# THE
# LAW OF EVIDENCE

## HISTORY OF THE LAW OF EVIDENCE IN INDIA

A brief history of the Law of Evidence in India before the passing of the Indian Evidence Act, will show the object and necessity for a codified law of Evidence in this country.

*The Law In The Presidency Towns.*—Before the introduction of the Indian Evidence Act, there was no complete or systematic enactment on the subject. Within the Presidency towns of Calcutta, Bombay and Madras, the courts established by Royal Charter followed the English rules of Evidence. The Common and Statute laws of England before 1726, were introduced in the Presidency Towns by the Charter of that year.[1]

*The Law In The Mofussil.*—Outside the Presidency Towns, there were no fixed rules of evidence. The law was vague and indefinite. The mofussil courts used to be guided by occasional directions and a few rules regarding evidence and procedure contained in the old Regulations made between 1793-1834. Vague customary law also prevailed in some part of the country. In the following case[2] decided in 1866, PEACOCK C.J., laid down that the English Law of Evidence was not the law of the mofussil courts and it was further held that the rules of evidence contained in the Hindu and Mahomedan laws were also not applicable to those courts. There being no definite and fixed rules of evidence, the administration of the law of evidence in the mofussil was far from being satisfactory.

*Attempt Towards Reform And The Passing Of Successive Acts Improve The Law.*—The first attempt towards reform was Act 10 of 1835 which was applicable to all Courts in British India and dealt with the proof of the Acts of the Governor-General in Council.[3] Between 1835 and 1853, a series of Acts were passed by the Indian Legislature, introducing some reforms for the improvement of the Law of Evidence, *viz.* Acts 10 of 1835, 20 of 1837, 9 of 1840, 7 of 1844, 15 of 1852, 19 of 1853. These Acts embodies with some additions, many of the reforms which were advocated by Bentham and introduced in England by Lords Brougham and Denman. A few of those English Acts may be noted here. The 3 and 4 Will. IV. c 92 which swept away the restriction as to interested witnesses: the 6 and 7 Vic., c. 85 (Lord Denman's Act, 1843) which declared that no witness should be excluded from giving evidence either in person or by deposition by reason of incapacity for crime or interest; the 9 and 10 Vic., c. 95 which declared parties to the proceeding, their wives and all other persons, competent as witnesses in the County Courts; the 14 and 15 Vic., c. 95 (Lord Brougham's Act, 1851) which declared the parties and the person on whose behalf any suit, action or proceeding might be brought or defended, competent and compellable to give evidence in any court of justice; the 16 and 17, Vic., c 83 (Lord Brougham's Act, 1853) which made the husbands and wives of parties to the record competent and compellable as witnesses. Similar reforms were

1. *Banwari v. Hetnarain*, 7 MIA 48.
2. *R v. Khairulla*, 6 WR Cr 21.
3. Whitely Stoke, Vol. II, p. 813.

effected by the Acts passed by the Indian Legislature, e.g., Act 19 of 1837 abolished incompetency by reason of a conviction for criminal offense; sec. 1 of Act 9 of 1840 extended the provisions of 3 and 4 Will. IV. c 92 *(vide supra)*; Act 7 of 1844 introduced provisions similar to that of the 6 and 7 Vic., c. 85 *(v supra)* in the Presidency Towns; Act 15 of 1852 contained provisions similar to that of 9 and 10 Vic. c. 95 and 14 and 15 Vic., 95 (v. *supra*); by Act 19 of 1853 many of these reforms were extended to the civil courts of the East India Company in the Bengal Presidency.

*Act 2 Of 1855.*—Act 2 was passed for further improvement of the Law of Evidence. Of all the Acts passed on the subject, this Act was the most important and contained valuable provisions. Though it did not contain a complete body of rules, it was designed as supplementary to and corrective of the English Law, and also customary law of evidence prevailing in those parts of British India where the English Law was not administered.[4] This Act reproduced with some additions all the reforms advocated by Bentham and carried out in England by Lords Denman and Brougham; but nearly all its provisions pre-supposed the existence of that body of law upon which those reforms were engrafted; and yet it was authoritatively laid down that the English law of Evidence was not the law in the mofussil.[5]

*Summary.*—From what has been said above, two facts emerge out: *First*, that the courts in the Presidency Towns usually followed the English rules of evidence. It must be noted that the entire English law on the subject was never declared to be applicable to India by any statute. Portions of it were from time to time introduced by the Acts mentioned before. Act 2 of 1855 was however the most important of these fragmentary enactments and embodied many of the reforms that were introduced in England. *Secondly*, that there were no complete and fixed rules of evidence in the mofussil courts, except the Acts 19 of 1853 and 2 of 1855. Some customary laws prevailed in different parts of the country but they did not assume any definite form. The English law also was not the law of the mofussil courts, except those portions of it that were introduced by the Acts referred to above. The law administered in the mofussil being thus indefinite and vague, there was much laxity regarding the admission or rejection of evidence.

*Unsatisfactory State Of The Law.*—The unsatisfactory state of the law was also commented on by judges in their judgments.[6] "The whole of the Indian Law of evidence" says Field, "might then have been divided into *three* portions, *viz.* one portion settled by the express enactments of the Legislature; a second portion *settled* by judicial decisions; and a third or *unsettled* portion—and this by far the largest of the three, which remained to be incorporated with either of the preceding portions."[7]

Gradually, in the mofussil courts the belief gained ground that it was their duty to administer the English law of evidence and a tendency towards a capricious administration of that law prevailed. This was thought undesirable for two reasons: first because the English law of evidence based as it is on the social and legal institutions of England was not applicable here in its entirety, owing to the peculiar circumstances of this country. *Secondly*, because, a competent knowledge of the

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4. See Report of the Indian Law Commissioners.
5. Field's Ev, 6th Ed, p 10.
6. *See Gujju Lal v. Fateh Lal*, 6 C 193; *Unide Rajah v. Pemaswamy*, 7 MIA 128, 137; *Hurreehur v. Churn Manjhee*, 22 WR 355, 356.
7. Field's Ev 6th Ed Intro p 10.

English law could then be hardly expected from the judges, and so a strict application of that law would result in miscarriage of justice.

*First Evidence Bill of 1868 and Necessity for Legislation.*—Such being the unsatisfactory state of the law, formal legislation on the subject was contemplated. What was needed, was the introduction in this country of the English law of evidence, which was the outcome of the experience and wisdom of ages, with such modifications as were rendered necessary by the peculiar circumstances of India. In 1868, the Indian Law Commissioners prepared a Draft Bill which was circulated to the Local Governments for opinion. Mr. Maine (afterwards Sir Henry Sumner Maine) introducing the Draft Bill said.—"No doubt much evidence is received by the mofussil courts which the English courts would not strictly regard as admissible. But I would appeal to members of Council, who have had more experience in the mofussil than myself whether the judges of those courts do not, as a matter of fact believe that it is their duty to administer the English law of evidence as modified by the Evidence Acts. In particular I am informed that when a case is argued by a barrister before a mofussil judge and when the English rules of evidence are pressed on his attention, he does practically accept those rules, and admit or reject evidence according to his construction of them. I cannot help regarding this state of things as eminently unsatisfactory. I entirely agree with the Commissioners that there are parts of the English law of evidence which are wholly unsuited to this country. We have heard much of the laxity with which evidence is admitted in the mofussil courts, but the truth is that this laxity is to a considerable extent justifiable. The evil, it appears to me, lies less in admitting evidence which under strict rules of admissibility should be rejected, than in admitting and rejecting evidence without fixed rules to govern admission and rejection. Any thing like a capricious administration of the law of evidence is an evil, but it would be an equal evil or perhaps even a greater evil, that such strict rules of evidence should be enforced as practically to leave the court without the materials for a decision."

*The Bill Dropped. Its Reasons.*—This bill did not proceed beyond the first reading. It was pronounced by every legal authority to which it was submitted, to be unsuitable to the wants of the country. The principal reasons, in the words of Sir James Fitz-James Stephen were, that the Bill was not sufficiently elementary; that it was in several respects incomplete, and that if it became law, it would not supersede the necessity under which judicial officers under this country are at present placed, of acquainting themselves by means of English hand-books with the English law upon the subject. The Commissioners' draft indeed, would be hardly intelligible to a person who did not enter upon the study of it with considerable knowledge of the English law.[8]

*Evidence Act of 1872.*—Two years later, Mr. Stephen (afterwards Sir James) prepared a new Bill, which was finally passed into law in 1872, as Act 1 of 1872. The general object kept in view, says the author of the Act, in framing it, has been to produce something from which a student might derive a clear, comprehensive and distinct knowledge of the subject, with necessary labours but not, of course, without that degree of careful and sustained attention which is necessary in order to master any important and intricate matter.[9]

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8. Stephen's Speech on presenting the Report of the Select Committee.
9. Speech on presenting the Report of the Select Committee.

The Act is based entirely on the English law of Evidence and the industry and care with which the great mass of principles and rules of English law have been codified, and that too within a very narrow compass, must need excite the admiration and wonder of all. But as the subject is a vast one, and as everything has been compressed within the four corners of the Code which comprises only 167 sections, the charge has often been made regarding the abstruse and intricate character as also of its incompleteness. The sections are therefore crabbed and not easy of comprehension. As the Act is drawn chiefly from the English law, a study of the text books on the subject affords great help towards a thorough grasp of the principles and rules underlying the sections, and is to some extent indispensable. For, the sections being only statements of rules in the form of express propositions, they can be best understood by first inquiring into the reasons of those rules. And this can be only achieved by a previous study of English and American text books on the subject. But it must be added that the task of studying and handling the Evidence Act has been rendered much easier than it was forty years ago. A vast number of case laws on the subject have accumulated, and eminent judges have always taken care to explain the sections with commendable energy. The commentators have also rendered valuable service in this direction.

*Divisions of the Act.*—The Indian Evidence Act has been divided into three principal parts—I, II and III.

*PART I.*—Contains two Chapters, *viz.*, I and II.

Chapter I deals with preliminary definitions (ss. 1-4).

Chapter II deals with the relevancy of facts, and shows in what way various relevant facts are connected with each other (ss. 5-55).

*PART II.*—Contains four Chapters, *viz.*, III, IV, V and VI. Chapter III deals with certain facts that need not be proved (ss. 56-68). These are notorious facts known to everybody and of which the court takes judicial notice.

Chapter IV deals with oral evidence (ss. 59, 60).

Chapter V deals with documentary evidence (ss. 61-90).

Chapter VI lays down the rules regarding the exclusion of oral by documentary evidence (ss. 91-100).

*PART III.*—Contains five Chapters, *viz.*, VII, VIII, IX, X and XI.

Chapter VII deals with the burden of proof and presumption (ss. 101-114).

Chapter VIII deals with the subject of estoppels (ss. 115-117).

Chapter IX speaks of witnesses who are competent to testify (ss. 118-134).

Chapter X deals with the examination of witnesses (ss. 135-166).

Chapter XI deals with the effect of improper admission and rejection of evidence (s. 167).

*Tabular Scheme of the Act.*—The following tabular scheme[10] will be of assistance. The figures refer to the sections of the Act which treat of the matter referred to:—

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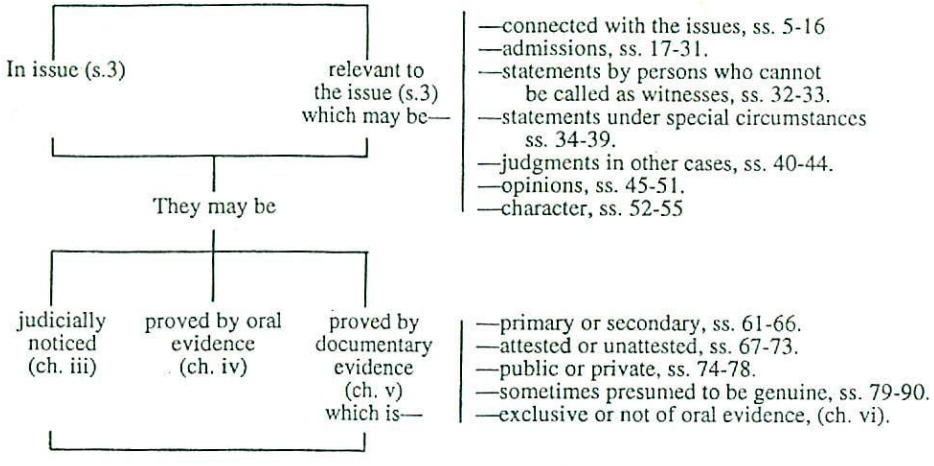
10. Stephen's Introduction to the Indian Evidence Act.

The object of legal proceedings is the determination of rights and liabilities which depends on facts (s. 3).




This proof must be produced by the party on whom the burden of proof rests (ch. vii), unless he is estopped (ch. viii)

If given by witnesses (ch. ix) they must testify, subject to rules as to examination (ch. x). Consequence of mistakes defined (ch. xi).

*Value of Codification.*—The condification of the Law of Evidence, it must be generally admitted, has been or immense value to those who are concerned with the administration of justice in India. The more so, as it, remedied a state of affairs, which was productive of great hardship and injustice, not to say of confusion. The condified law of evidence is of peculiar value to the judge which funished him with materials to ascertain the truth of the facts presented to him by the parties and enables to form his opinion and belief on them. It further enables him to say to the advocate, "I am as good a man as you; if you raise a question of evidence here is the law by which your question can be decied." and it also puts a stop to the practice of an advocate shaking in the face of the court a mysterious law of evidence, which was not to be found codified naywhere as substantive law or or otherwise, in any shape, admitting of its being easily referred to by judges and judicial officers of all grades.[11] "The condification of the law of evidence," says Mr. Norton, "gives the legal practitioner an immense advantage. Even if he applies it as a rule of thumb, the chances are that he will go right, though he may not understand why the rules should be so, but simly decides upon follows the law, because so it is. But this is surely a very low stand to take; it is to be hoped that everyone will endeavour not only to comprehend what the law is but why it is so. Though the Legislature has smoothed

11. Stephen's Speech on 12th March, 1872.

the path of the legal practitioner by codifying the Law of Evidence, the same necessity lies upon the student as heretofore, of mastering the principles which underlie the several propositions into which many of the rules of that law have now been cast."[12]

*Incompleteness of the Code and the Use of English Decisions.*—It may be asked if the Indian Evidence Act is a complete Code. As the Preamble shows, the Act is intended to be a complete code of the law of Evidence. It is not merely a fragmentary enactment but a consolidatory one repealing all rules of evidence other than those saved by the last part of section 2 of the Act.[13] But as there are also numerous other rules of evidence contained in various other statutes which have been saved by that section, the Act does not contain the whole Law of Evidence. The proviso to that section is very important. It has saved all rules of evidence which are to be found in any statute. Regulation &c., and not expressly repealed by the section. The law of evidence, therefore, is also contained in various such Acts &c., for example. *(1)* the provisions in the Criminal Procedure Code regarding the deposition of medical witnesses not called; reports of chemical examiners: certified orders of previous convictions and acquittals. certificates of jail officers; deposition taken in the absence of the accused when he has absconded; (2) sections 17, 49, 50 of the Indian Registration Act; (3) section 63 of the Indian Succession Act; (4) section 59 of the T.P. Act; (5) section 35 of the Indian Stamp Act,[14] &c., &c. Provisions of various English Statutes are also still in force in India, Eg., 13 Geo., 3c. 63, ss. 42, 44, 45; 21 Geo., 3, c. 70 s. 6 (Government of India); 33 Vic., c. 14 s. 12 (Naturalization); 33 & 34 Vic., c. 52, ss. 14, 15, 24 (Extradition); 3 & 4 Will., 4, c 41. ss. 7, 13 (Appeals to Judicial Committee) &c., &c. As the law of evidence in force in British India is contained in the Evidence Act as well as in numerous other Statutes. Regulations &c., mentioned above, the Evidence Act cannot be said to contain the entire law of evidence. This result has also been recognised in various decisions.[15] However much we may codify the law, says MR. JUSTICE HOLMES, into a series of seemingly self-sufficient propositions, those propositions will be but a phase in the continuous growth. To understand their scope fully, to know how they will be dealt with by judges trained in the past which the law embodies, we must ourselves know something of that past. The history of what the law has been, is necessary to the knowledge of what the law is[16] In the case of doubt or difficulty over the interpretation of any of the sections of the Evidence Act, reference for help should be made both to the case law of the land which existed before the Act, as also juristic principles, which only represent the common concensus of juristic reasoning[17] English decisions relating to evidence can be relied upon in India—*Per* SESHAGIRI AYYAR J. in *Re Annavi Muthiriyan*, 39 M 454. The law of Evidence is an abstract and difficult subject and like all other things of its kind, it is still in a process of growth. To say that everything that is good and useful is contained in the Act and nothing more will be necessary to add to its usefulness, or to make it perfect, would be dogmatic. It would be illusory to think that in forming our ideas on the subject, or in actual work, we are not to travel

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12. Norton's Ev. Preface.
13. *Collr of Gorakhpur v. Palakdhari*, 12 A 19, 35, 43(FB). S. 2 has now been repealed by the repealing Act 1 of 1938 (see post, p. 15).
14. for a complete list of Statutes &c, saved by sec. 2, see Whitley Stokes, Anglo-Indian Codes. Vol. II.
15. or a recent case, see In re Rudolph Stallman, 39 C 164
16. Holmes Common Law
17. *Collr of Gorakhpur v. Patakdhari*, 12 A 19, pp. 37, 38

beyond the limits assigned by the Act, and consult English text books on the subject. We must have recourse to every possible means that throw any light on the subject, without stopping to enquire from which quarter it comes.

Sometimes, questions arise for which no adequate provision is to be found in the Act, and a reference then to the English or American cases may be essential. *In Lekhraj v. Mahpal*, 5 Cal 744, p 754 PC, it has been held that the Evidence Act has repealed all rules of evidence not contained in any Statute, Act, or Regulation, and a person willing to tender evidence must therefore show that his documents are admissible under some provisions of the Act. In *R v. Abdullah*, 7 All 385, pp. 399, 401, it has been held that section 2 in effect prohibits the employment of any kind of evidence not specially authorised by the Act itself. And although the principle of exclusion adopted by the Evidence Act, *i.e.*, the principle that all evidence should be excluded which the Act does not expressly authorise, is the safest guide in regard to the admissibility of evidence, yet it should not be applied so as to exclude matters which may be essential for the ascertainment of truth. In *R v. Ashutosh*, 4 Cal 483, it has been held that where cases arise for which there is no positive solution in the Act itself, there is excuse for and safety in adopting the English rules, in so far as they are in accord with the general tenor of the Act. In the case of *Rudolph Stallman*, 39 Cal 164, pp. 185, 211: 15 CWN 1053: 14 CLJ 375, the petitioner objected to certain records of the Berlin Court being improperly admitted, on the ground that they were not duly authenticated as required by sections 78 and 86 of the Indian Evidence Act. WOODROFFE, J. said: This contention fails, because the records have in fact been authenticated in the manner prescribed by sections 14 and 15 of the English Extradition Act which are applicable in this country. The Evidence Act does not contain the whole law of evidence governing the country. Section 2 of the Act saves rules of evidence contained in any Statute. Act or Regulation in force. The law of evidence is contained in the Evidence Act and in other Acts and Statutes which make specific provision on matters of evidence. One of such statutes is the English Extradition Act, which as applicable to this country, is as much part of the *lex fori* as the Evidence Act itself." In the same case, MUKHERJI, J. observed: "The provisions of the Indian Evidence Act to which reference has been made, have no application, notwithstanding section 2 and section 5 and the observations of the Judicial Committee in *Lekhraj v. Mahpal, (v ante)*. They merely show that the Evidence Act has repealed all rules of evidence not contained in any Statute or Regulation."

Even in cases which are specifically provided for in the Act, it is submitted that a reference to English or American decisions will be of immense help both to the judge and the advocate, for it is not uncommon to find that portions of the Act are not easy of comprehension owing to the insufficiency or ambiguity of the language. Further, it will be a guard against error to which one is fall into, if he has to confine himself to only one source of information. The English decisions, also, widen our knowledge and serve as valuable guides towards a thorough understanding of the principles of the law of evidence which in the well known words of Lord Erskine, are founded in the charities of religion,—in the philosophy of nature,—in the truths of history,—and in the experience of common life.[18] Numerous instances may be cited where help was sought from extraneous sources for the above purpose. In *Munchershaw v. New Dhurumsey S W Co.*, 4 Bom 576, 581, it has been said that in drawing up the Act chiefly from Taylor on Evidence. Sir James Stephen plainly intended to adopt in section 129, the principle contended for in sections 846, 847 of the work he was condensing. In *R v. Rama*, 3 Bom 12, 17, it has been said that the meaning of the

18. How St Tr 966.

sections which bear on the admissibility of confession against a co-accused can be best learnt from the beginning of Vol II of Taylor's Evidence. In *Re Rami Reddi*, 3 Mad 48, 52. Taylor of Evidence was referred to in interpreting section 33 of the Act,—in 5 WR Cr 39, Best on Evidence; Gilbert on Evidence &c—in 7 WR 338 FB. Austin's Jurisprudence, Goodeve's Evidence;—in 18 B 280, American case-law;—in 11 BHCR 931, Russel on Crimes;—in 4 B 335, Phillip's Evidence, &c., &c. Various other instances may be mentioned. In the case of *R v. Chatrubhuj*, 38 Cal 96: 15 CWN 171, many English and American[19] authorities were referred to and examined at length with a view to ascertaining the points of difference between a spy or detective and an accomplice. In *Collector of Gorakhpur v. Palakdhari*, 12 All 11, 12 Edg, 12. EDGE, CJ, observed: "No doubt cases frequently occur in India in which considerable assistance is derived from the law of England and of other countries. In such cases we have to see how far such law was founded in common-sense and on the principles of justice between man and man and may safely afford guidance to us here." The English decisions may be referred to in elucidating the meaning of the Evidence Act, where such English decisions have received legislative approval in India (*R v. Vajiram*, 16 Bom 414, 433)[20].But as, all rules of evidence that were in force before the passing of Evidence Act have been expressly repealed, the English decisions can be no binding authority. Yet, for the reasons above, they are of

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19. As to American authorities, see the observations of HOLMWOOD, J, in the above case. The modern tendency in England appears to be to restrict the free citation of American Authorities, "We should treat with great respect the opinions of eminent American lawyers on points which arose before us, but the practice, which seems to be increasing, of quoting American decisions as authorities, in the same way as if they were decisions of our own courts, is wrong. Among other things, it involves an inquiry, which often is not as easy one, whether the law of America on the subject in which the point arises is the same as our own"—*Per* LORD HALSBURY, L.C., in *Re Missouri Steamship Co.*, 1899 L.R. 42 Ch. D. 321, 330; see the remarks of FRY AND COTTON, LL.JJ., in this case. See also the remarks of JAMES, LJ. in *R v. Castro*, 1880, LR 5 QBD 503: LORD WATSON in *Castro v. R*, 1881, LR 6 App Cas 249 and BUTT, J, in *The Avon & Thomas Joiiffe*, 1890, L.R. 1 Pro Div 8. Arguments from the American Statute are not of much force because Englishmen are not bound to know it; *per* POLLOCK, CB, in *Att-Genl v. Sillem*, 1864. The *Alexandra*, 12 WR 261. In *Mackintosh v. Dun*, 12 CWN 1053 PC. Amercian authority was not followed. Though American decisions are not binding they are treated with the utmost respect and as valuable guides (see remarks of BALHACHE J. in *Guranty T of New York v. Hanny & Co*, 1918, 1 KB 43: 62: BRETT, JJ in *Corry v. Burr*, 1882 LR 9 BD 469), and may be consulted with as much profit as the English or Indian for the elucidation of principles where Amercian law is identical with the English or Indian Law. It is in fact founded largely on the English Law. They may also offer solutions on points where English or Indian precedents are wanting. "Although the decisions of the American Courts are of course not binding on us, yet the sound and enlightened views of American lawyers in the administration and development of law—a law, except so far as altered by statutory enactment, derived from a common source with our own—entitle their decisions to the utmost respect and confidence on our part"—per COCKBURN, CJ, in *Scaramanya v. Stamp*, 1880, LR 5 Com PD 295, 303. "In coming to that conclusion, as I do upon principle, I am much strengthened by the Amercian authorities to which my attention has been called"—*per* FRY, J, in *Steel v. Dixon*, 1881 LR 17 CD 831. *In re CP Motor Spirits Acts*, 1939 FCR 18: A 1939, FC 1, 5, Gwyer, CJ, said: "The decisions of Canadian and Australian Courts are not binding upon us, and still less those of the Unites States, but where they are relevant, they will always be listened to in this court with attention and respect, as the judgment of eminent men accustomed to expound and illumine the principles of jurisprudence similar to our own; and if this court is so fortunate as to find itself in agreement with them, it will deem its own opinion to be strengthened and confirmed." See also *Madras Province v. Boddy* A 1942 FC 33, 36

20. As to the use of English case-laws as authorities, see further p 18 of the book.

immense help in leading us through the intricacies of the subject and afford us valuable assistance towards the comprehension and application of this difficult piece of legislation. "It appears to me idle to expect," says Mr Norton, "to be able to confine the judge or the advocate to the four corners of the Code. It will be necessary for the judge and the practitioner to refer to the well-known text books, whenever points not specifically provided for in the Code, present themselves. Probably some hundreds of judicial decisions will be necessary to explain the Code, and many amendments, and still more, large additions, will have to be made after it; but it is certain that in the interim, and possibly for ever, the judge will have to seek light and information in the text books and cases already published and decided."

# THE [1]INDIAN EVIDENCE ACT

## BEING

Act No. I of 1872[2] (15th March, 1872)

## PREAMBLE

[3]WHEREAS it is expedient to consolidate, define and amend the Law of Evidence; It is hereby enacted as follows:—

## SYNOPSIS



1. In Burma and Pakistan the title has been altered to "The Evidence Act" by omitting "Indian". In Ceylon the title is "The Evidence Ordinance". (Cap. 11 : 1st January, 1896).
2. For Statement of Objects and Reasons, see Gazette of India, 1868, p. 1574; for the draft or preliminary Report of the Select Committee, dated 31st March, 1871, *see ibid*, 1871, Pt. V, p. 273, and for the second Report of the Select Committee, dated 30th January, 1872, *see ibid*, 1872, Pt. V. p. 34; for discussions in Council, *see ibid*. 1868, Supplement, pp. 1060 and 1209, *ibid*, 1871, Extra Supplement, p. 42, and Supplement, p. 1641, and *ibid*, 1872, pp. 136 and 230
3. In Ceylon the Preamble is: "An Ordinance to consolidate, define, and amend the Law of Evidence."

**Object of Codification.**—The object of codification of a particular branch of law is, that on any point specifically dealt with by it, such law should be sought for in the codified enactment, and ascertained by interpreting the language used, instead of, as before roaming over a vast number of authorities to discover what the law is and extracting it by critical examination of the prior decisions [*Narendra v. Kamalbasini*, 23 IA 18 : 23 C 563 **following** *Bank of England v. Vagliano*, 1891 AC 107].

**—The Code is a Guide and Binds all Courts.**—Where the law has been codified it is of little avail to enquire what the law apart from such codification is, but we must look to the Code itself as our guide in the matter [*Burn & Co v. McDonald*, 36 C 354, 364 : 13 CWN 255]. The essence of a Code is to be exhaustive on the matters in respect of which it declares the law and it is not the province of a judge to disregard or go outside the letter of the enactment according to its true construction [*Gokul v. Padmanund*, 29 IA 196 : 29 C 707 : 6 CWN 825]; the Code therefore binds all courts so far as it goes [*Hukum Chand v. Kamalanand*, 33 C 927]. In questions relating to matters expressly provided for in the Evidence Act, it was intended to be a complete Code of the Law of Evidence [*R v. Nga Myo, A* 1938 R 177 FB : 175 IC 465].

**Title of Act.**—In construing the words of an Act, a reference may be made to its title and preamble [*Hurro Ch v. Shoorodhonee*, 9 WR 402, 404, 405 FB]. The title is an important part of the Act and may be referred to for ascertaining its general scope, and for throwing light upon its construction. But the title cannot override the clear meaning of the enactment [Maxwell, 11th Ed, p. 41].

**Preamble.**—The preamble of the Evidence Act shows that it is not merely a fragmentary enactment but a consolidatory one, repealing all rules of evidence other than those saved by the last part of s 2 [*Collr of Gorakhpur v. Palakdhari*, 12 A 1 FB, pp 19, 35, 43]. S 2 has now been repealed as unnecessary. If the sections are clear, the terms of the preamble cannot be called in aid to restrict the operation or to cut them down [*R v. Indrajit*, 11 A 262, 266; see *Kadir Bakash v. Bhawani*, 14 A 145, 154; *Keshab v. Bhabani*, 18 CLJ 187 : 21 IC 538]. Preamble discloses the primary intention of the statute but does not override the express provisions of the statute. *Competent Authority, Gujarat Housing Board v. Dhamji Vijendra Mehta*, A 1997 Guj 106, 112. For the meaning and effect of preamble, see *Baban v. Nagu*, 2 B 31, 38; *Uda Begam v. Imamuddin*, 2 A 74, 90; and *Chinna Aiyan v. Md*, 2 Mad HC 322 where it has been held that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose. Only where the object and meaning of an enactment is not clear the preamble may be resorted to explain it. [*Rashtriya Mill Mazdoor Sangh v. National Textile Corporation*, A 1996 SC 710, 713].

A preamble though a key to open the mind of the Legislature cannot be used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubts or ambiguity that recourse may be had to the preamble to ascertain the reason for the enactment in order to discover the true legislative intendment [*Y A Mamarde v. Authority &c*, A 1972 SC 1721; *Sital Ch v. Delanney*, 20 CWN 1158; *Gopi Kr v. Raj Kr*, 12 CLJ 8; *Bhola v. Kausilla*, A 1932 A 617 FB; *Badar v. Badsha*, A 1934 C 741 : 38 CWN 1056; *Kannammal v. Kanakasabhai*, A 1931 M 620 : 54 M 845; *Corpn of Calcutta v. Arun*, 38 CWN 917 : A 1934 C 862; *Monohar v. R*, A 1943 L 1; *Finch v. Finch*, A 1943 L 260 SB; *Bhola v. R*, A 1942 FC 17 : 1942 FCR 17]. Preamble can be invoked for removing an ambiguity, but it is equally well-settled that it cannot be invoked for creating an ambiguity in the Act [*Jnanendra v. Jadunath*, A 1938 C 211; *Powell v. Kempton &c*, 1899 AC 143, 157]. See Maxwell, 11th Ed, pp 43-49.

**Interpretation of Statutes (General).**—A statute is supposed to be an authentic repository of the legislative will and the function of the Court is to interpret it 'according to the intent of them that made it' [*Commr of Sales Tax v. Mangal*, A 1975 SC 1106; *Dhoom Singh v. Prakash*, A 1975 SC 1012]. There can be no controversy that the provisions of any statute must be properly and strictly construed [*Rama Reddy v. V. V. Giri*, A 1971 SC 1162]. The statute must be read as a whole and every provision in it must be construed with reference to the context and other clauses so as, as far as possible, to make a consistent enactment of the whole statute [*Hubli Municipality v. Subha Rao*, A 1976 SC 1398; *Jagir Singh v. S*, A 1976 SC 997]. But it is not possible to lay down any rule of universal application [*Links Advertisers v. Bangalore Mun*, A 1977 SC 1646]. No words should be considered redundant or surplus in interpreting provisions of a statute or a rule [*Dinesh v. S*, A 1978 SC 17]. The language of a provision or a rule should not be construed in a manner which would do violence to the phraseology used therein [*Heckett Eng Co v. Workmen*, A 1977 SC 2257]. In interpreting the provisions of a statute the courts have to give effect to the actual words used whether couched in the positive or in the negative. It is not permissible to alter the cohesive underlying thought process of the legislature by reading in positive sense what has been set out in negative terms. The courts will try to discover that the real intent by keeping the diction of the statute in tact [*Udayan v. R C Bali*, A 1977 SC 2319]. While construing two provisions covering the same field the court should harmonise them in such a manner that none of them is rendered otiose. *I A A v. Grand Slam International*, (1995) 77 ELT 753 (SC). Both have to be allowed to have their play unless such a construction would result in patent inconsistency or absurdity. *Director General v. K Narayanaswami*, A 1995 SC 2318. The text and the context of the entire Act must be looked into while interpreting any of the expressions used in the statute. *S Gopal Reddy v. State of A P*, A 1996 SC 2184, 2188 : 1996 Cri LJ 3237.

It is the part of judicial prudence to decide an issue arising under a specific statute by confining the focus to that statutory compass as far as possible. Diffusion into wider jurisprudential areas is fraught with unwitting conflict or confusion [*S. v. Orient Paper Mills*, A 1977 SC 687]. Courts must search for a reliable scientific method of discovery rather than the speculative quest for the spirit of the statute, and the crossthoughts from legislators' lips or Law Commissioner's pens [*Union v. Sankalchand*, A 1977 SC 2328]. It is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law: the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstance; nor can a positive enactment be annulled by indications of intention at a prior time, gathered from previous legislation on the matter [*Admr Genl v. Premlal*, 22 IA 107 : 22 C 788; **folld** in *R v. Tilak*, 2 B 112; *Ashutosh v. Watson*, A 1927 C 149; see also *Suraj Pd v. Golab*, 28 C 517; *Kadir Baksh v. Bhawani*, 14 A 145].

In interpreting a statute, "the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view" [per LORD HERSCHELL in *Bank of England v. Vagliano*, 1891 AC 107, 144; refd to with **approval** in *Narendra v. Kamalbasini*, 23 C 563 : 23 IA 18 : 6 MLJ 71; folld in *Bell v. Mun Commrs*, 25 M 457 : 12 MLJ 208; see also *Jonardan v. Ramdhone*, 23 C 738, 751 FB; *Jagodi-*

*shury v. Kailash*, 1 CWN 374 : 24 C 725, 741 FB; *In re Tulsi Bewa*, 24 C 881 : 1 CWN 642; *Brojadurlab v. Ramanath*, 1 CWN 597 : 24 C 908, 932 FB : *Rajib v. Lekhan*, 27 C 11, 16 : 3 CWN 660; *Krishna Kamini v. Abdul*, 6 CWN 737 FB : 30 C 155, 190; *Satis v. Ramdayal*, A 1921 C 1 : 24 CWN 982 SB; *Raghumull v. Offl. Assignee*, A 1924 C 424 : 28 CWN 34; *Ramanandi v. Kalawati*, 55 IA 18, 23; *Sales Tax Officer v. Kanhaiyalal*, A 1959 SC 135 : 1959 SCR 1350]. To begin with an examination of the previous law is to attack the problem at the wrong end [*R v. Barendra*, A 1924 C 257 FB : 28 CWN 170]. If the provisions are expressed in clear and unambiguous terms, resort should not be had to the pre-existing law, although such reference may be useful and legitimate when the provisions are of doubtful import or are couched in language which had previously acquired a technical meaning [*Nilmani v. Sati Pd*, 48 C 556 FB: 25 CWN 230]. History of previous legislation can only be legitimately referred to when there is reasonable doubt as to the construction of a statute [*Satish v. Ram Dayal, sup; Offl Receiver v. Murtaza*, 54 A 616; *Sarbeshwar v. Maharaja*, 26 CWN 15; *Secy of S v. Mask & Co.*, 67 IA 222 : 44 CWN 709 : A 1940 PC 105]. Considerations stemming from legislative history cannot be allowed to override the plain words of a statute [*CIT v. Madurai Mills*, A 1973 SC 1357; *CIT v. R. M. Amin*, A 1977 SC 999]. Legislative history plus, within circumspect limits, may be consulted by courts to resolve ambiguities. While understanding and interpreting a statute, the roots of the past, the foliage of the present and the seeds of the future must be within the ken of the activist judge [*Union v. Sankalchand*, A 1977 SC 2328]. The court is justified in looking into the history of legislation, not for the purpose of construing the Act but for the limited purpose of ascertaining the back-ground, the condition and the circumstances which led to its passing, the mischief it was intended to prevent and, the remedy it furnished to prevent the mischief [*Sanghvi v. M C G & K M W Union*, A 1969 SC 530, 534]. Court cannot consider the parliamentary history of an enactment for ascertaining its meaning [*Oamar v. Bansi*, A 1942 O 231 : 17 Luck 530]. There is no reason to restrict the power given by a section, by a reference to the history of the reasons which led to the enacting of that provision or by the single illustration affixed to that section [*Peria Krishnasami v. Aiyappa*, 24 IC 924].

Some cases have however held that in construing a statute reference may be made to the previous law on the subject [*Kripa Sindhu v. Ananda Sundari*, 35 C 34 : 11 CWN 983; *Baleswar v. Bhagirathi*, 7 CLJ 563] and if the words of the previous statute are re-enacted, it may be assumed, that it was intended that the law should be continued as it existed [*Narain v. Gabhrial*, 44 IC 262 : A 1918 P 131]. Such topics as the history of legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford conclusive argument [*Powell v. Kempton Park R Co*, 1899 AC 143; *R v. Benoari Lal*, A 1943 FC 36 : 1943 FCR 96].

Where a section which has received a judicial construction is re-enacted in the same words, such re-enactment may be treated as legislative recognition of the construction put upon those words unless there is something to rebut it [*Docks v. Cameron*, 11 HLC 443, 480; *Rukmayabaya v. Lulloobhoy*, 5 MIA 234, 250; *Parmeshwar v. R*, 3 PLJ 537; *Ishan v. Sajatulla*, 26 CWN 703, 707 : A 1922 C 331 : 57 C 381; *Radhamohan v. Abbas*, 53 A 612 FB : A 1931 A 294]. The same is the case when notwithstanding the construction placed upon the provisions in the previous Code, they have been reproduced in successive Codes without material alteration [*Jogendra v. Shyam*, 36 C 543; *Pratap v. Sarat*, 25 CWN 544, 547 : A 1921 C 101]. Presumption of legislative affirmance of judicial interpretation of

statutes when re-enacted explained [*Nagendra v. Pyari*, 21 CLJ 605 : 20 CWN 319]. Where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectively without the addition [*Secy of S v. Hindusthan C I S Ld*, 58 IA 259 : 35 CWN 794 : A 1931 PC 149].

In construing the words of a statute, recourse to other statutes is not legitimate when they are not in pari materia and are identical in terms with the statute under interpretation [*Panudimarri v. Ketti*, 46 M 730; *Siraj v. Mahomed*, 54 A 646 FB : A 1932 A 293].

**—Policy.**—If by 'policy of Act' is meant something which is to be looked at outside the Act and the various views of the advocates and opponents of the Act, such a method of interpretation is altogether illegitimate [*Bhairon v. Mahant*, 34 IC 441]. Between the general policy of the Act, and the express words of a section dealing with a specific matter, the express words ought to prevail [*Abdul Khadir v. Ahmmad*, 38 M 419]. The court is not concerned with the policy of Legislature [*Raghunath v. Commr*, A 1946 B 459]. Although courts are not concerned with the policy of the Legislature or with the result by giving effect to the language, it is their duty to ascertain the meaning and intendment of the Legislature. In doing so, courts will always presume that the impugned provision was designed to effectuate a particular object or to meet a particular requirement and not that it was intended to negative that which it sought to achieve [*Firm Amar Nath v. Tek Chand*, A 1972 SC 1548]. The court should adopt a construction which advances the policy of the legislation. It should not adopt a construction which curtails the benefit. The court should not read words which are not there and thereby restrict the scope of the statute. *Union of India v. Pradeep Kumari*, A 1995 SC 2259.

**—Object of Legislature.**—Courts are not concerned with the object of the Legislature unless in the particular enactment the object is stated as a guiding principle to be followed in interpretation [*Radhakishan v. R*, A 1932 P 293 SB]. Such object must be ascertained from within the four corners of the Act [*R v. Chottalal*, A 1937 B 1 FB]. The court must look into object which the statute seeks to achieve while interpreting any of the provisions of the Act. *S Gopal Reddy v. State of A P*, A 1996 SC 2184, 2188.

**—Plain Meaning of Words.—[Intention of Legislature or Hardship No Consideration].**—The words of a statute must be understood in the sense which the Legislature has in view and their meaning must be found not so much in a strictly grammatical or etymological propriety of language, nor in its popular use. The words cannot be read in isolation; their colour and content are derived from their context and, therefore, every word must be examined in its context [*Union v. Sankalchand*, A 1977 SC 2328]. Looking at the statute as a whole courts have to endeavour to find out the exact sense in which the words have been used in a particular context and give an interpretation in consonance with purposes of the statute and what logically follows from the terms [*CWT v. Court of Wards*, A 1977 SC 113]. Where the words of a statute are plain, precise and unambiguous, the intention of the Legislature is to be gathered from the language of the statute itself and no external evidence is admissible to construe those words. It is only where a statute is not exhaustive or where its language is ambiguous, uncertain, clouded or susceptible of more than one meaning, that external evidence as to the evils, if any, intended to be remedied or of the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the Legislature had in view in using the

words in question [*Anandji Haridas v. Engineering &c*, A 1975 SC 946; *CIT v. G. Hyat*, A 1971 SC 725; *Hiralal Ratanlal v. STO*, A 1973 SC 1034]. A court is bound to construe a section according to the plain meaning of the language used, either in the section itself or, in any part of the statute, unless it finds either in the section or in any other part of the statute, anything that will either modify, or qualify or alter the statutory language, even if the result of such construction leads to anomalies or be productive of even absurdities [*Bank of England v. Vagliano, sup; Narendra v. Kamalbasini, sup; St John Mainstead v. Cotton*, 12 App Cas (1886) 6 **folld**; *Rajib v. Lekhan*, 27 C 11 : 3 CWN 660]. The court cannot allow any extraneous considerations, such as unjust [*Nasiruddin v. State Transport &c*, A 1976 SC 331], hardship, [*Balkaran v. Gobind Nath*, 12 A 129 FB; *Corpn of Calcutta v. Arun*, 38 CWN 917; *Gureebullah v. Mohun*, 7 C 127; *Pramatha v. Bhagwan*, 35 CWN 705; *Kameshwar v. Dhunman*, 21 P 794] to influence the construction of the Acts where the wording is plain and unambiguous. The argument of convenience is not very often an argument when the language of the law is clear beyond doubt [*Anand v. Narain*, 53 A 239 FB; *In re Lloyds Bank*, 58 B 152; *Nadimint v. Malluri*, A 1941 M 713]. The question is not what the Legislature intended, but what the Legislature has enacted [*Govindasami v. Perumal*, A 1927 M 327; *Amalgamated E Co v. Mun Com*, A 1969 SC 227]. A statement by a Minister of the intention and object of an Act cannot be used to cut down the generality of the words used in a statute [*S v. Union*, A 1963 SC 1241, 1247]. The language should be interpreted as it stands without adding to it or taking away from it [*In re Hungerford &c*, 62 C 133; *Dhagta v. Sardar*, 16 L 204; *New Savan Sugar &c v. CIT*, A 1969 SC 1062]. Where language used in statute does not carry out its object court cannot supply deficiencies [*Janapada Sabha v. C P Syndicate*, A 1971 SC 57]. Dictionary meanings however helpful in understanding the general sense of the words cannot control where the scheme of the statute as considered as a whole clearly conveys a somewhat different shade of meaning [*Dy Chief Controller &c v. K T Kosalram*, A 1971 SC 1283]. A word of everyday use not defined in the Act must be construed in its popular sense [*Mangulu v. STO*, A 1974 SC 390; *CIT v. Taj Mahal Hotel*, A 1972 SC 168]. Court cannot proceed on the assumption that the Legislature has made a mistake. It must be assumed that it has intended what it has said [*Madho v. Skinner*, A 1942 L 243].

Where the language is clear and explicit, the court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature. The rule of interpretation of all statutes is that "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 that absurdity and inconsistency but no further" [*Vachar & Sons Ltd v. L S of Compositors*, 1913 AC 107, 117 : 107 LT 722, *per* LORD MACNAGHTEN; To the same effect are the observations of LORD WENSLEYDALE in *Grey v. Pearson*, 1857, 6 HLC 61, 106 : 26 LJ Ch 473; see *Nilmani v. Sati Pd*, 48 C 556 FB; *Mercantile Bank v. Offl. Assignee*, 57 M 177; *Gurmukh v. Intazamia*, A 1942 L 19; *In re Krishnamurthi*, A 1942 M 9; *Aiyasamier v. Venkatachela*, 31 MLJ 513 : 40 M 989; *Madho v. Makhan*, A 1939 A 328; *Badsha v. Rajib*, 50 CWN 578 FB : A 1946 C 348]. The law is not 'a brooding ominipotence in the sky' but a pragmatic instrument of social order. It is an operational art controlling economic life and interpretive effort must be imbued with statutory process. No doubt grammar is a good guide to meaning but bad master to dictate [*Carew & Co v. Union*, A 1975 SC 2260]. The fact that a particular interpretation of an Act of Parliament produces anomalous results is not however a decisive reason for rejecting the interpretation, if it is the result of

construing the words in their natural and grammatical sense [*In re Ref under G I Act*, A 1943 FC 13 : 1943 FCR 20].

**—Parts to Interpret Each Other.**—Each part of a statute must interpret every other part [*Lalji v. R*, 1 PLJ 58 : 54 IC 894]. The true meaning, the exact scope and significance of any passage in a statute may be found not merely in the words of that passage, but on a comparison of the same with other parts of the statute and the intention of the legislature ascertained in that way [*River Wear Commrs v. Adamson*, 2 AC 743; *Easter Co v. Comptroller of Patents*, 1898 AC 576; *Aghore v. Rajnandini*, 36 CWN 924; *Daulat v. Liquidators*, 20 PR 1915 : 29 IC 272].

**—Legal fiction.**—Full effect must be given to the legal fiction created by the statute. *Harish Tandon v. A D M*, A 1995 SC 676; See also *Voltas Ltd. v. Union of India*, A 1995 SC 1881.

**—Same Words.**—The same meaning ought to be given to same expression used in the same statute at different places [*Lalchand v. Radhakishan*, A 1977 SC 789]. It would be unreasonable to hold that the Legislature used the same word in different senses in the same Act [*R v. Naglakala*, 22 B 235, 238], or in the same context [*Burmah Oil Co v. Baijnath*, 59 IC 960; *Manohar v. Jagadish*, 46 CWN 298]. It is however recognised that if sufficient reasons exist, a word can be construed in one part of an Act in a different sense from that it bears in another part [*Chidambara v. Rama*, A 1937 M 385 FB; *In re N S Bank Assen*, 1866, 1 Ch A 547 (see judgment of TURNER, LJ, at p 550)]. Interpretations put upon certain words of a section by the Privy Council apply equally to the same words in other sections [*Sahedha v. Raja Ram*, 11 ALJ 757 : 21 IC 63].

Same words in different Acts do not necessarily have the same sense unless the scope and object of all the statutes are similar [*Narsing v. Chogmull*, 1939, 2 Cal 93 : A 1939 C 435 FB]. It is always dangerous to seek to construe one statute with reference to the words of another [*Nippon Kaisha v. Ramjiban*, 42 CWN 677].

**—Points Specifically Dealt With.**—On points specifically dealt with by enactments, courts cannot disregard or go outside the letter of the enactments, but must ascertain the law by interpreting the language used by the Legislature. But where no specific rule exists, the court may act according to equity, justice and good conscience, but it must be careful to see that its decision is based on sound principles and not in conflict with them or the intention of the Legislature [*Hukum Chand v. Kamala Nand*, 33 C 927; see *Narendra v. Kamalbasini*, *ante*].

**—General Words.**—General words in a statute must receive a general construction, unless it can be found in the statute itself some ground for limiting and retaining their meaning by reasonable construction and not by arbitrary addition or retrenchment [*Jokha Ram v. Ram Din*, 8 A 419, 425]. It is the function of general words to include things not specially named [*Munilal v. Trustees*, 45 C 343 : 22 CWN 1].

**—Two Interpretations.**—Of two possible constructions, that one must be preferred which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute [*Dilip v. S*, A 1976 SC 133; *S v. Chhotabhai &c*, A 1972 SC 971; *S v. Chaturbhuj*, A 1976 SC 1697; *S v. M K Kandaswami*, A 1975 SC 1871], or which sustains its validity [*S v. Dadabhoy's &c*, A 1972 SC 614; *S v. Chhotabhai &c*, A 1972 SC 971; *S v. M K Kandaswami*, A 1975 SC 1871], or which sustains its validity [*S v.*

*Dadabhoy's &c*, A 1972 SC 614; *S v. Chhotabhai &c*, A 1972 SC 971; *S v. M K Kandaswami, sup; S v. Prem Sukhdas*, A 1977 SC 1640] or which makes the particular provision purposeful [*Union v. Sankalchand*, A 1977 SC 2328] or which tends to make provisions constitutional, even if straining of language is necessary [*S v. Krishna*, A 1978 SC 747], or which advances the remedy and suppresses the evils the Legislature envisioned [*Carew & Co v. Union*, A 1975 SC 2260]. When a word is capable of various shades of meaning, the particular meaning to be attached must be arrived at by reference to the scheme of the Act or of the section as a whole [*Nihal v. Siri*, A 1939 L 388].

**Reference Statute.**—Legislation by referential incorporation falls in two categories: First, where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of the latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference [*Bajya v. Gopikabai*, A 1978 SC 793].

**—Special Acts.**—If there is a special Act dealing with a particular case and later a general Act is made including the subject of the special Act, the general Act does not abrogate the special Act unless such intention is clear [*Corpn of Madras v. M E Tramways Ld*, 54 M 364; *Corpn of Montreal v. Montreal I L Co Ld*, A 1932 PC 252 : 39 IC 667].

**—Inconsistent Acts and Sections.**—Of two inconsistent Acts, the latter is to be read as having impliedly repealed the former [*Haridasee v. Manufacturers' L I Co, Ld*, 1937, 1 Cal 67]. Where two parts of the same statute are in conflict, the governing intention of the Legislature must be found out and that part which agrees with that intention must be given effect to. The governing intention must *prima facie* be taken to be that expressed in the section and not in the rules framed under it [*Narsing v. Chogmul*, 1939, 2 Cal 93 FB : A 1939 C 435 FB (*Institute of Patent Agents v. Lockwood*, 1894 AC 347 refd to)].

**—Mandatory Enactments.**—"No universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed" [*per* LORD CAMPBELL LC in *Liverpool B Bank v. Turner*, 1860, 2 De GF & J 502 : 30 LJ Ch 379; **relied** on in *Ramchandra v. Govind*, A 1975 SC 915; *Govt of Assam v. Sahebulla*, 27 CWN 857 : 75 IC 129; see also *Mathura v. Ramkumar*, 23 CLJ 26: 43 C 790]. In determining the question whether a provision is mandatory or directory, the subject matter, the importance of the provision, the relation of that provision to the general object intended to be secured by the Act will decide whether the provision is directory or mandatory [*In re Presidential Election, 1974*, A 1974 SC 1682; *S v. V K Kangan*, A 1975 SC 2190; *Govindlal v. Agriculture Produce &c*, A 1976 SC 263; *Lachmi Narayan &c v. Union*, A 1976 SC 714]. For the effect of the word 'shall' see *Raza Buland Sugar Co Ltd v. Munpl Board*, A 1965 SC 895; *Hiralal v. Rampadarath*, A 1969 SC 244; *P M A Metropolitan v. Moran*, A 1995 SC 2001.

**—Remedial Statutes.**—"The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved [*per* LORD ATKIN in *Thakur*

*Raghuraj v. Harikisan*, 48 CWN 439; *Anand v. Narain*, 53 A 239 FB]. If the language of a statute can be construed widely so as to salvage the remedial intendment, the court must adopt it [*Carew & Co v. Union*, A 1975 SC 2260]. Court must interpret the law as it reads. While a purposive interpretation is permissible where two interpretations are possible, the purposive interpretation must be such as preserves the constitutionality of the provision. *Tejkumar Balakrishna Ruia v. A K Menon*, A 1997 SC 442, 445.

**—Disabling Section.**—Disabling rule should be strictly construed [*Lachman v. Bansi*, A 1931 L 79 : 12 L 275]. If there is ambiguity as to the meaning of a disabling section, the construction which is in favour of the freedom of the individual should be given effect to [*David v. De Silva*, A 1934 PC 36 : 148 IC 607

**—Saving Clause.**—A saving clause cannot be used to extend the scope of the prohibition contained in the main or enacting clause, because a saving clause may often be added by way of abundant caution [*Punjab Prov v. Daulat*, A 1942 PC 38 : 1942 FCR 67].

**—Act Based on English Statute.**—In construing a section of an Indian Act which is professedly based on an English enactment, which in fact reproduces almost word by word the language of an English enactment, we are, in practice, if not in theory, bound by the decisions of the English Court of Appeal [*Ramendra v. Brajendra*, 21 CWN 794; see also *Iswarayya v. Swarnam*, 58 IA 350 : A 1931 PC 234 : 35 CWN 1185]. When a section of the English Act is in *pari materia* with a section of the Indian Act, the interpretation placed by English Courts upon section of the English Act has great persuasive value [*Sterling Genl Insurance Co Ld v. Planters &c*, A 1975 SC 415]. When a Colonial Legislature has passed an Act in the same terms as an Imperial Statute and the latter has been authoritatively construed by the Court of Appeal, such construction should be adopted by the courts of Colonies [*Trimble v. Hill*, LR 5 AC 342; *Strimathoo v. Dorasinga*, 2 IA 169; *Bhimaji v. Chunilal*, A 1932 B 344]. But English equitable doctrines should not be applied by analogy to the clear provisions of an Indian Statute [*Ariff v. Jadunath*, 58 IA 91 : A 1931 PC 79]. Nor should English decisions be invoked when an Indian Statute is framed on other lines [*Bejoy v. Commrs*, 60 IA 196 : A 1933 PC 145]. Courts should not engraft on the plain meaning of the provisions of Acts, limitations founded on technical rules of English law and pleading [*Ramiah v. Somasi*, 29 IC 449 : 29 MLJ 125]. When the law is codified in India, it is not open to the court to ignore that law and to follow the English law [*Nazir v. Ram*, 53 IA 114]. A judge should not interpret statutory law when it provides for a specific procedure, by reference to a decision pronounced under a different system of procedure [*Radha Kishen v. Lakhmi Chand*, 24 CWN 454 : 56 IC 541]. As to use of English case-laws as authorities *see post*.

**Act Giving Effect to International Convention.**—In construing a statute giving effect to international convention the court should maintain uniformity and follow the construction put up by courts of other countries [see *James Buchanan v. Babco &c*, 1977, 1 All ER 518; *Ulster-Swift Ld v. Tanuton Meat &c*, 1977, 3 All ER 641].

**—Statute Ousting Jurisdiction.**—Statute ousting jurisdiction of a civil court must be very strictly construed [*Shaiba Pd v. Golammanjhi*, 50 IC 454; *Burmah Oil Co v. Baijnath*, 59 IC 960; *Baru v. Niadar*, A 1942 L 217 FB; *Kama v. Bhajanlal*, 45 IC 654]. It has to do it either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion [*Musamia v. Rabari*, A 1969 SC 439]. A statute conferring jurisdiction impliedly grants also the power to do such

acts, adopt such measures, and employ such means as are essentially necessary to its execution [*Yasin Ali v. Radha Gobind*, 30 CLJ 489].

The jurisdiction of a superior court can be taken away only by clear and unambiguous terms. This does not necessarily mean the employment of express words, but it may also be done by implication. But at all events it must be done clearly [*Jacobs v. Brett*, 1875, 20 Eq 1, 6, 7 : 32 LT 522; *Att-Genl v. Mayor of Dublin*, 30 RR 43, 55; *Narsing v. Chogmul*, 1939, 2 Cal 98 : A 1939 C 435 : 43 CWN 613 FB].

**—Reproduction of Words Receiving Judicial Construction.**—Where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has been previously assigned to it [*per* LORD BUCKMASTER in *Barras v. A S T & F Co Ld*, 1933 AC 402 : 149 LT 169; *Panchayat Bd v. WIM Co.*, A 1939 M 421 : 1939 Mad 566].

**—Other Rules of Interpretation.**—A change in the wording of the section does not necessarily involve a change in the law. Amendments are often made to clear up ambiguities [*Secy of S v. Purnendu*, 40 C 123 : 17 CWN 1151]. An amendment clarifying an earliest ambiguous provision can be useful aid in construing it even though the amendment is not given retrospective effect [*Thiru Mabickant v. S*, A 1977 SC 518]. Even if the legislature has overlooked a provision or a provision has been inserted or omitted through blunder, the court cannot make laws or amend them [*In re Bholanath*, 58 C 801]. It is contrary to sound canons of construction to enlarge the scope of the provisions of a statute by importing into it words which are not to be found there [*Maharaja v. Mahendra*, 34 CLJ 465].

As to how far a repealed section can be referred to for construing an amended section, see *Bradlaugh v. Clarke*, 1883, 8 AC 354, 380; *Tumahole v. R*, A 1949 PC 172. As to rules of construing repealing enactments, see *Thirumalaisami v. Subramanian*, 40 M 1009.

**Retrospective Effect.**—While provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment [*Delhi C & G M Co v. I T Commrs*, 54 IA 431 : A 1927 PC 242 : 32 CWN 237; *Jose Da Costa v. Bascora*, A 1975 SC 1843]. Ordinarily, when the substantive law is altered during the pendency of an action, rights of the parties are decided according to law, as it existed when the action began unless the new statute shows a clear intention to vary such rights [Maxwell—Interpretation of Statutes, 12th ed, p 220; *Katikara v. Guatreddi*, A 1974 SC 1069; *Pramatha v. Sourav*, 23 CWN 604 : 50 IC 335; *Manjhoori v. Akel*, 17 CWN 889; *Ram krishna v. Subbarava*, 24 MLJ 54 : 18 IC 64]. Statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time when amending Act came into force [*Shri Vijayalakshmi &c v. S*, A 1976 SC 1417; *Nanigopal v. S*, A 1970 SC 1636 : 1969, 2 SCR 411]. Statutes which are properly of a merely declaratory character have a retrospective effect. The mere fact that the expression 'it is declared' has been used is not conclusive as to the character of the statute [*Nawab v. Khahjeh*, 24 CWN 18 : 30 CLJ 122; see also *Jotiram v. Janaki*, 20 CWN 258]. Every statute which takes away or impairs a vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability, in respect of tran-

sactions or considerations already passed, must be deemed retrospective in operation [*Manjhoori v. Akel, sup; Pramatha v. Sourav*, 24 CWN 1011]. Retrospec-tive enactments must be strictly conclusive as to the character of the statute [*Nawab v. Khahjeh*, 24 CWN 1 8 : 30 CLJ 122; see also *Jotiram v. Janaki*, 20 CWN 258]. Every statute which takes away or impairs a vested right acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability, in respect of transactions or considerations already passed, must be deemed retros-pective in operation [*Manjhoori v. Akel, sup; Pramatha v. Sourav*, 24 CWN 1011]. Retrospective enactments must be strictly construed [*Zemindar v. Rajalapati*, 27 MLJ 718]. Enactments relating to procedure are always retrospective unless there is some good reason or other why they should not be [*Kedarnath v. Tarini*, 2 PLT 245 : 61 IC 4; *Jagamohan v. Behari* , 39 CWN 1006].

**—Law of Evidence Retrospective.**—The law of evidence is a law of mere procedure and does not affect substantive rights and since "alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be" [*Gardner v. Lucas*, 1878, 3 AC 582], rules of evidence are retrospective in their operation [*Parasram v. Mewa Kunwar*, A 1930 A 561 : 1930 ALJ 890] . Rules of evidence come into force at once and must be followed by the courts in deciding on the rights of the parties, whatever may have been the previous state of law in regard to the proper presumptions and burdens of proof [*Secy of S v. Janakiramayya*, 29 MLJ 389].

**Ejusdem Generis.**—Scope and extent of ejusdem gener is rule [*Amar v. Collector*, A 1972 SC 1863]. If the intention is clear, the occasion for the introduc-tion of ejusdem generis would not arise [*Hallingal v. Secy of S*, 43 M 65 : 37 MLJ 332]. The ejusdem generis rule must be confined within narrow limits and general words should receive their full and natural meaning. Further, there must be a distinct genus which must comprise more than one species, before the rule can be applied [*S v. Ali Gulshan*, A 1955 SC 810 : 1955, 2 SCR 867].

**Statement of Objects and Reasons.**—Statement of objects and reasons for introducing a bill in the Legislature is not admissible as an aid to the construction of the statute as enacted; far less can it control the meaning of the actual words used in the Act. It can only be referred to for the limited purpose of ascertaining the circumstances which actuated the sponsor of the bill to introduce it and the purpose for doing so [*Kumar Jagdish Chandra Sinha v. Eileen K Patricca D Rozarie*, A 1995 SC 2740; *A C Sharma v. Delhi Administration*, A 1973 SC 913; *Central Bank of India v. Workers*, A 1960 SC 12; *S v. Union*, A 1963 SC 1241]. It is not even relevant in a case in which the language of the operative parts of the Act leaves no room to doubt what was meant by the Legislature [*S v. Chanan*, A 1976 SC 1654; *Pathumma v. S*, A 1978 SC 771]. But it gives an indication as to what the Legislature intended to achieve [*Workmen &c of Firestone v. Management*, A 1973 SC 1227]. Statement of Objects and Reasons and draft Bill were however cited in *Hiralal v. R*, 28 CWN 968.

**Report of Select Committee** cannot be referred to in construing a statute [*Mahalakshmi v. Shamrangini*, 45 CWN 526; *Madho v. Skinner*, A 1942 L 243]. Where however, there is ambiguity in a statute the court may have regard to the report of a committee presented to Parliament containing proposal for legislation which resulted in the enactment of the statute in order to determine the mischief intended to be remedied [*Black-Clauson &c v. Papierwanke*, (1975) 1 All ER (HL)].

**Proceedings of Legislature** are excluded from consideration in the judicial construction of statutes [*Admr Genl v. Prem Lal*, 22 IA 107 : 22 C 788; *R v. Sri Churn*, 22 C 1017 FB; *Nafar v. Bhiku*, 35 CWN 19; *Shidramappa v. Neelavabai*, 57

B 377; *Krishna v. Nallaperumal*, 47 IA 33 : A 1920 PC 56 : 43 M 550; *Hiralal v. Parasram*, A 1942 N 5; *Hari Mahton v. Jamal*, A 1942 P 304 (2)], but they may be referred to for the object of the statue [*Firm of Ratan v. Sahiram*, 52 IC 139]. Proceedings in Parliament are scarcely a legitimate or helpful aid in the construction of the statutes and no observation made there can vary the plain meaning of the statutory language which is otherwise clear and unambiguous [*R L Narasimham v. Union*, A 1972 SC 2405]. The reasons stated by the mover of the amendment can only be used as an aid in interpretation if it helps considerably in understanding the meaning of the amended law [*Loka Shikshana Trust v. CIT*, A 1976 SC 10]. In a case of difficulty, proceedings of Legislature were referred to to obtain light on the intention and scope of a section [*R v. Kartick*, 14 C 721, 728 FB,—a decision before 22 C 788 PC]. The court should refrain from examining the discussion and the views of the legislative authority. It has to look to the meaning of the word only [*Sudarshan v. E I R*, 17 ALJ 1031 : 52 IC 644]. No reference can be made to the introductory note to a Code or to any statement of reasons for legislation unless it be where a section is ambiguous [*Legal Rem v. Tarak*, 62 C 666]. Proceedings of the legislature including statements of objects and reasons and the debates must be excluded. Nor are the courts at liberty to refer to the Bill in the original form [*Debendra v. Jogendra*, A 1936 C 593; *Shanta v. Basudevanand*, 52 A 619 FB : A 1930 A 225].

**Debate Upon the Bill.**—For the purpose of construing an Act, the debate upon the Bill, when before the Legislative Council, is not to be referred to [*Krishna v. Nallaperumal*, 47 IA 33, 42 : A 1920, PC 56; *Aswini v. Arabinda*, A 1952 SC 369 : 1953 SCR 1; *Gopal v. Sakhoji*, 18 B 133; *Rajmal v. Harnam*, 9 L 260; *R v. Ratansi*, 53 B 627; *In re Harkishen*, A 1937 L 497 SB; *Zemindar v. Rajalapati*, 27 MLJ 718; *In re 'New Sind'*, A 1942 S 65]. If debates in the Legislature should not be referred to, it seems to be still less legitimate to refer to expressions of antecedent views of Government which may have been modified during the passing of a Bill through the legislature, to interpret the plain words of an Act [*Kandalam v. Secy of S*, 14 MLT 454]. Speeches during the passing of the Bill cannot be looked at to interpret a section [*Zemindar v. Rajalapati*, 27 MLJ 718].

**Marginal Notes.**—For relevance of marginal heading see *P M A Metropolitan v. Moran*, A 1995 SC 2001. The marginal notes in an Indian statute cannot be referred to for the purpose of construing it [*Balraj v. Jagatpal*, 31 IA 132 : 8 CWN 699; *Nawab Bahadur v. Gopinath*, 13 CLJ 625, 631; *Dhunjibhoy v. Gunha*, A 1933 B 338; *Corpn of Calcutta v. Arun*, 38 CWN 153; *D'Souza v. Reserve Bank*, A 1946 B 510]. Judges should refrain from giving weight to marginal notes and side-notes [*Parsons v. B N Laboratories*, 1963, 2 All ER 674]. In *Balraj v. Jagatpal, sup*, the Judicial Committee observed: "It is well-settled that marginal notes to the sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake, and it has been exploded long ago." The marginal note cannot control the meaning of the body of the section if its language is clear and unambiguous [*Nalinakhya v. Shyam*, A 1953 SC 148 : 1953 SCR 533]. The marginal notes are not parts of the section [*Bahadur v. R*, 41 CLJ 45; see also *Dukhi v. Hollway*, 23 C 55; **folld** in *Punar Deo v. Ram Sarup*, 25 C 858 : 2 CWN 577, and *R v. Hari*, 21 A 391]. They are not binding as an explanation or construction of the section [*Shk Chamman v. R*, 1 PLT 11 : 64 IC 623; *Aiyalam v. Secy of S*, 42 M 451 : 51 IC 46]. Marginal notes cannot be referred to in clearing ambiguity in the text, but it may with advantage be referred to when it confirms the conclusion warranted by the language of the section [*Lahore Bank v. Kedar*, 31 SC 746 : 36 PR 1916; see however *Kameshwar v. Bhikan*, 20 C 609; *R v. Ismail*, 57 B 536 FB]. Marginal notes may shed some light in ambiguous situations [*R S Joshi v. Ajit Milla*, A 1977 SC 2279].

The true principle appears to be that where the language is precise and clear, marginal notes cannot be referred to, but where the court is unable to collect the precise intention of the Legislature, there is no reason why marginal notes should not be resorted to as extraneous aids [*Dharwar U Bank Ld v. Krisnarao*, A 1937 B 198; *Ramsaran v. Bhagwat*, A 1929, A 53 : 51 A 411 FB; *R v. Fulabhai*, A 1940 B 363]. In *Bushell v. Hammond*, 1904, 2 KB 563 : 73 LJKB 1006, 1007, COLLINS, MR, said: "This side-note, also, although it forms no part of the section, is of some assistance, inasmuch as it shows the drift of the section." **Folld** in *Indian Aluminium Co v. Kerala &c*, A 1975 SC 1967; *Muradan v. Secy of S*, 1939, 1 Cal 452 : A 1939 C 313. Where a particular construction leads to a conflict of rights granted by the Act and those acquired under old Act repealed by it, marginal notes can be looked into [*Thakur v. Kamtanath*, A 1939 N 230]. The former rule has not always been observed and marginal notes have on some occasions been made use of [see *Iswari v. Sen*, 55 CWN 719; *R v. Ismail*, A 1933 B 417; *S v. Heman*, A 1952 B 16; *Suresh v. Bank of Cal*, 54 CWN 832, 836; *Ramsaran v. Bhagwat, sup*].

**Illustrations.**—Illustrations in Acts ought never to be allowed to control the plain meaning of the section to which they are appended, specially when the effect would be to curtail a right which the section in its ordinary sense would confer [*Koylash v. Sanatun*, 7 C 132 : 8 CLR 283; *Offl. Assignee v. Sampath*, A 1933 M 795; *Maruti v. Bankat*, A 1933 B 313; see *Satya Priya v. Gobinda*, 14 CWN 414, 419 : 11 CLJ 236]. Remarks on the legal character of the "Illustrations" attached to Acts of Indian Legislature and the opinion expressed that they form no part of these Acts [*per* STUART CJ, in *Nanakram v. Mehin*, 1 A 487, 495-96 and the cases therein referred to; see also, *Dubey v. Ganeshi*, IA 34, 36 : *R v. Rahimat*, 1 B 147, 155 and *Shk Omed v. Nidhee*, 22 WR 367, 368]. They are not exhaustive of the meaning of a section [*Aniruddha v. Arabinda*, A 1946 C 396] yet they furnish some indication of the presumable intention of the Legislature [*R v. Fakirapa*, 15 B 491, 496; *Gujjulal v. Futteh*, 6 C 171, 185; *Satis v. Ramdayal*, 24 CWN 982; see *R v. Chidda*, 3 A 573, 575; *Surjanarayan v. Bissambhur*, 23 WR 311].

Illustrations "are to be taken as part of the statute" [*per* LORD ATKINSON in *Lala Bala v. Ahad*, 23 CWN 233, 237 : 48 IC 1; *Mahesh Chand Sharma v. Raj Kumari Sharma*, A 1996 SC 869]. The court should accept the illustrations—if that can be done—as being both of relevance and value in construing the text. To reject them on the ground of assumed repugnancy would be the very last resort of construction. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the legislature as helpful in the working and application of the statute should not be impaired [LORD SHAW, in *Md Syedol v. Veohoolyark*, 43 IA 256 : 21 CWN 257, 264 : A 1916, PC 242 (**relied** on in *Muralidhar v. I F Co*, A 1943 PC 34 : 70 IA 35); *Durga Priya v. Durga Pada*, 55 C 154 : *Hem v. Narendra*, 38 CWN 101 : *Janoo & Co v. Heap & Sons Ld*, 46 IC 497 : 11 Bur LT 9]. But an illustration though a part of the section ordinarily exemplifies the particular section to which it is appended [*Krishnadas v. Dwarkadas*, 1937 Bom 679 : A 1936 B 459]. Sec. 73 illus. (a) of the Contract Act contains an authoritative interpretation of the section for such a case [*Hajee Ismail v. Wilson & Co*, 41 M 109]. Where the meaning of a section is doubtful, a reference to an illustration is justified. But if there is a conflict between the section and illustration, the latter must give way to the former [*Sajidunnissa v. Hidayad*, 80 IC 896 (A)].

**Definition.**—The words 'means and includes' in the definition clause would indicate that the definition in exhaustive. *P Kasilingam v. P S G College*, A 1995 SC 1395. For construing definition clause in the Act connected definitions contained in the Rules should be taken into consideration. *P Kasilingam v. P S G College*, A 1995

SC 1395. Terms defined in an Act must be given the meanings contained therein unless it is clear that they must be given different meanings [*Offl Liq v. Jugal*, A 1939, A 1]. The courts are not at liberty to import into the Code definitions which are provided for the purpose of some other Acts [*R v. Ramlal*, 15 A 141, 143]. The frame of any definition, more often than not, is capable of being made flexible. But the precision and certainty in law requires that it should not be made loose and kept tight as far as possible [*Kalya Singh v. Gendalal*, A 1975 SC 1634].

**Interpretation Clause.**—See *post*, s 3.

**Exceptions.**—An exception is required to be interpreted strictly and should not be allowed to affect the general rule, nor can it be so interpreted as to nullify or destroy the main provision [*Maggi v. Sitaram*, A 1978 Raj 1]. Where there are in the same section exceptions, it may be assumed, unless it otherwise appears from the language, that exceptions were necessary, as otherwise the subject matter of the exceptions would have come within the operative provisions of the section [*Bombay Prov v. Hormusji*, A 1947 PC 200 : 74 IA 130].

**Explanation.**—An explanation does not enlarge the scope of the original section [*Kishan v. Prem*, A 1939 L 587]. If on a true reading of an explanation it appears that it has widened the scope of the main section, effect must be given to legislative intent notwithstanding the fact that the legislature named that provision as an Explanation [*Hiralal v. STO*, A 1973 SC 1034]. Although the orthodox function of an explanation is to explain the meaning and effect of the main provision the intention of the legislature is paramount and mere use of a label cannot control or deflect such intention [*Dattatraya v. S*, A 1977 SC 915].

**Forms.**—An act should not be construed by reference to the forms prescribed under its rule-making power [*Pandiri v. Maturi*, A 1941 M 152].

**Heading.**—The heading of a chapter could be looked into for the purpose of construing the sections [*Dwarkanath v. Tafazar*, 20 CWN 1097; *Offl Assignee v. Chimniram*, 34 Bom LR 1615]. It is of no material assistance in construing a section [*Secy of S. v. Mask & Co.*, 67 IA 222: A 1940 PC 105]. It may be referred to for finding out the meaning of a doubtful expression [*R. v. Ismail*, 57 B 537]. Under the English law the headings prefixed to sections or sets of sections in some of the modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute, but they may explain ambiguous words [MAXWELL, 11th ed, p 49; see also *Corpn of Calcutta v. Sub-Post Master*, 54 CWN 429; *Janki v. Jagannath*, 3 PLJ 1 FB: A 1918 P 398; *Janu v. Fakira*, 13 NLR 181 (*Mukhunlall v. Koondunlal*, 15 BLR 228, 234: 2 IA 210 refd to)]. But the headings or sub-headings cannot restrict or extend the scope of the sections, when the language used is free from ambiguity [*Savitri v. Dwarka*, A 1939 A 305]. The heading to a group of sections ought not to be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act [*Narma v. Bombay Munl. Commr*, 45 IA 125 : A 1920 PC 20 : 23 CWN 110]. A heading to one group of sections cannot be used to interpret another group of sections [*Shelly v. LCC*, 1949 AC 56, 59]. Headings do not control the substantive sections [*Durga v. Narain*, A 1931 A 597 FB; *Har Pd v. Dt Magte*, A 1949, A 403]. While headings may be looked at to resolve any doubt as to ambiguous words, they cannot be used to give a different effect to clear words in the section where there is no doubt as to their ordinary meaning [*R. v. Surrey Ass Com*, 1948, 1 KB 29, 32 *per* LORD GODDARD, CJ].

**Punctuation.**—It was held in *Taylor v. Bleach*, 39 B 182 and *Isap v. Abrahamji*, 41 B 588 that punctuation could be taken into consideration in intevpreting an Act.

But this is not good law. In *Duke of Devonshire v. O'Connor*, LR 24 QBD 468, LORD ESHER, MR said: "In an Act of Parliament there are no such things as brackets any more than there are such things as stops." Commas are no part of the statute [*Pugh v, Asutosh*, 56 IA 93, 100 : A 1929 PC 69 : 33 CWN 323; *Borgonha v. B*, 22 Bom LR 361; *Indian Cotton Co v. Hari*, A 1937 B 39; *Bando & Co v. Corpn of Calcutta*, 43 CWN 1173] and it is an error to rely on punctuation in construing Act [*Maharani of Burdwan v. Krishna Kamini*, 14 IA 20 : 14 C 365, 372; *Manilal v. Trustees*, 22 CWN 1, 23: 45 C 343; *Gobardhan v. S*, A 1957 P 340]. The present trend however is to refer to punctuation in proper cases [see *Iswari v. Sen*, 55 CWN 719; *R v. Ismail*, A 1933 B 417]. Although punctuation is not a part of a statute where it is not contended that a punctuation is not wrongly placed, there is no reason why punctuation should not be taken as a good guide for the purpose of understanding the sense of the passage in which it occurs [*Birendra v. Nagendra*, 39 CWN 910].

**Proviso.**—If, on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. A proviso must be limited to the subject matter of the enacting clause. A proviso must *prima facie* be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment [*Dwarka Pd v. Dwarkadas*, A 1975 SC 1758]. But when there is doubt as to the true meaning of the substantive part of the section, the words of a proviso may be legitimately looked to [*Sankaran v. Ramaswami*, 41 M 691 : 34 MLJ 446]. In exceptional cases proviso may be substantive provision itself [*Bd of Rev v. Ramkishan*, A 1968 SC 59]. In the context, setting and purpose of a provision, even a proviso may function as an independent clause [*Dattatraya v. S*, A 1977 SC 915]. Proviso should receive a strict construction [*Perichiappa v. Nachiappa*, A 1932 M 46]. Ordinarily a proviso to a section is intended to take out a part of the main section for special treatment. It is not expected to enlarge the scope of the main section. But cases have arisen in which the court has held that a proviso is really a separate provision substantially altering the main section [*Hiralal v. STO*, A 1973 SC 1034]. The proviso and the main provision should be read harmoniously. *C S T v. B G Patal*, A 1995 SC 865.

**Proposed Amendment.**—A judge is wrong in referring to the amendments of law proposed where they have not become part of the law [*Abdul v. R*, 36 CLJ 153].

**Government Resolution.**—Government resolution cannot override the law [*R v. Gopal* A 1933 B 234].

**Precedents as Aids to Construction.**—Decided cases effectively construe the words of a statute and establish principles and rules whereby its scope and effect may be interpreted. But there is always a danger that in the course of this process the terms of the statute may come to be unduly extended and attention may be diverted from what has been enacted to what was judicially said about the enactment [*Att Genl of Canada v. Att Genl of Ontario*, A 1932 PC 36 : 135 IC 754].