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# **THE PROCESS OF INTERPRETATION OF LAW** **AND ROLE OF JUDGES**

AUTHORED BY - BHAVNA SHUKLA

## **INTRODUCTION**

The rules of interpretation may well rank as an important branch of what is called the adjective law. The part that these rules play in the administration of justice is by no means less important than the rules of procedure and rules of evidence. Primarily the courts have to deal with three things:

1. Laws dealing with rights and liabilities,
2. Facts which establish such rights and liabilities in particular cases and
3. the machinery of administering the law and of ascertaining the facts.

The main duty of the court is, to deal with the substantive law, with which they are supplied by the State, and with the facts, with which the parties proposed to supply that. To assist them in respect of the greater duty, there is the law of evidence. To assist them as regards the former duty, there are the rules of interpretation. Thus, the rules of interpretation stand side- by-side with the rules of evidence. yet, the rules of interpretation have scarcely received that degree of attention as to the rules of evidence<sup>1</sup>. One of the reasons is a conception that the judges know to interpret the law without any hard and fast rules to guide them. No doubt, as a matter of fact, a well trained judge hits upon the proper interpretation of a passage of law, without thinking of any rules of interpretation, which may exist on a subject. Similarly, a man with common sense argues rightly without any knowledge of logic. No one, however, will say that logic is uncalled for, because many men reason rightly, without any consciousness of logic. No more can it be said that rules of interpretation are unnecessary, because good Judges interpret law properly, without thinking of any rules on the subject.<sup>2</sup>

In cases where a dispute arises concerning the meaning of a statutory provision, it falls to the courts to render authoritative pronouncements as to the meaning of the words in question. An analysis of the workloads of higher courts in India indicate that they spent significant amount of their time in hearing cases that involve questions about the proper meaning of statutory provisions. Since so much time is wasted in interpreting statutory language, it would be advisable to develop a well defined and well understood uniform process of interpretation.

<sup>1</sup> K.L.Sarkar's Mimansa Rules of Interpretation – Tagore Law Lectures 1905– Third Edition, p.33  
K.L.Sarkar's Mimansa Rules of Interpretation, Ibid, p. 33.

## MEANING OF INTERPRETATION AND CONSTRUCTION

Interpretation is the art of finding out the true sense of any form or words; i.e. the sense which their author intended to convey, and of enabling other to derive from them the same idea which the author intended to convey. Interpretation only takes place if the text conveys some meaning or other.<sup>3</sup>

By interpretation is meant the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed<sup>4</sup>

The process by which a Judge or indeed any person, lawyer or layman, who has occasion to search for the meaning of a statute, constructs from the words of a statute book a meaning which he either believes to be that of the legislature, or which he proposes to attribute to it, is called interpretation<sup>5</sup> "Interpretation", is often spoken of as if it were nothing but the search and the discovery of meaning which, however obscure and latent, had none the less a real and ascertainable pre-existence in the legislator's mind.<sup>6</sup>

Interpretation is also an agency of growth of the traditional element of law in that it is one of the points of contact between law and morals<sup>7</sup>.

## CONSTRUCTION

The Court has to harmonise the letter and spirit of an enactment. The idea is to get at the 'intent of the legislature'. But this expression is ambiguous. It may connote either the meaning or the purpose of legislation. And the two methods are known respectively by "interpretation" and "construction". In practice, one cannot be separated from the other, because it is difficult to see where 'interpretation' leave off and 'construction' begins.

However, Interpretation may be defined as the act of finding out the true sense of any form of words, that is, the sense which their author intended to convey, and of enabling other to derive from them the same idea which the author intended to convey. Whereas, Construction may be termed as the drawing of conclusions respecting subject that lie beyond the direct expressions of the text, from elements known from and given in the text, conclusions which are in the spirit, though not in the letter of the text.

## MIMANSA RULE OF INTERPRETATION

The Mimansa – the rules of interpretation of the sacred scriptures of ancient Hindu Law is one of forensic source of law. The various rules of mimansa has been systematically developed in most scientific manner. The substantive law was described as Dharma and the procedural law was called the vyavahara. In this sense of the word the legal disputes were to called vyavahara (vi=various, ava=doubts, hara=removing) (Harita) Party (Raga), greed (Lobha), fear (Bhaya), illwill or malice

(Dweshha)

<sup>3</sup> Swarup Jagdish: Legislation and Interpretation – p. 16

<sup>4</sup> Salmond: Jurisprudence 12th Edition – p. 133

<sup>5</sup> Gray: The Nature and the Sources of Law 11th Edition – p. 176

<sup>6</sup> Benjamin N. Cardozo, The Nature of the Judicial Process, 5th Indian Reprint 2004, p. 14

<sup>7</sup> Roscoe Pound – Jurisprudence Ibid, p. 467-468



The ancient rules of interpretation were very scientific. They recognized the science of reasoning and also the principles of Justice, 16 Equity and Good Conscience. Dharma or the Justice, and Yukti or the Equity and the reason were the foundations of justice or “No decision should be made merely exclusively according to the letter of shastra, for in a decision devoid of Yukti, failure of justice occurred.

The Mimansa principles of interpretation were first laid down by Jaimini in his sutras, about 500 B.C. That they are very ancient is proved by the fact that they are referred to in many Smritis, which themselves are very old.

### MEANING OF STATUTE

We live in and by the law. It makes us what we are citizens and employees and doctors and spouses and people who own things. It is sword, shield and menace; we insist on our wage, or refuse to pay our rent, or are forced to forfeit penalties, or are closed up in jail, all in the name of what our abstract and ethereal sovereign the law, have decreed. It is said that the attempt to define the term “law” is a useless endeavour.<sup>8</sup>

According to Analytical, ‘law’ is aggregate of sanctioned rules of conduct which have the guinea stamp of a politically organised society, or as the aggregate of rules and principles for determining controversies recognised or established by the appointed authorities of such a society, or as a body of threats of exercise of the force of such a society, or as a body of predictions as to how and when that force will be applied. Realists have used the word to mean whatever is done officially in such a society, or more specifically have used it for the judicial and the administrative processes.

The word ‘law’ in the context of Art. 300A of the Constitution must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law.<sup>9</sup>

Law in its legislative sense is of much wider import than the juristic notion of law as the command of a sovereign or as a rule laying down a general course of conduct. The term ‘Law’ in Article 245 of the Constitution must be construed so as to include in its scope all legislative Acts enacted in the prescribed manner and form.<sup>10</sup>

Statute law and judge-made law are not the only laws. There is something like a common or general law, the principles of which govern the making of judicial decisions and which courts and Tribunals state from time to time.<sup>11</sup>

The Supreme Court in *D. P. Joshi v. State of Madhya Bharat*<sup>12,68</sup> has held that a notification for an executive direction issued by the State Government against the provisions of the statute will come within the definition of the expression “Law” referred to in Article 13 of the Constitution.

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<sup>8</sup> W. Friedmann, *Legal Theory*, 4th Edition, 1960, p. 273

<sup>9</sup> *M/s. Bishamber Dayal Chandra Mohan v. State of U.P.*, AIR 1982 SC pp.32, 48

<sup>10</sup> *Ram Prasad v. State of Bihar*, AIR 1952 Pat. 194 at pp.195, 196

<sup>11</sup> *Punkaj Kumar v. Bank of India*, AIR 1957 Cal. pp.560, 570 : (1956) 2 L.L.J. 328 : 60 C.W.N. 601

<sup>12</sup> AIR 1958 SC 538; *R. Jacob Mathew v. State of Kerala*, AIR 1964 Ker pp.39, 67 : 1963 Ker. L.T. 783 : 1963 Ker. L.J. 820



## MEANING OF JUDGE

The term “Judge” may be defined as a person who is called upon regularly to determine right of parties in contested cases and to investigate the merits of the claims of the parties and to apply his unbiased and impartial mind in order to determine the contest. The judge, says Aristotle, “equalizes”.<sup>13</sup> According to the Concise Oxford English Dictionary Judge is a public officer appointed to decide cases in a law court.

The function of the Judge is to decide and determine the rights of the contested parties.

During such decision he has to deal with the particular Statute applicable in the case.

Sometimes Judge has to mold the law or became a legislature to fill the gaps in the law. A Judge’s philosophy is reflected in his judicial pronouncement. Such philosophy develops over a period of time on the basis of perception and experience. It is no exaggeration, no indulgence in hyperbole, to say that a judge is the high-priest of the constitution and its laws. To him the spirit as much as the letter has full value. The nation cannot survive as a democracy unless judges discharge their functions fearlessly, free from bias and untainted by prejudices, constant in their strength of purpose, endeavoring always to do right in every case.

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## OBJECT OF INTERPETATION

The object of interpretation refers to the text or document being analyzed or understood. In various contexts such as law, literature, or religious scriptures, interpretation involves extracting meaning, understanding intentions, or discerning implications from the object being interpreted. This could include statutes, contracts, novels, poems, religious texts, or any other form of written or spoken expression. The goal of interpretation is to comprehend the message, intent, or significance conveyed by the object being analyzed.

Interpretation is a constitutive feature of legal practice. The need for interpretation arises when our conventional ways of understanding break down. Lawyers use the forms of argument to appraise claims about what is true as a matter of law. In many cases we may call them “easy cases”, the relevant forms of argument all point to a single conclusion. But the forms of argument do conflict and; when they do, the Tension must be resolved. Resolving this tension is the activity of legal interpretation. It is in the act of interpretation that the fabric of law is repaired, thereby

enabling practitioners to go on with the practice.

### AMBIGUITY

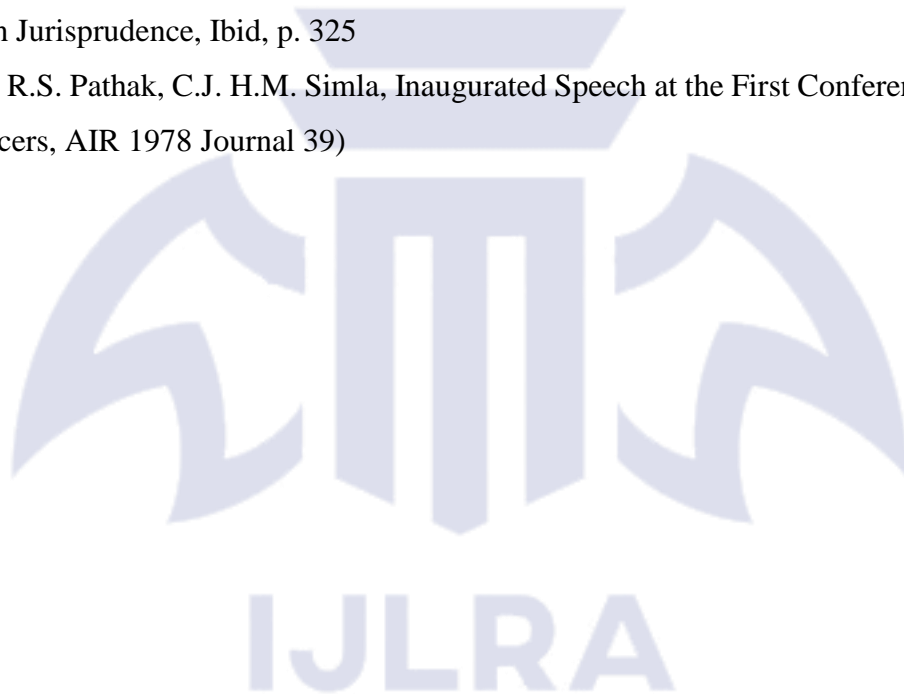
Ambiguity is an attribute of any concept, idea, statement or claim whose meaning, intention or interpretation cannot be definitively resolved according to a rule or process consisting of a finite number of steps. In ambiguity, specific and distinct interpretations are permitted.

Context may play a role in resolving ambiguity. Ambiguity is not unlikely to be involved in almost all use of words. The term “ambiguity” is used to indicate situations that involve uncertainty.

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<sup>13</sup> Holland on Jurisprudence, Ibid, p. 325

<sup>14</sup> Hon’ble Mr. R.S. Pathak, C.J. H.M. Simla, Inaugurated Speech at the First Conference of the H.P. Judicial Officers, AIR 1978 Journal 39)



A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.<sup>15</sup>

### MODES OF INTERPRETATION

#### A. Grammatical- Literal meaning Rule:

The first and most elementary rule of interpretation is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are construed according to the rules of grammar.<sup>16</sup>

According to Vepa P. Sarathi, the words of an enactment are to be given their literal meaning, and if such meaning is clear and unambiguous, effect should be given to a provision of a statute whatever may be the consequence.<sup>17</sup>

#### B. Golden Rule:

The Golden Rule of interpretation is to adhere to the ordinary meaning of the word used unless it leads to anomaly or absurdity. Where to apply words literally would defeat the obvious intention of the legislature and produce a wholly unreasonable result, Judge can do some violence to the words and so achieve that obvious intention and produce a rational interpretation.

#### C. Mischief Rule:

These rules are being applied by the Courts while interpreting various statutes. These rules are here as to interpret laws so that the legislation serves its purpose for which it was enacted. The rules examine the wording of the particular statute and are the most common approach of interpretation of the English legal system. The three rules take different approaches in the interpretation and some judges use one rule while another prefers to use another rule. That is why we have three rules not just one. This means that in English Legal System, the interpretation of statute may differ depending upon which judge is hearing the case. Once an interpretation has been made, a Judge can form a new precedent for future cases in the same area of law. Since the three rules can result in vary varied outcomes, it is important to understand the three rules. In the

succeeding chapters, these rules are discussed in detail. These principles guide judges and legal practitioners in interpreting statutes to ensure fairness, consistency, and adherence to the rule of law.

#### INTERPRETATION ACCORDING TO NATURE OF STATUTE

A Statute only enacts its substantive provisions, but, as a necessary result of legal logic it also enacts, as a legal proposition, everything essential to the existence of the specific

<sup>15</sup> N. S. Bindra's Interpretation of Statutes, Ibid, p. 485

<sup>16</sup> Maxwell on the Interpretation of Statute, 12th Edn. (2004), p. 28

<sup>17</sup> Vepa P. Sarathi, "The Interpretation of Statutes", Second Edition 1981, p. 9



enactments<sup>18</sup>. To interpret the statutes, there are rules of interpretation viz. Grammatical rule of interpretation, Golden rule of interpretation and Mischief rule of interpretation, which is also known as Purposive-Social Engineering Logical rule of interpretation. These rules are being applied by the Courts for interpretation of various types of statutes as per the nature of the legislation. The various types of statutes are dealt with as under.

#### PENAL STATUTE

Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the State. Ordinarily every crime which is created by a statute, however, comprehensive and unqualified the language used is always understood as requiring the element of mens rea or a blameworthy state of mind on the part of the actor. But there may be cases in which Legislature completely rules out the principle of mens rea while providing for penalty.<sup>19</sup> One class of cases in which the legislature may insist on strict liability rule, excluding the applicability of mens rea, are statutes which deal with public welfare, e.g. statutes regulating the sale of food and drink.<sup>20</sup> From early times it has been held that penal statutes must be strictly construed.<sup>21</sup> While interpreting a prohibitive clause leading to penalties, no addition is permissible.<sup>22</sup>

#### FISCAL STATUTE

In interpreting a fiscal statute the court cannot proceed to make good the deficiencies, if there be any in the statutes, it shall interpret the statute as it stands and in case of doubt, it shall interpret it in a manner favourable to the tax payer. In a considering a taxing Act the word is justified in straining the language in order to hold a subject liable to tax.<sup>23</sup> It has been said and said on numerous occasions that fiscal laws must be strictly construed, words must say what they mean, nothing should be presumed or implied, these must say so. The free test must always be the language used.<sup>24</sup>

#### PROCEDURAL STATUTE

According to Salmond,<sup>25</sup> the law of procedure may be defined as that branch of the law which governs the process of litigation. It is the law of actions – using the term action in a wide sense to include all proceeding, civil or criminal. In *Krishnaji Dattatraya Bapat v.*

Krishnaji Dattatraya Bapat, <sup>26</sup> it was held that “Statutes pertaining to a right of appeal should be liberally construed.”

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<sup>18</sup> Anand Prakash v. Narain Das, AIR 1931 All 162

<sup>19</sup> N.S. Bindra: Ibid, pp.709, 710

<sup>20</sup> N.S. Bindra: Ibid, p.710

<sup>21</sup> Steel Authority of India Ltd. v. Bihar Agricultural Produce Market Board, AIR 1990 Pat 146 (FB)

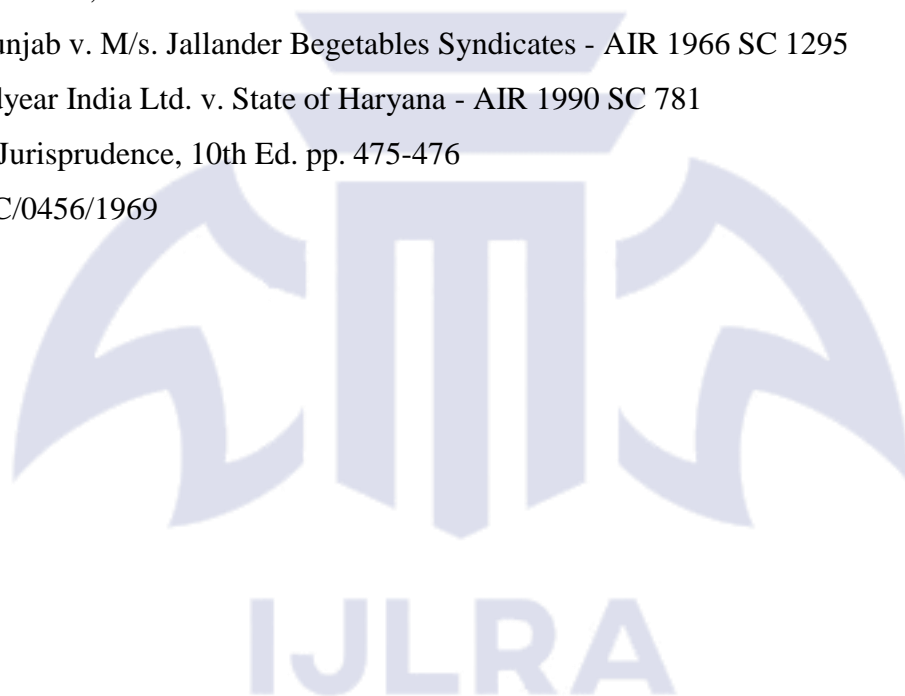
<sup>22</sup> Wasudeo v. State, AIR 1977 Bom 94

<sup>23</sup> State of Punjab v. M/s. Jallander Begetables Syndicates - AIR 1966 SC 1295

<sup>24</sup> M/s. Goddyear India Ltd. v. State of Haryana - AIR 1990 SC 781

<sup>25</sup> Salmond: Jurisprudence, 10th Ed. pp. 475-476

<sup>26</sup> MANU/SC/0456/1969



In *Habu v. State of Rajasthan*<sup>27</sup>, the court held that “Inherent powers under Section 482 Cr.P.C. are always inherent in a court and if (not) specifically provided by the legislature, allpervasive and comprehensive enough to arm the Court for advancing the cause of justice and to prevent the abuse of the process of the Court.”

#### BENEFICIAL STATUTE

A statute which purports to confer a benefit on individuals or a class of persons, by relieving them of onerous obligations under contracts entered into by them or which tend to protect persons against oppressive act from individual with whom they stand in certain relations, is called a beneficial legislation.

In *Gurcharan Singh v. Kamla Singh*,<sup>28</sup> the Court while dealing with Tenancy law observed: interpretation of socio-economic legislation should further the object and purpose of the legislation and legislative history becomes irrelevant when the Act seeks to usher in a new order. Interpretation which provides beneficial purpose of the provision should be adopted<sup>29</sup>. Remedial Act should be given beneficial interpretation.<sup>30</sup>

#### GENERAL AND SPECIAL STATUTE

What is a general statute and what is a special statute is often a question of difficulty to solve in most cases; but the classification has to be made with reference to the context in each case and the subject-matter dealt with by each statute. As Justice Ramesan has pointed out in *Thammayya v. Rajah Tyadapusapati*,<sup>31</sup> most Acts can be classed as General Acts from one point of view and Special Act from another. For example, it may be argued as he says that the Contract Act which is applicable to all is general in relation to the Labour Act which is limited to the relationship of the employer and the employee; and in another sense the Labour Act which applies to all concerns will be general in relation to the labour employed in concerns engaged in supplies as essentials. “A General Act prima facie, is that which applies to the whole community. In the natural meaning of the term it means an Act of Parliament which is unlimited both in its area and, as regards the individual, in its effects.” A special law must be taken as exhaustive in the subject it enacts. Rights not expressly conferred by it cannot be allowed to be spelled out by means of analogy nor can considerations of expediency and convenience unwarranted by the term of the statute be called in aid to enlarge the scope of its provisions. If there is a Special Act and a General Act, dealing with the same matter, the Special Act overrides the General Act.<sup>32</sup> Where there is a conflict between a special Act and a general Act, the provisions of the special Act prevail.<sup>33</sup>

#### EMERGENCY STATUTE

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<sup>27</sup> AIR 1987 Raj 83

<sup>28</sup> (1976) 2 SCC 152

<sup>29</sup> Ghantesher Ghose v. Madan Mohan Ghosh, (1996) 11 SCC 446

<sup>30</sup> Vijaynath v. Guramma, AIR 1999 SC 555

<sup>31</sup> AIR 1930 Mad 963

<sup>32</sup> N.S. Bindra: Ibid, p. 567

<sup>33</sup> Collector of Bombay v. Kamalawahooji, AIR 1934 Bom 162; Bhana Makan v. Emperor, AIR 1936 Bom 256; Gwalior R.S. M. Co. v. Union of India, AIR 1960 M 330; Abdul Halim v. State of M.P., 1962 MP LJ 183; Patna Improvement Trust v. Laxmi Devi, AIR 1963 SC 1077; Jogender Lal Saha v. The State of Bihar, AIR 1991 SC 1148



The Legislature may make temporary laws for the purpose of meeting an emergency in which case it may fix the period of expiration either expressly or it may fix no period and in such a case the temporary laws may expire otherwise. They cannot be allowed to outlast the emergency which brought it forth.<sup>34</sup>

The general rule is that on the expiration of a temporary provision which repeals an earlier Act, the earlier Act is revived after the temporary provision is spent. This rule will prevail except in cases where the intention of the temporary Act is clearly expressed for the purpose of repealing the earlier Act permanently<sup>35</sup>.

#### SUBSTANTIVE AND ADJECTIVE STATUTE

Law defines the rights which it will aid and specifies the way in which it will aid them. So far as it defines, thereby creating it is 'Substantive law'. So far as it provides a method of aiding and protecting, it is 'Adjective law'.<sup>36</sup> Adjective law are also called Procedural law.

There is difference in the matter of interpretation between a law dealing with substantive rights and dealing with procedure. There is no vested right in procedure but the case of vested right is different. The statute dealing with the substantive rights is to be interpreted in a way that the substantive right available to the subject is not lost. Generally, substantive statutes is treated as prospective in a nature. Whereas, rules of procedure may be retrospective in nature.

#### AMMENDING, CODIFYING, AND CONSOLIDATING STATUTE

A law is amended when it is, in whole or in part, permitted to remain, and something is added to or taken from it, or it is in some way changed or altered to make it more complete or perfect, or to treat it the better to accomplish the object or purpose for which it was made, or some other object or purpose. It is an alteration or change of something established as law.<sup>37</sup>

It frequently happens that legislative changes are made in order to reverse decisions of the courts; sometime, indeed the courts themselves invite the change. The decision is then the occasion of the enactment.

#### CODIFYING STATUTE

Codifying Acts are Acts passed to codify the existing law. This is not merely to declare the law upon some particular point, but to declare in the form of Code, the whole of the law upon some particular subject. Codification contemplates, implies and produces continuity of existing law in

clarified form rather than its interpretation<sup>38</sup>.

## CONSOLIDATING STATUTE

Consolidation is the combination in a single measure of all the statutes relating to a given subject matter and is distinct from codification in that the latter systematizes case law as well

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<sup>34</sup> Panna Lal Lahoti v. State of Hyderabad, AIR 1954 Hyd 129

<sup>35</sup> Govindswami Naidu v. Additional Commercial Tax Officer, ILR (1962) 2 Mad 294. <sup>36</sup> Holland: Jurisprudence, Chapter 8 end as referred to in N. S. Bindra: Ibid, p. 581 <sup>37</sup> N.S. Bindra, Ibid, p. 621

<sup>38</sup> N.S. Bindra, Ibid, p. 638



as statutes.<sup>39</sup> A Consolidating Act may further be an amending Act. This additional purpose is usually indicated in the Preamble or in the long title by use of the words 'an Act to consolidate and amend'.<sup>40</sup>

#### DELEGATED OR SUBORDINATE STATUTE

The nomenclature of delegated legislation is confused. The Act of Parliament which delegates the power may in so many words lay down that 'regulations', 'rules', 'orders', 'warrants', 'minutes', 'schemes', 'byelaws', or other instruments for delegated legislation appears under all these different names – may be 'made' or 'approved' under defined conditions.<sup>41</sup> A piece of subordinate legislation is not as immune as a statute passed by a competent legislative and is liable to be challenged on any of the grounds on which plenary legislation is questioned. The courts should make a cautious approach in interpreting the subordinate legislation and adopt almost the same standard as adhered to in interpreting legislative enactments<sup>42</sup>

#### INTERPRETATION OF CONSTITUTION

Interpreting a constitution involves analyzing its text, historical context, and Judicial precedents to determine its meaning and application to contemporary issues. There are several approaches to interpretation, including originalism, which focuses on the framers' intent, and living constitutionalism, which views the constitution as adaptable to modern circumstances. The interpretation process often involves balancing competing interests, such as individual rights and governmental powers, to ensure the constitution's principles are upheld while addressing evolving societal needs. Ultimately, interpretation is a complex and ongoing process that shapes the legal and political landscape of a country. In the construction of constitutional provisions dealing with the powers of Legislature a distinction cannot be made between an affirmative provision and a negative provision, for both are limitations on the power.<sup>43</sup>

It is a fundamental canon of interpretation that a constitution should receive a liberal interpretation in favour of a citizen, especially with respect to those provisions which were designed to safeguard the liberty and security of the citizen.

#### INTERPRETATION OF CONTRACTS

Contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meaning unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the

<sup>43</sup> Deepchand v. State of U.P., AIR 1959 SC pp.648, 656

court to make a new contract, however is reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without giving any outside aid. The terms of the contract

<sup>39</sup> Paton: Jurisprudence, 4th Edition, First Indian Reprint, 2004, p. 186

<sup>40</sup> Justice G.P. Singh: Ibid, p.217

<sup>41</sup> N.S. Bindra: Interpretation of Statutes, Ibid, p. 737

<sup>42</sup> P. V. Mani v. Union of India, AIR 1986 Ker. 86



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<sup>43</sup> Deepchand v. State of U.P., AIR 1959 SC pp.648, 656

have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely<sup>44</sup>.

### APPROACH TO BE ADOPTED BY JUDGE IN INTERPRETATION

The law is not static, but is a dynamic process. The task of judicial interpretation is not merely to reiterate Judicial Interpretation can be creative, but of course within the limits of the most rigorous discipline and in entire harmony with the boundaries of statute law and precious growth.<sup>45</sup>

The proper function of a court is merely to interpret what a statute lays down, and not to legislate according to what it thinks should be the law.<sup>46</sup>

A Statute is the will of the Legislature and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it.<sup>47</sup>

The fundamental rule of interpretation is the same whether the court is asked to interpret a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made for a modern legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situation, if the words are capable of comprehending them.<sup>48</sup> In a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made and, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them.<sup>49</sup> Object of law is good guide in interpreting it.

The rules of interpretation are not rules of law. They serve as guide. In applying the rules it must be kept in view that as the rules are not binding in the ordinary sense like a legislation, “they are our servants and not masters.”

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<sup>44</sup> United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, AIR 2004 SC 4794; The Rajasthan State

Industrial Development and Investment Corporation & Anr. v. Diamond and Gem Development Corporation Ltd. & Anr, AIR 2013 SC pp.1241, 1250

<sup>45</sup> Mrs. Nellie Wapshare v. Pierce Leslie & Co. Ltd., AIR 1960 Mad. pp.410, 422

<sup>46</sup> Raja Shatraijal v. Azmat Azim Khan, AIR 1966 ALL 109

<sup>47</sup> Maxwell on Interpretation of Statutes, pp. 1, 2 as referred in N. S. Bindra: Ibid, p.10

<sup>48</sup> Senior Electric Inspector v. Laxminarayan Chopra, AIR 1962 SC 159

<sup>49</sup> M/s. J. K. Cotton Spg. And Wvg. Mills Ltd. v. Union of India, AIR 1988 SC 191



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## AIDS TO INTERPRETATION

An Aid is considered as a tool or device which helps in interpreting a statute, the court can take help from internal aids to interpretation (i.e. within statutes) or external aids to interpretation (i.e. outside the statutes)

### A. Internal aids to interpretation

Internal aids means those aids which are available in the statute itself, court can interpret the statute by employing such aids which are as follows:

#### 1. Title of the statute

There are basically two types of title-

##### a. short Title

The short title of the Act is only its name which is given solely for the purpose of reference and identification. Short title is mentioned under Section 1 of the Acts and ends with the year of passing of the Act.

##### b. Long Title

The long title is mentioned under certain acts whose purpose is to give a general description about the object of the act. However, it is not considered as a conclusive aid to interpretation of statutes as it doesn't resolve ambiguity arising in words or expression under statutory provision but only provides a general idea of the act.

#### 2. Preamble

Preamble is a tool for internal aid to interpretation as it contains the main objects and reasons of the Act. The rule of interpretation of preamble is that when a language of an enactment is clear and unambiguous, the preamble has no part to play but if more than one interpretation is possible, a help can be taken from preamble to ascertain the true meaning of the provision.

The preamble is mentioned on the very first page of the act but modern acts don't pass with preamble which is declining its importance.

State of West Bengal v. Anwar Ali<sup>50</sup> the constitutionality of Section 5 of the West Bengal special courts act, 1950 was challenged on the grounds of violation of Article 14 of the constitution as the provision in the act authorized state government to select a particular case which deserved to be tried by special courts having special procedure. The Supreme Court took help of the preamble of the said Act and held that state government has discretion to choose

such cases.

### 3. Marginal notes

Marginal notes are inserted at the side of the sections in an act which express the effect of the section but they are not part of statute. They are also known as Side notes and are inserted by

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<sup>50</sup> AIR 1952 SC 75.



drafters and not legislators. The rule of interpretation is that in olden times a help is used to be taken from marginal notes when the clear meaning of the provision is in doubt but as per modern view of the court, marginal notes don't have any role to play because either they are inserted by legislators nor do they form the part of the statute. However, for interpreting constitution many times marginal notes are referred because they are made by constituent assembly.

#### 4. Headings

Headings are prefixed to sections or a group or set of sections.

These headings have been treated by courts as preambles to those sections or sets of sections. The rule of interpretation is that the heading can't control the plain words of the provision but if after the plain reading of the section more than one meaning is possible, only then the court may seek guidance from the headings.

#### 5. Illustration

Illustrations are appended to a section of a statute with a view to illustrating the law explained in the provision. Such illustrations manifest the intention of the legislature and can be referred in the case of ambiguity or repugnancy. However, the court emphasizes through various judgments that it doesn't explain the whole principle explained in the section through illustration nor does it curtail the ambit of the section.

In the case of repugnancy between section and illustration, section will prevail.

Example- Section 378 of theft in IPC has 16 illustrations attached to it.

#### 6. Explanation

The explanations are inserted with the purpose of explaining the meaning of a particular provision and to remove doubts which might creep up if the explanation had not been inserted. The purpose of explanations are to explain the meaning and intention of act, to clarify in case of obscurity or vagueness and to provide additional support to the object of the act.

However, it doesn't expand or curtail the meaning of the provision but only tries to remove uncertainty and in the case of conflict between explanation and main section, the duty of the court is to harmonize the two.

Example- section 108 of IPC defines the word abettor' which has five explanations attached to it.

#### 7..Definition or Interpretation clause

It defines certain words used elsewhere in the body of statute with the purpose to avoid the

necessity of frequent repetitions in describing the subject matter and extend the natural meaning of some words as per the statute. It also define intention of the legislature in respectof words mention in statute and avoid confusion.

The rule of interpretation is that whenever the words means or means and include' are used in definition, it makes the definition exhaustive and don't allow to interpret the definition widely but if the word includes' is used in the definition it provide widest interpretation possible to the definition or enlarge the ordinary meaning of the word.

However, if the definition clause will result in an absurdity, the court will not apply such definitions and the definition clause of one act can't be used to explain same word used in another statute except in the case of statutes in pari materia.

#### 8. Punctuation

Punctuation are put in the form of colon, semi colon, comma, full stop, dash, hyphen, brackets etc. In earlier times statutes are passed without punctuations and therefore, the courts were not concerned with looking at punctuations but in modern times statutes are passed with punctuations. The rule of interpretation is that while interpreting the provision in punctuated form, if court feels repugnancy or ambiguity the court shall read the whole provision without any punctuation and if the meaning is clear will so interpret it without attaching any importance.

#### 9. Schedules

Schedule are the part of statutes which are mentioned at the end of the act.

It contains details prescribe form of working out policies and contains subjects in the form of lists. In the case of clash between schedule and the main body of an act, the main body shall prevail.

Example- Article 1 of the constitution provides that India shall be union of states and in schedule 1 name of the states with its territories are mention.

#### 10. Saving Clause

Saving Clause are generally appended in cases of repeal and reenactment of a new statute. It is inserted in the repealing statute. By this the rights already created under repealed enactment are not disturbed nor are new rights created by it. In the case of clash between the main part of statute and a saving clause, the saving clause has to be rejected.

## 11. Proviso

The proviso to a section has the natural presumption that enacting part of the section would have included the subject matter of the proviso.

The proviso serve four different purposes- qualify or exempt certain provision, provide mandatory condition to be fulfilled by to make enactment workable, act as optional addenda and become integral part of the enactment. The rule of interpretation of proviso is that it can neither nullify the implication of main enactment nor can enlarge the scope of main enactment and can only be referred in case of ambiguity in the section. In case of conflict between main enactment and proviso, it must be harmoniously construct or in the view of many jurist provisowill prevail as it is the last intention of the legislature.



Example- Article 16(4) is considered as proviso of Article 16(1) held in T. Devadasan v. Union of India [9].<sup>51</sup>

## 12. Exception

Exception are generally added to an enactment with the purpose of exempting something which would otherwise fall within the ambit of the main provision.

In case of repugnancy between exception and main enactment, the latter must be relied upon.

However, in many cases exceptions are relied being the last intention of legislature.

Example: Section 300 of IPC has five exceptions attached to it.

## B. 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.

## 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.

## 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

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<sup>51</sup> AIR 1964 SC 179



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.

## 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*<sup>52</sup> *India Ltd.*, 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.

## 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.

### Text Books

The court while construing an enactment, may refer to the standard textbooks to clear the meaning. Although, the courts are not bound to accept such view.

The court time and again referred to mulla, kautiliya, manu, arthshastra.in

*Kesavananda Bharthi case*<sup>53</sup>, judges quoted large number of books.

## 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.

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 aid for the purpose of interpretation of a given statute. Undoubtedly, individually as well as collectively, they are very much useful in

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<sup>52</sup> (2014) 4 SCC 516

<sup>53</sup> AIR 1973 SC 1461



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.

## CONCLUSIONS

The task of judicial interpretation is not merely to reiterate. The present state of statutory interpretation suggests that something is amiss with the judicial approach to the whole exercise. The most important advantage of justice according to law is that it insures that the more valuable ultimate interests, social and individual, will not be sacrificed to immediate interests which are more obvious and pressing but of less real weight. Statutes are designed to operate over indefinite periods of time, so they should be viewed in a continuum. An intention to produce an unreasonable result is not to be imputed to a statute if some other construction available. If the statutory provision is unambiguous and if from that provision, the legislative intent is clear, we need not to call into aid the other rules of interpretation of statutes. The rules are called into aid when the legislative intent is not clear. The Judge must not sacrifice the general to the particular. We must not throw to the winds the advantages of consistency and uniformity to do justice. Every judge consulting his own experience must be conscious of times when a free exercise of will, directed of set purpose to the furtherance of the common good, determined the form and tendency of a rule which at that moment took its origin in one creative act.<sup>54</sup> Judge must get his knowledge just as the legislator gets it, from experience and study and reflection; in brief, from life itself<sup>55</sup>. Judges should decide by considerations of convenience, of utility and of the deeper sentiments of justice.

Judicial interpretation can be creative, but, of course, within the limits of the most rigorous discipline and in entire harmony with the boundaries of statute law, and previous growth.<sup>56</sup> In view of the present day increase in legislative activity, judges are more and more concerned with statutory interpretation.

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<sup>54</sup> Benjamin N. Cardozo, Ibid, pp. 103-104

<sup>55</sup> Benjamin N. Cardozo, Ibid, p. 113

<sup>56</sup> Mrs. Nellie Wapshare v. Pierce leslie & Co. Ltd., AIR 1960 Mal pp.410, 422