

* CH. 3 :- Interpretation of Statute. *

- A statute has defined as 'will of legislature'
- A statute is in always written form and it is a will of legislature expressed according to for state or law / law of state.
- According to Bouvier's Law dictionary, a statute is a law established by act of the legislative power i.e. Act of legislature.
- The term 'statute' generally applied to laws & regulations of every sort law which permits or prohibits anything which that is designated as statute.

* Statutes are commonly divided into following cases -

- 1) Codifying : When they codify or arrange the unwritten law.
- 2) Declaratory : When they do not make any alteration in existing law, but merely explains what it is.
- 3) Remedial : When they alter the common law or any judge make any law which is not statutory.
- 4) Amending : When they amend / alter the law which is already existed.

5) Consolidating : When they consolidate or amalgamate some provisions previous statutes related to some subject matter and with / without alteration to it

6) Enabling : When they remove a restriction or disability

7) Disabling : When they restrain alienation of property

8) Penal : When there is penalty imposed or forfeiture.

* Need for Interpretation of Statute

1) To discover the intention for or author. The written declaration that is in whose mind document should be always considered to be.

2) Consequently, construction must be near to minds & apparent intention of parties as possible & as the law will permit.

3) The ^{function} purpose of court is to determine what is the meaning of part by the words used by them and to declare meaning of what is written in instrument and to give effect to intention that is expressed for interpretation.

4) It is usually not possible to guess the exact intention of parties & substitute presumption for expressed intention.

5) Ordin ordinary rules of construction should be applied by doing it the real intention of parties in some instances may be defeated.

6) Such course tends to establish greater degree of certainty in administration of law.

* Meaning of Interpretation of statute.

- It implies the judicial process of determining the actual and true meaning of Acts of parliament.
- It would mean the process that conveys one's understanding of ideas or understaing as having a specific meaning & importance for a particular statute or law.
- The purpose of interpretation of statute is to ascertain the intention of legislation.

* Casus Omissus Rule

- It is a tool of statutory interpretation.
- It is a situation which is omitted from / not provided by any statute and thence governed by common law.

- There are two basic rules

1) Every word in statute must given meaning of it

2) The court cannot read anything into statute or rewrite provisions

Interpretation is done by using two principles

Primary Principles

&

Secondary principles

* Primary Principles / Rules of Interpretation

1] Rule of Literal Construction / Interpretation

- According to this rule, the words, phrases and sentences of statute should be understood in their natural, ordinary, popular & grammatical meaning unless it leads to absurdity.
- Interpretation should not be made in such a way which would make other provisions redundant.
- Every word used in statute should be given meaning and no word is used unnecessarily in statute.
- One should not ~~made~~ presume any omission & if any word is not in statute it should not be given any meaning.
- Interpretation of any statute should be made according to plain, literal & grammatical meaning of words.

2] Mischief Rule / Heydon's Rule

- It is a rule of interpretation which prevents the misuse or provisions of statute.
- It is framed to avoid any mischief provided/ added by statute.
- The rule states that the court shall adopt that construction which suppresses the mischief and which shall advance remedy.

• Four things should be considered -

- | | | | |
|----------------------------|------------------------------|---|--------------------------|
| ↓ | ↓ | ↓ | ↓ |
| 1) What was the common law | 2) What is mischief & defect | 3) Which remedy parliament has resolved | 4) True reason of remedy |

3] Rule of Reasonable Construction / Doctrine of Ut Res magis valent quam Pareat

- According to this Rule statute should be constructed sensible and reasonable.
- Every word expressed in Act should have / receive natural and fair meaning.
- It follows the principle of "Ut Res Magis Valent quam Pareat" it means when the interpre-

tation of statute is made, it should be done in meaningful & sensible manner.

- As far as possible all words used in statute must be given meaning as legislature is not expected to use unnecessary words.
- If letter of law is not clear then interpretation should be made according to purpose or spirit of law.

4] Harmonious Construction

- Whenever there is conflict between two or more provisions interpretation should be done in such a way as to avoid contradiction & to provide effect to both of them.
- A statute must be read as a whole & one provision or act should be constructed with reference to another provision of the Act to make consistent enactment of whole statute.
- Where in enactment, if there are two provisions and whenever it is which cannot be reconciled with each other then it should be interpreted that effect may be given to both. This is what is known as "rule of harmonious construction."

5] Rule of Eiusdem Generis

- The meaning of eiusdem generis is 'of the same kind or species'.
- The Rule of 'Eiusdem Generis' is the one of the primary rules for interpretation.
- It helps Courts to find out the true intention of legislature.
- When general words follows specific words of a distinct category, the general word may be given a restricted ~~category~~ meaning, of same category. General words takes its meaning from preceding expressions.
- The rule of Eiusdem Generis applies only when following conditions are satisfied. -
 - 1) The statute contains enumeration of specific words.
 - 2) The members of enumeration constitute class.
 - 3) Class / category not exhausted by enumeration.
 - 4) General term follows enumeration.
 - 5) There is distinct genus which comprises more than one species.

§) There is no clearly manifested intention that general term be given broader meaning than doctrine requires.

* Other principles / Rules of interpretation.

1] Expression Unis Est Alterius

- It means that express mentioned of one thing implies the exclusion of another.
- If a particular thing is specifically mentioned then all others are excluded.
- The method of construction according to this maxim must be carefully watched.
- This rule will not apply if, it would be lead to injustice & it would be simple & plain meaning.

2] Contemporanea Expositio Est Optimum Et fortissima in lege.

- This maxim says that contemporanea Expositio is best & strongest in law.
- Meaning of words can change over a period of time while interpreting law we will give same meaning to words which they have when law was passed.

3] Noscitur A sociis

- "Noscitur A sociis" i.e. "it is known by its associates"

- It means meaning of words should be known from its associating words.

- Two words having analogous meaning, are coupled together then one will derive from another.

4] Strict & liberal construction.

- While reading law & interpreting law we shall not include such meaning, which is not in their letter or spirit. This is known as strict construction.

- Everything is to be done in advancement of remedy that can be consistently, with any construction of statute.

* PRESUMPTIONS

1) Words used in statute are used precisely not loosely.

2) The statute is not intended to be inconsistent with principles of international law.

3) Legislature confers powers necessary to carry out duties imposed by it.

4) That vested rights at the time statute was passed cannot be taken away without express words or necessary implication.

5) Legislature knows the statute or law.

6) Legislature does not make any mistakes.

7) Mens rea is required i.e. guilty mind is required for criminal act.

8) Legislature cannot make any alteration in existing law unless by express enactment.

9) The law compels no man to do which is fruitless.

10) State is not affected by statute unless it is expressly mentioned.

11) Legislature knows practice of executive & judiciary.

* INTERNAL AIDS OF INTERPRETATION

i] Title : The long title or Act is part of Act. The long title or acts sets purpose of act in general terms. The long title is a legitimate aid to the construction.

ii] Preamble :- Preamble may be useful to know what statute intends to reach out. If any enactment is itself clear & unambiguous, then no preamble can cut down enactment.

iii] Heading : According to one view 'heading' is to be regarded as giving key to interpretation of clauses ranged under it. Heading might be treated "as preambles to the provisions following them."

iv] Marginal notes : In *Sarbjit Rick Singh Vs Union of India*, supreme court held that the marginal note although may not be relevant for rendition of decisions in all types of cases but where the main provision is sought to be interpreted differently, reference to marginal notes would be permissible in law.

v] Interpretation clause : In statutes it is common to find 'definitions' of words & expressed elsewhere in body of statute. The object of such definitions is to avoid necessity of frequent repetitions. When a word has been defined in interpretation clause, prima facie definition governs whenever that word used in body of statute.

vii] Provisos : The proper function of proviso is to except & to deal with case which would otherwise fall within the general language of the main enactment & its effect is confined to case.

vii] Illustrations & Explanation : If Illustration attach to statute sections are part of statute. They are useful to furnish some indication of presumable intention of legislature. The explanation is used to explain the meaning of words contained in section.

viii] Schedules : Schedules form part of statute and it should be read together with it. If there is any inconsistency with between schedule & enactment, then enactment shall prevail.

* EXTERNAL AIDS OF INTERPRETATION

i] Parliamentary History : Supreme Court enunciated rule of exclusion of parliamentary history in the way it is enunciated by English Courts, but on some occasions court used this aid in resolving questions of constructions.

ii] Reference to report of committees : The report of selected committees on whose report an enactment is based can be referred for interpretation.

iii) Reference to other statutes : To cure mischief Parliament may also refer to other statutes for interpretation of statute.

iv) Dictionaries : When word is not defined in any Act itself then dictionary can be referred to find out general sense of word in which it should be understood.

v) Use of foreign decision : Use of foreign decisions of countries that follows the same system of jurisprudence as ours. The assistance of such decisions is subject to qualification that prime importance always given to Indian statute.

* LEGAL TERMINOLOGIES & LEGAL MAXIMS

READING BARE ACT & CITATION OF CASES

• Reading bare Act.

- It is a text of legislation passed by parliament or state legislature. To understand bare Act professionals are working with regulatory framework.

- Important rules :-

1) Bare Act should be read according to context

2) Definitions of Act & pari materia statutes & general clauses Act may be referred

3) Literal interpretation should be given initially

4) ~~But~~ Break the sentence but understand provision as whole.

5) Read - understand - apply rule would be beneficial

6) Read the updated version of bare Act.

• Citation of Cases

- Citation refers to statute, reported case, regulation, etc.
- The decisions of H. court are having binding force on subordinate courts.
- This will result into the need of citation of cases in pleadings to made before authorities and courts.
- It is also used by authors to refer the case in books & publications.
- Equivalent citation is also important. It is use to refer cases which means parallel citations. It is also use to refer citation of some cases published in other journal.

* PERSPECTIVE & RETROSPECTIVE OPERATION.

- Statutory provisions which creates substantive rights or takes away rights are PROSPECTIVE.
- They are RETROSPECTIVE only if by express words or necessary implication legislature has made them retrospective.
- Generally, amendment of substantive law is NOT RETROSPECTIVE unless it is laid down.

- Whether law is declaratory & therefore RETROSPECTIVE / not depends upon language of statute.
- It may be noted that declaration about existing law is not an amendment.

* USE OF 'MAY' & 'SHALL'

- Standard rule is that 'shall' is mandatory & may either be permissive / discretionary.
- This rule cannot be applied in all situations while interpreting statute. In many cases 'shall' can be used even the nature of provision is permissive.

* USE OF 'AND' & 'OR'

AND : It connects two or more items & makes a cumulative group.

OR : It separates two or more items & makes them alternative to one another.

* INTERPRETATION OF PROVISO

- Any clause, document / statute begins with the word 'proviso'.
- Term 'proviso' defined as a clause making some condition.
- A clause in statute, deed / other legal document

introducing a qualification or condition to some another provision.

- Sometimes it mean to be exeption to something within main enactment to qualify something therein
- The proper function of proviso is to except & deal with a case, which would otherwise fall within general language of main enactment.

* DEEMING PROVISIONS

- The provision in statue which contains the word 'deemed' is called as deeming provision.
- The term 'deem' means to regard or to consider something in specific way.
- It means to treat something as if it were something else, assuming a fact which does not really exist.
- The legislature is quite competent to enact deeming provision for purpose of 'assuming' existence of fact which does not really exist.

* REPUGNANCY WITH OTHER STATUES

To ascertain meaning of section whole section should be read other & attempt should be made to reconcile all the part but if reconciliation is not possible regard should be made to leading

provision if this method is also not possible & if two sections are repugnant then then last one will prevail.

* ~~CONFLICT~~ CONFLICT BETWEEN GENERAL PROVISION AND SPECIAL PROVISION

- Whenever there is dispute between special & general provisions the rule is that general provision should obey special provisions

- It is generally duty of court to avoid conflict and harmonize provisions

- Provision of one section cannot be used to defeat another, unless it is impossible to reconcile.

- There is maxim 'Generalia specialibus non-derogant' which means general things do not derogate from special things.

- Special provision will always prevail over the general provision.

* SOCIALLY BENEFICIAL CONSTRUCTION

- In interpreting, social welfare legislation court should give construction which advances the beneficial purpose underlined enactment.

- MCA has been entrusted with responsibility of administering Companies Act. MCA from time to time issues circulars, clarifications to clarify provisions of act.

- Whenever words 'as may be prescribed' are used in Companies Act, 2013, it indicates legislature has given powers to executive on such particular point to make law.

- four things should be considered. -

- 1) What was common law before making Act.

- 2) What was mischief & defect for which common law did not provide.

- 3) What remedy the Parliament had resolved & appointed to cure the disease.

- 4) The true reason of remedy.

* INTERPRETATION OF PROCEDURAL LAW.

Code of Criminal Procedure, 1973, by its very designation it is Compendium i.e. set of law relating to criminal procedure. The provisions contained in it are required to be interpreted keeping in view that procedural provisions are meant for doing substantial justice. If violation of procedural provision does not

result into fair hearing, then the same has to be treated as directory notwithstanding the use of word 'shall'.

* INTERPRETATION OF FISCAL & TAXING STATUTES.

- While dealing with taxing provision 'strict interpretation' ~~so~~ should be applied.
- The court should not interpret statutory provision in such manner which would create additional fiscal burden on person.
- It would never be done by invoking the provision of another Act, which are not attracted.

* DELEGATED LA LEGISLATION

- Delegated legislation is legislation made under powers conferred by an Act of Parliament.
- The bulk of delegated legislation is governmental.
- It consists of orders, regulations, rules, directions and schemes mainly & made by ministers.
- Its primary use to supplement Acts of Parliament.
- It can be made or amend without taking up parliamentary time.

- Delegated is also be made by variety of bodies outside C. Govt.

* CONFLICT BETWEEN STATUE, RULE & REGULATIONS

- Rules have statutory force.
- But before rule can give effect of statutory provision two conditions should be satisfied, i.e.,
 - ↳ It must conform to the provisions of statue under which it is framed.

↳ It must also come within scope & purview of the rule.

- If these conditions are not satisfied, then rules so framed would be void.

* DOCTRINE OF SUBSTANTIAL COMPLIANCE

- If attempt to perform does not meet terms of agreement and it is done in good faith, then the performance will still considered complete if essential purpose is accomplished but, subject to claim for damages for shortfall

- Some rules are vital & go to root of the matter they cannot be broken others are directory & breach of them can be overlooked provided there is substantial compliance with rules & read as whole & provided no predu. prejudice ensues.

* DOCTRINE OF IMPOSSIBILITY OF PERFORMANCE.

It is reflected in following legal maxims.

- i] A l'impossible nul n'est tenu : No one is bound to do the impossible
- ii] Impossibilium nulla obligatio est : There is no obligation to perform impossible things.
- iii] Lex non cogit ad impossibilia : The law does not compel a man to do that which he cannot possibly perform.
- iv] Impotentia excusat legem : Impossibility excuses the law. The law excuses someone from doing the impossible. Impossibility is an excuse in the law.

* STRICT CONSTRUCTION OF PENAL STATUTES.

- Generally, penal provisions should be constructed strictly.

- But it is one of settled provisions should be constructed strictly that when two interpretations are possible of penal provision that which is less burdensome should be preferred.

- The rule of strict interpretation of penal statutes in favour of accused may not be rigid / universal application.

* Brief of General Clauses Act

- The General clauses Act was enacted on March, 11, 1897.
- When there is no definition in Act act is not provided, then general definitions provided under General clauses Act will be applicable.
- It does not confine to particular branch of law rather extends to various enactments & branches of law.
- It applies to Central legislation. It does not apply to state enactments as every state has their own General Clauses Act.
- It belongs to class of Act which may be called as interpretation Acts.
- It provides standard ~~at~~ ~~stat~~ set of definitions or extend definitions of words & expressions commonly used in legislation.
- It also provides set of rules & regulations of certain aspects of enactments.
- In addition there are other provisions which are not merely definition or rules of constructions but ~~substantive~~ ~~et~~ rules of law.

• Object / Purpose / Importance -

- 1) To shorten the language of central legislation.
- 2) To provide uniformity by defining common legal terminology.
- 3) To provide various definitions which would help to interpret law.
- 4) To avoid unnecessary repetition of certain words in various enactments.
- 5) To provide general definitions of words which are not specifically defined under any given law.
- 6) It also helps to resolve any conflict between 2 or more central legislations.

* Effect of Repeal

If any central act / regulation repeals any enactment then, unless different intention appears repeal shall not -

1) Receive anything not in enforce at the time of repeal.

2) Affect the previous operation of any enactment repeal.

3) Affect any right privilege obligation / liability acquired under repealed enactment.

4) Affect any penalty or punishment in repealed enactment.

5) Affect any investigation under repealed enactment.

- Repeal of Act making textual amendment in Act / regulation. - If any central act / regulation repeal any enactment then unless different intention appears repeal shall not affect continuance of such amendment made by enactment so repealed.

AIR - All India Report

SCC - Supreme Court cases

SCJ - Supreme Court journal

SCR - Supreme court report

DLT - Delhi law times

* Revival of repealed enactment

It is necessary for purpose of reviving either wholly / partly any enactment that wholly or partly repealed expressly state purpose for that.

* Computation of time

If any Central Act / regulation made after the commencement of this Act and any proceeding is need to be done or taken in court or office within prescribed time or on particular day & court/office is closed on that day, then Act/proceeding shall be considered to be done / taken in court / office on next day afterwards on which court is reopened.

* Gender & Number :

In all Central Acts & regulations, unless there is anything repugnant in subject,

- words imparting the masculine gender shall be taken to include females.

- words in singular shall include plural & vice versa.

* Power to issue, to include power to add to, amend vary / rescind :

If any Central Act / Regulation is given power to issue notifications, orders, rules / bye laws, then that power includes power, exercisable in like manner & subject to sanction & conditions if any, to add to amend vary / rescind any notification, orders, rules & bye-laws so issued.

* Recovery of offences.

As per section 63 to 70 of IPC & provisions of Code of Criminal procedure for time being in force in relation to issue & execution of warrants for levy of fines shall apply to all fines imposed under Act, ~~no~~ regulation, rule / bye law unless the Act / regulation contains provision to contrary.

* Provisions as to offences punishable under two / more enactments.

If one act / commission constitutes offence under two or more enactments then offender shall be liable to prosecuted & punished any of those enactments. Offender shall not be liable to ~~be~~ be

punished for same offence twice.

According to Supreme Court under Balish V Rangaichari states that there is no bar to trial or conviction of offence under two enactments, but there is only one bar for punishment to offender twice for the same offence.

* Meaning of Service by Post

If any Central Act / regulation made after the commencement of this Act, requires any document to be served by post & if there the "serve" or either "give" or "send" is used, then unless different intention appears the service shall be deemed to be effected properly addressing, pre-paying & posting by registered post.

* READING METHODOLOGY OF THE COMPANIES ACT, 2013 & ITS LEGAL AURA.

- The Companies Act, 2013 is not stand alone piece of legislature but is a whole ecosystem.
- It contains Orders, Rules, Notifications & Circulars.
- We should read each section of the Act with relevant Rule, Notification & circular.
- It is a superior authority in law passed by legislature.

The principal legislature / statute.

Statue law : It is body of law contained in Acts of Parliament. The Companies Act 2013 is principal legislature.

Schedules : It is appended to Act i.e. added in Act to form part of it. They are generally added to avoid encumbering statutes with matter of excessive details.

Unique academy