

**Q. Discuss the rules of statutory interpretation with the help of decided cases. Explain - Literal Rule, Mischief Rule (aka Rule in Haydon's case), Golden Rule, Rule of Harmonious Construction, Nosciur a sociis, Ejusdem generis, Reddendo singul singuis. State the circumstances when these rules are applied by the courts.**

**Introduction**

Statutory interpretation is the process of interpreting and applying legislation to decide cases. Interpretation is necessary when case involves subtle or ambiguous aspects of a statute. Generally, the words of a statute have a plain and straightforward meaning. But in some cases, there may be ambiguity or vagueness in the words of the statute that must be resolved by the judge. The reason for ambiguity or vagueness of a legislation is the fundamental nature of language. It is not always possible to precisely transform the intention of the legislature into written words. Interpreting a statute to determine whether it applies to a given set of facts often boils down to analyzing whether a single word or short phrase covers some element of the factual situation before the judge. The expansiveness of language necessarily means that there will often be equally good or equally unconvincing arguments for two competing interpretations. A judge is then forced to resort to documentation of legislative intent, which may also be unhelpful, and then finally to his or her own judgment of what outcome is ultimately fair and logical under the totality of the circumstances. To find the meanings of statutes, judges use various tools and methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. In common law jurisdictions, the judiciary may apply rules of statutory interpretation to legislation enacted by the legislature or to delegated legislation such as administrative agency regulations.

Over time, various methods of statutory interpretation and construction have fallen in and out of favor. Some of the important rules of statutory interpretation are:

**1. Primary Rules -**

1. **Literal Rule (aka Plain Meaning Rule)** - It means that statutes are to be interpreted using the ordinary meaning of the language of the statute unless a statute explicitly defines some of its terms otherwise. In other words, the law must be read, word for word, and it should not divert from its true meaning.
2. **Mischief rule** - This rule attempts to determine the legislator's intention. Originating from a 16th century case in the United Kingdom, its main aim is to determine the "mischief and defect" that the statute in question has set out to remedy, and what ruling would effectively implement this remedy. **Smith vs. Hughes [1960] 2 All E.R. 859**
3. **Golden rule** - It is a compromise between the plain meaning (or literal) rule and the mischief rule. Like the plain meaning rule, it gives the words of a statute their plain, ordinary meaning. However, when this may lead to an irrational result that

is unlikely to be the legislature's intention, the judge can depart from this meaning. In the case of homographs, where a word can have more than one meaning, the judge can choose the preferred meaning. If the word only has one meaning, and applying this meaning would lead to a bad decision, the judge can apply a completely different meaning.

4. **Rule of Harmonious Construction** - when there are two provisions in a statute, which are in conflict with each other, they should be interpreted such that effect can be given to both and the construction which renders either of them inoperative and useless should not be adopted except in the last resort. **Bengal Immunity Co. vs. State of Bihar (1955) 6 STC 446 (SC).**
2. **Secondary Rules aka Rules of Language** -
  1. **Noscitur a sociis** - When a word is ambiguous, its meaning may be determined by reference to the rest of the statute.
  2. **Ejusdem Generis** - When a list of two or more specific descriptors are followed by more general descriptors, the otherwise wide meaning of the general descriptors must be restricted to the same class, if any, of the specific words that precede them e.g. vehicles in "cars, motor bikes, motor powered vehicles" would be interpreted in a limited sense and therefore cannot be interpreted as including air planes.
  3. **Reddendo Singula Singulis** - When a list of words has a modifying phrase at the end, the phrase refers only to the last word, e.g., firemen, policemen, and doctors in a hospital. Here, "in a hospital" only applies to doctors and not to firemen or policemen.

### **Literal Rule**

A statute often contains a "definitions" section, which explicitly defines the most important terms used in that statute. However, some statutes omit a definitions section entirely, or fail to define a particular term. The literal rule, which is also known as the plain meaning rule, attempts to guide courts faced with litigation that turns on the meaning of a term not defined by the statute, or on that of a word found within a definition itself. According to this rule, when a word does not contain any definition in a statute, it must be given its plain, ordinary, and literal meaning. If the word is clear, it must be applied, even though the intention of the legislature may have been different or the result is harsh or undesirable. The literal rule is what the law says instead of what the law means. This is the oldest of the rules of construction and is still used today, primarily because judges are not supposed to legislate. As there is always the danger that a particular interpretation may be the equivalent of making law, some judges prefer to adhere to the law's literal wording.

When the words of a Statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. In **J.P. Bansal v. State of Rajasthan 2003**, SC observed that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition, substitution, or removal of words or which results in rejection of words as meaningless has to be avoided. This is accordance with the case of **Crawford vs Spooner, 1846**, where privy council noted that the courts cannot aid the

legislature's defective phrasing of an Act, they cannot add or mend, and by construction make up for deficiencies which are left there.

In **Kannailala Sur vs Parammindhi Sadhu Khan 1957**, J Gajendragadkar says that if the words used in statute are capable of only one construction then it is not open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged objective and policy of the act..

In **M V Joshi vs M V Shimpi, AIR 1961**, relating to Food and Adulteration Act, it was contented that the act does not apply to butter made from curd. However, SC held that the word butter in the said act is plain and clear and there is no need to interpret it differently. Butter is butter whether made from milk or curd.

Thus, when the language of a provision is plain and clear, court cannot enlarge the scope of the provision by interpretive process. Further, a construction which requires for its support addition of words or which results in rejection of words as meaningless has to be avoided

### **Advantages**

1. Proponents of the plain meaning rule claim that it prevents courts from taking sides in legislative or political issues.
2. They also point out that ordinary people and lawyers do not have extensive access to secondary sources and thus depending on the ordinary meaning of the words is the safest route.
3. It encourages precision in drafting.

### **Disadvantages**

1. Opponents of the plain meaning rule claim that the rule rests on the erroneous assumption that words have a fixed meaning. Words are imprecise, leading justices to impose their own prejudices to determine the meaning of a statute. However, since little else is offered as an alternative discretion-confining theory, plain meaning survives.
2. Sometimes the use of the literal rule may defeat the intention of Parliament. For instance, in the case of **Whiteley vs Chappel (1868; LR 4 QB 147)**, the court came to the reluctant conclusion that Whiteley could not be convicted of impersonating "any person entitled to vote" at an election, because the person he impersonated was dead. Using a literal construction of the relevant statutory provision, the deceased was not "a person entitled to vote." This, surely, could not have been the intention of Parliament. However, the literal rule does not take into account the consequences of a literal interpretation, only whether words have a clear meaning that makes sense within that context. If Parliament does not like the literal interpretation, then it must amend the legislation.
3. It obliges the courts to fall back on standard common law principles of statutory interpretation. Legislation is drawn up with these principles in mind. However, these principles may not be appropriate to constitutional interpretation, which by its nature tends to lay down general principles. It is said that it seems wrong to parcel the Constitution as if it were a Finance Act.

4. Clearly, the literal approach has another disadvantage in that one judge's literal interpretation might be very different from another's. Casey says: "What may seem plain to one judge may seem perverse and unreal to another."
5. It ignores the limitations of language.
6. To place undue emphasis on the literal meaning of the words is to assume an unattainable perfection in draftsmanship.
7. Judges have tended excessively to emphasise the literal meaning of statutory provisions without giving due weight to their meaning in wider contexts.

### **Mischief Rule**

The Mischief Rule is used by judges in statutory interpretation in order to discover legislature's intention. It essentially asks the question: By creating an Act of Parliament what was the "mischief" that the previous or existing law did not cover and this act covers. This rule was developed by **Lord Coke** in **Sir John Heydon's Case, 1584**, where it was stated that there were four points to be taken into consideration when interpreting a statute:

1. What was the common law before the making of the act?
2. What was the "mischief or defect" for which the common law did not provide?
3. What remedy the parliament hath resolved and appointed to cure the disease of the commonwealth?
4. What is the true reason of the remedy?

The application of this rule gives the judge more discretion than the literal and the golden rule as it allows him to effectively decide on Parliament's intent. Legislative intent is determined by examining secondary sources, such as committee reports, treatises, law review articles and corresponding statutes. The rule was further illustrated in the case of **Smith v Hughes, 1960**, where under the Street Offences Act 1959, it was a crime for prostitutes to "loiter or solicit in the street for the purposes of prostitution". The defendants were calling to men in the street from balconies and tapping on windows. They claimed they were not guilty as they were not in the "street." The judge applied the mischief rule to come to the conclusion that they were guilty as the intention of the Act was to cover the mischief of harassment from prostitutes.

This rule is of narrower application than the golden rule or the plain meaning rule, in that it can only be used to interpret a statute and only when the statute was passed to remedy a defect in the common law. This rule has often been used to resolve ambiguities in cases in which the literal rule cannot be applied. As seen In **Smith v Hughes**, the mischief approach gave a more sensible outcome than that of the literal approach.

### **Advantages**

1. The Law Commission sees it as a far more satisfactory way of interpreting acts as opposed to the Golden or Literal rules.
2. It usually avoids unjust or absurd results in sentencing

### **Disadvantages**

1. It is seen to be out of date as it has been in use since the 16th century, when common law was the primary source of law and parliamentary supremacy was not established.
2. It gives too much power to the unelected judiciary which is argued to be undemocratic.
3. In the 16th century, the judiciary would often draft acts on behalf of the king and were therefore well qualified in what mischief the act was meant to remedy, however, such is not the case any more.

## **Golden Rule**

This rule of statutory interpretation allows a shift from the ordinary sense of a word(s) if the overall content of the document demands it. This rule is a modification of the literal rule. It states that if the literal rule produces an absurdity, then the court should look for another meaning of the words to avoid that absurd result. The rule was evolved by Parke B (who later became **Lord Wensleydale**) in **Becke v Smith, 1836** and in **Grey v Pearson, 1857**, who stated, "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument in which case the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency, but no farther."

It is a very useful rule in the construction of a statute as it allows to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case it allows the language to be varied or modified so as to avoid such inconvenience.

This rule may be used in **two ways**. It is applied most frequently in a narrow sense where there is some ambiguity or absurdity in the words themselves. For example, imagine there may be a sign saying "Do not use lifts in case of fire." Under the literal interpretation of this sign, people must never use the lifts, in case there is a fire. However, this would be an absurd result, as the intention of the person who made the sign is obviously to prevent people from using the lifts only if there is currently a fire nearby. This was illustrated in the case of **Lee vs Knapp 1967 QB** where the interpretation of the word "stop" was involved. Under Road Traffic Act, 1960, a person causing an accident "shall stop" after the accident. In this case, the driver stopped after causing the accident and then drove off. It was held that the literal interpretation of the word stop is absurd and that the requirement under the act was not fulfilled because the driver did not stop for a reasonable time so that interested parties can make inquiries from him about the accident.

The second use of the golden rule is in a wider sense, to avoid a result that is obnoxious to principles of public policy, even where words have only one meaning. **Bedford vs Bedford, 1935**, is another interesting case that highlighted the use of this rule. It concerned a case where a son murdered his mother and committed suicide. The courts were required to rule on who then inherited the estate, the mother's family, or the son's descendants. The mother had not made a will and under the Administration of Justice Act 1925 her estate would be inherited by her next of kin, i.e. her son. There was no ambiguity in the words of the Act, but the court was not prepared to let the son who had murdered his mother benefit from his crime. It was held that the literal rule should not apply and that the golden rule should be used to prevent the repugnant situation of the son inheriting. The court held that if the son inherits the estate that would amount

to profiting from a crime and that would be repugnant to the act.

Thus, the Golden rule implies that if a strict interpretation of a statute would lead to an absurd result then the meaning of the words should be so construed so as to lead to the avoidance of such absurdity. A further corollary to this rule is that in case there are multiple constructions to effect the Golden rule the one which favors the assessee should always be taken. This rule is also known as the Rule of **Reasonable Construction**.

### **Advantages**

1. This rule prevents absurd results in some cases containing situations that are completely unimagined by the law makers.
2. It focuses on imparting justice instead of blindly enforcing the law.

### **Disadvantages**

1. The golden rule provides no clear means to test the existence or extent of an absurdity. It seems to depend on the result of each individual case. Whilst the golden rule has the advantage of avoiding absurdities, it therefore has the disadvantage that no test exists to determine what is an absurdity.
2. This rule tends to let the judiciary overpower the legislature by applying its own standards of what is absurd and what it not.

### **The purposive approach**

This approach has emerged in more recent times. Here the court is not just looking to see what the gap was in the old law, it is making a decision as to what they felt Parliament meant to achieve. Lord Denning in the Court of Appeal stated in **Magor and St. Mellons Rural District Council v Newport Corporation, 1950**, "we sit here to find out the intention of Parliament and of ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment by opening it up to destructive analysis".

This attitude was criticised on appeal by the House of Lords. Lord Simmons called this approach "a naked usurpation of the legislative function under the thin disguise of interpretation". He went on to say that if a gap is disclosed, the remedy lies in an amending Act..

These comments highlight one issue with the purposive approach. How Parliament's intentions can be determined and whether judges should really be refusing to follow the clear words of Parliament. The purposive approach is one used by most continental European countries when interpreting their own legislation. It is also the approach which is taken by the European Court of Justice in interpreting EU law.



Since the United Kingdom became a member of the European Economic Community in 1973, the influence of the European preference for the purposive approach has affected the English courts in a number of ways. First, the courts have been required to accept that, from 1973, the purposive approach has to be used when deciding on EU matters. Second, as they use the purposive approach for EU law they are becoming accustomed to using it and more likely to use it to interpret domestic law. One example is *Pickstone v Freemans plc* (1998). Here, women warehouse operatives were paid the same as male warehouse operatives. However, Miss Pickstone claimed that the work of the warehouse operatives was of equal value to that done by male warehouse checkers who were paid £1.22 per week more than they were. The employers argued that a woman warehouse operative was employed on like work to the male warehouse operatives, so she could not bring a claim under section 1(2) (c) of the 1970 statute for work of equal value. This was a literal interpretation of the 1970 statute. The House of Lords decided that the literal approach would have left the United Kingdom in breach of its treaty obligations to give effect to an EU directive. It therefore used the purposive approach and stated that Miss Pickstone was entitled to claim on the basis of work of equal value even though there was a male employee doing the same work as her.

### **Noscitur a Sociis**

Noscere means to know and sociis means association. Thus, Noscitur a Sociis means knowing from association. Thus, under the doctrine of "noscitur a sociis" the questionable meaning of a word or doubtful words can be derived from its association with other words within the context of the phrase. This means that words in a list within a statute have meanings that are related to each other. If multiple words having similar meaning are put together, they are to be understood in their collective meaning. According to Maxwell, "this rule means that when two or more words susceptible to analogous meaning are clubbed together, they are understood to be used in their cognate sense. They take as it were their colour from each other, i.e. the more general is restricted to a sense analogous to a less general".

This doctrine is broader than the doctrine of **eiusdem generis** because this rule puts the words in context of the whole phrase and not just in relation to the nearby words. The language of the phrase can be used as a guide to arrive at the true meaning of the word. This rule is illustrated in **Foster v Diphwys Casson (1887) 18 QBD 428**, involving a statute which stated that explosives taken into a mine must be in a "case or canister". Here the defendant used a cloth bag. The courts had to consider whether a cloth bag was within the definition. Under Noscitur a sociis, it was held that the bag could not have been within the statutory definition, because parliament's intention was referring to a case or container of the same strength as a canister.

In **State of Assam vs R Muhammad AIR 1967**, SC made use of this rule to arrive at the meaning of the word "posting" used in Article 233 (1) of the Constitution. It held that since the

word "posting" occurs in association with the words "appointment" and "promotion", it took its colour from them and so it means "assignment of an appointee or a promotee to a position" and does not mean transfer of a person from one station to another.

Noscitur a sociis is only a rule of construction and it cannot be used when it is clear that the word with wider meaning is deliberately used in order to increase the scope. It can only be used when the intention of the legislature in using a word with wider sense along with the words with narrower meaning is not clear. Further, this rule can only be used when the associated words have analogous meaning. It cannot be used when the words have disjoint meanings. For example, in the case of **Lokmat Newspapers vs Shankarprasad AIR 1999**, it was held that the words "discharge" and "dismissal" do not have the same analogous meaning and so this rule cannot be applied.

### **Ejusdem Generis**

The ejusdem generis, or 'of the same genus' rule, is similar though narrower than the more general rule of noscitur a sociis. It operates where a broad or open-ended term appears following a series of more restrictive terms in the text of a statute. Where the terms listed are similar enough to constitute a class or genus, the courts will presume, in interpreting the general words that follow, that they are intended to apply only to things of the same genus as the particular items listed. According to this rule, when particular words pertaining to a class or a genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified by the class or the genus. The meaning of an expression with wider meaning is limited to the meaning of the preceding specific expressions. However, for this rule to apply, the preceding words must form a specific class or genus. Further, this rule cannot be applied in the words with a wider meaning appear before the words with specific or narrow meaning. In **UP State Electricity Board vs Harishankar, AIR 1979**, SC held that the following conditions must exist for the application of this rule -

1. The statute contains an enumeration of specific words
2. The subject of the enumeration constitute a class or a category
3. The class or category is not exhausted by the enumeration
4. A general term is present at the end of the enumeration
5. There is no indication of a different legislative intent

**Justice Hidayatullah** explained the principles of this rule through the following example - In the expression, "books, pamphlets, newspapers, and other documents", private letters may not be held included if "other documents" be interpreted ejusdem generis with what goes before. But in a provision which reads, "newspapers or other documents likely to convey secrets to the enemy", the words "other documents" would include documents of any kind and would not take their meaning from newspaper.



This was also illustrated in the case of **Ishwar Singh Bagga vs State of Rajasthan 1987**, where the words "other person", in the expression "any police officer authorized in this behalf or any other person authorized in this behalf by the State government" in Section 129 of Motor Vehicles Act, were held not to be interpreted ejusdem generis because the mention of a single species of "police officers" does not constitute a genus.

It can be seen that this rule is an exception to the rule of construction that general words should be given their full and natural meaning. It is a canon of construction like many other rules that are used to understand the intention of the legislature.

This rule also covers **The rank principle**, which goes as follows - Where a string of items of a certain rank or level is followed by general residuary words, it is presumed that the residuary words are not intended to include items of a higher rank than those specified. By specifying only items of lower rank the impression is created that higher ranks are not intended to be covered. If they were, then their mention would be expected a fortiori. For example, the phrase "tradesman, artificer, workman, labourer, or other person whatsoever" was held not to include persons above the artisan class. Similarly, the phrase "copper, brass, pewter, and tin, and all other metals" in a local Act of 1825 was held not to include precious metals such as gold and silver.

### **Reddendo Singula Singulis**

The reddendo singula singulis principle concerns the use of words distributively. Where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech. A typical application of this principle is where a testator says 'I devise and bequeath all my real and personal property to B'. The term devise is appropriate only to real property. The term bequeath is appropriate only to personal property. Accordingly, by the application of the principle reddendo singula singulis, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'.

This rule has been applied in the case of **Koteshwar Vittal Kamat vs K Rangappa Baliga, AIR 1969**, in the construction of the Proviso to Article 304 of the Constitution which reads, "Provided that no bill or amendment for the purpose of clause (b), shall be introduced or moved in the legislature of a state without the previous sanction of the President". It was held that the word introduced applies to bill and moved applies to amendment.

## **Q. Explain - Generalia specialibus non derogant, utres magis valeat quan pareat, expressum facit cessare tacitum**

### **Generalia specialibus non derogant**

Where there is a special provision specifically dealing with a subject, a general provision, howsoever widely worded must yield to the former. This principle is expressed by the maxim *Generalia specialibus non derogant*.

The aforesaid rule of construction was applied by the Supreme Court in **Venkataramana Devaru Vs State of Mysore, AIR 1958**. In that case the Supreme Court applied the rule to resolve conflict between **Article 25 (2)(b)** and **26 (b)** of the Constitution. It was held that the right of every religious denomination or any Section thereof to manage its own affairs in matter of religion is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institution of a public character to all classes and sections of Hindus.

Article 25. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Article 26. Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

In **State of Gujarat Vs. Ramji Bhai, AIR 1979** Supreme Court taking note of the principle observed as follows:

“ *Generalia Specialibus non derogant* is a cardinal principle of interpretation. It means that the general provisions must always yield to the special provisions. Construed in accordance with this fundamental principle, the special class of unregistered dealer covered by Section 33 (6) must be taken to have been excluded from the purview of the general provisions in Section 35. Thus considered, it is clear that the case of an unregistered dealer who evades tax by committing the double default specified in Section 33(6), action can be taken only under that Section and not under Section 35”.

Thus, it is well settled that if a special provision is made on a certain matter, that matter is

excluded from the general provision. In the event of conflict between a general and a special provision, the latter must prevail. Differently stated the principle is that general words in a Statute should not be held to repeal or rip up a specific provision upon a particular matter. A general rule though stated in wide terms must be taken to be not interfering with matters covered by a special provision.

**In South India Corporation (P) Ltd. Vs Secretary, Board of Revenue, Trivendrum AIR 1964**, it was held that the general provision under **Article 372** of the Constitution regarding continuance of existing laws is subject to **Article 277** of the Constitution, which is a special provision relating to taxes, duties, cesses or fees lawfully levied at the commencement of the Constitution. In this regard, the Supreme Court observed as follows:-

“With this background let u now consider the following two questions raised before us: (i) whether Article 372 of the Constitution is subject to Article 277 thereof; and (ii) whether Article 372 is subject to Article 278 thereof. Article 372 is a general provision; and Article 277 is a special provision. It is settled law that special provision should be given effect to the extent of its scope, leaving the general provision to control cases where the special provision does not apply. The earlier discussion makes it abundantly clear that the constitution gives a separate treatment to the subject of finance and Article 277 saves the existing taxes etc. levied by states, if the conditions mentioned therein are complied with. While Article 372 saves all pre-Constitution valid laws, Article 277 is confined only to taxes, duties, cesses or fees lawfully levied immediately before the Constitution. Therefore, Article 372 cannot be construed in such a way as to enlarge the scope of the savings of taxes, duties, cesses or fees. To state it differently, Article 372 must be read subject to Article 277. We have already held that an agreement can be entered into between the Union and the States in terms of Article 278 abrogating or modifying the power preserved to the State under Article 277”.

**In Gujarat State Co-operative Land Development Bank Vs P.R. Mankad, (1979)**, the Supreme Court applying the maxim *generalia specialibus non-derogant* held that a general provision must yield to the special provision. **Lord Hobhouse in Barker Vs Edgar (1898) AC 749** opined that when the legislature had given its consent to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly.

### **Ut res magis valeat quam pereat**

Literal meaning - Such a construction is to be made that lets the thing have effect rather than let it fail. Aka Rule of Effectiveness.

**Avtar Singh vs State of Punjab, AIR 1955 SC 1107 166** - Appellant was convicted of theft of electricity under Section 39 of Electricity Act, 1990. He contented that the proceeding were illegal because they were not initiated by any of the persons as mandated by Section 50 of the act. It was held that under this principle, the requirement of Section 50 should be given effect.

**Corporation of Calcutta vs Liberty Cinema, AIR 1965 SC 661 170** -

Under a. 413 of the Calc

Q. What do you understand by Beneficial Construction?

Explain the statement, "Beneficial construction is a tendency rather than a rule".

A general rule of interpretation is that if a word used in a statute excludes certain cases in its common meaning, it should not be constrained unnecessarily to include those cases. An exception to this rule is that when the objectives of the statute are not met by excluding the cases, then the word may be interpreted extensively so as to include those cases. However, when a word is ambiguous i.e. if it has multiple meanings, which meaning should be understood by that word? This is the predicament that is resolved by the principle of Beneficial Construction. When a statute is meant for the benefit of a particular class, and if a word in the statute is capable of two meanings, one which would preserve the benefits and one which would not, then the meaning that preserves the benefit must be adopted. It is important to note that omissions will not be supplied by the court. Only when multiple meanings are possible, can the court pick the beneficial one. Thus, where the court has to choose between a wider mean that carries out the objective of the legislature better and a narrow meaning, then it usually chooses the former. Similarly, when the language used by the legislature fails to achieve the objective of a statute, an extended meaning could be given to it to achieve that objective, if the language is fairly susceptible to the extended meaning. This is quite evident in the case of B Shah vs Presiding Officer, AIR 1978, where Section 5 of Maternity Benefits Act, 1961 was in question, where an expectant mother could take 12 weeks of maternity leave on full salary. In this case, a woman who used to work 6 days a week was paid for only  $6 \times 12 = 72$  days instead of  $7 \times 12 = 84$  days. SC held that the words 12 weeks were capable of two meanings and one meaning was beneficial to the woman. Since it is a beneficial legislation, the meaning that gives more benefit to the woman must be used.

It is said by MAXWELL, that Beneficial Construction is a tendency and not a rule. The reason is that this principle is based on human tendency to be fair, accommodating, and just. Instead of restricting the people from getting the benefit of the statute, Court tends to include as many classes as it can while remaining faithful to the wordings of the statute. For example, in the case of Alembic Chemical Works vs Workmen AIR 1961, an industrial tribunal awarded more number of paid leaves to the workers than what Section 79(1) of Factories Act recommended. This was challenged by the appellant. SC held that the enactment being a welfare legislation for the workers, it had to be beneficially constructed in the favor of worker and thus, if the words are capable of two meanings, the one that gives benefit to the workers must be used.

Similarly, in U Unichoyi vs State of Kerala, 1963, the question was whether setting of a minimum wage through Minimum Wages Act, 1948 is violative of Article 19 (1) (g) of the constitution because the act did not define what is minimum wage and did not take into account the capacity of the employer to pay.

It was held that the act is a beneficial legislation and it must be construed in favor of the worker. In an under developed country where unemployment is rampant, it is possible that workers may become ready to work for extremely low wages but that should not happen.

Q. What do you understand by Strict Construction? If there is an ambiguity in a word in a penal statute, what interpretation should be given and why? Explain why a taxing statute should be strictly constructed?

#### Strict Construction

Strict construction refers to a particular legal philosophy of judicial interpretation that limits or restricts judicial interpretation. Strict construction requires the court to apply the text as it is written and no further, once the meaning of the text has been ascertained. That is, court should avoid drawing inference from a statute or constitution. It is important to note that court may make a construction only if the language is ambiguous or unclear. If the language is plain and clear, a judge must apply the plain meaning of the language and cannot consider other evidence that would change the meaning. If, however, the court finds that the words produce absurdity, ambiguity, or a literalness never intended, the plain meaning does not apply and a construction may be made. Strict construction occurs when ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implications are made. Strict construction is the opposite of liberal construction, which permits a term to be reasonably and fairly evaluated so as to implement the object and purpose of the document.

#### Applicability in Penal Statutes

A Penal Statute must be constructed strictly. This means that a criminal statute may not be enlarged by implication or intent beyond the fair meaning of the language used or the meaning that is reasonably justified by its terms. It is fundamentally important in a free and just society that Law must be readily ascertainable and reasonably clear otherwise it is oppressive and deprives the citizen of one of his basic rights. An imprecise law can cause unjustified convictions because it would not be possible for the accused to defend himself against uncertainties. Therefore, an accused can be punished only if his act falls clearly into the four corners of the law without resorting to any special meaning or interpretation of the law. For example, in *Seksaria Cotton Mills vs State of Bombay*, 1954, SC held that in a penal statute, it is the duty of the Courts to interpret the words of ambiguous meaning in a broad and liberal sense so that they do not become traps for honest unlearned and unwary men. If there is honest and substantial compliance with an array of puzzling directions that should be enough, even if on some hyper critical view of the law other ingenious meanings can be devised.

If a penal provision is capable of two reasonably possible constructions, then the one that exempts the accused from penalty must be used rather than the one that does not. Whether a particular

construction achieves the intention of the statute or not is not up to the court to think about in case of penal statutes. It is not apt for the court to extend the scope of a mischief and to enlarge the penalty. It is not competent for the court to extend the meaning of the words to achieve the intention of the legislature. If a penal provision allows accused to go scot-free because of ambiguity of the law, then it is the duty of the legislature and not of the courts to fix the law. Unless the words of a statute clearly make an act criminal, it cannot be construed as criminal. *Chinubhai vs State of Bombay*, AIR 1960, is an important case in this respect. In this case, several workers in a factory died by inhaling poisonous gas when they entered into a pit in the factory premises to stop the leakage of the gas from a machine. The question was whether the employer violated section 3 of the Factories Act, which says that no person in any factory shall be permitted to enter any confined space in which dangerous fumes are likely to be present. The Supreme Court, while construing the provision strictly, held that the section does not impose an absolute duty on the employer to prevent workers from going into such area. It further observed that the fact that some workers were present in the confined space does not prove that the employer permitted them to go there. The prosecution must first prove that the workers were permitted to enter the space to convict the accused.

#### Applicability in Taxing Statutes

Tax is the money collected from the people for the purposes of public works. It is a source of revenue for the government. It is the right of the govt to collect tax according to the provisions of the law. No tax can be levied or collected except by the authority of law. In general, legislature enjoys wide discretion in the matter of taxing statutes as long as it satisfies the fundamental principle of classification as enshrined in Article 14. A person cannot be taxed unless the language of the statute unambiguously imposes the obligation without straining itself. In that sense, there is no reason why a taxing statute must be interpreted any differently from any other kind of statute. Indeed, SC, in the case of *CIT vs Shahazada Nand and Sons*, 1966, observed that the underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than any notions which be entertained by the Courts as to what is just or expedient. In construing a statutory provision the first and foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.

Lord Russel in *Attorney General vs Calton Ban*, 1989, illustrated categorically as, "I see no reason why special canons of construction should be applied to any act of parliament and I know of no authority for saying that a taxing statute is to be construed differently from any other act."

However, as with any statute, a fiscal or taxing statute is also susceptible to human errors and impreciseness of the language. This may cause ambiguity or vagueness in its provisions. It is in such cases, the task of constructing a statute becomes open to various methods of construction. Since a person is compulsorily parted from his money due to tax, imposition of a tax is considered a type of



imposition of a penalty, which can be imposed only if the language of the provision unequivocally says so. This means that a taxing statute must be strictly constructed. The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement in *Cape Brandy Syndicate v I.R.C.* - "In a taxing statute one has to look merely at what is clearly said. There is no room for any intention. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used." If by any reasonable meaning of the words, it is possible to avoid the tax, then that meaning must be chosen. There is no scope for any inference or induction in constructing a taxing statute. There is no room for suppositions as to "spirit" of the law or by way of "inference". When the provision is reasonably open to only one meaning then it is not open to restrictive construction on the ground that the levy of tax, is oppressive, disproportionate, unreasonable or would cause hardship. There is no room for such speculation. The language must be explicit. Similarly, penalty provision in a taxing statute has to be specifically provided and cannot be inferred.

In *A. V. Fernandes vs State of Kerala*, AIR 1957, the Supreme Court stated the principle that 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 does not fall 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.

This does not mean that equity and taxation are complete strangers. For example, in the case of *CIT vs J H Kotla Yadgiri*, 1985, SC held that since the income from business of wife or minor child is includable as income of the assessee, the profit or loss from such business should also be treated as the profit or loss from a business carried on by him for the purpose of carrying forward and set-off of the loss u/s. This interpretation was based on equity. However, it does not permit any one to take the benefit of an illegality. This is illustrated in the case of *CIT vs Kurji Jinabhai Kotecha*, AIR 1977, where Section .24(2) of IT Act was constructed as not to permit assessee to carry forward the loss of an illegal speculative business for setting it off against profits in subsequent years. This proves that even a taxing statute should be so construed as to be consistent with morality avoiding a result that gives recognition to continued illegal activities or benefits attached to it.

The rule of strict construction applies primarily to charging provisions in a taxing statute and has no application to a provision not creating a charge but laying down machinery for its calculation or procedure for its collection. Thus, strict construction would not come in the way of requiring a person claiming an exemption. The provisions of exemptions are interpreted beneficially.

**Q. Discuss the principles of Constitutional Interpretation. Explain, "In the interpretation of constitution, the judicial approach should be dynamic than static, pragmatic than**

## **pedantic, and elastic than rigid". Describe - Harmonious Construction, Doctrine of Pith and Substance, Colourable Legislation, Proviso, Doctrine of Eclipse, Principle of separation. What is the proper function of a proviso? Can it affect the enacting portion of a section as well?**

### **Introduction**

Constitution is the supreme and fundamental law of our country. Since it is written in the form of a statute, the general principles of statutory interpretation are applicable to interpretation of the constitution as well. As is the case with any other statute, the court tries to find out the intention of the framers of the constitution from the words used by them. For example, in the case of **State of Bihar vs Kameshwar Singh AIR 1952**, SC used one of the standard principles of interpretation that where more than one reasonable interpretation of a constitutional provision are possible, that which would ensure a smooth and harmonious working of the constitution shall be accepted rather than the one that would lead to absurdity or give rise to practical inconvenience, or make well existing provisions of existing law nugatory, while interpreting the constitution. However, even if an argument based on the spirit of the constitution is very attractive, it must be validated with the spirit of the constitution as reflected by the words of the constitution. In the same case mentioned above, SC observed that spirit of the constitution cannot prevail if the language of the constitution does not support that view.

It is important to note that the constitution itself endorses the general principles of interpretation through **Article 367(1)**, which states that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of this constitution as it applies for the interpretation of an act of the legislature. Courts have ruled in cases such as **Jugmendar Das vs State 1951**, that not only the general definitions given in General Clauses Act, but also the general rules of construction given therein are applicable to the constitution.

Having said the above, the fact remains that Constitution is a special act. It is a fact that every provision of the constitution is constitutional and no part of it can be held unconstitutional. This casts an important duty on the interpreters of the constitution to interpret its provisions such that the spirit of the constitution is not maligned. In **Keshvananda Bharati vs State of Kerala, AIR 1973**, SC identified the basic structure of the constitution that reflects its true spirit and held that nothing that hurts the basic structure of the constitution, is constitutional. In the same case, SC held that one should give the freedom to the parliament to enact laws that ensure that the blessings of liberty be shared with all, but within the framework of the constitution. It is necessary towards that end that the constitution should not be construed in a narrow and pedantic sense.

The letters of the constitution are fairly static and not very easy to change but the laws enacted by the legislature reflect the current state of people and are very dynamic. To ensure that the new laws are consistent with the basic structure of the constitution, the constitution must be interpreted in broad and liberal manner giving affect to all its parts and the presumption must be that no conflict or repugnancy was intended by its framers. Applying the same logic, the

provisions relating to fundamental rights have been interpreted broadly and liberally in favor of the subject. Similarly, various legislative entries mentioned in the Union, State, and Concurrent list have been construed liberally and widely.

The following are some of the key principles applied specially in interpreting the provisions of the constitution -

1. Principle of Harmonious construction
2. Doctrine of pith and substance
3. Doctrine of Colourable legislation
4. Principle of Ancillary powers
5. Principle of Occupied field
6. Residuary power
7. Doctrine of repugnancy
8. Principle of Territorial Nexus
9. Doctrine of stare decisis
10. Doctrine of prospective overruling

### **Principle of Harmonious Construction**

The principle of harmonious interpretation is similar to the idea of broad or purposive approach. The key to this method of constitutional interpretation is that provisions of the Constitution should be harmoniously interpreted. As per Kelly:

“Constitutional provisions should not be construed in isolation from all other parts of the Constitution, but should be construed as to harmonize with those other parts.” A provision of the constitution must be construed and considered as part of the Constitution and it should be given a meaning and an application which does not lead to conflict with other Articles and which confirms with the Constitution’s general scheme. When there are two provisions in a statute, which are in apparent conflict with each other, they should be interpreted such that effect can be given to both and that construction which renders either of them inoperative and useless should not be adopted except in the last resort.

This principle is illustrated in the case of **Raj Krishna vs Binod AIR 1954**. In this case, two provisions of Representation of People Act, 1951, which were in apparent conflict were brought forth. Section 33 (2) says that a Government Servant can nominate or second a person in election but section 123(8) says that a Government Servant cannot assist any candidate in election except by casting his vote. The Supreme Court observed that both these provisions should be harmoniously interpreted and held that a Government Servant was entitled to nominate or second a candidate seeking election in State Legislative assembly. This harmony can only be achieved if Section 123(8) is interpreted as giving the govt. servant the right to vote as well as to nominate or second a candidate and forbidding him to assist the candidate in any other manner.

Upon looking at various cases, the following important aspects of this principle are evident -

1. The courts must avoid a head on clash of seemingly contradicting provisions and they must construe the contradictory provisions so as to harmonize them.

2. The provision of one section cannot be used to defeat the provision contained in another unless the court, despite all its effort, is unable to find a way to reconcile their differences.
3. When it is impossible to completely reconcile the differences in contradictory provisions, the courts must interpret them in such a way so that effect is given to both the provisions as much as possible.
4. Courts must also keep in mind that interpretation that reduces one provision to a useless number or a dead letter, is not harmonious construction.
5. To harmonize is not to destroy any statutory provision or to render it otiose.

### **Doctrine of Pith and Substance**

Pith means "true nature" or "essence" and substance means the essential nature underlying a phenomenon. Thus, the doctrine of pith and substance relates to finding out the true nature of a statute. This doctrine is widely used when deciding whether a state is within its rights to create a statute that involves a subject mentioned in Union List of the Constitution. The basic idea behind this principle is that an act or a provision created by the State is valid if the true nature of the act or the provision is about a subject that falls in the State list. The case of **State of Maharashtra vs F N Balsara AIR 1951** illustrates this principle very nicely. In this case, the State of Maharashtra passed Bombay Prohibition Act that prohibited the sale and storage of liquor. This affected the business of the appellant who used to import liquor. He challenged the act on the ground that import and export are the subjects that belong in Union list and state is incapable of making any laws regarding it. SC rejected this argument and held that the true nature of the act is prohibition of alcohol in the state and this subject belongs to the State list. The court looks at the true character and nature of the act having regard to the purpose, scope, objective, and the effects of its provisions. Therefore, the fact that the act superficially touches on import of alcohol does not make it invalid.

Thus, as held in **State of W Bengal vs Kesoram Industries, 2004**, the courts have to ignore the name given to the act by the legislature and must also disregard the incidental and superficial encroachments of the act and has to see where the impact of the legislation falls. It must then decide the constitutionality of the act.

### **Principle of Incidental or Ancillary Powers**

This principle is an addition to the doctrine of Pith and Substance. What it means is that the power to legislate on a subject also includes power to legislate on ancillary matters that are reasonably connected to that subject. It is not always sufficient to determine the constitutionality of an act by just looking at the pith and substance of the act. In such cases, it has to be seen whether the matter referred in the act is essential to give effect to the main subject of the act. For example, power to impose tax would include the power to search and seizure to prevent the evasion of that tax. Similarly, the power to legislate on Land reforms includes the power to legislate on mortgage of the land. However, power relating to banking cannot be extended to

include power relating to non-banking entities. However, if a subject is explicitly mentioned in a State or Union list, it cannot be said to be an ancillary matter. For example, power to tax is mentioned in specific entries in the lists and so the power to tax cannot be claimed as ancillary to the power relating to any other entry of the lists.

As held in the case of **State of Rajasthan vs G Chawla AIR 1959**, the power to legislate on a topic includes the power to legislate on an ancillary matter which can be said to be reasonably included in the topic.

The underlying idea behind this principle is that the grant of power includes everything necessary to exercise that power. However, this does not mean that the scope of the power can be extended to any unreasonable extent. Supreme Court has consistently cautioned against such extended construction. For example, in **R M D Charbaugwala vs State of Mysore, AIR 1962**, SC held that betting and gambling is a state subject as mentioned in Entry 34 of State list but it does not include power to impose taxes on betting and gambling because it exists as a separate item as Entry 62 in the same list.

### **Doctrine of Colourable Legislation**

This doctrine is based on the principle that what cannot be done directly cannot be done indirectly. In other words, if the constitution does not permit certain provision of a legislation, any provision that has the same effect but in a round about manner is also unconstitutional. This doctrine is found on the wider doctrine of "fraud on the constitution". A thing is Colourable when it seems to be one thing in the appearance but another thing underneath. **K C Gajapati Narayan Deo vs State of Orissa, AIR 1953** is a famous case that illustrates the applicability of this doctrine. In this case, SC observed that the constitution has clearly distributed the legislative powers to various bodies, which have to act within their respective spheres. These limitations are marked by specific legislative entries or in some cases these limitations are imposed in the form of fundamental rights of the constitution. Question may arise whether while enacting any provision such limits have been transgressed or not. Such transgression may be patent, manifest or direct. But it may also be covert, disguised, or indirect. It is to this later class of transgression that the doctrine of colourable legislation applies. In such case, although the legislation purports to act within the limits of its powers, yet in substance and in reality, it transgresses those powers. The transgression is veiled by mere pretense or disguise. But the legislature cannot be allowed to violate the constitutional prohibition by an indirect method. In this case, the validity of Orissa Agricultural Income Tax (Amendment) Act 1950 was in question. The argument was that it was not a bona fide taxation law but a colourable legislation whose main motive was to artificially lower the income of the intermediaries so that the state has to pay less compensation to them under Orissa Estates Abolition Act, 1952. SC held that it was not colourable legislation because the state was well within its power to set the taxes, no matter how unjust it was. The state is also empowered to adopt any method of compensation. The motive of the legislature in enacting a

law is totally irrelevant.

A contrasting case is of **K T Moopil Nair vs State of Kerala, AIR 1961**. In this case, the state imposed a tax under Travencore Cochin Land Tax Act, 1955, which was so high that it was many times the annual income that the person was earning from the land. The SC held the act as violative of Articles 14 and 19(1)(f) in view of the fact that in the disguise of tax a person's property was being confiscated.

Similarly, in **Balaji vs State of Mysore, AIR 1963**, SC held that the order reserving 68% of the seats for students belonging to backward classes was violative of Article 14 in disguise of making a provision under Article 15(4).