Nevertheless the court, as master of its own procedure, retains a residuary right to admit them where, in rare cases, the need to carry out the legislature's intention appears to the court so to require."

2.2.1 HISTORY – FACTS AND CIRCUMSTANCES

In order to arrive at the intention of the legislature, the state of law and judicial decisions antecedent to and at the time the statute was passed are material matters to be considered.

Evidence of matters relating to such surrounding circumstances and historical investigation of which judicial note can be taken by court, including reports of select committees and statements of objects and reasons, can be resorted to for ascertaining such antecedent law and for determining the intention of the legislature.

But the bill and reports of select committee are not legitimate material for arriving at the construction of a statute, that is, for finding the meaning of words.

Parliamentary debates on the floor legislature are also inadmissible, because, the court is concerned only with what the legislature actually said in the statute.

Moreover, plain words in the statute cannot be limited by any considerations of policy.

An erroneous assumption by the legislature as to the state of the law has no effect and would not become a substantive enactment.

In the construction of a statute the worst person to construe it is the person who is responsible for its drafting.

Courts sometimes make a distinction between legislative debates and reports of committees and treat the latter as a more reliable or satisfactory source of assistance.

The speeches made by the members of the House in the course of the debate are not admissible as extrinsic aids to the interpretation of statutory provisions.

It cannot be said that the acceptance or rejection of amendments to a Bill in the course of Parliamentary proceedings forms part of the pre-enactment history of a statute and as such might throw valuable light on the intention of the Legislature when the language used in the statute admitted of more than one interpretation. The reason why a particular amendment was proposed or accepted or rejected is often a matter of controversy and without the speeches bearing upon the motion, it cannot be ascertained with any reasonable degree of certainty. And where the Legislature happens to be bicameral, the second Chamber may or may not have known of such reason when it dealt with the measure.

2.2.2 STATEMENT OF OBJECTS AND REASONS

The Statement of Objects and Reasons, seeks only to explain what reasons induced the mover to introduce the bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. The Statements of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a statute.

2.2.3 DICTIONARY

The meaning of particular words in an Indian statute is to be found not so much in a strict etymological propriety of language nor even in popular sense, as in the subject or occasion on which they used. But it is well known that words are generally used in their ordinary sense and therefore, though dictionaries are not to be taken as authoritative in regard to the meanings of the words used in statutes, they may be consulted.

In *Voltas Ltd. v. Rolta India Ltd.*,⁸⁶⁴ the Supreme Court has held that:

“Dictionaries can hardly be taken as authoritative exponents of the meanings of the words used in legislative enactments for the plainest words may be controlled by a reference to the context.

⁸⁶⁴ (2014) 4 SCC 516

Similarly, Lexicons would only define an expression in terms of a decision given by a Court of Law, and unless this decision was given under the Act in which the expression is used "it involves" in the words of *Ram Lal, J. in Frim Karam Narain Daulat Ram v. Colkart Bros.*,⁸⁶⁵ a dangerous method of interpretation."

2.2.4 PRECEDENTS

Under this rule, a principle of law which has become settled by a series of decisions is generally binding on the courts and should be followed in similar cases. The rule is based on expediency and public policy. It is however not universally applicable. For example, if grievous wrong may result, a court will not follow the previous decisions which, they are convinced, are erroneous.

While dealing with the provision of Sec. 207 of the Motor Vehicle Act, 1988, Hon'ble Mr. Justice C.K. Thakkar in the case of *Ramkrishna Bus Transport and Ors v. State of Gujarat and Ors*,⁸⁶⁶ at Para. 43 held that, whether a particular provision is mandatory or directory depends upon intention of the Legislature and not only upon the language in which it is used. The meaning and intention of the Legislature must be treated as decisive and they are to be ascertained not only from the phraseology used but also by considering the nature, design and consequences which would flow from construing it one way or the other. It is also true that in certain circumstances, the expression 'may' can be construed as 'shall' or vice versa. At the same time, however, it cannot be ignored that ordinarily 'may' should read as 'may' which is permissive and not

⁸⁶⁵ A.I.R. 1946 Lah (F.B) pp.116, 128

⁸⁶⁶ 1995 (1) G.L.H 520

obligatory. For the purpose of giving effect to the clear intention of the legislature, ‘may’ can be read as ‘shall’ or ‘must’.

In *Mahadeolal Kanodia v. Administrator General of W.B.*,⁸⁶⁷ the Supreme Court was concerned with the retrospectivity of law passed by the West Bengal Legislature concerning the rights of tenants and in para 8 of the judgment the Supreme Court held that:

“8. The principles that have to be applied for interpretation of statutory provisions of this nature are well established. The first of these is that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective; they are retrospective only if by express words or by necessary implication...”

In *Amireddi Raja Gopala Rao v. Amireddi Sitharamamma*,⁸⁶⁸ a Constitution bench was concerned with the issue as to whether the rights of maintenance of illegitimate sons of a Sudra as available under the Mitakshara School of Hindu law were affected by introduction of Sections 4, 21 and 22 of the Hindu Adoptions and Maintenance Act, 1956. The Court held that they were not, and observed in para 7 as follows:

“7. ... a statute should be interpreted, if possible, so as to respect vested rights, and if the words are open to another construction, such a construction should never be adopted.”

The same has been the view taken by a Bench of three Judges of the Supreme Court in *ITO v. Induprasad Devshanker Bhatt*,⁸⁶⁹ in the

⁸⁶⁷ AIR 1960 SC 936

⁸⁶⁸ AIR 1965 SC 1970 : (1965) 3 SCR 122

⁸⁶⁹ AIR 1969 SC 778

context of a provision of the Income Tax Act, 1961, in the matter of reopening of assessment orders. In that matter the Court was concerned with the issue as to whether the Income Tax Officer could reopen the assessment under Sections 297(2)(d)(ii) and 148 of the Income Tax Act, 1961, although the right to reopen was barred by that time under the earlier Income Tax Act, 1922. The Supreme Court held that the same was impermissible and observed in para 5 as follows:

“5. ... The reason is that such a construction of Section 297(2)(d)(ii) would be tantamount to giving of retrospective operation to that section which is not warranted either by the express language of the section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost be efflux of time.”

In *Voltas Ltd. v. Rolta India Ltd.*,⁸⁷⁰ the Supreme Court has held that:

“We are absolutely conscious that a judgment is not to be read as a statute but to understand the correct ratio stated in the case it is necessary to appreciate the repetitive use of the words.”

In the case of *Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.*,⁸⁷¹ the Supreme Court has observed that:

“The Court should not place reliance upon a judgment without discussing how the factual situation first in with a fact situation

⁸⁷⁰ *Ibid*, p. 516

⁸⁷¹ AIR 2011 SC 1989

of the decision on which reliance is placed, as it has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the presidential value of a decision. A judgment of Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of case by blindly placing reliance upon a decision is not proper.

“Per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provisions or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reasons so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

In the case of *Sakshi v. Union of Inaia & Others*,⁸⁷² the Supreme Court has observed that:

“23. Stare decisis is a well-known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that,

⁸⁷² (2004) 5 SCC 518

when the law is declared by a court of competent jurisdiction authorized to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What is precluded is that where a principle of law has become established by a series of decisions, it is binding on the courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.

24. In *Mishri Lal v. Dhirendra Nath*⁸⁷³ importance of this doctrine was emphasized for the purpose of avoiding uncertainty and confusion and paras 14, 15, 16 and 21 of the report read as under: (SCC pp.18-19 & 20-21)

“14. This Court in *Maktul v. Manbhari*⁸⁷⁴ explained the scope of the doctrine of stare decisions with reference to *Halsbury’s Laws of England* and *Corpus Juris Secundum* in the following manner:

‘the principle of stare decisis is thus stated in *Halsbury’s Laws of England*, 2nd Edn.:

“Apart from any question as to the courts being of coordinate jurisdiction, a decision which has been followed for a long period of time, and has been acted upon by persons in the formation of contracts or in the disposition of their property, or

⁸⁷³ (1999) 4 SCC 11

⁸⁷⁴ AIR 1958 SC 918

in the general conduct of affairs, or in legal procedure or in other ways, will generally be followed by courts of higher authority than the court establishing the rule, even though the court before whom the matter arises afterwards might not have given the same decision had the question come before it originally. But the Supreme Appellate Court will not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the statute and outside the common law, when no title and no contract will be shaken, no persons can complain, and no general course of dealing be altered by the remedy of a mistake.”

The same doctrine is thus explained in *Corpus Juris Secundum*-

“Under the stare decisis rule, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. This rule is based on expediency and public policy, and, although generally it should be strictly adhered to by the courts, it is not universally applicable.”

15. Be it noted however that the *Corpus Juris Secundum* adds a rider that ‘previous decisions should not be followed to the extent that grievous wrong may result; and accordingly, the courts ordinarily will not adhere to a rule or principle established by previous decisions which they are convinced is erroneous. The rule of stare decisis is not so imperative or inflexible as to preclude a departure therefrom in any case, but its application must be determined in each case by the discretion

of the court, and previous decisions should not be followed to be extent error may be perpetuated and grievous wrong may result.’

16. The statement though deserves serious consideration in the event of a definite finding as to the perpetration of a grave wrong but that by itself does not denude the time-tested doctrine of stare decisis of its efficacy. Taking recourse to the doctrine would be an imperative necessity to avoid uncertainty and confusion. The basis feature of law is its certainty and in the event of there being uncertainty as regards the state of law – the society would be in utter confusion the result effect of which would bring about a situation of chaos - a situation which ought always to be avoided.

21. In this context reference may also be made to two English decisions:

(a) in *Admiralty Comms. V/s. Valvendra (Owners)*⁸⁷⁵ (AC at p.194) wherein the House of Lords observed that even long-established conveyancing practice, although not as authoritative as a judicial decisions, will cause the House of Lords to hesitate before declaring it wrong, and

(b) in *Button V. Director of Public Prosecution*⁸⁷⁶ the House of Lords observed:

‘In *Corpus Juris Secundum*, a contemporary statement of American law, the stare decisis rule has been stated to be a principle of law which has become settled by a series of

⁸⁷⁵ 1938 AC 173 : (1938) 1 ALL ER 162 (HL)

⁸⁷⁶ 1966 AC 591 : (1965) 3 ALL ER 587 (HL)

decisions generally, is binding on the courts and should be followed in similar cases. It has been stated that this rule is based on expediency and public policy and should be strictly adhered to by the courts. Under this rule courts are bound to follow the common law as it has been judicially declared in previously adjudicated cases and rules of substantive law should be reasonably interpreted and administered. This rule has to preserve the harmony and stability of the law and to make as steadfast as possible judicially declared principles affecting the rights of property, it being indispensable to the due administration of justice, especially by a court of last resort, that a question once deliberately examined and decided should be a question once deliberately examined and decided should be a question once deliberately examined and decided should be considered as settled and closed to further argument. It is a salutary rule, entitled to great weight and ordinarily should be strictly adhered to by the courts. The courts are slow to interfere with the principle announced by the decision, and it may be upheld even though they would decide otherwise were the question a new one, or equitable considerations might suggest a different result and although it has been erroneously applied in a particular case. The rule represents an element of continuity in law and is rooted in the psychologic need to satisfy reasonable expectations, but it is a principle of policy and not a mechanical formula of adherence to the latest decisions however recent and questionable when such adherence involves collision with a

prior doctrine more embracing in its scope, intrinsically sounder and verified by experience.’ ”

2.2.5 USE OF FOREIGN DECISIONS

Reference to English and American decisions may be made, because they have the same system of jurisprudence as ours, but do not prevail when the language of the Indian statute or enactment is clear.

They are of assistance in elucidating general principles and construing Acts in pari material.

But Indian statutes should be interpreted with reference to the facts of Indian life.

3 SUMMARY

An attempt is here made to give a general view of internal and external aids which are of most practical utility in interpreting statutes. The importance of use of these aids is manifest. In any case, where difficulty arises as to finding out the true intention of the legislature, the use of these materials could be made by the Courts. Of course, in India, there is no consistent and uniform approach to the use of extrinsic materials in the sense of determining as an aids for the purpose of interpretation of a given statute. Undoubtedly, individually as well as collectively, they are very much useful in finding out the true intention of the legislature. Of course, recourse to this aids could only be made in case of possibility of more than one interpretation of a given statute.