Interpretation of Statutes

Lesson 3

KEY CONCEPTS

■ Legislature ■ Statute ■ Literal Construction ■ Reasonable Construction ■ Harmonious Construction ■ Internal and External Aids to Interpretation

Learning Objectives

To understand:

- The meaning and need of interpretation of statutes
- Principle required to applied while interpreting a statute
- The meaning and need of interpretation of statutes
- Principle required to be applied while interpreting a statute
- Internal and external aid to Interpretation of Statutes
- Legal terminologies used in the field of legal studies
- How to read a Bare Act and Citation of Cases
- The rules that are applicable while interpreting statutes
- How different laws are required to be interpreted in a different manner
- Various doctrines that may be used while interpreting statutes
- The rules that are applicable while interpreting statutes
- How different laws are required to be interpreted in a different manner
- Various doctrines that may be used while interpreting statutes
- The applicability of General Clauses Act
- Reading methodology of Companies Act, 2013

Lesson Outline

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

"Interpretation or construction is the process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed." **– Salmond**

INTRODUCTION

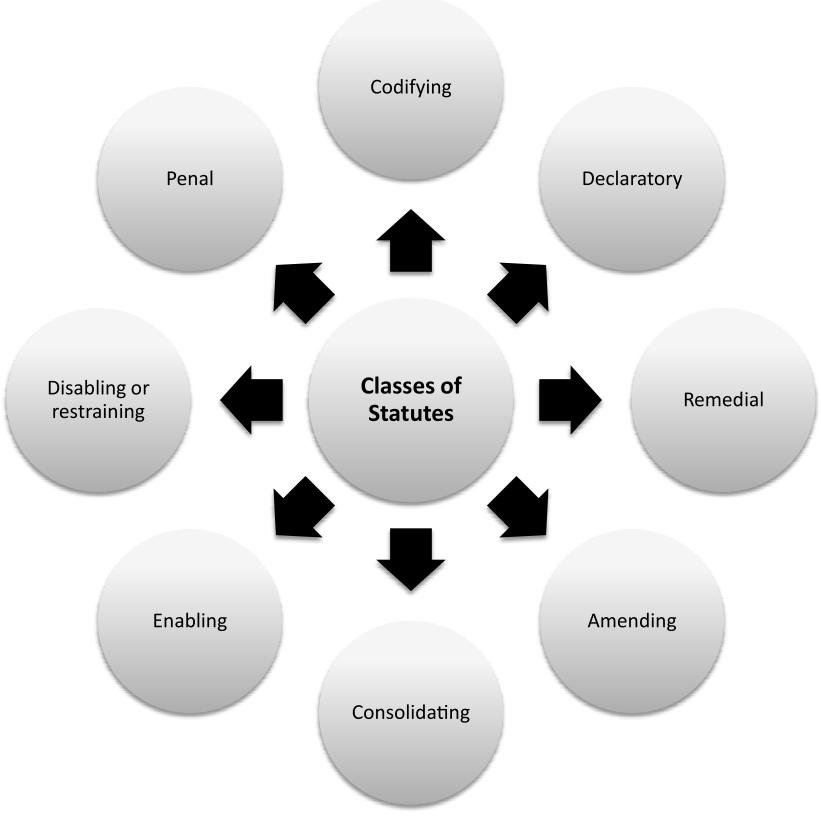
A statute has been defined as "the will of the legislature" (Maxwell, Interpretation of Statutes, 11th ed. p. 1). Normally, it denotes the Act enacted by the legislature.

A statute is thus a written "will" of the legislature expressed according to the form necessary to constitute it as a law of the State, and rendered authentic by certain prescribed forms and solemnities. (Crawford, p. 1)

According to Bouvier's Law Dictionary, a statute is "a law established by the act of the legislative power, i.e., an Act of the legislature. The written will of the legislature. The term 'statute' is generally applied to laws and regulations of every sort, law which ordains, permits or prohibits anything which is designated as a statute, without considering from what source it arises".

The Constitution of India does not use the term 'statute' but it employs the term "law" to describe an exercise of legislative power.

Statutes are commonly divided into following classes



(1) Codifying, when they codify the unwritten law on a subject;

(2) Declaratory, when they do not profess to make any alteration in the existing law, but merely declare or explain what it is;

(3) Remedial, when they alter the common law, or the judge made (non-statutory) law;

(4) Amending, when they alter the statute law;

(5) Consolidating, when they consolidate several previous statutes relating to the same subject matter, with or without alternations of substance;

(6) Enabling, when they remove a restriction or disability;

(7) Disabling or restraining, when they restrain the alienation of property;

(8) Penal, when they impose a penalty or forfeiture.

NEED FOR INTERPRETATION OF A STATUTE

The following observation of Denning L.J. in *Seaford Court Estates Ltd. v. Asher, (1949) 2 K.B. 481 (498)***,** on the need for statutory interpretation is instructive: "It is not within human powers to forsee the manifold sets of facts which may arise; and that; even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this, not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature. To put into other words : A judge should ask himself the question : If the makers of the Act had themselves come across this luck in the texture of it, how would they have straight ended it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

The object of interpretation has been explained in Halsbury's Laws of England 3rd Ed., vol. 2, p. 381 in the following words: "The object of all interpretation of a 'Written Document' is to discover the intention of the author, the written declaration of whose mind the document is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as possible, and as the law will permit. The function of the court is to ascertain what the parties meant by the words which they have used; to declare the meaning of what is written in the instrument, and not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent of the intention. It is not possible to guess at the intention of the parties and substitute the presumed for the expressed intention. The ordinary rules of construction must be applied, although by doing so the real intention of the parties may, in some instances be defeated. Such a course tends to establish a greater degree of certainty in the administration of the law". The object of interpretation, thus, in all cases is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used.

According to Salmond, interpretation or construction is the process by which the Court's seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed.

MEANINGS OF INTERPRETATION OF STATUTES

The phrase "Interpretation of Statutes" implies the judicial process of determining,, in accordance with certain rules and presumptions, the true meaning of the Acts of the Parliament. In this context, the phrase would mean a process or manner that conveys one's understanding of the ideas of the creator, or understand as having a particular meaning or significance, explanation, explication or a clarification for a particular statute or law. It is often said that the purpose of interpretation is to ascertain the intention of the Legislature.

The object of interpretation is to see what is intended by the words used by the lawmaker. But, sometimes it is very difficult to understand the meaning without making further inquiry. Therefore, it becomes necessary to find out the correct meaning by applying various rules of interpretation. However, there is no hierarchy of one rule over the other. The interpreter has to analyse which rule has to apply after giving due consideration to the facts of the situation and intent of the statute.

It must be kept in the mind that there is a clear distinction between Interpretation and Legislation. The court only interprets the law and does not legislate it. If the provision of law is misused and subjected to the abuse of the process of law, it is for the Legislature to amend modify or repeal it by having recourse to appropriate procedure if deemed necessary. Therefore, statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context.

CASUS OMISSUS RULE

According to definition of Merriam-Webster, casus omissus rule is a situation omitted from or not provided for by statute or regulation and therefore governed by the common law.

There are two basic rules of interpretation:

1. Every word in a statute to be given meaning.
2. The court cannot read anything into a statute or rewrite a provision which is unambiguous

A court generally interprets the law against rewriting.

[1]It is corollary to the general rule of literal construction that nothing is to be added to or taken out from a statute unless there are adequate grounds to justify the inference the legislature intended something which it omitted to express.

[2]When the language is clear and unambiguous and when there is no need to apply the tools of interpretation, there is no need to interpret the word 'or', nor any need to read it as a substitute word, instead of its plain and simple meaning denoting as 'alternative'.

However, [3]the judge may read in or read out words which he considers to be necessarily implied or surplus by words which are already in the statute; and the judge has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute.

INTERPRETATION OF DEFINITION CLAUSE

Usually, every statute has a definition section (also called 'interpretation clause') which provides definitions of various words and phrases used in the statute.

1. Maxwell on the Interpretation of Statutes, 12th edn., page 33.
2. Sri Jeyaram Educational Trust v. A. G. Syed Mohideen & Others 2010 AIR SCW 871
3. Cross: Statutory Interpretation, 3rd edn., p. 93.

Example

Section 2 of the Companies Act, 2013 provides the definitions of various terms used in the statute.

In order to keep the definition relevant the words "unless the context otherwise required" are used in the provisions relating to definition. These words means that the definition is only conclusive unless otherwise context requires.

While interpreting, the interpreter should consider the context in which a word has been used, where the definition of a word has not been given – the construction must be given in its popular sense and Object of the statute should be given due consideration.

Further, the definitions may be exhaustive definitions and inclusive definitions. In exhaustive definitions, a restricted meaning is provided for a particular word and in inclusive definitions, there is a scope of further reading into of the words according to the context.

Example

Exhaustive Definition: "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. (section 2(1) of the Companies Act, 2013.

Inclusive Definition: As per section 2(22AA) of the Income-tax Act, 1961 "document" includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000

PRINCIPLES OF INTERPRETATION INCLUDING HEYDON'S RULE OF INTERPRETATION, GOLDEN RULE OF INTERPRETATION

At the outset, it must be clarified that, it is only when the intention of the legislature as expressed in the statute is not clear, that the Court in interpreting it will have any need for the rules of interpretation of statutes. It may also be pointed out here that since our legal system is, by and large, modelled on Common Law system, our rules of interpretation are also same as that of the system. It is further to be noted, that the so called rules of interpretation are really guidelines.

Primary Rules
• The Primary Rule: Literal Construction
• The Mischief Rule or Heydon's Rule
• Rule of Reasonable Construction i.e. *Ut Res Magis Valeat Quam Pareat*
• Rule of Harmonious Construction
• Rule of *Ejusdem Generis*

Other Rules of Interpretation
• *Expressio Unis Est Exclusio Alterius*
• *Contemporanea Expositio Est Optima Et Fortissima in Lege*
• *Noscitur a Sociis*
• Strict and Liberal Construction

(i) Primary Rules

(a) The Primary Rule: Literal Construction

According to this rule, the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning. The objectives 'natural', 'ordinary' and 'popular' are used interchangeably.

Interpretation should not be given which would make other provisions redundant (*Nand Prakash Vohra v. State of H.P., AIR 2000 HP 65*).

If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed according to the ordinary and natural meaning of the words. "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive, if possible, at their meaning without, in the first instance, reference to cases."

"Whenever you have to construe a statute or document you do not construe it according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject matter with regard to which they are used". (Brett M.R.)

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express.

A construction which would leave without effect any part of the language of a statute will normally be rejected. Thus, where an Act plainly gave an appeal from one quarter sessions of another, it was observed that such a provision, though extraordinary and perhaps an oversight, could not be eliminated.

Similarly, the main part of the section must not be construed in such a way as to render a proviso to the section redundant.

Some of the other basic principles of literal construction are:

(i) Every word in the law should be given meaning as no word is unnecessarily used.

(ii) One should not presume any omissions and if a word is not there in the Statute, it shall not be given any meaning.

While discussing rules of literal construction the Supreme Court in *State of H.P v. Pawan Kumar (2005) 4 SCALE, P.1*, held: One of the basic principles of interpretation of statutes is to construe them according to plain, literal and grammatical meaning of the words.

- If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended, abridged, so far as to avoid such an inconvenience, but no further.
- The onus of showing that the words do not mean what they say lies heavily on the party who alleges it.
- He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity.

(b) The Mischief Rule or Heydon's Rule

In *Heydon's* Case, in [1584] [76 ER 637 360 REP 7a], it was resolved by the Barons of the Exchequer "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 had resolved and appointed to cure the disease of the Commonwealth; and

(4) The true reason of the remedy.

Although judges are unlikely to propound formally in their judgments the four questions in Heydon's Case, consideration of the "mischief" or "object" of the enactment is common and will often provide the solution to a problem of interpretation. Therefore, when the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in Heydon's case which has "now attained the status of a classic". The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur. (*See Umed Singh v. Raj Singh, A.I.R. 1975 S.C. 43*)

The Supreme Court in *Sodra Devi's case, AIR 1957 S.C. 832* has 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.

The correct principle is that after the words have been construed in their context and it is found that the language is capable of bearing only one construction, the rule in Heydon's case ceases to be controlling and gives way to the plain meaning rule.

(c) Rule of Reasonable Construction, i.e., *Ut Res Magis Valeat Quam Pereat*

Normally, the words used in a statute have to be construed in their ordinary meaning, but in many cases, judicial approach finds that the simple device of adopting the ordinary meaning of words, does not meet the ends as a fair and a reasonable construction. Exclusive reliance on the bare dictionary meaning of words' may not necessarily assist a proper construction of the statutory provision in which the words occur. Often enough interpreting the provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve.

According to this rule, the words of a statute must be construed ut res magis valeat quam pereat, so as to give a sensible meaning to them. A provision of law cannot be so interpreted as to divorce it entirely from common sense; every word or expression used in an Act should receive a natural and fair meaning.

It is the duty of a Court in constructing a statute to give effect to the intention of the legislature. If, therefore, giving of literal meaning to a word used by the draftsman particularly in penal statute would defeat the object of the legislature, which is to suppress a mischief, the Court can depart from the dictionary meaning which will advance the remedy and suppress the mischief.

CASE LAWS

It is only when the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship of injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence *(Tirath Singh v. Bachittar Singh, A.I.R. 1955 S.C. 830).*

Courts can depart from dictionary meaning of a word and give it a meaning which will advance the remedy and suppress the mischief provided the Court does not have to conjecture or surmise. A construction will be adopted in accordance with the policy and object of the statute *(Kanwar Singh v. Delhi Administration, AIR 1965 S.C. 871).* To make the discovered intention fit the words used in the statute, actual expression used in it may be modified [*Newman Manufacturing Co. Ltd. v. Marrables, (1931) 2 KB 297, Williams v. Ellis, 1880 49 L.J.M.C.*]. If the Court considers that the litera legis is not clear, it, must interpret according to the purpose, policy or spirit of the statute (ratio-legis). It is, thus, evident that no invariable rule can be established for literal interpretation.

In *RBI v. Peerless General Finance and Investment Co. Ltd. (1987) 1 SCC 424.* The Supreme Court stated that if a statute is looked at in the context of its enactment, with the glasses of the statute makers provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. *(See also Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd., AIR 2007 SC 2458*).

In *Municipal Corporation of Hyderabad vs. P.N. Murthy & Ors., 1987 SCR (2) 107* It was observed by the Supreme Court that the scheme of the relevant sections has to be read and construed in a meaningful, purposeful and rational manner. The expression 'vest' employed in Section 202(1)(c), under the circumstances must of necessity be construed as vesting both in title as well as in possession.

(d) Rule of Harmonious Construction

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construct provisions which appear to conflict so that they harmonise" *(Raj Krishna v. Pinod Kanungo, A.I.R. 1954 S.C. 202 at 203).*

Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the "rule of harmonius construction".

CASE LAWS

The Supreme Court applied this rule in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)]. *(Venkataramana Devaru v. State of Mysore, A.I.R. 1958 S.C. 255).*

In *M/s New India Sugar Mills Ltd. vs. Commissioner of Sales Tax, Bihar. SC, 1963 AIR 1207* It was observed by Supreme Court that It is a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature.

(e) Rule of *Ejusdem Generis*

Ejusdem Generis, literally means "of the same kind or species". The rule can be stated thus:

(i) In an enumeration of different subjects in an Act, general words following specific words may be construed with reference to the antecedent matters, and the construction may be narrowed down by treating them as applying to things of the same kind as those previously mentioned, unless of course, there is something to show that a wide sense was intended;

(ii) If the particular words exhaust the whole genus, then the general words are construed as embracing a larger genus.

In other words, the *ejusdem generis* rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose. It is merely a rule of construction to aid the Courts to find out the true intention of the Legislature *(Jage Ram v. State of Haryana, A.I.R. 1971 S.C. 1033).* To apply the rule the following conditions must exist:

(1) The statute contains an enumeration by specific words,

(2) The members of the enumeration constitute a class,

(3) The class is not exhausted by the enumeration,

(4) A general term follows the enumeration,

(5) There is a distinct genus which comprises more than one species, and

(6) There is no clearly manifested intent that the general term be given a broader meaning that the doctrine requires. *(See Thakura Singh v. Revenue Minister, AIR 1965 J & K 102)*

Question: Which of the given is not a primary rule of Interpretation?

Options:

(A) Literal Construction

(B) Heydon's rule

(C) *Noscitur a Sociis*

(D) *Ejusdem Generis*

Answer: (C)

The rule of *ejusdem generis* must be applied with great caution because, it implies a departure from the natural meaning of words, in order to give them a meaning or supposed intention of the legislature. The rule must be controlled by the fundamental rule that statutes must be construed so as to carry out the object sought to be accomplished. The rule requires that specific words are all of one genus, in which case, the general words may be presumed to be restricted to that genus.

Whether the rule of *ejusdem generis* should be applied or not to a particular provision depends upon the purpose and object of the provision which is intended to be achieved.

(ii) Other Rules of Interpretation

(a) *Expressio Unis Est Exclusio Alterius*

The rule means that express mention of one thing implies the *exclusio*n of another.

At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute ex *abundanti cautela*, and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. The method of construction according to this maxim must be carefully watched. The failure to make the 'expressio' complete may arise from accident. Similarly, the '*exclusio*' is often the result of inadvertence or accident because it never struck the draftsman that the thing supposed to be excluded requires specific mention. The maxim ought not to be applied when its application leads to inconsistency or injustice.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning. *(Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority, AIR 1960 SC 801)*

(b) *Contemporanea Expositio Est Optima Et Fortissima in Lege*

The maxim means that a contemporaneous exposition is the best and strongest in law. Where the words used in a statute have undergone alteration in meaning in course of time, the words will be construed to bear the same meaning as they had when the statute was passed on the principle expressed in the maxim. In simple words, old statutes should be interpreted as they would have been at the date when they were passed and prior usage and interpretation by those who have an interest or duty in enforcing the Act, and the legal profession of the time, are presumptive evidence of their meaning when the meaning is doubtful.

But if the statute appears to be capable of only interpretation, the fact that a wrong meaning had been attached to it for many years, will be immaterial and the correct meaning will be given by the Courts except when title to property may be affected or when every day transactions have been entered into on such wrong interpretation.

(c) *Noscitur a Sociis*

'*Noscitur* a *Sociis*', i.e., "It is known by its associates". In other words, meaning of a word should be known from its accompanying or associating words. It is not a sound principle in interpretation of statutes, to lay emphasis on one word disjuncted from its preceding and succeeding words. A word in a statutory provision is to be read in collocation with its companion words. The pristine principle based on the maxim 'noscitur a socitis' has much relevance in understanding the import of words in a statutory provision *(K. Bhagirathi G. Shenoy v. K.P. Ballakuraya, AIR 1999 SC 2143).*

The rule states that where two or more words which are susceptible of analogous meaning are coupled together, they are understood in their cognate sense. It is only where the intention of the legislature in associating wider words with words of narrower significance, is doubtful that the present rule of construction can be usefully applied.

The same words bear the same meaning in the same statute. But this rule will not apply:

(i) When the context excluded that principle.

(ii) If sufficient reason can be assigned, it is proper to construe a word in one part of an Act in a different sense from that which it bears in another part of the Act.

(iii) Where it would cause injustice or absurdity.

(iv) Where different circumstances are being dealt with.

(v) Where the words are used in a different context.

(d) Strict and Liberal Construction

In Wiberforce on Statute Law, it is said that what is meant by 'strict construction' is that "Acts, are not to be regarded as including anything which is not within their letter as well as their spirit, which is not clearly and intelligibly described in the very words of the statute, as well as manifestly intended", while by 'liberal construction' is meant that "everything is to be done in advancement of the remedy that can be done consistently with any construction of the statute". Beneficial construction to suppress the mischief and advance the remedy is generally preferred.

A Court invokes the rule which produces a result that satisfies its sense of justice in the case before it. "Although the literal rule is the one most frequently referred to in express terms, the Courts treat all three (viz., the literal rule, the golden rule and the mischief rule) as valid and refer to them as occasion demands, but do not assign any reasons for choosing one rather than another. Sometimes a Court discusses all the three approaches. Sometimes it expressly rejects the 'mischief rule' in favour of the 'literal rule'. Sometimes it prefers, although never expressly, the 'mischief rule' to the 'literal rule'.

PRESUMPTIONS

Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are:

(a) That the words in a statute are used precisely and not loosely.

(b) That vested rights, i.e., rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.

(c) That "*mens rea*", i.e., guilty mind is required for a criminal act. There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent. The general rule applicable to criminal cases is "*actus non facit reum nisi mens sit rea*" (The act itself does not constitute guilt unless done with a guilty intent).

(d) That the state is not affected by a statute unless it is expressly mentioned as being so affected.

(e) That a statute is not intended to be inconsistent with the principles of International Law. Although the judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.

(f) That the legislature knows the state of the law.

(g) That the legislature does not make any alteration in the existing law unless by express enactment.

(h) That the legislature knows the practice of the executive and the judiciary.

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

(j) That the legislature does not make mistake. The Court will not even alter an obvious one, unless it be to correct faulty language where the intention is clear.

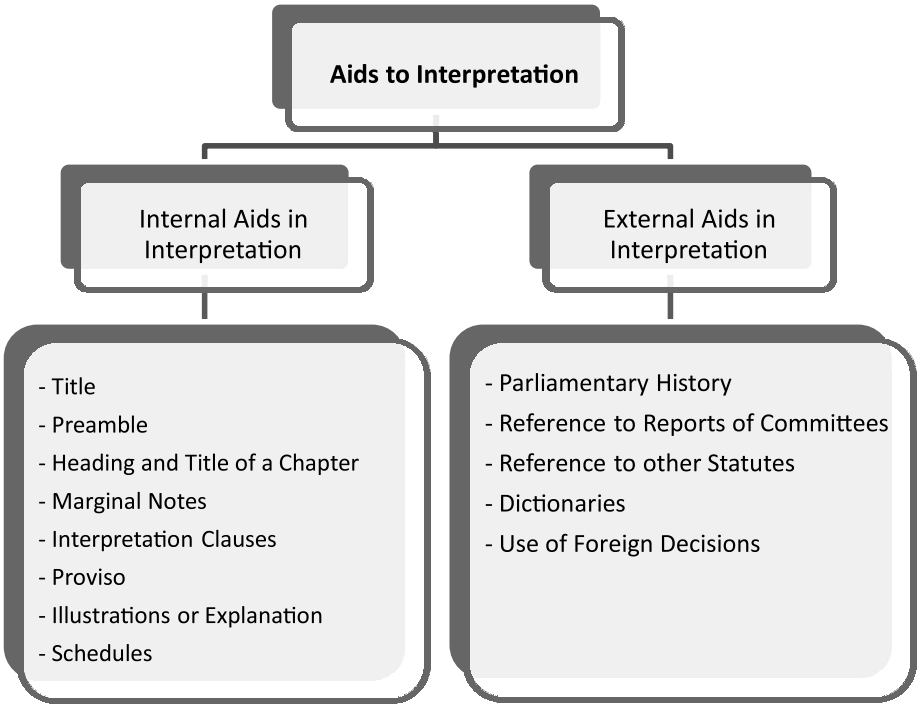
(jj) The law compels no man to do that which is futile or fruitless.

(k) Legal fictions may be said to be statements or suppositions which are known, to be untrue, but which are not allowed to be denied in order that some difficulty may be overcome, and substantial justice secured. It is a well settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

(l) Where powers and duties are inter-connected and it is not possible to separate one from the other in such a way that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties.

(m) The doctrine of natural justice is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

AIDS TO INTERPRETATION



In coming to a determination as to the meaning of a particular Act, it is permissible to consider two points, namely,

(1) The external evidence derived from extraneous circumstances, such as, previous legislation and decided cases etc., and

(2) The internal evidence derived from the Act itself.

(a) Internal Aids in Interpretation

Title

The long title of an Act is a part of the Act and is admissible as an aid to its construction. The long title sets out in general terms, the purpose of the Act and it often precedes the preamble. It must be distinguished from short title which implies only an abbreviation for purposes of reference, the object of which is identification and not description. The true nature of the law is determined not by the name given to it but by its substance. However, the long title is a legitimate aid to the construction.

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

Preamble

The true place of a preamble in a statute was at one time, the subject of conflicting decisions. In *Mills v. Wilkins, (1794) 6 Mad. 62,* Lord Hold said: "the preamble of a statute is not part thereof, but contains generally the motives or inducement thereof". On the other hand, it was said that "the preamble is to be considered, for it is the key to open the meaning of the makers of the Act, and the mischief it was intended to remedy". The modern rule lies between these two extremes and is that where the enacting part is explicit and unambiguous the preamble cannot be resorted to, control, qualify or restrict it, but where the enacting part is ambiguous, the preamble can be referred to explain and elucidate it *(Raj Mal v. Harnam Singh, (1928) 9 Lah. 260)*. In *Powell v. Kempton Park Race Course Co., (1899) AC 143, 157*, Lord Halsbury said: "Two propositions are quite clear – One that a preamble may afford useful light as to what a statute intends to reach and another that, if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment". This rule has been applied to Indian statutes also by the Privy Council in *Secretary of State v. Maharaja Bobbili, (1920) 43 Mad. 529*, and by the Courts in India in a number of cases (See for example, *Burrakur Coal Co. v. Union of India, AIR 1961 SC 154*. Referring to the cases *in Re. Kerala Education Bill, AIR 1958 SC 956* and *Bishambar Singh v. State of Orissa, AIR 1954 SC 139,* the Allahabad High Court has held in *Kashi Prasad v. State, AIR 1967 All. 173*, that even though the preamble cannot be used to defeat the enacting clauses of a statute, it has been treated to be a key for the interpretation of the statute.

Supreme Court in *Kamalpura Kochunni v. State of Madras, AIR 1960 SC 1080,* pointed out that the preamble may be legitimately consulted in case any ambiguity arises in the construction of an Act and it may be useful to fix the meaning of words used so as to keep the effect of the statute within its real scope.

Heading and Title of a Chapter

In different parts of an Act, there is generally found a series or class of enactments applicable to some special object, and such sections are in many instances, preceded by a heading. It is now settled that the headings or titles prefixed to sections or group of sections can be referred to in construing an Act of the legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. A "heading", according to one view "is to be regarded as giving the key to the interpretation of clauses ranged under it, unless the wording is inconsistent with such interpretation; and so that headings, might be treated "as preambles to the provisions following them". But according to the other view, resort to the heading can only be taken when the enacting words are ambiguous. So Lord Goddard, C.J. expressed himself as: However, the Court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is clear that those headings cannot be used to give a different effect to clear words in the sections where there cannot be any doubt as to the ordinary meaning of the words". Similarly, it was said by Patanjali Shastri, J.: "Nor can the title of a chapter be legitimately used to restrict the plain terms of an enactment". In this regard, the Madhya Pradesh High Court in *Suresh Kumar* v. *Town Improvement Trust, AIR 1975 MP 189*, has held: "Headings or titles prefixed to sections or group of sections may be referred to as to construction of doubtful expressions; but the title of a chapter cannot be used to restrict the plain terms of an enactment".

The Supreme Court observed that, "the headings prefixed to sections or entries (of a Tariff Schedule) cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision. Only in the case of ambiguity or doubt the heading or the sub-heading may be referred to as an aid for construing the provision but even in such a case aid could not be used for cutting down the wide application of the clear words used in the provision" *(Frick India Ltd. v. Union of India, AIR 1990 SC 689)*.

Marginal Notes

In England, the disposition of the Court is to disregard the marginal notes. In our country the Courts have entertained different views. Although opinion is not uniform, the weight of authority is in favour of the view that the marginal note appended to a section cannot be used for construing the section.

"There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the marginal notes in an English Act of Parliament" *(Balraj Kumar v. Jagatpal Singh, 26 All. 393).* Patanjali Shastri, J., after referring to the above case with approval observed: "Marginal notes in an Indian statute, as in an Act of Parliament cannot be referred to for the purpose of construing the Statute" (*C.I.T. v. Anand Bhai Umar Bhai, A.I.R. 1950 S.C. 134*). At any rate, there can be no justification for restricting the section by the marginal note, and the marginal note cannot certainly control the meaning of the body of the section if the language employed therein is clear and unambiguous *(Chandraji Rao v. Income-tax Commissioner, A.I.R. 1970 S.C. 158).*

The Privy Council in *Balraj Kumar v. Jagatpal Singh, (1904) 26 All. 393*, has held that the marginal notes to the sections are not to be referred to for the purpose of construction. The Supreme Court in *Western India Theatres Ltd. v. Municipal Corporation of Poona, (1959) S.C.J. 390*, has also held, that a marginal note cannot be invoked for construction where the meaning is clear.

Marginal notes appended to the Articles of the Constitution have been held to constitute part of the Constitution as passed by the Constituent Assembly and therefore, they have been made use of in consulting the Articles, e.g. Article 286, as furnishing prima facie, "some clue as to the meaning and purpose of the Article".

When reference to marginal note is relevant? The Supreme Court has 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 note would be permissible in law. *[Sarbajit Rick Singh v. Union of India (2008) 2 SCC 417; See also Dewan Singh v. Rajendra Prasad (2007) 1 Scale 32].*

Interpretation Clauses

It is common to find in statutes "definitions" of certain words and expressions used elsewhere in the body of the statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject-matter to which the word or expression so defined is intended to apply. A definition section may borrow definitions from an earlier Act and definitions so borrowed need not be found in the definition section but in some provisions of the earlier Act.

The 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 and such, the definition is prima facie restrictive and exhaustive, whereas where the word defined is declared to 'include' such and such, the definition is prima facie extensive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive. On the other hand, if a word is defined 'to apply to and include', the definition is understood as extensive. (See *Balkrishan v. M. Bhai AIR 1999 MP 86*)

A definition section may also be worded in the form 'so deemed to include' which again is an inclusive or extensive definition and such a form is used to bring in by a legal fiction something within the word defined which according to ordinary meaning is not included within it.

A definition may be both inclusive and exclusive, i.e., it may include certain things and exclude others. In such a case limited *exclusio*n of a thing may suggest that other categories of that thing which are not excluded fall within the inclusive definition.

The definition section may itself be ambiguous and may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary connotation of the word defined. A definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition

is to give precision and certainty to a word or a phrase which would otherwise be vague and uncertain but not to contradict or supplement it altogether.

When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute.

When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language, the provision and the object intended to be served thereby.

Proviso

"When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of proviso". In the words of Lord Macmillan: "The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to the case".

As stated by Hidayatullah, J. : "As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule".

A distinction is said to exist between the provisions worded as 'proviso', 'exception' or 'saving clause'. 'Exception' is intended to restrain the enacting clause to particular cases; 'proviso' is used to remove special cases from the general enactment and provide for them specially; and 'saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing.

Illustrations or Explanation

"Illustrations attached to sections are part of the statute and they are useful so far as they help to furnish same indication of the presumable intention of the legislature. An explanation is at times appended to a section to explain the meaning of words contained in the section. It becomes a part and parcel of the enactment. But 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. The meaning to be given to an 'explanation' must depend upon its terms, and 'no theory of its purpose can be entertained unless it is to be inferred from the language used" *(Lalla Ballanmal v. Ahmad Shah, 1918 P.C. 249).*

An explanation, normally, should be so read as to harmonise with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of the section. It is also possible that an explanation may have been added ex *abundanti cautela* to allay groundless apprehension.

Schedules

The schedules form a part of the statute and must be read together with it for all purposes of construction. But expression in the schedule cannot control or prevail against the express enactment *(Allen v. Flicker, 1989, 10 A and F 6.40).*

In *Ramchand Textile v. Sales Tax Officer, A.I.R. 1961, All. 24*, the Allahabad High Court has held that, if there is any appearance of inconsistency between the schedule and the enactment, the enactment shall prevail. If the enacting part and the schedule cannot be made to correspond, the latter must yield to the former.

There are two principles or rules of interpretation which ought to be applied to the combination of an Act and its schedule. If the Act says that the schedule is to be used for a certain purpose and the heading of the part of the schedule in question shows that it is prima facie at any rate devoted to that purpose, then the Act and the schedule must be read as if the schedule were operating for that purpose only. If the language of a clause in the schedule can be satisfied without extending it beyond for a certain purpose, in spite of that, if the language

of the schedule has in its words and terms that go clearly outside the purpose, the effect must be given by them and they must not be treated as limited by the heading of the part of the schedule or by the purpose mentioned in the Act for which the schedule is prima facie to be used. One cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the schedule and the definition of the purpose of the schedule contained in the Act.

Whether a particular requirement prescribed by a form is mandatory or directory may have to be decided in each case having regard to the purpose or object of the requirement and its interrelation with other enacting provisions of the statute; and it is difficult to lay down any uniform rule. Where forms prescribed under the rules become part of rules and, the Act confers an authority prescribed by rules to frame particulars of an application form, such authority may exercise the power to prescribe a particular form of application.

The statement of objects and reasons as well as the 'notes on clauses of the Bill relating to any particular legislation may be relied upon for construing any of its provisions where the clauses have been adopted by the Parliament without any change in enacting the Bill, but where there have been extensive changes during the passage of the Bill in Parliament, the objects and reasons of the changed provisions may or may not be the same as of the clauses of the original Bill and it will be unsafe to attach undue importance to the statement of objects and reasons or notes on clauses.

The Courts have only to enquire, what the legislature has thought fit to enact?

Regarding the reference to the statement of objects and reasons, it is a settled law that it can legitimately be referred to for a correct appreciation of:

(1) what was the law before the disputed Act was passed;

(2) what was the mischief or defect for which the law had not provided;

(3) what remedy the legislature has intended; and

(4) the reasons for the statute.

(b) External Aids in Interpretation

Apart from the intrinsic aids, such as preamble and purview of the Act, the Court can consider resources outside the Act, called the extrinsic aids, in interpreting and finding out the purposes of the Act. Where the words of an Act are clear and unambiguous, no resource to extrinsic matter, even if it consists of the sources of the codification, is permissible. But where it is not so, the Court can consider, apart from the intrinsic aids, such as preamble and the purview of the Act, both the prior events leading up to the introduction of the Bill, out of the which the Act has emerged, and subsequent events from the time of its introduction until its final enactment like the legislation, history of the Bill, Select Committee reports.

Parliamentary History

The Supreme Court, enunciated the rule of *exclusio*n of Parliamentary history in the way it is enunciated by English Courts, but on many occasions, the Court used this aid in resolving questions of construction. The Court has now veered to the view that legislative history within circumspect limits may be consulted by Courts in resolving ambiguities.

It has already been noticed that the Court is entitled to take into account "such external or historical facts as may be necessary to understand the subject-matter of the statute", or to have regard to "the surrounding circumstances" which existed at the time of passing of the statute. Like any other external aid, the inferences from historical facts and surrounding circumstances must give way to the clear language employed in the enactment itself.

Reference to Reports of Committees

The report of a Select Committee or other Committee on whose report an enactment is based, can be looked into "so as to see the background against which the legislation was enacted, the fact cannot be ignored that Parliament may, and often does, decide to do something different to cure the mischief. So we should not be unduly influenced by the Report [*Letang v. Cooper (1964) 2 All. E.R. 929; see also Assam Railways & Trading Co. Ltd. v. I.R.C. (1935) A.C. 445*].

When Parliament has enacted a statute as recommended by the Report of a Committee and there is ambiguity or uncertainty in any provision of the statute, the Court may have regard to the report of the Committee for ascertaining the intention behind the provision *(Davis v. Johnson (1978) 1 All. E.R. 1132).* But where the words used are plain and clear, no intention other than what the words convey can be imported in order to avoid anomalies.

Present trends in the European Economic Community Countries and the European Court, however, is to interpret treaties, conventions, statutes, etc. by reference to travaux preparatories, that is, all preparatory records such as reports and other historical material.

Reference to other Statutes

It has already been stated that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context, permits reference to other statutes in pari materia, i.e., statutes dealing with the same subject matter or forming part of the same system. Viscount Simonds conceived it to be a right and duty to construe every word of a statute in its context and he used the word in its widest sense including other statutes in pari materia.

The meaning of the phrase 'pari materia' has been explained in an American case in the following words: "Statutes are in pari materia which relate to the same person or thing, or to the same class of persons or things. The word par must not be confounded with the words simlis. It is used in opposition to it intimating not likeness merely, but identity. It is a phrase applicable to public statutes or general laws made at different times and in reference to the same subject. When the two pieces of legislation are of differing scopes, it cannot be said that they are in pari materia.

It is well accepted legislative practice to incorporate by reference, if the legislature so chooses, the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and subjects of the Act.

Words in a later enactment cannot ordinarily be construed with reference to the meaning given to those or similar words in an earlier statute. But the later law is entitled to weight when it comes to the problem of construction.

Generally speaking, a subsequent Act of a legislature affords no useful guide to the meaning of another Act which comes into existence before the later one was ever framed. Under special circumstances the law does, however, admit of a subsequent Act to be resorted to for this purpose but the conditions, under which the later Act may be resorted to for the interpretation of the earlier Act are strict. Both must be laws on the same subject and the part of the earlier Act which is sought to be construed must be ambiguous and capable of different meanings.

Although a repealed statute has to be considered, as if it had never existed, this does not prevent the Court from looking at the repealed Act in pari materia on a question of construction.

The regulations themselves cannot alter or vary the meaning of the words of a statute, but they may be looked at as being an interpretation placed by the appropriate Government department on the words of the statute. Though the regulations cannot control construction of the Act, yet they may be looked at, to assist in the interpretation of the Act and may be referred to as working out in detail the provisions of the Act consistently with their terms.

Dictionaries

When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of the word, regard must always be had to the context as it is a fundamental rule that "the meaning of words and expressions used in an Act must take their colour from the context in which they appear". Therefore, when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers". As stated by Krishna Aiyar, J. "Dictionaries are not dictators of statutory construction where the benignant mood of a law, and more emphatically the definition clause furnish a different denotation". Further, words and expressions at times have a 'technical' or a 'legal meaning' and in that case, they are understood in that sense. Again, judicial decisions expounding the meaning of words in construing statutes in pari materia will have more weight than the meaning furnished by dictionaries.

Use of Foreign Decisions

Use of foreign decisions of countries following the same system of jurisprudence as ours and rendered on statutes in pari materia has been permitted by practice in Indian Courts. The assistance of such decisions is subject to the qualification that prime importance is always to be given to the language of the relevant Indian Statute, the circumstances and the setting in which it is enacted and the Indian conditions where it is to be applied.

Question : Which of the following is Internal aid to Interpretation?

Options:

(A) Marginal Notes

(B) Parliamentary History

(C) Reference to Reports of Committees

(D) Reference to other Statutes

Answer: (A)

CASE LAW

The Authority for Clarification and Advance Ruling & Anr. v. M/s. Aakavi Spinning Mills (P) Ltd decided by Supreme Court on 12.01.2022

The Authority for Clarification and Advance Ruling, had held that the commodity "Hank Yarn", as stipulated in Entry 44 of Part B of the Fourth Schedule to the Tamil Nadu Value Added Tax Act, 2006 ('the Act'), meant only "Cotton Hank Yarn" and not "Viscose Staple Fiber ('VSF') Hank Yarn". The learned Single Judge of the Hon'ble High Court agreed with the interpretation. Per contra, the Division Bench of the High Court was of the view that no external aid for interpretation was called for when the language of the Entry in question was clear in itself. The Division Bench was also of the view that even the referred Budget speech did not specifically mention that there was any intention to restrict the exemption only to "Cotton Hank Yarn". The appeal was made to the Apex Court.

The Hon'ble Supreme Court decided and reiterated that, *there is no occasion to refer to the external aids like Finance Minister Speech in the present case, in view of the plain language in Entry 44* and even if one were to do so, there is no occasion to make an inference from the said Budget Speech that only cotton Hank yarn was entitled to be exempted. Cotton Hank yarn continues to be exempt in Entry 44 ....

LEGAL TERMINOLOGIES & LEGAL MAXIMS

A priori: From the antecedent to the consequent.

Ab initio: From the beginning.

Absolute sententia expositore non indiget: Plain words require no explanation.

Actio mixta: Mixed action.

Actio personalis moritur cum persona: A personal right of action dies with the person.

Actionable per se: The very act is punishable and no proof of damage is required.

Actus Curiae Neminem Gravabit: Act of the Court shall prejudice no one.

Actus non facit reumnisi mens sit rea: An act does not make a man guilty unless there be guilty intention.

Actus reus: Wrongful act.

Ad hoc: For the particular end or case at hand.

Ad idem: At the same point.

Ad valorem: According to value.

Aliunde: From another source.

Amicus Curiae: A friend of court member of the bar who is appointed to assist the Court.

Animus possidendi: Intention to possess

Audi alteram partem: Hear the other side.

Benami: Nameless.

Bona fide: Good faith; genuine.

Caveat: A caution registered with the public court to indicate to the officials that they are not to act in the matter mentioned in the caveat without first giving notice to the caveator.

Caveat emptor: Let the buyer beware.

Caveat actor: Let the doer beware.

Caveat venditor: Let the seller beware.

Certiorari: A writ by which records of proceeding are removed from inferior courts to High Court and to quash decision that goes beyond its jurisdiction.

Cestui que trust: The person who has the equitable right to property in India he is known as beneficiaries.

Consensus ad idem: Common consent necessary for a binding contract.

Contemporanea expositio est optima et fortissima lege: A contemporaneous exposition or language is the best and strongest in Law.

Corpus delicti: Body/gist of the offence.

Cy pres: As nearly as may be practicable.

Damnum sine injuria: Damage without injury.

De facto: In fact.

De jure: By right (opposed to de facto) in Law.

Dehors: Outside; foreign to (French term).

De novo: To make something new; To alter.

Dies non: Day on which work is not performed.

Deceit: Anything intended to mislead another.

Del credre agent: Is a mercantile agent who in consideration of extra remuneration called a del credre commission undertakes to indemnify his employer against loss arising from the failure of persons with whom he contracts to carry out their contracts.

Delegate potestas nonpotest delegari: A delegated power cannot be delegated further.

Delegatus non potest delegare: A delegate cannot delegate.

Dictum: Statement of law made by judge in the course of the decision but not necessary to the decision itself.

Dispono: Convey legally.

Ejusdem generis: Where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified.

Estoppel: Stopped from denying.

Ex parte: Proceedings in the absence of the other party.

Expressio unius est exclusio alterius: Express mention of one thing implies the *exclusio*n of another or which is shortly put.

Ex turpi causa non oritur actio: No action arises from an illegal or immoral cause.

Fatum: Beyond human foresight.

Fait accompli: Things done and no longer worth arguing against; an accomplished act.

Factum probandum: Fact in issue which is to be proved.

Factum probans: Relevant fact.

Ferae naturae: Dangerous by nature.

Force majeure: Circumstance beyond one's control, irresistible force or compulsion.

Generalia specialibus non derogant: General things do not derogate from special.

Habeas corpus: A writ to have the body to be brought up before the judge.

Ignorantia legis neminem excusat: Ignorance of law excuses no one.

Injuria sine damno: Injury without damage.

Interest reipublicae ut sit finis litium: State or public interest requires that there should be a limit to litigation.

Ipso facto: By the very nature of the case.

In promptu: In readiness.

In posse: In a state of possibility.

In limine: Initial stage; at the outset.

In lieu of: Instead of.

Inter alia: Among other things.

Inter se: Among themselves.

In specie: In kind.

Inter vivos: Between living persons.

Intra vires: Within the powers.

In personam: A proceeding in which relief is sought against a specific person.

Indicia: A symbol; token; mark.

Innuendo: Allusive remark.

Jus in personam: Right against a person.

Jus in rem: Right against the world at large.

Jus non scriptum: Unwritten law; Customary Law.

Jus scriptum: Written Law.

Lex Marcatoria: The law merchant, is a body of legal principles founded on the customs of merchants in their dealings with each other, and though at first distinct from the common law, afterwards became incorporated into it.

Lex fori: The law of the forum of court.

Lis: A suit cause of action.

Lis pendens: A pending suit.

Locus standi: Right of a party to an action to appear and be heard on the question before any tribunal.

Mala fide: In bad faith.

Mandamus: A writ of command issued by a Higher Court to a Lower Court/Government/ Public Authority.

Mens rea: Guilty mind.

Manesuetae natureae: Harmless by nature.

Mesne profits: The rents and profits which a trespasser has received/made during his occupation of premises.

Misnormer: A wrong name.

Mutatis-mutandis: With necessary changes in points of detail.

Noscitur a sociis: A word is known by its associated, one is known by his companions.

Obiter dictum: An incidental opinion by a judge which is not binding.

Onus Probandi: Burden of proof.

Pari passu: On equal footing or proportionately.

Per se: By itself taken alone.

Persona non-grata: Person not wanted.

Per incuriam: Through want of care; through inadvertance.

Prima facie: At first sight; on the face of it.

Profit a prendre: A right for a man in respect of his tenement.

Pro bono publico: For the public good.

Pro forma: As a matter of form.

Pro rata: In proportion.

Posteriori: From the consequences to the antecendent.

Puisne mortgage: Second mortgage.

Pari causa: Similar circumstances, with equal right.

Pari materia: Relating to same person or thing.

Qui facit per alium facit per se: He who acts through another is acting by himself.

Quo warranto: A writ calling upon one to show under what authority he holds or claims an office.

Quia timet: Protective justice for fear. It is an action brought to prevent a wrong that is apprehended.

Quid pro quo: Something for something.

Ratio decidendi: Principle or reason underlying a decision.

Res judicata: A decision once rendered by a competent court on a matter in issue between the parties after a full enquiry should not be permitted to be agitated again.

Res ipsa loquitur: The things speak for itself.

Respondent superior: Let the principal be liable.

Res sub judice: Matter under consideration.

Res gestae: Facts relevant to a case and admissible in evidence.

Rule nisi: A rule which will become imperative and final unless cause to be shown against it.

Scire facias: Your cause to know.

Status quo: The existing state of things at any given date.

Scientiet volenti non fit injuria: Injury is not done to one who knows and wills it.

Spes successionis: Chance of a person to succeed as heir on the death of another.

Supra: Above; this word occurring by itself in a book refers the reader to a previous part of the book.

Suppressio veri: Suppression of previous knowledge.

Sui juris: Of his own right.

Simpliciter: Simply; without any addition.

Scienter: Being aware of circumstances, the knowledge of which is necessary to make one liable, as applied to the keeper of a vicious dog, means no more than reasonable cause to apprehend that he might commit the injury complained of.

Sine qua non: An indispensable condition.

Situs: Position; situation; location.

Suo motu: On its own motion.

Stare decisis: Precedent. Literally let the decision stand.

Sine die: Without a day being appointed.

Travaux preparatotries: Preparatory records.

Tortum: Civil wrong actionable without contract.

Uberrimae fide: Of utmost good faith.

Ubi jus ibi remedium: Where there is a right there is remedy.

Ultra vires: Beyond the scope, power or authority.

Ut lite pendente nihil innovertur: Nothing new to be introduced during ligitation.

Usufructuary: One who has the use and reaps the profits of property, but not ownership.

Ut res magis valeat quam pereat: The words of a statue must be construed so as to give a sensible or reasonable meaning to them.

Vis major: Act of God.

Vigilantibuset, non dormientibus, jura subveniunt: The laws help those who are vigilant and not those who are slumber or lazy.

Vice versa: The order being reversed; other way round.

Volenti non fit injuria: Damage suffered by consent gives no cause of action.

READING A BARE ACT & CITATION OF CASES

Reading a Bare Act

Bare Act is the text of the legislation passed by the Parliament or State Legislature. It is essential for professionals working with regulatory framework to understand a Bare Act. Reading a bare act may look simple but it becomes difficult due to the use of legal language. Therefore, reading a bare act requires skills such as interpretational, comprehension, analytical and command over the language in which the act has been written.

The purpose of reading a bare act is to understand the correct meaning of a provision. A professional should read the bare act after keeping in consideration the object of the statute. Few important rules are as under:

1. A Bare Act should be read according to the context
2. Definition clause of the Act & *pari materia* statutes and General Clauses Act may be referred to
3. Literal interpretation should be given initially
4. Break the sentence but understand a provision as a whole
5. Read – understand – apply rule would be beneficial
6. Read the updated version of the bare act

Citation of Cases

Citation is a reference to a statute, reported case, regulation etc. The decisions of Higher Court are having binding force on the subordinate courts. This results to the need of citation of cases in the pleadings to made before the authorities and courts. Citations are also used by the authors in referring the cases in the books and publications.

Generally, law reports are referred by the professionals in their pleadings. The examples of the law reports used are as under:

1. All India Reporter (AIR)
2. Supreme Court Cases (SCC)
3. Supreme Court Journal (SCJ)
4. Supreme Court Reports (SCR)
5. Delhi Law Times (DLT)

Equivalent Citation is also an important mean to refer the cases which means parallel citations. They are used to refer to the citations of same cases published in other journal.

The citation generally gives an indication to the name of the parties, year of judgement, volume number, Abbreviated title of journal, page number.

PROSPECTIVE AND RETROSPECTIVE OPERATION

Interpretation of Statutory and Procedural provisions

Statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective. However, they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective. Generally, an amendment of substantive law is not retrospective unless expressly laid down. It may be noted that Declaration about existing law is not an amendment. Whether the law is declaratory and therefore retrospective or not depends upon the language of the Statute.

With respect to provisions of procedural nature, no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. A change in the law of procedure may operate retrospectively and unlike the law relating to vested right is not only prospective.

CASE LAW

In *Nabendu Dutta v. Arindam Mukherjee [2004] 121 Comp Cas 150 (Cal)* it was held that interpretation of the words of any statute cannot be given effect so as to frustrate or defeat the object of the act or to lead to an absurdity. The language mentioned in clause (g) of sub section (1) of section 274 of the Companies Act, 1956, clearly suggests that on the date of the commencement of the amending act (Companies (Amendment) Act, 2000) if any person has been a director in the defaulting company he will be affected by this subsection. Although the Legislature has not made any retrospective operation expressly, yet the language employed therein contextually makes it implicit that the Legislature intends retrospective operation. The words “is already a director” suggest, a person continuing to be director till the date of commencement of the amendment act. This is supported by the words “has failed to repay its deposits”. The plain grammatical position of these latter few words suggests that the failure has started even before the commencement of the amendment act. If the operation of the language is intended by the Legislature to indicate a future event or occurrence, then the words “has failed to deposit” or “is already a director” would not have been employed in the sub section.

USE OF "MAY" AND "SHALL"

The words "shall" or "may" used in a provision depends on the nature of compliance and gravity of non-compliance. The standard rule is that the provision containing 'shall' is mandatory and the provision containing 'may' is either permissive or discretionary. In other words, 'shall' conveys mandatory nature of the provision, while 'may' conveys permissive or discretionary nature. The word 'may' is used where a power, permission, benefit or privilege given to some person may but need not be exercised: exercise is discretionary. The provision using the word 'may' is an enabling provision and permissive in nature.

However, this rule cannot be applied in all the situations while interpreting a statute. There are many cases where 'shall' is used even if the nature of the provision is permissive or discretionary and may is used when nature of the provision is mandatory. This may happen due to various reasons including mistake or confusion of the draftsman. Also the drafters may find it easy to use 'shall' leaving it to the courts to interpret the provision.

The word "may" is often read as "shall" or "must" when there is something in the nature of the thing to be done which makes it the duty of the person on whom the power is conferred to exercise the power. There are several court decisions in which the word 'shall' is held as 'may' and *vice versa*.

CASE LAW

P.N. Chockalingam Pillai vs A. Natarajan And Ors.: (2001) 3 MLJ 661

The Madras High Court has decided the matter in which a question relating to nature of provision regarding laying the notification before the Legislature was raised. The Madras High Court has decided as under:

"Considering the word "shall" used, the circumstance that the Legislature has used a language of compulsive force is always of great relevance and in the absence of anything contrary in the context indicating that a permissive interpretation is permissible, the statute ought to be construed as pre-emptory. The term "shall" in its ordinary significance is mandatory and the Court shall ordinarily give that interpretation to that term unless such interpretation leads to absurd or inconvenient or be at variance with the intent of the Legislature to be collected from the other parts of the Act....

...We are in the agreement with the conclusion of the learned Judge that the provisions of the statute conferring on the State Government to lay the notification before the Legislature should be strictly followed. We hold that the provision, namely Sub-section (6) in Section 1 is mandatory and not directory."

USE OF "AND" AND "OR"

In ordinary usage, 'and' is conjunctive (that connects words, phrases and clauses in a sentence) and 'or' is disjunctive (that separates words, phrases and clauses in a sentence). Thus 'and' connects two or more items and makes a cumulative group of them whereas 'or' separates two or more items and makes them alternative to one another. If a series of items lays down stipulations or conditions, all of them must be complied with if they are connected by 'and'. But sometimes it may be required to read 'and' in place of 'or' and *vice versa*. This may be understood with the help of following examples:

Example

Under Companies Act, 2013 "document" includes summons, notice, requisition, order, declaration, form **and** register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

Under this situation if 'and' is used as conjunctive than the interpretation would not be correct.

INTERPRETATION OF PROVISO

A clause, as in a document or statute, that begins with the words Provided that is called 'proviso'. The term 'proviso' is defined as a clause making some condition or stipulation; a clause in a statute, deed, or other legal document introducing a qualification or condition to some other provision, frequently the one immediately preceding the proviso itself.

Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

Thus, a proviso in a statutory provision carves out an exception to the main provision to which it has been enacted and to no other. The proper function of a proviso is to except and deal with a case, which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case.

It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso. There is no rule that the proviso must always be restricted to the ambit of the main enactment. Occasionally in a statute, a proviso is unrelated to the subject-matter of the preceding section, or contains matters extraneous to that section, and it may then have to be interpreted as a substantive provision, dealing independently with the matter specified therein, and not as qualifying the main or the preceding section.

In some cases a proviso may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision. As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant.

CASE LAW

In *A.N. Sehgal & Ors 1991 AIR SCW 1246,* the Supreme Court stated as follows:

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

DEEMING PROVISIONS

A provision in a statute which contains the word 'deemed' is called a deeming provision or legal faction. To deem means to regard or consider (something) in a specified way; to treat something as if it were something else; assuming a fact which does not really exist.

Example

Section 314(2)(a) of the Companies Act 1956 provides that 'If any office or place of profit is held in contravention of the provisions of sub-section (1), the director, partner, relative, firm, private company, or the manager concerned, shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in the first proviso....'

Sometimes a deeming provision is used simply to provide that something will not be treated as a particular way, e.g. 'Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated'.

It is well settled that a deeming provision is an admission of the non- existence of the fact deemed. The Legislature is quite competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist.

In construing the scope of legal fiction, it would be proper and necessary to assume all those facts, on which alone the legal fiction can operate. The court is entitled and bound to ascertain the purpose for which the statutory fiction is created to ascertain as to what persons are entitled to the benefit of statutory fiction.

But a fiction created by law cannot operate beyond the purpose for which it has been created, It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. The full effect must be given to the fiction and then it should be carried to its logical end.

REPUGNANCY WITH OTHER STATUTES

To ascertain the meaning of a section, it is not permissible to omit any part of it, the whole section must be read together and an attempt should be made to reconcile all the parts. When reconciliation however is not possible, it has to be determined as to which is the leading provision and which must give way to the other. If this method also is not possible, then resort must be had to yet another well-established rule, namely that if two sections are repugnant, the known rule is that the last one must prevail.

Therefore, an attempt should be made in construing different provisions to reconcile them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possibly be avoided, then a question may arise as to which of the two provisions should prevail. But that question can arise only if repugnancy cannot be avoided.

CONFLICT BETWEEN GENERAL PROVISION AND SPECIAL PROVISION

Another well known rule of construction is that general provisions yield to special provisions. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect.

It is the duty of courts to avoid that and, whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise. Provisions of one Section of a statute cannot be used to defeat those of another unless it is impossible to effect re-conciliation between them.

This principle is also expressed in the Latin maxim Generalia specialibus non derogant (also known as the rule of implied exception) meaning general things do not derogate from special things; things general do not restrict or detract from things special; universal things do not detract from specific things. This well-known proposition

of law says that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision. The general provisions must admit to the specific provisions of law. It is a basic principle of statutory interpretation.

In *Pretty v. Solly (1859-53 ER 1032)* quoted in Craies on Statute Law at p. 206, 6th Edition) Romilly, M. R., mentioned the rule thus:

"The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

SOCIALLY BENEFICIAL CONSTRUCTION

For a sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of 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 had resolved and appointed to cure the disease

(4) the true reason of the remedy

After discerning, 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 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 statute *pro bono publico*.

In interpreting legislation which was clearly in furtherance of the Directive Principles of State Policy under article 39 (b) and (c) of the constitution of India, the court cannot adopt a doctrinaire or pedantic approach. It is a well-known rule of construction that in dealing with such a beneficent piece of legislation, the court ought to adopt a construction which would subserve and carry out the purpose and object of the Act rather than defeat it. Surplus Lands of the textile mills taken over under sub-section (1) of section 3 of the Textile Undertakings (Taking over of Management) Act, 1983 are but a vital physical resource capable of generating and sustaining economic growth of the Textile mills. There can be no doubt that the legislative intent and object of the Act was to secure the socialization of such surplus lands with a view to sustain the sick textile undertakings so that they could properly be utilized by the company for social good, i.e. in resuscitating the dying textile undertakings.[4]

In construing social welfare legislation, the courts should adopt a beneficent rule of construction and in any event, that construction should be preferred which fulfils the policy of the legislation. Construction to be adopted should be more beneficial to the purpose in favour of and in whose interest the Act has been passed. So it is clear that in the matter of interpretation of a beneficial legislation, the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

Further, it is a well-known canon of interpretation of statutes that in interpreting social welfare legislation, the court will normally adopt an interpretation which would favour persons sought to be benefited by the legislation. Where the courts are faced with a choice between a wider meaning which carries out more fully what appears to have been the object of the Legislature and a narrow meaning which carries it out less fully or not at all, they will often choose the former.

It is a sound rule of construction to confine the provisions of a statute to itself. The benefits intended by

4. National Textile Corporation Ltd. v. Sitaram Mills Ltd. (1987) 61 Comp Cas 373 (SC)

social welfare legislation such as the Employees Provident Funds and Miscellaneous Provisions Act and the Employees State Insurance Act 1948, cannot be defeated by granting relief under section 633 of the Companies Act to directors of the Companies in relation to offences under those Acts.[5]

INTERPRETATION OF PROCEDURAL LAW

By its very nomenclature, Bharatiya Nagarik Suraksha Sanhita, 2023, is a compendium of law relating to criminal procedure. The provisions contained therein are required to be interpreted keeping in view the well recognized rule of construction that procedural prescription are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory notwithstanding the use of the word 'shall'.[6]

INTERPRETATION OF FISCAL AND TAXING STATUTES

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

The principle was succinctly stated by Lord Russell of Killowon in *Inland Revenue Commrs. v. Duke of West-Minster, 1936 AC 1 at p. 24(A)*:

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstance of his case.'

As Lord Cairns said many years ago in *Partington v. The Attorney General, (1869) 4 H L 100 at p. 122 (B):*

'As I understand the principle of all fiscal legislation it is this; if the person sought to be taxed, comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.'

Relying on the above cases and discarding the suggestion that in revenue cases 'the substance of the matter' may be regarded as distinguished from the strict legal position, the Supreme Court said in *A. V. Fernandez v. The State of Kerala AIR 1957 SC 657*:

"It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the, substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

DELEGATED LEGISLATIONS

Delegated legislation (subordinate legislation) is legislation made under powers conferred by an Act of Parliament (an enabling statute, often called the parent Act). The bulk of delegated legislation is governmental. It consists mainly of orders, regulations rules, directions, and schemes made by ministers. Its primary use is to supplement Acts of Parliament by prescribing the detailed and technical rules required for their operation. Unlike an Act, it has the advantage that it can be made (and later amended if necessary) without taking up

5. Rabindra Chamaria v. Registrar of Companies (1992) 73 Comp Cas 257 (SC)
6. Shivjee Singh v. Nagendra Tiwary 2010 AIR SCW 4064

parliamentary time. Delegated legislation is also made by a variety of bodies outside central government, examples being the Rules of the Supreme Court, and bodies such as SEBI.

It is a principle of statutory interpretation that when rules are validly framed, they should be treated as a part of the Act. Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation. The statutory rules cannot be described as, or equated with, administrative directions.

However, in the preface to the Government publication 'Clarifications and Circulars on Company Law', Mr. K.K. Ray, the then Secretary to the Government of India and Chairman, Company Law Board said:

"*A perusal of these clarifications, circulars, instructions and orders will show that the Department has tried to take a broad and balanced view of the various issues in the light of the intention underlying the statute and the accepted administrative policies of the Government relating to trade, industry and corporate management. It should, however, be noted that these clarifications, etc., only reflect the thinking of the Department at the time when they were issued and do not bind it to that line of thinking. The Department has always an open mind and will be perfectly willing to change its thinking on any particular aspect of the matter, if a better view is shown to be possible. These clarifications should not, therefore, be cited as an authority of a binding character as is usually done in courts.*"

Therefore, delegated legislations are valid laws but inter alia are subject to the parent act and should be based on principle of Natural Justice.

CONFLICT BETWEEN STATUTE, RULES AND REGULATIONS

It is well settled rule of statutory interpretation that when a rule or form prescribed under a statute conflicts with a statutory provision, the latter will prevail.

In *General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav AIR 1988 SC 876,* the Supreme Court inter alia stated *that:*

"It is well settled that rules framed under the provisions of a statute form part of the statute. In other words, rules have statutory force. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."

In the case *Union of India v. Namit Sharma 2013 AIR SCW 5382*, it was inter alia stated that if the rules are made by the rule making authority and the rules are not in accordance with the provisions of the Act, the Court can strike down such rules as ultra vires the Act, but the Court cannot direct the rule making authority to make the rules where the Legislature confers discretion on the rule making authority to make rules.

DOCTRINE OF SUBSTANTIAL COMPLIANCE

In the domain of statutory interpretation, there exists the doctrine of substantial compliance. The Merriam Webster's Dictionary of Law defines the expression "substantial compliance" as "compliance with the substantial or essential requirements of something (as a statute or contract) that satisfies or purpose or objective even though its formal requirements are not complied with."

The Black's Law Dictionary, 8th edition, gives the following meaning of "substantial compliance" as under:

"substantial performance doctrine. The rule that if a good-faith attempt to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished, subject to a claim for damages for the shortfall."

The Supreme Court has held that tendency towards technicality is to be deprecated; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensures. Substance must take precedence over form. Of course, there are some rules which are vital and go to the root of the matter which cannot be broken. There are others where non-compliance may be condoned or dispensed with. In the latter case, the rule is merely directory provided there is substantial compliance with the rules read as a whole and no prejudice is caused.[7]

CASE LAW

In the case of *Umesh Challiyil vs K.P. Rajendran 2008 AIR SCW 1743*, the matter of minor defect has been decided. It may be summarized as under:

Where in an affidavit it was stated "no part thereof is false" instead of "I believe to be true", the Supreme Court held that the substance and the essence had been conveyed by the words used; both the phraseologies convey the same meaning; practically the same sense was conveyed and it was not such a defect which could entail dismissal of the election petition.

DOCTRINE OF IMPOSSIBILITY OF PERFORMANCE

The "doctrine of impossibility of performance" which is reflected in the following legal maxims which court apply in interpreting a statutory provision:

A l'impossible nul n'est tenu (No one is bound to do what is impossible; Nobody is expected to do the impossible);

Impossibilium nulla obligatio est (There is no obligation to perform impossible things);

Lex non cogit ad impossibilia (The law does not compel a man do to that which he cannot possibly perform);

Impotentia excusat legem (Impossibility excuses the law; The law excuses someone from doing the impossible; Impossibility is an excuse in the law).

Enactments which impose duties are subject to these maxims and are understood as dispensing with the performance of what is prescribed when performance of it is impossible. [8]

In Broom's Legal Maxims, 10th edition, page 162,163, the doctrine of impossibility is explained as follows:

A general rule which admits of ample practical illustration, that *impotentia excusat legem*; where the law creates a duty or charge, and the party is disabled to perform it, without default in him, and has no remedy over, there the law will in general excuse him; and though impossibility of performance is in general no excuse for not performing an obligation which a party has expressly undertaken by contract, yet when the obligation is one implied by law, impossibility of performance is a good excuse.

CASE LAW

In the case of *Raj Kumar Dey and Others vs Tarapada Dey and Others 1987 AIR 2195, 1988 SCR (1) 118,* where the arbitrators could not take back the award from the custody of the Court to take any further steps for its registration, the Supreme Court held that the entire period during which award remained in custody of Court should be excluded and it could not be said that they failed to get the award registered as the law required i.e. within period of four months.

7 J. P. Srivastava & Sons v. Gwalior Sugar Co. Ltd. [2004] 122 Com Cas 696 (SC)
8. Maxwell on the Interpretation of Statutes, 12th edition, page 326.

STRICT CONSTRUCTION OF PENAL STATUTES

Generally, penal provisions should be construed strictly.

But at the same time it is one of the settled principles of interpretation of statutes that when two interpretations are possible of a penal provision, that which is less onerous should be preferred.[9]

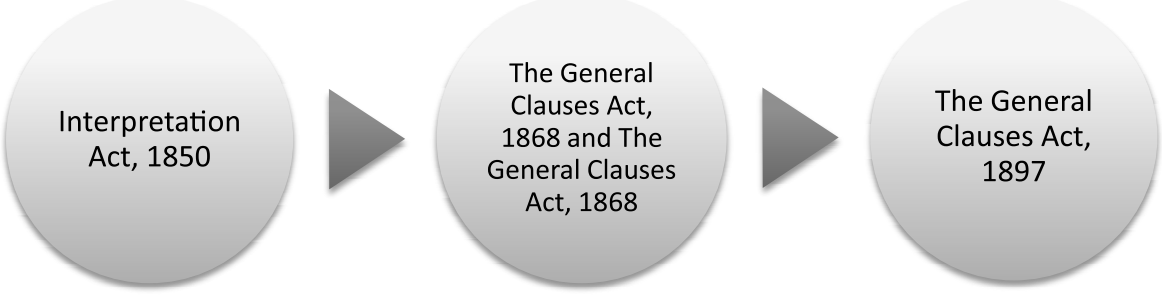
The rule of strict interpretation of penal statutes in favour of an accused may not be of rigid or universal application. It may be considered along with other well established rules of interpretation. When it is seen that the scheme and object of the statute are likely to be defeated by a strict interpretation, courts may endeavour to resort to that interpretation which furthers the object of the legislation.

Section 138 of the Act being a penal provision as is held in *Tolaram Relumal v. State of Bombay, AIR 1954 SC 496,* if two possible and reasonable constructions can be put on the said provision the court should lean towards that construction which would exempt the subject from the penalty rather than the one which would impose penalty.[10]

BRIEF OF GENERAL CLAUSE ACT, 1897

The General Clauses Act, 1897 is a consolidating Act. It consolidate the General Clauses Act, 1868 and the General Clauses Act, 1887. Before the enactment of the General Clauses Act, 1868, provisions of Interpretation Act, 1850 were followed. The provisions of that Act and certain additions were framed together and thus emerged the General Clauses Act, 1868. The object of the General Clauses Act, 1868 was to shorten the language used in the Acts of the Governor-General of India in Council. It contained only 8 sections.

The General Clauses Act, 1897 has been enacted with the aim and objective to provide a one single statute as a composite structure in defining different provisions as regards to the interpretation of words and legal principles which would better placed to be defined for the general application for various rules and regulations.



Importance of the General Clauses Act, 1897

The General Clauses Act 1897 belongs to the class of Acts which may be called as interpretation Acts. An interpretation Act lays down the basic rules as to how courts should interpret the provisions of an Act of Parliament. It also defines certain words or expressions so that there is no unnecessary repetition of the definition of those words in other Acts. The General Clauses Act is a consolidating as well as an extending measure. As a consolidating measure it did not purport to make any changes in the provisions of law repealed and reenacted by it. By reason of section 3, the Act becomes statutorily a part of every Central Act passed after 1897 and by its own force applies to the interpretation of every such enactment.

The Central Acts to which the General Clauses Act applies are:

(i) Acts of the Indian Parliament;

9. State of Madhya Bharat v. Hiralalji and another [1953] 23 Comp Cas 201
10. Smt. Sosamma vs Rajendran And Anr. 994 80 CompCas 503 Ker, 1993 CriLJ 2196

(ii) Acts of the Dominion Legislature passed between the 15th August, 1947 and the 26th January, 1950;

(iii) Acts passed before the commencement of the Constitution by the Governor-General in Council or the Governor-General acting in a legislative capacity.

CASE LAW

In the case of *Chief Inspector of Mines vs. K.C.Thapar, AIR 1961, SC 838, 843,* Supreme Court has observed that "Whatever the General Clauses Act say whether as regards the meaning of words or as regards legal principles, has to be read into every Act to which it applies."

Definitions

Section 3 is the principal section of the Act which contain definitions. The section applies to the General Clauses Act itself and to post- 1897 Central Acts and Regulations.

This section seeks to define phrases and terms commonly used in enactments and is intended to serve as a dictionary for the phrases and terms so used and the Courts are expected to look into this dictionary in the first instance for their interpretation. The reason why the definition section contains words like "unless there is anything repugnant in the subject or context". Ordinarily, terms defined in the section will have the same meaning in subsequent enactments which employ the same terms unless there is anything inconsistent with or repugnant to the context of the latter Act *(N. Subramania Iyer v. Official Receiver, AIR 1958 SC 1*).

Even when a definition given in an Act is exhaustive, it may have to be read differently in the context in which it occurs. That is why definition sections always begin with the words "unless the context otherwise requires" (which is another variation of the expression "unless there is anything repugnant in the subject or context"). It has been observed in cases like *Knightsbridge Estates Trust Ltd. v. Byrne & Co. (1940) AC 613* and *Choudhary Mohammed v. Sebait of Sri Sri Ishwar etc., AIR 1943 Cal. 36,* that the omission of words like "unless there is anything repugnant in the subject or context" may be of little import in certain cases because some such words would always be implied in statutes where the expressions which are interpreted by a definition clause are used in a number of section with meanings sometimes of a wide and sometimes of an obviously limited character.

Important provisions of General Clauses Act, 1897 (GCA) are as under:

1. **Applicability of the definitions to Central Laws:** The definitions for the following words provided in GCA apply also, unless there is anything repugnant in the subject or context, to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. The words are:

   "affidavit", "barrister", "District Judge", "father", "immovable property", "imprisonment", "Magistrate", "month", "movable "movable property", "oath", "person", "section", "son", "swear", "will", and "year".

   "abet", "Chapter", "commencement", "financial year", "local authority", "master", "offence", "part", "public nuisance", "registered", "schedule", "ship", "sign", "sub-section" and "writing".

2. **Applicability of the definitions to all Laws:** The following definitions in section 3 of the expressions shall apply, unless there is anything repugnant in the subject or context, to all Indian laws. The words are:

   "British India", "Central Act", "Central Government", "Chief Controlling Revenue Authority", "Chief Revenue Authority", "Constitution", "Gazette", "Government", "Government securities", "High Court", "India", "Indian Law", "Indian State", "merged territories", "Official Gazette", "Part A State", "Part B State", "Part C State", Provincial Government", "State" and "State Government".

3. **Revenues of the Central Government or of any State Government:** In any Indian law, references, by

whatever form of words, to revenues of the Central Government or of any State Government shall, on and from the first day of April, 1950, be construed as references to the Consolidated Fund of India or the Consolidated Fund of the State.

4. **Effect of repeal:** If GCA or any central Act or regulations repeals any enactment then, unless a different intention appears, the repeal shall not-

   (i) revive anything not in force or existing at the time at which the repeal takes effect.

   (ii) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder.

   (iii) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

   (iv) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed.

   (v) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.

   and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

5. **Repeal of Act making textual amendment in Act or Regulation:** If Central Act or Regulation repeals any enactment by which the text of any Central Act or Regulation was amended by the express omission, insertion or substitution, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.

6. **Revival of repealed enactment: I**t shall be necessary, for the purpose of reviving` either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

7. **Computation of time:** Where, by any Central Act or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

8. **Gender and number:** In all Central Acts and Regulations, unless there is anything repugnant in the subject or context,:

   (i) words importing the masculine gender shall be taken to include females; and

   (ii) words in the singular shall include the plural, and vice versa.

9. **Power to issue, to include power to add to, amend, vary or rescind:** Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

10. **Recovery of fines:** Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law, unless the Act, Regulation, rule or bye-law contains and express provision to the contrary.

11. **Provision as to offences punishable under two or more enactments:** where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

    According to the Supreme Court in *Baliah v. Rangachari, AIR 1969 SC 701*, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

12. **Meaning of service by post:** Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, where the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

READING METHODOLOGY OF THE COMPANIES ACT, 2013 AND ITS LEGAL AURA

The Companies Act, 2013 is not a standalone piece of legislation but a complete ecosystem. It contains Orders, Rules, Notifications and Circulars. One should read each Section of the Act, with relevant Rule, Notification and Circular.

The Act is a superior authority in law passed by the Legislature. Notifications and Rules are notified by the Executive under the powers derived from the Act itself.

Understanding the structure of Companies Act and the manner of identifying complementary legislations.

The Principal Legislation/Statute

Statute law is the body of law contained in Acts of Parliament. The Companies Act, 2013 is principal legislation.

Schedules- It is appended to an Act, to form part of it. They are generally added to avoid encumbering the statutes with matter of excessive details.

Delegated Legislations

Delegated legislation (subordinate legislation) is a legislation made under powers conferred by an Act of Parliament (an enabling statute, of ten called the parent Act). Here Parent Act is The Companies Act and the delegated legislations are Rules notified by Ministry of Corporate Affairs. Example Companies (Corporate Social Responsibility Policy) Rules 2014.

Rule, Regulation or By-Laws must not be *ultra-vires*, that is to say, if a power exists by statute to make rules, regulations, by laws, forms etc., that power must be exercised strictly in accordance with the provisions of the statute which confers the power, for a rule, etc.,if *ultra-vires* it will be held incapable of being enforced.

Before a Rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) It must confirm to the provision of statute under which it is framed; and (2) It must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rules so framed would be void.

Notifications/Circulars/Clarifications by Ministry of Corporate Affairs

A Notification means a notification published in the Official Gazette and the expression 'notify' and 'notified' shall be construed accordingly.

In *Bachu Lal vs. State-Allahabad High Court,* it was held that the words "notification, orders, rules and by-laws" have no reference to judicial orders the passing and cancellation whereof is subject to and regulated by the procedural law of the land.

The Ministry of Corporate Affairs (MCA) has been entrusted with the responsibility of administering the Companies Act, 2013 (Act). The MCA, from time to time, issues circulars and clarifications to clarify the provisions of the Act and the rules made thereunder (Rules).

The Circulars are issued by the Department interpreting a particular provision of the Act or the Rule in certain circumstances. The Companies Act, 2013 does not empower the Department to issue circular.

In a series of judicial decisions, the Supreme Court has consistently held that clarificatory circulars cannot amend or substitute statutory rules. But if the Act or the Rules are silent then the Government can issue clarifications to supplement the Rules by issuing instructions.

Notifications under Section 462 exempt certain companies from the applicable provision of the Act. At the time of reading a Section mentioned under an Exemption Notification dealing with a certain class of companies, one must read such Section in respect of that class of companies as amended by the Exemption Notification for that class. Exemption notifications effectively amend these Sections for the purpose of the class of companies with which the Exemption Notification deals.

The Central Government may amend schedules of the Act using power given under Section 467. Schedules must be read with the main Section.

Wherever a Section of the Companies Act, 2013 use words "*as may be prescribed*" it is an indication the Legislature has delegated powers to the Executive on that particular point. Section 469 empowers the Central Government to make rules for Sections which do not delegate such powers to the Central Government.

While provisions of the Act along with Exemption Notifications and Schedules, deals with the policy framework of the law; rules deals with the procedures. Rules cannot change policy framework in any manner and cannot override substantial provision of the Section empowering the Rules.

Secretarial Standards are standards prepared by Institute of Company Secretaries of India to standardize secretarial practices under the Companies Act and other areas related to Secretarial Practices. By virtue of Explanation to Section 205(1), secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government are part of law itself. Further Section 118(10) mandates that every company shall observe secretarial standards with respect to General and Board meetings.

This whole ecosystem is called the Companies Law and should be read collectively and comprehensive.

How to read and understand a Section?

The Companies Act, 2013 is to be read with relevant Rules, Schedules under Companies Act, Circulars/ Clarifications issued by Ministry of Corporate Affairs.

For example Section 135 (Relating to Corporate Social Responsibility) is to be read with the Companies (Corporate Social Responsibility Policy) Rules 2014, Schedule VII (Activities relating to Corporate Social Responsibility) and circulars/clarifications issued by Ministry of Corporate Affairs on Section 135 & Rules made thereunder.

Reading provisions of Companies Act, 2013 with delegated legislations

For example when you read sections relating to issue of capital you should read the sections with Companies (Share Capital and Debentures) Rules, Companies (Prospectus and Allotment of Securities) Rules. Besides, other legislative aspects including the provisions of SEBI Act, SEBI (ICDR) Regulations, SEBI (LODR) Regulations, provisions of Depositories Act for dematerialization provisions and even the provisions of FEMA when the shares are issued to non-residents, wherever applicable, are required to be read in collusion.

Breaking sections into parts and preparing notes for each section:

Company law is so wide that it cannot be easily remembered after only one reading. Students may make notes for each topic about sections, the genesis, amendments notified, reasons for amendments along with delegated legislation. They may also make notes on exemptions provided, exceptions and the reasons behind such exemptions/ exceptions. This will help in understanding the background of the provisions, the spirit of law and would help in remembering the provisions also. The exemptions provided for certain class of companies under Section 462 of Companies Act are provided in the e-book at MCA portal under respective sections.

Students may break the sections at relevant places and giving emphasis on critical words and read for getting more clarity.

For examples Section 2(6) deals with the Definition of "Associate Company" which may be read with the following breaks.

"associate company", in relation to another company ...../,

means a company in which that other company has a significant influence ...../,

but which is not a subsidiary company of the company having such influence and...../.

includes a joint venture company.

Explanation. – For the purpose of this clause, –

(a) the expression "significant influence" means control of at least twenty percent of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Thus the definition can be read by breaking at the places as indicated above, by understanding the terms 'joint venture company', 'significant influence' and the definition of subsidiary as mentioned in section 2(87).

Interpretations of some standard words and Phrases used in Statutes

"Proviso"- A clause, as in a document or statute, that begins with the words "Provided that" is called 'proviso'. The term 'proviso' is defined as a clause making some condition or stipulation; a clause in a statute, deed, or other legal document introducing a qualification or condition to some other provision, frequently the one immediately preceding the proviso itself.

It is well settled that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it."

"Notwithstanding anything contained"

Notwithstanding means, in spite of; without being opposed or prevented by; nevertheless; although, regardless of. A provision in a statute beginning with the words 'Notwithstanding anything contained' is called a 'non-obstante' provision and is generally used in a statute to give an overriding effect to a particular section or the

statute as a whole. A non-obstante clause is used in a statutory drafting to create an exception to or override the provision which this phrase follows.

"Subject to"*- The ordinary meaning of the phrase 'subject to' is being dependent upon; conditional upon; subordinate to; subservient to something else to happen or to be true; that on the condition of the provisions of the specified section being observed or complied with. It is used to express the intention that when while complying with one statutory provision, another provision relating to the subject matter also must be complied with.*

"Nothing contained in this section" shall apply

The phrase "Nothing in this section shall apply" or "Nothing contained in this section shall apply", is frequently used in legislative drafting. Literally, it means anything contained in the preceding part of the section would not apply in the situation stated in the provision that begins with this phrase.

"Without prejudice to the provisions contained in this Act/any other Act"

The phrase 'without prejudice' means without dismissing, damaging, or otherwise affecting; without detriment; harm. So when one provision says 'without prejudice to any other provision', it means that no other provision is affected by that provision or that other provisions remain unaffected. This is a qualifying phrase used in statutory drafting in a provision to protect the operation of another provision which it refers to. In other words, both the provisions operate independently.

"That is to say"

This phrase explains or clarifies the preceding word, phrase or expression.

"For the purposes of this section/provision/definition"

It has limited applicability; it apples to only the relevant section / provision/ definition but applies to the whole of it.

"As the case may be"- The phrase is used when in a provision two or more things are covered and the provision is applicable to both or all of them.

"Shall"-When used in a statute, the presumption is that its use is mandatory and not merely directory.

"May" is either permissive or directory.

LESSON ROUND-UP

- A statute normally denotes the Act enacted by the legislature. The object of interpretation in all cases is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used.
- The General Principles of Interpretation are Primary Rules and other Rules of Interpretation.
- The primary rules are:
  - Literal Construction
  - The Mischief Rule or Heydon's Rule
  - Rule of Reasonable Construction, i.e., *Ut Res Magis Valeat Quam Pereat*

  - Rule of Harmonious Construction
  - Rule of *Ejusdem Generis*
- Other Rules of Interpretation are:
  - *Expressio Unis Est Exclusio Alterius*
  - *Contemporanea Expositio Est Optima Et Fortissima in Lege*
  - *Noscitur a Sociis*
  - Strict and Liberal Construction
- Internal Aids in Interpretation are: Title; Preamble; Heading and Title of a Chapter; Marginal Notes; Interpretation Clauses; Proviso; Illustrations or Explanations; and Schedules.
- External Aids in Interpretation: Apart from the intrinsic aids, such as preamble and purview of the Act, the Court can consider resources outside the Act, called the extrinsic aids, in interpreting and finding out the purposes of the Act. There are: Parliamentary History; Reference to Reports of Committees; Reference to other Statutes; Dictionaries and Use of Foreign Decisions.
- Statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective. However, they are retrospective only if by express words or by necessary implication the Legislature has made them retrospective.
- The words "shall" or "may" used in a provision depends on the nature of compliance and gravity of non-compliance. The standard rule is that the provision containing 'shall' is mandatory and the provision containing 'may' is either permissive or discretionary.
- A clause, as in a document or statute, that begins with the words Provided that is called 'proviso'. The term 'proviso' is defined as a clause making some condition or stipulation; a clause in a statute, deed, or other legal document introducing a qualification or condition to some other provision.
- To ascertain the meaning of a section, it is not permissible to omit any part of it, the whole section must be read together and an attempt should be made to reconcile all the parts.
- While dealing with a taxing provision, the principle of 'strict interpretation' should be applied.
- The "doctrine of impossibility of performance" which is reflected in the legal maxims which court apply in interpreting a statutory provision
- The General Clauses Act 1897 belongs to the class of Acts which may be called as interpretation Acts. An interpretation Act lays down the basic rules as to how courts should interpret the provisions of an Act of Parliament.
- The Companies Act, 2013 is not a standalone piece of legislation but a complete ecosystem. It contains Orders, Rules, Notifications and Circulars. One should read each Section of the Act, with relevant Rule, Notification and Circular.

GLOSSARY

Statute Law: A Body of Law contained in Acts of the Parliament.

Delegated Legislation: A legislation made under the under powers conferred by an Act of parliament

Literal Construction: It is when the words, phrases and sentences of a statute are ordinarily to be understood in their natural, ordinary or popular and grammatical meaning unless such a construction leads to an absurdity or the content or object of the statute suggests a different meaning.

The Mischief Rule or Heydon's Rule: The construction which "shall suppress the mischief and advance the remedy".

Reasonable Construction: It means to have regard to the subject matter of the statute and the object which it is intended to achieve in place of the words construed in their ordinary meaning.

Harmonious Construction: A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. Discuss the need and object for interpretation of statutes.
2. Write notes on the following indicating their importance as an aid to interpretation of statutes:
   (i) Marginal Notes
   (ii) Interpretation clause.
3. What are the internal and external aids which could be taken into account while interpretation. Write short notes on:
   (i) Rule of Reasonable Construction, i.e., *Ut Res Magis Valeat Quam Pereat*
   (ii) The Mischief Rule or Heydon's Rule
4. Briefly discuss general principles of interpretation.
5. Explain the benefits of "Rule of Literal Interpretation".
6. Write a note on "Rule of *Ejusdem Generis"*.
7. Write a short note on reading methodology of the Companies Act, 2013.
8. Explain the importance of General Clauses Act, 1897.

LIST OF FURTHER READINGS

- Essential Rules of Interpretation of Statutes for Company Secretaries by CS (Dr.) K.R. Chandratre
  ICSI Publication
- Jagdish Swarup : Legislation and Interpretation
- Lawman's : General Clauses Act
- G.P. Singh : Principles of Statutory Interpretation; Wadhwa Publishing Company, Nagpur.
- B.M.Gandhi : Interpretation of Statutes; Eastern Book Company, 34, Lalbagh, Lucknow-226 001