EXTERNAL AIDS TO INTERPRETATION OF STATUTES: A CRITICAL APPRAISAL

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Laws enacted by the legislatures are interpreted by the judiciary. Enacted laws, specially the modern Acts and Rules, are drafted by legal experts and it could be expected that the language will leave little room for interpretation or construction. But the experience of all, who have to bear and share the task of application of law, has been different. It is quite often observed that courts are busy unfolding the meaning of ambiguous words and expressions and resolving inconsistencies. The age old process of the application of the enacted laws has led to formulation of certain rules of interpretation or construction.

INTRODUCTION

"By interpretation or construction is meant", says Salmond, "the process by which the courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed".[2] A statute is an edict of the Legislature[3] and the conventional way of interpreting and construing a statute is to seek the intention of its maker. A statute is to be construed according "to the intent of them that make it" and "the duty of judicature is to act upon the true intention of the legislature- the *mens or sentential legis*."[4]

There are two types of aids to interpretation- The **internal** and the **external** aids. The following are considered internal aids to interpretation-

- **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.[5] The title although part of the Act is in itself not an enacting provision and though useful in case of ambiguity of the enacting provision, is ineffective to control their clear meaning.[6]
- **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.
- **Preamble of the Constitution-** the majority judgments in Keshavananda Bharti[7] and Minerva Mills[8] relied upon the Preamble in reaching the conclusion that the power of amendment conferred by Art 368 was limited and did not enable parliament to alter the basic structure of the Constitution.
- **Headings-** the view is now settled that the Headings or Titles prefixed to Sections

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[2] See., Salmond, Salmond on Jurisprudence, p.152 (Sweet and Maxwell,11th edition).

[3] Vishnu Pratap Sugar Works Ltd. V. Chief Inspector of Stamp, UP, AIR 1968 SC 102

[4] Supra note 1.

[5] R. v. Secretary of State for Foreign and Commonwealth Affairs, (1994) 1 All ER 457

[6] Manoharlal v. State of Punjab, AIR 1961 SC 418: R. v. bates and Russell, (1952) 2 All ER 842

[7] Keshavananda Bharti v. State of Kerala, AIR 1973 SC1461

[8] Minerva Mills v. UOI, AIR 1980 SC 1789

or group of Sections can be referred to in construing an Act of the legislature.[9]

- **Marginal Notes**- one cannot ignore the fact that the headings and sidenotes are included on the face of the Bill throughout its passage through the legislature. They are there for guidance. They provide a context for the examination of those parts of the Bill that are open for debate.[10]
- **Punctuations**
- **Illustrations**- They form part of the statute and although forming no part of the section, are of relevance in the construction of the text of the Section.[11]
- **Interpretation Clauses**- it is common to find in a statute "definitions" of certain words and expressions used elsewhere in the body of the statute. These definitions are generally very useful while interpreting the meaning of the ambiguous terms.
- **Proviso**- 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.
- **Explanation**- an explanation is at times appended to a section to explain the meaning of words contained in the Section.[12]
- **Schedule**- schedules appended to statutes form part of the statute. They are added towards the end and their use is made to avoid encumbering the sections in the statute with matters of excessive details.

External aids to interpretation of statutes include **Parliamentary History, Historical Facts and Surrounding Circumstances, Later Scientific Inventions, Reference to Other Statutes (pari materia) & Use of Foreign Decisions.** Each of the above mentioned constituents of external aids to construction have been dealt briefly in the due course of my work.

[9] Hammer Smith v. City Ry. V. Brand, (1869) LR 4 HLC 171
[10] R. v. Montila, (2005) 1 All ER 113
[11] Mohammad Sydeol v. Yeah Oai Gark, 43 IA 256
[12] Bengal Immunity CO. Ltd. V. State of Bihar, AIR 1955 SC 661

PARLIAMENTARY HISTORY

The ingredients of Parliamentary History are **the bill in its original form or the amendments considered during its progress in the Legislature, Speech of the minister who introduced the bill in the Parliament which is also referred to as Statements of Objects and Reasons, Reports of Parliamentary debates and resolutions passed by either House of the Parliament and the Reports submitted different Parliamentary Committees.**

According to the **traditional English view** the Parliamentary History of a statute was not considered as an aid to construction. The Supreme Court of India in the beginning enunciated the rule of exclusion of Parliamentary History in the way it was traditionally enunciated by the English Courts but on many an occasion, the court used this aid in resolving questions of construction.[13]

In **Indira Sawhney v. Union of India**[14], while interpreting Article 16(4) of the Constitution the Supreme Court referred to Dr. Ambedkar's speech in the Constituent Assembly as the expression *backward class of citizens'* is not defined. The court held that reference to Parliamentary debate is permissible to ascertain the context, background and objective of the legislatures but at the same time such references could not be taken as conclusive or binding on the courts. Thus in the **Mandal Reservation Case**, the Supreme Court resorted to Parliamentary History as an aid to interpretation.

In the **Ashwini Kumar's Case**[15] (1952), the then Chief Justice of India Patanjali Shastri quoted that **the Statement of Objects and Reasons should not be used as an aid to interpretation** because in his opinion the Statement of Objects and Reasons is presented in the Parliament when a bill is being introduced. During the course of the processing of

[13] Refer Generally, Singh G.P., Principles of Statutory Interpretation, 221 (Wadhwa and Company, Nagpur, Tenth Edition, 2006)

[14] Indira Sawhney v. Union of India, AIR 1993 SC 477.

[15] Ashwini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369.

the bill, it undergoes radical changes. But in the **Subodh Gopal's Case**[16] (1954), Justice S.R. Das although he fully supported Chief Justice Patanjali Shastri's views in the **Ashwini Kumar's Case**[17] but he wanted to use the Statement of Objects and Reasons to protect the sharecroppers against eviction by the new buyers of land since zamindari system was still not abolished and land was still not the property of the farmers. So Justice S.R. Das took the help of Statements of Objects and Reasons to analyse the social, legal, economic and political condition in which the bill was introduced.

In **Harsharan Verma v. Tribhuvan Narain Singh**[18], the appointment of Tribhuvan Narayan Singh as the chief minister of Uttar Pradesh was challenged as at the time of his appointment he was neither a member of Vidhan Sabha nor a member of Vidhan Parishad. While interpreting Article 164(4) of the Constitution, the Supreme Court held that it did not require that a Minister should be a Member of the Legislature at the time of his being chosen as such, the Supreme Court referred to an amendment which was rejected by the Constituent Assembly requiring that a Minister at the time of his being chosen should be a member of the Legislature.

[16] State of West Bengal v. Subodh Gopal Bose, AIR 1954 SC 92.

[17] Supra at 4.

[18] Harsharan Verma v. Tribhuvan Narain Singh, AIR 1971 SC 1331.

HISTORICAL FACTS AND SURROUNDING CIRCUMSTANCES

Historical facts are very essential to understand the subject matter of the statute or to have regard to the surrounding circumstances which existed at the time of passing of the statute. The rule of admissibility of this external aid is especially useful in mischief rule. The rule that was laid down in the **Heydon's Case**[19] (1584), has now attained the status of a classic. The mischief rule enables the consideration of four matters in construing an act:

- What was the law before the making of the Act?
- What was the mischief for which the law did not provide?
- What was the remedy provided by the Act?
- What was the reason of the remedy?

This rule was applied in **Bengal Immunity Co. v. State of Bihar**[20] in the construction of Article 286 of the Constitution in which the Supreme Court held that a state has the legislative competence to impose sales tax only if all the ingredients of a sale have a territorial nexus. Thus on the same transaction sales tax cannot be imposed by several states.

Since the function of the court is to find the meaning of the ambiguous words in a statute, a reference to the historical facts and surrounding circumstances that led to the enactment assist the courts in efficient administration of speedy justice. The rule permits recourse to historical works, engravings, pictures and documents where it is important to ascertain ancient facts of a public nature. Historical evolution of a provision in the statute is also sometimes a useful guide to its construction.[21]

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[19] See., Heydon's Case(1584), as available in www.westlaw.com as accessed on 25th February,2008 at 3:45p.m. IST.

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

[21] R. v. Ireland, (1997) 4 All ER 225

LATER SCIENTIFIC INVENTIONS

The laws made in the past are applied in the present contemporary society in the light of changed social, political, legal and economic circumstances taking into consideration the advancement in science and technology. Statutes must be interpreted in accordance with the spirit of the Constitution of India even though the statutes were passed before independence of India or before the commencement of our Constitution.

The case **State v. J.S. Chawdhry**[22] relates to Section 45 of the Indian Evidence Act, 1872 which only mentions about handwriting experts and not typewriting experts for the reason that typewriters were invented much later than 1872.In the instant case the state wanted to use the *opinion of a typewriting expert* as evidence in a murder case. The Supreme Court then overruled its decision in the case **Hanumant v. State of Madhya Pradesh**[23] which held that the opinion of the typewriting expert was inadmissible as evidence in the court of law.

State of Maharashtra v. Dr. Prafulla Desai[24] case relates to Section 388 of the Indian Penal Code which deals with gross medical negligence resulting in the death of the patient. The prosecution wanted to produce the statements of a New York Doctor Dr.Greenberg as evidence. The problem arose when Dr.Greenberg refused to appear in the Indian Court to record his statements. There is no such provision which can compel a witness residing outside the domestic territory of India to come to an Indian court as a witness. Thus in such circumstances *video conferencing* became the only viable option. But the accused opposed video conferencing under Section 273 of Criminal Procedure Code which clearly says that evidence can be recorded only in the presence of the accused. The Supreme Court interpreted presence not merely as physical presence but as a situation in which the accused can see, hear and question the witnesses.

[22] State v. J.S.Chawdhry, AIR 1996 SC 1491.

[23] Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343.

[24] State of Maharashtra v. Dr. Prafulla Desai, AIR 2003 SC 2053

REFERENCE TO OTHER STATUTES

Statutes must be read as a whole in order to understand the words in their context. Problem arises when a statute is not complete in itself i.e. the words used in the statute are not explained clearly. Extension of this rule of context permits reference to other statutes in *pari materia* i.e. statutes dealing with the same subject matter or forming part of the same system. The meaning of the phrase pari materia was explained in an American Case, **United Society v. Eagle Bank** (1829) in the following words: "Statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things. The word *par* must not be confounded with the word *similes.* It is used in opposition to it- intimating not likeness merely but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject".[25]

In the case, **State of Punjab v. Okara Grain Buyers syndicate Ltd., Okara**[26] , the Supreme Court held that when two pieces of legislation are of differing scopes, it cannot be said that they are in *pari materia*. However it is not necessary that the entire subject matter in the statutes should be identical before any provision in one may be held to be in *pari materia* with some provision in the other.[27]

In the case **State of Madras v. A. Vaidyanath Aiyer** [28], the respondent, an income tax officer was accused of accepting bribe. The Trial Court convicted him and awarded a rigorous imprisonment of six months. When an appeal was made in the High Court, the High Court set him free on the ground of a possibility that he might have borrowed the money and not accepted it as bribe. The Supreme Court held the accused guilty and made an observation that the judgement of the High Court was extremely perverse.

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[25] See., Sigh G.P., Principles of Statutory Interpretation, 275(Wadhwa and Company, Nagpur, Tenth Edition, 2006)

[26] State of Punjab v. Okara Grain Buyers syndicate Ltd.,Okara, AIR 1964 SC 669.

[27] Ibid at 13

[28] State of Madras v. A.Vaidyanath Aiyer,AIR 1958 SC 61

In the instant case, the Supreme Court held that Section 4 of the Prevention of Corruption Act,1947, which directs that on proof that the accused has accepted any gratification other than legal remuneration, it shall be presumed unless the contrary is established by the accused that the gratification was accepted as bribe, has been held to be in *pari materia* with subject-matter dealt with by the Indian Evidence Act,1872; and the definition 'shall presume' in the Indian Evidence Act has been utilized to construe the words 'it shall be presumed' in section 4 of the Prevention of Corruption Act,1947.

USE OF FOREIGN DECISIONS

Reference to decisions of the English Courts was a common practice in the administration of justice in pre independent India. The reason behind this was that the Modern Indian Legal System owes its origin to the English Common Law System. But after the commencement of the Constitution of India as a result of the incorporation of the Fundamental Rights, the Supreme Court of India gave more access to American precedents.

It cannot, however, be doubted that knowledge of English law and precedents when the language of an Indian Act was not clear or express, has often been of valuable assistance. Speaking about Indian Codes Shri M.C.Setalvad has stated: "Where the language of the code was clear and applicable, no question of relying on English Authority would arise. But very often the general rule in the Indian Code was based on an English Principle and in such cases the Indian Courts frequently sought the assistance of English Decisions to support the conclusions they reached. They could not otherwise for not only the general rules contained in the codes but some of the illustrations given to clarify the general rules were based on English decisions."[29]

In the case **General Electric Company v. Renusagar Power Company**[30]**,** the Supreme Court of India held that when guidance is available from Indian decisions, reference to foreign decisions may become unnecessary.

Different circumstances may also result in non acceptance of English precedents by the Indian Courts. In the case **M.V.Elisabeth v. Harwan Investment and Trading Pvt. Ltd**.[31], the Supreme Court differed from English decisions and interpreted the words 'damage caused by a ship' in Section 443 of the Merchant Shipping Act, 1958 as not limited to a physical damage caused by a ship by reason of its coming into contact with

[29] See., Setalvad M.C., The Common Law in India , 61 as cited in Singh G.P., Principles of Statutory Interpretations, 327(Wadhwa and Company, Nagpur, Tenth Edition, 2006).
[30] General Electric Company v. Renusagar Power Company, (1987)4 SCC 137.

[31] M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd., AIR 1993 SC 1014.

something; it intended to include damage to the cargo carried in a ship. The Supreme Court in this case differed in its opinion because in India there is no other Act covering claim of damages for damage to the cargo carried in a ship but in England this subject is covered expressly by a different Act.

CONCLUSION

The chief source of law is legislation, though there are other sources of law such as precedents and customs. Every source of law finds its expression in a language. Often the language has a puzzling effect, i.e., it masks and distorts. Often it is found that the language of a statute is not clear. The words used in the statute too at times seem to be ambiguous. Sometimes it is not possible to assign the dictionary meaning to certain words used in legislation. Meaning which is to be assigned to certain words in a legislation. Even the dictionary does not give the clear-cut meaning of a word. This is so because the dictionary gives many alternative meanings applicable in different contexts and for different purposes so that no clear field for the application of a word is easily identified. So long as expansion of meaning takes place uniformly, the law will develop along healthy lines. But if one judge takes the narrow view and the other the broad view, the law will mean different things for different persons and soon there will be confusion. Hence, it is necessary that there should be some rules of interpretation to ensure just and uniform decisions. Such rules are called rules of interpretation. There are various aids to the rule of interpretation and in case the ambiguity is not removed even after applying the internal aids, then the external aids can come in handy. They provide various methods by the help of which a statute can be interpreted and used by the judiciary in deciding cases.