

CHAPTER XI

PRINCIPLES OF INTERPRETATION OF STATUTES

RULES OF INTERPRETATION GENERALLY

The interpretation of laws is confined to courts of law. In course of time, courts have evolved a large and elaborate body of rules to guide them in construing or interpreting laws. Most of them have been collected in books on interpretation of statutes and the draftsman would be well advised to keep these in mind in drafting Acts. Some Interpretation Acts, like the Canadian one¹, lay down that every Act shall be deemed remedial and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. The object of all such rules or principles as aforesaid broadly speaking, is to ascertain the true intent, meaning and spirit of every statute. A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that unattainable.²

THE NEED FOR STRUCTURE

Just as music is composed on staves with bars indicating timing, so should rules have a consistent framework for their component parts, divisions, sections, subsections, and other segments. Structural conventions, for music and for rules, provide a framework for both writers and readers. The framework aids in communicating the writer's musical or written

1 Canadian law provides for a purposive interpretation of statutes. In the Canadian Interpretation Act, under the heading "Rules of Construction" it is stated: "12. Every enactment is deemed remedial, and shall be given such fair large and liberal construction and interpretation as best ensures the attainment of its objects."

2 *Whitney v. Inland Revenue Commissioners*, 1926 AC 37 at 52.

message.³ Jerome Frank maintains that Judges while interpreting statutory or other rules may be compared with musical performers when playing musical compositions and perform judges like musical performers are to some extent creative artists.⁴

It is the duty of the courts to give effect to an Act according to its true meaning; and it is during this process that the rules or principles of interpretation have come to be evolved.⁵

The expression interpretation and construction are used interchangeably. Bennion terms this distinction is trivial because according to him there is no material distinction between the two. Interpretation connotes more than construction does, the idea of determining the legal meaning of any enactment. Construction is more concerned with extracting the grammatical meaning. Interpretation is a journey of discovery. It is the

3 R.N. Graham, “A Unified Theory of Statutory Interpretation.” Accessed at <http://ca.geocities.com/randallgraham@rogers.com/Extract.pdf>; Also published in the *Statute Law Review*, Vol. 23, No. 2, July 2002, at 91-134(44).

4 Frank, Jerome, “Say it With Music”, *Harvard Law Review*, Vol. LXI, 921-957 at 921(1948).

5 See F.A. Driedger, “A New Approach to Statutory Interpretation”, 31 *Canadian Bar Review*, at 838, (1951); Donoughmore Committee on *Minister’s Powers*, 54, 55 (1959), the following observations may be of interest in this context. “From time to time, expressions of opinion have fallen from our Judges upon the drafting of some of our statutes ... It has been said that the language of the particular provision is ambiguous and its meaning obscure; or that the method of legislation by reference is bound to create confusion. And equally undoubted is the inevitable consequence of such ambiguities – that occasionally the meaning which the court discerns in the language used is in fact the meaning which the Parliament intended it to bear. And from this occasional consequence, some student of politics have been tempted to doubt the suitability of the legal mind to interpret the statutory intention of a democratic Parliament bent on social legislation of a far reaching and often novel character. We mention this attitude towards the Law Courts because we think a certain section of public opinion may be disposed to adopt it. But in truth those who think so mistake the cause. It is not that the legally trained mind is prone to misinterpret social legislation, but that language of the legislation is not always clear enough to prevent the risk of misinterpretation. Consequently the remedy to which that section of public opinion seems to lean of entrusting the interpretation of such statutes to administrative officers in the civil service would not cure the disease. The interpretation of written documents, whether statutes, contracts, or wills requires the trained legal mind. To ask the layman to perform the task just when ex hypothesi the risk of ambiguity makes it difficult is to make the remedy worse than the disease. That Judges are human and sometimes make mistakes is irrelevant. The layman will make more.”

process of ascertaining the meaning of an Act of Parliament or of a provision of an Act.⁶ A statute is an edict of the legislature. The normal way of interpreting or construing a statute is to seek the intention of legislature.⁷ If a statutory provision is open to more than one interpretation, the Court has to choose that interpretation which represent the true intention of the legislature.⁸ The intention of the legislature is to be gathered from the language used. Attention should be paid to what has been said and also to what has not been said.⁹ However "Intention of the legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implication."¹⁰

Since Acts of Parliament have to be interpreted by the courts and it is the duty of the courts to give effect to an Act according to its true meaning while at the same time balancing with the need for making the Act workable, in course of time, an elaborate body of rules to guide them in construing or interpreting laws have evolved. These are known as Rules of Statutory Interpretation and have a direct impact on the drafting of legislation because as stated by Lord Simon of Glaisdale,

6 F. A.R. Bennion, *Statutory Interpretation*, Doc No 1990 002 082 Longman, (ISBN 0 85121 580 7) at 84; Crabbe describes the distinction between interpretation and construction as follows: Construction is wider in scope than interpretation. It is directed at the legal effect of consequences of the provision called in question (and thus comes after interpretation). Having ascertained the meaning of the words how do they fit into the scheme of the Act as a whole? We are in the realm of construction when the courts are dealing with such matters as casus omissus and time and circumstances of an Act of Parliament. Crabbe *Understanding Statutes*, (ISBN: 19594 1138) Butterworth, Ed. (1994).

7 *Institute of Chartered Accountants of India v. Price Waterhouse*, AIR 1998 SC 74 at 90; *Padmasundara Rao v. State of T.N.* AIR 2002 SC 1334 at 1346; (2002) 3 SCC 533.

8 *Dist. Mining Officer v. Tata Iron & Steel Co.* AIR 2001 SC 3134 at 3152; (2001) 7 SCC 358, *Bhatia International v. Bulk Trading SA*, AIR 2002 SC 1432 at 1437; (2002) 4 SCC 105.

9 *Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests*, AIR 1990 SC 1747 at 1752; *Mohammad Alikhan v. Commissioner of Wealth Tax*, AIR 1997 SC 1165 at 1167.

10 Craies, *Statute Law*, 66 (1971), which refers to Lord Watson's judgment in *Salomon v. Salomon & Co. Ltd.* (1887) AC 22 at 38.

"unsatisfactory rules of interpretation may lead the drafters to an over-refinement in drafting at the cost of the general intelligibility of the law.¹¹

PRIMARY RULES OF INTERPRETATION¹²

THE LITERAL RULE

The primary and important rule of interpretation is called the Literal Rule, laid down in the *Sussex Peerage Case*¹³. This rule stated that:

"The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case; best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe mean of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer is "a key to open the minds of the makers of the Act, and the mischiefs which they intend to redress".

The literal rule, in its purest form, has an inflexibility which places particular strain on the draftsperson, requiring language which expressly covers all eventualities. This extreme inflexibility can be seen in the words of Lord

11 Lord Simon of Glaisdale "The Renton Report-Ten Years On", *Statute Law Review*, 133 (1985).

12 First in 1584 came the Mischief Rule, which required the judges 'to make such constructions as shall suppress the mischief and advance the remedy'. In 1844 came the Literal Rule, which said, they alone do, in such a case, best declare the intention of the lawgiver'. Then in 1877 came the Golden Rule, later called the Absurdity Rule: "Take the whole statute together... giving the words their ordinary meaning, unless when so applied they produce an inconsistency, or absurdity or an inconvenience so great as to convince the court that the intention (of Parliament) could not have been to use their ordinary meaning and to justify the court in putting on them some other significance... which the court thinks the words will bear'. But now the judges apply the Purpose Rule by which statutes are liberally interpreted so as to promote the general legislative purpose underlying the provision. Lord Renton QC, "Current Drafting Practices and Problems in the United Kingdom," *Statute Law Review*, Vol. 11, 14 (1990).

13 *Sussex Peerage Case* [1844] 11 Clark and Finnely 85, 8 ER 1034 at 1844.

Eisher MR in *R. v. The Judge of the City of London Court*¹⁴ where he stated that "[i]f the words of an Act are clear you must follow them, even though they lead to manifest absurdity. The Court has nothing to do with the question whether the Legislature has committed an absurdity."¹⁵ This means that only the words of the statute count; if they are clear by themselves then effect must be given to them. This rule also has its drawbacks; it disregards consequences and the object of the statute may be considered only if there is doubt. It should be noted, however, that the object of a statute and the circumstances that led to its enactment are always relevant-not just in cases of doubt. When the words of a statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.¹⁶ Statutory enactment must be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the test of the statute.¹⁷

Next is the Mischief Rule laid by the Barons of the Exchequer in the *Heydon's*¹⁸ case as follows, namely-

"That for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

- (1) What was the common law before the making of the Act?
- (2) What was the mischief and defect for which the common law did not provide?
- (3) What remedy the Parliament have resolved and appointed to cure the disease of the Commonwealth
- (4) The true reason of the remedy and then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief

14 [1892] 1 QB 273 9 CA.

15 It is now generally recognised that the literal approach must be tempered by at least some flexibility in order to avoid an application of a statutory provision by a court which would be absurd or unreasonable.

16 *Nelson Motis v. Union of India*, AIR 1992 SC 1981 at 1984; *Gurudevadatt Maryadit v. State of Maharashtra*, AIR 2001 SC 1980 at 1991; *State of Jharkhand v. Govind Singh*, AIR 2005 SC 294 at 296; *Natbi Devi v. Radha Devi Gupta*, AIR 2005 SC 648 at 659.

17 *Bhavnagar University v. Palitana Sugar Mills (p) Ltd.*, (2003) 2 SCC 111 at 121.

18 *Heydon's case* (1584) 3 Co Rep 7.

and pro private commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico."

That was the beginning of what is now often referred to as the purpose approach or the Mischief Rule. In India the rule was explained by the Supreme Court in *Bengal Immunity Co. v. State of Bihar*.¹⁹ This rule was again applied in *Goodyear India Ltd. v. State of Haryana*.²⁰ In *CIT v. Sodra Devr*²¹ the Supreme Court (Bhagwati J) expressed the view that the rule in *Heydon's* case is applicable only when the words in question are ambiguous and are reasonably capable of more than one meaning. Gajendragadkar J in *Kanailal Sur v. Parmanidb*²² pointed out that the recourse to consideration of the mischief and defect which the Act purports to remedy is only permissible when the language is capable of two constructions. The Supreme Court in *P.E.K. Kalliani Amma (Smt) v. K. Devi*²³ referred extensively to the rule in *Heydon's* case and to the opinions of Bhagwati J. and Gajendragadkar J.

Thus in the construction of an Act of Parliament, it is important to consider the mischief that led to the passing of the Act and then give effect to the remedy as stated by the Act in order to achieve its object. This has its drawbacks; the language of the statute may have inadequately expressed the objective intended to be achieved.

GOLDEN RULE

The next development came with *Grey v. Pearson*.²⁴ The rule enunciated in that case came to be known as the 'golden rule'; a court could construe a statute by departing from the literal meaning of the words if to do would avoid consequences which are absurd. It stated that,

"In construing wills, and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words

19 AIR 1955 SC 661.

20 AIR 1990 SC 781.

21 AIR 1957 SC 832.

22 AIR 1957 SC 907.

23 AIR 1996 SC 1963.

24 (1857) 6 HL Cas. 61; 26 I.J Ch. 473; 5 WR 454; 10 ER 1216.

may be modified so as to avoid the absurdity and inconsistency, but no further.

The golden rule is still referred to by the courts today as a means of modifying stringent application of the literal rule. It was set out by Lord Blackburn in *River Wear Commissioners v. Adamson*.²⁵ The golden rule, he stated, enabled the courts: "to take the whole statute together, and construe it all together, giving their words their ordinary significance, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary significance, and to justify the court in putting on them some other signification, which, though less proper, is one which the court thinks the words will bear."²⁶

Affirming this rule Lord Simon of Glaisdale in *Suthendran v. Immigration Appeal Tribunal*,²⁷ has said:

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

The rule stated above have been quoted with approval by the Supreme Court in *Harbhajan Singh v. Press Council of India*,²⁸ wherein the Court observed:

"Legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material-intrinsic or external-is available to permit a departure from the rule."

25 (1877) 2 Appeal Cases 743.

26 *Id.* at 764.

27 (1976) 3 All ER 611 at 616.

28 AIR 2002 SC 1351 at 1354.

TELEOLOGICAL INTERPRETATION

The teleological approach to statutory interpretation originated in the civil law jurisdictions of Europe and was adopted by the European Court of Justice in the Construction of European Community legislation. In tandem with the growing importance of the law of the European Union in this jurisdiction, the teleological approach has gained recognition in the courts. It looks to the purpose or overall scheme of the Act. Denning I.J. in *Buchanan and Co v. Babco Limited*²⁹ explained the principle as follows:

"They adopt a method which they call in English strange words - at any rate they were strange to me - the 'schematic and teleological' method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation?"³⁰

The importance of a teleological approach to the interpretation of provisions of European law by the Irish courts was confirmed in *Lawlor v. Minister for Agriculture*,³¹ where Murphy J said:

" It seems to me that in construing EEC regulations I am bound to apply the canons of [teleological] interpretation ... and with regard to domestic legislation it does seem to me that similar principles must be applicable at least insofar as it concerns the application of Community regulations to this State."³²

Murphy J observed that the teleological approach to interpretation was not an entirely new departure in Irish law, since for some time a purposive

29 [1977] QB 208.

30 *Id.* at 213.

31 [1990] 1 IR 356.

32 *Id.* at 375.

approach had been adopted in the interpretation of the Constitution.³³

GENERAL PRINCIPLES OF INTERPRETATION WHICH A DRAFTER HAS TO BEAR IN MIND

According to Ilbert regard should be had to the general rules for the interpretation of statutes, as laid down in the ordinary textbooks.³⁴ Among the most important of these are -

1. The rule that an Act must be read as a whole. Therefore, the language of one section may affect the construction of another.
2. The rule that an Act may be interpreted by reference to other Acts dealing with the same or a similar subject matter. The meaning attached to a particular expression in one Act, either by definition or by judicial decision, may be attached to it in another. And variation of language may be construed as indicating change of intention.
3. The general rule that special provisions will control general provisions.
4. The similar rule that where particular words are followed by general words (horse, cow, or other animal) the generality of the latter will be limited by reference to the former ('Ejusdem Generis' rule).
5. The general rule, subject to important exceptions, that a guilty mind is an essential element in a breach of a criminal or penal law. It should, therefore, be considered whether the words 'willfully' or 'knowingly' should be inserted, and whether, if not inserted, they would be implied, unless expressly negated.
6. The presumption that the legislature does not intend any alteration in the rules or principles of the common law beyond what it expressly declares.
7. The presumption against an intention to oust or limit the jurisdiction of the superior courts.
8. The presumption that an Act of Parliament will not have extra territorial application.

33 Subsequent case law demonstrates a consistent acceptance of teleological interpretation. The case of *Bosphorus Hava v. Minister for Transport* concerned Council Regulation No 990/93/EEC, and the European Communities (Prohibition of Trade with Federal Republic of Yugoslavia, (Serbia and Montenegro)) Regulations 1993. Murphy J. confirmed that schematic and teleological interpretation was a fundamental principle of interpretation to be applied to EC Regulations and Directives.

34 Ilbert, *The Mechanics of Law Making*, Columbia University Press, 120 (1914).

9. The presumption against any intention to contravene a rule of international law.
10. The rule that the Crown is not bound by an enactment unless specially named.
11. The presumption against the retrospective operation of a statute, subject to an exception as to enactments which affect only the practice and procedure of the courts.
12. The rule that a power conferred on a public authority may be construed as a duty imposed on that authority ('may = shall')

PRESUMPTION THAT AN UPDATED CONSTRUCTION SHOULD BE APPLIED

This presumption derives from the principle that a statute should be construed as always speaking. The courts will presume that a statute should be read in the light of conditions prevailing today and that social and technological developments will be taken into account. The interpretation of older legislation in the context of new technologies is an increasingly important aspect of the rule.

THE USE OF EXTRINSIC AIDS TO CONSTRUCTION

If the courts are to venture beyond the literal meaning of the words in an Act, and attempt to ascertain the intention of the legislature, questions arise as to what tools may be used to discover intention. The purpose of a statutory provision may be ascertained from its context; but how wide should that context be? As one moves further from the text of the Act, the aids to interpretation become more controversial. Arguably, although the idea of a single "legislative intention" can be sustained on an examination of the text of an Act, an examination of the Parliamentary debates may show widely varying ideas as to the purpose of the statute. The intention of the legislature may not be uniform; and in relation to the particular circumstances of the case, there may not have been any clearly thought out legislative intention. As stated earlier,³⁵ "'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it." If great significance is attached to extrinsic aids, there is a danger that this "speculative" version of the legislation may be enforced. This leads to diminished legal certainty.

35 *Supra* note 10.

THE ENGLISH LAW

Francis Bennion traces the history of exclusionary rule and the effect of the decision in *Pepper v. Hart*.³⁶ Lord Scarman in *Davis v Johnson*³⁷ said that Parliamentary debates were an unreliable guide to the meaning of what is enacted. It promotes confusion not clarity. The cut and thrust of debate and the pressures of executive responsibility, the essential features of open and responsible government, are not always conducive to a clear and unbiased explanation of the meaning of statutory language."

NOT KNOWN TO OTHER HOUSE OF SOVEREIGN

The exclusionary rule was probably first stated by Willes J in *Millar v. Taylor*. The sole reason he gave was that the history of the changes undergone in the first House by the Bill which on passing became the Act in question 'is not known to the other House, or to the sovereign'. This reason no longer applies, since Parliamentary debates are now fully and accurately reported.³⁸

PAROL EVIDENCE RULE

In an 1859 case Byles J said: I do not think it is competent to a court of justice to make use of the discussions and compromises which attended the passing of the Act; for, that would be to admit parol evidence to construe a record. The term record has a technical meaning, and includes Acts of Parliament. Records are the memorials of the legislature, and of the courts of justice, which are authentic beyond all matter of contradiction. Historically they could not be contradicted by parol evidence, writing not consisting of a specialty or record. An Act of Parliament is both a specialty and a record.³⁹

UNRELIABILITY OF PARLIAMENTARY MATERIAL

What is said in Parliament is manifestly unreliable as a guide to the legal meaning of an enactment. In a 1906 case Farewell LJ said of reference to Parliamentary debates to interpret legislation they would be quite untrustworthy. In 1975 Lord Reid said of recourse to Hansard: 'At best we

36 Francis Bennion, "Hansard – Help or Hindrance? A Draftsman's View of *Pepper v. Hart*", *Statute Law Review*, Vol. 14 No. 3, 149-162 (1993).

37 [1979] AC 264 at 350.

38 *Supra* note 36 at 151.

39 *Id.* at 152.

might get material from which a more or less dubious inference might be drawn as to what the promoters intended or would have intended if they had thought about the matter. In the same case Viscount Dilhorne, who knew what he was talking about having served twenty years as an MP, said: In the course of the passage of a Bill through both Houses there may be many statements by Ministers, and what is said by a Minister in introducing a Bill in one House is no sure guide as to the intention of the enactment, for changes of intention may occur during its passage. In 1979 Lord Scarman said of Hansard such material is an unreliable guide to the meaning of what is enacted.⁴⁰

UNDERMINING THE STATUTE BOOK

The objection that recourse to Parliamentary materials for the purpose of statutory interpretation tends to undermine the reliability of the statute book is made by Jim Evans. It becomes less possible to rely on the apparent meaning of an Act if there is a suspicion that this might be displaced on reference to the enacting history.⁴¹

CONTRARY TO PRINCIPLE

Perhaps the most potent reason for the exclusionary rule is that reliance on the promoter's intention as ascertained through the Parliamentary history is contrary to the principle upon which statutory interpretation by the court rests. This is that the legislator puts out a text on which citizens and their advisers rely and which the judiciary interprets in the light of various accepted criteria. These may in some cases bear against the actual intention of the promoters of the Bill; for example after the passage of years the enactment may require an updated construction.⁴²

PEPPER V. HART

The English common law rule against the use of Parliamentary debates in the interpretation of a statute was considerably eroded by the case of *Pepper v Hart*.⁴³ The House of Lords in that case ruled that, where the statute was ambiguous or led to an absurdity, Parliamentary material, such as ministerial statements, could be used as an aid to interpretation, where the Parliamentary materials relied on were clear. The House of Lords considered

40 *Id.* at 154.

41 *Id.* at 155.

42 *Ibid.*

43 [1992] 3 WLR 1032.

that the move from an absolute literal approach to interpretation to a more purposive one, had created a climate in which the old rule of the exclusion of material from *Hansard* could be modified. The relaxed exclusionary rule as expressed by Lord Browne-Wilkinson in *Pepper v. Hart*, with which five of his six colleagues sitting in the Appellate Committee concurred,⁴⁴ would:

“permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear.”⁴⁵

In *Pepper v. Hart*, Lord Browne-Wilkinson stated that ‘...reference to Parliamentary material should be permitted as an aid to construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity and subsequently carefully established the ambiguity in the statutory provision in issue before relying on Parliamentary material as an aid to its construction. The clear implication of *Pepper v. Hart* is that reference to Parliamentary material is only permissible where the legislative text is obscure, ambiguous, or leads to an absurdity. Such material may not be introduced to establish textual ambiguity in an apparently unambiguous statutory provision.’⁴⁶

ADMISSIBLE AND CONTEXTUAL PARLIAMENTARY MATERIAL

The second element of the formulation by Lord Browne-Wilkinson of the relaxed exclusionary rule is that ‘the material relied upon consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect.’⁴⁷

It has been emphasized that the conditions mentioned in *Pepper v. Hart* must be strictly satisfied before reference can be made to speeches in Parliament for interpretation or in other words reference to Parliamentary speeches can be made only where the legislation is ambiguous, obscure or

44 T. St. J.N. Bates, “Parliamentary Material and Statutory Construction: Aspects of the Practical Application of *Pepper v. Hart*”, *Statute Law Review*, Vol. 14 No.1, 45- 55 at 47 (1993).

45. *Ibid.*

46 *Id.* at 49.

47 *Id.* at 51.

its literal meaning leads to an absurdity.⁴⁸ But Lord Steyn while delivering the leading speech in *Lesotho Highland Development Authority v. Impregilo*,⁴⁹ made extensive reference to the speech of Lord Wilberforce during second reading of the Bill in the House of Lords for interpreting the Arbitration Act, 1996.

EXCLUSIONARY RULE IN OTHER COMMONWEALTH COUNTRIES AUSTRALIA

Australia abolished the exclusionary rule in 1984 for the Commonwealth Acts. The Australian *Interpretation Act, 1901* (as consolidated) specifies a purposive approach to interpretation, and allows for the consideration of certain extrinsic materials in the construction of a statute. This was done by a provision adding a new section 15AB to the Interpretation Act 1901. Subsection (2) of this section states that the material that may be considered in the interpretation of a provision of an Act includes the speech made to a House of the Parliament by a Minister on the occasion of moving by that Minister of a motion that the Bill containing the provision be read a second time in that House.⁵⁰ Section 15AA (1) of the Interpretation Act states as follows:

"In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object."

Section 15AB states:

- "(1) Subject to subsection (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material
- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
 - (b) to determine the meaning of the provision when
 - (i) the provision is ambiguous or obscure; or

48 *R. v. Secretary of State for the Environment ex-parte Spath Holme*, (2001) 1 All ER 195 (HL).

49 (2005) 3 All ER 789 (HL)

50 *Supra* note 36 at 156.

- (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.
- (2) Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision of an Act includes:
- (a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer;
 - (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament before the time when the provision was enacted;
 - (c) any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the time when the provision was enacted; any treaty or other international agreement that is referred to in the Act;
 - (d) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted;
 - (f) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in that House;
 - (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section; and
 - (h) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.
- (3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to:

- (a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and

the need to avoid prolonging legal or other proceedings without compensating advantage."

NEW ZEALAND

New Zealand law allows for the consideration of extrinsic aids to interpretation. The Interpretation Act, 1924, prescribes a purposive approach to interpretation. Section 5 (j) of the Act states:

"Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit."

The Draft Interpretation Act set out by the New Zealand Law Commission also proposes a new statutory rule of purposive interpretation.⁵¹ The proposed rule provides:

- "9.(1) The meaning of an enactment is to be ascertained from its text in the light of its purpose and in its context
- (2) An enactment applies to circumstances as they arise so far as its text, purpose and context permit
- (3) Among the matters that may be considered in ascertaining the meaning of an enactment are all the indications provided in the enactment as printed or published under the authority of the New Zealand Government."

CANADA

In the Canadian context justification of the exclusionary rule was given by

51 New Zealand Law Commission, *A New Interpretation Act: To Avoid Prolixity and Tautology*, (1990).

J.A. Corry.⁵² According to him it is chiefly based on the unreliability of Parliamentary materials. The opposition is more concerned to belittle the Bill and undermine the popularity of the government than accurately expound the Bill. Even ministers are not immune from the temptation to falsify. In *AG Canada v. Reader's Digest Association*⁵³ Parliamentary debates were excluded. A more flexible approach was evident in the two constitutional cases of a *Reference re Anti-Inflation Act (Canada)*⁵⁴ and *Reference Re Residential Tenancies Act 1971 (Ontario)*.⁵⁵ The Ontario Court of Appeal in *R. v. Stevenson and McClean*⁵⁶ allowed for the use of extrinsic aids in some cases regardless of whether there were constitutional issues. Broadly, the exclusionary rule is relaxed in Canada. The exclusionary rule was first modified in regard to constitutional cases, involving either questions of the legislative competence of provincial legislatures, or of the compliance of a statute with the Canadian Charter of Rights and Freedoms. In *Re Upper Churchill Water Rights Reversion Act (Newfoundland)*⁵⁷ Parliamentary debates were admitted to show the historical context of the statute. However, it has been noted that the courts are increasingly ignoring or implicitly distinguishing the Reader's Digest decision and taking a peep at Hansard. The demise of the exclusionary rule was confirmed by the Supreme Court in *R. v. Morgentaler*.⁵⁸ In that case, the Canadian Supreme Court examined the legislative history of Nova Scotia Medical Services Act, 1989 and related regulations. The Court found, on an examination of the Parliamentary debates on the Bill, that the primary purpose of the legislation had been to prevent the accused from establishing an abortion clinic in the province, and not, as had been argued, to improve the general quality of health services. On an examination of the legislative history, the Court found that the purpose of the legislation had been to suppress what was considered by members of the Parliament to be a socially undesirable practice. As such the legislation was of a criminal nature and was outside the competence of the provincial legislature.

EXTRANEOUS AIDS IN CONSTRUCTION – INDIA

Ordinarily in construing the provisions of a statute speeches made in the

52 *Supra* note 36 at 158.

53 (1961) 30 DLR (2d) 296.

54 68 DLR (3rd) 452.

55 123 DLR (3rd) 554.

56 [1980] 57 C.C.C. (2d) 526.

57 8 DLR (4th) 537.

58 (1993) 107 DLR (4th) 537.

course of debate on the Bill should not be taken into consideration,⁵⁹ nor the statement of objects and reasons, nor the reports of select committees,⁶⁰ nor the subsequent omission or addition of words from or to a Bill as introduced. The acceptance or rejection of amendments to a Bill in the course of its Parliamentary career cannot be said to form part of the pre-enactment history of the statute.⁶¹ But in the *State of West Bengal v. Subodh Gopal Bose*,⁶² the statement of objects and reasons was quoted possibly with a view to ascertaining the conditions prevailing at the time of passing of the Act. Such a statement may explain the object of the legislature in enacting the Act.⁶³ The Law Commission had occasion to deal with this subject in its two Reports namely the 60th Report on the General Clauses Act May 1974 and the 183rd Report - A Continuum on the General Clauses Act, 1897 with special reference to the admissibility and codification of external aids to interpretation of statutes. The subject was taken up in pursuance to reference from the Legislative Department, Ministry of Law, Justice & Copany Affairs, Government of India for examining the Commission's 60th Report on the General Clauses Act, 1897 submitted to the Government of India in the year, 1974. The reference specifically sought the Commission's views on the issue whether extrinsic aids should be made admissible in construction or interpretation of a statute, and if so, whether rules for extrinsic aids should be codified and incorporated in the General Clauses Act, 1897? Further, it was stated in the reference that there has been conflict in judicial decisions as to the admissibility of extrinsic aids and courts are not following uniform approach to principles of statutory constructions especially regarding tools relating to external aids. Another question was also posed in the reference that since 1974 when the 60th Report of the Commission was submitted, many new statutes have come into force and some of the canons of interpretation on the use of extrinsic aid have also undergone changes, would it not lead to a 'criticism that the said report has lost its relevance because of a long gap'.

The Commission inter alia has examined the following main issues arising out of the said reference, as to whether the General Clauses Act, 1897

59 *A.K. Gopalan v. The State of Madras*, (1950) SCR 88. In construing the Constitution, however, the report of the drafting committee may have a special value.

60 *Hazari Mal v. I.T. Officer, Ambala*, AIR 1957 Punj. 5.

61 *Aswin Kumar Ghosh v. Arabinda Bose*, SCR (1953) 1.

62 1954 SCR 587; see also *T.K. Musaliar v. Venkatachalam*, AIR 1956 SC 246.

63 *Brigade Commander, Meerut sub-area v. Ganga Prasad*, AIR 1956 All. 207; see also *Bisambar Singh v. State of Orissa*, SCR (1954) 842; *SC Prashar v. Dwarkadas* AIR 1963 SC 1356.

should also provide the principles of interpretation of a statute as regards the extrinsic aids of interpretation. The extrinsic aids to construe a statute may include debates in Parliament, report of the Parliamentary Committees, Commissions, Statement of Objects and Reasons, Notes on Clauses, any international treaty or international agreement which is referred to in the statute, any other document relevant to the subject matter of the statute, etc.

Indian Courts, in early days followed the 'exclusionary rule' which prevailed in England and refused to admit Parliamentary material or Constituent Assembly debates for the purpose of interpretation of statutory or constitutional provision.⁶⁴ However, in subsequent cases, the Supreme Court relaxed this 'exclusionary rule', much before the law laid down in England in 'Pepper' case. Krishna Iyer J. in *State of Mysore v. R. V. Bidop*,⁶⁵ quoted a passage from Crawford on *Statutory Construction* (page 383) in which exclusionary rule was criticized. The relevant passage is quoted below:

"The rule of Exclusion has been criticized by jurists as artificial. The trend of academic opinion and the practice in the European system suggests that interpretation of statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible"

Krishna Iyer J. has observed in this case :

"There is a strong case for whittling down the Rule of Exclusion followed in the British courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute." In this regard, Bhagwati J. (as he then was) in *Fagu Shaw etc. v. The State of West Bengal*⁶⁶ has stated: "Since the purpose of interpretation is to ascertain the real meaning of a constitutional provision, it is evident that nothing that is logically relevant to this process should be excluded from consideration. It was at one time thought that the speeches made by the members of the Constituent Assembly in the course of the debates of the Draft Constitution were wholly inadmissible as extraneous aids to the interpretation of a constitutional provision, but of late there has been a shift in this position and following the recent trends in

64 *State of Travancore - Cochin and others v. Bombay Co. Ltd.*, AIR 1952 SC 366; *Aswini Kumar Ghose and another v. Arbinda Bose and another*, AIR 1952 SC 369.

65 AIR 1973 SC 2555.

66 AIR 1974 SC 613.

juristic thought in some of the Western countries and the United States, the rule of exclusion rigidly followed in Anglo American jurisprudence has been considerably diluted... We may therefore legitimately refer to the Constituent Assembly debates for the purpose of ascertaining what was the object which the Constitution makers had in view and what was the purpose which they intended to achieve when they enacted clause (4) and (7) in their present form."

Again in *R.S. Nayak v. A.R. Antulay*,⁶⁷ the Supreme Court observed in this regard:

"...Therefore, it can be confidently said that the exclusionary rule is flickering in its dying embers in its native land of birth and has been given a decent burial by this Court."

The Supreme Court in a numbers of cases referred to debates in the Constituent Assembly for interpretation of Constitutional provisions. Recently, the Supreme Court in *S.R. Chaudhuri v. State of Punjab and others*⁶⁸ has stated that it is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. But as far as speeches in Parliament are concerned, a distinction is made between speeches of the mover of the Bill and speeches of other Members. Regarding speeches made by the Members of the Parliament at the time of consideration of a Bill, it has been held that they are not admissible as extrinsic aids to the interpretation of the statutory provision.⁶⁹ However, speeches made by the mover of the Bill or Minister may be referred to for the purpose of finding out the object intended to be achieved by the Bill. J. S. Verma J (as he then was) in *R.Y. Prabboo (Dr.) v. P.K. Kunte*,⁷⁰ made extensive reference to the speech of the then Law Minister Shri A.K. Sen for construing the word 'his' occurring in sub-section (3) of section 123 of the Representation of People Act 1951. Similarly, Supreme Court in *P.V. Narsimha Rao v. State*,⁷¹ agreeing with the view taken in *Pepper v. Hart* has observed:

67 AIR 1984 SC 684.

68 (2001) 7 SCC 126.

69 *K.S. Paripoornan v. State of Kerala and others*, AIR 1995 SC 1012.

70 (1995) 7 SCALE 1.

71 AIR 1998 SC 2120.

"It would thus be seen that as per the decisions of this Court, the statement of the Minister who had moved the Bill in Parliament can be looked at to ascertain mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. The statement of the Minister who had moved the Bill in Parliament is not taken into account for the purpose of interpreting the provision of the enactment."

The Supreme Court in *Sushila Rani v. CIT and another*,⁷² referred to the speech of the Minister to find out the object of '*Kar Vivad Samadhan Scheme 1998*'.

So far as Statement of Objects and Reasons, accompanying a legislative Bill is concerned, it is permissible to refer to it for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. But, it cannot be used to ascertain the true meaning and effect of the substantive provision of the statute.⁷³

Reports of Parliamentary Committees and Commissions Reports of Commissions including Law Commission or Committees including Parliamentary Committees preceding the introduction of a Bill can also be referred to in the Court as evidence of historical facts or of surrounding circumstances or of mischief or evil intended to be remedied. Obviously, courts can take recourse to these materials as an external aid for interpretation of the Act.

O.Chinnappa Reddy J. in *B.Prabhakar Rao and others v. State of A.P. and others*,⁷⁴ has observed:

"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."

In *District Mining Officer and others v. Tata Iron & Steel Co. and another*,⁷⁵ Supreme Court has observed: "It is also a cardinal principle of construction that external aids are brought in by widening the concept of context as including not only other enacting provisions of the same statute, but its preamble, the existing state of law, other statutes in *pari materia* and the

72 (2002) 2 SCC 697.

73 *Devadoss (dead) by L. Rs, v. Veera Makali Amman Koil Athalur*, AIR 1998 SC 750.

74 AIR 1986 SC 120, (para 7).

75 (2001) 7 SCC 358, (para 18).

mischief which the statute was intended to remedy." So far as admissibility and utility of these external aids are concerned, law is almost settled in our country now. The Supreme Court in *K.P. Varghese v. Income Tax Officer Ernakulam*,⁷⁶ has stated that interpretation of statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. Following are some known external aids, which are admissible for the interpretation of statutory provisions are Parliamentary material like debates in Constituent Assembly, speeches of the movers of the Bill, Reports of Committees or Commission, Statement of Objects and Reasons of the Bill, etc.

In *Indira Sawhney v. Union of India*,⁷⁷ while interpreting Article 16(4) of the Constitution the Supreme Court referred to Dr. Ambedkar's speech in the Constituent Assembly and observed: "That the debates in the Constituent Assembly can be relied upon as an aid to interpretation of a constitution provision is borne out by a series of decisions of this court." The court, however, clarified that the debates or even speech of Dr. Ambedkar could not be taken as conclusive or binding on the court.

PRINCIPLES OF INTERPRETATION -INDIA

India has a written Constitution which defines *inter alia* the powers of the various law-making authorities. The Constitution itself, quite naturally, has been the subject matter of interpretation in several decisions of the Indian courts and it would be worthwhile in the first instance to examine briefly the manner in which the subject is approached before dealing with rules of interpretation in relating to ordinary statutes.

RULES REGARDING CONSTRUCTION OF CONSTITUTION

A constitution is unlike most of the numerous statutes that the courts have to interpret, and hence is not to be construed in a narrow static and pedantic sense.⁷⁸ As pointed out by the Rajasthan High Court.

The Constitution is the very framework of the body polity: its life and soul; it is the fountain-head of all its authority; the mainspring of all its strength and power... It is unlike other statutes which can be at any time altered, modified or repealed. Therefore, the language of the Constitution should be interpreted as if it were a living organism capable of growth and

76 AIR 1981 SC 1922.

77 AIR 1993 SC 477: 1992 Supp. (3) SCC 217.

78 *A.K. Gopalan v. State of Madras*, (1950) SCR 80 at 120; *Pathumma v. State of Kerala*, AIR 1978 SC 777.

development if interpreted in a broad and liberal spirit, and not in a narrow and pedantic sense.⁷⁹

According to the Supreme Court,

"Legislation, both statutory and constitutional, is enacted, it is true from an experience of evils, but its general language should not therefore, be necessarily confined to the form that evil had taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle to be valid, must be capable of wider applications than the mischief which gave it birth. This is particularly true of constitutions. They are not ephemeral enactments designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it."In the application of a Constitution, our interpretation cannot be only of what has been but of what may be."⁸⁰

CONSTITUTION — AN ORGANIC STATUTE

In interpreting a Constitution, it must be borne in mind that it is an organic statute and therefore that construction which is most beneficial to the widest amplitude of its power will be adopted. It will not be construed with the strictness of a private contract.⁸¹ That is not to say that different rules of construction apply in the construction of a Constitution. If at all there is a difference, it is in the degree of emphasis that is laid upon the rules. The application of the very rules of construction regarding construction of statutes requires that the court should take into account the nature and scope of the law that it is interpreting - "to remember that it is a Constitution, a mechanism under which laws are made and not a mere Act which declares what that law is to be".

BENEFICIAL CONSTRUCTION

Therefore in the construction of a Constitution a broad and liberal spirit will be adopted. Nevertheless, this does not imply that the courts are free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory even for the purpose of supplying omissions

79 *State of Rajasthan v. Sham Lal*, AIR 1960 Raj. 256 at 265.

80 *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1975 at 1986.

81 *Julliard v. Greenman*, 10 US 421 at 439; *British Corporation v. The King*, AIR 1935 PC 158.

or of correcting supposed errors. Besides, the courts have to guard themselves against extending the meaning of the words beyond their reasonable connotation.⁸²

ASCERTAINMENT OF INTENTION

The primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it." Normally such intent is gathered from the language of the provision. If the language or phraseology employed by the Legislature is precise and plain and this by itself proclaims the legislative intent in unequivocal terms, the same intent must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean, evocative or can reasonably bear meaning more than one, the rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the court to go beyond the arid literal confines of the provisions and to call in aid other well recognized rules of construction, such as legislative history, the basic scheme or framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation. Where two alternative constructions are possible, the court will choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew any other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions or undermines or tends to defeat or destroy any basic scheme or purpose of the enactment. These canons of construction apply to the interpretation of the Constitution with greater force because the Constitution is a living, integrated organism, having a soul and consciousness of its own.⁸³ The concept of the legislative intent is neither as straightforward as it might appear at first glance nor as elusive as one might fear on closer examination maintains Greenberg.⁸⁴ As traditionally understood by the courts, it is a concept that is capable of being discovered by reference to objective criteria. Its nature, and the nature

82 *Diamond Sugar Mills v. State of U.P.*, AIR 1961 SC 652 at 655; *N. Mafatlal v. Commissioner of Income-Tax Bombay*, AIR 1955 SC 58.

83 *Chief Justice of Andhra Pradesh v. L.V.A. Dikshitulu*, AIR 1979 SC 193.

84 Daniel Greenberg, "The Nature of Legislative Intention and its Implications for Legislative Drafting", *Statute Law Review*, Vol.27, No.1, 1 (2006).

of those criteria, requires to be borne in mind by the draftsman in order to ensure that his draft will be given the meaning that he intends. In particular, the nature of the objective search for legislative intent requires the draftsman to determine the nature of his primary target audience and the facilities likely to be available to them in applying and construing the legislation.⁸⁵ Graham maintains that the intention of legislature is a fiction. According to him legislative intention is not only a legal fiction, but also that the concept of an original intention is useless as a tool of interpretation.⁸⁶

- (a) Legislators usually do not have a specific intention on more than a few issues in any Bill for which they vote;
- (b) Legislators routinely vote for legislation simply because their president, their party leaders, or relevant interest groups favor it. Even when legislators do have specific intents, the historical record usually does not record them;
- (c) Even when legislators state for the record what they think a Bill means for a specific issue, their statements may not be reliable because of strategic behavior;
- (d) More over we seek the intention of the legislature we must first determine exactly who "the lawgiver" is. On a theoretical level, the lawgiver is the legislative body responsible for a particular enactment, i.e., Parliament or the provincial Legislative Assembly. But can a corporate body such as Parliament have a single ascertainable intent? Many commentators like Willis say no. According to John Willis "a composite body [such as Parliament or a legislative assembly] can hardly have a single intent".
- (e) It is unrealistic to talk about legislative intent, because the notion of "the lawmaker" is fictional; there is no such person. Nor is it realistic to talk about the intent of the heterogeneous collectivity known as "the legislature". In most cases, only one or two persons drafted the Bill, many persons voted against it, and those who voted for it may have had differing ideas and beliefs.

According to Dickerson as a practical matter, "the legislative draftsman often includes individual provisions to which no legislator pays particular attention."⁸⁷ How, then, are we to attribute a single collective intention to a heterogeneous group of individuals who often appear to have difficulty agreeing on the

85 *Ibid.*

86 *Supra* note 3 at p 103.

87 *Ibid.*

most basic concepts.⁸⁸

GRAHAM'S UNIFIED THEORY OF INTERPRETATION

Graham describes the relative merits and demerits two competing theories of interpretation namely the Original Meaning rule and Dynamic theory of interpretation in his article Unified Theory of Interpretation.⁸⁹ Originalism or the original meaning rule is that form of interpretation which holds that a statute should be given the meaning intended by its creators. According to the proponents of this theory, the act of interpretation is a process of discovery whereby the interpreter merely unearths the intention of the statute's drafters. The role of the originalist interpreter is not to create law, but to ensure that a law is construed and applied in a manner that is consistent with the drafter's expectations. According to Graham this kind of construction requires an enactment to "be given the meaning it would have received immediately subsequent to its adoption". The meaning that should be revealed by this form of interpretation "is that which was sought by the legislator at the time of [the Act's] adoption". In other words, the object of originalist construction is to ferret out the historical intention that existed in the drafters' collective mind at the time of the Act's creation. This historical intention is permanently set, and can never be changed with the passage of time. The interpreter's role resembles that of an historian, or an archaeologist, in quest of an ancient thought of which the enactment may contain traces. Through the process of "statutory archaeology", the originalist interpreter sifts through the statute's text in an attempt to unearth the intention of the drafters.⁹⁰

Dynamic Interpretation Dynamic or "progressive" interpretation is the opposite of originalist construction. Where the originalist sees the intention of the framers as the only legitimate goal of interpretation, proponents of dynamic interpretation feel that a law should be interpreted by reference to contemporary ideals, with little or no attention paid to the legislator's intent. Where the requirements of logic, justice or political correctness suggest that an enactment should be interpreted in a way that differs from the drafters' understanding of the language, dynamic interpretation permits the interpreter to select a construction that fits with current needs and departs from historical expectations. Dynamic interpretation permits

88 *Ibid.*

89 *Ibid.*

90 *Id.* at 93.

an enactment to be moulded in response to "needs which are identified at the time the rule is being applied, either with reference to the current rather than the historic will of the legislature, or with respect to what the interpreter considers is dictated under the circumstances". According to this view of legislation, statutory language must grow and adapt in response to changing social conditions. Unlike the originalist, who sees the intention of the drafter as the ultimate goal of interpretation, the dynamic interpreter views the author's intent as merely one (marginally relevant) element of construction. The drafters' understanding of the statute does not represent an objective "true meaning" of the legislative language, but merely one potential construction of the statute. In cases involving constitutional language, the courts abandon their traditional originalist stance in favour of a more dynamic approach to interpretation.

LIVING TREE APPROACH TO INTERPRETATION OF CONSTITUTION

According to Graham⁹¹ the use of dynamic interpretation when construing the constitution is frequently referred to as the "living tree" approach, and has become the official method of constitutional interpretation. The "living tree" method of construing the Constitution was established by the Privy Council in *Edwards v. A.G. Canada*.⁹²

In that case, the Privy Council was asked to interpret section 24 of the Constitution Act, 1867, which provides (in part) as follows: The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become a Member of the Senate and a Senator. The question in *Edwards* was whether or not the word "Persons" in section 24 included female persons, permitting women (as well as men) to occupy places in the Senate. Despite historical evidence that the framers of section 24 had not envisioned women in the Senate, the Privy Council in *Edwards* determined that the section's reference to "Persons" should not be construed in accordance with the framers' expectations. Instead, the Constitution's provisions must be permitted to evolve in response to changing ideals and shifting social conditions. In Lord Sankey's opinion:

"The British North America Act planted in Canada a living tree capable of growth and expansion within its natural limits. The

91 *Id.* at 30-32.

92 [1930] AC 124.

object of the Act was to grant a Constitution to Canada. "Like all written constitutions it has been subject to development through usage and convention": Canadian Constitutional Studies, Sir Robert Borden (1922). Their Lordships do not conceive it to be the duty of this Board - it is certainly not their desire - to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation."⁹³

As a result, the "living tree" approach to interpretation was adopted by the Privy Council as the principal doctrine of constitutional construction. The "living tree" approach to interpreting constitutional language has been enthusiastically adopted by Canada's courts. For example, in the *Provincial Electoral Boundaries* case⁹⁴ the Supreme Court of Canada held that "the Charter is engrafted onto the living tree that is the Canadian Constitution", and that the Canadian constitution "must be capable of growth to meet the future".⁹⁵

ACTS MUST BE INTRA VIRES CONSTITUTION

While the courts do not exercise any control over the legislatures, in a country like India with a written Constitution, they have every right to determine whether a particular Act is within the competence of the Legislature passing it or whether it offends any other provision of the Constitution. For instance, if a law infringes any of the fundamental rights guaranteed by the Constitution, article 13 would operate to render it void to the extent to which it constitutes such infringement.

In this context, it may be pointed out that courts have evolved certain rules which would be applied in testing Acts of legislatures in relation to the Constitution under which such Acts are made.

COURT'S APPROACH IN TESTING LEGISLATION

The courts will exercise their power to hold legislation ultra vires wisely and with unfailing restraint, and will not sit in judgment on the wisdom of the legislature in enacting the law. If the principle underlying the law is constitution, the court will not question the policy behind it. It does not sit to exercise a power of veto on legislation. Hardship is not a matter for consideration where the meaning is clear. There is always a presumption in

93 *Id.* at 136.

94 [1991] 2 SCR 158.

95 *Supra* note 3 at 107.

favour of constitutionality of a statute.⁹⁶

PRESUMPTION IN FAVOUR OF CONSTITUTIONALITY

Words in a constitutional enactment conferring legislative powers would be construed by the courts most liberally and in their widest amplitude.⁹⁷ The omnipotence of the sovereign legislative power will not be limited by judicial interpretation except so far as the express words of the Constitution give that authority. But in order to decide whether a particular legislation offends the provisions of the Constitution and is therefore unconstitutional, the court will examine with some strictness the substance of the legislation for determining what it is that the Legislature has really done. Where in the interpretation of the provisions of an Act two constructions are possible, one which leads towards constitutionality of the legislation would be preferred to that which has the effect of destroying it.⁹⁸

Where two constructions are possible, the Court will adopt that which will ensure the smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.⁹⁹

COLOURABLE LEGISLATION

The Court, however, is not over persuaded by the form or appearance of the legislation, because the Legislature cannot disobey the prohibitions contained in the Constitution by employing any indirect drafting or other devices. What is called "the doctrine of colourable legislation" is based on the maxim that you cannot indirectly what you cannot do directly.¹⁰⁰

LEGISLATIVE INTENT TO BE DETERMINED FROM LANGUAGE USED

Turning now to the interpretation of Acts, if the words of the Act are

96 *State of Bombay v. R.M.D. Chamarbaugwala*, (1957) SCR 874; *The Bengal Immunity Co. Ltd. v. State of Bihar*, (1955) 2 SCR 603; *Waverly Jute Mills Co. Ltd. v. Raymon & Co.* (1963) 3 SCR 209; *Kedar Nath Singh v. State of Bihar*, AIR 1962 SC 955; *A.N. Basheshar v. Tek Chand* AIR 1972 SC 1548.

97 *Jiyajee Rao Cotton Mills Ltd., v. State of M.P.*, (1962) Supp. (1) SCR 282; *Navinchandra Mafatlal v. Commissioner of Income Tax, Bombay*, (1955) SCR 829.

98 *Atma Ram v. State of Bihar*, AIR 1952 Pat. 359.

99 *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987 at 1993.

100 *K.C. Gajapati Narayan Das v. State of Orissa*, (1954) SCR 1; *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554. The validity or invalidity of an Act should not be made to depend upon mere drafting device or a draftsman's ingenuity; see *Shib Nath Banerji's case* (1943) 6: Fed. Ct. Rep. 151.

precise and unambiguous the courts are not left in doubt as to the true meaning of an Act. It is a cardinal rule of interpretation that the language used by the legislature is the true repository of the legislative intent and that words and phrases occurring in an Act are to be taken not in an isolated and detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself.¹⁰¹

WHEN LANGUAGE DEFECTIVE

But where an Act is drawn defectively the courts apply certain rules or principles to aid them in carrying out the purpose and object of the Act, that is to say, the intention of the legislature. The courts generally endeavour to make sense of the Act, but if the legislature has omitted to provide for any matter the courts cannot supply the deficiency for the purpose of assisting the legislature for a supposed object it might have; unless it becomes imperative to do so where such omission having regard to the legislative intent makes a statute absurd or unreasonable or where legislative intent is clearly indicated by the context or other parts of the statute but there was an accidental slip or unintentional omission.¹⁰²

COURTS WILL NOT RE-CAST ACTS

Courts may even go so far as to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency may be avoided.¹⁰³ Courts should not be astute to defeat the provisions of an Act whose meaning on the face of it is reasonably plain. Of course, this does not mean that any Act or any part of it can be re-cast. It must be possible to spell the meaning contended for out of the words actually used.¹⁰⁴

101 *Darshan Singh v. The State of Punjab*, (1953) SCR 319, see Ronald H. Israelit, “The Plain Meaning Rule in the Reflection of Current Trends and Proclivities”, *Temple Law Quarterly*, Vol. 26, 174 (1952).

The meaning of a statute is that which the judges say it has from time to time. Another definition of meaning must be forecasts, statements or opinions as to what the judges will say or should say or should have said the statute means, or, to put it in another way, that to which the judges will say or should say or should have said, the legislature refers. Otherwise, until a statute is interpreted it would have no meaning...” Graham L. Hart, “Some Aspects of section 92 of the Constitution...” *Australian Law Journal*, 551 (1957).

102 *Sachindranath v. State*, AIR 1972 Cal. 385 at 387.

103 *Grey v. Pearson* (1857) 6 HLC, 106; *Narayanan v. Emperor*, AIR 1939 PC 47.

104 *Sahmrao v. Parulekar v. The District Magistrate, Thana*, (1952), SCR 683 at 690.

If the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used in order to meet a possible injustice.¹⁰⁵

COURTS DO NOT ACT AS GRAMMARIANS

In case of difficulties in construing a provision of a statute, the courts must not proceed as mere grammarians of the written law, but must search for the true intention of the Legislature. But the intention of a Legislature is not to be judged by what is in its mind but by its mind but by its expression of that mind in the relevant statute itself.

The only repository of a Legislature's intention is the language it has used and in examining that language it must be presumed that the Legislature knows the accepted vocabulary of the legislature bodies and so knows what words are required and considered apt to effect a particular result. If it has not made a provision or used words from which a particular result can properly be found, courts will not be justified in finding it, simply because a contrary decision would cause hardship to the public.¹⁰⁶

Though the courts endeavour to ascertain the intention of the Legislature, they are careful lest the search for that intention should lead them into importing provisions into an Act which were not placed there by the Legislature. The sheet anchor is that the intention of the Legislature is to be found within the four corners of the enactment and from such connected statements as may be considered to be a part of the Act.¹⁰⁷

105 *Commissioner of Income Tax v. T.V.S. Iyengar*, (1976) I SCC 77 at 84; *State of M.P. v. V.P. Sharma*, AIR 1959 SC 459 at 470.

106 *Tarak Chandra Mukherjee v. Ratan Lal Ghosal*, AIR 1957 Cal. 257.

107 The Supreme Court has quoted with approval the decision in *Heydon's case* (76 E.R. 637) as laying down a sound rule of construction. In that case, it was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: -

- (a) What was the common law before the making of the Act.
- (b) What was the mischief and defect for which the common law did not provide.
- (c) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
- (d) The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act, *pro bono publico*. See, *The Bengal Immunity Case*, (1955), 2 SCR 603, 632, 633.

COURTS NOT CONCERNED WITH POLICY OF LAW

When the policy of the Act is clear the court has to interpret it as it stands; if there is an anomaly in the policy itself it is not for the legislature to remove the defect.¹⁰⁸

HARMONIOUS CONSTRUCTION

Where two provisions in a statute conflict with each other, courts will try their best to read the two harmoniously, and will reject either of them as useless only in the last resort.¹⁰⁹ If two constructions are possible, one leading to sense and the other to absurdity, the courts will adopt the former. The courts will always do their best to find a reasonable interpretation of the Act and help the draftsman. They will not regard any part of a statute as superfluous or nugatory. It is always to reason that the courts will lean. They will not allow a law to be defeated by the draftsman's unskillfulness or ignorance. A contention that what the Legislature intended to bring about, it has failed to do by reason of defective draftsmanship is one which can only be accepted in the last resort when there is no avenue left for escape from that conclusion.¹¹⁰

As pointed out by Justice Krishna Iyer

"Law, being pragmatic, responds to the purpose for which it is made, cognizes the current capabilities of technology and life-style of the community and flexibility, fulfills the normative rule, taking the conspectus of circumstances in the given case and the nature of the problem to solve which the statute was made. Legislative futility is to be ruled out so long as interpretative possibility permits."¹¹¹

COURTS NOT TO HOLD ACTS VOID FOR UNCERTAINTY

No statute has ever been held to be void for uncertainty. There are a few cases where a statute has been held to be void because it was meaningless,

108 *The State of Haryana v. Jiwan Singh* (1976) 1 SCC 99.

109 *Bengal Immunity Co. Ltd. v. State of Bihar*, AIR 1955 SC 661; *Chandra Mohan v. State of U.P.*, AIR 1966 SC 1987 at 1993.

110 *P.V. Sundramier v. The State of Andhra Pradesh*, AIR 1958 SC 468; see also *Emperor v. Hirabhai*, AIR 1948 Bom. 370.

111 *Busching Schmitz Pvt. Ltd. v. P.T. Benghani*, (1977) 2 SCC 535 at 543; see also *Carew and Co. v. Union of India* AIR 1975 SC 2261.

and not because it was uncertain.¹¹² As observed by Lord Denning, "The duty of the court is to put a fair meaning on the terms used and not as was said in one case, to repose on the easy pillow of saying that the whole is void for uncertainty."¹¹³ When a defect appears, a judge cannot fold his hands and blame the draftsman. A judge must not alter the material of which the Act is woven but he can and should iron out the creases.¹¹⁴

COURTS WILL CONSTRUE ACTS TO ADVANCE THE REMEDY

The courts will presume that the Legislature had the intention to do the best for the public. For example, legislation undertaken for the benefit of labour will not be so construed as to prejudice the rights and welfare of labour. It would be an illegitimate method of interpretation of a statute whose dominant purpose is to protect workmen to introduce by implication words of which the effect must be to reduce the protection. Thus in *State v. Bhiwandiwalla*¹¹⁵ it was pointed out by the Bombay High Court that in regard to remedial and beneficent legislation like the Factories Act, it is the duty of the court to adopt such construction as shall suppress the mischief and advance the remedy. Similarly, in *Kanpur Textile Finishing Mills v. Regional Provident Fund Commissioner*¹¹⁶ it was held that as the object of the Employees Provident Funds Act, 1952, is to provide for a provident fund for workers, it is the duty of the courts to give effect to that intention and not to put a very narrow construction which may defeat the object of the Act.

112 Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The principle that, where a provision is capable of one of two interpretations the interpretation which validates rather than one which may invalidate a provision applies only where two views are possible. It cannot be pushed so far as to alter the meanings of the clear words used in an enactment and to, in effect, repeal statutory provisions by making them useless without holding them to be void." *State of Punjab v. Prem Sukhdas*, (1977) 2 SCC 774.

113 *Fawcett Properties v. Buckingham* (1960) 3 All. ER 503 at 516, 517.

114 (1949) 2 All ER 155 at 164, cited in 2 SCA 266 (1961).

115 AIR 1955 Bom. 161; *State v. Andheri-Kurla Bus Service*, AIR 1955 Bom. 324; *Cap. Ramesh Chander Kaushal v. Mrs. Veena Kaushal* (1978) SCC 70. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause, the cause of the derelicts.

116 AIR 155 Punj. 130.

AMBIGUITY IN ACTS

Where there is ambiguity, the courts will adopt a construction which follows general principles of law, public policy and justice rather than assume that the Legislature intended to depart from those principles. The courts will, when possible, construe an Act so that the least inconvenience is caused to particular persons or a beneficial rather than a detrimental result is attained. In *State of Gujarat v. Chaturbhuj*¹¹⁷ the court held, where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provisions, conforms best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system.

LIMITS TO COURT'S ASSISTANCE

But there are limits to the court's assistance.¹¹⁸ The 'intention of the legislature' is a common and very slippery phrase is argument which may signify any thing from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant although there has been an omission to enact it; and to embark upon the latter speculation carried the matter outside the functions of the courts. It is not the business of the court to usurp the functions of the Legislature and remedy the defects of the law. What the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the courts for effectuating a supposed intention of the Legislature.¹¹⁹

117 AIR 1976 SC 1697 at 1700.

118 Rule 28 of the Adaptations Order, 1950, which required the court to construe the law in a particular manner not affecting the substance was held to be improper. A court cannot submit itself to an order of this kind requiring it to construe any provision not in accordance with justice or legal principles but in accordance with the desire of the executive, *Kumar Bose v. Chief Secretary to Govt. of West Bengal*, AIR 1950 Cal. 274.

119 *Sri Ram Narayan v. State of Bombay*, AIR 1959 SC 459; see also *State of M.P. v. V.P. Sharma*, AIR 1966 SC 1593; *T.C Mukherjee v. Ratanlal Bose*, AIR 1975 Cal.257. In an article on the "Interpretation of Statutes" in *Current Legal Problems*, (1956), D.J. Payne, Lecturer in Law, University College, London, queries the wisdom of the rule that it is the duty of the court to construe an Act according to the intention of the Legislature. He observes,—

HARD CASES MAKE BAD LAW

So the courts put limits on their powers and the draftsman must bear these in mind. If the words of an Act are clear, the courts cannot refuse to enforce it, or allow an evasion or exception merely because of the hardship which will ensue. 'Hard cases make bad law' is a warning that the endeavour to modify the law in cases where the legislature might reasonably have made a modification often leads to the illegality of going beyond the terms of the enactment. The courts have to allow an Act to cause hardship or injustice if there is no way to avoid the result by legitimate rules of construction.

PRESUMPTION THAT ACT IS COMPLETE

Ordinarily the courts start by assuming that the Act is complete. Documents connected with the origin of the Bill are not relied on as an indication of the intention with which the legislature ultimately passed the measure. Although section 57 of the Evidence Act, 1872, suggests the admissibility of evidence obtainable from the proceedings of the legislature, the courts tend to hold at arms length the Statement of Objects and Reasons which accompany the Bill when it is introduced in the legislature and the speeches

This rule is based on the assumption that the intention of the legislation is an objective, historical fact capable of inference from relevant evidence, but such an assumption can easily be rejected on several well-known grounds. In his opinion, the only sensible way of approaching problems of statutory interpretation is to recognize that, because of the limitations of the human mind and of language, interpretation necessarily involves a delegation by the legislature to the interpreter of the task of determining the particular application of a general rule, and that this delegated power and duty in no significant respect differs from an express delegation of legislative power. A statute is a formal document intended to warrant the conduct of judges and officials, and if any intention can fairly be ascribed to the legislature, it is that the statute should be applied to situations not present to the mind of its members. The proper office of a judge in statutory interpretation is not, I suggest, the lowly mechanical one implied by orthodox doctrine, but that of a junior partner in the legislative process, a partner empowered and expected within certain limits to exercise a proper discretion as to what the detailed law should be. His discretion is limited by the words used by the legislature, or rather by the possible extension of those words within the context in which they are used, for consideration even of the widest context will nearly always leave some discretion to the judge as to the meaning of a word. The limits set to his discretion by the words that their context may be compared with the doctrine of *ultra vires* by which expressly delegated powers are limited.

The suggestion that judges should act as junior partners in the making of legislation is hardly likely to gain acceptance.

made in the House and opinions of Select Committees, but there are cases, though exceptional, where the courts accept opinions from these sources when an enactment cannot be construed without such reference.¹²⁰

A statute is not passed in a vacuum; but in a framework of circumstances so as to give a remedy for a known state of affairs. To arrive at its true meaning, it is essential to know the circumstances with reference to which the words were used and what was the object appearing from those circumstances which Parliament had in mind.¹²¹

STATEMENT OF OBJECTS AND REASONS

The Supreme Court (Lahoti J) in *Bhaji v. SDO Thandla*¹²² observed:

"Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which is plainly covers."

HISTORY OF THE LAW

The history of the law as shown by previous enactments is used as a guide to a consolidating or amending Act but only if the latter is not sufficiently clear. If the words are clear and unambiguous it would be unreasonable to interpret them in the light of the alleged background of the statute and to attempt to see that their interpretation conforms to the said background.¹²³

The previous state of the law will be relevant as part of the circumstances on which the Act was passed. The courts will assume that the Legislature knew the law, including previous enactments and rulings

120 See Ronald H. Israelit, "The Plain Meaning Rule in the Reflection of Current Trends and Proclivities", *Temple Law Quarterly* 26, 174 *et. seq.* (1952) for some interesting trends in the use of extrinsic aids in Statutory Interpretation. Rule against the use of legislative history is not so much a rule of construction as a counsel of caution; see also D.G. Kilgour, "The Rule Against the Use of Legislative History", *Canadian Bar Review*, 30, 769, (1952).

121 *Escoigne Properties Ltd. v. Inland Revenue Commissioners* (1958), AC 549 at 565.

122 (2003) 1 SCC 692 at 700.

123 *State of West Bengal v. B.K. Mandal*, AIR 1962 SC 779.

thereon.¹²⁴ If words are used which have received judicial interpretation, the Legislature will be presumed to use those words in the same sense. Care is required in drafting an Act to indicate clearly any departure from existing law and decision.

PRACTICE OF THE EXECUTIVE

Although the practice of the executive in interpreting a law is not a factor which influences the court as to the meaning of that law, yet when the Legislature uses words which indicate that new legislation is founded on the practice of the executive, the courts will construe the legislation accordingly.¹²⁵

INTERNAL AIDS

INTERNAL AIDS TO CONSTRUCTION

The courts have been willing to consider the long title of an act, as well as other sections, in interpreting one of its provisions. They are, however, prohibited from taking into account marginal notes and headings.

USE OF THE LONG TITLE TO AN ACT

The courts have used long titles and other elements of the statutory context to ascertain the purpose and legislative intent behind a provision. Early cases allowed consideration of the long title only where there was ambiguity. It became established in the nineteenth century that the long title could be considered as an aid to interpretation. According to Lord Simon the

124 *Stare decisis* is no doubt a wise policy which the courts follow for it settles the applicable rule of law but when, as in India, an erroneous interpretation of the Constitution may continue to be perpetuated if the Supreme Court considers itself bound by a previous decision and is not willing to override it, (see article 141 of the Constitution in this connection) necessary powers will be presumed to exist to reconsider an earlier decision considered erroneous. *Bengal Immunity Co. v. State of Bihar* (1955) 2 SCR 603.

125 While commenting on the interpretation of statutes like the Excise Act, Gupta J. observed. The well known rule in interpreting items in statutes like the one we are concerned with is that “resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. *Union of India v. Gujerat Woollen Felt Mills*, (1977) 2 SCR 870; *Commissioner of Sales Tax, Indore v. Jaswant Singh*, (1967) 2 SCR 720; see also *Deshbandhu Gupta v. Delhi Stock Exchange Assoc. Ltd.*, AIR 1979 SC 1049 regarding the weight to be given to words in a statute in the light of interpretation but upon them by the executive at the time of enactment.

long title should be read as part of the context, "as the plainest of all the guides to the general objectives of a statute"¹²⁶ In *Minister for Industry and Commerce v. Hales*,¹²⁷ the Irish High Court accepted that the long title formed part of the Act, but held that it was permissible to call in aid the long title in the interpretation of a provision of an Act only where the provision was unclear or ambiguous. The leading Irish case is *East Donegal Co-operative Marts Ltd v. Attorney General*¹²⁸ in which the Court stressed the importance of the long title to the Act in forming a part of the context and background of the Act, in the light of which its provisions should be construed. Walsh J departed from the more restrictive rule in *Hales*, in allowing for a determination of ambiguity only after the long title had been considered. He stated:

"The long title and the general scope of the Act of 1967 constitute the background and the general scope of the context in which it must be examined. The whole or any part of the Act may be referred to and relied upon in seeking to construe any particular part of it, and the construction of any particular phrase requires that it is to be viewed in connection with the whole Act and not that it should be viewed detached from it. The words of the Act, and in particular the general words, cannot be read in isolation and their content is to be derived from their context. Therefore, words and phrases which at first sight might appear to be wide and general may be cut down in their construction when examined against the objects of the Act which are to be derived from a study of the Act as a whole including the long title. Until each part of the Act is examined in relation to the whole it would not be possible to say that any particular part of the Act was either clear or unambiguous."

The general principle set out in *East Donegal* may be seen as qualified, however, by the decision of the Irish Supreme Court in *The People (DPP) v. Quilligan*.¹²⁹ In that case, Griffin J reverted to the rule as set out in *Hales*, holding that the long title may only be considered in the interpretation of a provision of an Act if the provision is ambiguous or equivocal. In the instant case, the long title could not be considered. It is now settled law in India 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

126 (Per Lord Simon in *The Black-Clawson Case* [1975]).

127 1967 IR 50.

128 1970 IR 317.

129 [1987] ILRM 606.

light on its construction, although it cannot override the clear meaning of the enactment.¹³⁰

The present practice in India is to do away with preambles generally. The long titles are good enough substitutes for preambles in most cases, if not all. In many cases, the preambles used to be mere elaborations of the long titles. The long titles can very well be used for the purpose of interpreting an Act as a whole and ascertaining its scope in the same manner as a preamble might be used.¹³¹

That the policy and purpose behind an enactment may be deduced from its long title (and the preamble) has been recognized in many decisions of the Supreme Court in India. In *re Kerala Education Bill, 1957*,¹³² the Supreme Court said that the general policy of the Bill as laid down in its title and elaborated in the preamble is to "provide for the better organisation and development of educational institutions, providing a varied and comprehensive educational service throughout the State" and therefore each and every one of the clauses in the Bill has to be interpreted and read in the light of this policy. A reference was made to the case of *Biswambhar Singh v. State of Orissa*,¹³³ where, while interpreting the Orissa Estate Abolition (Amendment) Act, 1952, the Court relied on the long title of the Act and its preambles.

The long title, no doubt indicates the main purpose of the enactment but cannot, obviously control the express operative provisions of the Act,¹³⁴ nor can it limit the plain meaning of the text.¹³⁵ Where something is doubtful or ambiguous, the long titles may be looked at to resolve the doubt or ambiguity, but in the absence of doubt or ambiguity, the passage under construction must be taken to mean what it says, so that if its meaning be clear, that meaning is not to be narrowed or restricted by reference to the long title.¹³⁶

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

130 *Aswinkumar Ghose v. Arabinda Bose*, AIR 1952 SC 369 at 388; *R. v. Secretary of State for Foreign and Commonwealth Affairs* (1994) 1 All ER 457.

131 *Vacher & Sons Ltd., v. London Society of Compositors*, (1913) AC 107 at 128.

132 (1959) SCR 995.

133 (1954) SCR 842.

134 *Manohar Lal v. State of Punjab*, AIR 1961 SC 418 at 419.

135 *Maguire v. Commissioner of Internal Revenue* 85 L. ed. 1149 at 1154.

136 *R. v. Bates & Russel* (1952) WN 506.

and of throwing light on its construction, although it cannot override the clear meaning of the enactment.¹³⁷

HEADINGS AND MARGINAL NOTES

According to Gordon Stewart¹³⁸ the marginal note is the first guide for the user of statutes. They are often seem to be a mere afterthought in the overall drafting exercise. Once merely the product of the King's printer, then later the work of Parliamentary officers and drafters, the headings historically sat outside the Act. Consequently, their use as aids to statutory interpretation has varied according to the judges considering them, from outright rejection to more recent (and growing) acceptance. Courts are excluded from examining the marginal notes, headings and other similar elements of an Act in the interpretation of one of its provisions. It has very interesting history¹³⁹ and its purpose and function are subject to varied

137 *Aswinkumar Ghose v. Arabinda Bose*. AIR 1952 SC 369 at 388; *R. v. Secretary of State for Foreign and Commonwealth Affairs*. (1994) 1 All ER 457.

138 Gordon Stewart, "Legislative Drafting and the Marginal Note", *Statute Law Review*. Vol. 16, No.1, 29-67(1995).

139 Stewart traces the history of marginal notes in his article *ibid* 36. Since 1547, the King had appointed, by letters patent, a series of King's Printers, with sole rights to publish the statutes. The King's Printer did more than simply print the statutes. He separated public from private Acts, he organized the numbering of each series (private and public Acts), he printed abstracts of the Acts which he published, and he added tables of the titles of the Acts. In a further step away from the previous formlessness of the early legislation,

'He numbered the sections of the statutes, inserted marginal abstracts, and punctuated the text. It followed that the division into sections, the marginal notes, and the punctuation, were due to the work done by the King's Printer, and rested on his authority alone...'

In 1796, the House of Commons appointed a committee to consider the most effectual means for promulgating the statutes. In its report, the committee recommended that the responsibility for the drafting of marginal notes shift from the King's Printer:

'The particular requisites with which each bill ought to be introduced into Parliament, such as the numerical distinction of its sections, their marginal extract and their punctuation...should be settled by resolutions or standing orders adapted to those purposes'.

Despite such recommendations, by 1831 the examination and promulgation of statutes remained duties of the King's Printer. The call for someone of greater authority than the King's Printer to divide the bill into numbered sections was echoed by Bentham:

'True it is, by somebody or other, nobody knows who, before each paragraph, in the printer's sense of the word paragraph, a number is prefixed; but for any such purpose as the one here in question, the number might as well not be there. It is no part of the act. It has not received the mysterious touch of the sceptre.'

interpretations.¹⁴⁰ It steers the reader to the appropriate section, and it briefly indicates the contents of that section. In drafting these notes, the

Bentham was an ardent advocate of the numbered section, and a hostile critic of the lawyers who refrained from employing it. As he saw it, one of the several imperfections of the English statute was its ‘Nakedness in respect of helps to intellection—especially...in respect of such as are in general use:— such as division into parts of moderate length,— designation of those parts by concise titles and figures of arithmetic expressive of numbers... Although Bentham acknowledged that an absence of such readers’ aids was something to which all publications were susceptible, in England it was ‘peculiar to the discourse of the legislator—to that species of discourse in the instance of which the consequences resulting from it are of the most inconvenient and pernicious cast.

A properly drafted marginal note, one which would not ‘send a man to hunt over the whole statute’, was not, however, beyond Bentham’s wishes; the legislator should consider any aid which would clarify the statute and make it easier for the public to use:

‘So far, then, as concerns helps to intellection, that which ought to be done by the legislator—and will be done by the legislator as soon as the interests of the whole community at large obtain in his eyes the preference over the separate and sinister interest of a small portion of it,— is not only in the first place to give to the subject-matter in question the benefit of all such helps to intellection as can be found applied to any other subject; but in the next place to look out for all such additional helps, if any, as can be found applicable to the particular subject which stands so much in need of them.

The suggestion that the sections—be very sections created by Parliament or by printer—should carry descriptive headings appeared expressly in 1838 in a letter of Arthur Symonds of the Board of Trade to C.P.Thomson, President of the Board of Trade. The letter dealt with methods of drafting bills, and Symonds pointed out that “during the last 250 years our statute law has been a topic of ridicule and sarcasm” and that its composition had incurred the censure of “statesmen, judges, lawyers, wits, poets, and public writers of all kinds. To be precise,

‘...at present each Act of Parliament (with few exceptions) is an isolated performance, framed upon no principle, and pieced on very imperfectly to the law to which it belongs. It seldom corresponds with other Acts of the same session in style, or in structure, or in the uniform presence or absence of necessary provisions’.

Amongst Symonds’ suggested remedies were some aimed at improving the drafting of statutes, particularly ‘that the statutes should have marginal notes to their sections, tables of contents, short titles, that sentences should be shortened, (and) that sections should be divided into clauses and paragraphs... Another commentator writes that ‘the principal amendments recommended by Mr.Symonds are – The contents of each section to be placed across the line, and not to contain an abridgement of the section, but a mere indication of its subject matter.

140 To begin with, the section heading was a ‘marginal abstract’, a *précis* of the section, often quite lengthy. Some hint of what that entailed is given by Bentham’s attack on the practice’... in English statute law (of) attempting to describe the part in question by words expressive of the subject-matter, or the purport of it. Its function has more recently been described as ‘a short indication of the content of the section’,

aim should be to prevent users having to read more of the statute than they need to in order to answer the questions which brought them to the Act, and to ensure that they do read all that is necessary. If a marginal note does that, it saves the reader time and prevents confusion in the use of that statute.¹⁴¹

ACCORDING TO THORNTON

'The object of a marginal note is to give a concise indication of the contents of a section. A reader has only to glance through the marginal notes in order to understand the framework and the scope of an Act and also to enable him to direct his attention quickly to the part of an Act which he is looking for. To achieve this object, a marginal note must be terse and it must be accurate. Its language must be consistent with that of the section to which it refers. It must describe, but it should not attempt to summarise. It should inform the reader of the subject of a section. It cannot hope to tell him what the section says about the subject. Stewart maintains that -

- (i) section headings are the first point of reference for users of legislation,
- (ii) they should assist the user in finding his or her way through the Act and in understanding the contents of the sections in it,
- (iii) they often fail of those counts, and
- (iv) improvements to the usability of legislation would flow from section headings being drafted in question-form, and subsection headings being added throughout.¹⁴²

Section headings have a vital function to perform in making legislation comprehensible and readily usable. Prefacing the particular section which immediately follows it, the heading strongly affects the reader's comprehension of that provision; collected together in the Analysis, the headings provide an important map to guide users through the statute. Regardless of whether the reader is an experienced lawyer or a complete newcomer, the individual and collected section headings are probably the most often referred-to parts of an Act. When the headings fail to guide or explain adequately, however, the reliance that accompanies those references is misplaced. The view is now settled that the Headings or titles prefixed to sections can be referred to in construing an Act. But conflicting opinions

'short indications of the subject-matter of the provisions (which often) do not even purport to summarise the provision, an aid to quick reference, and a poor guide to the scope of a section.

141 Gordon Stewart, *op. cit.* at 38.

142 *Id.* at 49.

have been expressed on the questions as to what weight should be attached to the headings. Supreme Court in *Raichurumatham Prabbakar v. Rawatmal*¹⁴³ expressed as follows:

"It is not permissible to assign the heading or title of a section a limited role to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject matter dealt with thereunder. The heading or title may also be taken as condensed name assigned to indicate collectively the characteristics of the subject matter dealt with the enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder".¹⁴⁴

With regard to marginal notes or cross headings, there was some amount of uncertainty as to their utility in the construction of the relevant portions of the Act. In this connection, it should be noted that marginal notes are inserted by the draftsman as a matter of convenience; they are intended to condense the section to a short and accurate phrase, not always an easy task. Such notes can never be an exhaustive picture of the sections against which they appear. They are not discussed in Parliament; not are they voted upon as is the case with long titles (and preambles). They are often altered by the draftsman in consultation with the Parliament Secretariat when the sections against which they appear undergo a change during their passage in Parliament. As Russel has pointed out, marginal notes have no legislative authority and may be revised in a later edition though the alteration of a marginal note is a matter to be most sparingly undertaken.¹⁴⁵

What would happen if the marginal note is in conflict with the section against which it appears. Does the marginal note overrule the section or vice-versa? So far as India is concerned, it was stated by Lord Macnaghten in *Thakurain Balraj Kunwar v. Rae Jagar Pal Singh*.¹⁴⁶

143 (2004) 4 SCC 766 at 775.

144 *Ibid.*

145 Russel, *Legislative Drafting and Forms*, Butterworths, London, 594 (1938); see also *Law Quarterly Review*, XLV, at 174.

146 31 IA, 132 at 142.

It is well settled that marginal notes to the sections of an Act cannot be referred to for the purpose of construing the Act; the contrary opinion originated in a mistake and has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes to an English Act of Parliament.

It was however, observed that the marginal note, though it cannot control the meaning of the section if it is clear and unambiguous, may be of some assistance to show the drift of a section.¹⁴⁷

The reason on which the rule rests was thus stated by Baggallay J. in *Attorney-General v. Great Eastern Railway*¹⁴⁸ "I never knew an amendment set down or discussed upon marginal notes to a clause. The House of Commons has nothing to do with a marginal note.

After citing the above passage, Justice Venkatrama Ayyar in the *Bengal Immunity* case¹⁴⁹ added, "This reasoning applies with equal force to marginal notes to Indian statutes. In my opinion, the marginal note to article 286(1) (of the Constitution) cannot be referred for construing the Explanation. It is clearly inadmissible for cutting down the plain meaning of the words of the Constitution. He referred in this connection to *The Commissioner of Income tax, Bombay v. Ahmedabhai Umarbhai*.¹⁵⁰

Where the word "sedition" did not occur in the body of the section but only in the marginal note, the Privy Council observed that there was no justification for restricting the content of the section by the marginal note which was not an operative part of the section but merely provided the name by which the crime defined in the section was to be known.¹⁵¹

The temptation of using the marginal note for explaining the section should, of course, be repelled by the draftsman. If any explanation is needed, the section should be redrafted.

PREAMBLE

Assistance may be obtained from the preamble to a statute in ascertaining the meaning of the relevant enacting part, since words derive their colour

147 *Mahadevion v. Mohadevion*, (1962) 3 All ER. 1108 at 1120; see also *Stephens v. Cuckfield Rural District Council*, (1960) 2 All ER. 716.

148 (1879) 11. Ch.D., 449 at 461; see also *Nixon v. Attorney-General*, (1930) 1 Ch. 566 at 593.

149 (1955) 2 SCR 603 at 774.

150 (1950) SCR 335 at 353; see also *The Board of Muslim Wakfs Rajasthan v. Radhakishan*, AIR 1979 SC 289.

151 *King Emperor v. Sadashiv Narayan*, (1947), Bom. 110 at 117 PC.

and content from their context. But the preamble is not to affect the meaning otherwise ascribable to the enacting part unless there be compelling reason and it is not a compelling reason that the enacting words go further than the preamble indicated.¹⁵² The preamble, in the words of Chief Justice Subha Rao, contains in a nutshell the ideas and aspirations of the legislation.¹⁵³ A preamble can play both constructive and contextual roles in statutory interpretation. Some commentators and judges have disagreed over the contextual role. A small number have advocated that a preamble could not even be referred to as part of the context of an Act without an ambiguity being independently identified in the substantive enactments. Evidence suggests that this 'rule' has never been the favoured view of the courts, and it is certainly not an accurate statement of the current law. Misconceptions about the contextual role of a preamble can be traced to both mistaken assumptions about the legal status of preambles, and the imperfect methods of statutory interpretation commentators.¹⁵⁴

On the other hand, there are some difficulties which one may have to face if he has to have recourse to the preamble to construe a statute. The preamble may not be exhaustive; it may only recite some and not all of the inconveniences or evils. The evil recited may be the motive for legislation, but the remedy may extend beyond the cure of the evil. Radical amendments may have been made in the Act during its passage without the preamble being touched.¹⁵⁵

Indian courts have generally followed the English precedent and have held that where the meaning of the legislation is clear in the enacting part, there is no necessity to refer to the title, long or short or to the preamble. It is only in cases where the meaning of the legislation is not clear beyond doubt that the aid of title or preamble is sought.¹⁵⁶

The preamble of a statute has been said to be a good means of finding out its meaning and as it were a key to the understanding of the Act.¹⁵⁷ The policy and purpose of an Act can be ascertained from the preamble.¹⁵⁸

152 *Attorney General v. Prince Augustus of Hanover*, 1957 AC 436.

153 *Golaknath v. State of Punjab*, AIR1967 SC 1643 at 1655.

154 Anne Winckel, the Contextual Role of a Preamble in Statutory Interpretation, <http://www.austlii.edu.au/au/journals/MULR/1999/7.html>.

155 C.T. Carr "Revised Statutes" *Law Quarterly Review*, 175, (1929).

156 *Mangilal Karwa v. State of M.P.*, AIR 1955 Nag. 153.

157 *T.K. Musaliar v. Venkatachalam*, AIR 1956 SC 246.

158 *In re Kerala Education Act*, 1959 SCR 995 at 1022.

The recital of facts in a preamble may be taken as material for legislative clarifications.¹⁵⁹

The law on the subject may be said to have been summarized by the Supreme Court in *M/s Burrakur Coal Co. Ltd. v. The Union of India*,¹⁶⁰ while it is permissible to look at the preamble for understanding the import of the various clauses contained in a Bill, it is not the case that full effect should not be given to the express provisions of an Act where they go beyond the terms of the preamble. It is one of the cardinal principles of construction that where the language of an Act is clear, the preamble must be disregarded, though, when the object or meaning of an enactment is not clear, the preamble may be resorted to explain it. Again, where very general language is used in an enactment which it is clear is intended to have a limited application, the preamble must be used to indicate to what particular instances the enactment is intended to apply.

Or again, the title and preamble, whatever their value might be as aids to constructions of a statute, undoubtedly throw light on the intent and design of the legislature and indicate the scope and purpose of the legislation itself.¹⁶¹ The House of Lords in the case of *A.G. v. HRH Prince Ernest Augustus*,¹⁶² had approved following propositions in respect of Preamble as internal aid to construction. These are as follows:

- (a) Preamble being a part of the statute can be read along with other portions of the Act to find out the meaning of the words in the enacting provisions as also to decide whether they are clear or ambiguous;
- (b) the Preamble in itself is not an enacting provision and is not of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act;
- (c) the utility of preamble diminishes on a conclusion as to clarity of enacting provisions.

Supreme Court approved these propositions in *Union of India v. Elphinstone Spinning & Weaving Co. Ltd.*¹⁶³

DEFINITION SECTIONS OR INTERPRETATION CLAUSES

The Supreme Court has held that the legislature has power to define a

159 *Chayye Devi v. State of Bihar*, AIR1957 Pat. 44.

160 AIR 1961 SC 954; see also *Powell v. Kempton Park, Race Course Co.* (1899) AC 143.

161 *Poppattal Shab v. State of Madras* (1955) SCR 677.

162 (1957) 1 All ER 49 (HI.).

163 AIR 2001 SC 724 at 740.

word even artificially.¹⁶⁴ Definition of a word in the definition section may either be restrictive of its ordinary meaning or it may be extensive of the same. When a word is defined to 'mean' such as such, the definition is prima-facie restrictive and exhaustive.¹⁶⁵ Where the word defined is declared to 'include' such and such, the definition is prima facie extensive.¹⁶⁶ A definition may be in the form of 'means and includes', where the definition is exhaustive.¹⁶⁷ But, the word 'include' may in exceptional cases be construed as equivalent to 'mean and include'.¹⁶⁸ A definition may be both inclusive and exclusive i.e. it may include certain things and exclude others.¹⁶⁹

DEFINITIONS ARE SUBJECT TO A CONTRARY CONTEXT

When a word has been defined in the interpretation clause, prima facie that definition governs that word is used in the body of the statute.¹⁷⁰ But where the context makes the definition given in the definition clause inapplicable, a defined word when used in the body of statute may have to be given a meaning different from that contained in the interpretation clause. Therefore, all definitions given in a definition clause are normally enacted subject to the qualification- '*unless there is anything repugnant in the subject or context*' or '*unless the context otherwise requires*'.¹⁷¹ Even in the absence

164 *Kisbanlal v. State of Rajasthan*, AIR 1990 SC 2269 at 2270; *CIT v. Sunderam Spinning Mills*, AIR 2000 SC 490 at 491; *Feroze N. Dotivala v. P.M. Wadhvani*, (2003) 1 SCC 433 at 442: See also Humpty Dumptyism at note.

165 *Kasiligam v. P.S.G. College of Technology*, AIR 1995 SC 1395 at 1400; *Commissioner of Trade Tax U.P. v. M/s Kajaria Ceramics Ltd.*, AIR 2005 SC 2968 (para 65-66).

166 *Kisbanlal v. State of Rajasthan*, AIR 1990 SC 2269 at 2270; *Kasiligam v. P.S.G. College of Technology*, AIR 1995 SC 1395 at 1400; *Feroze N. Dotivala v. P.M. Wadhvani*, (2003) 1 SCC 433 at 442.

167 *Kasiligam v. P.S.G. College of Technology*, AIR 1995 SC 1395.

168 *South Gujarat Roofing Tile Manufacturers Association v. State of Gujarat*, AIR 1977 SC 90.

169 *CIT, Gujarat v. Vadilal Lallubjai*, AIR 1973 SC 1016.

170 *Indian Immigration Trust Board of Natal v. Govindaswamy*, AIR 1920 PC 114 at 116.

171 *Pushpa Devi v. Milkbi Ram*, AIR 1990 SC 808 at 812; *N.K. Jain v. C.K. Shab*, AIR 1991 SC 1289 at 1303; *Printers (Mysore) Ltd. v. Asst. Commercial Tax Officer*, (1994) 2 SCC 434; *Spl. Officer and Competent Authority Urban Land Ceiling v. P.S. Rao* AIR 2000 SC 843 at 844; *State of Maharashtra v. Indian Medical Association*, AIR 2002 SC 302 at 307; *Mukesh K. Tripathi v. Sr. Divisional Manager LDC*, AIR 2004 SC 4179 at 4186.

of an express qualification to that effect such a qualification is always implied.¹⁷²

TITLES OF CHAPTERS

Similarly, the title of a chapter cannot be legitimately used to restrict the plain meaning of an enactment.¹⁷³

EXPLANATIONS

An Explanation is at times appended to a section to explain the meaning of words contained in the section.¹⁷⁴ When a section contains a number of clauses and there is an Explanation at the end of the section, it should be seen as to which clause it applies and the clarification contained in it applied to that clause.¹⁷⁵ When the Explanation added towards the end of the section opens, with the words 'for the purpose of this section' or 'nothing in this section' it will prima facie indicate that the Explanation applies to all the clauses in the section.¹⁷⁶ An Explanation may be added to include something within or to exclude something from the ambit of the main enactment or the connotation of some word occurring in it.¹⁷⁷ Fazal Ali J. in *Sundaram Pillai v. Pattabiraman*,¹⁷⁸ culled out from earlier cases the following as objects of an Explanation to a statutory provision:

- (a) to explain 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 sub serve;
- (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

172 *Printers (Mysore) Ltd. v. Asst. Commercial Tax Officer*, (1994) 2 SCC 434; *Indian City Properties Ltd. v. Municipal Commissioner of Greater Bombay*, (2005) 6 SCC 417 at 420.

173 *Messrs. Banka Mal v. Central Bank of India Ltd.*, AIR 1952 Punj. 400.

174 *S. Sundaram Pillai v. Pattabiraman*, AIR 1985 SC 582; *Dipak Chandra Rubidas v. Chandan Kumar Sarkar*, (2003) 7 SCC 66 at 7.

175 *Patel Roadways Ltd. v. Prasad Trading Co.*, AIR 1992 SC 1514 at 1518.

176 *CIT v. Plantation Corporation of Kerala Ltd.*, AIR 2000 SC 3714 at 3717: (2001) 1 SCC 207.

177 *Controllor of Estate Duty v. Kantilal Trikamal*, AIR 1976 SC 1935.

178 AIR 1985 SC 582.

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.

These objects were referred to in the cases of *M.P. Cement Manufacturers Association v. State of M.P.*,¹⁷⁹; *Swedish Match AB v. Securities & Exchange Board of India*.¹⁸⁰

ILLUSTRATIONS

Illustrations to the sections are part of the section and help to elucidate the principle of the section.¹⁸¹

Illustrations cannot have the effect of modifying the language of the section and they cannot either curtail or expand the ambit of the section which alone forms the enactment.¹⁸²

PUNCTUATION MARKS

Punctuation and other typographical aids are no doubt important items. But it is dangerous for the draftsman to rely on a comma to show the sense of a section because careless checking of the proof of the printed Act may result in altering the sense. Early draftsman of deeds avoided reliance on punctuation because of the risk of ambiguity and hence the old deeds were verbose.

Indian Acts used always to be punctuated, unlike early English Acts, but as early as 1887, the Privy Council ruled that it is an error to rely on punctuation marks in construing a statute.¹⁸³ They were said to be of little importance.¹⁸⁴ Certain Indian cases, however, took a different view, distinguishing the Privy Council rulings as based on English precedents or as referring to old Regulations.¹⁸⁵

179 (2004) 2 SCC 249 at 269.

180 (2004)11 SCC 641.

181 *Mahesh Chandra Sharma v. Raj Kumar Sharma*; AIR 1996 SC 869 at 877.

182 *Lalit Mohan Pandey v. Pooran Singh*; AIR 2004 SC 2303 at 2315.

183 *Maharani of Burdwan v. M. Singh* (1887) 14 IA 30; see also *Pugh v. A.Sen*, 56 IA 93.

184 *Piper v. Harvey*, (1958) WLR 408.

185 *B.S. Taylor v. C.G. Bleach* (1914) ILR 39 Bom. 182; *B.L. Chowdhury v. Nagendra Nath Mukherjee*, (1934) 39 CWN 910; *T.C. Mukherjee v. Raton Lal Ghosal* AIR 1957 Cal. 257. For an article on the subject, see *Australian Law Journal*, March (1956) at 630.

The present position may be summarized in the words of the Supreme Court as follows:

Punctuation is after all a minor element in the construction of a statute and even if the orthodox view that it forms no part of the statute is to be regarded as of imperfect obligation and it can be looked at as *contemporanea expositia*, it is clear that it cannot be allowed to control the plain meaning of a text.¹⁸⁶

It may be mentioned that punctuation marks are seldom subjected to amendments during the passage of a Bill. For instance, where a proviso comes to be added to a section during the passage of a Bill, it is not the practice to move an amendment for replacing the full stop at the end of the section by a colon; this is done when the final copy of the Bill as passed is checked by the draftsman or other officer concerned.¹⁸⁷ However the modern trend is to attach importance to punctuation. In the words of Professor Crabbe the legislative draftsman, nonetheless will have to use punctuation marks in drafting the law. The less room he leaves for argument the better. And we cannot ignore the observation of Stephen J., that although Acts of Parliament "may be easy to understand, people continually try to misunderstand."¹⁸⁸ Professor Crabbe maintains that Punctuation forms part of legislation. The language of the law is a part of language as a whole. And language comprises also the writings whose value lies in beauty of form or emotional effect. Legislation is part of that literature. The law is part of the literature of a people. Punctuation plays its part - a useful role - in legislation as it does in language a whole.¹⁸⁹ Crabbe adds that in legislation, the correct use of punctuation cannot be over-emphasised. The legislative draftsman who uses a punctuation mark must necessarily, select the correct one. Not only that. He must use it in its right place. The punctuation marks normally found in legislation are the brackets, the colon, the comma, the dash, the full stop, the inverted commas, the semi-colon, and the creature ":- ". It has no name as a punctuation mark. Legislation draftsman who use it refer

186 *Aswini Kumar Ghosal v. Arebindo Bose*, (1953) SCR 1.

187 The Government of India (Reprinting) Act, 1935, (26 Geo. 5 and 1 Edw. 8, c.1) gave statutory recognition to punctuation, since Schedule I, Part II, omitted a comma after "made" and inserted a comma after "except" in section 225(2) of the Government of India Act, 1935.

188 Hon. Mr. Justice V.C.R.A.C. Crabbe, "Punctuation in Legislation", *Statute Law Review*, 87-101(1988).

189 *Id.* at 92.

to that creature, that symbol as the "colon-dash".¹⁹⁰ The full stop does not present any problem to the legislative draftsman. When you come to the end of the sentence you do not go any further. You stop. Period.¹⁹¹ In legislation brackets are used in order to insert a paraphrase, an information or an explanation into a sentence. Their use is only appropriate where the sentence is complete without the insertion. That is to say they indicate material that is not part of the text. The colon is used to make a formal introduction. It is used to indicate a series or a particularization or a list. The comma is used mainly in ordinary writing to cause a break. In legislation form and clarity should dictate its use. This is used in legislation as a link between ideas, especially in the enumeration of paragraphs or sub-paragraphs of a tabular nature.¹⁹²

"SHALL" AND "MAY"

Stating that an officer "shall" perform a certain function makes the performance obligatory. If the Act says that the officer "may" do something, the matter is left to his discretion. But it is not often that courts are left in doubt whether the legislature meant to make the matter obligatory or otherwise.

The Supreme Court has stated that,

When a statute used the word "shall", *prima facie*, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature, the court may consider, *inter alia* the nature and design of the statute and the consequences which would follow from construing it one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances that the statute provides for a contingency of compliance with the provisions, the fact that non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow there from any

190 *Ibid.*

191 *Id.* at 94.

192 *Ibid* at 96. An English professor wrote the words, "a woman without her man is nothing" on the blackboard and directed the students to punctuate it correctly. The men wrote: "A woman, without her man, is nothing." The women wrote: "A woman: without her, man is nothing." So punctuation is everything!
Anon, Cited in *Commonwealth Association of Legislative Council*, The Loophole- June 2000.

above all whether the object of the legislation will be defeated or furthered.¹⁹³

The support of the auxiliary verb "shall" is inconclusive as to whether it is mandatory or otherwise and similarly the mere absence of the imperative is not conclusive either.¹⁹⁴ "May" may be construed as "shall" when the existence of the purpose is established and the conditions for the exercise of the discretion are fulfilled.¹⁹⁵ In other words, "may" will be construed, as "shall" when the thing directed to be done is for the same of justice or public good.¹⁹⁶ Perhaps, the addition of the words "in his discretion" after the word "may" in cases where performance of the function is not obligatory, may render the intention clearer.

"IT SHALL BE LAWFUL"

The phrase "it shall be lawful," means that if the law had not been enacted, there would have been no authority to do the act. The phrase enacted, there would have been no authority to do the act. The phrase is apt to express that a power is given and as *prima facie* the words are equivalent to saying that the donee may do it. But if the object for which the power is conferred is for enforcing a right, there may be a duty cast on the donee to exercise the power for the benefit of such persons.¹⁹⁷

EJUSDEM GENERIS

The *ejusdem generis*, or "of the same genus" rule, is similar though narrower than the more general rule of *noscitur a sociis*. It operates where a broad or open-ended term appears following a series of more restrictive terms in the text of a statute. Where the terms listed are similar enough to constitute a class or genus, the courts will presume, in interpreting the general words that follow, that they are intended to apply only to things of the same

193 *State of U.P. v. Babu Ram Upadhyay*, AIR 1961 SC 751.

194 *Collector of Monghyr v. Keshav Prasad Goenka*, AIR 1962 SC 1994; *Rani Digranj Kaur v. Raja Sri Amar Krishna Narain Singh*, AIR 1960 SC 444; *State of M.P. v. Ms Azad Bharat Finance Co.*, AIR 1967 SC 276; *H.V. Kamath v. Ahmed Ishaque*, (1955) 1 SCR 1104.

195 *In re Kerala Education Bill*, (1959) SCR 995; *State v. Hari Shanker* (1965) 3 SCR 402.

196 *State of Madh. B. v. Ramratan*, AIR 1957 Madh. B. 7; *Government of Burma v. Municipal Corporation of Rangoon*, AIR 1930 Ran. 279 FB; *Supt. & Remembrancer of Legal Affairs, Govt. of West Bengal v. Abdul Maity* AIR 1979 SC 1029.

197 *C.R.H. Readymoney v. State of Bombay*, AIR 1956 Bom. 304; 50 Bom. LR 728 at 731; *Julius v. Lord Bishop of Oxford*, (1880) 5 App. Cas. 214 at 241.

genus as the particular items listed. Bennion defines the *ejusdem generis* rule as,

"a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character."¹⁹⁸

The *ejusdem generis* rule will not apply where there is a list of items which do not constitute a genus, or where only one item is listed. The courts will also refuse to apply *ejusdem generis* where a statute contains general words, which are then followed by a list of particular items. In such cases the list of items is not regarded as limiting. While the word "etc." should be avoided in statutes, quite often general words follow certain specific terms when the intention is to include within the general term other matters or things falling within the same category or genus. The rule of *ejusdem generis* applies in such cases. The Supreme Court has upheld that the true scope of the rule of *ejusdem generis* is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow.¹⁹⁹ Another words according to the Supreme Court the true scope of the rule of *ejusdem generis* is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one that has to be applied with caution and not pushed too far. It is a rule which must be confined to narrow bounds so as not to unduly or unnecessarily limit general or comprehensive words. If a broad-based genus could consistently be discovered, there is no warrant to cut down general words to dwarf size. If giant it cannot be, dwarf it need not be.²⁰⁰

"OR" AND "AND"

The word "or" and the word "and" are often used interchangeably. As a result of this common and careless use of the two words in legislation, there are occasions when the court, through construction, may change one to the other. This cannot be done if the meaning of the statute is clear or if

198 Francis Bennion, *Statutory Interpretation*, 2nd Ed. 858 (1992).

199 *Thakur Amar Singhji v. State of Rajasthan*, (1955) 2 SCR at 303; see also *The State of Bombay v. Ali Gulshan* (1955) 2 SCR 867 at 870; *Rajasthan State Electricity Board v. Mohan Lal*, AIR 1967 SC 1857.

200 *U.P. State Electricity Board v. Hari Shankar Jain*, AIR 1979 SC 65 at 73.

the alteration operates to change the meaning of the law. It has been said that "or" may mean "nor"-not necessarily as laying down something in the alternative.²⁰¹ Where five conditions were laid down with an "or" at the end of the fourth condition, a question arose whether the conditions were cumulative or disjunctive.²⁰²

"AND/OR" The solicitatorial conjunction "and/or" sometimes favoured by draftsman (particularly of deeds) has been described as a bastard conjunction and as an elliptical and embarrassing expression which endangers accuracy for the sake of brevity.²⁰³ It is a slipshod and blundering phrase and shows lack of draftsmanship and should be dropped from the jargon of law.

BAR OF JURISDICTION OF COURTS

The ordinary right of recourse to the courts for the trial of any claim is one of the rights which is not to be curtailed except by clear words. So far as the jurisdiction of the High Court and the Supreme Court in respect of the issue of writs under the Constitution is concerned it cannot be taken away by any form of words.

PRESUMPTION THAT ACTS OPERATE PROSPECTIVELY

There is a presumption against retrospective effect being given to a statute. When no contrary intention is shown the courts assume that the statute deals with the future and not with the past. No statute will be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary implication.²⁰⁴

It is a well recognized rule that a statute should be interpreted if possible, so as to respect vested rights. Where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from which the party was at liberty to depart as long as he pleased, binding, the prima facie construction of the Act is that it is not to be retrospective.²⁰⁵

201 *Patel Chunnibhai v. Narayan Rao*, (1965) 2 SCR 328.

202 *Phillips v. Price* (1958) 3 WLR 616 see also R.E. Megarry, "Copulatives and Punctuations, in Statutes" 75, *Law Quarterly Review*, 29 (1959).

203 *Bonitto v. Fuerst Bros & Co. Ltd.*, (1944) AC. 75, 82; *Fadden v. Deputy Federal Commissioner of Taxation*, (1943) 68 CLR 76 at 82.

204 *P. Janardhan v. Union of India*, AIR (1970) Mys. 171 at 179; *Vijay Lakshmi Rice Mills v. State of A.P.*, AIR 1976 SC 1471.

205 *Kapen Chacko v. Provident Investment Co.*, (1977) 1 SCC. 593 at 602; see also *Gardner v. Lucas*, (1878) 3 AC 582.

Where the substantive law is altered during the pendency of a suit the rights of the parties will be decided according to the law as it existed when the action was begun unless the enactment makes it clear that the contrary is intended, either expressly or by necessary intendment. A substantive right cannot be taken away retrospectively unless the law expressly states so or there is a clear intendment.²⁰⁶

RIGHT OF APPEAL

CHANGE IN PROCEDURE

A right of appeal prevailing at the time of institution of a suit is not taken away by a law passed during the pendency of the suit omitting provision for appeal. If the Legislature intends to abolish the right of appeal which has accrued by the filing of a suit, the enactment must be framed so as to make it clear. It was held by the Supreme Court in *Garikapati v. S. Choudhry*²⁰⁷ that the right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and this vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise. However, in the matter of procedure, there is no vested right and a change in the law of procedure operates retrospectively and, unlike the law relating to vested right, is not prospective.²⁰⁸ Thus a person accused of the commission of an offence has no vested right to be tried by a particular court or a particular procedure except in so far as there is any constitutional objection by way of discrimination or the violation of any other fundamental right is involved.²⁰⁹

SANCTITY OF CONTRACTS

It is a fundamental canon of construction that a court of law will not permit the sanctity of obligations or of contracts to be interfered with unless the statute, in express terms, permits a violation of that sanctity.²¹⁰ Where an Act creates a new or special remedy for the enforcement of a

206 *R.C. Chowdhury v. M. Mukharjee*, AIR 1969 SC 11871; see also *Kapen Chako v. Provident Investment Co.* (1977) 1 SCC 593 at 603; ILR 38 Mad. 101 (1912).

207 AIR (1957) SC 540 at 553; see also *R.C. Chowdhury v. M. Mukberjee*, AIR 1969 SC 1187.

208 *A.G. Sheorey v. State of Bombay* AIR 1958 SC 915 at 917; *K. Kapen Chako v. Provident Investment Co.* (1977) 1 SCC 593.

209 *Union of India v. Sukumar*, AIR 1966 SC 1206 at 1209.

210 50 Bom. LR 718 (1948).

right or duty, the courts should not be left in doubt whether this remedy is intended to be exclusive of the usual remedy, although the courts have ruled in aid of the draftsman that where an Act creates a new right and also provides the remedy for enforcing it, that remedy may be presumed to be the exclusive method of enforcing that right. For example, when a special tribunal or authority is appointed to determine questions under an Act, there is a strong presumption that the Legislature intended to provide completely for the matter and that the person aggrieved is limited to the remedy so provided. This does not, of course, affect the special powers vested by the Constitution in the High Courts and the Supreme Court. But where an Act merely provides a new mode of enforcing preexisting legal rights, then, in the absence of any clear indication in the Act to the contrary, the new remedy is deemed to be an additional remedy and the right of suit in the civil court is not taken away.

CONSTRUCTION OF PENAL ACTS

Acts which impose penalties are subject to strict construction. The courts will not read into a penal section any words which extend the operation of the section. While interpreting a penal statute,

Pollock, C.B. observed,

“Our constitutions were never safer than at the present moment, but we cannot lose any of the grounds of our security; no calamity would be greater than to introduce a lax or elastic interpretation of a criminal statute to serve a special but temporary purpose.”²¹¹

The Supreme Court pointed out in *Motibhai Fula Bhai Patel & Co. v. R. Prasad*²¹² that in dealing with a provision relating to forfeiture, one is dealing with a penal provision. It would not be proper for the court to extend the scope of that provision by reading into it words which are not there and thereby widen the scope of the provision relating to confiscation.²¹³

In a penal statute affecting the business of hundreds of persons, the court would construe words of ambiguous meaning in a broad and liberal sense so that they will not become traps for honest, unlearned (in the law) and unwary men.

The rule of strict construction means that the language of a statute should be so construed that no case shall be held to fall within it which does not

211 *Attorney General v. Sillem*s (1864) 2 H & C. 431; 33 LJ Ex. 92 at 110.

212 (1970) 1 SC J 559 at 563.

213 *Seksaria Cotton Mills Ltd. v. State of Bombay* (1953) SCR 825.

come within the reasonable interpretation of the statute. In construing a penal statute it is a cardinal principle that in case of doubt, the construction favourable to the subject shall be preferred.²¹⁴ The courts will give the best construction consistent with commonsense, reason and justice. In this process moral and ethical considerations have no place.

DIFFERENT PENALTIES FOR SAME OFFENCE

Where two Acts provide different penalties for the same act or omission, the question should not be left in doubt whether the latter enactment supersedes the former. Under article 20 of the Constitution no person accused of an offence shall be prosecuted and punished for the same offence more than once and the General Clauses Act, 1897, also contains a somewhat similar provision. More detailed discussion on this topic has been covered in General Clauses Act 1897, Chapter XII.

FISCAL STATUTES

Taxing Acts are also subject to strict construction and the benefit of doubt is given to the person sought to be taxed. The Act will be construed strictly according to its terms so as not to affect persons by mere implication. But in choosing between two possible constructions of the statute, effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.²¹⁵

There is no presumption of law against a person being taxed for the same thing under two enactments. The latter law should survey the previous enactment and render this question clear if any overlapping of the subject matter is likely to occur.

MEANING OF STRICT OR LIBERAL CONSTRUCTION

While on the subject of strict or liberal construction of statutes, it may be worth while to repeat the words of Crawford²¹⁶ from his book quoted with approval by the Supreme Court in *Subba Rao v. Commissioner of Income tax, Madras*.²¹⁷

“Why should a statute be subjected to a strict or a liberal construction, as the case may be? The only answer that can possibly be correct is because

214 *M.V. Joshi v. M.V. Shimpi*, AIR 1961 SC1493 at1498; see also *Commissioner of Income-Tax v. T.V.S. Iyenger* (1976)1 SCC 77.

215 *The Express Mills, Nagpur, v. Mun. Comm.* AIR 1958 SC 341.

216 Crawford, *Construction of Statutes*, 454.

217 (1956) SCR 577at 584.

the type of construction utilized gives effect to the legislative intent. Sometimes a liberal construction must be used in order to make the legislative intent effective, and sometimes such a construction will defeat the intention of the legislature. If this is the proper conception concerning the rule of construction to be adhered to, then a strict or a liberal construction is simply a means by which the scope of a statute is extended or restricted in order to convey the legislative meaning. If this is the proper position to be accorded to strict and liberal construction, it would make no difference whether the statute involved was penal, criminal, remedial or in derogation of common rights, as a distinction based upon the classification would then mean nothing.”

The above are some of the more important general rules of construction which may be found more elaborately dealt with in any book on the interpretation of statutes. As a learned judge of the Calcutta High Court observed in 1946, the rules of interpretation of statutes have now reached such a condition that they themselves require to be interpreted.²¹⁸ C.K. Allen in his admirable book, *Law in the Making* thinks that much of the case law on the interpretation of statutes suggests, "the letter killeth more often than the spirit giveth life". The criticism leveled against the courts now is that a disproportionate emphasis is laid on the body as opposed to the soul of statutes. To quote C.K. Allen again, "the fundamental weakness lies in the inadequacy of human language to convey thoughts and intentions with perfect accuracy".

The perfect statute, like perfect justice, is only an ideal and can never be achieved; but the draftsman's aim should be to constantly work in pursuit of this ideal and if he at least manages to reduce ambiguities to the minimum he would have made a success of his job.

CONCLUSION

We may conclude by referring to an article written by John Willis way back in 1938 in the *Canadian Bar Review*.²¹⁹ According to Willis if you are trying to guess what meaning a court will attach to a section in a statute which has not yet been passed on by a court, you should be careful how you use *Craies' Statute Law and Maxwell on The Interpretation of Statutes*. Willis maintains that as armories of arguments for counsel they can be very useful, but you must know how to choose your weapon. In at least three

218 *Badsha Mea v. Rajjab Ali*, AIR 1946 Cal. 348.

219 John Willis, "Statute Interpretation in a Nutshell" *The Canadian Bar Review*, Vol. XVI, No.1, 38 (1938).

respects these legal classics are very defective. Both books assume one great sun of a *principle*, "the plain meaning rule", around which revolve in planetary order a series of minor rules of construction. Both assume that what courts do is unswervingly determined by that one principle. That is not so.²²⁰ These books base their rules not on decisions, not on what the courts did in cases before them, but on dicta, the remarks let fall by a heterogeneous collection of judges in an unrelated series of situations. This is unsound.²²¹ Both books treat the "principles" and dicta with which they deal as if, having once been enunciated by a court, they remained equally valid at all times and in all places. Once again they are merely misleading.²²² If you are trying to guess what meaning your court will attach to a section in a statute which has already been passed on by the courts, when it comes to apply it to the facts of your case, you should beware of putting too implicit a trust in previously decided cases.²²³ According to Willis one should not be misled in reading of cases by pious judicial references to "the intent of the Legislature". The expression does not refer to actual intent - a composite body can hardly have a single intent: it is at most only a harmless, if bombastic, way of referring to the social policy behind the Act.²²⁴ According to Willis "Every school boy knows" that our law recognizes three main approaches to all statutes: their usual names are (1) the "literal (plain meaning) rule"; (2) the "golden rule"; (3) the "mischief (*Heydon's Case*) rule" and any one of these three approaches may legitimately be adopted by the court in the interpretation of any statute which it does in fact adopt, and the manner of its application, will, if the case in question is a close one, be decisive of the result.²²⁵ Ultimately according to Willis a court invokes whichever of the rules produces a result that satisfies its sense of justice in the case before it.²²⁶ According to him the basic rule of statutory interpretation is that it is taken to be the legislator's intention that the enactment shall be construed in accordance with the guides laid down by law and that where in a particular case these do not yield a plain answer but point in different directions the problem shall be resolved by a balancing exercise, that is by weighing and balancing

220 *Id.* at 1.

221 *Id.* at 2.

222 *Ibid.*

223 *Id.* at 3.

224 *Ibid.*

225 *Id.* at 10.

226 *Id.* at 16.

the factors they produce. But Francis Bennion does not agree. Bennion maintains²²⁷ that for at least the past half century the teaching of this subject has been bedeviled by the false notion that statutory interpretation is governed by a mere three 'rules' and that the court selects which 'rule' it prefers and then applies it in order to reach a result. The error according to him perhaps originated in an article²²⁸ published in 1938 by J Willis. After warning his readers that it is a mistake to suppose that there is only one rule of statutory interpretation because 'there are three—the literal, golden and mischief rules', Willis went on to say that a court invokes 'whichever of the rules produces a result which satisfies its sense of justice in the case before it'. Academics are still producing textbooks which suggest that the matter is dealt with by these three simple 'rules'. However, as demonstrated at length in his 1984 textbook *Statutory Interpretation*, the truth is far more complex. Willis, and those who have followed him, are wrong according to Bennion in two ways. First, there are not just three guides to interpretation but a considerable number. Second, the court does not 'select' one of the guides and then apply it to the exclusion of the others. The court takes (or should take) an overall view, weighs all the relevant factors, and arrives at a balanced conclusion. What is here called the basic rule of statutory interpretation sets out this truth. It is a rule because it is the duty of the interpreter to apply it in every case.

227 Bennion, *Statute Law-Part II*, *Statutory Interpretation*, Chapter Nine, Guides to Legislative Intention I: Rules of Construction, at 104.

228 *Supra* note 219.